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The Treasury Option: How the US can achieve the financial inclusion benefits of a CBDC now

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ABSTRACT

We propose that the U.S. Treasury Department create "Treasury Accounts" as a means of improving access to financial services for many Americans. These would be digital accounts that would facilitate distribution of federal benefits and provide low cost, no-frills payment services. Treasury could create these accounts under existing statutory authority. In addition, Treasury's substantial experience, dating back several decades, in devising benefit distribution and payment service programs for individuals can serve as the foundation for our proposal. Treasury Accounts could make it easier for those who are underserved by today's banking system to both open and sustain an account. We propose a limit on account size and rollovers to private accounts to minimize disintermediation of bank deposits. As the public debate heats up over whether to create a U.S. central bank digital currency (CBDC), we explain why Treasury is better suited, at least in the short term, to provide retail accounts than the Federal Reserve, and why this proposal would be a faster, easier way to achieve some of the primary objectives of a CBDC.

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CONFLICT OF INTEREST DISCLOSURE

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Introduction

As public debate heats up over whether the United States should create a central bank digital currency (CBDC), there is another option that deserves consideration: Treasury Accounts. The Treasury Department could, relatively quickly, create digital accounts to provide payment services that would be especially valuable to unbanked and underbanked individuals. These accounts might not possess all the technological advances of a full-blown CBDC, but they would be much easier to establish and could be implemented now under existing statutory authority. Importantly, Treasury Accounts could immediately improve access to financial services for the millions of Americans who have limited access to banking services today and also greatly facilitate the distribution of federal benefit programs, like child tax credits, to all Americans. Treasury Accounts are not an alternative to CBDCs but rather a faster, easier way to achieve some of the primary objectives of those who favor creating a CBDC. The creation of Treasury Accounts would represent a concrete step forward in the Treasury Department's efforts "to unlock the unrealized potential of underserved communities," an initiative the Department announced in connection with Secretary Yellen's appointment of the Department's first counselor for racial equity last fall, and would also address the call for "safe, affordable and accessible financial services as a U.S. national interest" in President Biden's executive order on "ensuring responsible innovation in digital assets."[1]

This paper is organized as follows:

In Section I, we discuss why CBDCs are very much on the minds of policy makers, as well as challenges that need to be overcome before the Federal Reserve System (the "Federal Reserve" or the "Fed") could deploy a new digital currency. We also discuss why some believe a CBDC could expand financial inclusion, as well as why it may not be the best way to address this need.

In Section II, we discuss why Treasury Accounts could be a good alternative to address the needs of underserved communities in the immediate future.[2] We explain how the Treasury Department has both the authority and the expertise to develop the program. Over several decades, Treasury has developed multiple financial programs to reach individuals, including in particular the underserved. These programs involve distribution of federal benefits as well as payment services related to those benefits. We believe this demonstrates why Treasury is better suited, at least in the short term, to provide retail accounts than the Federal Reserve.

In Section III, we explain how Treasury Accounts would be implemented. We propose design features that might make them attractive to underserved individuals and address some of the challenges to serving that population effectively. We explain how the program could be implemented using Treasury's financial agent authority to partner with commercial institutions that could provide customer-facing functions and could be designed to minimize possible disintermediation of bank deposits or unfair competition with private institutions. We describe two possible legal structures for creating Treasury Accounts, one building on the existing Direct Express program and the other utilizing Treasury's savings bond authority. We conclude by discussing how Treasury Accounts compare to a CBDC as a vehicle to promote financial access, and how they could generate useful information and insights that might later be incorporated into any CBDC that the nation eventually decides to adopt.

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[1] See A Coordinated Strategy to Advance Racial Equity at the Treasury, Statement of Deputy Secretary of the Treasury Wally Adeyemo (Oct. 24, 2021); Fact Sheet: President Biden to Sign Executive Order on Ensuring Responsible Innovation in Digital Assets (Mar. 9, 2022). See also Executive Order on Ensuring Responsible Development of Digital Assets (Mar. 9, 2022) [hereinafter Biden Executive Order].

[2] We do not wish to imply that Treasury Accounts should displace *other* potential government initiatives to enhance financial inclusion—such as requirements or incentives for banks to implement no-cost or low-cost accounts or to clear checks faster, as well as other initiatives designed to enhance access to digital money. While our focus is on comparisons to CBDCs, and those other ideas are beyond the scope of this paper, suffice to say that we support exploring multiple options given the fact that so many American households are unbanked or underbanked. See *infra*, text at notes 21–22. For a discussion of some of those other options, see Aaron Klein, Opening statement of Aaron Klein at roundtable on America's unbanked and underbanked, Brookings Inst. (Dec. 15, 2021). For Klein's longer paper on the subject, see also Aaron Klein, Can Fintech Improve Health?, Brookings Inst. (Sept. 24 2021) [hereinafter Klein Fintech Paper]. Also important are public-private efforts such as the Bank On initiatives designed to improve the financial stability of unbanked and underbanked individuals through, among other things, access to low-cost, consumer-friendly accounts. See discussion *infra* at note 78.

I. The coming debate over CBDCs

Several forces have pushed CBDCs to the front burner. For one thing, the rapid growth of stablecoins—privately issued digital currencies whose value is pegged to a sovereign currency such as the dollar—has motivated central bankers around the world to launch CBDC development projects, for fear that private digital money would displace sovereign currencies.[3] In addition, several foreign governments, most notably the People's Republic of China, have recently launched CBDC pilot programs, which may someday challenge dollar supremacy and weaken the United States' ability to use financial sanctions to safeguard national interests.[4] More generally, many believe that a well-designed CBDC could help reduce the cost and increase the speed of payments, especially for the retail market and cross-border transactions, such as remittances.[5]

In response to these concerns, a blizzard of reports from the Bank of International Settlements and other policy analysts has appeared over the past two years,[6] and the discussion is likely to intensify in the United States in the coming months. The Federal Reserve Board in January of 2022 released its own white paper on the subject and a second, more technical report detailing what is called Project Hamilton, a collaboration between the Boston Federal Reserve Bank and MIT to develop a hypothetical CBDC platform, was just released.[7] President Biden's new executive order on digital assets also calls for "plac[ing] the highest urgency on research and development efforts into the potential design and deployment options of a United States CBDC."[8] This heightened focus on CBDCs does not mean there will be a unified view on how best to move forward. Over the summer of 2021, three Federal Reserve Board governors gave speeches offering dramatically different views on the desirability of creating a CBDC for the United States. While Governor Brainard was quite supportive of the initiative,[9] Governors Quarles (who left the Federal Reserve at the end of 2021) and Waller raised serious questions about whether a CBDC would serve any meaningful public purpose, with the latter denominating the effort as "a solution in search of a problem."[10] Meanwhile,

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[3] See President's Working Group on Financial Markets, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency, Report on Stablecoins (Nov. 1, 2021) [hereinafter PWG Report]; Timothy G. Massad, Facebook's Libra 2.0: Why you might like it even if we can't trust Facebook (June 2020) (Brookings Economic Studies).

[4] See Jake Laband, *Existential Threat or Digital Yawn: Evaluating China's Central Bank Digital Currency*, 63 HARV. INT'L L.J. __ (forthcoming 2022).

[5] See Fumiko Hayashi & William R. Keeton, *Measuring the Costs of Retail Payment Methods*, FEDERAL RESERVE BANK OF KANSAS CITY ECON. REV. 37, 38 (2nd Quarter 2012) ("Estimates of the aggregate costs of making retail payments have . . . varied across the studies, from 0.5 percent to 0.9 percent of GDP.").

