

2023

## Who Bears the Burden? A Collectivist Approach to Resolving Pandemic Relief Overpayments

Allison R. Mastrangelo

Follow this and additional works at: <https://scholarship.law.marquette.edu/benefits>



Part of the [Disaster Law Commons](#), [Health Law and Policy Commons](#), [Law and Economics Commons](#), and the [Social Welfare Law Commons](#)

---

### Recommended Citation

Allison R. Mastrangelo, *Who Bears the Burden? A Collectivist Approach to Resolving Pandemic Relief Overpayments*, 24 Marq. Ben & Soc. Welfare L. Rev. 229 (2023).

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Benefits and Social Welfare Law Review by an authorized editor of Marquette Law Scholarly Commons. For more information, please contact [megan.obrien@marquette.edu](mailto:megan.obrien@marquette.edu).

# WHO BEARS THE BURDEN? A COLLECTIVIST APPROACH TO RESOLVING PANDEMIC RELIEF OVERPAYMENTS

By: Allison R. Mastrangelo\*

## ABSTRACT

Unemployment rates soared when COVID-19 hit the U.S. While pandemic relief programs allowed millions to meet their basic needs, a new problem emerged: overpayments. Overpayments occur when state agencies give claimants benefits they were not entitled to. While most claimants were not at fault for these mistakes, millions are now expected to repay benefits they spent months ago. Thus far, the U.S. has prioritized fraud detection over this overpayment crisis. This misguided effort is representative of the destructive, individualistic American welfare culture at large. This note advocates for a solution rooted in collectivist European values: amending the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act to require blanket waivers for all no-fault COVID-related overpayments. This solution would support both states and individual claimants as they recover from the financial devastation of COVID-19.

TABLE OF CONTENTS

**INTRODUCTION** ..... 231

**I. CONTRASTING WELFARE STATES** ..... 237

    A. European Welfare Policies and Pandemic Responses .....238

    B. American Welfare Policies and Pandemic Responses .....242

**II. THE AMERICAN OVERPAYMENT CRISIS** .....248

    A. Federal COVID-19 Relief Programs.....248

    B. Overpayment Causes .....252

**III. RESOLVING OVERPAYMENTS: A COLLECTIVIST APPROACH** ..... 258

**CONCLUSION**..... 264

## INTRODUCTION

Before the COVID-19 pandemic, Monica Metcalf worked at a salon in Genoa, Ohio.<sup>1</sup> Like millions of other Americans, Monica found herself unemployed in the spring of 2020, as her salon shut down due to pandemic safety measures.<sup>2</sup> Fortunately, she qualified for a new COVID-19 relief program under the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, allowing her to collect benefits weekly.<sup>3</sup> However, she soon realized that her weekly benefit amount seemed inaccurate. Monica explained the situation to her local newspaper, stating, “I called [the Ohio Department of Job and Family Services] weekly for six months and was told time and time again, this was how the CARES Act worked, and I just didn’t understand it – but was assured the money was mine.”<sup>4</sup> Despite these reassuring calls, Monica was told in December of 2021 that she had been

---

\*Allison Mastrangelo is a recent graduate of Northeastern University School of Law, and she holds bachelor’s degrees in Labor and Employment Relations and Psychology from the Pennsylvania State University. She will begin her legal career as a Civil Rights Litigation Fellow this fall. During the first semester of her 2L year, Allison worked with a legal aid organization to help claimants in the Boston area maintain unemployment and pandemic relief benefits. Her clients and colleagues remained resilient through pervasive legal obstacles, and their experiences of injustice inspired her to write this article the following semester. Allison would like to thank her Scholarly Legal Writing professor and classmates for helping her develop ideas into an article she is proud of. She would also like to thank her family, law school friends, and Lawyering Fellow professor for cheering her on.

<sup>1</sup> See Josh Sweigart, *‘This is Cruel and Unusual Punishment:’ Thousands Waiting for answers on Unemployment Overpayment Waivers*, SPRINGFIELD NEWS-SUN (Dec. 31, 2021), <https://www.springfieldnewssun.com/local/this-is-cruel-and-unusual-punishment-thousands-waiting-for-answers-on-unemployment-overpayment-waivers/LRWIAB5ZSNA4FNNC SXZREEADNI/> (describing Ohio claimants’ struggles in navigating the overpayment crisis).

<sup>2</sup> See *id.*

<sup>3</sup> *Id.*; see also *About the CARES Act and the Consolidated Appropriations Act*, U.S. DEP’T OF TREASURY (last accessed Mar. 5, 2023), <https://home.treasury.gov/policy-issues/coronavirus/about-the-cares-act>.

<sup>4</sup> *Id.*

overpaid \$10,000.<sup>5</sup> While this mistake was not Monica's fault, she is now expected to repay the \$10,000 the Department gave her months ago.<sup>6</sup>

Monica's situation is common; from the start of the pandemic through October of 2021, state agencies overpaid \$4.2 billion in Pandemic Unemployment Assistance benefits.<sup>7</sup> Some overpayments are a few hundred dollars, while others are tens of thousands of dollars.<sup>8</sup> Peter Goselin, a practicing labor and employment attorney in Connecticut, noted that one of his clients is being asked to repay more than \$40,000 in benefits that she received over the course of 18 months.<sup>9</sup> Goselin explained, "She was not notified that she was ineligible for benefits until after benefits stopped. An appeal hearing might find that she was eligible for benefits all along. Meanwhile, she and her family live under the shadow of a large, unintentionally incurred debt."<sup>10</sup> Most Americans facing COVID-related overpayments spent the money months ago on basic needs, such as food and housing costs.<sup>11</sup> Furthermore, claimants facing overpayments cannot receive more benefits until their overpayment claim is resolved.<sup>12</sup>

---

<sup>5</sup> See *id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> See Peter Goselin, *Thousands May Have Received Aid They Weren't Eligible for During the Pandemic*, HARTFORD COURANT, (Dec. 26, 2021), <https://edu.icourban.com/edu-https-www.courant.com/opinion/op-ed/hc-op-connecticut-should-waive-unemployment-benefit-payments-20211226-6313yx7m3jebbfzv66crs2hz3i-story.html>.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See Sophie Nieto-Munoz, *N.J. Wants Congress to Forgive Overpaid Unemployment Benefits*, N.J. MONITOR (Jan. 26, 2022), <https://newjerseymonitor.com/briefs/n-j-wants-congress-to-forgive-overpaid-unemployment-benefits/> (describing the National Association of State Workforce Agency's ("NASWA") letter to Congress advocating for federal, blanket overpayment waivers with input from New Jersey Labor Commissioner Robert Aasaro-Angelo).

<sup>12</sup> *Id.* ("Overpayments made by mistake can affect someone who will need unemployment aid in the future: People who owe the Labor Department money can't receive more benefits until their claim is resolved.").

Overpayment appeal claims often have long wait times, leaving claimants without an income for months at a time.<sup>13</sup>

While overpayments have been a longstanding problem with unemployment insurance (“UI”), COVID-19 exacerbated this issue.<sup>14</sup> During the week of March 21, 2020, a record 3.28 million people filed for UI.<sup>15</sup> Only 282,000 people filed the week before, and the previous weekly record high was 695,000 in October of 1982.<sup>16</sup> The pandemic also sparked the creation of new benefit programs.<sup>17</sup> While these programs mitigated the financial impacts of COVID-19, overpayments

---

<sup>13</sup> See Larry Edelman, *Baker Administration Seeks Approval to Waive All Federal Unemployment Overpayments*, BOS. GLOBE (Feb. 25, 2022), <https://www.bostonglobe.com/2022/02/25/business/baker-administration-seeks-approval-waive-all-federal-unemployment-overpayments/> (describing how “[w]orkers who have been able to navigate the technical and confusing waiver application are waiting on average four to five months for their waivers to be processed, but [she also has] clients who have been waiting for nearly a year”); see also Catherine Tymkiw, *What to Do About Unemployment Overpayment: Due to the COVID-19 Pandemic, Some Errors Were Made*, INVESTOPEDIA (Sept. 15, 2021), <https://www.investopedia.com/what-to-do-about-unemployment-overpayment-5180862>.

<sup>14</sup> See Tymkiw, *supra* note 13; see also Tyler Boesch et al., *What Did and Didn’t Work In Unemployment Insurance During The Pandemic*, FED. RSRV. BANK MINNEAPOLIS (Aug. 2, 2021) <https://www.minneapolisfed.org/article/2021/what-did-and-didnt-work-in-unemployment-insurance-during-the-pandemic> (“Overpayments increased sharply during the pandemic, both due to errors and intentional fraud.”); see also Fiona Greig et al., *Lessons Learned From the Pandemic Unemployment Assistance Program During COVID-19*, J.P. MORGAN CHASE INST. 1, 12-13 (2022) (describing increase in UI overpayments during the pandemic); see also Zaakary Barnes, *Unemployment Overpayments: What States Are Doing*, NAT’L CONF. STATE LEGIS. (Jan. 10, 2022), <https://www.ncsl.org/research/labor-and-employment/unemployment-overpayments-what-states-are-doing-magazine2022.aspx> (explaining that state UI agencies’ lack of resources and funding during the pandemic contributed to their inability to meet increased UI demands).

