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Stimulus Checks, Universal Basic Income, and Debtor Protections

Sophie B. Laing

STIMULUS CHECKS, UNIVERSAL BASIC INCOME, AND DEBTOR PROTECTIONS

*Sophie B. Laing**

*Sophie B. Laing is a student loan attorney at a legal aid organization. The author would like to thank Professor David Super for his initial guidance and comments on this paper, Clare Elizondo and Paula Kates for their assistance in reviewing this Article, and the Loyola Consumer Law Review editors for their thoughtful review and edits.

ABSTRACT

Interest in Universal Basic Income (UBI) is growing. While Congress may not be passing UBI legislation anytime soon, the policy has enjoyed enthusiastic support from a variety of high-profile politicians and advocates and made its way from a fringe idea to a national debate. Universal Basic Income has inspired pilot programs across the country, beginning with one such program in 2019 and growing to at least thirty-three by 2021. UBI has been discussed, debated, and dissected in the literature, which has addressed arguments for and against UBI, the values and principles underlying the program, and the policy mechanisms needed to implement it. But despite the ubiquity of debt in American society, the interactions between debt and UBI have only recently begun to be explored. Americans have more debt than ever before, and American society continues to be fueled by credit. If the federal government were to implement UBI on a national scale, the program would necessarily interact with this phenomenon of American debt.

The first round of stimulus checks during the pandemic revealed the necessity of considering debt when constructing a national program to deliver direct payments to Americans. Debtors were not categorically ineligible for the stimulus checks, yet many did not receive them. Instead, the payments were seized by creditors as they were en route to Americans struggling with medical debts, past due utilities, student loans, and rent. They were counting on the stimulus checks to pay for essentials. The seizure of stimulus checks demonstrates the need for debtor protections in any social program, especially in a UBI program.

This Article adds to the UBI literature by arguing that discussion of UBI is not complete without the consideration of debt, using COVID stimulus checks as a case study. Given the credit-heavy nature of American society, a debtor protection is necessary to fully and fairly implement a UBI program in the United States.

INTRODUCTION

Universal Basic Income may not be on Congress' agenda yet. But the program is no longer a far-fetched, utopian idea. Leaders on the national stage, from Hillary Clinton to Mark Zuckerberg to Andrew Yang, have considered or advocated for basic income.[1] Pilots continue

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[1] In 2016, Hillary Clinton considered including a basic income as part of her presidential campaign platform, Mark Zuckerberg has promoted UBI, and Andrew Yang

to take root in cities across the United States, and support for UBI among the public has grown significantly over the years.[2] In 2019, UBI was "having a moment,"[3] and 2021 was dubbed "the year basic income programs went mainstream."[4] In 2020, eleven mayors formed a network to advocate for guaranteed income, which grew to a network of sixty mayors by 2021.[5] The same year, at least thirty-three local UBI programs were ongoing or had recently concluded.[6] Evaluations of

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campaigned for president in 2020 on a basic income platform (calling the payments "Freedom Dividends"). *See* John W. Miller, *Universal Basic Income is Having a Moment. Can Advocates Convince a Skeptical Public?* AMERICA MAGAZINE (Oct. 2, 2019), https://www.americamagazine.org/politics-society/2019/10/02/universal-basic-income-having-moment-can-advocates-convince-skeptical; Evelyn L. Forget, *The Basic Income Has Its Moment,* FOREIGN AFFAIRS (Oct. 8, 2020), https://www.foreignaffairs.com/articles/united-states/2020-10-08/basic-income-has-its-moment; Dylan Matthews, *Basic Income: The World's Simplest Plan to End Poverty, Explained,* VOX (Apr. 25, 2016), https://www.vox.com/2014/9/8/6003359/basic-income-negative-income-tax-questions-explain.

[2] While UBI does not enjoy majority support, support has grown significantly and is close to 50%. Annie Nova, *More Americans Now Support a Universal Basic Income,* CNBC (Feb. 26, 2018), https://www.cnbc.com/2018/02/26/roughly-half-of-americans-now-support-universal-basic-income.html; *More Americans oppose than favor the government providing a universal basic income for all adult citizens,* PEW RSCH. CTR. (Aug. 19, 2020), https://www.pewresearch.org/fact-tank/2020/08/19/more-americans-oppose-than-favor-the-government-providing-a-universal-basic-income-for-all-adult-citizens/.

[3] Miller, *supra* note 1; Forget, *supra* note 1; Sarah Holder, *2021 Will Be the Year of Guaranteed Income Experiments,* BLOOMBERG CITYLAB (Jan. 4, 2021), https://www.bloomberg.com/news/articles/2021-01-04/guaranteed-income-gains-popularity-after-covid-19.

[4] *See* Sarah Holder, *The Year Basic Income Programs Went Mainstream,* BLOOMBERG CITYLAB (Dec. 28, 2021), https://www.bloomberg.com/news/articles/2021-12-28/the-u-s-cities-giving-residents-direct-cash-payments.

[5] *MAYORS FOR A GUARANTEED INCOME,* https://www.mayorsforagi.org/ (last visited Nov. 8, 2022); Caitlin Dewey, *Momentum for Basic Income Builds as Pandemic Drags On,* PEW STATELINE (Sept. 17, 2020) https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/09/17/momentum-for-basic-income-builds-as-pandemic-drags-on.

[6] Jason Lalljee, *33 Basic and Guaranteed Income Programs Where Cities and States Give Direct Payments to Residents, No Strings Attached,* INSIDER (Dec. 16, 2021) https://www.businessinsider.com/how-many-ubi-guaranteed-basic-income-programs-us-cities-states-2021-12; *see also* Chase DiBenedetto, *Every U.S. city testing free money programs,* MASHABLE (Sept. 18, 2022) https://mashable.com/article/cities-with-universal-basic-income-guaranteed-income-programs (listing 45 recent UBI programs in the U.S., including concluded programs and programs announced but not yet started).

these pilot programs have so far delivered positive results, showing that UBI improves employment rates, leads to greater well-being and less stress, is overwhelmingly spent on necessities, and allows people to save and plan for their futures.[7]

Scholars have thoroughly debated UBI in the literature, considering different justifications for the payments from different political philosophies and values systems. Yet, the literature has not as thoroughly considered the practical steps that would be necessary to implement of a UBI program in the United States today. Until recently, missing from the dialogue the stark reality of many Americans' lives: debt. In *Debtor/Creditor Issues with Basic Income Guarantees*, Matthew Bruckner reveals some of the holes in basic income proposals when it comes to debtor-creditor law, and the design implications that result from that.[8] This Article expands upon such concepts and goes further in advocating for, and imagining, a total debtor protection in any UBI proposals, by both using the experience of COVID-19 stimulus checks and building upon state and federal exemptions.

The COVID stimulus checks provide some context for why debt matters when distributing direct payments. From the beginning, the pandemic had devastating financial effects for people across the country. As part of the CARES Act, Congress created unprecedented direct payments that were supposed to help individuals deal with circumstances caused by the pandemic, like loss of employment or new caretaking responsibilities or illness, that were out of their control.[9] When Congress finally began sending out the first stimulus checks a few months into the pandemic, it seemed like some help was on its way. Then came reports that debt collectors and banks were seizing the payments.[10] Advocates warned that the payments were vulnerable to

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[7] Rachel Treisman, *California Program Giving $500 No-Strings-Attached Stipends Pays Off, Study Finds,* NPR (Mar. 4, 2021), https://www.npr.org/2021/03/04/973653719/california-program-giving-500-no-strings-attached-stipends-pays-off-study-finds; Bryce Covert, *They Gave Black Mothers in Mississippi $1,000 a Month. It Changed Their Lives,* THE NEW REPUBLIC (Oct. 12, 2021), https://newrepublic.com/article/163911/mississippi-basic-income-democrats-child-tax-credit.

[8] Matthew Adam Bruckner, *Debtor/Creditor Issues with Basic Income Guarantees*, 29 Am. Bankr. Inst. L. Rev. 171 (2021).

[9] Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, 134 Stat. 281 (2020).

[10] Pamela Foohey et al., *CARES Act Gimmicks: How Not to Give People Money During a Pandemic and What to Do Instead*, 2020 U. ILL. L. REV. ONLINE 81, 82 (2020) ("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

seizure by private creditors without recipients taking additional steps to protect them, but those steps were complex, state-specific, and unlikely to be successful. The risk of seizure was major; millions of Americans have outstanding court judgments against them.[11] Additionally, the IRS could offset delinquent state child support obligations with the first round of stimulus checks, although the CARES Act exempted the payments from other federal offsets.[12] Some states had strong exemptions to protect deposited funds already in place, and others took moves to specifically shield the first payments from seizure.[13] Congress took additional steps to protect the second payment from

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could be garnished immediately by debt collectors and even banks themselves."); Quentin Fottrell, *Creditors May View Stimulus Payments as an Opportunity to Seize Money – 5 Ways to Protect Your Stimulus Check*, MARKETWATCH (May 6, 2020), https://www.marketwatch.com/story/debt-collectors-are-going-after-millions-of-stimulus-checks-5-ways-to-stop-them-2020-04-14; 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/; Joe Smith, *Hospitals in West Virginia are Seizing Bank Accounts, Garnishing Wages Over Unpaid Debt During Ongoing COVID-19 Pandemic*, WEST VA. TIMES (Apr. 20, 2020), https://www.timeswv.com/news/hospitals-in-west-virginia-are-seizing-bank-accounts-garnishing-wages-over-unpaid-debt-during-ongoing/article_2570a96e-82ac-11ea-b6cb-1f200dcac618.html.

[11] Irina Ivanova, *Debt Collectors are Going After Americans' Stimulus Checks-and the CARES Act Allows It*, CBS NEWS (Apr. 27, 2020), https://www.cbsnews.com/news/stimulus-checks-debt-collectors-cares-act/.

[12] Treasury Offset Program, *Frequently Asked Questions on the Treasury Offset Program (TOP), IRS 2021 Child Tax Credit, Economic Impact Payments, and the Recovery Rebate Credit,* U.S. DEP'T OF THE TREASURY, https://fiscal.treasury.gov/top/faqs-for-the-public-covid-19.html (last visited Nov. 8, 2022); Dayen, *supra* note 10; While the Treasury Offset Program announced it was not going to offset the second payments, it did accidentally threaten to fire more than 109,000 people. *See* Michelle Singletary, *IRS Mistakenly Tells Tens of Thousands of Taxpayers They Won't Get Their Stimulus Payments*, WASH. POST (Feb. 5, 2021), https://www.washingtonpost.com/business/2021/02/05/irs-stimulus-payment-cp21c-error/. The third $1,400 stimulus payments, in March 2021, were not protected from garnishment. Arthur Delany, *The New Stimulus Payments Aren't Protected from Debt Collectors,* HUFFPOST (Mar. 15, 2021), https://www.huffpost.com/entry/stimulus-checks-debt-collectors_n_604f9e2cc5b60ef5c939bf12.

[13] Lorie Konish, *Will Your Stimulus Check Get Seized? It Could Come Down to Where You Live*, CNBC (Apr. 19, 2020), https://www.cnbc.com/2020/04/17/states-are-moving-to-stop-creditors-from-taking-your-stimulus-check.html; NAT'L CONSUMER L. CTR., *Covid-19 Related State Protections for Wages and Cash in Bank Accounts*, (Oct. 18, 2021) https://docs.google.com/document/d/1oV5JGVvqhkN4eKQr8rJLqEuSQKU1O7EMqj70O3crQu4/edit.

creditors, but left the third without those additional protections.[14] Overall, the level of protection afforded to the payments was inconsistent and not well-communicated, and it left many payments vulnerable to seizure. Without clear legislation or directives, how would UBI reach the millions of Americans in debt?

The delivery of stimulus checks previewed what a rollout of a UBI program would look like in the United States. As Congresspeople, scholars, and others more seriously consider basic income and other larger public benefit programs, it is critical that they establish clear and strong debtor protections. The experience with creditor seizure of stimulus checks revealed that legislators must proactively consider debt protections in the authorizing legislation. Some scholars have considered the design elements necessary to effectuate a basic income in the United States, and Bruckner has overviewed the interactions of basic income and debtor-creditor law.[15] However, the existing literature on UBI has not fully explored how debt and a UBI program would interact, and the lessons learned from past protections and the stimulus payments. This Article considers that connection and proposes that comprehensive debtor protection be implemented in a future UBI program. Without such a protection, UBI would fail to reach those who need it most, and the major tenets of such a program, such as its universality, promotion of individual financial freedom, and poverty reduction, would be seriously jeopardized.

This Article proceeds in three parts. First, Part I provides background on UBI and compares it with the stimulus checks. Part II discusses why it will be necessary to affirmatively consider debtor protections in future UBI legislation. To do so, Part II addresses the state of debt in America, demonstrating why and how debt harms the individuals who could benefit most from basic income. Part II also discusses the practical justifications for including a debtor protection in UBI legislation, as well as the potential negative externalities of such a protection. Lastly, Part III considers more specifically how a UBI program could include debtor protections, taking into account existing protections and their vulnerabilities.

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[14] David Dayen, *First 100: Why Can Debt Collectors Take Your $1400 Check? Blame Everyone*, THE PROSPECT (Mar. 15, 2021), https://prospect.org/first100/why-can-debt-collectors-take-your-1400-check-blame-everyone/.

[15] Bruckner, *supra* note 8.

PART I: UBI AND STIMULUS CHECKS

While UBI is far from enactment as a welfare policy in the United States, it is not absent from the political discussion. The stimulus checks provide some insight into how such a program could be implemented in the United States, both in terms of the political will behind implementation as well as the administration of the benefits themselves. This Part reviews the general elements making up universal basic income. It further explores the connections between UBI and the stimulus checks in order to understand how debt is relevant to the construction of UBI.

General Elements

UBI is generally defined as a cash payment made to all members of a society, without strings attached (i.e., no means testing or work requirements).[16] UBI can be designed and implemented in many different ways; scholars and policy advocates do not always have the same definitions of the core components of the policy. However, UBI does have some generally agreed upon underlying principles, such as the five core elements of UBI. These core elements are that UBI is basic, cash, individual, universal, and obligation-free.[17]

The "basic" in "universal basic income" refers to the amount of payment that is made to recipients. There is no agreement on a specific grant level. Some see basic income as a "modest" sized payment.[18] Others think that the payment needs to go beyond a "bonus" or supplement level, and be enough that it can support someone without additional work.[19] Those who argue for larger payments often explain that the core of universal "basic" income is "the idea of a floor on which one can stand because of its very unconditionality."[20] Although even among those who see UBI as a floor, additional income is necessary to get past basic needs.[21]

Scholars and advocates generally envision basic income as cash payments, rather than in-kind transfer. However, this is not

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[16] Philippe Van Parijs, *Basic Income: A Simple and Powerful Idea for the Twenty-first Century*, 32 POL. & SOC'Y 7, 7 (2004).

[17] PHILIPPE VAN PARIJS & YANNICK VANDERBORGHT, BASIC INCOME: A RADICAL PROPOSAL FOR A FREE SOCIETY AND A SANE ECONOMY 7-12 (2017).