[6] See Bank for International Settlements, Central Bank Digital Currencies for Cross-Border Payments: Report to the G20 (July 2021); Bank for International Settlements, Central Bank Digital Currencies: Foundational Principles and Core Features (Oct. 2020). See also Sarah Allen et al., Design Choices for Central Bank Digital Currency: Policy and Technical Considerations (July 23, 2020) (Brookings Global Economy & Development Workshop Paper No. 140); Francesca Carapella & Jean Flemming, Central Bank Digital Currency: A Literature Review, FEDS NOTES (Nov. 9, 2020); Patrycja Beniak, Central Bank Digital Currency and Monetary Policy: A Literature Review (Oct. 22, 2019) (Munich Personal RePEc Archive Paper No. 96663).

[7] Board of Governors of the Federal Reserve System, Money and Payments: The U.S. Dollar in the Age of Digital Transformation (Jan. 2022) [hereinafter Fed white paper] and Federal Reserve Bank of Boston & MIT Digital Currency Initiative, Project Hamilton Phase 1: A High Performance Payment Processing System Designed for Central Bank Digital Currencies (Feb. 3, 2022) [hereinafter Project Hamilton Paper]. See also Congressional Research Service, Central Bank Digital Currencies: Policy Issues (Updated Feb. 7, 2022) and Testimony of Dr. Neha Narula Before the Task Force on Financial Technology of the House Financial Services Committee (June 15, 2021) [hereinafter Narula 2021 Testimony].

[8] See Biden Executive Order, *supra*, note 1.

[9] See Private Money and Central Bank Money as Payments Go Digital: an Update on CBDCs: Remarks of Governor Lael Brainard at the Consensus by CoinDesk 2021 Conference (May 24, 2021).

[10] See CBDC – A Solution in Search of a Problem?: Remarks of Governor Christopher J. Waller at the American Enterprise Institute (Aug 5, 2021); Parachute Pants and Central Bank Money: Remarks by Governor Randal K. Quarles at the 113th Annual Utah Bankers Association Convention (June 28, 2021) [hereinafter Remarks of Governor Randal K. Quarles]. Governor Michele Bowman said last fall that she was "not really sure I understand or see the business case for creating [a CBDC]", though more recently said she has an "open mind" on the issue. See "Fed's Bowman doesn't see case for U.S. central bank digital currency," Reuters, (November 8, 2021) and "Fed Governor Michele Bowman is 'trying to keep an open mind' on U.S. CBDC," Seeking Alpha, (February 9, 2022).

members of Congress from both sides of the aisle are weighing in.[11] Legislation has been introduced by some to require the Fed to create CBDCs, and by others to prohibit it from doing so.[12]

A. Technical and legislative challenges

The path forward with a CBDC for the United States is likely to be fraught. As the Fed's white paper made clear, exactly how a new U.S. digital currency should be structured is complicated and contested. Whether designers should incorporate distributed ledger technologies of the sort employed in many cryptocurrencies is a possibility but so are more familiar centralized ledgers.[13] Also uncertain is the extent to which a CBDC would pull substantial amounts of deposits out of commercial banks and relocate them onto the balance sheet of the Federal Reserve.[14] There is debate as to whether such a transformation would reduce the supply of commercial credit or simply force banks to compete more for funding.[15] Also in dispute is whether a CBDC would diminish the ability of the Fed to control monetary policy or provide it with new tools to do so—such as the ability to implement "helicopter drops" of money by crediting individual digital accounts. There is also disagreement as to whether a CBDC would enhance or undermine financial stability.[16] The challenge of protecting individual privacy will likely be one of the thorniest issues, requiring not only a balancing of privacy rights with the "transparency necessary to deter criminal activity," as the Fed report notes,[17] but also making sure that a CBDC would not be used to collect data or screen transactions for improper purposes.[18] And there are also to be worked out a host of other technical issues related to settlement finality and dispute resolution.[19]

Partisan politics may also come into play. As articulated in the Fed's white paper, "[t]he Federal Reserve does not intend to proceed with issuance of a CBDC without clear support from the executive branch and from Congress, ideally in the form of a specific authorizing law."[20] Exactly how and when Congress would grant such authority is a subject of considerable uncertainty. Because the introduction of a CBDC could threaten to disrupt financial market incumbents as well as emerging private technologies, the politics of CBDC legislation will almost certainly be challenging, and barring some unanticipated external event, adoption of enabling legislation in the short term seems unlikely.

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[11] For a flavor of reactions to the release of the Fed's white paper on CBDCs, compare Press Release of Representative Maxine Waters (D-CA) (Jan. 21, 2022) ("As the report highlights, a U.S. CBDC has the potential to create significant improvements in financial inclusion, one of my priorities, so we can ensure that the unbanked, low- and moderate-income consumers, and people of color are fully included in our rapidly evolving financial system."), with Press Release of Senator Pat Toomey (R-PA) (Jan. 20, 2022) ("The report . . . rightfully recognizes that the Fed offering retail accounts is not only a terrible idea, but also impermissible by law.").

[12] See S. 3571, 116th Cong. (2020) ("To require [Federal Reserve] member banks to maintain pass-through digital dollar wallets for certain persons, and for other purposes."); H.R. 6415, 117th Cong. § 1 (2022) ("Except as specifically authorized under this Act, a Federal reserve bank may not . . . issue a central bank digital currency directly to an individual.").

[13] See Project Hamilton Paper, *supra* note 7, at 5 and Narula 2021 Testimony, *supra* note 7, at 6 (outlining a range of CBDC design options).

[14] See Fed white paper, *supra* note 7, at 17.

[15] For an example of the argument that a CBDC would reduce the supply of commercial credit, see the Bank Policy Institute (BPI), an advocacy group representing major banks, and in particular Greg Baer and Bill Nelson, A Costly Misunderstanding About CBDC, (December 17, 2021). For a response to the Fed White Paper arguing that a CBDC would increase competitive pressures on private banks and increase government revenues, see Lev Menand & Morgan Ricks, A U.S. Digital Dollar Should Serve the Public, Not Banks, BLOOMBERG OPINION (Feb. 1, 2022).

[16] Id. at 7, 17–18. For the BPI view, see Greg Baer, Central Bank Digital Currencies: Costs, Benefits and Major Implications for the U.S. Economic System (Apr. 7, 2021).

[17] Fed white paper, *supra* note 7, at 13.

[18] Id.

[19] See Jess Cheng, Angela N Lawson, and Paul Wong, *Preconditions for a General-Purpose Central Bank Digital Currency*, FEDS NOTES (Feb. 24, 2021). See also Jess Cheng, *How to Build a Stablecoin: Certainty, Finality, and Stability Through Commercial Law Principles*, 17 BERK. BUS. L.J. 320 (2020).

[20] Fed white paper, *supra* note 7, at 3; *see also id.* at 13 (stating that "[t]he Federal Reserve Act does not authorize direct Federal Reserve accounts for individuals," as a FedAccounts program would require). By characterizing authorizing legislation as "ideal," the Fed white paper leaves open the possibility of moving forward with a CBDC with some other form of clear support from the executive branch and Congress, but finding such clarity in the views of the political branches is likely to prove difficult as well.