<sup>15</sup> Tymkiw, *supra* note 13.

<sup>16</sup> *Unemployment Insurance Weekly Claims*, U.S. DEP’T OF LABOR (Mar. 26, 2020), <https://www.dol.gov/sites/dolgov/files/OPA/newsreleases/ui-claims/20200510.pdf>.

<sup>17</sup> See *Unemployment Insurance Program Letter (“UIPL”) No. 20-21*, U.S. DEP’T OF LABOR, 2 (May 5, 2021) <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-20-21> (describing state requirements for establishing overpayments for benefit programs under the CARES Act and outlining overpayment waiver eligibility criteria).

resulted as well.<sup>18</sup> Throughout the pandemic, state unemployment agencies have been understaffed and reliant on old technology, hindering their capacity to resolve overpayments.<sup>19</sup> Claimants often face language or technological barriers as well, inhibiting their ability to understand overpayment causes.<sup>20</sup> Additionally, overpayments disproportionately impact communities of color.<sup>21</sup> This finding is especially concerning, as people of color have also faced more COVID-related illness, hospitalization, and death than white Americans.<sup>22</sup>

Forcing claimants to repay no-fault, COVID-related overpayments is unjust and runs counter to the intent of pandemic relief programs. These overpayments resulted from the mistakes of state unemployment agencies, so states should front the cost.<sup>23</sup> Additionally, requiring repayment increases the financial burdens of low-income families – the exact opposite of what the COVID-19 relief programs were intended to accomplish.<sup>24</sup> The overpayment crisis and pervasive focus on fraud detection exposes problems with the

---

<sup>18</sup> See Tymkiw, *supra* note 13; see also Barnes, *supra* note 14 (“[A]mid the massive influx of claims, some cases of improper payment went undetected, including fraudulent . . . and nonfraudulent claims.”).

<sup>19</sup> Tymkiw, *supra* note 13.

<sup>20</sup> See generally Lilo Schluender, *Legal Aid in a Pandemic: Notes from the Front Lines*, 78 BENCH & BAR MINN. 28, 28-30 (2021) (describing “poverty shaming in a pandemic” as well as the pandemic’s overall impact on legal aid organizations).

<sup>21</sup> *Overpayments and Waivers*, NAT’L EMP. L. PROJECT (Oct. 2, 2022), <https://www.nelp.org/publication/overpayments-and-waivers/> (“Overpayments can disproportionately harm Black workers and other workers of color.”).

<sup>22</sup> See Svenn-Erick Mamelund & Jessica Dimka, *Not the great equalizers: Covid-19, 1918-20 influenza, and the need for a paradigm shift in pandemic preparedness*, 75 POPULATION STUD. 179, 184-85 (2021) (describing racial, COVID-related health disparities in the U.S. and U.K.).

<sup>23</sup> See generally Beth LeBlanc, *States Should Expand Pandemic Unemployment Waivers, Feds Say*, GOVERNING: THE FUTURE OF STATES AND LOCALITIES (Feb. 9, 2022) (describing overpayment crisis in Michigan resulting from state error).

<sup>24</sup> See Nieto-Munoz, *supra* note 11 (“To try to recover these funds after the fact stresses these workers and their families, strains the system of resources with little chance of success, and is counterintuitive to our mission of helping people in their time of need”).

individualistic American welfare state at large.<sup>25</sup> The U.S. should instead prioritize communities' financial recovery from the pandemic.

The American overpayment waiver system is deeply flawed and insufficient to solve the overpayment crisis. While the Continued Assistance Act gave states the option to waive COVID-related overpayments, waivers are not always granted.<sup>26</sup> Additionally, claimants must apply for a waiver, which requires English proficiency and internet access.<sup>27</sup> Moreover, while fraudulent overpayments make up only a fraction of COVID-related overpayments, the American focus is largely on combatting fraud.<sup>28</sup> This misplaced focus exhibits the

---

<sup>25</sup> See generally PEPI MARTINEZ ET. AL., FIN. CRYPTOGRAPHY & DATA SEC. 615 (Matthew Bernhard et al. eds., 25th ed. 2021) ("Perhaps the most prominent problem with current government spending programs is the lax verification (fraud detection and credible threat) systems associated with them, leading to billions of taxpayer money lost annually"); see also Boesch et al., *supra* note 14 (listing fraudulent claims as an UI system weakness exposed by the pandemic, but failing to discuss the detrimental impact of no-fault overpayment repayment on individual claimants); see generally FRANZ-XAVER KAUFMANN, EUR. FOUNDS. OF THE WELFARE STATE 260 (John H. Veit Wilson & Thomas Skelton-Robinson trans., 1st ed. 2012) (describing the individualistic nature of the United States regarding state intervention patterns and employer practices).

<sup>26</sup> See *Unemployment Insurance Program letter No. 09-21*, U.S. DEP'T OF LABOR, 7, (Dec. 30, 2020), [https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-09-21\\_\(clarifying\\_§\\_201\(d\)\\_of\\_the\\_Continued\\_Assistance\\_Act,\\_which\\_provides\\_that\\_\[s\]tates\\_are\\_provided\\_the\\_authority\\_to\\_waive\\_\[Pandemic\\_Unemployment\\_Assistance\]\\_overpayments\\_only\\_when\\_the\\_individual\\_is\\_not\\_at\\_fault\\_for\\_the\\_payment\\_and\\_repayment\\_would\\_be\\_contrary\\_to\\_equity\\_and\\_good\\_conscience"\)](https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-09-21_(clarifying_§_201(d)_of_the_Continued_Assistance_Act,_which_provides_that_[s]tates_are_provided_the_authority_to_waive_[Pandemic_Unemployment_Assistance]_overpayments_only_when_the_individual_is_not_at_fault_for_the_payment_and_repayment_would_be_contrary_to_equity_and_good_conscience); see also UIPL No. 20-21, *supra* note 17, at 6-11 (outlining circumstances in which states may waive a claimant's pandemic-related overpayment).

<sup>27</sup> See Schluender, *supra* note 20, at 28-30 ("[T]here seems to be a prevailing assumption that if a resource is posted online, it is accessible. For clients without internet access, or the technological literacy to make use of these resources, an online filing guide resembles hieroglyphics.").

<sup>28</sup> See Tymkiw, *supra* note 13 ("Fraud generally accounts for only a small portion of unemployment overpayment[s]."); See also U.S. Gov't Accountability Off., GAO-21-387, COVID-19: Sustained Federal Action Is Crucial as Pandemic Enters Its Second Year 6-7, 417-20 (2021) (recommending Department of Labor collect data on COVID-related overpayments to manage fraud risks); see also David A. Fahrenthold, *Prosecutors Struggle to Catch Up to a Tidal Wave of Pandemic Fraud*, N.Y. TIMES (Aug. 18, 2022),



pervasive culture of individualism within the American welfare state.<sup>29</sup>

Congress should model continental European values when reforming COVID-19 relief programs. In Germany, the Netherlands, and Belgium, “[s]ocial protection is part of the social dialogue . . . They typically offer more than just minimum protections: the aim is to guarantee living standards through proportional benefits that replace income from work.”<sup>30</sup> This collectivist approach is reflected in European pandemic relief strategies as well. For example, Belgium generously protects self-employed claimants and does not implement time limits for UI.<sup>31</sup> Moving forward, the U.S. should abandon its individualistic perspective and adopt the European “shared political value of solidarity.”<sup>32</sup> This change would shift the American focus to recognize issues outside claimants’ control, such as no-fault overpayments.

The CARES Act, as amended by the Continued Assistance Act, should be amended once more, requiring states to waive all no-fault overpayments from COVID-19 relief programs. The current overpayment waiver system relies too heavily on individual states, leaving millions with unforeseen debt. By automatically waiving all no-fault COVID-related overpayments, Congress could eliminate a

---

<https://www.nytimes.com/2022/08/16/business/economy/covid-pandemic-fraud.html> (explaining the federal government’s continuing efforts to prosecute Americans for fraud relating to pandemic relief programs); see also MARTINEZ ET AL., *supra* note 25, at 615 (describing insufficient fraud detection as “the most prominent problem” with U.S. government spending).

<sup>29</sup> See generally NICK WIKELEY, *The Welfare State*, OXFORD HANDBOOK LEGAL STUD. 397, 403 (Mark Tushnet & Peter Cane eds., 2005) (discussing the history of welfare state legal scholarship and describing the American welfare state’s individualistic characteristics).

<sup>30</sup> See Bea Cantillon et al., *The COVID-19 crisis and policy responses by continental European welfare states*, 55 SOC. & POL’Y ADMIN. 326, 327 (2021) (describing the welfare states and social protection schemes in Germany, Belgium, and the Netherlands, and their connections to the nations’ pandemic response strategies).

<sup>31</sup> See *id.* at 330.

<sup>32</sup> See WIKELEY, *supra* note 29, at 403.

costly burden for states, increase claimants' well-being, encourage community spending, and support the most vulnerable workers in the U.S. This Article advocates for this collectivist solution, proceeding in three parts. Part I defines the welfare state and analyzes European values that could improve the American system. Part II outlines American COVID-19 relief programs, reviews overpayment causes, and explains the current waiver application process. Lastly, Part III proposes an amendment to the CARES Act and discusses potential results.

