



August 05, 2022

Department of Financial Protection and Innovation, Legal Division
Attention: Araceli Dyson, Regulations Coordinator
2101 Arena Boulevard
Sacramento, CA 95834

Transmission via electronic means to regulations@dfpi.ca.gov

Invitation for Comments – Crypto Asset-Related Financial Products and Services

Dear Commissioner Hewlett,

The National Consumer Law Center (on behalf of its low-income clients) appreciates the opportunity to respond to your requests for comments regarding consumer protection and crypto asset-related financial products and services.

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people in the United States through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training.

Attached are comments NCLC and partner organizations submitted to the U.S. Department of Treasury regarding the responsible development of digital assets. We submit these comments as they may also be responsive to your inquiry.

If you have additional questions or comments, please contact Lauren Saunders, Associate Director at [REDACTED] or Staff Attorney Carla Sanchez-Adams at [REDACTED].

Yours very truly,

National Consumer Law Center (on behalf of its low-income clients)



National
Consumer Law
Center



CRL

Center for Responsible Lending

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Education and advocacy since 1971



Consumer Federation of America



U.S. PIRG
Federation of
State PIRGs

August 5, 2022

Submitted at regulations.gov

Natalia Li, Deputy Director
Office of Financial Institutions Policy
U.S Department of the Treasury
Washington, DC

Re: Request for comment on ensuring responsible development of digital assets

The National Consumer Law Center (on behalf of its low-income clients), Americans for Financial Reform, Center for Responsible Lending, Consumer Action, Consumer Federation of America, Digital Finance Alliance, and U.S. PIRG Education Fund appreciate the opportunity to respond to your request for comments on ensuring the responsible development of digital assets. In these comments, we focus on the perspective of consumers and consumer protection.

Introduction and Summary

This request for comments covers two different sets of digital assets: cryptocurrencies, including stablecoins, and central bank digital currencies.

We see little to no legitimate use for cryptocurrencies and few, if any, potential benefits that are not heavily outweighed by the high degree of risk, harm, and evasion of consumer protection laws:

- Individual consumers are investing money they cannot afford to lose in speculative assets that will often crater in value and trigger high fees if the consumer attempts to cash out.
- Scams using cryptocurrencies are exploding off the charts.
- Stablecoins are not as stable as they claim and exist primarily as a gateway to and support for unstable and dangerous cryptocurrencies.
- As a payment method, cryptocurrencies have no protections and do not comply with laws that require protecting consumers from unauthorized use and errors.

These problems are serious for all consumers, especially for low-income consumers with no buffer of assets to lose, and for Black and Latino communities, which disproportionately invest in cryptocurrencies. Cryptocurrencies are becoming the latest in a long line of devices used to strip wealth from communities of color and push them further behind.

Regulators should do as much as possible to discourage expanding use, which is simply unsafe. We see few prospects for “responsible” development, as the problems with cryptocurrencies are a feature, not a bug.

While greater regulation is important, it is critical not to do so in a manner that helps cryptocurrencies expand their reach or provide a gloss of legitimacy. Commodities and securities laws should certainly apply to the investment and trading aspects of cryptocurrencies. But we are deeply concerned about measures that help to bring cryptocurrencies within the banking system.

Cryptocurrencies should not be given access to payment rails or allowed to be used to facilitate consumer payments without complying with the Electronic Fund Transfer Act (EFTA). Products that mimic deposit accounts but lack deposit insurance and EFTA protections will put vital consumer funds at risk.¹ Consumer warnings and disclosures are ineffective and can be overshadowed by offers of higher interest or other advantages that are funded by not paying for deposit insurance and not complying with consumer protection laws. If banks, or their subsidiaries or affiliates, offer cryptocurrency products and services, consumers will mistakenly believe these products and services are safe and covered by existing laws. But without EFTA protections, bank adoption of cryptocurrency products and services will inappropriately legitimize them, facilitate their spread, and lead consumers to believe, wrongly, that they are safe. Furthermore, closer ties between bank accounts and crypto accounts will make it easier for scammers to move money fast, with no form of relief for the defrauded consumers.

With respect to a potential United States central bank digital currency (CBDC), we have yet to hear a plausible case for how a CBDC could expand financial inclusion or otherwise have significant benefits for consumers, especially in an intermediated model. On the flip side, a CBDC poses significant potential risks to consumers, including threats to privacy, the potential for surveillance of and control over those who receive government benefits, fraud at greater scale and velocity, and unclear application of consumer protections. A CBDC could also hurt financial inclusion if it became the de facto preferred payment system while many consumers were shut out of or distrustful of it, or if it deprived banks of the capital used to support low-balance accounts, consumer credit, and reinvestment activities. However, we do encourage Treasury to explore other public payment systems or strategies that may have more potential to improve financial inclusion for consumers.