[18] LOUISE HAAGH, THE CASE FOR UNIVERSAL BASIC INCOME 1 (2019).

[19] VAN PARIJS & VANDERBORGHT, *supra* note 17.

[20] *Id.* at 10.

[21] PHILIPPE VAN PARIJS, REAL FREEDOM FOR ALL 30 (1995); ANDY STERN & LEE KRAVITZ, RAISING THE FLOOR 187 (2016).

strictly necessary. Supporting UBI for freedom reasons lends itself to a cash transfer that can be spent freely, although such reasoning could also generate other options.[22] Even if basic income is delivered in cash, that does not necessarily determine how it would be delivered.[23]

Three more elements of UBI—that the payments are universal, individual, and obligation-free—are intertwined. UBI Payments are universal, made without regard to any demographic attributes or any specific needs: an individual living alone would get the same amount as an individual living with a spouse and children.[24] There is no means-testing in UBI programs, which means that individuals would receive UBI payments regardless of their existing financial resources or ability to earn additional wealth, or the resources of those they live with.[25] Lastly, the payments are obligation-free, meaning there are no off-limits purchases; recipients are not required to only spend their money on food, housing, or other necessities.

Basic income is also often considered to be made in regular payments. Most scholars think that the regularity must be more frequent than annual, and many conceptualize UBI as monthly payments. For example, the grants envisioned by Anne Alstott and Bruce Ackerman in *The Stakeholder Society*, which are granted when an individual turns eighteen, are not generally considered universal basic income payments because they are one-time-only, lump sum grants.[26] Many of the current UBI pilots in the United States make monthly payments to recipients.

Comparing UBI and the Stimulus checks

UBI is often conceptualized as a floor from which people can gain more income and survive on if necessary.[27] In that way, UBI diverges sharply from the stimulus checks. The stimulus checks were not enough to provide people with a basic floor of support. The payments were meant both to "jump-start the economy,"[28] and act as emergency

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[22] *Id.* at 31 (Van Parijs argues that in a market economy "a concern with maximum individual freedom generates a presumption in favour of cash.").
[23] *Id.*
[24] Maitreesh Ghatak & François Maniquet, *Universal Basic Income: Some Theoretical Aspects*, 11 ANN. REV. ECON. 895, 898 (2019).
[25] *Id.*
[26] *See* BRUCE ACKERMAN & ANNE ALSTOTT, THE STAKEHOLDER SOCIETY (2000).
[27] VAN PARIJS & VANDERBORGHT, *supra* note 17, at 10.
[28] Shawn Tully, *Will $1,400 Checks Stimulate the Economy? No, and Here's Why Not, Say Three Prominent Economists*, FORTUNE (Mar. 22, 2021), https://fortune.com/2021/03/22/stimulus-check-will-irs-stimulus-checks-help-us-economy-

support as the pandemic lead to massive sickness and disruption to employment.[29] Basic income also diverges from the stimulus checks in that there are no cliffs or phase-outs as income rises. The stimulus checks had very steep phase outs starting at relatively low incomes.[30]

However, in many ways, the stimulus checks provide a glimpse into a modern day, federal, basic income program. While the payments were means-tested and irregular, they were also multiple, recurring, unconditional payments that were unlike any other type of benefits in the country at the moment. The existence of these payments communicated to the public that people deserved payments not because of work that they were doing or searching for, but because of external conditions that made basic security difficult. While the pandemic heightened unemployment and other hardships for people across the country, it deepened issues that were already present and serve to justify UBI. Undoubtedly there are many details of the stimulus checks that make it different from UBI: stimulus checks were adjusted based on income and family size, irregular, undependable, and not available to every individual in the country.[31] But the general experience of these

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what-to-know/ ("Treasury Secretary Janet Yellen recently declared on PBS, adding in a CNBC interview that 'these checks will help jump-start the economy [by] giving people money to spend.'"); Martha C. White, *Stimulus Checks That Don't Get Used Right Away Still "Economic Rocket Fuel," Experts Say,* NBC (Feb. 9, 2021), https://www.nbcnews.com/business/economy/stimulus-checks-still-boost-economy-even-if-money-goes-savings-n1257073.

[29] Sahil Kapur, *House Democrats Push New Round of Stimulus Checks in Coronavirus Bill,* NBC (May 13, 2020), https://www.nbcnews.com/politics/congress/house-democrats-push-new-round-stimulus-checks-coronavirus-bill-n1205421.

[30] The CARES Act payments phased out entirely from $75,000 for single taxpayers, $112,500 for heads of households, and $150,000 for joint taxpayers at $50 per $1,000 earned. For example, a single taxpayer with no children making $99,000 received no payment. The phase out of the second and third payments started at the same incomes, but phased out at different (and sharper) rates and was also dependent on household size. *See* Alicia Adamczyk, *What You Need to Know About the Third Round of Stimulus Payments*, CNBC (Mar. 16, 2021), https://www.cnbc.com/2021/03/10/what-you-need-to-know-about-third-stimulus-payment.html; *see also* Ashlyn Still & Leslie Shapiro, *Calculate How Much You Would Get from the $1,400 (or More) Coronavirus Checks,* WASH. POST (Mar. 11, 2021), https://www.washingtonpost.com/graphics/business/coronavirus-stimulus-check-calculator/.

[31] What constitutes the "political community" is not well-defined or discussed in the basic income literature. Most seem to make large concessions in UBI's universality for exclusions based on immigration status or incarceration. Scholars also disagree on whether or not basic income should be given to children in addition to adults. *See* JOSÉ ANTONIO OCAMPO & JOSEPH E. STIGLITZ, THE WELFARE STATE REVISITED (José Antonio Ocampo & Joseph E. Stiglitz eds. 2018).

payments, and what people expect from their government, seemed to change. UBI was already considered to be "having a moment" in 2019,[32] and polling during the first year of the pandemic revealed that 75% of Americans supported more stimulus checks and larger unemployment checks.[33]

PART II: WHY PROTECT UBI FUNDS

While stimulus checks were popular among Americans, many Americans in debt did not receive the full benefit of this lifeline program because of how the payments were left vulnerable to creditor seizure. Failing to protect UBI payments from seizure would similarly risk significant harm to the would-be recipients. It would deprive millions of people of benefits they were likely in need of and expecting. The circumstances under which people have accumulated debt, coupled with the disparate impact that creditor access to UBI funds would have, provide justification for enacting a debtor protection in UBI legislation. This Part expands on the background of how and why low-income people have accumulated debt that would make their UBI payments at risk of seizure, the practical impact of allowing creditor access to UBI, and why a debtor protection is necessary to effectuate UBI's purpose.

The Debt Burden on Low-Income People

Debt is not a burden affecting just a few Americans. Policies in the United States have pushed credit as a social provision and while shrinking the availability of welfare, so it is no surprise that so many people have debt. Decades of government policy have created a society in which low-income people have not had access to much wealth or income and have had to rely on credit for necessities. Even equality-focused legislation has prioritized credit without a serious look at the consequences for people who cannot access significantly better financial lives after receiving credit. This historic and ongoing push for access to credit, not coupled with substantial investments in people's material livelihoods, justifies why debt should not result in the seizure of basic income payments.

Allowing creditor access to UBI funds would disadvantage those already harmed by histories of inequality and result in a disparate impact on people of color. People of color in this country have suffered

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[32] Miller, *supra* note 1.
[33] Dewey, *supra* note 5.

from generational wealth inequality, and many of the policies that have opened up access to credit have failed to alleviate this gap.[34] This leaves many people of color with debt, ranging from defaulted mortgages, to defaulted student loans, to credit card debt.[35] A debtor protection for a UBI can halt some of the cumulative effects of the inequality of debt and debt collection, allowing everyone to have full access to their funds. Without debtor protections, giving individuals a few hundred (or more) dollars a month might not do as much. People who are in the direst financial straits might not even see UBI payments at all if creditors have free reign to either offset the debt directly or sue for a civil judgment that permits garnishment of the UBI payments. Allowing such offsetting would result in the further "'coupling' of disadvantages" that happens between different sources of deprivation.[36] In other words, disadvantages that create conditions that make it more likely someone would take on debt to begin with, would further disadvantage people in a UBI program without a debtor protection. This might include disability, illness, generational poverty, lending deserts, and other circumstances or conditions.

Credit Policy

Credit has been promoted by government policies and embedded into American life. Access to credit does not happen in a vacuum. Credit creates debt, and for low-income people having debt often leads to negative consequences like collection, negative credit reporting, and seizure of funds or other property.

Scholars have noted how changes in U.S. welfare policy and credit regulation have created or elevated credit access as a method of social provision, in other words as a government policy meant to improve welfare of its recipients.[37] In the last forty years, the amount of debt that American households have has increased considerably.[38]

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[34] Benjamin Harris & Sydney Schreiner Wertz, *Racial Differences in Economic Security: The Racial Wealth Gap* (Sept. 15, 2022), https://home.treasury.gov/news/featured-stories/racial-differences-economic-security-racial-wealth-gap.
[35] *Id.*
[36] AMARTYA SEN, THE IDEA OF JUSTICE 256 (2009).
[37] *See, e.g.*, Abbye Atkinson, *Rethinking Credit as Social Provision*, 71 STAN. L. REV. 1093, 1093 (2019); Greta R. Krippner, *Democracy of Credit: Ownership and the Politics of Credit Access in Late Twentieth-Century America*, 123 AM. J. SOC. 1, 2 (2017).
[38] Annie Harper et al., *"Let Me Be Bill Free": Consumer Debt in the Shadow of Incarceration*, 63 SOC. PERSP. 978, 979 (2020) (citing Jonathan Zinman, *Household Debt: Facts, Puzzles, Theories, and Policies*, 7 ANN. REV. ECON. 1251 (2015)).

About 40% of Americans have trouble paying their bills each month.[39] Over 40% of Americans also reported that they were unable to set aside money for emergency expenses.[40] As of 2015, approximately 70% of United States households participate in the credit card market, 45% hold mortgages, 19% student loans, and 30% car loans.[41] In sum, low-income Americans borrow to make ends meet: borrowing for everyday expenses and necessities, not for discretionary purchases.[42] In the U.S., "[s]tated simply, people *need* credit."[43] And because credit it is a necessity, even expensive or risky credit will be worth it to families.[44]

Federal credit and lending policies have helped to create a situation whereby Americans are saddled with debt. As the government began tackling issues of inclusion and discrimination in the financial sphere, it could have created a system of direct grants and support. Instead, legislation focused on "borrowing-as-equality" policies that promoted the idea that access to credit would ameliorate racial disparities and enable socio-economic mobility for marginalized groups.[45] Access to credit was a key component of the civil rights and women's movements.[46] The federal policies passed during the 1960s and 1970s employed the rhetoric of equality through access to credit in a number of significant laws, including the Higher Education Act, the Consumer Credit Protection Act, the Equal Opportunity Act, and the Community Reinvestment Act.[47] These policies failed to thoroughly consider the consequences of credit when it is not affordable, and the additional investment in communities needed to make access to credit fulfill its

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39 Cheryl R. Cooper, *Financial Inclusion and Credit Access Policy Issues*, CONGRESSIONAL RESEARCH SERVICE 1, 3 (October 21, 2019).
40 *Id.*
41 Zinman, *supra* note 38, at 252.
42 *See* Atkinson, *supra* note 37, at 1152; Mehrsa Baradaran, *Credit, Morality, and the Small-Dollar Loan*, 55 HARV. CIV. RTS.-CIV. LIBERTIES. L. REV. 63, 108 (2020) ("Nor is the borrowing [of payday loans] frivolous. Surveys reveal that the loan is being used to pay for food, or rent, but the budget shortfall is likely due to a variety of setbacks such as medical emergency, car problems, or some other unexpected life expense.").
43 Pamela Foohey, *Consumer Bankruptcy Should Be Increasingly Irrelevant - Why Isn't It?*, 36 EMORY BANK. DEV. J. 653, 657 (2020).
44 Atkinson, *supra* note 37, at 1152.
45 Abbye Atkinson, *Borrowing Equality*, 120 COLUM. L. REV 1402-09 (2020).
46 *Id.* at 1406-07.
47 *Id.* at 1407-08; *see also* Doug Rendleman & Scott Weingart, *Collection of Student Loans: A Critical Examination*, 20 WASH. & LEE J. CIV. RTS. & SOC. JUST. 215, 243 (2013) (describing how the Higher Education Act and the Debt Collection Improvement Act of 1996 specifically "provide the Department of Education with authority to garnish wages of a borrower in default on federal student loans.").

transformative promise.[48] Even during the economic crisis created by the coronavirus pandemic, the federal aid policy has been primarily credit-focused and moratoria-driven, providing very little direct aid to people.[49]

Not all credit is created equal. Despite the federal policies designed to promote access to credit among women and people of color, access to quality credit can still remain difficult in some communities. Higher risk or unscrupulous lenders sometimes specifically target marginalized groups through practices known as "predatory inclusion"[50] and "reverse redlining."[51] This can be seen most notably in the mortgage and student loan markets. Mortgages represent the bulk of all household debt in the U.S., and subprime mortgage lending targeted at Black and Latinx families led to "profoundly racialized and gendered consequences of the 2008 mortgage and foreclosure crisis."[52] Recent research has warned of educational redlining, whereby private student lenders use of alternative data "penalize[s] borrowers of color and community college students."[53]

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[48] Atkinson, *supra* note 45, at 1406-08; *See also* Atkinson, *supra* note 37, at 1101 (explaining that there is an "essential mismatch between problem and solution" when using credit as a social provision for low-income and marginalized Americans.).

[49] Pamela Foohey et al., *The Folly of Credit as Pandemic Relief*, 68 UCLA L. REV. DISCOURSE 126 (2020); Foohey, *supra* note 10.

[50] Hannah Appel et al., *The Power of Debt: Identity and Collective Action in the Age of Finance,* THE DEBT COLLECTIVE (2019), https://escholarship.org/uc/item/2hc1r7fx.

[51] *See generally* Linda E. Fisher, *Target Marketing of Subprime Loans: Racialized Consumer Fraud & Reverse Redlining,* 18 J.L. & POL'Y 121 (2009-2010); Raymond H. Brescia, *Subprime Communities: Reverse Redlining, The Fair Housing Act and Emerging Issues in Litigation Regarding the Subprime Mortgage Crisis,* 2 ALB. GOV'T L. REV. 164 (2009); *Reverse Redlining, Discrimination, and For-Profit Education,* Student Loan Borrower Assistance, NAT'L CONSUMER LAW CTR. (Aug. 19, 2011) https://www.studentloanborrowerassistance.org/?s=redlining.

[52] Appel, *supra* note 50, at 20; Jacob S. Rugh & Douglas S. Massey, *Racial Segregation and the American Foreclosure Crisis,* 75 AM. SOC. REV. 629 (Oct. 2010); Wilhelmina Leigh & Danielle Huff, *African Americans and Homeownership: Separate and Unequal, 1940 to 2006,* THE JOINT CENTER FOR POLITICAL AND ECONOMIC STUDIES (2007), http://beta.accesstofinancialsecurity.org/sites/default/files/HomeownershipPaperBrief_JointCenter-1354525951.pdf.

