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Obstacles to Successful Introduction of a U.S. Central Bank Digital Currency

NICHOLAS P. MACK*

ABSTRACT

Exploring the possibility of a Central Bank Digital Currency (CBDC) has been a high priority for numerous countries over the last few years. A CBDC seems to be the next development in the global currency regime, with many countries already using or piloting a CBDC program. The United States and its accompanying central bank—the Federal Reserve—have recently shown strong interest in developing and issuing a CBDC. While the government is deeply entrenched in researching possible CBDC outcomes and strategies, it appears to lack research and development into a proper regulatory scheme that will ensure a well-ordered rollout of a CBDC.

The United States' monetary and financial regulatory regimes are ones that are notably fragmented among numerous federal and state agencies, some of which perform overlapping or quite similar duties. This issue of regulatory fragmentation and overlap among regulators exists in numerous respects regarding the issuance and creation of a U.S. CBDC. For this reason, among others, it is paramount that the federal government coordinate between and within its branches to ensure that the next development in U.S. Currency—a CBDC—is created, issued, and regulated in a way that minimizes regulatory overlap and enhances intragovernmental communication and cooperation.

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INTRODUCTION

From the Coinage Act of 1792[1] to the introduction of paper money,[2] to the establishment and abolition of the gold standard[3]—and everything in between[4]—United States (U.S.) currency has taken many forms. Each of these developments in U.S. currency came in response to a catalyzing event, whether that be the founding of a

* © Nicholas P. Mack, Associate at Freshfields Bruckhaus Deringer LLP, in the Finance group of the firm's Global Transactions practice. Vanderbilt University Law School, Doctor of Jurisprudence (2022). The College of New Jersey, Bachelor of Science in Finance (2019). The author wishes to thank Associate Dean Yesha Yadav for her unwavering support and meaningful guidance throughout writing this Article.

1. Coinage Act of 1792, ch. 16, 1 Stat. 246 (1792) (establishing a mint for the purposes of minting and regulating coins of the U.S.).

2. National Bank Act of 1863, ch. § 11, 56, 12 Stat. 665 (1863), *repealed by* National Bank Act, ch. 106, sec. 62, 13 Stat. 118 (1864) (permitting national banks to issue paper currency in the form of national bank notes); Federal Reserve Act of 1913, Pub. L. No. 63-43, § 16, 38 Stat. 251, 265 (1913) (authorizing the Federal Reserve to issue paper currency in the form of Federal Reserve Notes).

3. Gold Standard Act of 1900, Pub. L. No. 56-41, 31 Stat. 45 (1900) (*repealed by* Exec. Order No. 6,102) (establishing gold as the only standard for redeeming paper money in the U.S.); Exec. Order No. 6,102, *repealed by* Pub.L. 93–373, 88 Stat. 445 (1974) (order by President Franklin Delano Roosevelt beginning the process of taking the U.S. off of the Gold Standard, which was followed nearly 40 years later by President Richard Nixon's "Nixon Shock" plan that further abolished the Gold Standard).

4. *See generally The History of U.S. Currency*, U.S. CURRENCY EDUC. PROGRAM, https://www.uscurrency.gov/history?period=1700s (last visited Mar. 21, 2022) (using the "Period" dropdown, users can interact with this webpage to read about numerous 100-year periods ranging back to the 1700s with accompanying information about the history of U.S. currency).

nation, a financial crisis, or otherwise. Likewise, the latest development in U.S. currency—a proposed Central Bank Digital Currency ("CBDC")—is punctuated by technological revolution, global and domestic decline of cash usage, and the proliferation of other nations' CBDCs.[5] Consequently, the Federal Reserve (the "Fed") released a white paper in January of 2022, officially starting the conversation about a U.S. CBDC. by requesting questions and comments from the American public.[6] In addition to looking externally, the Fed and other regulators should look internally to determine how to best adapt the regulatory framework to conform with the imminent evolution of U.S. currency.

CBDCs—as its moniker suggests—are a centralized form of currency, differentiating it from cryptocurrencies and other crypto-assets that operate on a decentralized, peer-to-peer foundation.[7] CBDCs are a digital representation of currency issued by, and as a liability of, a sovereign's central bank.[8] In the case of the U.S., the Federal Reserve—as the country's central bank—would take on the digital liability.[9] As such a liability, a U.S. CBDC would not require deposit insurance to maintain public confidence, nor would it be backed by an underlying asset pool.[10] Thus, a U.S. CBDC would be

5. *See* BANK FOR INT'L SETTLEMENTS, ANNUAL REPORT 2020 72 (2020) ("global values of card and e-money payments have risen, while those of cash withdrawals and cheques have declined"); DAVID W. PERKINS, CONG. RSCH. SERV., R45716, THE POTENTIAL DECLINE OF CASH USAGE AND RELATED IMPLICATIONS, Summary (2019) ("Electronic forms of payment have become increasingly available, convenient, and cost efficient due to technological advances in digitization and data processing."); Dion Rabouin, *The U.S. is Losing the Global Race to Decide the Future of Money—and It Could Doom the Almighty Dollar*, TIME (Sept. 21, 2021, 7:00 AM), https://time.com/6099105/us-china-digital-currency-central-bank/.

6. *See generally* BD. OF GOVERNORS OF THE FED. RSRV. SYSTEM, MONEY AND PAYMENTS: THE U.S. DOLLAR IN THE AGE OF DIGITAL TRANSFORMATION (2022) [hereinafter FED WHITE PAPER].

7. FED WHITE PAPER, *supra* note 6, at 11; MATTHEW BLUMENFELD, ET AL., PRICEWATERHOUSECOOPERS, THE EVOLUTION OF MONEY: WHY FINANCIAL INSTITUTIONS SHOULD START PAYING ATTENTION TO CBDCS, at 2 (2021) [hereinafter PRICEWATERHOUSECOOPERS, THE EVOLUTION OF MONEY]. One can think of a CBDC as simply a digital form of the dollar they hold in their wallet. CBDCs are not be confused with other forms of digital money, such as credit and debit cards, cryptocurrencies such as Bitcoin or Dogecoin, stablecoins (crypto-assets that peg their value to a fiat currency), or payment services that have wallet functions like Venmo.

8. John Kiff, et al., *A Survey of Research on Retail Central Bank Digital Currency* 9 (IMF, Working Paper No. 20/104, 2020); PRICEWATERHOUSECOOPERS, THE EVOLUTION OF MONEY, *supra* note 7, at 2.

9. FED WHITE PAPER, *supra* note 6, at 3, 13.

10. FED WHITE PAPER, *supra* note 6, at 13

safer than commercial bank money with regard to loss of deposits; would provide for a more stable store of value than cryptocurrencies; and would allow the public to make digital payments like most other commercial bank and nonbank money.

The upsides of implementing a U.S. CBDC are certainly found in spades. However, the U.S. Government and the private sector need to be prepared for various challenges leading up to and following such implementation. Particularly, it is undecided whether the current statutory framework permits the government to issue a CBDC.[11] Enacting new legislation authorizing an executive branch agency—or multiple agencies—to issue a CBDC must be crafted with the utmost care and aforethought to minimize further fragmentation in the financial and monetary regulatory space.[12] Regulatory fragmentation and overlap can lead to policy uncertainty, operational inefficiency, coordination challenges, and increased costs.[13] To this point, novel challenges of statutory and regulatory

11. MARK LABONTE & REBECCA M. NELSON, CONG. RSCH. SERV., R46850, CENTRAL BANK DIGITAL CURRENCIES: POLICY ISSUES 25 (2022) [hereinafter CENTRAL BANK DIGITAL CURRENCIES: POLICY ISSUES]; *see also* Jess Cheng, et al., *Preconditions For A General-Purpose Central Bank Digital Currency*, FEDS NOTES (Feb. 24, 2021), https://www.federalreserve.gov/econres/notes/feds-notes/preconditions-for-a-general-purpose-central-bank-digital-currency-20210224.html. Further to this point, there may also be an internal impediment as Fed Chair Jerome Powell pledged not to move forward with such a project unless there was a "buy-in from Congress, from the Administration, [and] from broad elements of the public." *See* Michael S. Derby, *Powell Says Congressional Support Likely Needed to Adopt Fully Digital Dollar*, WALL ST. J. (Mar. 22, 2021), https://www.wsj.com/articles/powell-says-congressional-support-likely-needed-to-adopt-fully-digital-dollar-11616424452.

12. *See generally* Mark Labonte, CONG. RSCH. SERV., R44918, WHO REGULATES WHOM? AN OVERVIEW OF THE U.S. FINANCIAL REGULATORY FRAMEWORK (2020) [hereinafter WHO REGULATES WHOM?] (explaining the overlapping and fragmented framework found in the U.S. financial regulatory space); Matthew C. Turk, *Overlapping Legal Rules in Financial Regulation and the Administrative State*, 54 GA. L. REV. 791 (2020); Louise Bennetts, *Regulatory Fragmentation, the Balkanization of Financial Markets and the Competitiveness of the American Financial Services Sector*, CATO INST. (Mar. 4, 2014), https://www.cato.org/testimony/regulatory-fragmentation-balkanization-financial-markets-competitiveness-american. For discussion on regulatory fragmentation generally and in the financial and monetary sectors, *see infra* Subsections II.C.1 and II.C.2, respectively.

