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# CARES ACT GIMMICKS: HOW NOT TO GIVE PEOPLE MONEY DURING A PANDEMIC AND WHAT TO DO INSTEAD

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## INTRODUCTION

The coronavirus pandemic upturned Americans' lives. Within the first few weeks, millions of Americans reported being laid off from their jobs.<sup>1</sup> Other people were working reduced hours or were working remotely from home. Children's daycares and schools closed, and parents were thrown into new roles as educators and full-time babysitters, while, in some instances, also continuing to work full-time jobs. The profound financial effects caused by even a few weeks

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1. Jeff Cox, *US Payrolls Plunge 701,000 in March Amid the Start of a Job Market Collapse*, CNBC: ECON. (April 3, 2020, 8:30 AM), <https://www.cnbc.com/2020/04/03/jobs-report-march-2020.html>.

of the coronavirus' upheaval spurred Congress to pass the CARES Act,<sup>2</sup> which purported to provide economic relief to individuals and businesses.

For individuals, the CARES Act includes five provisions that were effectively designed to provide people money: a direct payment in the form of a tax rebate,<sup>3</sup> enhanced employment benefits,<sup>4</sup> additional paid sick leave,<sup>5</sup> a limited mortgage foreclosure and eviction moratorium,<sup>6</sup> and temporary suspension of some student loan payments.<sup>7</sup> Of these provisions, the direct payment and enhanced employment benefits were the two touted as centerpieces of the CARES Act and the two most likely to aid the majority of American households.

Ultimately, this financial support will prove to be shockingly minimal. The direct payments represent a fraction of the average American households' monthly budget. It also quickly became apparent that the payments were unlikely to reach most people within any sort of useful timeframe, and that once they did, they could be garnished immediately by debt collectors<sup>8</sup> and even banks themselves.<sup>9</sup> The unemployment benefits, while providing people with more money over several months, required that people be laid off and similarly were unlikely to reach people quickly enough to be effective.

These corner pieces of the CARES Act are best understood as gimmicks. Through them, the federal government told people that it would take care of them in ways that were immediately salient to them as the coronavirus crisis began. People's wages decreased at the exact time they were spending more money to stock up on supplies. The CARES Act promised to send people small checks and augment unemployment benefits. Americans very soon began to discover that these promises would do little to help them survive the coming months of financial and social upheaval.

It also became quickly apparent to at least some lawmakers that Congress would need to pass at least one additional stimulus package.<sup>10</sup> And with projections that the pandemic could last for twelve to eighteen months,<sup>11</sup> it seems that

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2. The full text of the bill is available at <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf> [hereinafter CARES Act].

3. CARES Act, § 2201.

4. *Id.* § 2107.

5. *Id.* § 3602.

6. *Id.* § 4022.

7. *Id.* § 3513.

8. See Pamela Foohey, Dalié Jiménez, & Christopher Odet, *Time is Running Out to Protect Americans' Relief Payments from Debt Collectors*, HARV. L. REV. BLOG: CONSUMER PROTECTION (Apr. 7, 2020), <https://blog.harvardlawreview.org/time-is-running-out-to-protect-americans-relief-payments-from-debt-collectors/>.

9. See David Dayen, *Your Coronavirus Check is Coming. Your Bank Can Grab It*, THE AMERICAN PROSPECT (Apr. 14, 2020), <https://prospect.org/coronavirus/banks-can-grab-stimulus-check-pay-debts/>.

10. See Lauren Egan, *What's Next from Congress in Coronavirus Stimulus Legislation*, NBC NEWS: CONGRESS (Apr. 8, 2020, 8:01 AM), <https://www.nbcnews.com/politics/congress/what-s-next-congress-coronavirus-stimulus-legislation-n1179106>; Emily Cochrane, *Nancy Pelosi Is Already Talking About the Next Stimulus Bill for Coronavirus Relief*, N.Y. TIMES (Mar. 30, 2020), <https://www.nytimes.com/2020/03/30/us/politics/coronavirus-stimulus-relief-congress.html>.

11. See Jacqueline Howard, *Coronavirus Pandemic Will Likely Be Around "For 12 to 18 Months," Harvard Doctor Says*, CNN (Mar. 26, 2020, 1:09 PM), [https://www.cnn.com/world/live-news/coronavirus-outbreak-03-26-20-intl-hnk/h\\_664fa9ce30870c744bd3e47d73f8acbf](https://www.cnn.com/world/live-news/coronavirus-outbreak-03-26-20-intl-hnk/h_664fa9ce30870c744bd3e47d73f8acbf).

Congress may have several more opportunities to craft legislation that actually will help American families survive the pandemic. This legislation must provide people with true funding to stay current with their minimum necessary expenses as these expenses are incurred. In this Essay, we discuss the gimmicks of the CARES Act's individual provisions and what Congress should do for people in future bills to address this pandemic. If done right, helping individuals will cost the government more than \$2 trillion next time, and the time after that, and possibly the time after that. And, if done right, it will be worth every penny.

## I. HOW THE CARES ACT GETS MONEY TO AMERICANS

When thinking about how to provide American households with financial assistance during a pandemic, there are two primary approaches: sending people money and temporarily halting people's recurring necessary expenses. The CARES Act's individual provisions primarily take the first approach. In addition to the direct payments and enhanced unemployment benefits detailed below, it augments paid sick leave.<sup>12</sup>

The legislation also includes minimal provisions that halt recurring large expenses. People who have federally-backed mortgages may request six months of forbearance, during which late fees or penalties are not allowed, but interest will continue to run.<sup>13</sup> Mortgages owned by private lenders, such as large banks, are not included in this provision. For rental properties on which there is a federally-backed mortgage or that are part of federal housing programs, landlords may not evict tenants for four months.<sup>14</sup> If landlords have financed their properties with private loans, they likewise are not covered by the eviction moratorium. There also is a similar provision for federally-backed student loans that suspends monthly payments and eliminates interest accrual through the end of September.<sup>15</sup>

As we discuss, cessation of recurring expenses is the best way to get the equivalent of money to Americans. And yet the CARES Act mainly provides for cold hard cash sent to people, often too little and too late.