B. CBDCs and the under- and unbanked

A further complexity for the emerging debate over CBDCs is the extent to which the initiative should be envisioned as a mechanism to reach the unbanked and underbanked and expand access to key financial services, or whether CBDC design should be driven primarily by the need to modernize our financial infrastructure and meet international challenges. The financial inclusion need is significant. According to the FDIC, 5.4% of American households are unbanked and roughly three times as many more underbanked—the latter term meaning those who have a bank account but use nonbank services like check cashing, money orders, payday lenders and international remittance services.[21] Moreover, the unbanked as a percentage of the population is greater in the United States than in all other G7 countries, and far more concentrated among those at the lower end of the income distribution.[22] Despite considerable efforts from consumer advocates over decades, neither regulatory authorities nor private initiatives have succeeded in providing universal access to financial services in the United States.

A CBDC could potentially improve access to financial services in a couple of ways. Simply making payments faster and cheaper as noted earlier (as well as reducing the cost of remittances) would help: for example, those who use check cashing services even though they have a bank account may do so because they cannot afford to wait for a bank to clear a check.[23] However, the financial inclusion argument for a CBDC usually focuses on the possibility of the Fed directly providing financial services to individuals. One prominent CBDC proposal known as FedAccounts would create a system of retail accounts at the Federal Reserve that would provide all Americans with the opportunity to have a bank account at no cost.[24] The FedAccounts proposal envisions a relatively simple form of CBDC, utilizing a simple general ledger technology built off of the Fed's current system of master accounts for depository institutions, rather than the more sophisticated blockchain approaches that others favor.[25] The proposal also contemplates that these FedAccounts could be used to distribute emergency federal benefits on an expedited basis.[26] Several progressive members of Congress have expressed support for FedAccounts precisely because of its emphasis on reaching underserved communities.[27]

But while the need to address financial inclusion is great, some question whether a Fed-administered CBDC is the best way to reach retail markets. To begin with, the Federal Reserve Board traditionally interacts with commercial banks and has precious little experience, at least in modern times, with retail customers, and the ability of the Fed to engage effectively with underserved communities is an open question.[28] Some have questioned whether the Fed would be any better at reaching underserved populations than the many financial services firms that are currently attempting to serve that market.[29] Surveys suggest that, in addition to cost, one of the primary reasons individuals remain unbanked is a lack of trust in commercial banks, and one might reasonably question whether programs implemented through Federal Reserve Banks would do better on this dimension.[30] Of course, the Fed has the financial wherewithal to subsidize banking services for underserved communities and perhaps that would make a difference. The Federal Reserve Bank of Cleveland has been tasked with studying the extent to which a

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[21] Federal Deposit Insurance Corporation, How America Banks: Household Use of Banking and Financial Services, 2019, at 1 & Appendix D1 [hereinafter FDIC 2019 Study].

[22] See Christian Catalini and Andrew Lilley, Why is the United States Lagging Behind in Payments? (July 27, 2021).

[23] See *infra*, text at note 80.

[24] John Crawford, Lev Menand & Morgan Ricks, *FedAccounts: Digital Dollars*, 89 GEO. WASH. L. REV. 113 (2021).

[25] Id. at 153 ("[T]here is no compelling basis for basing CBDC on distributed ledger technology.").

[26] Id. at 129-30 & n.79.

[27] Press coverage of and political support for the FedAccounts proposal is summarized id. at 116-17 n.11.

[28] See Fed white paper, *supra* note 7, at 16 ("Further study would be helpful to assess the potential for CBDC to expand financial inclusion . . . ."). See also Remarks of Governor Randal K. Quarles, supra note 10, at 10 ("I am far from convinced that a CBDC is the best, or even an effective, method to increase financial inclusion."). See also Narula 2021 Testimony, *supra* note 7, at 8 ("It is to be determined if the FedAccounts proposal would promote innovation in payments beyond improving competition.").

[29] Those skeptical of the capacity of CBDCs to increase financial inclusion often offer private sector initiatives as more promising. See, e.g., Remarks of Governor Christopher J. Waller, *supra* note 10, at 3 ("It is implausible to me that developing a CBDC is the simplest, least costly way to reach . . . [unbanked and underbanked] households. Instead, we could promote financial inclusion more efficiently by, for example, encouraging widespread use of low-cost commercial bank accounts through the Cities for Financial Empowerment *Bank On* project.").

[30] See FDIC 2019 Study, *supra* note 21, at 3.

CBDC could be designed to improve financial inclusion, while the Federal Reserve Bank of Atlanta is studying the value of digital payments for cash-based and vulnerable populations.[31]

Some also worry that adding an explicit mandate to provide retail banking, particularly for underserved communities, might draw the Fed further into politically charged waters and compromise its independence from political control, which has been a critical feature of institutional design.[32] Others would say that various actions, in particular the Fed's interventions in the 2008 financial crisis and the COVID-19 pandemic—even if necessary to prevent financial system deterioration—already blurred the line between traditional monetary policy objectives and fiscal policy. They might also add that the Fed's support for financial markets in those interventions benefited those with financial assets more than those without; adding financial inclusion as a policy goal of the Fed would simply create a more balanced "central banking for all" approach, under this view.

In all events, it is clear that the development and design of a CBDC is likely to take time.[33] The challenge of improving financial services for the underserved is urgent, and warrants pursuing promising governmental initiatives now, particularly one that can be developed now under existing statutory authority.

II. Treasury has the authority and experience to create Treasury Accounts

Absent from public policy debate so far has been serious consideration of a much more attractive and pragmatic approach for reaching the underserved: Treasury Accounts.[34] The Treasury Department could create a system of retail payment accounts for individuals, accounts that could be used to receive deposits and make payments even for those without traditional bank accounts. Treasury Accounts would offer the kind of low-cost, no-frills bank services that have been found to be necessary to bring the underserved into the financial system.[35]

In this section, we explain how the Treasury Department has both the authority and the experience to implement a program of this sort. Over several decades, the Treasury Department has devised multiple financial programs designed to reach individuals and households, particularly the financially vulnerable and minority communities who are more likely to be unbanked or underbanked. These programs include not only efforts to distribute federal benefits to low-income communities but also to attach payment services to those benefits. As a result, the Department is better suited to the job of providing retail accounts than

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[31] See Fed white paper, *supra* note 7, at 24.

[32] See Remarks of Governor Randal K. Quarles, *supra* note 10, at 13 (noting the "risk of politicization of the Fed's mandate" that a CBDC could pose); Remarks of Governor Christopher J. Waller, *supra* note 10, at 5 ("[C]urrent congressionally mandated division of functions between the Federal Reserve and commercial banks reflects an understanding that, in general, the government should compete with the private sector only to address market failures."). For a prominent articulation of this sentiment, see PAUL TUCKER, THE POLITICAL ECONOMY OF CENTRAL BANKING IN THE DIGITAL AGE (2017).

[33] While we could see expanded use of private stablecoins well before then, that timing is uncertain also, as is the degree to which stablecoins might improve financial inclusion. Private stablecoins tied to the dollar are used extensively in the crypto sector, but their use beyond that sector has been limited by the lack of regulatory clarity. As mentioned *supra* note 3, the President's Working Group on Financial Markets recently issued a report on stablecoins that highlights the risks but acknowledges that they could "support faster, more efficient, and more inclusive payments options." PWG Report at 1. The report calls for new legislation to create a regulatory framework. On the potential for stablecoins to improve financial inclusion through faster, more efficient payments, as well as the regulatory uncertainty concerning their expanded use, see Timothy Massad, Regulating Stablecoins Isn't Just About Avoiding Systemic Risk (Oct. 5, 2021) (The Brookings Institution); Howell E. Jackson & Morgan Ricks, Locating Stablecoins within the Regulatory Perimeter (Aug. 5, 2021) (HLS Forum on Corporate Governance); and Catalini & Lilley, *supra* note 22.

