

Digital Dollars / Central Bank Digital Currencies

CONGRESSIONAL LEGISLATIVE TRACKER AND ANALYSIS

17 March 2021



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Introduction

- **Central bank digital currency (CBDC)** and **digital dollars** have become policy and regulatory spotlights in the United States and elsewhere.
 - Developing a digital dollar is a “very high priority project” for the Federal Reserve
 - *Federal Reserve Chair Jay Powell, [Feb. 23, 2021](#)*
 - “Too many Americans really don’t have access to easy payment systems and to banking accounts, and I think this is something that a digital dollar – a central bank digital currency – could help with.”
 - *Treasury Secretary Janet Yellen, [Feb. 23, 2021](#)*
 - “My hunch is that [a digital euro] will come . . . If it’s cheaper, faster, more secure for the users, then we should explore it.”
 - *ECB President Christine Lagarde, [Nov. 12, 2020](#)*
 - “CBDC, whilst offering much potential, also raises profound questions... The Bank of England is exploring these issues”
 - *BoE Governor Andrew Bailey, [Sept. 2, 2020](#)*
- These conversations have raised questions about the potential design, availability and functionality of a U.S. CBDC and, accordingly, a host of policy and regulatory questions, widely ranging from payment finality and commercial law to data privacy, combating financial crimes and monetary policy, to the implications of a CBDC for the commercial banking sector. The [Legal Resources](#) slide includes links to key thought leadership and legal work on CBDC.

CBDC and Digital Currency – Key Global Initiatives

A [January 2021 BIS Survey](#) of 65 central banks found that 86% of them are “actively engaged” in CBDC work. Some key initiatives:

- People’s Bank of China conducts retail CBDC pilot study, the [Digital Currency and Electronic Payment](#) project
- Bank of England publishes a [CBDC discussion paper](#)
- ECB publishes a [Report on a digital euro](#) (Oct 2020) and completes a [public consultation](#)
- Fed announces Boston Fed/MIT [research collaboration](#), publishes staff paper on [Preconditions for a general purpose CBDC](#)
- Swedish Riksbank launches pilot project to propose technical solutions for an [e-krona](#)

Tracking U.S. Federal CBDC Legislation

- The Federal Reserve’s authority to issue a retail CBDC is unclear under existing law; legislation is likely necessary to authorize and implement it.
 - The Federal Reserve Act (**FRA**) enshrines the Federal Reserve’s “mandates, functions, and powers.” The Federal Reserve is unofficially signaling that it may need legislation to issue a CBDC. Depending on the function and design of the CBDC, “consideration would need to be given” as to whether amendments to the FRA are required.*
 - [Section 16\(1\)](#) of the FRA authorizes the Federal Reserve Board of Governors to issue notes (that is, paper currency) for specified purposes; the Board may issue paper currency *only* to Federal Reserve Banks for distribution through their member banks, thrifts and credit unions to the public.
 - Other provisions of the Federal Reserve Act authorize the Federal Reserve to provide payment services to depository institutions and certain other financial entities, but not to individuals or commercial businesses.
 - “Depending on what we do, we could well need legislative authorization for such a thing,” Chair Powell testified to the House Financial Services Committee on [February 24, 2021](#).
- This deck tracks U.S. congressional legislative efforts that seek to implement, or may be precursors to, the creation of a U.S. digital dollar.
 - Over time, it is likely that these efforts will increase in number and will be refined in substance. We will update this deck from time to time as legislation is introduced and considered by the U.S. Congress.
- The following slides explain what CBDC and digital dollars are and identify the bills that have been introduced in Congress to implement digital dollars as of the date of this deck. The deck then compares and analyzes the bills’ key design features.

* See Jess Cheng, Angela N. Lawson, and Paul Wong, [Preconditions for a general-purpose central bank digital currency](#), FEDS Notes, Board of Governors of the Federal Reserve System (2021)

What is CBDC / the Digital Dollar?