### A. Direct Payments

Perhaps the most publicized part of the CARES Act for individuals is the direct payments to American households, termed "recovery rebates."<sup>16</sup> Single

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12. We do not discuss this provision because the CARES Act significantly reduced benefits as proposed during negotiations and then the Department of Labor further slashed benefits such that most people will be ineligible for paid sick leave. See Emily Peck, *Trump's Labor Department Takes a Hacksaw to Coronavirus Paid Sick Leave*, HUFFPOST: POL. (Apr. 2, 2020, 6:52 PM), [https://www.huffpost.com/entry/trumps-labor-department-hacksaws-coronavirus-paid-sick-leave\\_n\\_5e865661c5b6a9491833a797](https://www.huffpost.com/entry/trumps-labor-department-hacksaws-coronavirus-paid-sick-leave_n_5e865661c5b6a9491833a797).

13. CARES Act, § 4022.

14. *Id.* § 4023. See also *Summary and Analysis of Federal CARES Act Eviction Moratorium*, NAT. HOUSING L. PROJECT (Mar. 28, 2020), <https://www.nhlp.org/wp-content/uploads/2020.03.27-NHLP-CARES-Act-Eviction-Moratorium-Summary.pdf>.

15. CARES Act, § 3513.

16. I.R.C. § 6428 (as added to the Internal Revenue Code by the CARES Act).

adults who make \$75,000 or less and heads of households who make \$112,500 or less receive \$1,200. Married couples who make \$150,000 or less receive \$2,400. And every household receives \$500 for every child aged 16 or under in the household.<sup>17</sup> How much people make is determined by their adjusted gross income on their most recently filed tax return, either 2019 or 2018.<sup>18</sup> If a person or couple did not file a tax return, they can use their 2019 Social Security statement, which reports their income as reported to the IRS by their employer.<sup>19</sup>

Those people who make over these thresholds receive a sliding scale reduction in their direct payment at a rate of \$5 per every \$100 of income over their applicable threshold.<sup>20</sup> For instance, a single adult will not receive a payment if their income is over \$99,000. A married couple with one child will not receive a payment if their income is over \$203,000. And a head of household with two children will not receive a payment if their income is over \$146,500.

The mechanics of delivering payments to American households also is tied to previously-filed tax returns. The CARES Act contemplates payments coming to American households “as rapidly as possible.”<sup>21</sup> It allows the Treasury Department to distribute payments electronically to the bank accounts to which people previously authorized the IRS to deposit their 2018 or 2019 tax refunds.<sup>22</sup> Treasury reported that it first deposited coronavirus relief payments into people’s bank accounts on April 10, 2020,<sup>23</sup> two weeks after Congress passed the CARES Act.<sup>24</sup>

Of course, if people did not provide the IRS with direct deposit information, the Treasury Department will need to send the payment some other way. Based on IRS statistics, 20% of people eligible for a tax refund do not provide the IRS with direct deposit instructions.<sup>25</sup> How these and other Americans who did not receive a tax refund will get their direct payments is not specified.<sup>26</sup> Regardless of the payment method, the CARES Act requires that the Treasury Department send a notice to recipients’ last known address within 15 days of distributing the payment. That notice must provide how the payment was made, the amount of

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17. *Id.* § 6428(a), (c).

18. *Id.* § 6428(f)(1), (f)(5).

19. *Id.* § 6428(f)(5)(B).

20. *Id.* § 6428(c).

21. *Id.* § 6428(f)(3)(A).

22. *Id.* § 6428(f)(3)(B).

23. See Marty Johnson, *First Coronavirus Relief Checks Hit Americans’ Bank Accounts*, THE HILL (Apr. 11, 2020, 8:15 PM), <https://thehill.com/policy/finance/economy/492375-first-coronavirus-relief-checks-hit-americans-bank-accounts>.

24. See Leon LaBrecque, *The CARES Act Has Passed: Here Are the Highlights*, FORBES: MONEY (Mar. 29, 2020, 7:00 AM), <https://www.forbes.com/sites/leonlabrecque/2020/03/29/the-cares-act-has-passed-here-are-the-highlights/#1602bd1d68cd> (noting that President Trump signed the CARES Act into law on March 27, 2020).

25. *Get Your Refund Faster: Tell IRS to Direct Deposit Your Refund to One, Two, or Three Accounts*, IRS, <https://www.irs.gov/refunds/get-your-refund-faster-tell-irs-to-direct-deposit-your-refund-to-one-two-or-three-accounts> (last visited Apr. 10, 2020).

26. See *infra* Part II for a discussion of the projected timing of relief payments getting to these Americans.

the payment, and a phone number at the IRS for people to report that they did not receive the payment.<sup>27</sup>

### B. *Enhanced Unemployment Benefits*

Another core component of the CARES Act in providing money to American households deals with unemployment benefits. Unemployment insurance is principally a cash payment, state-level program made possible through a partnership with the Department of Labor.<sup>28</sup> Each state creates and manages its own unemployment insurance program,<sup>29</sup> but the federal government sets certain baseline requirements.<sup>30</sup>

Unemployment benefits help households manage through difficult times without making dramatic and sudden changes in spending and consumption.<sup>31</sup> While the benefit does not cover all lost income, it softens the blow such that people can continue to buy groceries and pay for utilities while hunting for new employment. More broadly, unemployment benefits maintain economic activity.<sup>32</sup>

Generally, individuals qualify for unemployment benefits if they are unemployed through no fault of their own, often by being laid-off due to a lack of work.<sup>33</sup> States also have enacted certain minimum earning and work requirements, which are derived from a base period calculation that typically consists of about four quarters of the calendar year before the claim is made, excluding the current quarter and the one prior to it.<sup>34</sup> People must file unemployment benefit claims with the applicable state agency, often over the phone or online.<sup>35</sup>

Typically, states do not pay employees 100% of their prior earnings. Instead, the benefit is usually limited to about one half of that amount up to a state-level earnings average. The precise formula ranges widely from state to state, and only some states provide a supplement for children and other dependents

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27. I.R.C. § 6428(f)(6).