Below we respond to the specific questions posed by the FSOC.

Adoption to Date and Mass Adoption

(1) What explains the level of current adoption of digital assets? Please identify key trends and reasons why digital assets have gained popularity and increased adoption in recent years.

The exploding consumer interest in digital assets appears to be driven primarily by intense marketing and media attention that promote a desire to cash in on a “gold rush” investment opportunity. Promotions of and opportunities to purchase crypto in mainstream nonbank banking apps lend legitimacy to the product and add to the belief that everyone should consider owning crypto.

(2) Factors that would further facilitate mass adoption.

¹ For an example of an article promoting accounts and payment services with no mention of the serious risks, see Coinbase, “Can crypto really replace your bank account? From direct deposit to earning yield, key ways crypto can help you take control of your financial future,” <https://www.coinbase.com/learn/crypto-basics/can-crypto-really-replace-your-bank>.

Factors that would further facilitate mass adoption include:

- Broader access to payment rails, and greater integration of crypto purchase and payment options within existing payment platforms;
- Promotion of, incentives for, and ease of payment by crypto at the point of sale;
- The offer of higher interest rates in an inflationary environment;
- Spread of crypto promotions, availability, and integrations with mainstream banks and credit unions;
- Increasing promotion of crypto by celebrities and others;
- A new run-up in value followed by media stories of fortunes being made.

Access to payment rails and anything else that would encourage broader use as a payment device have particularly strong potential to lead to mass adoption and serious risk to the public. While payments are a marginal to nonexistent use case today, that could change if crypto companies have easier and broader access to the payment rails. Merchants, financial institutions, and payment providers could see broad advantages to moving payments in a manner that allows them to escape complying with consumer protection laws. In turn, that could lead them to heavily promote those types of payments and offer consumers an incentive to use them. In particular, merchants could give consumers discounts to entice them into paying through a method that silently deprives them of their chargeback and error resolution rights.

Similarly, the closer cryptocurrencies are associated with and promoted by mainstream banking institutions, the more legitimacy and reach they will have. Right now, beyond the crypto industry itself, many nonbank banking apps – heavily marketed to lower income and struggling consumers -- prominently feature the opportunity to buy crypto. But most consumers bank at more traditional financial institutions. If they see their trusted institution making it easy to purchase or use crypto, millions more consumers will do so.

Conversely, the distrust of large financial institutions can also feed mass adoption of alternative financial services that claim to be able to meet the same needs.

Opportunities for Consumers, Investors, and Businesses

- (3) What are the main opportunities for consumers, investors, and businesses from digital assets? For all opportunities described, please provide data and specific use cases to date (if any).**

Cryptocurrencies

Some consumers may be able to make significant amounts of money by investing in crypto. But as with any investment, the greater the potential for reward, the greater risk of significant loss.

Despite the unsubstantiated hype about crypto as a potential way of promoting financial inclusion or of addressing inefficiencies in current payment systems, such as in international remittances, we have yet to see credible examples that match these claims. The friction in current systems exists for good reason – such as preventing money laundering or fraud. Moreover, any remittances sent through cryptocurrency still need to be transferred out of and back into fiat currencies and need a network to enable consumers to access the funds, all of which result in costs.

U.S. central bank digital currency

We have a hard time finding any significant benefits of a U.S. CBDC for consumers. Our thoughts on a U.S. CBDC are outlined in our comments in response to the Federal Reserve Board's (FRB) recent discussion paper,² and we will only briefly summarize them here.

The FRB's discussion paper largely ignores consumers and does not explain how a CBDC would benefit them. The paper identifies five theoretical benefits of a CBDC but does not explain how a CBDC would actually provide those benefits or help consumers beyond what FedNow will provide.³

It is difficult to see how a CBDC would promote financial inclusion, especially in an intermediated model (with financial institutions and possibly nonbank entities as the interface), which is the model that the Federal Reserve appears to be considering. A CBDC would pose the same issues that keep people out of banks today: mistrust of banks; not enough money to be worth having an account; cost of accounts; and know-your-customer issues and exclusion due to adverse consumer reports with checking account screening agencies. Mistrust of the federal government and privacy concerns could compound those reasons. We also fail to perceive how a CBDC would meet the need for faster payments in a fashion superior to FedNow.