- **CBDC** is “a digital payment instrument, denominated in the national unit of account, that is a direct liability of the central bank.” [*Joint report by the BIS and 7 central banks \(Oct 2020\)*](#)
 - The terms **CBDC and digital dollar** are used in different contexts to refer to the same concept. We are unaware of any significant difference in meaning except that digital dollars are the CBDC of the United States. This deck uses the terms interchangeably with deference to source and context.
- Electronic central bank money exists in the United States today.
 - The Federal Reserve System issues and allows its members to hold and transact in U.S. dollars in electronic-only form through accounts at Federal Reserve Banks.
- The key difference between existing central bank digital money—available only to Federal Reserve member banks through Federal Reserve Bank accounts—and CBDC is that a CBDC would be available broadly to retail and commercial users.
 - Individuals and businesses could directly hold CBDC and use it for payments, rather than using commercial bank deposits or other payment instruments like checks, debit cards and credit cards for this purpose.
 - Indeed, CBDC is often defined based on this distinction from other types of central bank money: “central bank digital currency typically refers to a new type of central bank liability that could be held directly by households and businesses without the involvement of a commercial bank intermediary.” [*Speech by Fed Governor Lael Brainard \(Oct 2019\)*](#)

Legislation as of March 2021

- As of this March 2021 version, three bills to implement a digital dollar have been introduced in the U.S. Congress.
 - None has meaningfully progressed to committee or full chamber votes.
 - The bills have been influenced by the work of a few key legal scholars in this area. We expect that legal and other scholarship, as well as lessons learned from other countries, will continue to shape legislative proposals in the future.*
 - The bills are concerned both with digital dollars/CBDC and with improving how relief payments are made to eligible citizens and residents.
- Two proposals were included in pandemic relief packages that led to passage of the CARES Act, in March 2020:
 - **Brown**: the [Banking for All Act](#), sponsored by Sen. Sherrod Brown (D-OH)
 - **Waters**: the [Financial Protections and Assistance for America's Consumers, States, Businesses and Vulnerable Populations Act](#), sponsored by Rep. Maxine Waters (D-CA)
- A third proposal was introduced the following month, in April 2020:
 - **Tlaib**: the [Automatic Boost for Communities Act](#), sponsored by Rep. Rashida Tlaib (D-MI)
- The following slide compares the key design choices made in each of these bills. The rest of the deck provides more detailed analysis of the bills' design features and their implications.

* See, e.g. Morgan Ricks, John Crawford, and Lev Menand, [FedAccounts: Digital Dollars](#), 89 George Wash. L. Rev. 113 (2020); Robert Hockett, [Digital Greenbacks: A Sequenced 'TreasuryDirect' and 'FedWallet' Plan for the Democratic Digital Dollar](#), 25 J. of Tech. L. & Pol. (2020); Mehrsa Baradaran, [It's Time for Postal Banking](#), 127 Harv. L. Rev. F. 165 (2014). Professor Hockett has also published an [Inclusive Value Ledger](#) proposal, a version of which has been [introduced in the NY state legislature](#), to create a publicly administered payments system based on individual digital wallets linked to a single master account.

Key Design Choices

The table below lists key design features of a potential U.S. CBDC and indicates which of the bills introduced in Congress include the design feature.

	Brown	Waters	Tlaib
Account-based CBDC	✓	✓	✓
Token-based CBDC	✗	?	✓
Federal Reserve System provides consumer-facing digital wallets	✓	✓	✓
Mandate for commercial banks to provide services to consumers	✓	✓	✗
Facilitates non-banks providing services to consumers	✗	✗	✓
Use for federal government support payments	✗	✓	✓

Tokens vs Accounts

- **Tokens vs Accounts.**

- Token-based systems rely on verifying the validity of the object used to make a payment. For example, cash in paper or coin form are token-based payment instruments—they will be accepted so long as not suspected counterfeit.
- Account-based systems rely on verifying the identify of the payer. Commercial bank accounts, where the account holder and the originating and receiving banks must be identified to conduct a payment transaction, are an example of an account-based payment system.
- Digital assets, including CBDC, blur the distinctions between token- and account-based systems. See [here](#) for an excellent explanation from staff at the Federal Reserve Bank of New York.*

- **Account-based CBDC.**

- All three bills provide for Federal Reserve Banks to establish and maintain digital dollar wallets branded as **FedAccounts** that would allow individuals and businesses to hold “dollar balances consisting of digital ledger entries recorded as liabilities in the accounts of any Federal Reserve Bank.”

- **Token-based CBDC.**

- The Waters and Tlaib bills, but not the Brown bill, include tokens in the definition of “digital dollar.” The Waters bill makes no other reference to tokens but arguably opens the door for token-based functionality.
- The Tlaib bill would require Treasury to develop and administer a system of “digital dollar cash wallets” branded as **eCash Wallets** that would allow individuals and businesses to hold “digital coins or currency instruments issued by the United States Treasury as legal tender,” which would be “considered bearer instruments in the possession of” the wallet holder.