28. Lucy A. Williams & Margaret Y.K. Woo, *The “Worthy” Unemployed: Societal Stratification and Unemployment Insurance Programs in China and the United States*, 33 COLUM. J. TRANSNAT’L L. 457, 478 (1995) (describing the history of the U.S. system of unemployment insurance).

29. *See, e.g.*, Oklahoma Security Act of 1980, OKLA. STAT. tit 40, §§ 1-101-9-104.

30. *See, e.g.*, 26 U.S.C. § 3301; 20 C.F.R. § 604.

31. *The Importance of Unemployment Insurance for American Families and the Economy*, BROOKINGS (Dec. 4, 2012), <https://www.brookings.edu/research/the-importance-of-unemployment-insurance-for-american-families-and-the-economy/>.

32. *Unemployment Insurance in the Wake of the Recent Recession*, CBO 2 (Nov. 2012), [https://www.cbo.gov/sites/default/files/112th-congress-2011-2012/reports/11-28-UnemploymentInsurance\\_0.pdf](https://www.cbo.gov/sites/default/files/112th-congress-2011-2012/reports/11-28-UnemploymentInsurance_0.pdf).

33. Williams & Woo, *supra* note 28 at 480–81.

34. For example, if an individual filed for unemployment insurance in September 2020, the base period would be comprised of the period between April 2019 and March 2020 (four quarters). The current quarter at the time of filing (July through September 2020) and the one immediately prior to that (April through June 2020) would be excluded. Some states provide an alternative to this formula when individuals do not have enough work hours or earnings during the typical base period to qualify. *See* NAT’L EMP. L. PROJECT: WHAT IS AN “ALTERNATIVE BASE PERIOD” & WHY DOES MY STATE NEED ONE? (2015), <https://www.nelp.org/wp-content/uploads/2015/03/Alternative-Base-Period.pdf>.

35. *See, e.g.*, *Get Unemployment Benefits*, OKLAHOMA EMP. SECURITY COMMISSION, <https://unemployment.state.ok.us> (last visited Apr. 10, 2020).

(typically \$25 or less per week).<sup>36</sup> For February 2020, the national average weekly benefit was \$387, with significant variation between states. The average for Massachusetts was \$550 but only \$161 in Puerto Rico.<sup>37</sup>

Title II of the CARES Act expands unemployment insurance through the end of 2020. The law makes several moves to accomplish this endeavor. First, it expands eligibility. Any person who self-certifies that he or she is able to work but is unable to do so on a full-time or part-time basis because of a wide variety of reasons related to COVID-19 (including illness, quarantine, caregiving, underlying illness susceptibility, or work closure) is eligible to apply for benefits.<sup>38</sup> This expanded definition covers individuals who are typically not eligible for unemployment insurance, such as those with insufficient work histories to meet state law standards and independent contractors, like gig economy workers.<sup>39</sup>

Second, individuals are eligible to receive their normal state-calculated benefit,<sup>40</sup> plus an additional \$600 per week regardless of state law earnings limitations.<sup>41</sup> This additional benefit only lasts until the end of July 2020.<sup>42</sup> Third, the CARES Act elongates the time during which people can collect benefits for an additional 13 weeks, from a typical 26 weeks to a total of up to 39 weeks (nearly 9 months).<sup>43</sup>

As to benefits' delivery, the CARES Act endorses states' already adopted approaches.<sup>44</sup> States generally offer either direct deposit or a pre-loaded debit card. For example, in Massachusetts, although the first payment always comes in the form of a paper check, benefits are thereafter received either via direct deposit into a bank account or loaded to a prepaid debit card.<sup>45</sup> The first payment typically takes between three and four weeks after the application is made. Few states (if any) still offer a paper check option.<sup>46</sup> However, the CARES Act allows the additional \$600 payment to be made separately from the normal benefit payment, but it must be made on the same weekly basis.<sup>47</sup>

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36. See *infra* note 37.

37. *Policy Basics: Unemployment Insurance*, CTR. ON BUDGET & POL'Y PRIORITIES (last updated Apr. 1, 2020), <https://www.cbpp.org/research/economy/policy-basics-unemployment-insurance>.

38. CARES Act, § 2102(a)(3). But again, the CARES Act defers to the states. Not all state unemployment programs offer benefits to those who are only partially employed or who have their benefits cut.

39. *Id.* § 2102(a)(3)(A)(ii)(II).

40. *Id.* § 2102(a)(1)(A).

41. *Id.* § 2104(b)(1)(B).

42. *Id.* § 2104(e)(2). Each state funds its unemployment insurance program through a payroll tax that is paid by employers into the fund. See, e.g., OKLA. STAT. TIT. 40 § 3-102. The cost of the increased benefits under the CARES Act will be paid to the various states by the U.S. Treasury. Section 2102(a)(1)(A).

43. CARES Act, § 2102(c)(2).

44. *Id.* § 2104(d)(3).

45. *Receiving your unemployment benefits by direct deposit or DUA debit card*, MASS. GOV., <https://www.mass.gov/guides/receiving-your-unemployment-benefits-by-direct-deposit-or-dua-debit-card> (last visited Apr. 2, 2020).