[34] One noteworthy exception to this claim is the work of Cornell Law Professor Robert Hockett, who has written extensively about new kinds of digital dollars issued at various levels of government. See, e.g., Robert Hockett, *Digital Greenbacks: A Sequenced 'Treasury Direct' and 'Fed Wallet' Plan for the Democratic Digital Dollar*, 25 J. TECH L. & POLICY (2021); Robert Hockett, *The Democratic Digital Dollar: A Digital Savings & Payments Platform for Fully Inclusive State, Local, and National Money & Banking Systems*, 10 HARV. BUS. L. REV. 1 (2020); Robert Hockett, The Democratic Digital Dollar: A 'Treasury Direct' Option, Just Money Blog (Mar. 25, 2020).

[35] See *supra* note 2.

the Federal Reserve. Also unlike the Fed, Treasury is not an independent agency and routinely takes on government responsibilities that reflect social policy priorities.

We begin by discussing the most recent example of Treasury's experience—its distribution of COVID-19 relief payments. Despite delays and problems in getting payments out, especially in the first round, the scale of the programs and the improvements in distribution over time illustrate that the Department has the implementation capabilities for a program like this. We then turn to Treasury's longstanding experience in the development of systems for electronic payments of federal benefits. Most notable in this regard is the Direct Express program, a prepaid card onto which federal benefits can be loaded, which could serve as a foundation for a Treasury Accounts program. We also discuss Treasury's savings bond authority and experience, including the TreasuryDirect program which provides savings instruments for individuals, as well as the myRA initiative. While the latter did not succeed as envisioned, the creation of the myRA program shows how Treasury's savings bond authority could be used to create an account into which individuals can deposit their own funds and make withdrawals for any reason. Taken together, these programs contain all the essential components for creation of Treasury Accounts, illustrating that Treasury has both the experience and the necessary statutory authority to do so.

A. Pandemic relief efforts

The unprecedented demands of the COVID-19 pandemic forced the federal government to face the extraordinary challenge of distributing newly enacted federal benefits to a wide range of recipients, including financially vulnerable and underserved communities. While there were delays and problems in those benefit distribution efforts over the past two years,[36] what is striking to us is the magnitude of those distributions and the creativity and speed with which the federal government, under the leadership of the Treasury Department, has upped its game with each passing wave of legislation.[37] Given the economic significance of the COVID-19 benefits, considerable amount of thought has been given, both within the government and in policy circles, to improving benefit distribution programs for the future.[38] This experience provides a substantial foundation for a more broadly based and permanent system of Treasury Accounts.

The details of the COVID-19 relief efforts are beyond the scope of this paper, but two benefit programs are of particular interest. The first is the trio of Economic Impact Payments (EIPs) authorized under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of March 2020, the Consolidated Appropriations Act of December 2020, and the American Rescue Plan Act of March 2021. The second is the creation of a new system of Advanced Child Tax Credits (AdvCTC), payable at the option of eligible recipients on a monthly basis and authorized under the American Rescue Plan Act.

The scale of these COVID-19 payments was staggering. According to the Government Accountability Office (GAO), through May of 2021, EIPs resulted in the disbursal of more than $820 billion across over 488 million separate payments.[39] According to a December 2021 Treasury Department press release, some $93 billion dollars had been distributed in AdvCTC payments to approximately 61 million eligible children.[40] Both programs were administered by the Internal Revenue Service, which is a bureau

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[36] For an overview of Child Tax Credit payments through the end of 2021, see [Natasha Pilkauskas & Katherine Michelmore, Families with Low Incomes and the Child Tax Credit: Who is Still Missing Out, University of Michigan Poverty Solutions (Dec. 2021)]. This study found that "[a]lthough a total of 32% of families with very low incomes did not receive the October CTC payment, 4% had filed for the credit but were awaiting a payment, and another 7% reported not receiving the credit for 'valid' reasons, such as opting to get the lump sum payment or another parent receiving the credit. Thus, about 1 in 5 eligible parents (21%) did not receive the October CTC payment for other reasons." *Id.* at 1. The data reported in this study was obtained through Propel, a private fintech firm that has developed apps to facilitate the distribution of social welfare programs, such as SNAP, to eligible beneficiaries.

[37] See text infra at notes 42-43.

[38] See GAO, COVID-19: Continued Attention Needed to Enhance Federal Preparedness, Response, Service Delivery, and Program Integrity (July 2021) (GAO-21-551); Murphy, *supra* note 37; Jack Landry & Stephen Nuñez, Assessing Non-filer Rates & Poverty Impacts for the American Rescue Plan Act's Expanded CTC (Sept. 8, 2021) (Jain Family Institute).

[39] See GAO, *supra* note 38, at 6.

[40] See Treasury Department Press Release: Treasury and IRS Disburse Sixth Monthly Child Tax Credit to Families of 61 Million Children (Dec. 15, 2021).

within the Treasury Department. Both programs contemplated the payment of benefits to millions of individuals and families that the IRS did not already have in its computer systems, either because the beneficiaries did not file tax returns, filed through a tax preparation service, or otherwise are individuals for which the federal government lacks correct contact information, a group sometimes denominated "non-filers." In an analysis focusing on the first round of EIPs, Dan Murphy has estimated that some 26 million potential EIPs recipients were non-filers (or over 16 percent of all recipients).[41] On the AdvCTC side, determining the number of children in non-filing households has been particularly challenging, but one study estimated in August of 2021 that 6.4 million children would not receive the AdvCTC because the IRS lacked sufficient information.[42]

There were significant problems in getting benefits out, especially in the first EIPs round, but substantial improvements were made over time. Dan Murphy of the Financial Health Network estimated that only 45 percent of CARES Act EIPs were distributed in the first wave of payments, compared to 77% in the first wave under the Consolidated Appropriations Act. Similarly, while it took almost four months to distribute 90% of CARES Act EIPs, under the Consolidated Appropriations Act it took less than three weeks.[43] Treasury also increased the percentage receiving payment by direct deposit over time.[44]

Telling about these COVID-19 payments is the institutional muscle that the Treasury Department, and in particular the IRS, developed to reach these very large groups of non-filers and the groundwork that has been laid for refining these capabilities going forward. While the Federal Reserve has an extraordinarily skilled staff and many areas of expertise, the Board has never been called upon to take on the kinds of challenges that the Treasury Department has overcome to deliver COVID-19 relief. Among other things, to reach the millions of non-filers, Treasury staff helped integrate potential beneficiary data sets from a number of other federal agencies, including the Social Security Administration and Veterans Affairs.[45] Within weeks of the passage of the CARES Act in the Spring of 2020, the IRS established an online tool for recipients to claim first EIPs and later the AdvCTC.[46] Then, in September 2021, the Treasury Department joined with White House personnel to enlist the services of a non-profit group, Code for America, to launch a new "mobile-friendly and bilingual Child Tax Credit (CTC) sign-up tool."[47]

The Treasury Department's work on the EIPs and the AdvCTC has attracted considerable attention and a range of proposals have been advanced for how the government's process for reaching vulnerable communities might be enhanced. Public interest groups have stressed the importance of better collaborations with state and local authorities,[48] and others have suggested that the Department could reach more non-filers if its efforts were better integrated with the Supplemental Nutrition Assistance Program (SNAP) and the Temporary Assistance for Needy Families program (TANF).[49] Others have recommended that the Department establish a permanent capacity to deliver federal benefits more quickly in future emergencies, and others criticize the Department's continued reliance on the delivery of physical checks to many beneficiaries, notwithstanding the country's multi-decade effort to move towards electronic payment systems.[50] Many of these recommendations are fully consistent with the proposal we advance in this paper and indicate that there is considerable thinking underway that the Treasury Department might leverage to help with the establishment of a vibrant and effective Treasury Account program.