13. Jody Freeman & Jim Rossi, *Agency Coordination in Shared Regulatory Space*, 125 HARV. L. REV. 1131, 1135 (2012); *see also* BUSINESS ROUNDTABLE, REDUCING REGULATORY OVERLAP IN THE 21ST CENTURY 6 (2019); Bennetts, *supra* note 12; Matthew C. Turk, *The Underappreciated Dilemmas of Overlapping Financial Regulations*, COLUM. L. SCHOOL BLUE SKY BLOG (Oct. 25, 2018),

interpretation may also arise once an agency is permitted to issue a digital currency due to such fragmentation and overlap. For example, the Treasury Department and the Fed share the regulation of issuing new money in the form of coins and Federal Reserve notes, respectively.[14] This raises the question: how will a CBDC fall into this scheme and who will issue it? This only represents a sampling of the potential issues discussed herein, but likewise highlights the overarching theme of novel legal concerns presented by developing and issuing a new form of currency.

This article also explores the impacts of introducing a U.S. CBDC on monetary policy. With the Fed monitoring the supply of money in the U.S., it must grapple with how a digital form of the U.S. Dollar will influence its monetary policymaking, and, in turn, how it will regulate the supply of money in the U.S. regarding bank deposits.

Before the U.S. can successfully implement a CBDC, numerous legislative, regulatory, and institutional obstacles must be addressed prior to successful implementation. This article sets out to explore these challenges while highlighting issues that should be addressed prior to implementing a U.S. CBDC. As such, this article advocates for a framework that will assuage the obstacles referenced herein to help ensure a smooth and efficient implementation of a U.S. CBDC. This article proceeds as follows: Part II discusses international CBDCs with particular reference to China and its Digital Currency Electronic Payment (E-CNY), the current state of U.S. CBDC, and a background on the fragmented U.S. regulatory framework. Part III explores legal obstacles to introducing a U.S. CBDC and contextualizes the fragmented regulatory framework within the introduction of a U.S. CBDC, highlighting the legislative, regulatory, and policy hurdles of such introduction. Lastly, Part IV provides recommendations to the legislative and executive branches on how best to address the

https://clsbluesky.law.columbia.edu/2018/10/25/the-underappreciated-dilemmas-of-overlapping-financial-regulations/.

14. 31 U.S.C. § 5111(a)(1) (establishing the Treasury Department's power to determine the supply of U.S. coins, stating "The Secretary of the Treasury . . . shall mint and issue coins . . . in amounts the Secretary decides are necessary to meet the needs of the U.S."); 12 U.S.C. § 411 (establishing the Federal Reserve Board of Governors' power to control the supply of federal reserve notes, stating "Federal reserve notes to be issued at the discretion of the Board of Governors."). *See* 31 U.S.C. §§ 303(a), 304(a) (designating the Bureau of Printing and Engraving—the institution that prints federal reserve notes—and the U.S. Mint—the institution that creates coins—as bureaus in the U.S. Treasury, thus vesting the power to physically create current U.S. currency with the Treasury.

challenges presented by the current legislative and regulatory frameworks.

This article is not meant to provide an exhaustive outlook on every possible obstacle associated with the implementation of a U.S. CBDC. Instead, it plans to highlight major legal obstacles, while proposing a regulatory framework that is universally applicable to issues associated with such implementation.

I. THE CURRENT STATE OF AFFAIRS: CBDC AND THE U.S. REGULATORY REGIME

A. International Perspectives on CBDC

A survey of more than sixty central banks conducted in late 2020 by the Bank for International Settlements revealed that 86% of those surveyed were researching CBDCs.[15] Central banks making up the remaining proportion of the survey were typically from smaller jurisdictions.[16] Central banks representing roughly 20% of the world's population were predicted to issue a CBDC within the next three years, with an additional 21% of the surveyed central banks considering it a possibility.[17] Moreover, as of March 2022, nine countries have fully launched a CBDC, the latest being Nigeria with its e-Naira.[18]

With the U.S. joining the CBDC "race" fairly recently,[19] Congress and executive agencies are in a position that allows them to examine

15. CODRUTA BOAR & ANDREAS WEHRLI, READY, STEADY, GO? – RESULTS OF THE THIRD BIS SURVEY ON CENTRAL BANK DIGITAL CURRENCY 3 (2021) (BIS Papers No. 114).

16. CENTRAL BANK DIGITAL CURRENCIES: POLICY ISSUES, *supra* note 11, at 10.

17. CENTRAL BANK DIGITAL CURRENCIES: POLICY ISSUES, *supra* note 11, at 10.

18. *Central Bank Digital Currency Tracker*, ATLANTIC COUNCIL, https://www.atlanticcouncil.org/cbdctracker/ (last visited Mar. 23, 2022) (think tank Atlantic Council uses its own research and sources from Bank for International Settlements, International Money Fund, and John Kiff Database to establish this tracker, following CBDC launches, pilots, development, and research).

19. *See generally* FED WHITE PAPER, *supra* note 6 (the Fed first asked for public comment on implementing a CBDC in January 2022); *see also* MARC LABONTE ET AL., CONG. RSCH. SERV., IF11471, FINANCIAL INNOVATION: CENTRAL BANK DIGITAL CURRENCIES (2020) (quoting a 2019 statement by the Fed that it is "not currently developing a [CBDC], but is committed to "continu[ing] to analyze the potential benefits and costs" *in the future*); CENTRAL BANK DIGITAL CURRENCIES: POLICY ISSUES, *supra* note 11, at 5 (quoting Fed Chair Jerome Powell's statement before the House Financial Services Committee on February 24, 2021, where Chair Powell stated with regard to a U.S. CBDC, "We don't need to rush this project, and we don't need to be first

other countries' CBDC programs and apply such case studies to a U.S. CBDC implementation. This article does not intend to be an exhaustive comparative analysis between existing countries' CBDCs and a U.S. CBDC. Nonetheless, information useful to the U.S. government is gleaned from a brief foray into the CBDC program of one of the U.S.' largest trading partners—China and its E-CNY. A brief analysis of the China's CBDC introduction follows, with emphasis on points that may give U.S. legislators and regulatory agencies pause.

1. China and its E-CNY

China first launched its E-CNY in April 2020 as a pilot program in four cities, then expanded it to twenty-eight cities in August 2020.[20] China opted to issue E-CNY using a two-tier method that is intermediated by both mobile payment platforms—like WeChat and Alipay—and commercial banks and other authorized entities.[21] An interesting—and perhaps concerning—attribute of the Chinese intermediated system is that the People's Bank of China (PBOC) maintains sole authority to clear transactions conducted in E-CNY.[22] This clearing authority abandons true anonymity and provides the PBOC with a clear record of all transactions conducted in E-CNY.[23]

to market."). While the U.S. is behind a large portion of the world when it comes to developing a CBDC, including some of its largest trading partners, perhaps this presents an opportunity to learn from its peer nations on what worked, what did not work, and how that applies to the U.S. and the American public.

20. Ahmet Faruk Aysan & Furrukh Nawaz Kayani, *China's Transition to a Digital Currency: Does It Threaten Dollarization*, 2 ASIA & GLOB. ECON. 1, 1 (2022).

21. Jiaying Jiang & Karman Lucero, *Background and Implications of China's E-CNY* 5 (Jan. 11, 2021) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3774479. *Cf.* FED WHITE PAPER, *supra* note 6, at 13 (stating with regard to an intermediated CBDC, "potential intermediaries could include commercial banks and regulated nonbank financial service providers, and would operate in an open market for CBDC services," leaving the door open to potential intermediaries that include digital payment providers).

22. Jiang & Lucero, *supra* note 21. Clearing fiat currency transactions is usually an obligation left to intermediaries, which typically includes commercial banks. With China's central bank taking on this clearing responsibility, this presents privacy issues and government oversight that the American public would likely not allow.

23. DR. SAMANTHA HOFFMAN ET AL., THE FLIPSIDE OF CHINA'S CENTRAL BANK DIGITAL CURRENCY 11 (2020); *see also id.* at 8 (stating that PBOC's centralized clearing makes it feasible for it to monitor "all financial activities conducted with E-CNY").

However, some restrictions are levied on the PBOC and other intermediaries when it comes to personal information.[24]

China's Personal Information Protection Law restricts personal information handlers ("PIH") in a few ways that may be important to its E-CNY. Specifically, PIHs are only permitted to retain personal information for the "shortest period" necessary to realize the purpose of handling such information.[25] It seems likely that the PBOC will utilize the provision in Article 13(5) to collect and use E-CNY users' personal information: "Personal information handlers may only handle personal information where they conform to one of the following circumstances: . . . (5) Handling personal information within a reasonable scope to implement news reporting, public opinion supervision, and other such activities for the public interest."[26] "Public opinion supervision" and "activities for the public interest" are quite broad initiatives and represent ideals that likely are not temporally finite. Thus, the PBOC can likely utilize personal information gleaned from its E-CNY clearing responsibilities indefinitely. Relating this issue to the U.S. CBDC, the Fed is not convinced that the Chinese system is possible in the U.S. because of the incredible government oversight required for each transaction.[27] One final notable point regarding the E-CNY is that there have already been instances of both counterfeit E-CNY wallets[28] and counterfeit currency,[29] which may raise novel issues in

24. Zhonghua Renmin Gongheguo Geren Xinxi Baohu Fa [Personal Information Protection Law], art. 33 (2021) (China) ("This Law applies to State organs' activities of handling personal information."); *see generally* Zhonghua Renmin Gongheguo Geren Xinxi Baohu Fa [Personal Information Protection Law].

25. Zhonghua Renmin Gongheguo Geren Xinxi Baohu Fa [Personal Information Protection Law], art. 19.

26. Zhonghua Renmin Gongheguo Geren Xinxi Baohu Fa [Personal Information Protection Law], art. 13.

27. FEDERAL RESERVE, TRANSCRIPT OF CHAIR POWELL'S PRESS CONFERENCE 19 (Apr. 28, 2021), https://www.federalreserve.gov/mediacenter/files/FOMCpresconf20210428.pdf [hereinafter CHAIR POWELL'S APRIL PRESS CONFERENCE] ("I mean, that—what the China—the currency that's being used in China is not one that would—that would work here. It's, it's one that really allows the government to see every payment that's used—for which it is used in real time.").