[53] Student Borrower Protection Center, *New Report Finds "Educational Redlining" Penalizes Borrowers Who Attended Community Colleges and Minority-Servicing Institutions, Perpetuates Systemic Disparities,"* (Feb. 5, 2020) https://protectborrowers.org/new-report-finds-educational-redlining-penalizes-borrowers-who-attended-community-colleges-and-minority-serving-institutions-perpetuates-systemic-disparities/.

The deregulation of the credit card industry, including the repeal of usury ceilings, banning interest rate caps, and other policies,[54] alongside improvements in technology,[55] have also led to the growth in borrowing. The deregulation of credit cards in the late 1970s was followed by the spread of other high-cost lending, like payday loans.[56] While some regulations since the Great Recession have curbed the worst abuses in the lending and collection industries,[57] credit still remains a precarious social net for many low-income people.

Debt Collection

When people fail to pay the required amount on their debt, companies start collection methods which may include outsourcing collection to debt collectors. Outstanding consumer debt is now higher than right before 2008 and the Great Recession.[58] In 2014, one third of U.S. adults with credit history had debt in collection, with an average debt of about $5,000.[59] Presently, the rate of debt in collection is higher for communities of color, at 39%, than for white communities, at 24%.[60] Thirty-five percent of those with credit card files have an account in collection (many owned by third-party collectors), with the average amount owed over $5,000.[61] The Urban Institute further finds that 15% of people have medical debt in collections, 10% student loan debt in collections, and 4% have delinquent auto/retail loans (the rate is much higher for subprime loans).[62]

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[54] Christopher L. Peterson, *Truth, Understanding, and High-Cost Consumer Credit: The Historical Context of the Truth in Lending Act*, 55 FLA. L. REV. 807, 873 (2003); Baradaran, *supra* note 42, at 87, 99-100; Sara Sternberg Greene, *The Broken Safety Net: A Study of Earned Income Tax Credit Recipients and a Proposal for Repair*, 88 N.Y.U. L. REV. 515, 548 (2013).

[55] Lukasz A. Drozd & Ricardo Serrano-Padial, *Modeling the Revolving Revolution: The Debt Collection Channel*, 107 AM. ECON. REV. 897 (March 2017).

[56] Peterson, *supra* note 53, at 874.

[57] *See, e.g.,* the Fair Debt Collection Practices Act, the Credit Card Accountability, Responsibility and Disclosure Act, Dodd-Frank Wall Street Reform and Consumer Protection Act, and various regulations on payday lending promulgated by the CFPB.

[58] Foohey, *supra* note 43, at 655.

[59] Caroline Ratcliffe et al., *Delinquent Debt in America*, THE URB. INST. (July 30, 2014).

[60] Alexander Carther et al., *Debt in America: National-Level Overall Debt,* THE URB. INST., *Debt in America: An Interactive Map* (Last updated Mar. 31, 2021), https://apps.urban.org/features/debt-interactive-map/?type=overall&variable=pct_debt_collections.

[61] Zinman, *supra* note 38, at 258.

[62] Carther, *supra* note 59.

Researchers at ProPublica found that collection lawsuits, in which usually unsecured creditors and debt buyers pursue consumer debts, have been disproportionately filed in predominantly Black communities.[63] The analysis focused on five years of court judgments from St. Louis, Chicago, and Newark, and found that "even accounting for income, the rate of judgments was twice as high in mostly Black neighborhoods as it was in mostly white ones." The researchers attributed this to three factors: i) the "generations of discrimination that have left Black families with grossly fewer resources to draw on when they come under financial pressure," ii) the transition in debt collection towards pursuing people with even small debts, and ii) the increased rate at which collectors garnish from workers who earn between $25,000 and $40,000, or even less.[64]

This is the backdrop against which UBI legislation would be enacted, and therefore it is critical to understanding the environment into which the funds would be released. UBI would alleviate some of people's need for credit, especially when it comes to credit for basic necessities. But it can only do so if debtors are able to access their funds. A new government policy focused on some basic standard of living for its citizens cannot similarly ignore the relationship of credit and debt as the access to credit policies of the civil rights movement did. A debtor protection is a basic way to enable people to move forward towards economic equality and out from financial distress, but in order to be successful, it must acknowledge the reasons why people have accumulated that debt.

Perpetual Debt Cycles

When people struggle to manage basic necessities and devote all of their income to those expenses,[65] the various survival strategies they employ to manage other expenses in their lives can create or worsen perpetual debt cycles.

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[63] Paul Kiel & Annie Waldman, *The Color of Debt: How Collection Suits Squeeze Black Neighborhoods*, PROPUBLICA (Oct. 8, 2015), https://www.propublica.org/article/debt-collection-lawsuits-squeeze-black-neighborhoods.

[64] *Id.*

[65] Paul Kiel, *Old Debts, Fresh Pain: Weak Laws Offer Debtors Little Protection*, PROPUBLICA (Sept. 16, 2014), https://www.propublica.org/article/old-debts-fresh-pain-weak-laws-offer-debtors-little-protection ("'Most low-income people are struggling to keep up with basic fixed costs,' said Michael Collins, faculty director of the Center for Financial Security at the University of Wisconsin-Madison. 'That tends to absorb most of the budget. There isn't much left.'").

Alternative financial services, like check-cashing, payday loans, rent-to-own, and the like, can be critical ways for low-income families to get cash in hand. They provide accessible, and sometimes the sole, alternatives to people who face numerous barriers to traditional banking.[66] While alternative financial services can provide options to individuals who otherwise would not have any access to credit, they often charge high fees and interest rates, and individuals end up rolling over loans, perpetually paying back small amounts and continuing to borrow.[67] The history of high-interest, small credit lenders reveals a "tendency to manipulate loans into 'chain debt'" through a variety of means including extremely punitive late fees, "creative" calculations of interest, other additional fees, and refinancing as a result of balloon payments.[68] Although today's payday loans are for relatively low amounts and limited by income,[69] the CFPB found that "80% of loans are rolled over or followed by another loan within 14 days."[70] During the Great Recession, Black families were three times more likely to turn to loan sharks, pawnshops, and payday lenders than white families with similar incomes.[71] Check cashers can do little to pursue debts owed to them, but they sell debts to debt buyers who generally pursue the claims more aggressively.[72]

Bank fees and policies create additional costs for low-income people. Overdraft and bounced check fees can compound quickly, and banks can freeze accounts and charge for garnishments.[73] Overdraft fees can range anywhere from around $20 to $40, often can be charged

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[66] Michael S. Barr, *Banking the Poor*, 21 YALE J. REG. 121 (2004).
[67] *Id.* at 128.
[68] Peterson, *supra* note 53, at 851; an extreme example of cyclical lending to people with income primarily from public benefits arose in South Africa in the last decade, when the government ceded most administrative control of its welfare program to a private company. The company disbursed the grants, but in doing so collected massive amounts of information on the recipients and financial products specifically to target this population, under the name of democratizing lending. They "effected a major financial coup: instead of grants providing monetary assistance to poor households, loans extracted value from people whose only asset was their monthly social entitlement." Erin Torkelson, *Sophia's Choice: Debt, Social Welfare, and Racial Finance Capitalism*, 0 SOCIETY AND SPACE 1 (2020).
[69] Jim Hawkins, *Regulating on the Fringe: Reexamining the Link between Fringe Banking and Financial Distress*, 86 Ind. L.J. 1361 (2011).
[70] Zinman, *supra* note 38, at 257.
[71] LISA SERVON, THE UNBANKING OF AMERICA: HOW THE NEW MIDDLE CLASS SURVIVES 74 (2017).
[72] *Id.* at 91-93.
[73] Zinman, *supra* note 38, at 257-58.

multiple times in one day, sometimes without limit.[74] Overdraft fees are essentially short-term loans with extremely high interest, with APRs over 5,000%.[75] Almost one third of consumers who incur overdraft fees in fact view these fees as "a way to borrow when short on cash."[76]

Some may argue that perpetual debt cycles are escapable because of the statutes of limitations on consumer debts and the availability of bankruptcy. However, these do not often provide meaningful relief for most people. Many states do not allow for statutes of limitations to extinguish liability automatically; rather, the statute of limitations is a defense that the debtor must raise affirmatively in a collections action.[77] Debt collection actions have default rates ranging from 60% to 90%, meaning that in the vast majority of these cases the debtor does not appear and does not have the opportunity to assert a statute of limitations defense, or any other.[78] Debtors may not appear for a variety of reasons: because they do not know about the action due to "sewer service" practices[79], because they are unfamiliar with the court process, because they do not recognize the name of the company that is suing them and think it is a scam or a mistake, or because of any other numerous barriers like disability or language that make responding to and appearing at the case difficult.[80]

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[74] Spencer Tierney, *Overdraft Fees: Compare What Banks Charge*, NERDWALLET (Sept. 6, 2019), https://www.nerdwallet.com/article/banking/overdraft-fees-what-banks-charge.

[75] Servon, *supra* note 70, at 87.

[76] Nick Bourke & Andrew Scott, *Millions Use Bank Overdrafts as Credit*, THE PEW CHARITABLE TRUSTS (Mar. 21, 2018), https://www.pewtrusts.org/en/research-and-analysis/articles/2018/03/21/millions-use-bank-overdrafts-as-credit.

[77] Dalié Jiménez, *Ending Perpetual Debts*, 55 HOUS. L. REV. 609 (2018); John F. Serafine, *WWZZZ: Zombie Debt, the Zlaket Rules, and Regulation Z*, 25 GEO. J. POVERTY L. & POL'Y 1, 21 (2017) ("The defense is an affirmative one and must be asserted in an answer. It may be raised earlier by way of motion to dismiss when the face of a complaint itself demonstrates that a cause of action is filed beyond the limitations period. Debt buyers, however, omit dates from their complaints. The defense will therefore be litigated at summary judgment and trial unless the consumer moves for and obtains a more definite statement.").

[78] *See* Dalié Jiménez, *Dirty Debts Sold Dirt Cheap*, 52 HARV. J. LEGIS. 41 (2015); Peter A. Holland, *Junk Justice: A Statistical Analysis of 4,400 Lawsuits Filed by Debt Buyers*, 26 LOY. CONSUMER L. REV. 179 (2014); HUMAN RTS. WATCH, *Rubber Stamp Justice* (Jan. 20, 2016), https://www.hrw.org/report/2016/01/20/rubber-stamp-justice/us-courts-debt-buying-corporations-and-poor.

[79] *Rubber Stamp Justice*, *supra* note 77.

[80] *Id.* at 36.

Practical Impact on Recipients

Permitting the seizure of UBI payments from recipients would look very different depending on the individual, debts, creditors, and procedures used in each situation. In every circumstance, however, it would remove payments from those who are presumably eligible and expecting payments. Debtors are not discussed as a group in terms of eligibility for social programs in the way that others are, like immigrants, incarcerated people, or childless adults. If debtors were to be ineligible for payments, it would likely not be because of an explicit ban in the legislation. Rather, the failure of UBI legislation to contemplate debtor protections and creditor access to payments would generate a situation in which many debtors did not receive payments and were effectively ineligible. In this scenario, there would be no clear signal to individuals that they would not receive payments on account of their debts. Instead, debtors would find themselves ineligible when the payments, en route to them, are seized. Allowing creditors immediate access to basic income payments in the initial months of the program's implementation would be extremely detrimental to the program's efficacy. Seizures would prevent the payments from helping any of these individuals emerge from poverty, save for a more stable future, or better weather financial crises. Those with debt would remain in a place of stagnation and financial distress, while watching fellow citizens without defaulted debt reap the benefits of supposedly "universal" payments.

At its most extreme, allowing complete access to UBI payments could result in perverse lending cycles in which families with defaulted debt must continue to borrow more when faced with crises, forcing them to forgo future UBI payments to pay back debt and accrued interest. It is likely that creditors, including federal and state governments themselves, would seek to exploit this new influx of money. This already happens with existing social provisions. For example, officials in Texas, in a practice known as the "Great Texas Warrant Roundup," wait until tax season to aggressively pursue collections on warrants, knowing that people will have influxes of money from tax refunds, including the Earned Income Tax Credit.[81] During the early days of the pandemic and the delivery of the first stimulus payments, debt buyers across the country "couldn't help marveling at their good fortune" as they collected from people who should have been

[81] Christopher D. Hampson, *The New American Debtors' Prisons*, 44 AM. J. CRIM. L. 1, 12 (2016).

benefitting from the stimulus checks.[82] If UBI payments were not sufficiently protected from creditor seizure, it is not difficult to foresee a similar pattern emerging for UBI, whereby creditors time their collections to coincide with payment delivery.

Some may argue that allowing creditors to seize UBI payments to offset debts is good, practically, for debtors: it will automatically reduce their debt loads, helping them end a perpetual cycle of debt and freeing up some of their limited income. However, this would not be the practical effect of unfettered creditor access to UBI funds. Some debt loads are enormous. For example, even a generous UBI could end up being offset for tens of years to pay back student loan debt. This would be especially true for large loans or obligations that accrue significant interest. The experience of EITC seizures through the Treasury Offset Program has had devastating effects on the low-income people who rely on that refund.[83] Reports from the National Consumer Law Center gathered stories from student loan borrowers who had their EITC offset, and found that people lost jobs because they had been planning on paying for tools with the refund, or because they were unable to make critical car repairs; that people were evicted because they had been planning on paying back rent with their refund; and that people lost utility access because they did not receive the refund.[84] While

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[82] *See* Paul Kiel & Jeff Ernsthausen, *Debt Collectors Have Made a Fortune This Year. Now They're Coming for More*, PROPUBLICA (Oct. 5, 2020), https://www.propublica.org/article/debt-collectors-have-made-a-fortune-this-year-now-theyre-coming-for-more ("In August, Encore Capital, the largest debt buyer in the country, announced that it had doubled its previous record for earnings in a quarter. It primarily had the CARES Act to thank: The bill delivered hundreds of billions of dollars worth of stimulus checks and bulked-up unemployment benefits to Americans, while easing pressures on them by halting foreclosures, evictions and student loan payments. There was no ban on collections of old credit card bills, Encore's specialty...At the same time, the pandemic compelled households to cut spending. Finding themselves with enough money to settle old debts, people responded to collectors' calls and letters. Debt-buying executives couldn't help marveling at their good fortune. All this created 'a perfect storm from a cash perspective,' the CEO of Portfolio Recovery Associates, Encore's main competitor, told Wall Street analysts.").

[83] Persis Yu, *Voices of Despair: How Seizing the EITC is Leaving Student Loan Borrowers Homeless and Hopeless During a Pandemic,* NAT'L CONSUMER LAW CTR. (July 2020), https:/www.nclc.org/resources/voices-of-despair-eitc/; Persis Yu, *Voices of Despair: Student Borrowers Trapped in Poverty When the Government Seizes Their Earned Income Tax Credit*, NAT'L CONSUMER LAW CTR. (Mar. 2018), https://www.nclc.org/images/pdf/student_loans/voices-of-despair.pdf (featuring moving stories from people who had their EITC seized to pay student loan debt).