Despite our skepticism regarding the use case for a CBDC, a CBDC does seem to pose fewer risks than crypto and stablecoins. As such, we urge the Treasury and other agencies to continue exploring whether there might be a model that offers tangible benefits and adequately addresses risks. To the extent that distributed ledger technology may ultimately be used for payment services in some fashion, it's important for public models, systems, or principles to be available to serve as counterweights to private models or systems, which present their own unique array of limitations and risks to consumers.

Additionally, we urge Treasury to explore other public payment systems or strategies that may have more potential to enhance or improve financial inclusion for consumers while also paying close attention to fraud risks.⁴

Risks to Consumers, Investors, and Businesses

- (5) **Please identify and describe potential risks to consumers, investors, and businesses that may arise through engagement with digital assets.**

Risks of Cryptocurrencies.

The request for information accurately identifies a number of very real risks to consumers:

Frauds, scams, and losses associated with interacting with illicit counterparties directly. Since the start of 2021, reports to the Federal Trade Commission describe losses of over \$1 billion in payment scams involving crypto – undoubtedly a vast understatement of the amount of actual fraud, as many fraud

² See Comments of National Consumer Law Center to Board of Gov. of the Federal Reserve System re. central bank digital currency (May 20, 2022), <https://bit.ly/CBDC-comment> (“NCLC CBDC Fed comments”).

³ See *id.*

⁴ See [Sept. 2021 comments](#) of 43 groups urging stronger protections for FedNow and more detailed [FedNow comments](#) from National Consumer Law Center, National Community Reinvestment Coalition, and National Consumers League.

losses go unreported.⁵ Crypto accounted for one out of every four dollars of fraud losses reported to the FTC since 2021, more than any other payment method.⁶ Crypto scams are exploding and are likely going to increase. Crypto losses reported to the FTC in 2021 were *sixty times* what they were in 2018,⁷ and even the losses in the first quarter of 2022 were 16% higher than the last quarter of 2021.⁸

The more that crypto spreads, the more fraud will spread. Fraud is rampant today even with funds going through regulated financial institutions. Closer integration of cryptocurrency with traditional bank accounts will make it easier for scammers to quickly move money from one to the other. For example, we recently heard from an attorney representing a consumer because a scammer managed to take control of the consumer's computer, access her bank account, transfer \$100,000 into a newly created Coinbase account fraudulently opened using her identity, and then move the money out. That transaction would be much easier if the scammer did not need to create the Coinbase account and could simply transfer money with access to the bank login alone.

Conversely, there are also severe risks if cryptocurrency enables individuals to transact with counterparties directly, without any institution overseeing the transaction to attempt to ensure its legitimacy. In that case, even the modest protection of our know-your-customer laws and fraud prevention regimes will not be available.

Losses due to theft. Cryptocurrencies are designed with no protection against theft or unauthorized access.

Losses of private keys. People lose or forget passwords all the time. One can only imagine how unacceptable it would be to say that you lose all the money in your bank account if you forget your password, with no method of recovering it.

Losses from the failure/insolvency of wallets, custodians, or other intermediaries. Crypto has no deposit insurance and no other protection if the wallet, custodian, or other intermediary fails, becomes insolvent, or has technical problems that lead to losses. We have already seen examples of the devastating havoc these events can cause.⁹

Disclosures and amount of fees. People do not realize how costly it can be to cash out of crypto into fiat currency, or all the significant risks that crypto entails. No laws beyond the common law and laws against unfair, deceptive, and abusive practices dictate disclosures associated with cryptocurrency, including fee disclosures.

⁵ See Emma Fletcher, FTC, [Data Spotlight: Reports show scammers cashing in on crypto craze](#) (June 3, 2022).

⁶ *Id.*

⁷ *Id.*

⁸ Fraud losses by cryptocurrency reported to the FTC were \$299.1 million in the last quarter of 2021 and \$364.6 million in the first quarter of 2022. See <https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/LossesContactMethods>. Those numbers are vastly understated, as many losses are not reported to the FTC, and most of those reported do not describe the payment methods.

⁹ See, e.g., Sean Stein Smith, Forbes, [Crypto Failures Highlight The Need For Better Accounting Standards](#) (July 17, 2022); Michael P. Regan, Bloomberg Crypto, [Terra Was Too Big to Fail, and It Failed](#) (May 12, 2022).

Authenticity of digital assets, including NFTs. Consumers have little way of verifying if digital assets are authentic, and many are falling for scams.¹⁰

Ability of consumers, investors, and businesses to understand contracts, coding, and protocols.