28. JIANG & LUCERO, *supra* note 21, at 23 (citing Jane Li, *There are already counterfeit wallets of China's digital yuan*, QUARTZ (Jul. 20, 2022), https://qz.com/1922648/there-are-already-counterfeit-wallets-of-chinas-digital-yuan/).

29. Jason Hsu & Lindy Tsai, *An Alternative Monetary System Reimagined: The Case for Central Bank Digital Currency*, 51 CAL. WEST. INT'L L.J. 327, 352 (2021).

cybersecurity, enforcement, and agency responsibility if this issue were to arise in the U.S.

B. U.S. CBDC Developments

Much of the recent discussion and governmental action regarding a U.S. CBDC followed the January 20, 2022 release of the Fed's white paper entitled "*Money and Payments: The U.S. Dollar in the Age of Digital Transformation*". While this paper only presents preliminary findings, the Fed determined that a U.S. CBDC with the following characteristics would best serve the American people: privacy-protected, intermediated, transferable, and identity-verified.[30]

The Fed cites protecting consumer privacy as "critical", but recognizes the need to reach a medium between safeguarding privacy rights and deterring illicit behavior.[31] The Fed also referenced existing laws regulating financial institutions to combat money laundering and terrorist financing as a sufficient means of deterring illicit behavior.[32] Furthermore, the intermediated[33] aspect of a U.S. CBDC—that is, the commercial banks and regulated nonbank financial institutions offering accounts or digital wallets to facilitate the management of CBDC holdings and payments—favors consumer privacy in terms of government oversight because these intermediaries are governed by existing privacy and identity-management frameworks.[34] An ideal U.S. CBDC, according to the Fed, would also be readily transferable between customers of different intermediaries, ideally with offline capabilities.[35] Lastly, to comply with existing money laundering and terrorist financing rules, a CBDC intermediary would have to verify the identity of the CBDC user in the same way that financial institutions currently verify the identity of their customers.[36]

30. FED WHITE PAPER, *supra* note 6, at 13–14.
31. *Id.* at 13.
32. *Id.* at 19–20.
33. The current legislative framework under the Federal Reserve Act does not authorize direct Federal Reserve accounts for individuals (only for institutions). Therefore, if the Fed were to expand its services to include accounts for individuals, it would represent a significant expansion of the Federal Reserve's role in the financial system and the economy. Additionally, such an expansion would need legislative approval in the form of new legislation or an amendment to the existing Federal Reserve Act.
34. FED WHITE PAPER, *supra* note 6, at 13–14, 19–20.
35. *Id.* at 14, 20.
36. *Id.* at 14.

The Fed white paper does little to address the novel regulatory concerns that may arise after introducing a U.S. CBDC. Although not much clearer on novel concerns, President Biden's executive order entitled "Executive Order on Ensuring Responsible Development of Digital Assets" highlights some concerns directly and others indirectly.[37] Particularly, the Executive Order draws attention to enhanced threats of illicit financing and associated national security risks resulting from implementing a CBDC.[38] Further, the Order consistently reiterates the government's dedication to protecting consumers, investors, and businesses throughout this process.[39] In outlining these two salient points, the government highlighted—albeit indirectly—another issue: the current fragmented regulatory state overseeing the implementation of a CBDC.[40] This idea is realized in the Order's call to action.

The Order calls on numerous regulators to research the subject matters previously mentioned and development reports thereon.[41] Specifically, the Order calls on the Secretaries of Treasury, State, Commerce, and Homeland Security; the Attorney General; the Director of the Office of Management and Budget (OMB); the Director of National Intelligence (DNI); and the leaders of other relevant agencies to each submit supplements to the National Strategy for Combating Terrorist and Other Illicit Financing, to the President.[42] Moreover, the Order calls on the Secretaries of Treasury and Labor, the Federal Trade Commission (FTC), Securities and Exchange Commission (SEC), Commodities and Futures Trading Commission (CFTC), federal banking agencies, and the Consumer Financial Protection Bureau (CFPB) to submit a report to the President regarding consumer, investor, and business protections.[43]

The Executive Order offers some semblance of coordination, providing the Assistant to the President for National Security Affairs (APNSA) and the Assistant to the President for Economic Policy (APEP) with the authority to coordinate with seventeen agencies, through the interagency process described in National Security Memorandum 2 of February 4, 2021.[44] National Security

37. *See generally* Exec. Order. No. 14,067, 87 Fed. Reg. 14,143 (Mar. 9, 2022).
38. *Id.*
39. *Id.* at 14,143.
40. *See id.*
41. *Id.*
42. *Id.*
43. Exec. Order. No. 14,067, 87 Fed. Reg. 14,143, 14,147 (Mar. 9, 2022).
44. *Id.* at 14,145.

Memorandum 2 establishes three types of committees to improve interagency coordination of national security policies: the Principals Committee, the Deputies Committee, and the Interagency Policy Committee.[45] The first committee—the Principals Committee—is charged with being the senior interagency forum for consideration of policy issues and consists of the National Security Advisor; Secretaries of State, Treasury, Energy, Homeland Security, and Defense; the Attorney General; the Director of the OMB; the Representative of the United States of America to the United Nations; the Administrator of the United States Agency for International Development; and the Chief of Staff to the President.[46] The Deputies Committee—consisting of the Deputies to the members of the Principals Committee—is charged with reviewing and monitoring the work of the interagency process, considering and resolving policy issues, and ensuring that issues being brought before the Principals Committee have been properly analyzed and prepared for decision.[47] Lastly, the National Security Memorandum 2 calls for establishing multiple Interagency Policy Committees that review and analyze discrete policy decisions made by the President, and to consider and resolve other policy issues.[48]

Within the context of implementing a U.S. CBDC, this coordination process could bring together the relevant governing bodies to allow for open channels of communications and reviews of Presidential decisions and agency research. While the U.S. regulatory regime remains both fragmented and overlapping, implementing the National Security Memorandum 2's interagency process is a step in the right direction towards the coordination and development of coherent policy initiatives and regulatory oversight.

The potential of a U.S. CBDC has also spurred action by members of Congress. Three particular bills made headlines in the first quarter of 2022. Representative Tom Emmer of Minnesota introduced a bill to the House of Representatives on January 12, 2022, that would amend the Federal Reserve Act to prohibit the Fed from introducing a CBDC directly to individuals.[49] To further bolster support for this

45. *See generally* Memorandum on Renewing the National Security Council System, 2021 DAILY COMP. PRES. DOC 121, at 2-3 (Feb. 04, 2021) [hereinafter National Security Memorandum 2].

46. *Id.* at 2.

47. *Id.* at 2-3.

48. *Id.* at 3-4.

49. Press Release, Tom Emmer, Representative, U.S. House of Representatives, Emmer Introduces Legislation to Prevent Unilateral Fed Control of a U.S. Digital

notion, Senators Chuck Grassley of Iowa, Ted Cruz of Texas, and Mike Braun of Indiana introduced a bill to the Senate on March 30, 2022, similarly preventing the Fed from issuing a CBDC directly to individuals.[50]

The impetus behind these two bills is to protect the financial privacy of the American public by preventing the Fed from overseeing every CBDC transaction—a reality that, as the bills' sponsors state, would persist if the Fed issued a CBDC directly to consumers.[51] Interestingly, however, the Fed white paper on CBDCs maintains that a U.S. CBDC must be intermediated by commercial banks and regulated nonbank financial institutions that would offer accounts or digital wallets to facilitate the management of CBDC holdings and payments.[52] Further, the Fed white paper actually acknowledges that the Federal Reserve Act does not authorize direct

Currency (Jan. 12, 2022), https://emmer.house.gov/2022/1/emmer-introduces-legislation-to-prevent-unilateral-fed-control-of-a-u-s-digital-currency [hereinafter Representative Emmer Press Release]; *see* H.R. 6415, 107th Cong. (2022) ("Section 13 of the Federal Reserve Act is amended by adding at the end the following new paragraph: '(15) Except as specifically authorized under this Act, a Federal reserve bank may not offer products or services directly to an individual, maintain an account on behalf of an individual, or issue a central bank digital currency directly to an individual.'").

50. Press Release, Chuck Grassley, Senator, U.S. Senate, Grassley, Colleagues Introduce Bill to Prohibit Unilateral Fed Control of a U.S. Digital Currency (Mar. 31, 2022), https://www.grassley.senate.gov/news/news-releases/grassley-colleagues-introduce-bill-to-prohibit-unilateral-fed-control-of-a-us-digital-currency [hereinafter Senator Grassley Press Release]; *see also* Press Release, Ted Cruz, Senator, U.S. Senate, Sen. Cruz Introduces Legislation Prohibiting Unilateral Fed Control of a U.S. Digital Currency (Mar. 30, 2021), https://www.cruz.senate.gov/newsroom/press-releases/sen-cruz-introduces-legislation-prohibiting-unilateral-fed-control-of-a-us-digital-currency [hereinafter Senator Cruz CBDC Press Release]; S. 3954, 117th Cong. (2022) ("Section 13 of the Federal Reserve Act is amended by adding after the 14th undesignated paragraph (12 8 U.S.C. 347d) the following: 'No Federal reserve bank may offer products or services directly to an individual, maintain an account on behalf of an individual, or issue a central bank digital currency directly to an individual.'").