46. John Morell, *Unemployment benefits switch from paper to plastic*, CREDIT CARDS.COM (July 21, 2008).

47. CARES Act, § 2104(d)(3).

## II. PAYING PEOPLE REQUIRES PROVIDING THEM WHAT THEY ACTUALLY NEED RIGHT NOW

Despite being lauded as everything from “a lifeline”<sup>48</sup> to American workers to a giveaway that provides “taxpayer funds to plenty of people who don’t need more money,”<sup>49</sup> when it comes to giving direct financial aid to individuals, the CARES Act falls short. How short the CARES Act falls will only become more and more apparent in the coming months and years as the United States and the global economy struggles to recover. Indeed, in important ways, the CARES Act provides nothing more than gimmicks to Americans.

At first glance, the \$1,200 or \$2,400 (plus \$500 per child) “recovery rebate” may seem like a significant amount. Some might imagine that one could do quite a few things with an extra thousand dollars or two. Many American households, however, have little savings, and once their savings are depleted, these funds will cover few of their continuing expenses. The typical American family has about \$8,863 in a savings account but with significant variance based on age. Couples in the 34 and younger group only have about \$4,727 stocked away. Single individuals in that cohort have even less—\$2,729.<sup>50</sup>

People’s lack of savings ties to rising expenses and relatively stagnant incomes. In the past ten years since the Great Recession, household incomes have risen about 15%, yet housing is up 26%, medical expenses up 33%, and college tuition is up an astonishing 45%.<sup>51</sup> These national averages also obstruct the financial precarity of many Americans. Federal Reserve survey data from 2017 indicated that four in every ten adults, if faced with an unexpected expense of \$400, would not be able to cover the expense without selling something or going into debt.<sup>52</sup>

The Federal Reserve Bank of Saint Louis calculated that the relief checks would last four weeks for low-income households and a max of eight weeks for higher earners.<sup>53</sup> This and other projections soon brought calls for additional

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48. Elaine Pofeldt, *The Historic \$2 Trillion CARES Act Will Be an Economic Lifeline for Gig Workers and Freelancers*, CNBC (Mar. 30, 2020, 9:57 AM), <https://www.cnbc.com/2020/03/30/cares-act-will-be-an-economic-lifeline-for-gig-workers-freelancers.html>

49. Rachel Greszler, *13 Key Things to Know About the Senate’s Giant Coronavirus Bill*, HERITAGE FOUND. (Mar. 24, 2020), <https://www.heritage.org/public-health/commentary/13-key-things-know-about-the-senates-giant-coronavirus-bill>.

50. Adrian D. Garcia, *This is the Average Amount in Savings Accounts—How Does Your Cash Stack Up?*, BANKRATE (Dec. 3, 2018), <https://www.bankrate.com/personal-finance/savings-account-average-balance/> (analyzing inflation adjusted data from the Federal Reserve).

51. Christopher Maloney & Adam Tempkin, *America’s Middle Class Is Addicted to a New Kind of Credit*, BLOOMBERG (Oct. 29, 2019, 3:57 PM), <https://www.bloomberg.com/news/articles/2019-10-29/america-s-middle-class-is-getting-hooked-on-debt-with-100-rates>.

52. *Report on the Economic Well-Being of U.S. Households in 2017*, FED. RES. (May 2018), <https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf>.

53. YiLi Chien, *How Long Will the Relief Check Last?*, FED. RES. BANK ST. LOUIS (Apr. 6, 2020), <https://research.stlouisfed.org/publications/economic-synopses/2020/04/06/how-long-will-the-relief-check-last>.

funding.<sup>54</sup> These calls were met with immediate political push-back against additional spending.<sup>55</sup>

As many households come upon the fifth week or more of social distancing and shelter-at-home orders, it is clear that this one-time payment is not enough for those who need it. How “not enough” the additional money would prove to be for an individual or couple depended significantly on where they live. The amount allocated to every household presumes that the cost of living is the same for all Americans. This is clearly false. Someone living in small town Louisiana is bound to find \$1,200 more significant than someone living in San Francisco. Federal law recognizes this; numerous other programs—ranging from housing voucher programs to bankruptcy to SNAP payments—scale economic benefits based on residence.<sup>56</sup> This ensures that the amounts are meaningful in light of where people live.

The rebate payment calculation can be similarly critiqued as insufficiently tailored. The rebate amount is derived from an individual’s 2018 or 2019 tax return. Many Americans may not have filed their 2019 returns. Even if someone has filed their 2019 return, their income may have fluctuated significantly between 2018 or 2019 and present day. For instance, a real estate broker’s \$75,000 commission-based income from 2019 might suddenly be reduced to almost nothing under current real estate market conditions. The same can be said for hourly jobs or those based on tips or commission. Only if an individual has been laid off from those jobs will they be able to collect unemployment. In addition, the composition of a family can change from year-to-year with marriages and births that prior years’ tax returns will not show.

Beyond the monolithic approach that Congress took to calculating the rebate amount, it also seemingly thought little about how the rebate will be delivered to American households. A week after the bill was signed, the Treasury Department said it would likely take three weeks for Americans with direct deposit information on file with the government to receive payment.<sup>57</sup> By one account, that only includes 90 million individuals. Although Treasury was able to direct deposit *some* relief payments within two weeks,<sup>58</sup> about 15% of these payments likely went to closed bank accounts or accounts not controlled by the taxpayer.<sup>59</sup>

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54. See sources cited *supra* note 10.

55. Eamon Javers & Jacob Pramuk, *White House Is Not Planning for a 4th Coronavirus Relief Bill Despite Democrats’ Push, Officials Say*, CNBC (April 1, 2020, 12:09 PM), <https://www.cnbc.com/2020/04/01/coronavirus-stimulus-package-white-house-is-not-planning-4th-bill.html>.