## I. CONTRASTING WELFARE STATES

Welfare institutions signify societies' underlying cultural values; therefore, contrasting European and American welfare states provides context for the American overpayment crisis.<sup>33</sup>

This section defines the welfare state and analyzes European welfare state cultures and pandemic responses. This section then contrasts European and American welfare states and examines how individualism connects to the shortcomings of the American COVID-19 relief programs.

The welfare state is a social structure that regulates the free market and establishes minimum government protection standards.<sup>34</sup>

---

<sup>33</sup> See Carsten Jensen & Gert Tinggaard Svendsen, *Giving money to strangers: European welfare states and social trust*, INT'L J. OF SOC. WELFARE 3, 8 (2011) (“[T]here are numerous indications that welfare institutions in general correspond to the cultural values of the societies in which they are introduced. This is evident in the social democratic welfare states where high levels of Protestantism and low cultural fragmentation led to an acceptance of universal institutions, whereas such institutions were perceived as much less acceptable in Continental Europe. These countries opted for familiaristic institutions, placing special emphasis on the traditional family structure, which led to generous schemes for male breadwinners and policies to ensure that childcare and eldercare remained within the family.”).

<sup>34</sup> See WIKLEY, *supra* note 29, at 398. (“The Welfare State [is] a system of social organization which restricts the operation of the free market... the essence of the Welfare State revolves around government-protected minimum standards.”).

Welfare states designate certain societal groups as needing protection, deliver services to community members regardless of their resources, and facilitate payment transfers to maintain income sources for people in need.<sup>35</sup> The welfare state's emergence has surprised economists, as the system promotes monetary transfers regardless of free-rider incentives.<sup>36</sup> Some scholars credit this phenomenon to taxpayers' social trust, or general belief that they will not be disadvantaged by contributing to a collective pool.<sup>37</sup>

Understanding welfare states is especially crucial during the pandemic, as international COVID-19 responses implemented unprecedented expansions of public spending.<sup>38</sup> While both Europe and the U.S. had flawed pandemic responses, the American overpayment waiver process is particularly disastrous, as the system inhibits the financial recovery of low-income communities.<sup>39</sup> In summary, the American overpayment process could be improved through federal legislative changes mirroring the collectivist culture of European welfare states.

### *A. European Welfare Policies and Pandemic Responses*

Unlike the U.S., continental European nations have welfare policies centered on "a shared political value of solidarity."<sup>40</sup> Europe

---

<sup>35</sup> *Id.*

<sup>36</sup> See Jensen & Svendsen, *supra* note 33, at 3.

<sup>37</sup> *Id.* ("Each taxpayer must be confident that he or she does not wind up with the sucker's payoff, but that other taxpayers also contribute to the common pool of resources when they are able to. Otherwise, this collective insurance system would not work at the state level").

<sup>38</sup> See David Bailey et al., *Regions in Covid-19 recovery*, 22 REG'L STUD. 1955, 1957 (2021).

<sup>39</sup> See NICO STEYTLER, *COMPARING FEDERALISM & COVID-19: COMBATTING THE PANDEMIC* 181-85 (1st ed. 2021) (describing the delayed and uncoordinated pandemic response in the U.S and comparing countries' COVID-related death counts); see generally Nieto-Munoz, *supra* note 11 (describing the overpayment waiver process' detrimental impact on New Jersey claimants).

<sup>40</sup> See WIKLEY, *supra* note 29, at 403.

generally holds a stronger view of state authority and prioritizes communal ideals over individualism.<sup>41</sup> This subsection analyzes continental European welfare states and connects the nations' welfare policies to their COVID-19 relief measures.

Germany, the Netherlands, and Belgium are all affluent, continental European nations with collectivist welfare states and robust pandemic relief programs.<sup>42</sup> These nations exhibit strong social protection, as well as quasi-universal health care.<sup>43</sup> "Social benefit expenditure is high, at around 28% GDP in all three countries, [and] [p]overty is relatively low though persistent, averaging between 16% in Belgium and Germany and 13% in the Netherlands."<sup>44</sup> In contrast to the U.S., social security in mainland Europe remains closely tied to collective labor law ideals.<sup>45</sup> Furthermore, continental welfare states have roots in Bismarck's old age pensions and workers' compensation system of the 1880s.<sup>46</sup>

Continental welfare states still demonstrate Bismarckian traditions today.<sup>47</sup> Germany has continued its long history of using a "short-time work scheme to mitigate economic shocks."<sup>48</sup> While German benefits have a time limit, individuals needing continued support or failing to qualify can rely on unemployment assistance.<sup>49</sup> The Netherlands adopted a similar generic social assistance program for individuals needing continued support or failing to qualify for other benefits.<sup>50</sup> Additionally, the Netherlands provides the self-employed

---

<sup>41</sup> See generally KAUFMANN, *supra* note 25, at 260-61 (describing ideologies demonstrated in European and American industrialization and workers' rights movements).

<sup>42</sup> See Cantillon, *supra* note 30, at 327.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 227, 330.

<sup>45</sup> See WIKELLY, *supra* note 29, at 403 (describing the welfare state in "mainland Europe, where social security law is still seen as closely allied to collective labour law.").

<sup>46</sup> *Id.* at 402.

<sup>47</sup> *Id.*

<sup>48</sup> See Cantillon, *supra* note 30, at 334.

<sup>49</sup> *Id.* at 329.

<sup>50</sup> *Id.*

with unemployment for a maximum of two years for 70% of a worker's wage.<sup>51</sup> Scholars have identified Belgium as most closely adhering to the traditional Bismarckian welfare model.<sup>52</sup> Unlike Germany and the Netherlands, Belgium offers unlimited unemployment benefits with a strong decline over time.<sup>53</sup>

In summary, continental welfare states value social protection and aim to guarantee adequate living standards.<sup>54</sup> This collectivist approach is reflected in continental Europe's pandemic relief strategies. In continental European nations, social security has played a major role in supporting workers during the COVID-19 pandemic.<sup>55</sup> Belgium, Germany, and the Netherlands strengthened their already well-performing social insurance schemes to protect workers historically excluded from benefit programs.<sup>56</sup> The extent to which European nations utilized existing social insurance programs as COVID-19 relief measures seems to correspond with national transitions towards an Anglo-Saxon welfare approach.<sup>57</sup>

Belgium, the most Bismarckian nation of the group, relied on existing short-term systems for employees and self-employed workers.<sup>58</sup> This strategy began on March 18, 2020, when the National Labour Council extended the existing unemployment system.<sup>59</sup> The Council then upgraded temporary unemployment policies.<sup>60</sup> Temporary unemployment was effective during the 2008 economic crisis

---

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 330.

<sup>53</sup> *Id.* at 329.

<sup>54</sup> *Id.* at 326-27 (describing pandemic responses in continental European welfare states, where "social security has been a powerful instrument providing protection of individuals and families whose livelihoods have been threatened by unemployment, sickness and loss of economic activity during the prevailing COVID-19 crisis.").

<sup>55</sup> *Id.* at 327.

<sup>56</sup> *Id.* at 332.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 334.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

and supported Belgian workers again during the COVID-19 pandemic, serving over 29% of Belgium's workforce.<sup>61</sup> Social insurance supported self-employed workers as well.<sup>62</sup> Additionally, the federal government introduced parental leave to support working parents whose children were unable to attend school in-person.<sup>63</sup>

Germany used existing benefit systems, covering self-employed workers through unemployment assistance.<sup>64</sup> Germany also extended UI payments for up to three months and established support for small companies and the self-employed.<sup>65</sup> Like Belgium, Germany administered temporary benefits, supporting 16.8% of the German workforce.<sup>66</sup> Germany also provided working parents facing school closures with benefits for 10 weeks.<sup>67</sup> Moreover, Germany gave single parents 20 weeks of benefits and established emergency benefits for low-income families to apply for.<sup>68</sup> Scholars have noted Germany's COVID-19 relief as particularly middle-class oriented, as Germany suspended the wealth test for unemployment assistance.<sup>69</sup>

Instead of relying on existing welfare systems, the Netherlands introduced two new protection mechanisms.<sup>70</sup> The first new mechanism was the Temporary Emergency Measures for the Preservation of Employment ("NOW").<sup>71</sup> Companies that applied for this program were not allowed to fire workers but received 90% of wage

---

<sup>61</sup> *Id.* at 334-35.

<sup>62</sup> *Id.* at 335.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 336.

<sup>65</sup> *Id.* at 333.

<sup>66</sup> *Id.* at 335.

<sup>67</sup> *Id.* at 334.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* ("The most important new and time-limited element was the suspension of the wealth test. Hence, the scheme became more middle-class oriented as it was intended to support those who lost their income without having access to their savings or investments.").

<sup>70</sup> *Id.* at 332-33.