51. *See* Senator Grassley Press Release, *supra* note 50 ("Our bill would ensure that Congress continues to stand in the way of government bureaucrats snooping on the finances of hardworking Americans."); Senator Cruz Press Release, *supra* note 50 ("Specifically, the legislation prohibits the Federal Reserve from developing a direct-to-consumer CBDC which could be used as a financial surveillance tool by the federal government, similar to what is currently happening in China."); Representative Emmer Press Release, *supra* note 49 ("[I]t is more important than ever to ensure the U.S.' digital currency policy protects financial privacy…").

52. Fed White Paper, *supra* note 6, at 13–14, 19–20.

Federal Reserve accounts for individuals.[53] This calls into question the frivolity of such bills and whether these particular solutions to privacy concerns are misguided or misplaced by the Republican representatives. While these bills essentially restate the already-existing law found in the Federal Reserve Act and mirror the Fed's own understanding of such law, the bills' purpose and impetus still hold true: a U.S. CBDC must be intermediated to protect the American public from unnecessary and uncharacteristic governmental oversight in the financial sector.

Representative Stephen Lynch of Massachusetts introduced a bill in the House of Representatives on March 28, 2022 offering a different proposal for a U.S. digital currency.[54] Specifically, the bill refers to its digital currency as e-cash and outright differentiates it from a CBDC.[55] Consequently, due to e-cash's non-CBDC nature, its introduction, deployment, and regulation would be overseen and regulated by the Secretary of the Treasury, not the Fed.[56] To further facilitate regulation of e-cash, the bill requires the Secretary of the Treasury to establish the Digital Dollar Council (the "Council") to coordinate the Electronic Currency Innovation Program ("ECIP"), which is the program that will oversee e-cash and its related

53. *Id.* at 13.

54. Press Release, Stephen Lynch, Representative, House of Representatives, Rep. Lynch Introduces Legislation to Develop Electronic Version of U.S. Dollar (Mar. 28, 2022), https://lynch.house.gov/press-releases?ID=5A0DA9DE-8884-4E06-AC0A-BCA08850F05E.

55. H.R. 7231, 117th Cong. § 3(b)(11)(A) (2022) (stating that this "electronic dollar . . . shall be … distinguishable from other forms of electronic currency issued by or on behalf of the United States Government, including any such forms that are issued by a department, branch, agency, or instrumentality of the United States Government other than the Department of the Treasury, including such forms of 'central bank digital currency' as may be issued by the Board of Governors of the Federal Reserve System or its designated agents").

56. *Id.* § 3(a) (stating that "[t]he Secretary of the Treasury shall promote and facilitate the development and deployment of an electronic version of the U.S. dollar…"); *id.* § 3(b)(5) (stating that this "electronic dollar . . . created and issued into circulation by the Department of the Treasury, in such quantities, denominations, and technical forms as the Secretary, in the Secretary's discretion, determines to be appropriate"); *id.* § 3(c) (stating that "[t]he Secretary shall promulgate and enforce rules, standards, and criteria pertaining to the development and implementation of e-cash instruments, devices, technologies, platforms, and supporting and enabling infrastructure, as well as the issuance, dissemination, circulation, storage, and use of e-cash balances, including use in transactions, in such a manner and to such an extent as the Secretary determines to be necessary or appropriate to achieve the objectives of this Act…").

infrastructure.[57] Pursuant to the bill, the Council will be comprised of the Secretary of the Treasury; the Director of ECIP; the Chairman of the Board of Governors of the Federal Reserve System; the Postmaster General of the United States Postal Service; the Director of the Office of Science and Technology Policy; the Chief Technology Officer of the United States; the Director of the National Institute of Standards and Technology; and any other federal employees or representatives of federal agencies as the Secretary, in the Secretary's discretion, determines to be appropriate.[58]

Notably, the bill leaves out particular reference to many of the financial and monetary regulators that will undoubtedly play a large role in the regulation and implementation of e-cash.[59] The bill does, however, reference "other Federal employees or representatives of Federal agencies as the Secretary . . . determines to be appropriate,"[60] which provides the Secretary with great discretion over regulatory oversight and decision-making when it comes to e-cash.

C. U.S. Regulatory Fragmentation

A common theme permeates the discourse surrounding attempts to distill the best process and practices for implementing a U.S. digital currency: the need for regulatory oversight by some conglomerate of regulatory bodies. This is due to the persistent issue of regulatory fragmentation and overlap in the U.S. government. This issue is not distinct to the financial sector, but is instead a complication that is experienced by the general regulatory framework of the U.S. in its entirety. This Section explores both the general issue of regulatory fragmentation and overlap and the specific issue of the same seen in the financial and monetary regulatory space.

1. General U.S. Regulatory Fragmentation

Today's fragmented regulatory framework likely has its origins in the congressional delegation process.[61] Professors Jody Freeman and Jim Rossi highlight numerous possibilities and reasonings behind the congressional delegation processes that inevitably lead to such

57. H.R. 7231, 117th Cong. § 5(a).
58. *Id.* § 5(b).
59. *See generally id.* § 5.
60. *Id.* § 5(b).
61. *See generally* Freeman & Rossi, *supra* note 13, at 1138-40.

fragmentation in their 2012 article.[62] Professors Freeman and Rossi emphasize that there is no one reason why congressional delegation leads to such fragmentation, nor do they advocate for one explanation over another.[63] Nonetheless, the 2012 article highlights that the fragmented congressional committee system incentivizes members to expand benefits to their constituencies due to inter-committee competition, the decision to "splinter" authority in a way that removes presidential political influence, the notion that delegating to two or more agencies allows politicians to reach a bargain or compromise over different preferences, and the possibility that fragmentation is simply the result of a legislative process that breeds accident and inconsistencies.[64] These key theories serve as a baseline for why fragmentation *may* exist, and allows for—at least, in part—a solution to preempt any further issues stemming from fragmentation due to the introduction of a U.S. CBDC.

While Part IV provides further information and analyses on how best to combat these fragmentation issues, this Section continues to explore the issues inherent in a fragmented regulatory regime. Perhaps most obviously is the general "too many cooks in the regulatory kitchen" issue which breeds inconsistencies and inefficiencies due to multiple regulators being pulled in different directions, or the same direction on one issue.[65] Different regulators

62. *See generally id.* at 1138–45.

63. *Id.*

64. *Id.* at 1139–43. Professors Rossi and Freeman organize and cite a range of authorities supporting these various theories. *See id.* For more information and further insight into the development of these theories, *see* J.R. DeShazo & Jody Freeman, *Public Agencies as Lobbyists*, 105 COLUM. L. REV. 2217, 2233 (2005) (explaining inter-committee competition that, in turn, incentivizes committee members to expand the jurisdiction of the agencies they oversee to best benefit their constituents); DAVID E. LEWIS, PRESIDENTS AND THE POLITICS OF AGENCY DESIGN: POLITICAL INSULATION IN THE UNITED STATES GOVERNMENT BUREAUCRACY, 1946-1997, 7 (2003) (arguing that administrative "duplication, fragmentation, and overlap" are not the result of a desired "improved effectiveness," but instead, results primarily from the desire "to remove certain policies from presidential political influence."); *see* Mathew D. McCubbins et. al., *Structure and Process, Politics and Policy: Administrative Arrangements and the Political Control of Agencies*, 75 VA. L. REV. 431, 472 (1989) (arguing that regulatory fragmentation is a result of a compromise among lawmakers—or even the chambers of Congress—with differing policy objectives that choose to solve their differences by delegating responsibilities to multiple agencies).

65. *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-16-175, FINANCIAL REGULATION: COMPLEX AND FRAGMENTED STRUCTURE COULD BE STREAMLINED TO IMPROVE EFFECTIVENESS

being pulled in different directions on the same issue can lead to overregulation, differing policy objectives, and, ultimately, disassociation with the policy goal initially calling for such regulation.[66] Conversely, regulators being pulled in the same direction on the same issue can further a broader collective action problem in which regulators may be discouraged from forming coherent policy, due to the overwhelming need for cooperation.

Effective communication among congressional committees and executive agencies is essential in addressing the issues of regulatory fragmentation.[67] This subpart seeks to refine the discussion on regulatory fragmentation to address the fragmentation inherent in the financial and monetary regulatory framework. Part III will further refine this idea to determine the regulatory gaps and present issues that may result with the introduction of a U.S. CBDC.

2. Financial and Monetary Regulatory Fragmentation

While the general issues of regulatory fragmentation discussed above persist in the financial sector, this subsection seeks to further explain why the financial sector is fragmented in the way it is and how legislators have attempted to ameliorate some of these inherent issues.

Built over more than a century ago, the financial regulatory system is one that is punctuated by financial crises and market developments.[68] Legislators look to these significant events as catalysts for developing new regulatory bodies to "fix" the issues presented by these occurrences in history. For example, the Civil

30 (2016) [hereinafter GAO-16-175, FINANCIAL REGULATION]. An example provided by the GAO report highlights the repercussions of inconsistent pre-Dodd-Frank examination activities by financial regulators. GAO-16-175, Financial Regulation at 30. From 1990 to 1993, the report identifies "significant inconsistencies in examination policies and practices among FDIC, OCC, OTS, and the Federal Reserve, including differences in examination scope, frequency, and documentation and examination guidance and regulations." *Id.* at 31. The GAO "found that [the] methods for assessing loan loss reserves varied among the [aforementioned] regulators and [that this] lack of a generally accepted method for assessing loss reserves made it difficult for these regulators to successfully challenge management's estimates when the examiners thought reserves were inadequate." *Id.* at 31-32.

66. *See* Freeman & Rossi, *supra* note 13, at 1149 (explaining that congressional delegations requiring multi-agency concurrence on one issue can lead to vetoes and one agency essentially blocking the decisions of another).