Our larger point here is not that the Treasury Department has been perfect in getting COVID-19 relief to vulnerable populations. Rather, the key takeaway is that coupled with the experiences described in the rest of this section, the Treasury Department has decades of experience working on these kinds of challenges and already has numerous work streams in place to improve upon its existing capacities. While

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[41] See Murphy, *supra* note 37, at 8.
[42] See Landry & Nunez, *supra* note 38.
[43] Dan Murphy, Economic Impact Payments: Uses, Payment Methods, and Costs to Recipients 2 (Feb. 2021) (Economics Study at Brookings, *supra* note 37 at 2, 10, fig. 4.
[44] See Treasury Department Press Release: Treasury & IRS Release State-by-State Data on Third Round of Economic Impact Payments Totaling Nearly $390 Billion (June 29, 2021).
[45] See Murphy, *supra* note 37, fig. 1.
[46] See Get My Payment, Internal Revenue Service. See also Murphy, *supra* note 37, at 21.
[47] Treasury Department Readout (Sept. 1, 2021) (the tool is located here).
[48] See Kris Cox et al., State and Local Child Tax Credit Outreach Needed to Help Lift Hardest-to-Reach Children Out of Poverty (Aug. 5, 2021) (Center on Budget and Policy Priorities).
[49] See Landry & Nunez, *supra* note 38 at 3.
[50] See Murphy, *supra* note 37, at 23–24.

one might hope that that the Fed could develop similar or better expertise over time, Treasury is the part of the federal government that has been doing this hard work since the Clinton administration.

B. Treasury electronic payments and Direct Express

While the recent distribution of pandemic relief benefits is the largest example by size, Treasury has been developing electronic payment capabilities over the last few decades. Back in the 1990's, Congress mandated that Treasury move to electronic payments for delivering various forms of federal benefits to individuals and households.[51] The task was fairly straightforward for recipients with bank accounts, but Treasury also had to find a way to get benefits to the unbanked. Initially, the Department experimented with Electronic Transfer Accounts (ETA), no-frill accounts to be established at financial institutions under Treasury Department guidelines and designed for federal beneficiaries who did not already have bank accounts.[52] According to a GAO study in 2002, the ETA program had very limited take-up: "Since initiation of the program in 1999, 36,000 ETAs have been opened, representing fewer than 1 percent of unbanked beneficiaries . . . ."[53] A few years later, in 2008, Treasury's Bureau of Fiscal Services shifted direction and introduced an alternative to ETAs: the Direct Express card, a prepaid card onto which federal benefits can be loaded. In 2012 congressional testimony, Richard Gregg, Fiscal Assistant Secretary of the Treasury Department, reported the progress that the Department had made in a few years:

> The Direct Express card has significantly benefited the unbanked population. For the first time, Treasury is able to offer the unbanked an option that is convenient, safe, and inexpensive. The Direct Express card provides excellent consumer protections, and most fees can be avoided by using the card wisely. The card enables cardholders to make purchases, pay bills, and get cash at thousands of ATMs and retail locations without having to pay a check-cashing fee, which can range from 2 percent to 6 percent for the check amount. As of June 2012, more than 3.6 million payment recipients have signed up for a Direct Express card, approximately two-thirds of whom did not have a traditional bank account. According to a June 2012 survey, 95 percent of individuals who use Direct Express cards to receive their monthly Social Security benefits are satisfied with the card.[54]

Unlike the earlier ETA program, which was dependent on persuading banks to sign up for the program and prioritize the initiative, the Direct Express program is run through a single fiscal agent that reports to Treasury. Comerica Bank was selected as the agent through a competitive process in 2014 and reappointed in early 2020.[55] As of 2019, Direct Express had more than 4.5 million open accounts, with more than 3.4 million of those accounts having at least one deposit and transaction each month.[56] At that time, more than a quarter million Direct Express cards were issued each month. Like any government program, Direct Express has been subject to routine oversight and recommendations for operational improvement,[57] but the program is widely considered to be a successful Treasury Department initiative. Indeed, Professor

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[51] *See* Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321; *see also* Michael S. Barr, *Banking the Poor*, 21 YALE J. REG. 121, 185 (2004).

[52] See GAO Report on Electronic Transfers: Use by Federal Payment Recipients Has Increased but Obstacles to Greater Participation Remain 1 (Sept. 2002) (GAO-02-913) [hereinafter GAO Report on Electronic Transfers]. For a helpful and contemporaneous overview of the ETA program and how it could have been expanded, see Barr, *supra* note 51, at 176, 185-87.

[53] GAO Report on Electronic Transfers, *supra* note 52, at 3.

[54] Testimony of Richard Gregg, Fiscal Assistant Secretary, Department of the Treasury, Hearings on the Direct Deposit of Social Security Benefits Before the Subcommittee on Social Security of House Committee on Ways and Means 8 (Sept. 12, 2012).

[55] See Press Release: Treasury's Bureau of the Fiscal Service Selects Comerica Bank to Continue Prepaid Debit Card for Unbanked, Bureau of the Fiscal Service (Jan. 7, 2020).

[56] See Direct Express® Debit Card Program: Financial Agent Selection Process Questions and Answers at 1-2 (updated May 22, 2019). By way of comparison, the FDIC estimated that 7.1 million American households were unbanked in 2019. See FDIC 2019 Study, *supra* note 21, at 1.

[57] For a recent overview of reports by the Treasury Department's Office of Inspector General on Direct Express and the Department's responses thereto, see OIG Audit Report No. 20-028 (Mar. 2, 2020). See generally GAO Report on Revenue Collections and Payments: Treasury Has Used Financial Agents in Evolving Ways But Could Improve Transparency 13 (Jan. 2017) (GAO-17-1760) [hereinafter GAO 2017 Report on Financial Agents].

Prasad Krishnamurthy of Berkeley School of Law recently proposed that the program be expanded to allow Direct Express cardholders to deposit their own funds onto Direct Express cards, a feature not currently offered but a way in which the program could be expanded to serve the unbanked and underbanked.[58] We suggest that Treasury Accounts could be created in a similar manner in Part III.

For our purposes, the key point about the Direct Express program is that its success demonstrates that the Treasury Department has the proven capacity to establish and oversee a large-scale payments program capable of reaching millions of individuals, many of them unbanked and underserved by the financial services industry. By utilizing its statutory authority to appoint financial agents,[59] the Treasury Department has partnered with a private firm—Comerica Bank—to administer the program for retail clients in an efficient manner and with sustained consumer satisfaction.

C. TreasuryDirect and savings bonds

Finally, we turn to the Treasury Department's use of its federal debt issuance authority to create and maintain retail accounts for individuals. Treasury has enabled individuals to buy and hold Treasury securities and savings bonds for many years through its TreasuryDirect program, which, like Direct Express, illustrates its capacity to engage with the retail market. In addition, it used its savings bond authority to create an innovative retirement savings account in the myRA initiative. Although that program was ultimately not successful, its design shows that Treasury has the authority to create the type of account contemplated by our proposal—one into which individuals could deposit their own funds and make withdrawals for payments.