<sup>71</sup> *Id.*

costs for permanent and temporary workers.<sup>72</sup> NOW differed greatly from the Netherlands' 2008 response; scholars suggest this change was in response to the growing number of contract workers who would not have been covered by short-term insurance.<sup>73</sup> About 22.3% of the workforce benefitted from NOW.<sup>74</sup> The second new program, Temporary Support Measure for Self-Employed ("TOZO"), provided social assistance to about 300,000 self-employed workers, comparable to the Social Assistance Act.<sup>75</sup> In summary, the Netherlands exhibited Anglo-Saxon welfare trends through its abolishment of a temporary unemployment system and implementation of the NOW and TOZO programs.<sup>76</sup>

Generally, collectivist European welfare states established strong COVID-19 relief programs.<sup>77</sup> While addressing COVID-related overpayments, the U.S. should model these European values, prioritizing unified financial recovery over fraud detection. The American welfare state culture and its detrimental impact on the overpayment crisis are discussed below.

### ***B. American Welfare Policies and Pandemic Responses***

The American welfare state is rooted in individualism.<sup>78</sup> As the U.S. industrialized, the nation developed welfare policies with a non-intervention pattern; unemployment was not "a collective issue of

---

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 333 (discussing strong presence of contract workers in sectors hit hard by the pandemic, such as hospitality and tourism, who would not have been covered by the Netherlands' short-term insurance in 2008).

<sup>74</sup> *Id.* at 335.

<sup>75</sup> *Id.* at 333.

<sup>76</sup> *Id.* at 336.

<sup>77</sup> *Id.* at 327.

<sup>78</sup> See generally Samuel Bazzi, Martin Fiszbein, & Messay Gebresilasse, "Rugged individualism" and collective (in)action during the COVID-19 pandemic, 195 J. OF PUB. ECON. 1, 1 (2021) (describing the impact of American individualism on U.S. pandemic responses).

public concern . . . [but rather] a problem to be solved solely at the level of business.”<sup>79</sup> The American welfare state was established during the Great Depression through the Social Security Act of 1935.<sup>80</sup> Generally, the American welfare system is a partnership between federal and state governments, funded by taxes on employers.<sup>81</sup> While states must adhere to federal guidelines, states administer unemployment, establishing eligibility, duration, and benefit levels.<sup>82</sup> While some states, like Wisconsin, established welfare policies similar to European nations, most states have welfare policies expressing a weaker view of the federal government and “more radical individualism.”<sup>83</sup> This pattern resulted from both state-level choices and Supreme Court decisions preventing increased federal interventions.<sup>84</sup>

Scholars have identified various individualistic aspects of the American welfare state.<sup>85</sup> For example, there is a firm American distinction between social security benefits (compensation for disabilities or old-age) and welfare benefits (public assistance).<sup>86</sup> Contrasting perceptions of social security and welfare demonstrate the “morally inferior status of reliance on income not acquired through effort and exchange’.”<sup>87</sup> In recent scholarship, this culture is referred to as rugged individualism: a combination of individualism and resistance to

---

<sup>79</sup> See KAUFMANN, *supra* note 26, at 260.

<sup>80</sup> WIKELEY, *supra* note 30, at 403-04.

<sup>81</sup> See Patrick Carey et al., *Applying for and Receiving Unemployment Insurance Benefits During the Coronavirus Pandemic*, MONTHLY LAB. REV. 1, 10 (2021).

<sup>82</sup> *Id.*

<sup>83</sup> See KAUFMANN, *supra* note 26, at 263-64.

<sup>84</sup> *Id.*

<sup>85</sup> See WIKELEY, *supra* note 30, at 403-05; see generally William H. Simon, *Rights and Redistribution in the Welfare System*, 38 STAN. L. REV. 1431, 1434 (1986) (describing public perceptions of welfare).

<sup>86</sup> See WIKELEY, *supra* note 30, at 403.

<sup>87</sup> *Id.* (quoting Simon, *supra* note 86, at 1434, “Welfare, which institutionalized a form of dependence, was at best a prudential activity foreign to the core value of individual independence. Welfare connoted the morally inferior status of reliance on income not acquired through effort and exchange.”).



government intervention.<sup>88</sup> Scholars have linked rugged individualism to the period of westward expansion in early U.S. history.<sup>89</sup> The American frontier encouraged independence, yet lacked a social infrastructure for settlers to rely on.<sup>90</sup> While frontier settlers faced setbacks, they also enjoyed opportunities for upward mobility.<sup>91</sup> These conditions seem to have pervasive impacts on national cultures; countries with longer frontier histories, such as the U.S., have weaker civic capital, greater anti-government partisanship, and more distrust in science.<sup>92</sup> In short, the individualistic American welfare state has historic roots which remain prevalent in American culture today.<sup>93</sup>

While individualism may encourage innovation, it can also interfere with collective action.<sup>94</sup> This shortcoming is particularly significant when evaluating the American COVID-19 response. Generally, rugged individualism corresponds with poor public health responses.<sup>95</sup> Scholars have even suggested that “America’s frontier culture of rugged individualism is at the heart of its flawed responses to the COVID-19 pandemic.”<sup>96</sup> Additionally, countries with longer frontier histories have demonstrated less mask use and less social distancing throughout the pandemic.<sup>97</sup> The inadequate American pandemic response and its individualistic features are detailed below.

While the U.S. was well-equipped for a pandemic, President Trump had a delayed response and prioritized the economy’s

---

<sup>88</sup> See Bazzi et al., *supra* note 79, at 8.

<sup>89</sup> *Id.* at 1.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 8.

<sup>93</sup> See Bazzi et al., *supra* note 79, at 8; WIKLEY, *supra* note 30, at 403-06.

<sup>94</sup> See Bazzi et al., *supra* note 79, at 1.

<sup>95</sup> *Id.* at 8.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

maintenance over the suppression of COVID-19.<sup>98</sup> The U.S. faced its first COVID-19 surge from late March to early April 2020 with a peak of 34,904 cases on April 9.<sup>99</sup> A second surge took place in July 2020, with a peak of 79,086 cases on July 24, and a third surge occurred that fall, with a peak of 200,447 cases on November 20.<sup>100</sup> By late November 2020, “only Belgium (136.7 deaths per 100,000 population), Spain (91.2), Argentina (83.2), Brazil (80.8), and Mexico (80.6) had worse outcomes than the [U.S.] (78.5).”<sup>101</sup>

COVID-19 created the most distressing financial crisis since the 1930s.<sup>102</sup> In April 2020, 23.1 million Americans lost their jobs, causing an unemployment rate of 14.7%.<sup>103</sup> More than twice as many jobs were lost at the start of the COVID-19 pandemic than during the Great Recession of 2007-2009.<sup>104</sup> Additionally, “only a third of jobs lost at the start of the pandemic were recovered in two months.”<sup>105</sup> While the unemployment rate decreased to 6% in March 2021, 9.7 million workers remained unemployed.<sup>106</sup> COVID-related job loss caused an unprecedented demand for UI.<sup>107</sup> Before COVID-19, there were about 200,000 weekly UI claims in the U.S.<sup>108</sup> In late March and early April 2020, there were around six million weekly UI claims.<sup>109</sup> This increase is drastic yet unsurprising, as job losses left millions unable to meet their basic needs. Food insecurity increased from 11%

---

<sup>98</sup> See Steytler, *supra* note 40, at 196.

<sup>99</sup> *Id.* at 182.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 181.

<sup>102</sup> See Mohammad Yamin, *Counting the Cost of COVID-19*, INT’L J. INFO. TECH. 311, 311 (2020).

<sup>103</sup> See Tymkiw, *supra* note 14.

<sup>104</sup> See Carey et al., *supra* note 82, at 1.

<sup>105</sup> *Id.*

<sup>106</sup> See Tymkiw, *supra* note 14.

<sup>107</sup> See Carey et al., *supra* note 82, at 1.

<sup>108</sup> *Id.* at 2. (Chart 1. Shows that from Jan 4, through March 14, 2020, initial claims for unemployment insurance were around 200,000).

<sup>109</sup> *Id.* (Chart 1. Shows that a short while after March 14, 2020, UI initial claims reached six million).

in 2018 to 23% in April 2020.<sup>110</sup> Among UI claimants in April 2020, 33.7% had difficulty with household expenses and 18.7% were not confident they would be able to make their upcoming mortgage or rent payments.<sup>111</sup>

While President Trump's response largely relied on individual states, Congress intervened in March of 2020.<sup>112</sup> Most notably, Congress established new COVID-19 relief programs to supplement regular UI.<sup>113</sup> While these programs supported millions, "most state unemployment offices were understaffed and ill-equipped from a technology standpoint to handle the barrage of requests for help."<sup>114</sup> Thus, many individuals claiming new benefits were overpaid and expected to pay back state agencies months after spending the money.<sup>115</sup>

Individualism has emerged in the overpayment context as well. Despite the pressing overpayment crisis, the U.S. is focused on combatting fraud.<sup>116</sup> For instance, in August of 2022, President Biden

---

<sup>110</sup> *Id.* at 13.

<sup>111</sup> *Id.* at 14.

<sup>112</sup> See Steytler, *supra* note 40, at 184.

<sup>113</sup> See *Unemployment Insurance program Letter No. 16-20, Change 6*, DEP'T OF LAB., 2-3, (Sept. 3, 2021) <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-16-20-change-6> (outlining sources of law for new COVID-19 relief programs).

<sup>114</sup> See Tymkiw, *supra* note 14.