67. *See id.* at 1151.

68. GAO-16-175, FINANCIAL REGULATION, *supra* note 65, at 9.

War necessitated the establishment of the Office of the Comptroller of the Currency ("OCC"); financial panics and instability of the late 1800s led to the founding of the Federal Reserve System; the Great Depression provided legislators with the opportunity to develop a slew of regulators to combat financial instability, including the SEC; and most recently, the 2008 financial crisis led to the creation of the Financial Stability Oversight Council ("FSOC") and the Consumer Financial Protection Bureau ("CFPB"), among others, under the authority of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[69] Consequently, the last 150 years have been characterized by piecemeal changes to the financial regulatory system, tending to splinter similar responsibilities among varying agencies.[70]

Regulatory fragmentation in the financial sector leads to inherent restrictions on data sharing and coordination. The current leading solution to this issue are interagency bodies, which lessen the strain on individual agencies and enhance coordination between overlapping and fragmented regulators.[71] One of these interagency bodies in particular is likely the best equipped to handle potential issues presented from the introduction of a U.S. CBDC: the FSOC.

"FSOC [identifies] risks to financial stability and [responds] to emerging systemic risks."[72] FSOC's primary duties include, *inter alia*, "monitoring the financial system to identify potential systemic risks," "facilitating information sharing and coordination among financial regulators," "making regulatory recommendations to financial regulators, including 'new or heightened standards and safeguards,'" and "identifying gaps in regulation that could pose systemic risks."[73] The FSOC consists of the Secretary of the Treasury and the heads of the Fed, Federal Deposit Insurance Corporation ("FDIC"), OCC, National Credit Union Administration ("NCUA"), SEC, CFTC, Federal Housing Finance Agency ("FHFA"), and CFPB.[74] The

69. *See id.* at 104, 106, 114-15. Appendix II provides a timeline of events that have materially impacted financial and monetary policy over the last 150 years. *See generally id.* at Appendix II. The text above only covers a select few of the important events and related legislative actions. There are plenty other historical events that have punctuated the financial regulatory regime over the last century and a half, all leading to its current fragmented and overlapping state. *See id.*

70. GAO-16-175, FINANCIAL REGULATION, *supra* note 65, at 9.

71. *See* WHO REGULATES WHOM?, *supra* note 12, at 22.

72. *Id.*

73. *Id.* at 23.

74. *Id.* at 22.

FSOC should rightfully should be involved in the introduction of a U.S. CBDC for multiple reasons that align with its core duties. The introduction of a new form of currency uncovers novel challenges that regulatory agencies may not be equipped to handle alone. The FSOC could—and *should*—play the role of regulatory “quarterback” to ensure adequate information flow between the above agencies, Doing so will undoubtedly play a role in this market development.[75] Subsection III.A.1 discusses in more depth the novel legal issues that may result from introducing a CBDC in the U.S. The FSOC’s role in bridging these forthcoming legal issues will increase efficiency and reduce costs through streamlined communication channels.[76]

When regulatory issues undoubtedly result from the introduction of a U.S. CBDC, interagency bodies can help develop standards, designate regulatory responsibilities, and enhance communication. Once these conversations occur, agency heads should establish written documentation to memorialize the discussions and the responsibilities designated to each agency. A useful tool in interagency communication is the memorandum of understanding (“MOU”), which typically assigns responsibility for certain tasks and establishes procedures in a quasi-contractual agreement.[77] MOUs offer low-cost solutions to interagency coordination that allows for the development of a practical framework in which agencies can designate regulatory tasks and responsibilities.[78] The introduction of a U.S. CBDC will create novel questions of agency responsibility, and agencies “contracting” via an MOU is an easy and effective way to

75. *See infra* Part IV. for a more detailed discussion of how this article proposes FSOC be involved in the introduction of a U.S. CBDC.

76. *See infra* Part IV.B.1. FSOC brings the key regulators that are needed to regulate a CBDC such as the Treasury Secretary and head of the Fed, among others, to one table. The novel legal issues that present can therefore be easily discussed, analyzed, and addressed without each of the respective agencies’ decisions overlapping or fragmenting further.

77. *See* Freeman & Rossi, *supra* note 13, at 1161. MOUs are a useful tool in interagency coordination and operate like a contract, but are generally unenforceable and unreviewable by the courts.

78. *See* Yesha Yadav, *The Failed Regulation of U.S. Treasury Markets*, 121 COLUM. L. REV. 1173, 1239 (2021). Professor Yadav offers the MOU as a solution to the fragmented oversight of U.S. Treasuries. With regard to this instance of regulatory oversight, Professor Yadav references MOUs as a “first, workable step” in interagency coordination. As this article will explore more *infra* Part IV, MOUs can also be a useful coordination tool as an intermediate or last step, as well. Once an issue is pinpointed and explored, MOUs may be a useful tool in determining which agency will address such issue.

parse through these novelties without further fragmenting the financial regulatory sector.

III. LEGAL OBSTACLES TO IMPLEMENTING A U.S. CBDC

U.S. policy has consistently adapted as the form of money changes.[79] With this ideal in mind, this Part addresses novel legal issues regarding regulatory fragmentation and monetary oversight policy regarding the introduction of a U.S. CBDC. The following discussion of legal issues is not meant to be exhaustive. The purpose of this article and the discussion found herein is to highlight issues of particular importance to the *introduction* of a U.S. CBDC, pinpointing first-line issues that Congress and regulators will likely face.

A. Governmental Authority to Issue a U.S. CBDC

An initial question that needs to be answered is whether the U.S. government has legal authority to issue a CBDC under its existing laws. This analysis must begin with the U.S. Constitution, which enumerates a congressional power "to coin money."[80] On its face, this power may seem quite narrow; nonetheless, the courts construe Congress' coinage power quite broadly.[81] Under this broad authority, Congress developed numerous iterations of American currency ranging from various types of coins to different forms of paper money. Although the Constitution only vests Congress with the power to "coin" money, they soon realized a need for paper money, permitting the creation of demand notes in 1861 and U.S. notes, Gold Certificates, Silver Certificates, and Treasury Coin notes

79. *See* Steven L. Schwartz, *Regulating Digital Currencies: Towards an Analytical Framework*, 102 B.U. L. REV. 1037, 1053 (2022).

80. U.S. CONST. art. I, § 8, cl. 5.

81. Cong. Rsch. Serv., *Coinage Power*, Constitution Annotated, https://constitution.congress.gov/browse/essay/artI-S8-C5-1/ALDE_00001066/ (last visited Apr. 16, 2022) (The "power 'to coin money' and 'regulate the value thereof' has been broadly construed to authorize regulation of '*every phase* of the subject of currency'" (emphasis added)); *see, e.g.*, Equitable Life Assur. Soc. of U.S. v. Grosvenor, 426 F. Supp. 67, 73 (W.D. Tenn. 1976), *aff'd*, 582 F.2d 1279 (6th Cir. 1978), ("Congress has the right to establish the monetary system of this country and to establish a uniform currency."); Guar. Trust Co. of N.Y. v. Henwood, 307 U.S. 247, 259 (1939) (Under constitutional power of Congress to coin money and regulate value thereof, and its "'*broad comprehensive authority* over subjects of revenue, finance and currency'" derived from other constitutional provisions, "Congress was authorized . . . to establish, regulate and control the national currency and to make that currency legal tender money for all purposes") (emphasis added).

by the early 1900s.[82] Thus, under Congress' broad authority to regulate currency in the U.S.[83] and its proven track record of deviating from the textual "coin" powers, it seems rightfully within the power of Congress to legislate an issuance of a U.S. CBDC.

Although Congress likely has the constitutional authority under its coinage powers to create a CBDC, issues of regulatory fragmentation may quickly arise after its introduction. While it is currently unclear which regulator(s) will hold the authority to issue and regulate a U.S. CBDC under existing laws, Congress can wisely use novel legislation to close regulatory gaps and reduce further fragmentation.

B. Regulation of Money: Whose Job Is It Anyways?

Fragmentation and overlap may worsen with the introduction of a U.S. CBDC. This presents a novel legal issue regarding which regulator(s) will be responsible for issuing and creating the digital currency. Regulating the issuance of U.S. currency is an issue fragmented among the Fed and the Treasury. The current forms of currency as we know them are paper money and coins, each of which are interconnected and fragmented in today's financial regulatory regime.

The Fed's Board of Governors—pursuant to the authority of the Federal Reserve Act—maintains the authority to issue and retire Federal Reserve notes.[84] Federal Reserve notes are understood to constitute the paper money of the U.S.[85] The tangible nature of

82. *See* Paige Pidano Paridon, *Legal Authority to Issue a U.S. Central Bank Digital Currency*, BANK POL'Y INST. (June 9, 2021), https://bpi.com/legal-authority-to-issue-a-u-s-central-bank-digital-currency/#_ftnref34.

83. *See* sources cited *supra* note 81 and accompanying discussion in the footnote.

84. *See* 12 U.S.C. § 248(d) ("To supervise and regulate through the Secretary of the Treasury the issue and retirement of Federal Reserve notes"); *id.* § 411 ("Federal reserve notes, to be issued at the discretion of the Board of Governors of the Federal Reserve System . . . are authorized.").