* Rod Garratt, Michael Lee, Brendan Malone, and Antoine Martin, [Token- or Account-Based? A Digital Currency Can Be Both](#), Federal Reserve Bank of New York Liberty Street Economics (August 12, 2020).

Mandate for Federal Reserve Banks

- **FedAccounts.** All three bills call for Federal Reserve Banks to make FedAccounts available to U.S. citizens, residents and businesses to store, send and receive digital dollars.
 - The Brown and Waters bills would expressly require Federal Reserve Banks to establish FedAccounts. Under the Tlaib bill, it is “a sense of Congress” that they should do so.
- **Retail Fed.** All three bills set terms by which Federal Reserve Banks must provide FedAccounts:
 - No account fees, no minimum or maximum balances, and no overdraft coverage
 - Access to debit cards, mobile apps, automatic billpay, fraud protection and other typical retail banking services for FedAccount holders
 - Balances collect interest at a rate no less than the interest rate paid by the Federal Reserve to commercial banks on required or excess reserves
- **Rulemaking.** The Federal Reserve Board would need to promulgate regulations to implement FedAccounts under all three bills.
- **Coordination.** Each bill would also require the Federal Reserve to coordinate with other federal agencies and the private sector.
 - For example, under the Brown and Waters bills, Federal Reserve Banks would need to create new types of master accounts to enable commercial banks to provide “pass-through digital dollar” wallets to consumers, as discussed on the following slides.
 - Under the Tlaib bill, the Federal Reserve would need to coordinate with Treasury, commercial banks and money transmitters to promote integration and interoperability between account- and token-based digital dollars.

Mandate for Commercial Banks

- **Pass-through digital dollar wallets.** The Brown and Waters bills would require banks to open and maintain “pass-through digital dollar wallets” for customers.
 - The requirement would apply to all Federal Reserve member banks; state nonmember banks and credit unions would also have the option to maintain pass-through wallets if they choose.
 - These pass-through wallets appear designed to ensure consumer access to CBDC and related payment services indirectly through commercial banks. They may have been intended to blunt the potential disintermediation of the banking system that could result from providing consumers FedAccounts or other access to CBDC.
 - These provisions would have a very significant impact on commercial bank activities, as in essence they require commercial banks to provide a new type of transactional payments account that has the look and feel of narrow banking, as the only permitted use of the funds received by a bank in a pass-through wallet is for the bank to deposit those funds in its own Federal Reserve account.
 - In many respects, these pass-through digital wallets are similar to stablecoin structures, including as contemplated by the Office of the Comptroller of the Currency [in 2020 interpretive guidance](#).
- **Structure.**
 - A bank would need to create a separate legal entity to hold all assets—limited to cash in Federal Reserve accounts—and to maintain all liabilities associated with the pass-through digital wallets.
 - Each wallet holder would be entitled to a pro rata share of the balance the bank maintains at its Federal Reserve Bank.
- **Service features.**
 - Pass-through digital dollar wallets would need to be provided on substantially the same terms as required for FedAccounts (see previous slides), with the added requirement for a bank to “provide functionality and service levels no less favorable” than for its existing transaction accounts.
 - Banks with \$10 billion or less in assets would be reimbursed by the Federal Reserve for their “actual and reasonable operational costs” incurred in offering pass-through wallets.

Nonbank Participation

- **eCash Wallets**. While the Tlaib bill's core elements are not digital dollars but building on Treasury [Direct Express](#) to deliver relief payments more efficiently, the bill contemplates a role for nonbanks in providing digital dollar services.
 - It would require Treasury to develop **digital dollar cash wallets** for individuals to store, send and receive tokenized digital dollars that, like paper banknotes, are bearer instruments.
 - Cash wallets would be “capable of being self-hosted” on smartphones and other devices, with any necessary software under an open source license.
 - These digital dollar cash wallets could **expand the potential role of nonbanks** in providing payment and other services involving CBDC.
 - A nonbank could not provide services involving FedAccount or pass-through digital dollar balances, except by partnering with the Fed or a bank that has a Federal Reserve Bank account.
 - These provisions appear to contemplate nonbanks developing consumer-facing products and services by building on top of the Treasury digital dollar cash wallet.