<sup>115</sup> *Id.* States reported more than \$3.6 billion of PUA overpayments from March 2020 through February 2021.

<sup>116</sup> See Tymkiw, *supra* note 14; see also Fahrenthold, *supra* note 29 ("There are currently 500 people working on pandemic-fraud cases across the offices of 21 inspectors general, plus investigators from the F.B.I., the Secret Service, the Postal Inspection Service and the Internal Revenue Service. The federal government has already charged 1,500 people with defrauding pandemic-aid programs, and more than 450 people have been convicted so far. But those figures are dwarfed by the mountains of tips and leads that investigators still have to chase"); see also U.S. Gov't Accountability Off., *supra* note 29, at 6-7, 417-20 (describing the pandemic's impact on fraud opportunities and encouraging increased risk management for fraud in COVID-19 relief programs); see also Boesch et al., *supra* note 15 ("In an effort to reduce fraud, the federal government has created tools and resources for states through the DOL and provided funding to help them reduce fraud.").

signed various bills to extend the pandemic-related fraud statute of limitations from five years to ten years, giving the government more time to prosecute cases.<sup>117</sup> Scholars have even declared, “the most prominent problem with current government spending programs is the lax verification (fraud detection and credible threat) systems associated with them, leading to billions of taxpayer money lost annually.”<sup>118</sup> This perspective fails to consider systemic problems with benefit administration. Fraud has certainly been a problem with COVID-19 relief programs; from March 2020 through October 2021, there were \$454 million in fraudulent overpayments detected in the Pandemic Unemployment Assistance (“PUA”) program.<sup>119</sup> However, in that same time period, there were \$4.2 billion in non-fraudulent overpayments in the PUA program.<sup>120</sup> Based on these figures, there have been nine times more non-fraudulent PUA overpayments than fraudulent ones. Despite this finding, fraud detection remains the primary American concern.<sup>121</sup>

In short, the U.S. is prioritizing fraud over a disastrous overpayment problem. This misguided effort is representative of the detrimental, individualistic American welfare culture. In contrast, European welfare states maintain a collectivist approach; these differences are evident in pandemic relief measures as well.<sup>122</sup>

---

<sup>117</sup> See Fahrenthold, *supra* note 29.

<sup>118</sup> See Martinez et al., *supra* note 26, at 615 (describing insufficient fraud detection as “the most prominent problem” with U.S. government spending); see generally Greig et al., *supra* note 15, at 13 (suggesting the federal government increase its involvement in state UI agencies’ data cross-checking and third-party verification processes to reduce fraud).

<sup>119</sup> See Sweigart, *supra* note 1.

<sup>120</sup> *Id.*

<sup>121</sup> See Martinez et al., *supra* note 26, at 615. Public charities are losing around \$100 billion to fraud annually, adding to the exigency behind detecting fraud.

<sup>122</sup> See Wikeley, *supra* note 30, at 403. (contrasting American and European welfare state cultures); see also Cantillon et al., *supra* note 31, at 326-38 (describing the welfare state cultures and pandemic responses in Germany, Belgium, and the Netherlands); see also Steytler, *supra* note 40, at 106-14, 142-51 (outlining European and American pandemic responses).

Moving forward, American reforms should model continental European nations, acknowledging that unemployment issues can arise from factors outside claimants' control.

## II. The American Overpayment Crisis

The current overpayment waiver system exhibits the problematic individualistic welfare culture of the U.S. This section outlines American COVID-19 relief programs and explains the resulting overpayment crisis. This section then applies European values to the overpayment waiver process and advocates for collectivist, legislative reforms at the federal level.

### A. Federal COVID-19 Relief Programs

While the American pandemic response primarily relied on states, the federal government established COVID-19 relief programs that are at the center of the overpayment crisis.<sup>123</sup> First, President Trump signed the CARES Act of 2020 into law on March 27, 2020.<sup>124</sup> This was the principal federal response to COVID-19, providing \$150 billion to state and local governments.<sup>125</sup> CARES Act funding was distributed through pre-pandemic intergovernmental systems, including state UI agencies.<sup>126</sup> The new CARES Act programs are detailed below.

The CARES Act created the PUA program, which covers workers who are self-employed, seeking part-time work, have a limited work history, have exhausted their rights to other COVID-19 programs, or

---

<sup>123</sup> See Steytler, *supra* note 40, at 186-87 (listing sources of law for American pandemic relief programs, such as the Pay Check Protection Program Flexibility Act and CARES Act); see also UIPL No. 16-20, Change 6, *supra* note 114, at 1-3.

<sup>124</sup> See UIPL No. 16-20, Change 6, *supra* note 114, at 2..

<sup>125</sup> See Steytler, *supra* note 40, at 194; see also *id.* (The CARES Act funds were also allocated to local, tribal, and territorial governments).

<sup>126</sup> See Steytler, *supra* note 40, at 194.

would not qualify for regular UI or other COVID-19 programs.<sup>127</sup> Notably, PUA extended benefits to traditionally excluded workers, such as independent contractors.<sup>128</sup> PUA originally provided 39 weeks of payments for individuals who were unemployed beginning on or after January 27, 2020, and ending on or before December 31, 2020.<sup>129</sup> PUA claimants establish eligibility by self-certifying that they are able and available to work but are unemployed or unable to work due to a COVID-19 related reason listed in the CARES Act.<sup>130</sup>

The CARES Act also created the Pandemic Emergency Unemployment Compensation (“PEUC”) program.<sup>131</sup> The PEUC program covers workers who have no rights to regular UI or have exhausted their rights to UI, as long as they are able to work, available to work, and actively seeking work.<sup>132</sup> The program originally provided up to 13 weeks of benefits for workers who were unemployed beginning after the date the specific state entered into an agreement with the U.S. Department of Labor (“DOL”) and ending on or before December 31, 2020.<sup>133</sup> Additionally, the CARES Act established the Federal

---

<sup>127</sup> See CARES Act, 15 U.S.C. §§ 9021-9034 (2020) (“is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under State or Federal law or pandemic emergency. . .”); see also UIPL No. 16-20, Change 6, *supra* note 114, at 2-3.

<sup>128</sup> See MONICA HALAS ET AL., UNEMPLOYMENT INSURANCE ADVOCACY GUIDE: AN ADVOCATE’S GUIDE TO MASSACHUSETTS UNEMPLOYMENT INSURANCE 226 (2022) (describing the PUA program and its notable differences from regular UI).

<sup>129</sup> See *Unemployment Insurance Program Letter No. 16-20*, DEP’T OF LAB., at 2-3, (Apr. 5, 2020) <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-16-20>.

<sup>130</sup> See CARES Act, 15 U.S.C. § 9021 (2020); see also UIPL No. 16-20, *supra* note 130, at 3.

<sup>131</sup> See 15 U.S.C. § 9025 (2020); see also *Unemployment Insurance Program Letter No. 17-20*, at 2-3, (Apr. 10, 2020) <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-17-20>.

<sup>132</sup> See 15 U.S.C. § 9025 (2020); see also UIPL No. 17-20, *supra* note 32, at 2-3.

<sup>133</sup> See 15 U.S.C. § 9025 (2020); see also UIPL No. 17-20, *supra* note 131, at 1-3.

Pandemic Unemployment Compensation (“FPUC”) program.<sup>134</sup> FPUC originally provided an additional \$600 per week to claimants receiving other COVID-19 relief benefits or regular UI.<sup>135</sup> The program provided this additional \$600 to workers who were unemployed beginning after the date the state entered into an agreement with DOL and ending on or before July 31, 2020.<sup>136</sup>

Following the CARES Act, President Trump signed the Consolidated Appropriations Act of 2021 into law on December 27, 2020.<sup>137</sup> Title II, Subtitle A of this Act created the Continued Assistance for Unemployed Workers Act of 2020 (“Continued Assistance Act”), which extended and modified the PUA, PEUC, and FPUC programs.<sup>138</sup>

The Continued Assistance Act extended the PUA program to include weeks of unemployment ending on or before March 14, 2021.<sup>139</sup> The Act also increased the maximum number of PUA weeks from 39 to 50.<sup>140</sup> Notably, the Continued Assistance Act gave states the authority to waive PUA overpayments when: (1) the claimant was not at fault for the overpayment, and (2) requiring repayment would be contrary to equity and good conscience.<sup>141</sup> The Continued Assistance Act also created a new employment substantiation requirement for

---

<sup>134</sup> See 15 U.S.C. § 9023(b)(1) (2020); *see also* Unemployment Insurance Program Letter No. 15-20 Attachment I at 1, (Apr. 4, 2020) <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-15-20>.

<sup>135</sup> See 15 U.S.C. § 9023(b)(1) (2020); *see also* UIPL No. 15-20, Attachment I, *supra* note 134, at 1.

<sup>136</sup> See 15 U.S.C. § 9023(b)(1) (2020); *see also* UIPL No. 15-20, Attachment I, *supra* note 134, at 2-3.

<sup>137</sup> See UIPL No. 9-21, *supra* note 27, at 1.

<sup>138</sup> See generally 15 U.S.C §§ 9001-9021; *see also* § 206 Continued Assistance for Unemployed Workers Act of 2020.

