



National  
Consumer Law  
Center

NATIONAL HEADQUARTERS  
7 Winthrop Square, Boston, MA 02110  
(617) 542-8010

WASHINGTON OFFICE  
Spanogle Institute for Consumer Advocacy  
1001 Connecticut Avenue, NW, Suite 510  
Washington, DC 20036  
(202) 452-6252

**NCLC.ORG**

May 20, 2022

digital-innovations@frb.gov  
Board of Governors of the Federal Reserve System  
Washington, DC

Re: Central bank digital currency

Thank you for the opportunity to comment on the question of whether the United States should create a central bank digital currency (CBDC) as outlined in the discussion paper by the Board of Governors of the Federal Reserve System: Money and Payments: The U.S. Dollar in the Age of Digital. Below please find our responses to the questions posed. Except for this introduction, the responses to the questions have also been submitted through the online feedback form.

These comments are submitted on behalf of the low-income clients of the National Consumer Law Center. Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training.

These comments focus on the perspective of individual consumers, in particular lower income consumers. Our comments assume that a CBDC would take the form identified by the paper that “would best serve the needs of the United States”: one that is privacy-protected, intermediated (i.e., handled by financial institutions and possibly nonbank entities, not through FedAccounts), widely transferable, and identity-verified (subject to existing know-your-customer and other fraud controls). Even within those parameters, however, there are a vast number of uncertainties, many more than are outlined in these comments.

In brief, we have a hard time finding any significant benefits of a CBDC for consumers. The discussion paper largely seems to ignore consumers and does not explain how a CBDC would benefit them. Weighed against the lack of obvious benefit, a CBDC would pose a vast number of risks and uncertainties that could negatively impact consumers. The discussion paper identifies a number of issues, in particular the potential for unclear but fundamental change in the U.S. financial system, and also the need to strike a balance between consumer privacy and the prevention of financial crimes. But the paper does not discuss, or inadequately addresses, these significant risks and uncertainties:

- Significant privacy concerns from government access to data that will be difficult to address and cannot be minimized simply by asserting that a CBDC would be “privacy protected”;
- Misuse of CBDC technology by the government to monitor or control spending by public benefits recipients;
- Fraud at greater scale and velocity, with no protection;
- Reduction in access to credit;
- Cost of accounts;
- Unclear coverage and application of the Electronic Fund Transfer Act (EFTA);
- Unclear application or preemption of other important state and federal consumer protection laws;
- Easier garnishment by debt collectors and the government for debts, including for the wrong amount or against the wrong person; and
- Reduction of community reinvestment activities.

It is difficult to see how a CBDC could foster financial inclusion, especially in an intermediated model. A CBDC would not solve the problems that keep people out of banks today and could exacerbate those problems by excluding consumers who distrust the government.

### **1. What additional potential benefits, policy considerations, or risks of a CBDC may exist that have not been raised in this paper?**

a. **Misuse of CBDC technology to monitor or control spending by public benefits recipients.** A CBDC could be used to make benefits payments. As one [blog notes](#): "A government-issued CBDC would allow the government to dictate how, where, and when currency holders spend their funds. As an example, consider unemployment money issued in the form of a CBDC. The government could restrict the funds to not work at businesses categorized as liquor stores or bars." TANF recipients are already prohibited from using their cards at liquor stores, 42 U.S.C. § 608(12), even though for those without transportation or in neighborhoods without convenient grocery stores, the corner store holding a liquor license is also the place to buy milk and bread and use the ATM. Lawmakers have intruded on the privacy of poor people and restricted where they can use or access their money to undermine support for public benefit programs. Even if monitoring or restrictions were initially prohibited, a future Congress could authorize them.

b. **Fraud at greater scale and velocity with no protection.** The paper mentions the risk of money laundering and the financing of terrorism but does not address the potential explosion of other financial crimes like fraudulent inducement scams. A CBDC would “need to be final and completed in real time,” leading to the same fraud problems that have [plagued Zelle](#) and [Venmo](#). Problems could be more widespread with the ubiquity of a CBDC. While Zelle and Venmo – as the middlemen between the sender and receiver – play a role in fraud prevention and error resolution, what role would the Fed play? Moreover, the EFTA lacks adequate fraud protection for instant push-payment systems like CBDC transactions. See more in our [digital wallets](#)

[hearing statement](#). Fraud problems would be compounded if nonbanks were allowed to be intermediaries (see below).

c. **Reduction in access to credit.** Banks would have less capital and less money to lend, and perhaps would be less inclined to lend money to people who keep their funds in CBDC.

d. **Cost of accounts.** Intermediaries would likely charge for accounts to access CBDCs, as they would bear costs in administering them and providing access devices. The accounts could be costly for low-income consumers given that banks would not benefit from the use of the funds or interchange fees. Any CBDC legislation should guarantee free or very low-cost (\$5/month) access to accounts with no overdraft or NSF fees.