85. *See* Paridon, *supra* note 82 ("The context of the [Federal Reserve] Act, as well as other statutes, makes clear that "Federal reserve notes" are paper currency."); *History of Paper Money*, FED. RES. BANK OF ATL. (last visited Apr. 16, 2022) ("Federal Reserve notes make up the majority of U.S. paper money in circulation today."); *see* 12 U.S.C. § 418 ("In order to furnish suitable notes for circulation as Federal reserve notes, the Secretary of the Treasury shall cause *plates and dies* to be engraved in the best manner to guard against counterfeits and fraudulent alterations, and shall have *printed therefrom* and numbered such quantities of such notes of the denominations of $1, $2, $5, $10, $20, $50, $100,

Federal Reserve notes is made particularly apparent in Title 12 of the U.S. Code, which calls for the *printing* of Federal Reserve notes.[86] By contrast, the Department of the Treasury holds the authority to mint and issue coins within the discretion of the Secretary to meet the needs of the U.S..[87] Likewise, the tangible nature of "coins" is made apparent in Title 31 of the U.S. Code, which calls for coins to be of a specific diameter and weight.[88] Thus, the existing legislative framework regulating Federal Reserve notes and coins seems to prevent the issuance of a digital currency by the Fed and Treasury under these laws as they are specific to tangible forms of currency.

Tangible currency *issuance* in the U.S. is therefore splintered among the Fed (having authority over paper money issuance) and the Treasury (having authority over the issuance of coins). Legislation regarding the *creation* of money further illustrates the financial regulatory fragmentation in the U.S. Although the Fed regulates the issuance of Federal Reserve notes, the responsibility of engraving and printing such notes falls within the ambit of the Treasury Secretary.[89] Further, coin production also falls under the purview of the Secretary, effectively providing the Treasury with a monopoly on the physical creation of money in the U.S.[90] This means that the Fed cannot unilaterally create money even if it wishes to issue more of it; instead, it must go through the relevant channels at the Treasury. Consequently, interagency coordination is paramount when the U.S. government wishes to introduce new money into the economy.

It is important to keep in mind, however, that Federal Reserve notes and coins are not the only types of legal tender that exist in the U.S. monetary system. The U.S. Code defines "legal tender" as "U.S. coins and currency (*including* Federal Reserve notes and circulating notes of Federal Reserve banks and national banks)."[91] The operative word in this statutory section is "including," which may indicate an open door to further types of currencies.[92] Without judicial interpretation or regulatory guidance, the purposes of the

$500, $1,000, $5,000, $10,000 as may be required to supply the Federal Reserve banks." (emphasis added)).

86. *See* 12 U.S.C. § 418.
87. *See* 31 U.S.C. § 5111(a)(1).
88. *See id.* § 5112(a)(1)–(12).
89. *See id.* §§ 303(a), 5114(a)(1).
90. *Id.* §§ 304(a), 5111(a).
91. *Id.* § 5103 (emphasis added).
92. *See* Paridon, *supra* note 82.

parenthetical remain ambiguous. If the parenthetical exists as an exhaustive list of types of legal tender in the U.S., this presents yet another legislative barrier to the introduction of a U.S. CBDC. However, if this list is purely indicative—that is, a sampling of those currencies available as legal tender—a CBDC may escape this legislative conundrum.[93] While this statute may provide an opportunity for the issuance and creation of a U.S. CBDC, it does nothing to determine *who* will bear the burden of the resulting regulatory responsibilities.[94]

The current legislative structure designating authority to issue tangible currency to both the Fed (Federal Reserve notes) and the Treasury (coins) presents three issues regarding a U.S. CBDC. First, without further statutory authority, it seems implausible that the Fed or the Treasury have legal authority to issue a digital currency. Second, because the two regulators possess the power to issue new money in different forms, it raises questions of which regulator is better suited to receive the power to issue a CBDC. Third, because the Treasury is currently charged with physically creating both Federal Reserve notes and coins, it begs the question of whether it too would be responsible for creating a CBDC and its accompanying infrastructure. If not addressed prudently and rightfully by Congress at the outset, these issues can lead to further regulatory fragmentation in the financial sector, breeding inefficiencies, and disjointedness in policymaking.

C. Monetary Policy and Supply

While the issuance and creation of money in the U.S. is fragmented amongst the Fed and the Treasury, the actual supply of money in the U.S. is governed by the Fed.[95] The primary way the Fed exercises this

93. *Cf. id.* Paige Paridon, writing for the Bank Policy Institute, uses a canon of statutory interpretation *esjudem generis* to interpret this statutory section in an attempt to decipher whether a CBDC would qualify as "legal tender" pursuant to the parenthetical. Paridon references the list of included types of currency—Federal reserve notes and circulating notes of Federal reserve banks and national banks—to compare to a CBDC to determine its "fit" among those listed. Paridon determined that the nature and functionality of a CBDC are too different compared to those enumerated currencies to justify its inclusion in the statute.

94. *Id. But see* Marcelo Prates, *Legal Troubles May Delay CBDCs*, OFF. MONETARY & FIN. INSTS. F. (Feb. 24, 2021), https://www.omfif.org/2021/02/legal-troubles-may-delay-cbdcs/ (arguing that the Fed could use its existing mandate to issue a CBDC).

95. *How Does the Federal Reserve Control the Supply of Money?*, FED. RSRV. BANK OF ST. LOUIS (July 10, 2018), https://www.stlouisfed.org/on-the-

responsibility is by impacting the monetary base in the U.S.[96] The monetary base is comprised of the currency in circulation (Federal Reserve notes and coins) and the deposits held by banks and other depository institutions in their accounts at the Fed.[97]

Although multiple components constitute the monetary base, the Fed's monetary decision-making to increase or decrease the supply of money revolves around deposits. The Fed's control over bank deposits is realized in its authority to issue reserve requirements, effectively requiring banks to hold deposits in certain amounts.[98] The reserve requirements come in the form of a ratio, requiring banks to maintain a certain percentage of its deposits to protect against excessive withdrawals and bank runs. This type of policy governs the monetary supply, in part, by regulating the amount of money banks can lend to the public. Thus, if the Fed reduces the reserve requirement, banks can lend more money to the public, increasing the supply of money in the economy.

The Fed also controls the supply of money through buying and selling U.S. Treasury securities on the open market.[99] The Fed will buy these securities from any party and pay with a check "written on the Fed."[100] The seller of the Treasury securities then deposits the proceeds of the sale with its bank, increasing its bank deposits.[101] The bank will then deposit the seller's deposit in the bank's account with the Fed, adding to its reserves and increasing the monetary base.[102] Conversely, to decrease the monetary base, the Fed sells Treasury securities, and deposits the check it receives to decrease the bank's balance at the Fed.[103]

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economy/2018/july/federal-reserve-control-supply-money#:~:text=The%20Fed%20controls%20the%20supply,hold%20with%20the%20Federal%20Reserve.

96. *Id.*

97. *What is the Supply of Money? Is It Important?*, BD. OF GOVERNORS OF THE FED. RSRV., https://www.federalreserve.gov/faqs/money_12845.htm (last updated Dec. 16, 2015).

98. *See* 12 C.F.R. § 204.1 (2021).

99. 31 U.S.C. § 5301; *How Does the Federal Reserve Control the Supply of Money?*, *supra* note 95; *see also* Anna J. Schwartz, *Money Supply*, LIB. ECON. & LIBERTY, https://www.econlib.org/library/Enc/MoneySupply.html (last visited Apr. 23, 2022).

100. *How Does the Federal Reserve Control the Supply of Money?*, *supra* note 95.

101. Schwartz, *supra* note 99.

102. *Id.*

103. *How Does the Federal Reserve Control the Supply of Money?*, *supra* note 95.

The Fed's control over reserve requirements and the portion of the monetary base consisting of deposits at commercial banks is predicated on the fact that money held by commercial banks is a liability of those depository institutions. Consequently, the regulatory framework concerning reserve requirements also applies to "deposits" at depository institutions.[104] Unlike the theme of the current regulations maintaining "deposits" as a liability of the depository institution, a U.S. CBDC would generally be a liability of the Fed.[105] Therefore, even though commercial banks would operate as intermediaries for the CBDC and hold the CBDC in its accounts, it does not represent a liability of the commercial banks.

Further issues arise when the CBDC is put into the context of the Code of Federal Regulations' definition of what does not constitute a deposit. A U.S. CBDC—given its nature of being a liability of the Fed—would fall within the enumerated definitions of what does not constitute a "deposit" under the Code of Federal Regulations. Specifically, "obligations, the proceeds of which are not used by the depository institution for purposes of making loans, investments, or maintaining liquid assets such as cash or 'due from' depository institutions or other similar purposes" do not constitute a deposit.[106] A reduction in deposits at a commercial bank restrains its lending powers and leads to a decrease in loan volume.[107] This issue raises a few questions of monetary policy.

104. *See* 12 C.F.R. § 204.2(a)(1)(i)-(viii). A "deposit" is defined in 12 C.F.R. § 204.2(a)(1)(i)–(viii) and includes an array of liabilities maintained by the depository institution.

105. FED WHITE PAPER, *supra* note 6, at 13–14; *see* 12 C.F.R. § 204.2(a)(1)(i)–(viii) (describing multiple definitions of a deposit in ways that represent liabilities of the depository institution).

106. 12 C.F.R. § 204.2(a)(2)(iii) (2022).

107. Jonas Gross & Jonathan Schiller, *A Model for Central Bank Digital Currencies: Implications for Bank Funding and Monetary Policy* (July 28, 2021) (manuscript at 1) (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3721965) ("As commercial banks rely on deposits to fund their lending business, deposit outflows increase their funding costs and lead, *ceteris paribus*, to a decline in loan volume, investment, and overall economic activity."); Francesca Carapella & Jean Flemming, *Central Bank Digital Currencies: A Literature Review*, FEDS NOTES (Nov. 9, 2020), https://www.federalreserve.gov/econres/notes/feds-notes/central-bank-digital-currency-a-literature-review-20201109.html.