[84] Yu, *Voices of Despair: How Seizing the EITC is Leaving Student Loan Borrowers Homeless and Hopeless During a Pandemic, supra* note 82; Yu, *Voices of Despair:*

one debt was being paid down via the seizure of the EITC, other debts continued to accumulate. For low-income people with high debt loads, for example student loan debt in the tens of thousands, there would never be an opportunity to take advantage of UBI funds.

One concern of a strong or total debtor protection of UBI is that it could increase the riskiness of lending to low-income people and/or make fewer lending options available to them. But this should not be a concern for a few reasons. First, basic income itself presents a reason that there may be less small-loan lending, or less reliance on credit and alternative financial services to pay for basic necessities. If UBI were enacted with a strong debtor protection, individuals would not have the same level of expenses left uncovered by income. Instead of using a credit card to pay rent one month, they could pay it in cash (as financial advisors would recommend). Individuals could also start to save, as they are encouraged to do even now, despite their lack of disposable income. Seizing UBI payments would lead to some of the same problems that arise when the EITC is seized: low-income recipients relying on the funds would be thrust into financial crisis, unable to pay rent, for necessary car repairs, or leave abusive relationships.[85] Seizure of additional benefits only compounds inequalities and forces individuals to continue to rely on expensive credit for basic necessities and to weather crises.

Another concern of a debtor protection for UBI payments is that it would create perverse incentives for people not to repay their debts, since a significant portion of their income would become protected. However, there will still be incentives for people to repay their debts. For one, credit scores are powerful tools that have the ability to significantly shape many parts of people's lives, from housing, to employment, to additional borrowing. A debtor protection does not affect credit reporting, so failure to repay debts, even if someone is receiving only exempt income, would still damage their credit score. If people hope to use their UBI to build stronger financial futures for themselves and their families, access to future streams of credit will be important. The weight of credit reporting in many financial transactions, from credit access to housing to employment, provides significant incentive for people to pay back debts even if they are aware that the UBI

Student Borrowers Trapped in Poverty When the Government Seizes Their Earned Income Tax Credit, *supra* note 82.

[85] *See* Yu, *Voices of Despair: How Seizing the EITC is Leaving Student Loan Borrowers Homeless and Hopeless During a Pandemic*, *supra* note 82; *see also* Yu, *Voices of Despair: Student Borrowers Trapped in Poverty When the Government Seizes Their Earned Income Tax Credit*, *supra* note 82.

payments are untouchable by debt collectors. Additionally, creditors would still have access to other income like wages and tax refunds. If UBI does not provide a sufficient amount to live on without additional income, people will need to preserve other income streams and prevent garnishments. Lastly, debtors are also not immune to the moral judgments that society place on debtors. Many debtors feel strongly that they should pay their debts.[86] A study of EITC recipients revealed that people often plan to use the refund to catch up on back bills, and "derive a palpable sense of relief from the ability to use the refund to manage their stretched budgets and catch up on obligations."[87]

UBI's Principles

A debtor protection fits in naturally with UBI's principles and goals, but it is rarely adequately addressed in UBI literature. Scholars frequently touch upon the issue of assignability, or the ability to promise a future stream of income to someone else. The general consensus across this literature is that there should be either total or partial prohibitions on assignability for UBI. Some see the restriction as a natural progression when UBI is viewed as providing people with a baseline level of support. In many states and jurisdictions, exemptions already exist to protect a baseline level of income.[88] Miranda Perry Fleischer and David Hemel, in their article *Architecture of Basic Income*, offer a more concrete (but still tentative) suggestion of limiting assignability of UBI to twelve months of payments and to adults over eighteen years old.[89] Fleischer and Hemel acknowledge that designing such an assignability rule depends on the goal of the basic income program. For example, limits around assignability may look different if UBI is aimed at providing subsistence-level income compared to if it is simply meant to increase recipients' financial opportunities.[90] While those goals lead may lead to different limits on the assignability of UBI payments, they both still lend in favor of having some sort of protection of UBI

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[86] *See generally* Servon, *supra* note 70; Laura M. Tach & Sara Sternberg Greene, *"Robbing Peter to Pay Paul": Economic and Cultural Explanations for How Lower-Income Families Manage Debt*, 61 SOC. PROBS. 1 (Feb. 2014) (finding that EITC recipients value a narrative of self-sufficiency and prioritize paying off debts that help their upward mobility); *Rubber Stamp Justice*, *supra* note 77.

[87] Ruby Mendenhall et al., *The Role of Earned Income Tax Credit in the Budgets of Low-Income Households*, SOC. SERV. REV. 368, 385 (Sept. 2012).

[88] *Id.*

[89] Miranda Perry Fleischer & Daniel Hemel, *Architecture of a Basic Income*, 87 U. CHI. L. REV. 625, 690 (2020).

[90] *Id.*

payments from creditor seizure. Allowing basic income to be seized by creditors chips away at the amount calibrated to provide subsistence, as well as the amount able available to be saved to pursue other financial opportunities. Bruckner, in his article *Debtor/Creditor Issues with Basic Income Guarantees*, considers how other public benefit programs deal with assignability (including under that umbrella both voluntary and involuntary transfers).[91] Bruckner addresses how the inability to assign (or garnish) basic income payments would have important effects for access to credit or ability to repay debts.[92]

A wide range of thinkers, politicians, advocates, academics, and activists have justified or advocated for basic income. Arguments for some sort of guaranteed income have been made on the basis of ideals like "real freedom,"[93] libertarian values of "individual autonomy, freedom, and dignity,"[94] social equality and security,[95] poverty reduction,[96] and pragmatic understandings of the nature of work in an increasingly technology-focused society.[97] Across these sometimes disparate philosophical or intellectual motivations, some significant goals and principles of UBI still emerge, and allowing seizure of basic income payments would contravene those very principles.

One of UBI's most distinguishable features is its universality. A basic income program that allows creditors to have free reign in accessing UBI funds destroys that principle and results in only people without defaulted or past due debt receiving payments. Seizure would create different classes of people: those with debt they can repay (who are also more likely to be those with wealth already) and who get access to their payments immediately, and others with debt they cannot repay and who may never get access to their payments. Any semblance

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[91] Bruckner, *supra* note 8, at 196-200

[92] *Id.*

[93] VAN PARIJS, *supra* note 21, at 30; Philippe Van Parijs, ARGUING FOR BASIC INCOME 3 (Philippe Van Parijs ed. 1992).

[94] Miranda Perry Fleischer & Daniel Hemel, *Atlas Nods: The Libertarian Case for a Basic Income*, 2017 WIS. L. REV. 1189 (2017); Charles Murray, *A Guaranteed Income for Every American,* W.S.J. (June 3, 2016), https://www.wsj.com/articles/a-guaranteed-income-for-every-american-1464969586.

[95] HAAGH, *supra* note 18, at 15.

[96] Ghatak & Maniquet, *supra* note 24, at 916; Jordan Weissman, *Martin Luther King's Economic Dream: A Guaranteed Income for All Americans*, ATLANTIC (Aug. 28, 2013), https://www.theatlantic.com/business/archive/2013/08/martin-luther-kings-economic-dream-a-guaranteed-income-for-all-americans/279147/; Mary Louise Kelly, *Martin Luther King Jr.'s Vision for Economic Justice,* NPR (Jan. 18, 2021), https://www.npr.org/2021/01/18/958120759/martin-luther-king-jr-s-vision-for-economic-justice.

[97] STERN, *supra* note 21, at 185.

of equality among recipients, despite the lack of means testing and universality of the program, would be wiped out. Those in more financially-sound situations would continue to accumulate resources, using their UBI to save, spend, or invest, and those in financial distress would continue to be left behind.

Another core element of UBI is its unconditionality. This means that UBI would not be means-tested, have a work requirement, or have any other eligibility or behavioral requirements.[98] Recipients do not need to show their deservedness, whatever that may mean, to receive UBI payments.[99] While conditionality has historically been a core feature of U.S. welfare programs, it was not a feature of the stimulus checks. The stimulus checks were made to everyone, irrespective of their work history or current work status. The payments were also ultimately available to incarcerated individuals.[100] If basic income payments lack protection from seizure, access to the payments becomes conditional on lack of debt or on debt repayment. Allowing creditors complete access to UBI payments would be a significant departure from the unconditionality and universality elements of the program and would only benefit select creditors prioritized through whatever offset or seizure methods are permitted through the legislation. If UBI legislation is to depart from its core values, the repayment of creditors should not be a first priority.

Other significant goals of UBI relate to poverty reduction. One goal is to provide subsistence level support, in effect making up for where welfare has failed and wages have stagnated.[101] Another is to go further than subsistence, by providing enough money that individuals can truly shape their lives how they want to and make different

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[98] While discussed as unconditional (and universal), many UBI programs exempt incarcerated people and undocumented immigrants from receiving the payments. Therefore, there are some "conditions" that need to be met to receive the payments. However, these are much simpler and more limited than most welfare or social benefit programs currently in existence in the U.S.

[99] *See generally* VAN PARIJS & VANDERBORGHT, *supra* note 17; Miranda Perry Fleischer & Daniel Hemel, *The Architecture of a Basic Income*, 87 U. CHI. L. REV. 625 (2020).

[100] Order Granting Motion for Preliminary Injunction and Motion for Class Certification, Colin Scholl, et al., v. Steven Mnuchin, No. 20-cv-05309-PJH (N.D. Cal., Sept. 24, 2020).

[101] Drew DeSilver, *For Most U.S. Workers, Real Wages Have Barely Budged in Decades,* PEW RSCH. CTR. (Aug. 7, 2018), https://www.pewresearch.org/fact-tank/2018/08/07/for-most-us-workers-real-wages-have-barely-budged-for-decades/; Lawrence Mishel, et al., *Wage Stagnation in Nine Charts*, ECON. POL'Y INST. (Jan. 6, 2015), https://www.epi.org/publication/charting-wage-stagnation/.

financial choices should they so choose.[102] Under both views, debtor protections are essential. Without debtor protections, creditors can access funds that are intended to help people purchase basics like groceries, housing, transportation, and other goods. UBI payments made that are intended to be higher than subsistence level could mean that even if the payments were offset to pay off debts, people would still receive some portion of their payment, lowering the UBI to something more a subsistence or supplementary payment.

PART III: BUILDING A UBI DEBTOR PROTECTION

The lack of debtor protections would make basic income funds extremely vulnerable to creditors. Failing to protect the funds would undermine the poverty alleviation and subsistence goals of the program and instead further entrench perpetual debt cycles and destroy the universality of UBI, making the many debtors functionally ineligible for the payments. This Part will address how basic income would be vulnerable to collection, how it could fit into existing debtor protections, and how a stronger UBI debtor protection could be built from existing protections.

Often the literature on UBI will have a cursory treatment of the issue of assignability, which is the ability to promise a future stream of income to someone else. There is general consensus that UBI should not be assignable, or that there should be limits around its assignability.[103] Bruckner further breaks down how debt can be accessed, clarifying that debtor-creditor law would interact with basic income payments in different ways depending on if there is a garnishment, assignment, or transfer of the payments.[104] This paper focuses on the ability of creditors to seize payments, whether through an administrative or court process. Examing existing debtor protections reveals to what extent UBI payments would already be protected by current law, as well as how a UBI debtor protection could be built off of existing protections.

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[102] *See* VAN PARIJS & VANDERBORGHT, *supra* note 17.

[103] Van Parijs and Vanderborght note that "it makes most sense to set the rules so that a basic income cannot be mortgaged; its beneficiaries must not be allowed to use its future stream as a guarantee for loans." VAN PARIJS & VANDERBORGHT, *supra* note 17 at 10.

[104] Bruckner, *supra* note 8.

Existing Regulations

If a UBI program were enacted with no regard for debtor protections, payments would be left extremely vulnerable. However, the funds would not be released into a system that provides no protection for income. In order to understand what further protection would be needed, this sub-Section considers how the funds would be seized and what protections could protect them, and also looks at the experience of the stimulus checks.

Vulnerabilities to Collection

Income, including public benefits, is subject to collection by creditors in various ways. Debt collection lawsuits have "long plagued American households," and threaten to increase in volume due to the damaging effects of the pandemic.[105] A successful judgment from a collection action enables the creditor or debt buyer to "garnish wages, freeze bank accounts, seize or place liens on assets (including personal property and real estate), and in some states, have an individual arrested."[106] Millions of Americans have their wages garnished every year as a result of debt collection lawsuits.[107] Wage garnishment allows creditors to take wages directly from the debtor's employer. Wage garnishment can also be known as a lien on wages, withholding order, or income execution.[108] Bank garnishment allows creditors to canvass banks in the area to get access to the debtors' funds. Some states require separate garnishment actions to be filed in court, while

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[105] Pamela Foohey, et al., *The Debt Collection Pandemic*, 11 CAL. L. REV. ONLINE 222, 225 (2020).

[106] Lisa Stifler, *Debt in the Courts: The Scourge of Abusive Debt Collection Litigation and Possible Policy Solutions*, 11 HARV. L. & POL'Y REV. 91, 107 (2017) ("As one expert put it, '[T]he primary goal of debt-buyer lawsuits is to turn unsecured debt into court judgments, fully secured and fully collectable through garnishment and other enforcement proceedings.' Debt collectors have increased their use of the court system, relying on the assumption that for various reasons, the majority of defendants will not show up in court when sued-'90% of our cases are default judgments. We show the judge our math and if no one disputes we get our judgment.' According to a large debt buyer, 'Our legal collection efforts over time have led to the development of a significant number of awarded judgments on our owned accounts, which we believe will help generate future cash flows.'").

[107] Steven L. Willborn, *Wage Garnishment: Efficiency, Fairness, and the Uniform Act*, 49 SETON HALL L. REV. 847, 849 (2019).