56. See *A Quick Guide to SNAP Eligibility and Benefits*, CTR. ON BUDGET AND POL’Y PRIORITIES (Nov. 1, 2019), <https://www.cbpp.org/research/food-assistance/a-quick-guide-to-snap-eligibility-and-benefits>; *Means Testing*, U.S. DEP’T JUST., <https://www.justice.gov/ust/means-testing> (last visited Apr. 16, 2020).

57. Lorie Konish, *When Will the Money Arrive? Here Are Answers to Your Questions About the Coronavirus Stimulus Checks*, CNBC (Mar. 31, 2020, 3:32 PM), <https://www.cnbc.com/2020/03/31/coronavirus-stimulus-checks-answers-to-your-most-pressing-questions.html>.

58. See *supra* note 23 and accompanying text.

59. See Adam Levitin, *Corona Cash and Refund Anticipation Checks*, CREDIT SLIPS (Apr. 12, 2020, 4:17 PM), <https://www.creditslips.org/creditslips/2020/04/corona-cash-and-refund-anticipation-checks.html>.



As for Americans for whom the IRS did not have direct deposit information, the IRS launched a website around the same time as Treasury sent the first direct deposit payments.<sup>60</sup> At the time of the website's launch, it was unclear when these payments would be deposited or mailed to households. Other news stories at the time suggested that many Americans may not receive their direct payments for as many as four months.<sup>61</sup> This led to banks and other consumer financial services providers jockeying to provide services to distribute the payments, bringing worries that they will take a cut of money meant to go to American families.<sup>62</sup>

A lot can happen in just three or four weeks in terms of needing money to pay necessary expenses. If someone loses their job, they have to pay for health insurance: for COBRA, to temporarily continue employer-provided insurance, or to purchase an individual plan on the open market. During this period, people also will need to pay their car loans. Many individuals may default on their car loans, meaning their vehicles can be repossessed.<sup>63</sup> Families may be stranded and unable to make necessary trips to the grocery or receive medical care. Indeed, nothing in the CARES Act prevents general debt collection activities such as vehicle repossession, and a number of states have implicitly or explicitly indicated that debt collectors are considered "essential businesses" and thus can remain open during shutdowns.<sup>64</sup>

Many people also will have to continue paying their home mortgages. Although the eviction and foreclosure moratoria help free up extra funds for some, that is not necessarily true for a significant minority of American households. The foreclosure moratorium only applies to federally-related mortgage loans, leaving out about one-third of the market.<sup>65</sup> These mortgage holders are at the mercy of state governors and mayors for relief.

Even those people who are covered by the CARES Act, the law only provides a right to a forbearance. A forbearance doesn't mean that the amounts not paid are forgiven. Rather, they must be made up later—and if the financial crisis is any indicator, the accrued amounts may have to be paid all at once at the end

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60. *Non-Filers: Enter Payment Info Here*, INT'L REVENUE SERV., <https://www.irs.gov/coronavirus/non-filers-enter-payment-info-here> (last visited Apr. 16, 2020).

61. Kelsey Snell, *Stimulus Cash Payments May Take Up to 20 Weeks to Reach Some Americans*, NPR (Apr. 2, 2020, 4:35 PM), <https://www.npr.org/sections/coronavirus-live-updates/2020/04/02/826187693/stimulus-cash-payments-may-take-up-to-20-weeks-to-reach-some-americans>.

62. Jennifer Surane & Robert Schmidt, *There's a Battle Brewing for Your \$1,200 Government Relief Check*, BLOOMBERG (Mar. 31, 2020, 11:52 AM), <https://www.bloomberg.com/news/articles/2020-03-31/there-s-a-battle-brewing-for-your-1-200-government-relief-check>.

63. *See Vehicle Repossession*, FED. TRADE COMMISSION, <https://www.consumer.ftc.gov/articles/0144-vehicle-repossession> (last visited Apr. 16, 2020).

64. *COVID-19 State Update: West Virginia Deems Debt Collection Essential Business*, ACA INT'L (Mar. 24, 2020, 10:00 AM), <https://www.acainternational.org/news/covid-state-update-west-virginia> (listing others); *see also* Foohey, Jiménez, & Odinet, *supra* note 8.

65. CARES Act, §§ 4022, 4023; *Housing Finance at a Glance*, URB. INST. (March 2020), <https://www.urban.org/sites/default/files/publication/101926/housing-finance-at-a-glance-a-monthly-chartbook-march-2020.pdf>.

of the forbearance period.<sup>66</sup> Few homeowners will have enough cash to make a big lump sum payment, particularly coming off the heels of a pandemic with historic unemployment. On top of this, it is not entirely clear who is entitled to the forbearance. The CARES Act appears to give a wide berth for any COVID-19-related reduction in income, yet in early April, Treasury Secretary Mnuchin indicated that the relief was only intended for those who had lost their jobs due to the virus.<sup>67</sup>

The situation for tenants is even more uncertain. Again, the CARES Act eviction moratorium only applies to federal housing programs and leased premises subject to federally-related mortgages.<sup>68</sup> Everyone else (a large portion of tenants) must fall back to their states for relief.<sup>69</sup> And even in those cases, it is often not clear what happens to missed rental payments in the interim. Are they subject to forbearance or do they accrue late fees and penalties? Will they be due in a lump sum at the end of the moratorium?

Both the payment amount and timing mismatch may drive people to payday lenders and similar high-cost alternative finance outfits.<sup>70</sup> Households in financial desperation and waiting for a forthcoming cash infusion are perfect targets for predatory lending. That people anticipate receiving money that they likely need now makes them even more perfect targets.

Finally, while the unemployment payments are more generous in terms of eligibility, length, and amount than what the unemployment current system provides, problems will likely arise. First, the extra \$600 payments end in July.<sup>71</sup> The time from filing a claim, through claim approval, to receipt to the first payment may take months. This hand-up might be brief, perhaps totaling \$1,800 in the best case scenario. Second, the CARES Act defers to state unemployment law. Even if someone is eligible, the core benefit will be limited to only half of their previous income and will be capped by the average state earning ceiling.