<sup>139</sup> See Continued Assistance Act, 15 U.S.C. 9021(c)(2); *see also* UIPL No. 9-21, *supra* note 27, at 4.

<sup>140</sup> *See also* UIPL No. 9-21, *supra* note 27, at 6-7.

<sup>141</sup> *See id.* at 7.

PUA.<sup>142</sup> Under this requirement, all claimants who received PUA after December 27, 2020, had to provide documentation demonstrating either their prior employment or self-employment that was disrupted by the pandemic, or the planned beginning of employment or self-employment that was disrupted by the pandemic.<sup>143</sup> The employment substantiation requirement only applied two weeks after the Continued Assistance Act was enacted, and the deadline for uploading documentation depends on when the individual originally filed for PUA.<sup>144</sup> While uploading documentation demonstrating past or planned employment may seem simple, many claimants lacked internet access or faced language barriers.<sup>145</sup> These obstacles likely contributed to the overpayments resulting from failure to upload employment substantiation documentation.

The Continued Assistance Act extended and modified the PEUC and FPUC programs as well.<sup>146</sup> The Act increased the maximum amount of PEUC benefits from 13 times claimants' average weekly benefit amount ("WBA") to 24 times their average WBA.<sup>147</sup> The Continued Assistance Act also reauthorized the FPUC program, providing \$300 per week for weeks of unemployment beginning after December 26, 2020, and ending on or before March 14, 2021.<sup>148</sup>

---

<sup>142</sup> See *Unemployment Insurance Program Letter No. 16-20 Change 4*, DEP'T OF LAB. (Jan. 8, 2021) <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-16-20> (citing Continued Assistance Act § 241); see also UIPL No. 9-21, *supra* note 27, at 8-9.

<sup>143</sup> See UIPL No. 16-20 Change 4, *supra* note 142 at I-2 (citing Continued Assistance Act § 241); see also UIPL No. 9-21, *supra* note 27, at 8-9.

<sup>144</sup> See UIPL No. 16-20 Change 4, *supra* note 142, at I-9 (citing Continued Assistance Act § 241); see also UIPL No. 9-21, *supra* note 27, at 8-9.

<sup>145</sup> See generally Schluender, *supra* note 21, at 28-30 (describing legal aid clients' difficulties navigating resources amidst technological and language barriers).

<sup>146</sup> See UIPL No. 9-21, *supra* note 27, at 10-13.

<sup>147</sup> See Continued Assistance Act 15 U.S.C. 9021(c)(2) (2020); see also UIPL No. 9-21, *supra* note 27, at 12.

<sup>148</sup> See Continued Assistance Act § 203; see also UIPL No. 9-21, *supra* note 27, at 10; see also UIPL No. 17-20 Change 2, (Dec. 31, 2020)



Lastly, President Biden signed the American Rescue Plan Act of 2021 (“ARPA”) into law on March 11, 2021.<sup>149</sup> ARPA modified the COVID-19 relief programs created in the CARES Act, as amended by the Continued Assistance Act.<sup>150</sup> ARPA extended the PUA, PEUC, and FPUC programs from their previous expiration date of March 14, 2021, to September 6, 2021.<sup>151</sup> ARPA also increased the maximum number of PUA benefit weeks from 50 to 79 weeks.<sup>152</sup>

### **B. Overpayment Causes**

Overpayments are created when a state unemployment agency determines a claimant received a payment he or she was not entitled to.<sup>153</sup> Overpayments have been especially pervasive in COVID-19 relief programs, as “[t]he government scrambled to get relief packages up and running.”<sup>154</sup> While many COVID-related overpayments were not the claimants’ fault, claimants across the country are now burdened with debt they did not know was accumulating for months.<sup>155</sup> This subsection analyzes overpayment causes and the existing waiver process.

---

<https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-17-20-change-2> (citing Continued Assistance Act § 206).

<sup>149</sup> See *Unemployment Insurance Program Letter No. 14-21*, DEP’T OF LABOR, 1 (Mar. 15, 2021) <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-14-21#:~:text=14%2D21,-Issue%20Date%3A&text=To%20advise%20states%20of%20the,L>.

<sup>150</sup> See *id.* at 4.

<sup>151</sup> *Id.*

<sup>152</sup> See American Rescue Plan Act, 15 U.S.C. § 9011(a)-(b) (2021); see also UIPL No. 14-21, *supra* note 149, at 6.

<sup>153</sup> See UIPL No. 20-21, *supra* note 18, at 3.

<sup>154</sup> See Tymkiw, *supra* note 13.

<sup>155</sup> See Sweigart, *supra* note 1 (describing Ohio claimants’ struggles in navigating the overpayment crisis).

Most overpayments are caused by state errors.<sup>156</sup> Applying for COVID-19 relief programs while unqualified will lead to an overpayment, even if the claimant was initially approved.<sup>157</sup> For example, claimants who received PUA after December 27, 2020, and failed to submit documentation demonstrating employment or the scheduled start of employment were ineligible for PUA because they did not comply with the new employment substantiation requirement in the Continued Assistance Act.<sup>158</sup> However, these claimants may have been approved for PUA, as state agencies were strained throughout the pandemic.<sup>159</sup> Applicants in this situation were notified months later that they were ineligible for benefits and were responsible for repaying the money they received.<sup>160</sup> “In most cases, applicants were ineligible because they did not know the rules and could not find out.”<sup>161</sup> Overpaid claimants do not receive additional payments until their claim is resolved, leaving individuals with no income for months.<sup>162</sup>

Overpayments can also occur when a claimant is eligible for

---

<sup>156</sup> See Tymkiw, *supra* note 13 (“[T]he bulk of overpayments have been tied to unintentional errors on the part of filers or the agencies with which they are filing. Some reasons that overpayments occur are: [r]eporting incorrect earnings (such as gross instead of net), [i]ncorrect wage history, [a]pplying when unqualified (even if initially approved), [a]pplication inaccuracies, [and] [f]raud”); See also Greig et al., *supra* note 14, at 12-13 (“[A] significant share of overpayments is administrative in nature in that they represent a claimant or agency error rather than fraud”).

<sup>157</sup> Tymkiw, *supra* note 14.

<sup>158</sup> See UIPL No. 16-20 Change 4 Attachment I, *supra* note 142 at 9-12, (Jan. 8, 2021), <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-16-20-change-4>.

<sup>159</sup> See Goselin, *supra* note 8, at 2-3.

<sup>160</sup> *Id.* at 2.

<sup>161</sup> *Id.*; see also Boesch et al., *supra* note 14, at 5 (“In some cases, applicants did not know whether they qualified for a particular program. This confusion is understandable given the complexity of the new UI programs and the fact that many state UI agencies encouraged all potentially eligible claimants to apply, assuming that their states’ screening infrastructure would be able to discern whether an applicant was, in fact, eligible. However, that screening was not perfect.”).

<sup>162</sup> See Nieto-Munoz, *supra* note 11.

benefits and complied with all statutory updates to the program.<sup>163</sup> Angela Matthews, a catering business owner in Columbus, Ohio, qualified for PUA at the start of the pandemic, as all catering opportunities were canceled.<sup>164</sup> Angela submitted her 2019 1099, which listed her income as \$10,706.<sup>165</sup> However, the state accidentally listed her 2019 income as \$30,033.<sup>166</sup> As a result of this error, Angela received weekly checks for \$480 beginning in May of 2020.<sup>167</sup> Angela called her state unemployment agency and mentioned that her weekly benefit amount “seemed off.”<sup>168</sup> Despite this phone call, the Department did not realize its mistake until October of 2020; the agency then determined that Angela had been overpaid.<sup>169</sup> As a result, Angela received no PUA payments for two months.<sup>170</sup> When payments resumed, the agency withheld \$95 per week to recover the overpayment, leaving Angela to survive on \$94 per week.<sup>171</sup> Angela described this as “getting kicked while we were down.”<sup>172</sup> While Angela was eventually approved for an overpayment waiver, the existing overpayment waiver system is insufficient to solve this national problem and leaves other similarly situated claimants in unanticipated debt at no fault of their own.<sup>173</sup>

Claimants facing COVID-related overpayments like Angela have limited options. While claimants can ask their state unemployment agency for a redetermination of their claim, contacting these agencies

---

<sup>163</sup> See Tymkiw, *supra* note 13 (listing potential overpayment causes).

<sup>164</sup> See Sweigart, *supra* note 1 (describing Ohio claimants’ struggles in navigating the overpayment crisis).

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

is difficult given the lack of staffing and updated technology.<sup>174</sup> Without a successful redetermination, claimants must fill out an online waiver application.<sup>175</sup> Submitting a waiver application is essentially admitting to being overpaid and asking for forgiveness. Only no-fault claimants are eligible for overpayment waivers.<sup>176</sup> Once the overpayment waiver application is submitted, the state unemployment agency will not take action to collect on the claimant's overpayment.<sup>177</sup> If a waiver is granted, the claimant does not have to repay the overpaid benefits.<sup>178</sup> If a waiver is not granted, the claimant must repay the overpaid amount to the state.<sup>179</sup> Like regular UI claimants, claimants with COVID-related overpayments can appeal overpayment waiver denials within 30 days of the determination.<sup>180</sup>

Under the Continued Assistance Act, states can waive COVID-related overpayments when the claimant is not at fault and requiring repayment would be contrary to equity and good conscience.<sup>181</sup> DOL has clarified that individual states define "fault" and "against equity and good conscience."<sup>182</sup> As a result, the waiver application review process varies by state.<sup>183</sup>

In May of 2021, DOL outlined two limited circumstances in which states may grant "blanket waivers" to overpaid PUA claimants.<sup>184</sup> Blanket waivers are permissible when:

---

<sup>174</sup> See generally Tymkiw, *supra* note 13 (discussing lack of adequate staffing and technology among state unemployment agencies).