[108] Faith Mullen, *Another Day Older and Deeper in Debt: Mitigating the Deleterious Effect of Wage Garnishments on Appalachia's Low-Wage Workers*, 120 W. VA. L. REV. 973, 974 (2018).

others allow for garnishment within the original action.[109] The threat of garnishment also often induces debtors to enter into unfavorable settlements. These settlements frequently leave consumers "more likely to fall behind on other debts or end up in foreclosure or bankruptcy," as they effectively drained all the debtor's resources, leaving them "vulnerable to falling behind" on other bills and debt repayment.[110] High post-judgment interest rates, which vary considerably state to state, can also "exacerbate the problem of garnishments for low-wage workers."[111] Common actions by banks can compound the effect of creditors' seizures or effect their own seizures of sorts. Banks are able to offset deposits to pay off delinquent loans, cover overdraft fees, and to offset other charges.[112]

The government has "unique collection tools" to pursue its debts.[113] One such tool is the Treasury Offset Program (TOP), which allows to tax refunds to be seized to offset several different kinds of debts, including defaulted federal student loan debt, overpayments of Old Age, Survivors, and Disability Insurance, child support debt, and other federal agency debts. The program has seized billions: in fiscal year 2021, over $4.5 billion in federal and state debts was offset.[114] These seizures were made widely unreviewable through the Deficit Reduction Act, which prohibited legal and equitable claims on refund reductions as well as administrative review by the Treasury.[115] This program initially seized tax refunds from taxpayers who owed child support to children who had received Aid to Families with Dependent Children (AFDC). The seizure of tax refunds can be particularly harmful for low-income people, who are likely to get larger refunds and rely on the influx of cash to make essential payments. In *Sorenson v. Secretary of Treasury*, the Supreme Court held that Earned Income Tax Credit (EITC) payments were subject to the tax offset power.[116] In a study of EITC recipients, 14% has had their tax refunds or EITC

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[109] Willborn, *supra* note 105, at 858.
[110] Kiel & Ernsthausen, *supra* note 81.
[111] Mullen, *supra* note 106, at 974.
[112] Dayen, *supra* note 10; Zinman, *supra* note 38, at 257-58.
[113] Melissa B. Jacoby, *Does Indebtedness Influence Health - A Preliminary Inquiry*, 30 J.L. MED. & ETHICS 560 (2002).
[114] U.S. DEP'T TREAS., *Treasury Offset Program*, https://www.fiscal.treasury.gov/top/.
[115] Bobby L. Dexter, *Transfiguration of the Deadbeat Dad and the Greedy Octogenarian: An Intratextualist Critique of Tax Refund Seizures*, 54 U. KAN. L. REV. 643, 646 (2006).
[116] 475 U.S. 851 (1986) (holding that an excess earned-income credit can be intercepted by the IRS).

garnished in one or both years of the study to pay off student loan debt, back taxes, overpayments for unemployment compensation, or welfare fraud.[117] EITC recipients use payments for continuing expenses and necessities, and to pay back debt incurred to weather financial shocks.[118] Many recipients use Refund Anticipation Loans (or Refund Anticipation Checks),[119] which means they have borrowed money or incurred fees but now have no new influx of cash to pay those obligations. Reports from the National Consumer Law Center in 2018 and 2020 reveal the devastating effects of the offset program on would-be EITC recipients: mothers now unable to leave abusive situations, individuals unable to avoid car repossessions, and more.[120] TOP is strong and relatively unreviewable,[121] and the bankruptcy process might not even protect refunds from the offset power.[122] Other federal collection tools exist for specific types of debt. For example, the Higher Education Act and Debt Collection Improvement Act allow the Department of Education (and sometimes guaranty agencies) to garnish the wages of federal student loan borrowers who have defaulted.[123]

Seizure and Protection of Stimulus Checks

During the pandemic and first wave of stimulus checks, garnishment was a particularly prominent concern for consumers and advocates.[124] Experts estimated that millions of Americans would see the first check garnished, and many worried that they would never see their

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[117] Jennifer L. Romich & Thomas Weisner, *How Families View and Use the EITC: Advance Payment Versus Lump Sum Delivery*, 53 NAT'L TAX J. 1245, 1260 (2000).
[118] *Id.*; Greene, *supra* note 53, at 523, 551-52.
[119] Leslie Book, *Refund Anticipation Loans and the Tax Gap*, 20 STAN. L. & POL'Y REV. 85 (2009); Michael Best, et al., *2021 Tax Season: Higher Costs for Vulnerable Taxpayers During the COVID Economic Crisis*, NAT'L CONSUMER LAW CTR. (Feb. 2021); Mandi Matlock & Chi Chi Wu, *2019 Tax Season: The Return of the Interest-Bearing Refund Anticipation Loan and other Perils Faced by Consumers*, NAT'L CONSUMER LAW CTR. (Apr. 2019).
[120] Yu, *Voices of Despair: How Seizing the EITC is Leaving Student Loan Borrowers Homeless and Hopeless During a Pandemic, supra* note 82; Yu, *Voices of Despair: Student Borrowers Trapped in Poverty When the Government Seizes Their Earned Income Tax Credit, supra* note 82.
[121] Dexter, *supra* note 112.
[122] Michelle Lyon Drumbl, *Bankruptcy, Taxes and the Primacy of IRS Refund Offsets*, S.C. L. REV. (2021) (forthcoming).
[123] Rendleman & Weingart, *supra* note 47, at 243-44.
[124] Letter from 25 State Attorneys Generals and the Hawaii Office of Consumer Protection to Secretary Mnuchin (Apr. 13, 2020), https://www.ohioattorneygeneral.gov/Files/Briefing-Room/News-Releases/04-13-20-multistate-letter-to-Treasury-re-garnishm.aspx.

payments due to overdraft fees and negative balances.[125] Reports emerged that states were offsetting and garnishing stimulus checks to pay fines and fees owed to the state,[126] although some states took extra steps to protect the payments.[127] The CARES Act, in March 2020, failed to fully address how the stimulus checks would be protected. Banks, "by virtue of having [the checks] deposited into accounts at their institutions" had "more immediate access to the coronavirus checks" than other creditors.[128] Many national and large regional banks "pledged to temporarily zero out their customer's negative balances" so that deposited stimulus payments would not be offset to pay overdraft fees and negative balances.[129] Other banks did not take such steps, and some reviewed Some states took extra steps to protect requests "on a case-by-case basis."[130] While the CARES Act did exempt payments from many types of agency reduction or offset through the Treasury Offset Program, it still left them vulnerable to seizure for past-due child support. The Act also enabled the Treasury Secretary to prescribe regulations necessary to carry out the purposes of the rebates.[131] Despite urging from advocates in Congress, and the authority to do so through the CARES Act, Treasury Secretary Steve Mnuchin declined to promulgate guidance to further protecting the first round of stimulus checks from seizure.[132] In fact, it was revealed that Secretary Mnuchin

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[125] Sarah Kolinovsky, et. al., *Millions Could See Their Coronavirus Stimulus Checks Taken by Debt Collectors*, ABC NEWS (Apr. 17, 2020) https://abcnews.go.com/Politics/millions-coronavirus-stimulus-checks-debt-collectors/story?id=70167489.

[126] FINES & FEES JUST. CTR., *Why Are Stimulus Checks Being Taken From People Who Need Them Most?* (Apr. 20, 2021) https://finesandfeesjusticecenter.org/2021/04/20/why-are-stimulus-checks-being-taken-from-the-people-who-need-them-most/.

[127] NAT'L CONSUMER L. CTR., *Covid-19 Related State Protections for Wages and Cash in Bank Accounts*, *surpra* note 13.

[128] Dayen, *supra* note 10.

[129] Emily Flitter, *Their Finances Ravaged, Customers Fear Banks Will Withhold Stimulus Checks*, N.Y.T. (Dec. 31, 2020) https://www.nytimes.com/2020/12/31/business/stimulus-checks-overdraft.html

[130] *Id.*

[131] CARES Act, Pub. L. No. 116-136, § 2201(h), 134 Stat. 281, 337-38 (2020).

[132] Lauren Hirsch, *Lawmakers Urge Mnuchin to Stop Debt Collectors from Seizing Payments*, CNBC (Apr. 10, 2020), https://www.cnbc.com/2020/04/10/coronavirus-lawmakers-urge-mnuchin-to-stop-debt-collectors-from-seizing-direct-payments.html; Jordain Carney, *13 Senators Join Harris Letter Urging Mnuchin to Exempt Coronavirus Checks from Private Debt Collection,* THE HILL (Apr. 17, 2020), https://thehill.com/homenews/senate/493328-dem-senators-urge-mnuchin-to-exempt-coronavirus-checks-from-private-debt.

more or less made it clear to banks that the payments were up for grabs.[133]

The second round of stimulus checks, passed via the Consolidated Appropriations Act of 2021, were more protected than the CARES Act payments.[134] These payments were not subject to offset by any TOP powers, including for child-support.[135] The Act also made the payments unassignable, and extended some of the protections contained in the regulations on federal benefit garnishment to cover the second stimulus checks.[136] The second stimulus checks were encoded so that they would be readily identifiable by financial institutions when deposited.[137]

Despite these debtor-friendly changes for the second payments, Congress did not extend all of these protections to the third stimulus checks. The third stimulus checks, passed as part of the American Rescue Plan Act, were also exempt from many of the TOP offset powers, however other garnishment protections and protections from federal administrative offsets were missing.[138] The Act was passed as part of a budget reconciliation process, and some argued that this prohibited further debtor protections from being included in the bill.[139] Again,

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[133] *Id.* ("The Treasury Department effectively blessed this activity on a webinar with banking officials last week. In audio obtained by the *Prospect*, Ronda Kent, chief disbursing officer with Treasury's Bureau of the Fiscal Service, can be heard explaining that banks had posed questions to her about 'whether these payments could be subject to collection from the bank to which the money is deposited, if the payee owes an outstanding loan or other payments to the bank.' She responded—twice—that 'there's nothing in the law that precludes that action,' while counseling that the banks' compliance officers should consult with their legal offices about what policies their banks will implement. 'You will want to know for your bank what your bank has decided to do,' Kent said.").

[134] Consol. Appropriations Act § 272(a).

[135] *Id.*

[136] *Id.*

[137] *Id.*

[138] Am. Rescue Plan Act, Pub. L. No. 117-2, § 9601, 135 Stat. 4, 138-44 (2021) (failing to protect payments from offset under 31 U.S.C. § 3720A, through a prohibition on assignability, or from garnishment using the protections in 31 C.F.R § 212).

[139] *See* Aimee Picchi, *Your Stimulus Check Can Be Garnished, But Some States Are Pushing Back*, CBS News (Apr. 9, 2021) https://www.cbsnews.com/news/stimulus-check-garnishment-states-pushing-back/; Letter from the National Consumer Law Center, et al., to Speaker Nancy Pelosi, et al. (Mar. 8, 2021) https://www.nclc.org/images/pdf/debt_collection/Joint-Banking-Trades-and-Consumer-Group-letter-urging-garnishment-exemption-March-2021.pdf . Whether or not debtor protections of economic impact payments could have been implemented through a budget reconciliation bill was not fully litigated or explored. It is arguable that while UBI legislation would likely be passed through budget reconciliation, instead of a bipartisan bill,

advocates urged Congress to adopt similar protections for the third payments that had been implemented for the second ones.[140]

The protections available to stimulus checks were further complicated by the method by which individuals received the payments. Millions of Americans did not get the payments sent directly to them by the IRS, and instead had to claim the payments on their tax returns.[141] This left them vulnerable to certain IRS offsets. The IRS ultimately agreed to use its discretion to not pursue some offsets, but other offsets were required by law.[142]

Federal and State Protections

Federal and state laws exist to protect certain benefits or levels of income from creditor seizure, and some of these laws and regulations could conceivably apply to UBI payments. The main protections for public benefits are found in the Social Security Act and accompanying Treasury Regulations. Section 207(a) of the Social Security Act prohibits individuals from assigning their benefits, and exempts benefits from "execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law." The language in section 207(a)'s prohibition has been held to be "all-inclusive," protecting federal as long as the funds are "readily withdrawable and retain[] the quality of 'moneys.'"[143]

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that debtor protections would be possible as necessary conditions of implementing the program.

[140] Letter from the National Consumer Law Center, et al., to Speaker Nancy Pelosi, et al., *supra* note 133 (also urging similar protections for the expanded Child Tax Credit payments); NAT'L CONSUMER LAW CTR., *Feed Families, Not Debt Collectors* (Mar. 2021), https://www.nclc.org/images/pdf/debt_collection/Protect-EIP-3-and-child-tax-credits-from-garnishmentv2.pdf.

[141] Katie Lobosco, *Some Struggling Americans Aren't Getting the Stimulus Payment They Were Promised*, CNN (Mar. 7, 2021) https://www.cnn.com/2021/03/07/politics/stimulus-payment-tax-credit-offset/index.html

[142] Taxpayer Advocate Service, *Update on Offset of Recovery Rebate*, (Apr. 15, 2022) https://www.taxpayeradvocate.irs.gov/news/nta-blog-update-on-offset-of-recovery-rebate-credits-the-irs-has-agreed-to-exercise-its-discretion-to-stop-offsets-of-federal-tax-debts/ (interrogating the "significant disparity between the treatment of taxpayers who received advance payments and the treatment of taxpayers who did not receive advance payments. . ."); Alison DeNisco Raymone & Clifford Colby, *Your Third Stimulus Check Can Be Seized. Here's What To Know*, CNET (Mar. 19, 2021) https://www.cnet.com/personal-finance/your-third-stimulus-check-can-be-seized-heres-what-to-know/.

[143] 409 U.S. 413 (1973).

Despite these broad interpretations of section 207(a)'s protections, loopholes have allowed creditors to seize public benefits. In the years leading up to 2010, advocates testified in front of Congress that many people relying significantly on these benefits were seeing them disappear due to creditor seizures, and that financial institutions had not been acting diligently to assure that the garnishments were proper before allowing the funds to leave people's accounts.[144] While these funds were still technically exempt from garnishment prior to these regulations, banks would automatically freeze bank accounts when they received garnishment orders.[145] The freezes were hard to reverse quickly, and banks would continue charging fees for the freeze itself, as well as for receiving a garnishment order (as well as overdraft fees if the amount in the bank account was not enough to satisfy the garnishment order).[146] Many banks would even refuse to refund these fees in the face of an improper garnishment.[147] Banks argued that they feared being held in contempt for failing to fulfill garnishment orders, said they could not identify exempted funds when they were co-mingled with other income in an account, and were slow to undo harmful account freezes (and would not refund fees) even when garnishment orders were successfully fought by the debtor.[148] When uncooperative banks slowed down challenges to illegal garnishment, some people "desperate to regain access to their funds" would agree to payments

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[144] NAT'L CONSUMER L. CTR., ET AL., Comment Letter on Proposed Rule on Garnishment of Accounts Containing Federal Benefit Payments (June 18, 2010), https://www.nclc.org/images/pdf/other_consumer_issues/exempt_public_benefits/comments-treasury-june2010.pdf; *see* Protecting Social Security Benefits from Predatory Lending and Other Harmful Financial Institution Practices: Hearings Before the Subcomm. on Social Security of the H. Comm. on Ways and Means, 110th Cong. (2008), https://www.govinfo.gov/content/pkg/CHRG-110hhrg89562/html/CHRG-110hhrg89562.htm (testimony of Margot Saunders, National Consumer Law Center); *see also* Margot F. Saunders & Johnson Tyler, *Past, Present and Future Threats to Federal Safety Net Benefits in Bank Accounts,* 16 N.C. BANKING INST. 43 (2012); Louise M. Tarantino, et al., *Social Security Benefits' Antiassignment Protections under Attack*, 36 CLEARINGHOUSE REV. 465 (2003).

[145] *Id.*

[146] *Id.*

[147] Saunders & Tyler, *supra* note 140, at 58; Carolyn Carter, NAT'L CONSUMER L. CTR., *No Fresh Start 2020:*
Will States Let Debt Collectors Push Families into Poverty in the Wake of a Pandemic? (Oct. 29, 2020), https://www.nclc.org/issues/report-still-no-fresh-start.html.