Third, eligibility may have been expanded, but it does not cover everyone. Individuals who leave a job voluntarily because of health-related fears are not covered. Consider a person with a CDC designated pre-existing condition whose employer maintains on-site work requirements in a state without a shelter-in-place or essential business restriction or an employer deemed an essential business. If that person chooses not to work to protect themselves, they will not be eligible for benefits. And the CARES Act does nothing for those people who are

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66. For a discussion of loan modification failures during the financial crisis, see CHRISTOPHER K. ODINET, FORECLOSED: MORTGAGE SERVICING AND THE HIDDEN ARCHITECTURE OF HOMEOWNERSHIP IN AMERICA 45-47 (2019).

67. See Melissa Quinn, *Mnuchin Says Checks from Coronavirus Bill Coming "Within 3 Weeks"*, CBS NEWS (Mar. 29, 2020, 10:29 AM), <https://www.cbsnews.com/news/coronavirus-economy-steven-mnuchin-stimulus-bill-face-the-nation/>.

68. CARES Act, §§ 4023, 4024.

69. See, e.g., Press Release: Gov. Reynolds Signs New Proclamation Continuing State Public Health Emergency Declaration (Apr. 2, 2020) (suspending evictions).

70. See Pamela Foohey & Nathalie Martin, *Reducing the Wealth Gap Through Fintech 'Advances' in Consumer Banking and Lending*, 2020 U. ILL. L. REV. \_\_, Part III.C (forthcoming 2021), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3551469](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3551469) (discussing payday and other high-cost short-term loans).

71. CARES Act, § 2104.

seeking work for the first time or who have been looking for new work for months. They will be unlikely to find employment and may be the most in need of temporary financial help.

### III. HOW CONGRESS CAN FIX ITS MISTAKES

During the first month of the coronavirus pandemic, when Congress passed the CARES Act, it remained difficult to wrap our heads around how deep this crisis would go, and how long it would last.<sup>72</sup> Two weeks after state governors issued the first state stay-at-home orders,<sup>73</sup> more than 10 million people had filed unemployment claims--almost 20% more than filed between 2008-10.<sup>74</sup> The jobless rate is predicted to top off at 30%.<sup>75</sup>

The United States' economic situation likely will get worse, both quickly in the short term and persistently over coming months. As the infection and death count grew in March and into April, it became clear this was just the beginning. Drastic measures will continue to be needed, but unfortunately, the CARES Act fails to address the harms of this pandemic to the most vulnerable. The enhanced unemployment benefits of the CARES Act are a start in the right direction, but will take far too long to make a difference to people's pocketbooks and will prove to not stretch far enough. Congress will have to go back to the drawing board. While the American economy is in an induced coma to shake the COVID-19 outbreak,<sup>76</sup> in subsequent legislation, Congress should focus on minimizing human suffering by ensuring access to shelter,<sup>77</sup> utilities, food, and health care, thereby putting Americans' major expenses on hold.<sup>78</sup>

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72. Fareed Zakaria, *This Is Just the First in a Series of Cascading Crises*, WASH. POST (Apr. 2, 2020), <https://www.washingtonpost.com/opinions/global-opinions/this-is-just-the-first-in-a-series-of-cascading-crises/2020/04/02/>.

73. Faith Karimi & Sarah Moon, *California Orders Its Nearly 40 Million Residents to Stay Home to Prevent the Spread of Coronavirus*, CNN (Mar. 20, 2020, 7:13 AM), <https://www.cnn.com/2020/03/19/us/california-coronavirus-stay-home-order/index.html>.

74. See Anneken Tappe, *A 3,000% Jump in Jobless Claims Has Devastated the US Job Market*, CNN (Apr. 2, 2020, 11:35 AM), <https://www.cnn.com/2020/04/02/economy/unemployment-benefits-coronavirus/index.html>; Zakaria, *supra* note 72.

75. See Andrew Soergel, *Fed Official Warns of 30% Unemployment*, U.S. NEWS (Mar. 23, 2020), <https://www.usnews.com/news/economy/articles/2020-03-23/fed-official-unemployment-could-hit-30-as-coronavirus-slams-economy>.

76. Paul Krugman, *The Covid-19 Slump Has Arrived*, THE N.Y. TIMES (April 2, 2020), <https://www.nytimes.com/2020/04/02/opinion/coronavirus-economy-stimulus.html>.

77. Gianpaolo Baiocchi & H. Jacob Carlson, *The Case for a Rent Moratorium*, N.Y. TIMES (Apr. 1, 2020), <https://www.nytimes.com/2020/04/01/opinion/coronavirus-rent-freeze.html>.

78. See Letter from Congressional Progressive Caucus to Speaker Nancy Pelosi (Apr. 9, 2020), [https://cpc-grijalva.house.gov/uploads/2020.04.09\\_CARES2%20CPC%20Priorities.pdf](https://cpc-grijalva.house.gov/uploads/2020.04.09_CARES2%20CPC%20Priorities.pdf) (outlining similar priorities for subsequent legislation). We do not address here the issue of what to do about the more than half a million people who are homeless or who were homeless before the coronavirus crisis, except to argue that they too should receive stimulus money even if they were not earning an income prior to this crisis. See *State of Homelessness*, END HOMELESSNESS, <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness-report/> (last visited Apr. 3, 2020).