While the Department's financing operations are most commonly associated with the management of the $30 trillion dollars of gross public debt outstanding, which is overwhelmingly funded in public capital markets,[60] Treasury also has many years of experience issuing debt directly to individuals, starting in the 1930's through the sale of certificated savings bonds and more recently through TreasuryDirect, a website maintained by Treasury's Bureau of the Fiscal Services that allows individuals to purchase marketable Treasury securities and paperless savings bonds. As of the end of January 2022, TreasuryDirect reported over $46 billion in retail debt outstanding, roughly evenly divided between marketable securities and savings bonds.[61] By comparison, retail funding of that magnitude in the commercial banking sector would place the TreasuryDirect program in the top decile of U.S. depository institutions. [62]

Historically, the Treasury Department's retail financing program has served investors of modest means and has been "designed to be accessible even to inexperienced investors"[63] and at a time was "universally available."[64] In recent years, consumer groups have lobbied for the Department to update the TreasuryDirect website and to more actively promote the savings bonds as a savings vehicle for vulnerable populations.[65] Particularly prominent here have been efforts to encourage low-income households to allocate a portion of tax refunds—a common byproduct of earned-income tax credits—to purchase savings

[58] See Prasad Krishnamurthy, Stimulus for All, Hill (May 14, 2021). See also Prasad Krishnamurthy & Tucker Cochenour, An Economic Case for Public Banking (Feb. 7, 2022) (offering a more complete description of how Direct Express could be expanded into a universal bank account program).

[59] This statutory authority is discussed in more detail below. See *infra*, text at notes 71-72.

[60] See Debt to the Penny, Fiscal Data (last updated Feb. 18, 2022).

[61] For an overview of federal retail debt outstanding, see https://www.treasurydirect.gov/govt/reports/pd/pd.htm.

[62] According to the Federal Financial Institutions Examination Council's 2020 Annual Report, there were over ten thousand federal depository institutions in the United States. Federal Financial Institutions Examination Council, Annual Report 2020 at 35 (2021). The funding structure of TreasuryDirect as of year-end 2021 would rank it among the top fifty banking organizations, which represent the largest depository institutions. *See* List of Largest Banks in the United States, Wikipedia (last visited Feb. 21, 2022); Securities Issued in Treasury Direct, Treasury Direct (last visited Feb. 21, 2022).

[63] See Executive Order 13,968 (Dec. 18, 2020) (ordering a Treasury study on the redemption of matured but unredeemed paper savings bonds). See also Bureau of the Fiscal Service, Report on the Redemption of Savings Bonds (June 17, 2021) (providing required study and reporting on ongoing efforts to redeem some $29 billion in matured but unredeemed paper savings bonds, which are not included in the TreasuryDirect outstandings discussed in the text).

[64] See Commonwealth, Increasing Access to U.S. Savings Bonds: Recommendations for Innovation 2 (2016) (noting that savings were once available through banks and credit unions as well as payroll deductions by many employers).

[65] See, e.g., id. at 3–5 (recommending the modernizing of TreasuryDirect to improve access and allow for interfaces with mobile devices).

bonds as emergency reserves, and the IRS has adapted Form 8888 to facilitate such allocations into TreasuryDirect accounts. In a 2019 study of several pilot programs in this area, the Consumer Financial Protection Bureau (CFPB) voiced support for this approach, concluding, "[t]ax time represents a unique opportunity, especially for the 4 in 10 adults who would have difficulty covering [a] $400 expense, to take an important step by saving some or all of their tax refund. Setting aside a portion of the tax refund can provide a consumer with a buffer to weather unexpected expenses that may occur later in the year."[66] While the TreasuryDirect program in its current form has been appropriately criticized as cumbersome and old fashioned, the existence of the program is another example of Treasury's capacity to engage with the retail market.[67]

The Treasury Department also relied on its statutory authorities to issue savings bonds to design the myRA program, the Obama administration initiative that was intended to help low and middle-income earners who did not have access to a 401(k) or pension at work to start saving for retirement. Its design offers a valuable example of the fact that Treasury has the legal authority to create the type of financial account for individuals contemplated by our proposal.

The myRA program created a new class of savings bonds to underlie an account into which individuals could deposit funds and make withdrawals. It was designed to be a low-cost way for participating employers to make tax-advantaged retirement savings available to their employees.[68] Anyone working for a participating employer could open a myRA account as long as the individual earned less than $131,000 a year (or $193,000 for married couples filing jointly). As myRAs were structured as Roth-IRAs, contributions were made with after-tax dollars from payroll deductions, and earnings on myRA accounts were exempt from taxation. Withdrawals from myRAs were permitted at any time, tax free and without penalty. Annual contributions to myRAs were subject to the same annual contribution limits as Roth IRAs but also had an additional cap of $15,000 on account balances, at which point it was contemplated that myRAs would be transferred into private Roth-IRA accounts. In other words, the myRA program was designed to be a starter retirement saving account and not one that would compete with private sector offerings.

For our purposes, the myRA is an important precedent on three dimensions.

First, the myRA program demonstrates that the Treasury Department has statutory authority to create a new kind of savings bond that could serve as a vehicle for the creation of Treasury Accounts.[69] The myRA security was unique in that it permitted investors both to contribute additional funds (through payroll deductions and subject to applicable limits) as well as to withdraw funds for any reason. In effect, the myRA securities approximated a special purpose account with the Treasury Department, and the securities were characterized in Treasury Department documentation as "contracts between the Treasury

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[66] Consumer Financial Protection Bureau, Tax Time: An Opportunity to Start Small and Save Up 2 (Oct. 2019).

[67] We also note there are outstanding proposals for updating the program under current statutory authority. See Commonwealth, Increasing Access to U.S. Savings Bonds: Recommendations for Bond Innovations (Dec. 9, 2016).

[68] The description in this paragraph is drawn from a document titled "myRA: My Retirement Account" prepared by the Treasury Department at the time the program was launched. See also "Starter" Savings Accounts (myRAs), RIA Pension Analysis ¶ 35,261 (2021).

[69] The authority used to create savings bonds underlying myRA accounts was 31 U.S.C. § 3105 ("[T]he Secretary of the Treasury may issue savings bonds and savings certificates of the United States Government and may buy, redeem, and make refunds . . . ."). See Final Rule on Regulations Governing Retirement Savings Bonds, 79 Fed. Reg. 74,023 (Dec. 15, 2014). The program was established pursuant to a Presidential Memorandum for the Secretary of the Treasury (Jan. 29, 2014), which included the following directions to the Secretary with respect to security design:

> In developing this security, you shall ensure that it:
>
> (i) protects the principal contributed while earning interest at a rate based on yields on outstanding Treasury securities;
>
> (ii) offers savers the flexibility to take money out if they have an emergency and keep the same Treasury security if they change jobs; and
>
> (iii) is designed to help savers start on a path to long-term saving and serve as a stepping stone to the broader array of retirement products available in today's marketplace.

As implemented, the myRA security "earn[ed[interest at the same annual percentage rate as securities issued to the Government Securities Investment Fund (G Fund) in the Thrift Savings Plan for federal employees." 79 Fed. Reg. at 74,024 (codified at 31 C.F.R. § 347.40 (2014)).

and the owner of the security."[70] Work on the myRA program commenced in 2014 through the issuance of an executive memorandum by the White House, and a similar path could be taken here.