e. **Unclear coverage and application of the EFTA.** The EFTA provides the core protections for accounts and payments but only for transfers that authorize a “financial institution” to debit or credit an “account.” Legislation must ensure that CBDC is covered. But adapting the EFTA to CBDC would raise many knotty problems. Error resolution could be complicated – who is responsible, the federal government or the intermediary? Will they work together?

f. **Unclear application or preemption of other important state and federal consumer protection laws.** Federal and state laws have important consumer protections for bank accounts and money transfers, and it is unclear whether they would apply to the federal government or to CBDCs. Particular laws might have definitions or a scope that do not contemplate CBDCs or funds held by the federal government. Critical laws include [state laws that limit bank account garnishment](#) by judgment creditors, [federal rules](#) that financial institutions must follow before allowing garnishment of Social Security, the FCRA (which applies to account screening agencies), and bankruptcy laws. The government does not have processes in place to ensure compliance with many of those laws. Courts might find that the federal government is not subject to states laws or might erroneously treat private intermediaries as exempt agents of the government. See *Starr Int’l Co. v Federal Reserve Bank of NY*, 742 F.3d 37 (2d Cir. 2014). Any rules should explicitly subject CBDCs and CDBC accounts and payments to all applicable state and federal laws.

g. **Easier for garnishment by debt collectors and the government, including for the wrong amount or against the wrong person.** Debt collectors could have an easy, central place to go to serve garnishment orders, evading state protections against wage garnishment by garnishing wages after they are in a CBDC account. It is unclear if state garnishment protections would apply to the federal government, and the government may not be equipped to comply with 50 state laws. Collectors routinely pursue debts not owed or fail to serve consumers with notice. The government could also much more easily empty out accounts without court process, similar to what is currently done with tax refund offsets, but with more dire effects on regular income needed for necessities.

h. **Reduction of community reinvestment activities.** The Community Reinvestment Act only applies to insured depository institutions. Funds in CBDC accounts might reduce bank CRA obligations.

## 2. Could some or all of the potential benefits of a CBDC be better achieved in a different way?

To promote financial inclusion, financial institutions should be required to offer Bank On accounts with low monthly fees and without overdraft or NSF fees. The CFPB should adopt rules to prevent abusive use of overdraft fees that push people out of accounts. The rules governing international remittances should be improved to address hidden costs. See [CFPB junk fees comments](#).

From the consumer perspective, it is hard to understand any significant benefits of a CBDC; any benefits seem far outweighed by the potential risks and uncertainties described above. The paper identifies five potential benefits but does not really explain how a CBDC would provide any benefits to consumers beyond what FedNow will provide. The potential benefits of a CBDC should be more clearly explained. Even for the benefits already stated in the paper, many can be better achieved in other ways.

The discussion paper identifies four potential benefits:

(1) “Safely meet future needs and demands for payment services.” What needs and demands would a CBDC serve that today’s money, coupled with FedNow capability, will not? Digital money in the form of commercial bank money is widely available and deposit insurance makes that money safe. For individuals with accounts under \$250,000, the risk of a bank failure is both remote and, even if it occurs, results in little disruption. Many new payment mechanisms have emerged using today’s digital money. To the extent that a CBDC is aimed at more safely serving the audience that is using stablecoins and cryptocurrencies, a CBDC will not be an alternative for those who are interested in investment speculation or a payment system outside of government control.

(2) “Improvements to cross-border payments.” How would a CBDC improve cross-border payments? The major problems today are due to inflated and hidden costs imposed by remittance providers, and the costs of and delays posed by the sending and receiving infrastructure. See [CFPB junk fees comments](#). It is unclear how putting a CBDC in the middle would change anything significantly. Stronger rules to make remittance fees transparent and protect consumers from errors and liability would do more to improve cross-border payments. Moreover, faster, final CBDC payments to international locations could increase payment fraud and make it harder to reach scammers.

(3) “Support the dollar’s international role.” That may be a benefit on the macro level, but it does not impact consumers individually.

(3) “Extend public access to safe central bank money”. Why is commercial bank money with deposit insurance not good enough for consumers with less than \$250,000 in one account? What would the public gain from such access? Additionally, many immigrant communities are fearful of central bank control over currency, preferring to remain unbanked or bank with smaller community banks. See more below.

(4) “Financial inclusion.” Any benefit is not explained and is better addressed through other measures. See below.

### **3. Could a CBDC affect financial inclusion? Would the net effect be positive or negative for inclusion?**

It is difficult to see how a CBDC could help financial inclusion, especially in an intermediated model. A CBDC would pose the same issues that keep people out of banks today: Mistrust of banks, not enough money, cost of accounts, KYC and checking account screening agencies. Mistrust of the federal government and privacy concerns could compound those reasons. A CBDC could hurt financial inclusion if (1) it became the de facto preferred payment system but many consumers were shut out of or distrustful of it, or (2) it deprived banks of the capital and funding used to support low-balance accounts.