Nearly half of Americans have less than \$400-500 set aside for an emergency.<sup>79</sup> Even if the CARES Act gimmick checks arrived in people's bank accounts immediately after the Act's passage instead of two, three, or more weeks later, the one-time check would not be enough to make a difference.<sup>80</sup> Americans needed cash flow or the equivalent of money as the pandemic escalated and will continue to need funds for months into the future.<sup>81</sup>

People also need to obtain or maintain their health insurance. This crisis underscores the highly problematic way in which individuals acquire health insurance in the United States.<sup>82</sup> Unemployment payments will not be enough to cover the cost of COBRA, and ACA plans can be prohibitively expensive either on a monthly basis or because of high deductibles. If Congress really wants to reduce human suffering during these uncertain times, they would allow uninsured individuals or families to sign up for Medicare starting now.<sup>83</sup>

As a short term solution, money equivalents should have begun with an immediate nationwide eviction and foreclosure moratorium,<sup>84</sup> accompanied by a debt collection, garnishment, and re-possession moratorium.<sup>85</sup> Future legislation needs to include these measures to protect people's housing situations and their savings. As stated by Massachusetts Attorney General, attempting to collect consumer debts right now and until the pandemic abates constitutes an unfair practice in violation of the Fair Debt Collection Practices Act, the Consumer Financial Protection Act, and many state consumer protection statutes.<sup>86</sup>

Halting these proceedings is important for more than financial reasons. Evictions, foreclosures, and repossessions require human-to-human interaction that are likely to increase the number of people infected with the covid-19 and exacerbate the public health crisis. Each of these processes cannot be

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79. See Sarah O'Brien, *Fed Survey Shows 40 Percent of Adults Still Can't Cover a \$400 Emergency Expense*, CNBC (May 23, 2018, 8:58 AM), <https://www.cnbc.com/2018/05/22/fed-survey-40-percent-of-adults-cant-cover-400-emergency-expense.html>.

80. As Adam Levitin noted weeks ago, "[s]ending out checks isn't fast enough" but "foreclosure/eviction moratoria are equivalent to an immediate cash injection to the economy." Adam Levitin, *COVID-19 Response: The Need for Speed*, CREDIT SLIPS (Mar. 18, 2020, 2:21 PM), <https://www.creditslips.org/creditslips/2020/03/covid-19-response-the-need-for-speed.html>.

81. Jeff Spross, *We Need to Send People Money. We Need to Fix How They Get It, Too*, WEEK (Mar. 28, 2020), <https://theweek.com/articles/905207/need-send-people-money-need-fix-how>.

82. *Enroll in or Change 2020 Plans—Only with a Special Enrollment Period*, HEALTHCARE.GOV, <https://www.healthcare.gov/coverage-outside-open-enrollment/special-enrollment-period/> (last visited April 16, 2020).

83. Abigail Abrams, *For Organizer Ady Barkan, COVID-19 Is Yet Another Reason to Pass Medicare for All*, TIME (Mar. 26, 2020), <https://time.com/5810489/medicare-for-all-coronavirus-2/>.

84. The CARES Act takes some steps in this direction, but it is limited to federally-backed mortgages. CARES Act, §§ 4022, 4023.

85. A number of states have already tolled statutes of limitations on debt collection and other private causes of action. Donald Maurice, *COVID-19: Several States Toll Statutes of Limitations on Legal Actions*, INSIDE ARM (Mar. 25, 2020, 12:00 PM), <https://www.insidearm.com/news/00046055-covid-19-several-states-toll-statutes-lim/>.

86. Mass says collecting debts (filing suit, threatening, garnishing, seizing, repossessions) is an unfair and deceptive practice under Mass. Consumer Protection Act. *See id.*

accomplished with proper social distancing.<sup>87</sup> Despite debt collectors' arguments to the contrary, these are not essential processes or businesses.<sup>88</sup> People need food, medicine, trash pickup, and mail delivery.<sup>89</sup> No one needs to be called by a debt collector, to be evicted for their home, or to have their car repossessed right now. And this is not just a matter of the harm these events could bring to the individuals called, evicted, and forced to live without a car. These actions undoubtedly will affect the lives of unrelated individuals.<sup>90</sup>

Similarly, as Americans are required to shelter at home and many are unable to earn an income, Congress must enact a nationwide moratorium on utility shut-offs. This moratorium should include basic utilities like electricity, gas, water, and the devices people are using to remain connected during this crisis, such as phone and internet access. These are all essential in the current environment in a world of social distancing.<sup>91</sup>

Moratoria will not be enough, however, if all they do is push off the costs to the unknown future. The forbearance relief given to those with federally-related mortgages (covering two-thirds of home loan borrowers<sup>92</sup>) does not guarantee that the payments can be caught up in any kind of manageable way. Indeed, a typical forbearance requires the borrower to make up the sum of missed payments all at once. Few if any Americans will have that kind of cash at the end of this crisis. Tenants fare even worse. The CARES Act only provides an eviction moratorium for one in every four tenants,<sup>93</sup> leaving everyone else at the mercy of their governors or legislatures for relief. They face even worse prospects when it comes to making up the missed rental payments because there is no such thing as a "loan modification" with a lease contract.

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87. Brooke Wolford, *Is 6 Feet far Enough? Study Suggests Coronavirus Can Leap the Social Distancing Gap*, THE NEWS TRIBUNE (Apr. 1, 2020, 10:46 AM), <https://www.thenewtribune.com/news/coronavirus/article241664666.html>.

88. *COVID-19 State Update: West Virginia Deems Debt Collection Essential Business*, *supra* note 64.

89. Instead of failing to bail out the United States Post Office, as the White House declined to do, Congress should increase funding to the Post Office to address this crisis. See Jacob Bogage, *White House Rejects Bailout for U.S. Postal Service Battered by Coronavirus*, SEATTLE TIMES (Apr. 11, 2020, 12:08 PM), <https://www.seattletimes.com/nation-world/white-house-rejects-bailout-for-u-s-postal-service-battered-by-coronavirus/>; Nicole Goodkind, *USPS Warns It Might Have to Shutter by June as \$2 Trillion Coronavirus Stimulus Package Provides No Funding*, FORTUNE (Mar. 30, 2020, 10:30 AM), <https://fortune.com/2020/03/30/usps-postal-service-stimulus-package-no-funding-post-office-mail-delivery-could-shutter-june-coronavirus-relief-bill/>.