<sup>175</sup> *Id.* (outlining next steps for claimants facing overpayments).

<sup>176</sup> *Id.*

<sup>177</sup> See *id.*

<sup>178</sup> *Id.*

<sup>179</sup> See *id.*

<sup>180</sup> See Halas, *supra* note 128, at 235 (describing overpayment waiver appeal process and noting similarities with regular UI appeal process).

<sup>181</sup> See Continued Assistance Act § 201(d); see also UIPL No. 20-21, *supra* note 18, at 6.

<sup>182</sup> See UIPL No. 20-21, *supra* note 18, at 6.

<sup>183</sup> *Id.* at 6-7.

<sup>184</sup> *Id.* at 7-8.

- (1) A claimant is eligible for an unemployment benefit program for a particular week, however, at no fault of the claimant, he or she was incorrectly paid under the PUA or PEUC program at a higher weekly benefit amount;<sup>185</sup>
- (2) A no-fault claimant was paid a minimum PUA weekly benefit amount according to Disaster Unemployment Assistance guidance that was higher than the state's minimum PUA weekly benefit amount.<sup>186</sup>

While claimants in these scenarios have their overpayments automatically waived, claimants who were incorrectly told they were eligible for COVID-19 programs are not protected. Claims where the state made a mistake unrelated to the weekly benefit amount are also ineligible for blanket waivers. DOL updated its guidance on blanket waivers in February of 2022, identifying five additional circumstances where states can utilize blanket waivers:

- (1) A claimant indicated on his or her online PUA account that he or she is not able or available to work and the state paid the claimant PUA or PEUC benefits without adjudicating the eligibility issue;<sup>187</sup>
- (2) The state paid a claimant the wrong amount of a dependent's allowance on a PUA or PEUC claim;<sup>188</sup>
- (3) A claimant indicated on his or her online PUA account that he or she is not unemployed, partially unemployed, or unable or unavailable to work because of a COVID-related reason listed in the CARES Act, but the state paid the claimant PUA benefits anyway;<sup>189</sup>
- (4) A no-fault claimant correctly followed state instructions to

---

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> See *Unemployment Insurance Program Letter No. 20-21 Change 1*, U.S. DEP'T OF LABOR, 11-14 (Feb. 7, 2022), <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-20-21-change-1>.

<sup>188</sup> *Id.* at 12.

<sup>189</sup> *Id.* at 13.

submit earnings to be used while calculating the PUA weekly benefit amount. However, the state provided the claimant with inadequate instructions or calculated the weekly benefit amount using gross income instead of net income or documents from an inapplicable tax year, creating a higher weekly benefit amount;<sup>190</sup>

- (5) A no-fault claimant correctly followed state instructions to submit self-employment earnings to evaluate the claimant's eligibility for the MEUC program. However, the state provided the claimant with inadequate instructions or calculated eligibility using the incorrect self-employment income or documents from an inapplicable tax year, incorrectly deeming the claimant eligible for the MEUC program.<sup>191</sup>

While this updated guidance expanded blanket waivers, these outlined circumstances are still very limited, excluding various no-fault claimants with COVID-related overpayments. Additionally, states are permitted – not required – to grant blanket waivers in these circumstances.<sup>192</sup> Some states, such as Missouri, have state laws requiring the collection of overpaid benefits and are not offering overpayment waivers at all.<sup>193</sup> Overall, the current waiver system for

---

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> *Id.* at 14 (describing scenarios in which states *may* waive overpayments through a blanket waiver).

<sup>193</sup> See *States Can Forgive Unemployment Overpayments, But Missouri Demands People Pay Up*, NPR MORNING EDITION (Feb. 15, 2021), <https://www.npr.org/2021/02/15/967370630/states-can-forgive-unemployment-overpayments-but-missouri-demands-people-pay-up>; see also *Understanding and Improving Overpayment Waivers for Federal and State Unemployment Insurance Benefits*, NAT'L L. EMP. PROJECT, (Feb. 24, 2022) <https://www.nelp.org/publication/understanding-and-improving-overpayment-waivers-for-federal-and-state-unemployment-insurance-benefits/> ("Each state has the power to determine if, when, and how overpayment waivers will be granted for regular state unemployment insurance benefits."); see also Greg Iacurci, *States Have Tried Seizing Unemployment Benefits During The Pandemic. Some Fear New Rules Won't Help*, CNBC (Jan. 19, 2021),

COVID-related overpayments is far from sufficient. The following section outlines a collectivist solution at the federal level: requiring states to grant blanket waivers for *all* no-fault overpayments from COVID-19 relief programs.

### III. RESOLVING OVERPAYMENTS: A COLLECTIVIST APPROACH

Congress should amend the CARES Act to require states to waive all non-fraudulent COVID-related overpayments. The current overpayment waiver system relies too heavily on individual states to offer overpayment waivers, leaving claimants across the country with unforeseen debt.<sup>194</sup> Existing permissible waivers and informal solutions have also fallen short of providing relief to claimants.<sup>195</sup> By adopting a collectivist approach and waiving all no-fault COVID-related overpayments, the U.S. would increase Americans' well-being, support marginalized workers, promote community spending, and facilitate states' pandemic recovery.

The lack of uniformity in the American COVID-19 response is problematic for the nation's welfare state.<sup>196</sup> Because there is no

---

<https://www.cnn.com/2021/01/19/unemployment-benefits-some-fear-states-wont-waive-pua-overpayments.html> (explaining that ten states – Delaware, Kentucky, Mississippi, Missouri, New Mexico, New York, Oklahoma, Texas, Virginia, and West Virginia – do not have regular UI waiver laws in place and are not required to develop such laws to assist overpaid pandemic relief claimants).

<sup>194</sup> See Iacurci, *supra* note 194 (“States have tried clawing back unemployment benefits from thousands of people during the Covid pandemic. While new protections are meant to help, some fear states may not sign on.”).

<sup>195</sup> See Marty Hobe, *Few Are Eligible For Pandemic Unemployment Overpayment Waivers*, WTMJ-TV MILWAUKEE (Aug. 6, 2021), <https://www.tmj4.com/unemployment/few-are-eligible-for-pandemic-unemployment-overpayment-waivers> (“The federal government gave states guidance to waive overpayments made on pandemic unemployment programs [] but . . . of the thousands who were overpaid, only hundreds received a waiver.”).

<sup>196</sup> See Steytler, *supra* note 40, at 196 (“The major liability of this response pattern is that the U.S. has had one of the world's highest levels of cases and deaths,”).

national overpayment waiver requirement, overpaid claimants are at the mercy of state definitions of “against equity and good conscience” to receive a waiver.<sup>197</sup> Existing blanket waivers are also too limited to address this crisis. While DOL expanded blanket waiver uses in February of 2022, states are only allowed to automatically waive overpayments in a few scenarios.<sup>198</sup> Essentially, claimants are losing months' worth of benefits because the CARES Act requires states to process overpayment waiver applications on a case-by-case basis.<sup>199</sup> This issue could be resolved by a federal blanket overpayment waiver expansion requiring states to waive all no-fault COVID-related overpayments.

Informal support systems are also insufficient to resolve the overpayment crisis. Throughout the pandemic, claimants across the country have formed social media groups to circulate helpful overpayment information, with some groups accumulating thousands of members.<sup>200</sup> Joe Luscomb, a 33-year-old father from New Hampshire, referred to the “N.H. Unemployment during Covid-19” Facebook group as he navigated an overpayment.<sup>201</sup> Joe acknowledged a need for structural changes in the overpayment waiver process, stating, ““The group has been a huge help . . . [b]ut these types of things need to be held accountable as they are messing with our livelihood

---

<sup>197</sup> See UIPL No. 20-21, Change 1, *supra* note 187, at 5; see also Iacurci, *supra* note 194 (“Even states that do apply the new PUA protections have broad latitude to interpret when a person will or will not get relief, according to worker advocates.”).

<sup>198</sup> See UIPL No. 20-21, Change 1, *supra* note 188, at 1 (describing limited scenarios where states may grant waivers on a blanket basis).

<sup>199</sup> *Id.* at 9 (“States may continue to consider waiving recovery of overpayments that do not fall within the approved scenarios . . . by evaluating the overpayment on an individual, case-by-case basis . . .”).

<sup>200</sup> See LeBlanc, *supra* note 24; see also Scott Merrill, *Complaint Alleges Systemic Breakdown with the Handling of New Hampshire's Unemployment Cases*, N. H. BAR NEWS (Apr. 1, 2021), <https://www.nhbr.com/complaint-alleges-systemic-breakdown-in-new-hampshire-unemployment-cases/>; see also Sweigart, *supra* note 1.