[148] Saunders & Tyler, *supra* note 140, at 91; John Infranca, *Safer than the Mattress? Protecting Social Security Benefits from Bank Freezes and Garnishments*, 83 ST. JOHN'S L. REV. 1127, 1130 (2009).

plans with creditors, "foregoing the exemptions they are entitled to under law."[149]

Regulations finalized in 2013 were critical to effectuating the Social Security Act's protections for public benefits.[150] The regulations were issued jointly by the Treasury, Social Security Administration, Department of Veteran Affairs, Railroad Retirement Board, and Office of Personnel Management, and implemented several significant changes pertaining to the garnishment of accounts containing federal benefit payments.[151] These Treasury regulations protect benefits deposited in an account during a two-month "lookback period."[152] The funds are protected regardless of if they were deposited in bank accounts with other non-exempt funds; the payments are encoded specifically as federal payments when deposited and therefore easily identifiable.[153] The regulations do not protect benefits after two months nor do they protect funds that have been transferred between accounts.[154] When the garnishment order comes from the federal government or a state child support agency (as opposed to any other creditor), banks are not required to conduct lookback reviews, and benefits may not be protected.[155] The regulations also require financial institutions to notify the account holder of the garnishment notice, explain what garnishment means and provide additional information on the account holder's rights.[156] Supplemental Security Income (SSI) benefits are further protected from garnishment; unlike other federal public benefits, they are not subject to seizure to pay past-due child support.[157] The Office of Child Support at the U.S. Department of Health and Human

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[149] Infranca, *supra* note 143, at 1131.

[150] Garnishment of Accounts Containing Federal Benefit Payments, 31 C.F.R. § (2013); NAT'L CONSUMER L. CTR., COLLECTION ACTIONS § 14.5.4.2 (5th ed. 2020); Saunders & Tyler, *supra* note 140 (addressing the gaps in the 2011 Rules); NAT'L CONSUMER L. CTR., Comments Regarding the Interim Final Rule on Garnishment of Accounts Containing Federal Benefit Payments, 76 Fed. Reg. 9939 (Feb. 23, 2011).

[151] *Id.*

[152] Garnishment of Accounts Containing Federal Benefit Payments, 31 C.F.R. § 212 (2022).

[153] NAT'L CONSUMER L. CTR., COLLECTION ACTIONS § 14.5.4.1 (5th ed. 2020).

[154] *Id.*

[155] Garnishment of Accounts Containing Federal Benefit Payments, 31 C.F.R. § 212 (2022); NAT'L CONSUMER L. CTR., *supra* note 145, at §§ 14.5.4.2; 14.4.4.3; 14.3.3.

[156] 31 C.F.R. § 212 (2022).

[157] 5 C.F.R. § 581.104(j) (2022); OFFICE OF CHILD SUPPORT ENFORCEMENT, *Garnishing Federal Benefits for Child Support*, (Feb. 2013), https://www.acf.hhs.gov/media/16576; OFFICE OF CHILD SUPPORT ENFORCEMENT, *Attachment of Social Security Benefits* DCL-00-103 (Oct. 6, 2000), https://www.acf.hhs.gov/css/policy-guidance/attachment-social-security-benefits.

Services explains that this is because SSI "is a means-tested program that is not based on remuneration or employment."[158]

In addition to protections for specific public benefits, there are also federal protections for a basic amount of money in a person's bank account. The Credit Card Protection Act of 1968 instituted an exemption of thirty times the federal minimum wage to "assure the [employee's] retention of sufficient earnings to maintain a subsistence level for himself and his family."[159] However, because the federal minimum wage has remained low for so long, "the level of this protection tends to be lumpy and unrelated to any public policies related to garnishment."[160] The protection only applies to wages before they are actually paid out to the employee: it ceases once the wages are deposited in a bank account.[161] Additionally, oversight of wage garnishment is relatively limited and the process is highly fragmented, complicated, and understudied.[162]

If there is not an explicit debtor protection enacted in UBI legislation, then debtors will have to look to state laws for protection. Many states provide general exemptions for a certain amount of money in one's bank account, ranging from $300 to $5,000.[163] However, confusion around exemption and seizure of stimulus payments during the pandemic "exposed the enormous gaps in the states' exemption laws," with people receiving protection mainly from temporary moratoriums on lawsuits.[164] State exemption laws are extremely variable in their levels of protection. Some protect specific assets, and specific amounts of those assets, while others provide a general amount of protection, and others provide a combination of specific asset exemption and general amount of protection. Only a few states have self-executing exemptions, which means that many debtors are left to assert these

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[158] OFFICE OF CHILD SUPPORT ENFORCEMENT, *Garnishment of Supplemental Security Income Benefits*, DCL-13-06 (Feb. 27, 2013), https://www.acf.hhs.gov/css/policy-guidance/garnishment-supplemental-security-income-benefits.

[159] Faith Mullen, *Fifty Years After the Consumer Credit Protection Act: The High Price of Wage Garnishment*, 45 MITCHELL HAMLINE L. REV. 191, 203 (2019).

[160] Willborn, *supra* note 105, at 860-61, n. 71; Mullen, *supra* note 149, at 203; Carter, *supra* note 142, at 15 ("[W]age garnishment will not reduce a debtor's paycheck below $217.50 (thirty times the current minimum wage of $7.25 an hour). But a weekly paycheck of $217.50 places even a single individual who has no dependents below the federal poverty level. For a family of four, $217.50 per week is less than half of the federal poverty guideline ($503.85).").

[161] Carter, *supra* note 142, at 19.

[162] Willborn, *supra* note 105, at 860.

[163] NAT'L CONSUMER L. CTR., *supra* note 145, at § 14.5.2; *see also* Saunders & Tyler, *supra* note 140, at 77-78.

[164] Carter, *supra* note 142, at 5.

protections themselves.[165] Given the extremely high default rate in civil debt collection lawsuits,[166] it seems unlikely that they do, and do so successfully. These weak exemption laws also negatively impact Black and Latinx households, that not only have less wealth and savings to begin with, but are suffering economically and physically in disproportionately high rates.[167] Generally speaking, public assistance is exempt under state statutes, and a handful of states exempt all wages of some present or former recipients of means-tested benefits.[168] However, courts have interpreted these exemptions extremely variably: for example, courts have differed on their interpretations of stimulus checks, and whether or not they are public assistance subject to such exemptions.[169]

Leaving the protection of UBI up to state laws would undermine the universality at the core of the program. Instead, debtors in some states would see much more protection of their payments than debtors in others. States should continue to work towards improving their own exemption laws so that the incidence of a UBI payment exemption does not ultimately still fall on the debtor. UBI debtor protections could be accompanied by additional legislation creating a large general exemption. For example, in 2016, Representative Elijah Cummings and Senator Jeff Merkley introduced the Wage and Garnishment Equity (WAGE) Act that would have protected up to $12,000 in a debtor's bank account.[170] The amount was chosen to correspond with the federal poverty guideline for a single-person household, and the Act was introduced after ProPublica and NPR reports came out that

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[165] NAT'L CONSUMER L. CTR., *supra* note 145, at § 14.5.2; Carter, *supra* note 142, at 13.

[166] Cheryl R. Cooper, *The Debt Collection Market and Selected Policy Issues,* CONGRESSIONAL RSCH. SERV. 4 (updated Oct. 15, 2020), https://fas.org/sgp/crs/misc/R46477.pdf ("More than half of filed suits lead to default judgments in favor of the debt owner, often because consumers fail to appear in court. According to a CFPB consumer survey, about 15% of those contacted about a debt were sued in the past year. Of those sued, a fraction—about a quarter— of consumers reported attending the court hearing."); *How Debt Collectors Are Transforming the Business of State Courts,* PEW RSCH. CTR. (May. 6, 2020), https://www.pewtrusts.org/en/research-and-analysis/reports/2020/05/how-debt-collectors-are-transforming-the-business-of-state-courts ("Over the past decade in the jurisdictions for which data are available, courts have resolved more than 70 percent of debt collection lawsuits with default judgments for the plaintiff.").

[167] Carter, *supra* note 142 at 12-13.

[168] NAT'L CONSUMER L. CTR., *supra* note 145, at § 14.3.2; Mullent, *supra* note 151, at 231.

[169] NAT'L CONSUMER L. CTR., *supra* note 145, at § 14.3.2.

[170] WAGE Act, H.R. 5664 § 7, 114th Cong. (2016).

millions of workers had their wages garnished each year, hitting "low-income workers most frequently."[171]

Building the Protection

The existing literature on UBI often briefly touches on the assignability of UBI, or the right of the recipient to assign his or her benefits to another. Proposals usually prohibit assignability or limiting the amount that could be assigned, but do not consider how to implement such a protection in practice, or how the prohibition would intersect with existing debtor protection laws.[172] Miranda Perry Fleischer and David Hemel's article identifying six building blocks of a UBI program has come the closest. Two building blocks in particular that they identify—assignability and payment mechanism—would naturally affect and implicate how protected UBI funds would be from creditor seizure. However, neither fully address how the funds would be treated and made available to creditors. An explicit debtor protection is necessary. As the stimulus checks revealed, failing to legislate on this issue leaves people who were expecting, and in need of, payments without the lifeline for which they were ostensibly eligible.

Classifying UBI Payments

An integral component of debtor protections for basic income payments is the designation of those payments. Designating UBI payments as tax refunds, federal public assistances, or wages could affect the type of protection the payments receive if there are not explicit debtor protections created in the authorizing legislation. None of these designations alone would give complete protection to basic income payments, although treating UBI as federal public assistance may provide the easiest path to protection compared to the other two options.

Basic income payments could be treated as wages because of their regularity. Treating UBI as wages would also make sense if a major purpose of the program were to compensate for job loss due to automation, as well as the stagnation of wages. During the pandemic, at least one state interpreted stimulus checks as having a wage-like quality. The Ohio Attorney General stated that the CARES Act payments qualified for exemption from creditor collection under Ohio law

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[171] Paul Kiel, *In Bill, Lawmakers Propose New Limits for Seizing Workers' Pay Over Old Debts*, ProPublica (July 12, 2016), https://www.propublica.org/article/in-bill-lawmakers-propose-new-limits-for-seizing-workers-pay-over-old-debts.

[172] *See* Van Parijs, *supra* note 21, at 47 (suggesting that basic income should be handed out in the form of a non-mortgageable regular stream).

under the category of "[a] payment in compensation for loss of future earnings of the person or an individual of whom the person is or was a dependent, to the extent reasonably necessary for the support of the debtor and any of the debtor's dependents."[173] While in Ohio this categorization was protective of stimulus checks, states have varying laws on wage garnishment and protection that are often less protection of wages and wage replacements, like Unemployment Compensation. Treating UBI as wages would provide limited protection under the Consumer Credit Protection Act of 1968, but would leave the payments vulnerable to different state laws on wage and wage supplement exemptions.

If UBI is delivered through the tax system, it would more closely resemble a tax refund like the EITC. Designating UBI as a tax refund would make sense considering the roots of a federal basic income program in the U.S., which started with the negative income tax pilots in the 1970s. When payments are considered tax refunds, they are left vulnerable to the collection and offset powers of the IRS. As was seen with the stimulus checks, the designation also does not automatically protect payments from seizure from other creditors. Designation as a tax refund may also affect how payments are treated in bankruptcy. Bankruptcy courts have had differing opinions, for example, on whether the EITC is a "refunded tax payment" or "public assistance."[174] The experience creating and administering the stimulus checks is instructive: the pandemic acts created stimulus checks by amending the Internal Revenue Code, and designated the payments as tax refunds.[175] In addition to specific garnishment prohibitions, advocates also urged Congress to label the payments as public benefits to afford them more protection.[176] The stimulus checks were exempted from the means-testing that limits access to Chapter 7 (liquidation) bankruptcy, as well as the total amount from which payments to unsecured creditors must be made in Chapter 13 (reorganization)

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[173] Simon Hanning, *Ohio Attorney General Says COVID-19 Stimulus Checks are Protected by Ohio Law*, CLEVELAND 19NEWS (Apr. 13, 2020), https://www.cleveland19.com/2020/04/13/ohio-attorney-general-says-stimulus-checks-are-protected-by-ohio-law/.

[174] Jennifer E. Spreng, *When Welfare Becomes Work Support: Exempting Earned Income Tax Credit Payments in Consumer Bankruptcy,* 78 AM. BANKR. L.J. 279, 285 (2004).

[175] CARES Act, Pub. L. No. 116-136, §2201(c)(3)(C).

[176] Letter from 25 State Attorneys Generals and the Hawaii Office of Consumer Protection to Secretary Mnuchin, *supra* note 123.

bankruptcy cases.[177] However, the lack of exemption of CARES Act payments, and their status as refundable tax credits, meant that they could become the property of the bankruptcy estate.[178]

On its face, UBI seems most similar to public assistance, especially when viewed through the lens of poverty reduction. It has elements that resemble other federal public benefits, like Social Security. If UBI authorizing legislation were to define the payments as a federal public benefit, they would more easily fall under protections already in place, like the 2013 Treasury regulations, as well as state protections exempting federal benefits. The 2013 Treasury regulations account for the future creation of federal benefits payments. The regulations state "[t]he Agencies have structured the rule to create a framework in which payments protected by statute from garnishment can be included in the future."[179] They state that federal agencies issuing such payments can initiate their own rulemaking procedures to make their payments covered by this rule.[180] The five federal agencies involved in the 2013 Regulation would then issue a rule including those payments within the existing regulation.[181] If UBI were issued by the IRS, with a basic anti-assignability clause, the IRS would then need to implement a rule stating that the payments are considered federal benefits covered under the 2013 regulations, and the agencies that promulgated that 2013 regulations would need to mirror that.

Learning from Existing Protections

Section 207(a) in the Social Security Act is instructive. Although it was understood initially to be a strong exemption, it quickly became outdated and proved too vague as the debt collection industry rapidly developed and debt loads of low-income Americans rose. UBI legislation should contain a strong, self-executing, detailed debtor protection, learning from the experiences of section 207(a) and the 2013

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[177] CARES Act, Pub. L. No. 116-136, §1113(b)(1)(A) (excluding stimulus checks from the definition of "current monthly income" for the purposes of bankruptcy); *Notice to Chapter 7 and 13 Trustees Regarding Treatment of Recovery Rebates and Tax Credits for Consumer Bankruptcy Debtors Under the American Rescue Plan Act of 2021*, DEP'T JUST. (Mar. 25, 2021) https://www.justice.gov/ust/page/file/1379846/download.

[178] CARES Act, Pub. L. No. 116-136, §1113(b), 134 Stat. 310, 310-11 (2020); 11 U.S.C. §1325(b)(2); NAT'L CONSUMER L. CTR., *Major Consumer Protections Announced in Response to COVID-19* (Aug. 13, 2020), https://library.nclc.org/major-consumer-protections-announced-response-covid-19#content-11.

[179] 31 C.F.R. § 212.2 (2013).

[180] *Id.*

[181] 31 C.F.R. § 212.2 (2022).

regulations. The 2013 regulations were significant in more fully effectuating the protection of federal public benefits, but only protect two months of federal public benefits, and require less due diligence of banks when the debtors owe money to federal agencies or state child support agencies.