90. As Mehrsa Baradaran has noted, this crisis reminds us that "our actions affect other people even when we aren't aware." Mehrsa Baradaran, *Unsanitized: A Crisis to End All Crises*, AMERICAN PROSPECT (Mar. 29, 2020), <https://prospect.org/coronavirus/unsanitized-a-crisis-to-end-all-crises/>.

91. Kevin Dickinson, *How to Survive Social Distancing According to Science*, BIG THINK (Mar. 19, 2020), <https://bigthink.com/mind-brain/social-distancing>; Ezra Klein, *Coronavirus Will also Cause a Loneliness Epidemic*, VOX (Mar. 12, 2020, 8:20 AM), <https://www.vox.com/2020/3/12/21173938/coronavirus-covid-19-social-distancing-elderly-epidemic-isolation-quarantine>; Ethan Sacks, *Social Distancing Could Have Devastating Effect on People With Depression*, NBC NEWS (Mar. 16, 2020, 5:01 AM), <https://www.nbcnews.com/health/health-news/social-distancing-could-have-devastating-effect-people-depression-n1157871>.

92. See sources cited *supra* note 65.

93. Laurie Goodman et al., *The CARES Act Eviction Moratorium Covers All Federally Financed Rentals—That's One in Four US Rental Units*, URBAN INST. (Apr. 2, 2020), <https://www.urban.org/urban-wire/cares-act-eviction-moratorium-covers-all-federally-financed-rentals-thats-one-four-us-rental-units>.

Again, this is also an issue of social distancing and slowing down the virus. In these extraordinary times, the FDA, CDC, and other government agencies have relaxed regulatory red-tape for fast tracking important things like vaccines<sup>94</sup> and tests, Congress should do the same with regards to direct payments.<sup>95</sup>

For future relief bills, we propose an expansion of the gimmick payments into something that will actually help people. First, these payments need to come on a monthly basis until a few months after the health crisis ends to give the economy time to recover. This may mean that American households receive payments for over a year.<sup>96</sup> As a long-term alternative to moratoria, households should be given funds sufficient to cover their housing needs. This means giving people money to cover their mortgage payments and their rent. Such a solution is more effective than merely trying to halt evictions and foreclosures from a procedural standpoint. It keeps money flowing through the housing market and has the potential to prevent the need for the government to engage in aggressive interventions when it comes to holding up the mortgage finance sector.

This will cost a lot.<sup>97</sup> But providing people with funds that allow them to maintain their living situations, health insurance, and pay for necessities ultimately will help all Americans and the economy by stemming the coronavirus's spread.

Second, the relief amount should be tied to United States Census and Bureau of Labor Statistics data so that it can be meaningful for people living in cities and other high cost areas. Third, the relief money must be reliably delivered to Americans. One idea is Representative Tlaib's proposal that pre-loaded debit cards be sent to every person for whom the IRS has an address. Such cards also could be obtained in person, at local post offices, or can be distributed through local community outreach. The cards easily can be set up to require personally-identifiable information before they can be activated to prevent their use by the wrong person. And cards sent to the wrong address can be blacklisted and never be activated.<sup>98</sup>

The federal government will need to carry the economy for the next year or more. The longer Congress and the White House delay in accepting this, the more people will suffer and the longer the economic recession will last. Proposals

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94. Nicoletta Lanese, *Researchers Fast-Track Coronavirus Vaccine by Skipping Key Animal Testing First*, LIVE SCIENCE (Mar. 13, 2020), <https://www.livescience.com/coronavirus-vaccine-trial-no-animal-testing.html>.

95. Fortunately, Congress suspended its draconian 3-month limit of SNAP benefit for unemployed adults without children at home earlier this year. Ed Bolen, *Unemployed Workers Can Get SNAP During Health Emergency*, CTR. BUDGET & POL'Y PRIORITIES (Apr. 2, 2020, 9:00 AM), <https://www.cbpp.org/blog/unemployed-workers-can-get-snap-during-health-emergency>.

96. See Howard, *supra* note 11.

97. Given the magnitude of this crisis, on the front end, Congress does not have time to sort out who "deserves" money and who does not. See Mehrsa Baradaran, *The U.S. Should Just Send Checks—But Won't*, ATLANTIC (Apr. 9, 2020), <https://www.theatlantic.com/ideas/archive/2020/04/the-us-should-just-write-checks-but-wont/609637/>. Instead, when the crisis over, the federal government can recapture the excess through taxes.

98. U.S. HOUSE OF REPRESENTATIVES, CONGRESSWOMAN RASHIDA TLAIB, AUTOMATIC BOOST TO COMMUNITIES, <https://tlaib.house.gov/sites/tlaib.house.gov/files/Automatic%20Boost%20to%20Communities%20Act%20.pdf> (last visited April 3, 2020). We also support Rep. Tlaib's proposal to convert these pre-loaded debit cards into a universal Fed or Postal Bank Account. *Id.*

abound for how to “pay for” the economy life support we describe above, from “minting a coin”<sup>99</sup> to a time-limited progressive wealth tax.<sup>100</sup> The exact mechanism is beyond the scope of this piece. One thing is certain—we cannot afford to wait.

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99. Ryan Cooper, *Free Money for Everyone*, WASH. MONTHLY (March/April/May 2014), <https://washingtonmonthly.com/magazine/marchaprilmay-2014/free-money-for-everyone/>.

100. Camille Landais, et al., *A Progressive European Wealth Tax to Fund the European COVID Response*, VOX (Apr. 3, 2020), <https://voxeu.org/article/progressive-european-wealth-tax-fund-european-covid-response>.