### **8. If cash usage declines, is it important to preserve the general public’s access to a form of central bank money that can be used widely for payments?**

It is more important to prevent impediments to the acceptance of cash and the ability to use cash than it is to create a new form of central bank money. It is important to preserve a form of money that (a) can be used by those shut out of bank accounts either because they don’t trust them, can’t afford them, or are improperly blocked by fraud/account screening controls, and (b) can be used anonymously. But CBDC would not achieve this.

### **12. How could a CBDC provide privacy to consumers without providing complete anonymity and facilitating illicit financial activity?**

The discussion paper understates the challenges of ensuring privacy, dismissing those concerns quickly by stating that a CBDC would be “privacy protected” and that, in an intermediated model, “intermediaries would address privacy concerns by leveraging existing tools.” But our national privacy laws are woefully inadequate. CBDC must not enable the federal government – or intermediaries – to have more personal information about individuals than they do today. To the extent that privacy laws do apply, they do not address the issues posed by the federal government’s access to data generated by use of CBDCs, even in an intermediated model. CBDCs may also enable collection of more detailed information about spending and payments than today’s forms of money do. Moreover, even if legislation establishing a CBDC had additional privacy protections, those protections are likely to be a compromise and less robust than state protections – and yet there will be a push to preempt state protections. Data uses also change making it difficult for legislation and regulations to keep up with the growing use and commercialization of data.

But it is also critical not to facilitate illicit financial activity— not just money laundering and the funding of terrorism, but also scams. Much more robust KYC controls and monitoring than we have today are necessary to ensure that accounts do not provide a vehicle for scammers to receive funds. Will the Fed or intermediaries monitor CBDC accounts to ensure that they are not being used for illegal activities or to pass funds onto scammers, even if the threshold is less than the \$10,000 for mandatory SARs? With a fast and final payment system like CBDC, robust fraud monitoring of receiving accounts is essential.

#### **14. Should a CBDC be legal tender?**

Yes.

#### **17. What types of firms should serve as intermediaries for CBDC? What should be the role and regulatory structure for these intermediaries?**

Only insured depositories whose parent companies are subject to the Bank Holding Company Act should be allowed to serve as intermediaries. Nonbank entities and ILCs that do not have the same full oversight and obligations of insured institutions should not be allowed, as explained in our [comments](#) on the Fed's proposed guidance on access to master accounts. Allowing nonbank intermediaries would be especially problematic given the lack of federal supervision and the bigger problems they have had appropriately handling KYC issues. Nonbanks have both permitted widespread opening of fraudulent accounts (not only for stimulus money but also as vehicles for receiving money from payment scams) while at the same time overreacting to fraud concerns and shutting down or freezing legitimate accounts and preventing people from accessing their money.

#### **18. Should a CBDC have "offline" capabilities? If so, how might that be achieved?**

If possible, any CBDC should have offline capabilities that sync up once the user is back online. To the extent a CBDC is a cash replacement as cash usage and acceptance decreases, it is still helpful to have a form of payment usable by those who do not have smartphones and for use when there is no internet connectivity, including in rural areas and during times of power outages and natural disasters. Moreover, even if a CBDC has offline capabilities – and especially if it does not – it is still important to preserve access to and acceptance of cash.

#### **19. Should a CBDC be designed to maximize ease of use and acceptance at the point of sale? If so, how?**

A CBDC should be designed to be usable at the point-of-sale. Money management is more difficult if funds are siloed into different assets that can be spent in limited ways. POS use emphasizes the need for EFTA protection and the chargeback rights that credit cards have under TILA. A CBDC used at point-of-sale without chargeback rights would be less safe than a credit card, and less safe than a debit card if there are issues regarding EFTA coverage or enforcement (see above).

#### **20. How could a CBDC be designed to achieve transferability across multiple payment platforms? Would new technology or technical standards be needed?**

Interoperability is essential. Funds must be easily convertible, at no cost, between CBDC and bank deposits. Otherwise, if funds are siloed between two types of money, both are less useful, as families living paycheck to paycheck will face more challenges in trying to access and spend their funds on day-to-day obligations.

Thank you for the opportunity to submit these comments. If you have any questions, please contact me at [lsaunders@nclc.org](mailto:lsaunders@nclc.org).

Yours very truly,

A handwritten signature in black ink, appearing to read "Lauren K. Saunders", with a long horizontal flourish extending to the right.

Lauren K. Saunders  
Associate Director  
National Consumer Law Center  
(on behalf of its low-income clients)