<sup>201</sup> See Merrill, *supra* note 201.



and putting extreme stress and anxiety on a lot of people.”<sup>202</sup> A unified, federal response to COVID-related overpayments could settle overpaid claimants’ confusion and anxiety, and potentially eliminate the need for these groups altogether.

Requiring states to waive all non-fraudulent overpayments from pandemic relief programs could also improve claimants’ lives substantially. A 2021 U.S. Bureau of Labor Statistics study found that compared to individuals who applied for UI during the pandemic but did not receive UI, “individuals who received benefits had greater well-being in a variety of domains, including household finances, food security, and mental health.”<sup>203</sup> For example, receiving UI during the pandemic reduced the probability of having difficulty with household expenses by 7.8%.<sup>204</sup> This finding persisted after controlling for pre-pandemic differences such as household income, education, and demographics.<sup>205</sup> Additionally, the Bureau found that receiving UI during the pandemic reduced the probability of a claimant experiencing anxiety symptoms by 7.2% and reduced the probability of a claimant experiencing depression symptoms by 7.5%.<sup>206</sup> These findings suggest that receiving benefits during the pandemic generally improved Americans’ lives. Similarly, allowing claimants to keep overpaid benefits would be a significant step in increasing financial stability and mental well-being throughout the U.S.

Waiving all no-fault COVID-related overpayments would also support the most marginalized workers in the U.S. Minoritized groups have been disproportionately harmed by the pandemic, with higher rates of illness, hospitalization, and deaths among Asian, Indigenous, and Black Americans compared to white Americans.<sup>207</sup>

---

<sup>202</sup> *Id.*

<sup>203</sup> See Carey et al., *supra* note 82, at 1.

<sup>204</sup> *Id.* at 16.

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> See Mamelund & Dimka, *supra* note 23, at 184-85 (describing racial, COVID-related health disparities in the U.S. and U.K.).

Additionally, “Black and Hispanic workers [were] disproportionately affected by job losses, layoffs, and disruptions to small businesses during the pandemic.”<sup>208</sup> COVID-19 had a profound impact on women as well.<sup>209</sup> Food, retail, and business administration were three key sectors harmed by COVID-related job losses in early April 2020.<sup>210</sup> “Women comprise the bulk of workers in [these] secondary labour market[s] worldwide: as millions of women’s jobs have disappeared, the feminisation of poverty has increased.”<sup>211</sup> Requiring repayment of COVID-related overpayments increases an already disproportionate financial strain on minoritized groups. Automatically waiving overpayments resulting from states’ mistakes would be a crucial step towards economic recovery for all.

Requiring overpayment waivers for no-fault COVID-19 relief claimants would benefit communities as well. When the FPUC program was in effect, claimants received an additional \$600 payment per week, and “spending of the unemployed after job loss rose substantially above pre-pandemic levels.”<sup>212</sup> This increased spending likely assisted communities in recovering from the pandemic, as businesses faced devastating financial impacts from emergency COVID-related closures.<sup>213</sup> Requiring repayment could have the opposite effect, preventing claimants from spending money that could boost local economies. Therefore, allowing claimants to keep overpaid COVID-19 relief payments could not only increase individuals’ well-being, but also encourage spending and investments in community recovery.

Requiring waivers for all no-fault COVID-related overpayments

---

<sup>208</sup> See Carey et al., *supra* note 82, at 4.

<sup>209</sup> See Kristin van Barneveld et al., *The COVID-19 pandemic: Lessons on building more equal and sustainable societies*, 31 *ECON. & LAB. REL. REV.* 8-10, 133 (2020).

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> Carey et al., *supra* note 82, at 14..

<sup>213</sup> See generally Yamin, *supra* note 103, at 314 (describing economic costs of the pandemic).

would benefit states as well.<sup>214</sup> Alexa Tapia from the National Employment Law Project explained that states have no incentive to go after COVID-related overpayments.<sup>215</sup> She clarified, “It actually creates more work for the states to collect that money . . . it would harm their local economies and their citizens, who they should be trying to uplift at this time.”<sup>216</sup> New Jersey Labor Commissioner Robert Asaro-Angelo has explained that the odds of recovering benefits are low, as claimants spent the money on food and housing months ago.<sup>217</sup> Connecticut Attorney Peter Goselin echoed these perspectives, stating, “To process these overpayment cases, state [DOL] staff spend hundreds of hours reviewing cases, mailing notices, holding hearings and writing decisions. For all of them, a blanket waiver would mean catching up in a job that has been out of control for nearly two years.”<sup>218</sup> In short, collecting no-fault overpayments is a waste of states’ resources and perpetuates the financial hardships the CARES Act aimed to eliminate.

State leaders have also expressed their support for expanding overpayment waivers for COVID-19 relief programs.<sup>219</sup> In January of 2022, the National Association of State Workforce Agencies (“NASWA”) wrote a letter to Congress asking its leaders to forgive no-fault COVID-related overpayments nationally.<sup>220</sup> This letter was co-authored by NASWA leaders from New Jersey, Alaska, and

---

<sup>214</sup> See NPR MORNING EDITION, *supra* note 194 (discussing the overpayment crisis in Missouri with input from the National Employment Law Project’s Alexa Tapia, who noted that “[O]verpayment bills disproportionately impact people of color. Equity and economic recovery are reasons more states are forgiving overpayments.”).

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> See Nieto-Munoz, *supra* note 12.

<sup>218</sup> See Goselin, *supra* note 9.

<sup>219</sup> See Nieto-Munoz, *supra* note 12; see also Edelman, *supra* note 14; see also LeBlanc, *supra* note 24.

<sup>220</sup> See NASWA Letter on Pandemic UI Requests, NAT’L ASS’N OF STATE WORKFORCE AGENCIES (Jan. 7, 2022), <https://www.naswa.org/government-relations/congressional-testimony/naswa-letter-on-pandemic-ui-requests>.

Washington, D.C.<sup>221</sup> Massachusetts took similar steps in February of 2022 when Governor Baker sent a letter to DOL asking for support as the Commonwealth drops its efforts to recover COVID-related overpayments.<sup>222</sup> Michigan Governor Whitmer also applauded the 2022 blanket waiver expansion, stating, “Michiganders should not be penalized for doing what was right at the time they applied for federal pandemic benefits.”<sup>223</sup> These state actions suggest that automatically waiving no-fault pandemic overpayments is a practical approach that would alleviate claimants and state agencies from COVID-related burdens.

Of course, not all state leaders support blanket waivers for no-fault pandemic overpayments.<sup>224</sup> For instance, Missouri Governor Parson has no plans to change the existing state law requiring overpayment collection.<sup>225</sup> Governor Parson expressed that while mistakes were clearly made during the pandemic, claimants have a responsibility to pay back taxpayers’ money.<sup>226</sup> Missouri Representative Bosley disagreed.<sup>227</sup> She pointed out that nearly all overpaid funds are from new federal COVID-19 relief programs, and the federal government granted states authority to waive these overpayments.<sup>228</sup> Bosley asserted, “Asking people to pay back \$8,000, \$10,000, \$11,000—even \$200—it’s just too far. And it’s too much. And now you’re crushing [claimants’] hopes that things will go back to normal and that they can rely on their government to help and step in when they need it.”<sup>229</sup>

---

<sup>221</sup> See *id.*

<sup>222</sup> See Edelman, *supra* note 14.

<sup>223</sup> See LeBlanc, *supra* note 24.

<sup>224</sup> See NPR MORNING EDITION, *supra* note 194 . (“Missouri is one of 10 state that by law does not allow forgiveness of unemployment benefits overpayments.”).

<sup>225</sup> *Id.*

<sup>226</sup> *Id.* (“There were mistakes made...[b]ut at the end of the day, I think there is a responsibility as taxpayers’ money.”).

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

As Representative Bosley illustrated, forcing claimants to repay no-fault overpayments “out of loyalty to taxpayers” is not worth the impact on claimants’ financial stability and mental wellbeing.<sup>230</sup> These concerns are exacerbated by the low probability of recovering any money from overpaid claimants.<sup>231</sup> Requiring repayment ignores these large-scale problems and places an enormous financial burden on individual Americans, exhibiting the dangers of an individualistic welfare state. In short, automatically waiving no-fault overpayments is far more beneficial for both claimants and state governments than demanding repayment.

## CONCLUSION

In the aftermath of the COVID-19 pandemic, “[i]t is still possible for nations to transform the crisis into an opportunity to reimagine the social contract, putting . . . equity and humanitarian solidarity at the heart of a program[] of reconstruction and renewal.”<sup>232</sup> As it stands, the American welfare state is missing this opportunity for transformation. By prioritizing fraud detection over resolving the overpayment crisis, the U.S. is exhibiting its individualistic roots and hindering the nation’s financial recovery. As the U.S. reimagines its systems in a post-COVID world, the welfare state must prioritize a shift towards European, collectivist ideals. Automatically waiving no-fault COVID-related overpayments is a crucial step in this direction. Congress must amend the CARES Act to reflect this need.

---

<sup>230</sup> See *id.*

<sup>231</sup> See Nieto-Munoz, *supra* note 12.

<sup>232</sup> See van Barneveld et al., *supra* note 210, at 21.