A second important feature of the myRA program is the way it was implemented. While the Department was formally responsible for administering the program,[71] it delegated operational responsibility and day-to-day administration to a private party—a "designated Roth IRA custodian"—pursuant to the Department's statutory powers to appoint financial agents.[72] As a GAO report noted, Treasury "has a long history of using financial agents to support its core functions of disbursing payments and collecting revenue."[73] Following a public bidding process, Treasury selected Comerica Bank—the same financial agent responsible for managing the Department's Direct Express prepaid card—to serve as the myRA program's sole Designated Roth IRA custodian.[74] As a result, Comerica handled all communications with retail investors and held myRA savings bonds on their behalf, with the Treasury Department role effectively limited to issuing securities to the designated Roth IRA custodian for each retail investor. The myRA program was thus similar to the Direct Express program in that a private company in its capacity as financial agent, rather than Treasury itself, served as the customer interface in both cases. The myRA program was distinctive, however, in that the individual's account represented a claim on the U.S. government, and Comerica served merely as custodian and agent.

A third and final distinctive feature of the myRA program is the liquidity it provided. Whereas the Direct Express prepaid card can only be funded through the payment of federal benefits,[75] myRA participants were allowed to make deposits into their myRA accounts, albeit under limits applicable to Roth IRAs as additional myRA design criteria. As a functional matter, therefore, the myRA program represents a special purpose savings account with a payment function in the form of an unlimited right for program participants to withdraw funds, effected through the services of a private financial institution as Treasury's financial agent.

Despite these features, the myRA program failed to attract many users. It was publicly launched in late 2015 but shut down by the Trump administration in 2017. One former Treasury official attributed the failure primarily to a lack of marketing, noting that 30,000 accounts were reached without any significant publicity, and some of the public commentary on the program's launch does suggest it was a restrained effort.[76] Certainly a strong publicity effort would seem to be necessary to get people's attention. This official also said the private sector did not support the effort and saw it as competition. To the extent that people were even aware of the opportunity to create an account, were the program terms sufficiently attractive? Would potential users have had privacy concerns about the government holding their retirement account? To the extent that a post-mortem analysis might have offered insights into the lack of take-up, it was not conducted. Its limited popularity stands in stark contrast to the success of the TreasuryDirect and Direct Express programs.

The marketing of financial services has changed significantly since the days of myRA. The growth of online offerings and Fintech options means the strategies would be different today. But clearly, there would need to be a significant marketing effort for a Treasury Accounts program, and pilot programs would probably be wise.

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[70] 79 Fed. Reg. at 74,023 (explaining that the rule establishing these securities fell within the contract exemption to the APA at 5 U.S.C. § 553(a)(2)).

[71] 31 C.F.R. § 347.2 (2014).

[72] See 12 U.S.C. §§ 90, 265. For an overview of Treasury's authority to appoint financial agents, see GAO 2017 Report on Financial Agents, *supra* note 57.

[73] GAO 2017 Report on Financial Agents, *supra* note 57. The GAO report listed some twenty different programs in which Treasury used financial agents, and noted that additional agents were used under legislation passed to respond to the 2008 financial crisis. As of 2017, the GAO reported that Treasury employed at least nine different private firms to serve as its financial agent in various capacities. *See id.* at 2.

[74] The appointment of Comerica Bank in this role is described in detail in GAO's 2017 report. Id. Appendix IV: Department of Treasury's Use of a Financial Agent for the *my*RA Program.

[75] As noted earlier, Direct Express holders are not currently permitted to reload the cards with other funds. *See supra*, text at note 58.

[76] See, e.g., Brenna Clark et al., Treasury Softly Launches myRA Program, JD Supra (Jan. 6, 2015). See also Jeff Swensen, Obama's Retirement Fail, Politico (June 7, 2018) (describing Obama Administration's path to adopting the myRA program and its demise).

III. The structure and terms of a Treasury Account program

We now turn to a provisional vision of how a Treasury Account program would be designed and implemented, building upon the Treasury Department's prior experience reaching unbanked and non-filer populations over the decades since electronic federal payments were mandated. We first outline the basic elements of our proposal and then two paths for implementation, one building off of Direct Express and a second, savings-bond-based option that relies on a key design feature of the myRA program. We then return to a comparison with a CBDC as a means to expand financial inclusion, as well as some thoughts on how Treasury Accounts could be a stepping stone to an eventual CBDC.

A. Design features

Basic structure. In both cases, Treasury Accounts would be designed to offer digital accounts that would facilitate distribution of federal benefits, provide low cost, no-frills payment services, and encourage the accumulation of emergency savings reserves.[77] The breadth of the eligibility criteria would need to be determined—that is, should the accounts be available to all individuals eligible to receive certain enumerated federal benefits or tax refunds or should the criteria be more narrowly defined? In any event, Treasury Accounts would be designed to meet the needs of low-income individuals and in particular the unbanked and underbanked. They would be low-cost savings and payment services for individuals likely to qualify for federal benefits programs such as the earned income tax credit, AdvCTC, SNAP and TANF programs. Eligible individuals would be entitled to—but not required to—activate these accounts both to receive federal benefits and tax refunds. Accountholders would also be allowed to make additional contributions, either directly or by payroll deductions. Treasury would rely on financial agents for all customer-facing functions and marketing, as described below.

Scope of services and fees. While the precise terms on which Treasury Accounts would be offered to eligible participants would need to be worked out as the program is stood up, the goal would be to make the accounts attractive to eligible participants, drawing on recent Fintech offerings based on streamlined mobile banking applications, checkless payments and direct deposit, together with no overdraft or non-sufficient funds fees and very low or no balance requirements and monthly maintenance fees. The accounts might also offer additional services like budgeting, spending trackers, transaction alerts and credit enhancement tools and incorporate other relevant features from the Bank On program.[78] The terms of Treasury Accounts could also be a means to incentivize improvement of private market offerings to the unbanked and underbanked. For example, low-cost Treasury Accounts might create more incentive for private banks to reduce fees, including in particular overdraft and non-sufficient funds fees. Although a few major banks have recently announced plans to reduce or eliminate such fees, many still impose them.[79] At the same time, to limit the risk of disintermediation of commercial banks and avoid what might be perceived to be unfair competition with private financial institutions, the accounts would be subject to a maximum average annual balance as discussed further below.[80]

Faster clearing of deposits. An important way in which Treasury Accounts could be more attractive than private market offerings to the unbanked and underbanked—while also incentivizing banks to improve such offerings—is by faster clearing of deposited checks. Treasury could direct its financial agents to credit immediately all government checks as well as direct deposits from participating employers or possibly to make use of available real-time payment networks. Those who live paycheck to paycheck often incur overdraft and non-sufficient funds fees because of the time between the deposit and clearing of a check. As

[77] There is evidence that combining an emergency savings sleeve with a standard pre-paid card increases the amount of precautionary savings. See Commonwealth, Walmart MoneyCard Prizze Savings: One Year Anniversary Brief (Dec. 7, 2017).
[78] Examples of recent Fintech offerings include Chime, Dave and Varo. The Bank On initiative encourages commercial banks to offer accounts that meet standards based on the Model Safe Account Template first proposed by the FDIC in 2011, which include checkless checking, debit cards, telephone banking, no fee bill pay, and no fee in-network ATM usage. See *Bank On*, Cities for Fin. Empowerment (last visited Feb. 21, 2022) and FDIC Model Safe Accounts Pilot, *Fed. Deposit Ins. Corp.* (last updated Apr. 25, 2012).
[79] See for example Adam Shell, "Banks Starting to Cut Hated Overdraft Fees," AARP (Jan. 13, 2022).
[80] See *infra* text at note 82.

a result, many use check-cashing services—and indeed, 70% of check-cashing customers have bank accounts, according to FDIC data.[81] It was estimated that over three million CARES Act checks were cashed through check cashers, and EIP recipients paid $66 million in check cashing fees.[82] Providing faster clearing of deposits would incorporate one of the key advantages of retail CBDC account proposals such as FedAccounts. Treasury could also consider encouraging participating employers to adopt, and direct its financial agents to facilitate, earned wage access programs in which workers can access or receive their earned wages currently over a pay period rather than having to wait until the end of a monthly or bi-monthly period.