Direct Payments to Individuals

- **Pandemic Relief.** These bills were introduced early in the 2020 pandemic when discussions on direct financial support to Americans were a congressional focus. They vary on whether and how they would have provided direct payments in digital dollars. Although relief payments were later included in the CARES Act and digital dollars were not, we summarize here how each bill would have used them.
 - **Brown bill.** Persons who received pandemic relief payments could, but would not have been required to, “elect to deposit funds” into pass-through wallets.
 - **Waters bill.** Commercial banks would have been required to open pass-through wallets for all persons who were eligible to receive payments and “elect[ed] to deposit such payments” in a pass-through wallet, but no such requirement would have applied to FedAccounts.
 - **Tlaib bill.** Treasury would have been required to offer recipients the option to receive relief payments in new FedAccounts.
- **Financing of Relief Payments.** The Waters and Tlaib bills would have funded relief payments by directing the Federal Reserve to create new money, rather a traditional appropriation.
 - **Waters bill.** Treasury would have notified the Federal Reserve of the aggregate amount of each upcoming monthly payment, and the Federal Reserve would have provided newly issued U.S. currency in the same amount.
 - **Tlaib bill.** Treasury would have minted two (or more) platinum coins with a face value of \$1 trillion each, which the Federal Reserve would have paid for using newly created U.S. currency. The coins, and any assets or liabilities relating to the program, would have been booked to a special account at the Federal Reserve Bank of New York.

Shared Features

- **Postal banking.** All three bills would call on the Federal Reserve to work with the U.S. Postal Service to make banking services more accessible, e.g. by putting ATMs in post offices.
- **Availability to U.S. residents.** FedAccounts would be available to all U.S. citizens and domestically domiciled businesses under all three bills, with some variation in availability to non-citizen residents:
 - Any U.S. resident could have a FedAccount under the Brown and Tlaib bills, but only legal permanent residents under the Waters bill.
 - The Tlaib bill would further expand availability of the digital dollar wallets maintained by Treasury to include any nonresident alien who has been in the United States for more than three months since December 2019.
- **BSA/AML.** In maintaining FedAccounts, Federal Reserve Banks would be expressly required to comply with anti-money laundering requirements under the Bank Secrecy Act, including with respect to recordkeeping, reporting and customer identification.
- **Privacy.** Digital wallets would have privacy protections as set out in the Privacy Act of 1974, which establishes a code of fair practices for information about individuals in federal agency records. Any privacy violations would be subject to penalties similar to those imposed by the IRS with respect to federal tax returns.
 - The Tlaib bill would also establish a Digital Financial Privacy Board within Treasury, charged with overseeing the cash wallet system and “replicat[ing] the privacy and anonymity-respecting features of physical currency transactions as closely as possible.”

Legal Resources

- CBDC raises a host of legal and regulatory issues, which are the subject of vibrant debate and a growing body of scholarship. Professor Steven Schwarcz, for example, identifies the following as key legal issues: risk of loss; counterfeiting protection; privacy and data keeping; anti-money laundering; and consumer protection.
- Here are links to a selection of the legal work we have found useful in understanding of the legal, regulatory and policy issues raised by CBDC:
 - [Mehrsa Baradaran, *Using FedAccounts and Digital Tools to Improve Delivery of Stimulus Payments, Testimony before the Task Force on Financial Technology of the H. Comm on Financial Services, 116th Cong. \(2020\)*](#)
 - [Jess Cheng, Angela N. Lawson, and Paul Wong, *Preconditions for a general-purpose central bank digital currency, FEDS Notes, Board of Governors of the Federal Reserve System \(2021\)*](#)
 - [Jess Cheng, *How to Build a Stablecoin: Certainty, Finality, and Stability Through Commercial Law Principles, 17 Berkeley Business Law Journal 320 \(2020\)*](#)
 - [Robert Hockett, *Digital Greenbacks: A Sequenced 'TreasuryDirect' and 'FedWallet' Plan for the Democratic Digital Dollar, 25 Journal of Technology Law & Policy 1 \(2020\)*](#)
 - [Robert Hockett, *The Democratic Digital Dollar: A Peer-to-Peer Savings & Payments Platform for Fully Inclusive State, Local, and National Money & Banking Systems, Cornell Legal Studies Research Paper No. 19-37 \(2019\)*](#)
 - [Morgan Ricks, John Crawford, and Lev Menand, *FedAccounts: Digital Dollars, 89 George Washington Law Review 113 \(2021\)*](#)
 - [Steven Schwarcz, *Central Bank Digital Currencies and Law, in forthcoming Istituto Affari Internazionali, \(Peter Lang ed., 2021\)*](#)
- The Uniform Law Commission has also done substantial work on developing a [legal framework](#) for payments in CBDC and other virtual currencies under the Uniform Commercial Code.

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