Bank deposits will likely shrink given the nature of the U.S. CBDC.[108] Depository institutions, as purely intermediaries in the CBDC regime, will maintain digital wallets for the American public, which will differ from the typical bank accounts in use today.[109] Because these digital wallets are seen as holding the equivalent of paper money—paper money being a liability of the Fed—the depository institutions will be unable to lend money held in a CBDC wallet.[110] Further, the public is likely to choose to hold their money in a CBDC wallet rather than a typical bank account due to CBDC's backing by the federal government and its inherent transferability qualities typical of digital money. This option presents a safer and potentially more useful alternative to a typical bank account. As a result, the public is presented with digital money that is insulated from the risks of bank runs and the need for federal insurance to recover lost funds.

This potential public preference for a CBDC wallet and crowding out of bank deposits then trickles into an issue of monetary policy that the Fed must face. As discussed, the Fed regulates money supply by regulating the amount of money banks can lend in multiple ways.[111] Banks secure increased deposits once the Fed purchases Treasury securities. The seller of the securities then deposits the check from the Fed into a bank, which can in turn lend out more funds from its now-increased supply of deposits. However, theoretically, the seller of the securities can be paid directly into his CBDC wallet, circumventing the bank deposit system.

Yes, this still increases the supply of money in circulation, but it does not achieve the primary missions of enhancing money supply. Although more money is circulating in the U.S., the money likely would not be able to spur economic growth, due to being held in electronic wallets impervious to the lending power of the commercial bank facilitating the wallet. Increasing money supply works to reduce interest rates, making lending more inviting to investors and stimulating spending.[112] Analogically, having money build up in a CBDC wallet is the equivalent of someone storing paper money under their mattress—the money remains in circulation, but

108. Gross & Schiller, *supra* note 107, at 24 (estimating that bank deposits will decrease by 7% to 16% based on a study using economic modelling); Carapella & Flemming, *supra* note 107.

109. FED WHITE PAPER, *supra* note 6, at 1, 13.

110. *Id.*

111. *See supra* notes 95–103 and accompanying text.

112. Schwartz, *supra* note 99.

does little to spur economic growth and depletes banks' potential lending volume.

The potential introduction of a U.S. CBDC comes at a time of technological innovation all over the world. Although the U.S. has taken its time to propose such an introduction, a U.S. CBDC is coming closer and closer to fruition. However, the current legislative and regulatory frameworks for such an introduction are lacking in substance, specificity, and coherence. Furthermore, novel issues of monetary policy and threats to economic growth will also likely persist once the U.S. creates and issues a CBDC. For these reasons, the legislative and executive branches must develop both a legislative framework and accompanying regulatory delegations and responsibilities to facilitate this transition to a digital currency.

III. LEGISLATIVE AND REGULATORY STEPS TOWARDS CBDC SUCCESS

A. Legislation Permitting Issuance and Creation of a U.S. CBDC

The current legislative framework does not allow the government to issue and create another form of currency.[113] Furthermore, Fed Chair Jerome Powell stated that the Fed would need authorization from Congress to move forward with developing such a currency.[114] Thus, a U.S. CBDC faces both legal and institutional barriers to introduction.

Authorizing legislation would solve these two issues. The initial issue to legislate is the agencies responsible for issuing and creating a U.S. CBDC. As the driver of monetary policy in the U.S. and the determining body of money supply, the Fed is likely the best candidate to receive the congressional designation to issue and regulate the digital currency. Providing authority to the Treasury to issue and regulate a new form of money would only further the regulatory fragmentation issue. It is true that the Treasury does maintain some monetary power in the issuance and creation of coins, but the power to regulate monetary policy and the supply of money in the economy rests with the Fed.[115]

113. *See supra* Section III.A.

114. *Fed's Powell 'Legitimately Undecided" on Central Bank Digital Currency*, REUTERS (July 15, 2021, 12:45 PM), https://www.reuters.com/business/finance/feds-powell-says-hes-undecided-central-bank-digital-currency-2021-07-15/.

115. *See supra* Section III.B.

The issuance of a U.S. CBDC is, in part, predicated on the declining use of cash.[116] The Treasury, whose monetary powers only extend to cash in the form of coins, is an unsuitable candidate to govern the supply of a cash replacement. The Fed, however, whose monetary powers are focused more on the overall supply of money in the U.S. in all forms, is better suited to combat the policy issues that will arise as a result of this new form of currency. Particularly, as referenced above, the Fed's main monetary policy components is its governance over deposits. However, experts and scholars have expressed concerns over CBDCs' ability to disrupt monetary policy by reducing deposits in favor of CBDC wallets.[117] In addition to a reduction in deposits stripping some lending power from banks, this issue may also cause financial disintermediation which would take further revenue away from the banking industry.[118] Thus, as disruptions in monetary policy and deposit volume take the forefront, the Fed is best positioned to regulate the issues that will present. It is for these reasons that Congress should designate the Fed to issue and regulate a U.S. CBDC.

Although issuance and regulation of a U.S. CBDC is best suited for the Fed, the actual creation and accompanying infrastructure of the digital currency is likely best designated to the Treasury. The Treasury currently regulates and oversees the creation of both coins and Federal Reserve notes in the U.S.[119] For this reason, the

116. *See generally* Tanai Khiaonarong & David Humphrey, *Falling Use of Cash and Demand for Retail Central Bank Digital Currency* (Int'l Monetary Fund, Working Paper WP/22/27, 2022).

117. *See* Gross & Schiller, *supra* note 107, at 1, 24 (estimating that bank deposits will decrease by 7% to 16% based on a study using economic modelling); Bill Nelson, *The Benefits and Costs of a Central Bank Digital Currency for Monetary Policy*, BANK POL'Y INST. (Apr. 15, 2021), https://bpi.com/the-benefits-and-costs-of-a-central-bank-digital-currency-for-monetary-policy/ ("[A] CBDC could lead to rapid and huge reductions in reserve balances (the deposits of commercial banks and other depository institutions at the Federal Reserve) when there is a flight to quality, driving up money-market interest rates and potentially destabilizing financial markets."); *Central Bank Digital Currencies May Disrupt Financial Systems*, FitchRatings (May 17, 2021, 7:44 AM), https://www.fitchratings.com/research/banks/central-bank-digital-currencies-may-disrupt-financial-systems-17-05-2021 ("Widespread adoption of CBDCs may be disruptive for financial systems if associated risks are not managed. These include the potential for funds to move quickly into CBDC accounts from bank deposits[.]").

118. *Central Bank Digital Currencies May Disrupt Financial Systems*, *supra* note 117.

119. 31 U.S.C. §§ 303(a), 304(a), 5111(a), 5114(a)(1).

Treasury has numerous existing regulatory frameworks in place that allow for the safe and seamless creation of U.S. currency. Specifically, two important aspects of the Treasury's oversight of U.S. currency creation include: the Advanced Counterfeit Deterrence ("ACD") Steering Committee and the U.S. Secret Service. The Treasury's Bureau of Engraving and Printing ("BEP") works collaboratively with ACD—a committee made up of stakeholders from Treasury, BEP, the Federal Reserve Board, the Federal Reserve System, and the U.S. Secret Service—to develop anti-counterfeiting measures which are then subject to approval by the Treasury Secretary.[120] The U.S. Secret Service, an agency most known for protecting the President, also exists within the Treasury to combat counterfeiting, fraud, and financial crimes.[121] To contend with emerging technologies and recent monetary trends, the Secret Service has recently shifted its focus to combating the illicit use of digital assets by adjusting its investigative and enforcement procedures accordingly.[122] As both counterfeit CBDC wallets and currency are likely an imminent threat,[123] creating a U.S. CBDC should be designated to the agency that is most accustomed to designing and safeguarding American money: the Treasury.

120. *The Future of Money: Coins and Banknotes: Hearing Before the Subcomm. On Monetary Poli'y & Trade of the H. Comm. on Fin. Servs.*, 115th Cong. 6 (2018) (statement of Leonard Olijar, Dir., Bureau of Engraving and Printing); *Currency Redesign,* BUREAU OF ENGRAVING & PRINTING, *https://www.bep.gov/currency/currency*-redesign (last visited Apr. 25, 2022); *See also* 12 U.S.C. § 418 (granting the Treasury Secretary review of the anticounterfeiting measures for federal reserve notes; it seems plausible to have this power extend to a CBDC, with legislation likely needed for such an extension).

121. *About Us*, U.S. Secret Service, https://www.secretservice.gov/about/history (last visited Apr. 25, 2022).

122. *Develop Investigative Capabilities:* OFFICE OF INVESTIGATIONS STRATEGY: FY 2021–2027, U.S. SECRET SERVICE 29 (2021) (stating that the Secret Service's Office of Investigations will improve its investigative capabilities and equipment through the following objectives: (1) Improve data management and analysis to more effectively investigate crimes; (2) Develop capabilities to ensure timely recovery of digital evidence; (3) Equip field offices with improved capabilities for investigating cybercrime; (4) Increase field office access to secure communications systems); *Combating the Illicit Use of Digital Assets*, U.S. Secret Service, https://www.secretservice.gov/investigation/DigitalAssets (last visited Apr. 25, 2022) (describing Secret Services' role in protecting the American public from counterfeit digital assets); Press Release, U.S. Secret Service, U.S. Secret Service Launches Cryptocurrency Awareness Hub (Feb. 2, 2022), https://www.secretservice.gov/newsroom/releases/2022/02/us-secret-service-launches-cryptocurrency-awareness-hub.

123. *See supra* notes 28-29 and accompanying text.

Designating different responsibilities for introducing a U.S. CBDC to various regulators will likely exacerbate the negative effects of fragmentation. However, the above discussion seeks to pull numerous regulators into the CBDC mix for the better. Consequently, coordination among these regulators is paramount to the success of a U.S. CBDC introduction. This coordination is discussed further below in Section IV.B.