Consumers have no ability to understand contracts, coding or protocols governing cryptocurrency or to protect themselves from manipulations. They are at the complete mercy of those who design them.

Risks of a CBDC

While a CBDC does not pose all the same risks as cryptocurrencies do, it shares some of them and poses others.¹¹

A CBDC not only seems unlikely to help with financial inclusion, it could actually hurt financial inclusion if it became the de facto preferred payment system while many consumers were shut out of or distrustful of it; or if it deprived banks of the capital used to support low-balance accounts, to provide access to credit, or to engage in community reinvestment.

Other risks with a CBDC include:

- Privacy threats, which cannot be minimized simply by asserting that a CBDC would be privacy protected;
- Misuse of CBDC technology by the government to surveil and control spending by public benefits recipients. Public benefits recipients are already being told how to spend their money,¹² and the broader capacity to monitor and limit spending will be irresistible for some (especially opponents of public benefits) to resist;
- Fraud at greater scale and velocity, with no protection;
- Reduction in access to credit as funds are moved out of the banking system;
- Cost of accounts imposed by financial institution intermediaries needed to access funds held in CBDC;
- Unclear coverage and application of the Electronic Fund Transfer Act (EFTA);
- Unclear application or preemption of other important state and federal consumer protection laws;
- Easier garnishment by debt collectors and the government for debts, with the United States as a “one stop shop” on which to serve garnishment orders. As with many debt collection judgments, garnishments could be for the wrong amount or against the wrong person; and

¹⁰ See, e.g., Ben Kochman, Law360, FBI Warns Fake Crypto Apps Defrauded Investors Out Of \$42M (July 18, 2022); U.S. Attorney’s Office for the Southern District of New York, Press Release, [Manhattan U.S. Attorney Announces Charges Against Leaders Of “OneCoin,” A Multibillion-Dollar Pyramid Scheme Involving The Sale Of A Fraudulent Cryptocurrency](#) (Mar. 8, 2019).

¹¹ For a longer discussion of the risks of a CBDC, see NCLC CBDC Fed Comments, *supra*.

¹² See, e.g., Teresa Wiltz, Pew Charitable Trusts, [Should States Tell Welfare Recipients How to Spend Their Benefits?](#) (April 24, 2015).

- Reduction of community reinvestment activities, with fewer funds held by banks subject to reinvestment obligations.

Impact on the Most Vulnerable

(6) According to the FDIC's 2019 "How America Banks" survey, approximately 94.6 percent (124 million) of U.S. households had at least one bank or credit union account in 2019, while 5.4 percent (7.1 million) of households did not. And roughly 25 percent of U.S. households have a checking or savings account while also using alternative financial services. Can digital assets play a role in increasing these and other underserved Americans' access to safe, affordable, and reliable financial services, and if so, how?

No. As discussed in response to question (3) above, we have not seen any credible explanation for how either cryptocurrencies or a CBDC could increase access to safe, affordable, and reliable financial services.

On the other hand, cryptocurrencies pose a severe threat to the most vulnerable. They are highly volatile and subject to scams and high fees taken from those who can least afford to bear the losses. The "get rich quick" pitch of cryptocurrencies preys on those who lack assets yet cannot afford the risk.

Surveys also suggest that Black Americans and Latinos are more likely to invest in cryptocurrencies.¹³ These communities will also likely bear a disproportionate share of the losses from volatility and scams, further exacerbating inequality and stripping assets from communities that have long been denied the opportunity to build wealth.¹⁴ We simply cannot let this happen.

Thank you for the opportunity to submit these comments. With questions, please contact Lauren Saunders, Associate Director, National Consumer Law Center, [REDACTED]

Yours very truly,

National Consumer Law Center (on behalf of its low-income clients)
Americans for Financial Reform
Center for Responsible Lending
Consumer Action
Consumer Federation of America
Digital Finance Alliance
U.S. PIRG Education Fund

¹³ See, e.g., Terri Bradford, Kansas City Federal Reserve Board, [The Cryptic Nature of Black Consumer Cryptocurrency Ownership](#) (June 1, 20212); Andrew Perrin, Pew Research Center, [16% of Americans say they have ever invested in, traded or used cryptocurrency](#) (Nov. 11, 2021) (18% of Black adults had invested in, traded or used crypto, compared to 13% of white adults).

¹⁴ See, e.g., The Economist, [Why the crypto crash hit black Americans hard](#) (May 20, 2022).