A comprehensive UBI debtor protection would need to include the encoding of UBI payments so that they are readily identifiable upon deposit. It would need to prohibit seizure and offset by three groups of creditors: the federal government, private creditors, and debt collectors via civil judgments and financial institutions. The lookback period for UBI should be longer than that for other federal benefits, set at six months to enable recipients to save more. Designating the payments as public benefits, rather than tax refunds would also make them less vulnerable to collection under state law and in bankruptcy. A UBI debtor protection should go further than existing federal public benefit exemptions and cover all creditors, including federal agencies and state child support agencies. Without a complete prohibition, many people's UBI payments will be seized, undermining the universality and efficacy of the program.

A second-best option would be for UBI legislation to designate the funds as federal public benefits that fall within the 2013 Treasury regulations. This means that the protection would prohibit assignability, exempt up to two months of UBI payments from seizure, and put protective requirements in place for how banks must react to garnishment requests. The CARES Act directed the Treasury Department to take action to protect the payments, but failed to put a time limit or more specifics on the directive.[182] Twenty-five State Attorneys General and the Hawaii Office of Consumer Protection also urged Treasury to protect the stimulus payments.[183] But the Treasury Department failed to do so, and even "effectively blessed" various seizures of the funds when speaking with banking officials.[184] A proscribed time limit for action by the Department would be necessary: despite the seemingly strong language of section 207(a) exempting federal benefit payments, millions of people were at risk of having their benefits seized or offset for decades before interim regulations were finally promulgated in 2011.[185] UBI-authorizing legislation could direct the Secretary of the Treasury to promulgate regulations within a year to fully protect

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[182] CARES Act § 2201(h); Dayen, *supra* note 10.
[183] Dayen, *supra* note 10; Letter from 25 State Attorneys Generals and the Hawaii Office of Consumer Protection to Secretary Mnuchin, *supra* note 123.
[184] Dayen, *supra* note 10.
[185] Saunders & Tyler, *supra* note 140, at 55.

the benefits, leaving these benefits protected by the 2013 Treasury regulations in the interim.

If there is not an explicit debtor protection enacted in UBI legislation, then debtors will have to look to state laws for protection.[186] These laws vary considerably across states, and many are relatively unprotective and out of date.[187] Generally speaking, public assistance is exempt under state statutes, and a handful of states exempt all wages of some present or former recipients of means-tested benefits.[188] Courts have differed on their interpretations of stimulus checks, and whether or not they are public assistance subject to such exemptions.[189] The confusion around exemption and seizure of stimulus payments during the pandemic "exposed the enormous gaps in the states' exemption laws," with people receiving protection mainly from temporary moratoriums on lawsuits.[190]

Payment Mechanism

They delivery method of basic income funds would impact their vulnerability to seizure. Some methods of payment delivery would more easily allow for protections than others. For example, loading UBI payments on a prepaid card, as SNAP does, would make them harder to seize than if they were directly deposited in a bank account and co-mingled with other funds. While prepaid cards are linked to bank accounts, they are not managed by vendors on behalf of the government and not locatable or accessible like normal bank accounts. Having prepaid cards deliver UBI funds would also remove the ability of banks themselves to offset the payments through overdraft charges and other fees. However, if recipients then transferred the payments to bank accounts, this could make the payments more vulnerable as they would likely appear as unlabeled normal income funds in the bank account. Recipients could be encouraged to open separate accounts just for the funds, if legislation provided that a certain amount would

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[186] *Infra* Part III(a)(iii).

[187] *See generally* Robert J. Hobbs et al., *Model Family Financial Protection Act,* NAT'L CONSUMER L. CTR. (revised 2021), https://www.nclc.org/wp-content/uploads/2022/08/model_family_financial_protection_act.pdf; Carter, *supra* note 142, at 14 ("Because of inflation and changes in society, exemption laws can become irrelevant simply due to the passage of time. States can reduce the erosion of these critical protections by building in automatic inflation adjustments.").

[188] NAT'L CONSUMER L. CTR., *supra* note145, at § 14.3.2; Mullen, *supra* note 149, at 218.

[189] NAT'L CONSUMER L. CTR., *supra* note 175.

[190] Carter, *supra* note 142.

automatically be protected (akin to the two-month lookback for certain federal public benefits).

Although the news surrounding stimulus checks primarily focused on direct deposits of the payments, the Treasury delivered millions of payments via prepaid debit cards.[191] The first-round stimulus checks that were issued on prepaid debit cards were issued by MetaBank N.A. The cards and envelopes were not marked with IRS or Treasury logos, and it has been reported that people may have regarded the cards as a scam and thrown them away.[192] The second round of cards were Visa debit cards issued by MetaBank, with the Treasury seal prominently featured on the envelopes.[193]

In a UBI pilot program based in Stockton, California, local leaders chose a prepaid debit card in partnership with a local financial nonprofit. They explained that they chose to use a card, instead of direct deposit or checks, because close to 10% of Stockton residents are unbanked. Stockton leaders also expressed a desire to make sure that the money was not "stripped away by predatory check-cashing service fees."[194] Similarly, a guaranteed income program launched in spring 2021 in Columbia, South Carolina, is also providing payments through prepaid debit cards. The debit cards are a partnership between a community foundation and MoCaFi,[195] which is a Black-owned and -led fintech company that operates a digital banking platform aimed at serving unbanked and underbanked people.[196]

A national UBI program would likely tend more towards direct deposit, given how the stimulus payments and other federal benefits have been delivered. Direct deposit has lower administrative start-up costs than pre-paid debit cards. It also provides incentives to bring more unbanked or underbanked people into the banking system, which is what happened when the move of Social Security benefits moved to primarily direct deposit starting in the late 1990s.[197] While SNAP is

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[191] Carmen Reinicke, *About 8 Million $600 Stimulus Payments Will Come on a Debit Card. What You Need to Know.* CNBC (Jan. 8, 2021), https://www.cnbc.com/2021/01/08/8-million-stimulus-payments-will-come-via-debit-card.html; NAT'L CONSUMER L. CTR., *Alert: IRS Sending Letters About Unactivated Stimulus Prepaid Cards,* (July 2, 2020), https://www.nclc.org/alert-irs-sending-letters-about-unactivated-stimulus-prepaid-cards/.

[192] Reinicke, *supra* note 191.

[193] *Id.*

[194] Treisman, *supra* note 7, at 4.

[195] COLUMBIA CLIMB, *Executive Summary* (2021), https://drive.google.com/file/d/1mz3htd-rn6qZ1qI14xtvmFxZAijucDX_/view.

[196] MoCaFi, *About* (Oct. 25, 2022), https://mocafi.com/about/.

[197] Infranca, *supra* note 143, at 1143.

successfully delivered via EBT cards, it is only usable for certain goods and at certain locations. A basic income program, by contrast, would provide monies that are obligation-free. People may want to save their payments or use them for larger purchases. Making the funds accessible through cards could result in fees from the card itself or ATM fees when cash is withdrawn.

As previously mentioned, some of the stimulus checks were delivered to individuals on pre-paid debit cards. The National Consumer Law Center recommended that people worried about garnishments transfer their stimulus payments to cards immediately after they were received. The rollout of the economic impact payment pre-paid cards was not smooth either: some people reported throwing them out, believing that they were scams.[198] This could be corrected with a better public messaging campaign. The National Consumer Law Center also suggested that consumers open new, low-cost bank accounts for the stimulus checks, which could at least for a short time avoid detection by creditors looking to be paid.[199] While this might have been a short-term solution for limited stimulus checks, it would not hide funds forever from creditors. Additionally, funds are still subject to garnishment from a new account and from a prepaid card.[200]

Agency Administration

Social programs implicate important questions of institutional design.[201] Compartmentalizing and assigning activities to specific units of government can ensure that the program is simpler to administer and provides the necessary expertise.[202] The agency that develops and delivers the payment or operates the payment mechanism matters and is likely to be different for national payments than for local UBI experiments. While traditionally welfare has been administered either by federal or state agencies, in recent decades "the federal government has started turning the tax code into the primary vehicle to provide for

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[198] Ben Popken, *People are Accidentally Throwing Out Their Stimulus Payments-Because They Look Like Junk Mail,* NBC (May 28, 2020), https://www.nbcnews.com/business/consumer/people-are-accidentally-throwing-out-their-stimulus-check-because-it-n1216991.

[199] NAT'L CONSUMER L. CTR., *Consumer Law Implications of the American Recovery Plan Act* (Mar. 15, 2021), https://library.nclc.org/consumer-law-implications-american-recovery-plan-act.

[200] *Id.*

[201] David A. Weisbach & Jacob Nussim, *Integration of Tax and Spending,* 113 YALE L.J. 955 (2004).

[202] *Id.*; *see also* Susannah Camic Tahk, *Everything is Tax: Evaluating the Structural Transformation of U.S. Policymaking*, 68 HARV. J. LEGIS. 67 (2013).

new social welfare programs in the form of discounts off of tax bills."[203] The IRS has had a significant role in the most recent iterations of cash benefits and other more universal benefits. The IRS administers the EITC, CTC, tax refunds, and was in charge of delivering the stimulus payments. There have been capacity issues with the IRS taking on these roles before the stimulus payments, and that has become increasingly clear during the pandemic. This would likely need to be addressed if the UBI program were incorporated into the IRS's duties. Additionally, it is worth considering the impact that having the IRS delivering funds would have on the vulnerability of those funds to specific creditor seizures and offsets. The IRS has access to significant information on many citizens and experience with the delivery of tax refunds and stimulus checks. However, the IRS's primary role is as a collector may make it easier for funds to be seized, especially by government entities for federal debts like tax debt or student loan debt.[204]

The way the payments were administered would also matter for the costs to people in to accessing the payment. Millions of people each year use either refund anticipation checks (RACs) or refund anticipation loans (RALs) to access their tax refunds.[205] RALs are short-term loans (originally made by banks, but now made by other lenders like H&R Block) for an anticipated refund, which are secured by the refund and repaid from it.[206] RALs enable taxpayers to get funds sooner than the refund would be deposited. RACs are products in which banks open temporary bank accounts for the tax refund deposits, and from that account issue a check or prepaid card or direct deposit into the consumer's normal account.[207] RACs do not deliver funds faster, like RALs, but rather enable taxpayers to "put off paying the tax-preparation fee and have the fee taken from the refund before the balance is deposited, enabling financially constrained taxpayers to have their taxes prepared without having to pay up front."[208] Millions of taxpayers use each product, with RACs being more popular in recent years.[209]

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[203] Tahk, *supra* note 188, at 69-70.

[204] Leslie Book, *Bureaucratic Oppression and the Tax System*, 69 TAX L. 567, 569 (2015).

[205] Chi Chi Wu, *Tax-Time Products 2018: New Generation of Tax-Time Loans Surges in Popularity*, NAT'L CONSUMER L. CTR. (Mar. 2018).

[206] *Id.* at 1-2.

[207] *Id.* at 5-6.

[208] Maggie R. Jones, *Tax Preparers, Refund-Anticipation Products, and EITC Noncompliance*, U.S. CENSUS BUREAU, 126, 126 (2014).

[209] Wu, *supra* note 191, at 1-2, 5-6.

Both products have very high charges associated with them, including fees for the product itself and additional add-on fees.[210]

Many low-income families filing for the EITC turn to commercial tax preparers, "unaware of other choices available to them- including free tax preparation at Volunteer Tax Assistance (VITA) sites."[211] One study found that the highest fees charged by tax preparers were charged for returns with qualifying-child EITC claims, and that the amounts represented about 20% of the full credit for the average household.[212] Research in Detroit revealed that many unbanked taxpayers who use RALs do so in order to pay off bills faster, but that this method often requires them to take out another loan to cover the tax preparation fees.[213] A study of taxpayers in Illinois found that a majority of RAL users were EITC recipients, and in neighborhoods with high African American populations.[214] Many advocates for low-income consumers note that these are extremely high interest, risky loans. However, they are often necessary, or seem necessary, to file complicated tax forms.[215]

If basic income were implemented through the tax system and had to be "claimed," then the cost of these tax services might chip away at the amounts paid out to recipients. Hopefully the simplicity of UBI's eligibility guidelines (when compared to the EITC or CTC, for example) would mean that tax preparers do not charge additional fees for recipients claiming the payments. Ideally, universal basic income would be delivered automatically if the recipient had filed taxes in the past, similarly to the stimulus checks. This method would avoid additional middlemen extracting fees from the payments and claimants having to exhort extra effort to receive them, which could drive down participation rates.

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[210] *Id.* at 3-7.

[211] *Keeping What They've Earned: Tax Credits for Working Families,* THE CHILDREN'S DEFENSE FUND (Feb. 2006), https://www.childrensdefense.org/wp-content/uploads/2018/08/Rals_report_National_id1601.pdf; Brett Theodos et al., *Who Needs Credit at Tax Time and Why: A Look at Refund Anticipation Loans and Refund Anticipation Checks*, THE URB. INST. 10-11 (Nov. 2010), https://www.urban.org/sites/default/files/publication/27166/412304-Who-Needs-Credit-at-Tax-Time-and-Why-A-Look-at-Refund-Anticipation-Loans-and-Refund-Anticipation-Checks.PDF.

[212] Jones, *supra* note 195, at 127-28.

[213] *Id.*

[214] *Id.*

[215] *Id.*; *See generally* Mandi Matlock & Chi Chi Wu, *2019 Tax Season: The Return of the Interest-Bearing Refund Anticipation Loan and other Perils Faced by Consumers*, NAT'L CONSUMER L. CTR. (Apr. 2019).

Addressing Negative Externalities

In addition to considering the loopholes in any debtor protection, the negative externalities that might be created by such protection must be accounted for.

First, a strong and absolute debtor protection of basic income could lend ammunition to creditors to lobby and weaken the already anemic exemption laws protecting other sources of income such as wages. Ideally, state exemption laws would be simultaneously strengthened or coordinated with federal UBI exemptions. Some recommendations for stronger exemption laws include: increasing the percentage of wages that are protected from garnishment, reducing garnishment for families in particular, and limiting the use of wage garnishment (e.g., exempting people who are suffering from illness or domestic abuse or those newly released from incarceration). However, some of these recommendations would not work for the universality prong of UBI. For example, Minnesota, which exempts recently released inmates and recent recipients of public assistance from garnishments for six months after their return to employment.[216] Similarly, a universal basic income program could exempt the entire amount for the first year or so, to allow recipients to take control of their new financial circumstances. Then, a limited garnishment of perhaps 10% might be allowed.[217] Ideally, a federal law could obviate this issue by updating the Credit Card Protection Act to exempt much higher percentages of wages and by adding protections for deposited wages.

Another negative externality that might exist from enacting a strong debtor protection of UBI would be that it would increase the riskiness of lending to low-income people and/or make fewer lending options available to them. An argument could also be made against exempting the total amount of UBI because it could lead to creditors pulling back on lending as risk increases. But this should not be a concern for a few reasons. First, basic income itself presents a reason that there may be less small-loan lending, or less reliance on credit and alternative financial services to pay for basic necessities. If universal basic income were enacted with a strong debtor protection, individuals would not have the same level of expenses left uncovered by income.

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[216] Minn. Stat. § 550.37(14) (noting that the exemption is not self-executing and that "[t]he burden of establishing that funds are exempt rests on the debtor").