B. Agency Coordination in a Fragmented Space

1. Coordinating Interagency Body

President Biden's Executive Order gestured correctly towards agency coordination, but left some details to be desired.[124] The Order calls for interagency coordination via the process outlined in National Security Memorandum 2.[125] This Memorandum calls for three distinct types of committees to ensure adequate agency communication, oversight, and general coordination: the Principals Committee, the Deputies Committee, and the Interagency Policy Committee.[126] While this general structure is beneficial, the Order seems to call on the incorrect personnel to participate in the interagency process. Particularly, the Order calls on, "as appropriate": the Secretaries of State, Treasury, Defense, Commerce, Labor, Energy, Homeland Security; the Attorney General; the Administrator of the Environmental Protection Agency; the Director of the OMB; the DNI; the Director of the Domestic Policy Council; the Chair of the Council of Economic Advisers; the Director of the Office of Science and Technology Policy; the Administrator of the Office of Information and Regulatory Affairs; the Director of the National Science Foundation; and the Administrator of the U.S. Agency for International Development.[127] While some of these personnel are paramount to the oversight of introducing a U.S. CBDC, the Order includes numerous others that are ancillary, if not frivolous. Further, the Order only states that the relevant financial regulators *may* be invited to attend interagency meetings *as appropriate*.[128]

124. *See* Joe Biden CBDC Executive Order, *supra* note 37.
125. *Id.*
126. *Id.*
127. *Id.*
128. *Id.*

Using the general structure of the interagency process outlined in National Security Memorandum 2, this article recommends that the Principals Committee overseeing the introduction of a U.S. CBDC be populated by the representatives serving on the FSOC. Most relevantly, FSOC is staffed by the Treasury Secretary, the head of the Fed, and others whose roles in ensuring a smooth introduction of a U.S. CBDC are indispensable.[129] With novel issues of legal and regulatory responsibilities arising as a result of introducing a new form of currency, the interagency process overseeing such a revolution should be managed by those agencies most impacted. Further, due to the current fragmented regime of monetary regulation, coordination amongst the Treasury, Fed, and other financial regulators is necessary to determine the best policies for developing and issuing a digital currency. Because this article suggests monetary regulation remains fragmented amongst the Treasury and Fed for the creation and issuance of a U.S. CBDC, respectively, these two regulators must have open and active communication channels. With the Principals Committee consisting of FSOC and the Deputies Committee consisting of the deputies thereof, communications between the most relevant and impacted regulators can be maintained in an orderly and streamlined fashion.[130]

National Security Memorandum 2 also calls for forming multiple Interagency Policy Committees to address numerous discrete policy issues.[131] While multiple policy committees are needed and expected to ensure a safe and efficient U.S. CBDC introduction, two themes for such committees are most timely: cybersecurity and privacy. These two interconnected themes are at the forefront of CBDC discussions across the globe and are interconnected.[132] Although this article does not discuss American cybersecurity threats

129. WHO REGULATES WHOM?, *supra* note 12, at 22-23; *see* discussion *supra* Part III (describing the novel legal issues that present due to the potential introduction of a U.S. CBDC).

130. The Deputies Committee will help ensure the Principals Committee is informed on all policy matters to be impacted by the CBDC introduction and will review and monitor the work of the interagency process generally. *See supra* text accompanying note 47.

131. National Security Memorandum 2, *supra* note 45, at 1-4.

132. *See, e.g.*, Jiang & Lucero, *supra* note 21 (discussing China's Central Bank's clearing of all transactions); SAMANTHA HOFFMAN ET AL., THE FLIPSIDE OF CHINA'S CENTRAL BANK DIGITAL CURRENCY 11 (2020); Chair Powell's April Press Conference, *supra* note 27, at 19 (stating that China's CBDC regime is not one that would work in the United States due to its intrusion into the privacy of its citizens' transactions).

and privacy concerns, it is still an important aspect to consider regarding oversight of discrete policy issues resulting from a U.S. CBDC. With this in mind, the relevant personnel to begin working on Interagency Policy Committees with regard to cybersecurity and privacy would likely involve the Secretaries of State and Homeland Security, the head of the U.S. Secret Service, the Comptroller of the Currency, the Director of the Federal Bureau of Investigation, the DNI, and other heads of regulators and federal agencies as the Principals and Deputies Committees see fit. This group of personnel would be responsible for the careful balance between regulating the financial safety of the American public and maintaining adequate levels of privacy for CBDC transactions.

2. Memoranda of Understanding

Because this article recommends that the regulatory regime of a U.S. CBDC remain fragmented primarily amongst the Treasury and the Fed, these agencies should utilize MOUs to establish written and effective communication. On a general level, MOUs would allow these regulators to secure necessary approval to share data and establish terms of such data sharing.[133] More specifically, MOUs can clarify each agency's respective role, coordinate activities, and harmonize regulatory guidance.[134] For example, an MOU can demarcate the responsibilities of each regulator regarding fraud or counterfeit enforcement actions. Further, since the CBDC will require novel technology and implementation, an MOU can be used to coordinate ideals among regulators involved for best practices in developing such technologies. Finally, an MOU may be used to coordinate regulatory concerns to form cohesive messaging in agency guidance. Thus, in theory, MOUs can help close regulatory gaps by establishing channels of communication, coordinating roles in the regulatory regime, and, in the process of creating the MOU, forcing deliberation among agencies on how best to employ each agency's expertise and skill.[135]

133. *See* Yadav, *supra* note 78, at 1240; REDUCING REGULATORY OVERLAP IN THE 21ST CENTURY, *supra* note 13, at 17.

134. REDUCING REGULATORY OVERLAP IN THE 21ST CENTURY, *supra* note 13, at 17.

135. *See* Yadav, *supra* note 78, at 1240.

C. Fed Response to Offset Likely Deposit Reduction

Introducing a U.S. CBDC carries a general fear of its potential to crowd out bank deposits due to the public's flight to a more quality store of money found in a CBDC wallet.[136] This issue may be combatted by a substantial increase in central bank lending to commercial banks, consequently offsetting CBDC-induced bank funding losses.[137] However, this type of response by the Fed carries two immediate concerns. First, enhanced central bank funding does little to ameliorate the disintermediation in the financial sector caused by CBDC wallets' crowding out deposits.[138] Yes, the increased funding helps to replenish deposits, thus enhancing banks' lending power, but it does little to maintain bank deposits from the public in the long run. Second, in order for the Fed to fund its increased lending activities, it must increase its FOMC operations in buying securities. This, in turn, increases the monetary base, which will likely have inflationary ramifications.[139]

Increasing central bank funding to commercial banks seems to be a first-line defense to CBDCs crowding out bank deposits. However, this proposal also appears to be unsustainable due to the possible resulting inflation. Therefore, there must be another component to monetary policy regarding CBDC that can combat bank deposits crowding. One proposal may be to offer a non-interest bearing CBDC that mirrors the current framework of cash on hand. This may provide an incentive for the public to store their money in banks, rather than CBDC wallets, which provide interest on funds held in accounts. However, with savings account interest being extremely low, if the Fed decides to introduce a non-interest bearing CBDC, the private sector should address this issue. Without further information and empirical data, the potential for crowding out of bank deposits

136. Nelson, *supra* note 117 at 1; Gross & Schiller, *supra* note 107, at 32; Daniel Sanches, *Central Bank Digital Currency: Is It a Good Idea?*, 5 ECON. INSIGHTS 10, 13 (2020) (research conducted for the Federal Reserve Bank of Philadelphia); Todd Keister & Daniel Sanches, Should Central Banks Issue Digital Currency? 2 (Feb. 21, 2022) (unpublished manuscript) http://www.restud.com/wp-content/uploads/2022/03/MS28210manuscript.pdf.

137. Nelson, *supra* note 117, at 1; Gross & Schiller, *supra* note 107, at 5.

138. Gross & Schiller, *supra* note 107, at 3.

139. *See Money and Inflation*, FED. RSRV. BANK OF ST. LOUIS, https://www.stlouisfed.org/education/feducation-video-series/episode-1-money-and-inflation#:~:text=To%20summarize%2C%20the%20money%20supply,leading%20to%20increases%20in%20unemployment (last visited Apr. 27, 2022).

remains only a speculative fear. Nonetheless, the Fed and the Treasury should be prepared to address this potential issue once it introduces the U.S. CBDC.

CONCLUSION

The introduction of a U.S. CBDC is likely in the forthcoming years. The U.S. regulatory regime, as history shows, will undoubtedly pivot to respond to this market development. This pivot begins with a clear congressional delegation to the requisite regulatory bodies. As this article argues, responsibilities for issuing and regulating the CBDC should fall within the ambit of the Fed, whose purview of monetary policy and supply make it the best regulatory candidate for this particular job. Further, the Treasury should maintain responsibilities for creating the CBDC and its accompanying infrastructure as it already maintains the requisite safeguards and procedures for overseeing the creation of currency. It is hard to escape the existing regulatory fragmentation in financial and monetary regulation; the proposed delegations are no exception to this fact. Thus, a key aspect of introducing a U.S. CBDC is interagency coordination, fostering open communication channels among various regulators. For this reason, this article recommends that the representatives of FSOC and its deputies comprise the Principals Committee and Deputies Committee, respectively, as outlined in National Security Memorandum 2. To further exact coordination on ancillary CBDC issues, numerous Interagency Policy Committees should be created to address various concerns, such as cybersecurity and privacy. With clear congressional delegations and coordination procedures in place, the roles of regulators will be more apparent and the ability to develop coherent and beneficial CBDC policies will be less arduous.