[217] The National Consumer Law Center recommends 10% garnishment limit in its model amendments to the Uniform Wage Garnishment Act. Carolyn L. Carter, *Model Consumer Amendments to Uniform Wage Garnishment Act*, NAT'L CONSUMER L. CTR. 1 (2017), https://www.nclc.org/images/pdf/legislation/model_laws/model-amendments-ulc-wga-02142017.pdf.

Instead of using a credit card to pay rent one month, they could pay it in cash (as financial advisors would recommend). Individuals could also start to save, as they are encouraged to do even now despite their lack of disposable income. Seizing UBI payments would lead to some of the same problems that arise when the EITC is seized: low-income recipients relying on the funds would be thrust into financial crisis, and many would be unable to pay for basic necessities or leave abusive relationships due to lack of resources.[218] Seizure of additional benefits only compounds inequalities and forces individuals to continue to rely on expensive credit for basic necessities and to survive crises.

Second, there will still be incentives for people to repay their debts. For one, credit scores are powerful tools that have the ability to significantly shape many parts of people's lives, from housing to employment to additional borrowing. A debtor protection does not affect credit reporting, so failure to repay debts, even if someone is receiving only exempt income, would still damage their credit score. If people hope to use their UBI to build stronger financial futures for themselves and their families, access to future streams of credit will be important. The weight of credit reporting in many financial transactions, from credit access to housing to employment, provide significant incentive for people to pay back debts even if they are aware that the UBI payments are untouchable by debt collectors. Additionally, creditors would still have access to other income like wages and tax refunds. Especially if UBI does not provide a sufficient amount to live on without additional income, people will need to preserve other income streams and prevent garnishments. Lastly, debtors are also not immune to the moral judgments that society places on debtors. Many debtors feel strongly that they should pay their debts.[219] A study of EITC recipients revealed that people often plan to use the refund to catch up on back bills, and "derive a palpable sense of relief from the ability to use the refund to manage their stretched budgets and catch up on obligations."[220]

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[218] Yu, *Voices of Despair: How Seizing the EITC is Leaving Student Loan Borrowers Homeless and Hopeless During a Pandemic, supra* note 82; Yu, *Voices of Despair: Student Borrowers Trapped in Poverty When the Government Seizes Their Earned Income Tax Credit, supra* note 82.

[219] *See generally* Servon, *supra* note 70; Tach & Greene, *supra* note 83 (finding that EITC recipients value a narrative of self-sufficiency and prioritize paying off debts that help their upward mobility); *Rubber Stamp Justice, supra* note 77.

[220] Mendenhall, *supra* note 86, at 385.

Which Debtors Should be Protected?

Universal basic income is a major conceptual and administrative shift from the how welfare in the U.S. has operated, especially for programs benefitting low-income people. Stimulus checks during the pandemic are perhaps bridging that gap by providing payments with no strings attached to help people cope with economic hardship. However, these payments were limited based on income much more than universal basic income likely would be and had other limitations on who could be recipients.[221] One of the major obstacles against enacting a full, comprehensive debtor protection in a universal basic income program would be the cultural values that we hold against debtors. Debt and debtors have been villainized for centuries. At the height of the foreclosure crisis, even those being foreclosed on still considered it unacceptable to stop making payments on their underwater homes.[222] Many consider it a moral imperative to make good on the deals or contracts one made, to be self-sufficient, and to keep promises. Society sees some debt as "good debt" (e.g., an investment in education or to purchase a home), and some as "bad debt" (e.g., taking on credit card debt to pay for wants rather than needs).[223]

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[221] The economic payments were only available to US citizens, not undocumented residents or other immigrants with legal status. *See* Sarah Ruiz-Grossman, *Undocumented Immigrants Won't Get Stimulus Checks - For Third Time Around,* HUFFPOST (Mar. 9, 2021), https://www.huffpost.com/entry/undocumented-immigrants-no-stimulus-checks-coronavirus-again_n_6048025fc5b636ed3376acac?x3r. Advocates had to sue to get the payments to incarcerated individuals, because the payments were not initially making it to them (and still, some prisons are taking chunks of the payments). *See* Asher Stockler & Daniel Moritz-Rabson, *Prisons Are Skimming Big Chunks of CARES Act Stimulus Checks,* THE INTERCEPT (Feb. 17, 2021), https://theintercept.com/2021/02/17/stimulus-checks-cares-prisons-skimming-irs/. Lastly, the stimulus checks differed by number of dependents.

[222] Noelle Stout, *#Indebted: Disciplining the Moral Valence of Mortgage Debt Online*, 31 CULTURAL ANTHROPOLOGY 82, 87 (2016) (citing Fannie Mae, Press Release, *New Nationwide Survey Provides Comprehensive Look at Sentiment Toward Housing* (Apr. 6, 2010), https://www.fanniemae.com/newsroom/fannie-mae-news/new-nationwide-survey-provides-comprehensive-look-sentiment-toward-housing).

[223] Servon, *supra* note 70, at 63 (Explaining that "popular financial guru Suze Orman" wrote in one of her columns that "[g]ood debt is money you borrow to purchase an asset, such as a home you can afford. . . Bad debt is money you borrow to purchase a depreciating asset or to finance a 'want; rather than a need." Servon questions: "But what happens when what you need- but can't afford- is food, or medication, necessities that will not appreciate over time? The new middle class is facing this situation. . .").

Yet the categories are not that simple. As explained in Part II, low-income Americans are struggling to pay for necessities, juggling employment and trying to cobble together a livable wage through different means that often include accessing credit time and time again. The debts that low-income families have "place them at disadvantage relative to more affluent families, as they are less likely to have investment debt, such as mortgages, and more likely to have high-interest or unsecured debt, such as credit cards."[224] The federal government has simultaneously promoted borrowing as a method of social mobility while deregulating the credit industry and failing to address wage stagnation that makes it difficult for people to pay back loans.

Indebtedness, and the relationship between debtor and creditor "has always been intertwined with notions of morality."[225] Many have noted that this has deep historical and religious roots.[226] Failure to pay one's financial obligations has traditionally been met with social opprobrium, internal shame, and external stigma."[227] People are generally considered to "have a moral duty to keep their word, make good on their promises, and pay their bills," and these values are "embedded in American culture."[228] It is also supported by American individualism, and heavily promoted in updates of the Bankruptcy Code, especially in the 2005 reform.

Historically, the opportunity to extinguish one's debt has been defined as reserved for the "honest but unfortunate debtor,"[229] and exceptions from discharge are made based on ideas about the moral obligation to pay back certain debts.[230] While credit had been promoted, it has been separated from the issue of debt.[231] In particular, the United States "stigmatizes unmanageable indebtedness," which is clear

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[224] Tach & Greene, *supra* note 85, at 1-2.
[225] Michael D. Sousa, *The Persistence of Bankruptcy Stigma*, 26 AM. BANKR. INST. L. REV. 217, 218-19 (2018).
[226] *Id.*; Peterson, *supra* note 53; Baradaran, *supra* note 42.
[227] Sousa, *supra* note 210.
[228] A. Michele Dickerson, *America's Uneasy Relationship with the Working Poor*, 51 HASTINGS L.J. 17, 39 (1999).
[229] Sullivan, et al., *Consumer Bankruptcy in the United States: A Study of Alleged Abuse and of Local Legal Culture*, 20 J. CONSUMER POL'Y 223, 229 (1997); Lauren E. Tribble, *Judicial Discretion and the Bankruptcy Abuse Prevention Act*, 57 DUKE L. J. 789, 793 (2007); *Local Loan Co. v. Hunt,* 292 U.S. 234, 244 (1934); Melissa B. Jacoby, *Collecting Debts from the Ill and Injured: The Rhetorical Significance, but Practical Irrelevance, of Culpability and Ability to Pay*, 51 AM. U. L. REV. 229, 239 (2001).
[230] Atkinson, *supra* note 45, at 1450-51; Dickerson, *supra* note 213; Tach & Greene, *supra* note 85.
[231] Atkinson, *supra* note 45, at 1461, 1434-35.

through the historically punitive treatment of debtors in the country, religious admonitions, and the American ethos of self-reliance and economic individualism.[232] People struggle for years before filing for bankruptcy,[233] and research shows that individuals tend to experience significant shame related to their financial distress, particularly when it diverges from an individual's "normal" financial situation.[234] A study of EITC recipients found that debtors were strongly invested in a narrative of self-sufficiency that sometimes made it hard to make certain economic decisions such as accepting help or seeking out welfare, and instead turned to the stigma-free option of credit, which then created debt.[235]

While morality critiques often focus on debtors, they can also be applied to lenders or to specific financial practices. For example, there has been a recent re-emergence of advocacy towards imposing usury caps on loans, which are limits on the level of interest that can be charged. Senator Sanders and Congresswoman Ocasio-Cortez make the case for usury caps with "a moral critique of high interest rates," and invoke "the familiar trope of loan sharks as ruthlessly exploitative."[236] Senator Sanders described the interest rate practices as "grotesque and disgusting," painting those decisions as outrageous in the face of people who are "desperate" and need the money for survival.[237] However, this sort of debate about the morality of creditors is less common than it once was, as now when "policymakers and academics discuss the price of a loan, they are asking the 'market' price and not the 'moral' price. In other words, where earlier eras decried the usurer as 'greedy' and 'evil,' today the tone of the debate is about market pricing and efficiency."[238]

An additional distinction made between debts, not unrelated from morality, is the legitimacy of the debt incurred. Sometimes this is dealt with through private law, in the common law doctrines of

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[232] Michael D. Sousa, *supra* note 210, at 218-19.

[233] Pamela Foohey et al., *Life in the Sweatbox*, 94 NOTRE DAME L. REV. 219, 219 (2018).

[234] *See* Michael D. Sousa, *Debt Stigma and Social Class*, 41 SEATTLE U. L. REV. 965 (2018); *see also* Sousa, *supra* note 210.

[235] *See* Tach & Greene, *supra* note 85, at 8-9.

[236] Baradaran, *supra* note 42, at 64.

[237] *Id.*; Jacob Passy, *Bernie Sanders and Alexandria Ocasio-Cortez's Interest-Rate Cap Could be the Death Knell for Credit-Card Rewards Programs*, MARKETWATCH (May 13, 2019), https://www.marketwatch.com/story/how-bernie-sanders-and-alexandria-ocasio-cortezs-proposal-to-cap-credit-card-interest-rates-at-15-could-hurt-consumers-2019-05-10.

[238] Baradaran, *supra* note 42, at 66.

unconscionability, unclean hands, fraud, and other such defenses. However, there has been a decline in the utility of such tools to truly serve as equalizers in the face of unfair or deceptive conduct. People may make these distinctions in their own lives, but to a varying degree. For example, a study of EITC recipients revealed that people were making different judgments about the legitimacy of their debts in determining which to repay first. Many prioritized debts that would have immediate consequences, like utility arears, and some recipients explained that they deprioritized credit cards because they saw the high interest and fees as scams.[239]

American individualism and morality surrounding debt is strong: even at the height of the foreclosure crisis most though that people had to keep paying on subprime mortgage loans despite the well-known issues with those loans. A study of bankruptcy filers also found that debtors "went to considerable lengths to distinguish their 'legitimate' reasons for declaring bankruptcy from the otherwise illegitimate and morally objectionable actions and rationales of other bankrupt debtors."[240] However, there has been movement in recent decades to rally against the illegitimacy of debt, with Occupy Wall Street gaining widespread attention in 2012. Emerging from Occupy Wall Street was the Debt Collective, a debtors union organizing primarily around abolishing student loan debt. The Debt Collective organized with former Corinthian College students to strike and refuse to pay on their loans given the failures and bad practices existent in the higher education financing system and with Corithian Colleges, specifically.[241] The movement generated significant news coverage and was successful in activating debt discharges for students through a previously dormant procedure in the Higher Education Act.[242]

A debtor protection is not the same as bankruptcy: it does not forgive debts, and it does not take a full accounting of someone's assets and financial position. In this way, moral arguments lodged against debtor forgiveness should have less salience in the context of debtor exemptions for UBI payments. At the same time, while a UBI program would recognize the structural problems of current poverty in the U.S., it would be an opportune time to enact a debtor protection that also recognizes how debt, especially from certain industries and for certain

[239] Tach & Greene, *supra* note 85, at 13-14.
[240] Sousa, *Debt Stigma and Social Class*, *supra* note 217, at 978 (citing Deborah Thorn & Leon Anderson, *Managing the Stigma of Personal Bankruptcy*, 39 SOC. FOCUS 77 (2006)).
[241] THE DEBT COLLECTIVE, *Our History and Victories*, https://debtcollective.org/about-us/history-and-victories/.
[242] Appel, *supra* note 50, at 55-56.

groups, have contributed to and continue to contribute to that poverty. If UBI is meant to lift people out of difficult economic situations, allowing seizure of UBI payments would only compound issues of legitimacy and morality.

A complete debtor protection would not be completely novel. The original version of the Credit Card Protection Act of 1968 included the abolition of wage garnishment. SSI payments are also understood as needing more protective exemptions than other federal benefits because they are based on need.[243] The moral and ethical concerns of how debt is originated and perpetuated are at the same time personal and structural. A universal basic income program that seeks to follow guiding basic income principles of universality and unconditionality should ensure that full payments are made to everyone: not just those with no debt or solely "good debt." If debtors are de facto ineligible for payments in a UBI because payments are easily able to be garnished, then that eligibility restriction should be debated outright in Congress. A universal basic income program cannot achieve universality or unconditionality if its payments are inadequately protected and some debtors find themselves with smaller payments than their peers.

CONCLUSION

UBI pilot programs are proliferating across the country, and politicians have brought the idea to the national consciousness. The stimulus checks, while far from the universal, regular payments envisioned for a UBI, presented a window into what a no-strings-attached payment from the government might look like. In doing so, they revealed the need for strong and clear debtor protections for any new federal payment. While the impetus behind enacting a UBI program is varied, many Americans could clearly benefit from the influx of additional income. Without access to living wages, affordable housing, affordable college, and more, low-income Americans have taken on significant debt burdens to make ends meet, and these debt burdens are only likely to increase when pandemic moratoriums and other protections cease.

Creating a UBI program without considering debt beyond a general anti-assignability provision, or mirroring the limited

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[243] 5 C.F.R. § 581.104(j) (2022); OFFICE OF CHILD SUPPORT ENFORCEMENT, *Garnishing Federal Benefits for Child Support*, (Feb. 2013), https://www.acf.hhs.gov/media/16576; OFFICE OF CHILD SUPPORT ENFORCEMENT, *Attachment of Social Security Benefits* DCL-00-103 (Oct. 6, 2000), https://www.acf.hhs.gov/css/policy-guidance/attachment-social-security-benefits.

protections given to stimulus checks, would make the payments incredibly vulnerable to creditors. States' patchwork systems would create uneven protections, and in some places might leave the entire payment unprotected. Existing federal regulations would likely not cover the payments unless the enacting UBI legislation specifically said so. To fully effectuate the program and its goals, UBI legislation should implement a strong, absolute, and self-executing debtor protection of its own.