More efficient KYC process. Another potential advantage of Treasury Accounts could be in simplifying know-your-customer (KYC) screening, which often prevents or discourages unbanked persons from obtaining private accounts. Moreover, once someone is on a "do not bank" list of account screening consumer reporting services such as ChexSystems, it can be very difficult to get an account from any bank. The account opening screening for a Treasury Account could be considered largely or entirely satisfied by the eligibility criteria—that is, the fact that someone has already established eligibility for and is receiving government benefits means a further KYC process is not necessary. If so, the same standard could apply to the transfer to a private firm account if the Treasury Account maximum were reached. Maintaining a Treasury Account could also enable an individual to get their name removed from a "do not bank" list, and thereby enhance their ability to obtain financial services and credit generally, whether or not the maximum balance was ever reached. Also relevant to consider is the extent to which Treasury Accounts should be protected from garnishment, as are certain other federal benefits, like Social Security payments.

Maximum balance to minimize disintermediation risk. As noted earlier, to minimize the possible disintermediation of bank deposits or unfair competition with private institutions, the size of Treasury Accounts would be limited to some reasonable average monthly balance, and provisions could be devised for rolling over accounts that reached such limitations into private accounts. In particular, we recognize that while the risk of disintermediation would likely be insignificant in the aggregate to a large bank, the design of the program should be such as to not undermine community banks that are more dependent on relatively low-balance customers. In addition, as was the case with the myRA program, the financial agency agreement could include controls that place limits on the financial agent's ability to direct such accountholders to its own products when account balance limitations are reached, as well as controls on the ability of the agent to cross-market its own products.[83]

Privacy protections. Some potential users might be reluctant to sign up for Treasury Accounts maintained and administered directly by the Treasury Department for fear that the government would acquire too much information about their finances (the same issue, of course, arises with respect to potential CBDC designs, as noted below). We believe the use of private sector financial agents to maintain and administer the accounts and for all customer-facing activities, as discussed below, is a means to address privacy concerns. The system we are proposing could be designed so that the government does not have access to individual account information.

Financial agent for customer enterface. To facilitate payment services from these Treasury Accounts, the Department would appoint, under its financial agent authority, one or more private financial institutions to serve as the front-office interface with account holders. This feature would hopefully ensure that the quality, efficiency, and safety of the services and customer interface would be comparable to the private market and avoid creating an undue administrative burden on Treasury. It would also be a means of ensuring that anti-money laundering requirements such as KYC and similar requirements are effectively met. Because the cost of retaining financial agents is covered under the permanent, indefinite

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[81] Calculated from FDIC 2019 Study, *supra* note 21, at 40.
[82] See Murphy, *supra* note 37, at 2.
[83] As a point of comparison, in 2019, the median transaction account balance of those in the bottom quintile of income was under $1,000 while the median balance of those in the second quintile was just over $2000. Even the third quintile median in only slightly over $4,000. See *Survey of Consumer Finances (SCF)*, Fed. Reserve (last updated Nov. 4, 2021). Similar in spirit, the myRA program had a $15,000 account limit, as discussed infra at note. See also GAO Report at 45 ("Once *my*RA accountholders reach a limit of $15,000 in their account or the account reaches a maturity of 30 years, they are required to roll over their account into another retirement savings account. Fiscal Service officials told us that to address concerns that the financial agent would try to promote its own products to *my*RA accountholders, the financial agency agreement includes additional controls that place limits on the financial agent's ability to cross-market its own products to accountholders so that, for instance, the financial agent would not be able to steer accountholders to its own products when they are required to roll over their account.").

appropriation adopted by Congress in 2004, no new appropriation would be needed.[84] The terms of Treasury's contract with these financial agents would need to be negotiated, and pricing would reflect the nature of the service provided as well as any offsetting revenues, such as interchange fees, that the agent could expect to earn in connection with its services. Regular renewal of the financial agent contract would give Treasury the means to hold firms accountable.

Marketing and outreach. While Treasury's financial agents have generally been some of the largest banks, the contract could require any such agent to identify and work with other types of firms to ensure that the targeted populations are reached in an effective manner. For example, a financial agent could be directed to work with Fintech firms that could provide innovative forms of outreach, including through mobile applications.[85] Treasury has worked with some Fintechs to provide mobile banking services and other forms of outreach for COVID-19 payments. A financial agent could also be directed to work with minority-owned or women-owned firms or firms that specialize in working with veterans and other specific constituencies, to ensure that the populations receiving various benefits are reached. While the Treasury Department's authority to appoint financial agents is limited to certain regulated financial institutions, the Department routinely allows, and sometimes requires, its financial agents to subcontract with other firms, including Fintechs, minority-owned, and women-owned firms.[86] Because many underserved individuals receive and need to deposit cash, having a widespread network of ATMs that accept cash and branch offices through the financial agents as a whole would likely be important also.[87]

Legal structure. In terms of legal structure, Treasury Accounts could be set up in one of two ways. First and more simply, the Department could take a Direct Express Plus approach, whereby payments from the government would be held in FDIC insured depository institutions appointed as financial agents in accounts to which participants could make additional deposits (up to balance limits), along the lines that Professor Krishnamurthy has proposed.[88] The accounts would thus be liabilities of the financial institution and account balances insured by the FDIC, but customer interfaces could still be structured through firms

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[84] Transportation, Treasury, and Independent Agencies Appropriations Act, 2004, Pub. L. No. 108-199, Div. F, § 218, 118 Stat. 279, 321 (2004). For an explanation of this authority and the Treasury Department's reporting practices on these expenditures, see GAO 2017 Report on Financial Agents, *supra* note 57, at 1-3 & n.4.

[85] Treasury's statutory authority to designate financial agents also states that "they [the financial institutions designated as financial agents] shall perform all such reasonable duties, as . . . financial agents of the Government, as may be required of them." 12 U.S.C. § 90.

[86] For example, according to the Treasury Department's Bureau of the Fiscal Services:

> Pursuant to its authority under 12 U.S.C. §§ 90 and 265, 31 C.F.R. §§ 202 and 208, and other federal laws, Fiscal Service is authorized to designate a[Financial Agent (FA)] for the purpose of disbursing federal non-benefit payments electronically through debit card. These statutory authorities and implementing regulations require that FAs be [financial institutions (FIs)] that meet certain requirements. Potential applicants are thus limited to FIs that meet the requirements described in 31 C.F.R. § 202. Notwithstanding this limitation, FIs may contract with other service providers including non-FIs such as processors or financial technology companies (FinTechs) to provide the services solicited in this document. Also, Fiscal Service encourages interested FIs to consider partnering with or contracting with small FIs, or other businesses, including minority-owned or women-owned FIs and businesses, to assist in providing the required services. The application must be submitted by the FI and the FI will have the legal relationship with Fiscal Service and liability and responsibility to Fiscal Service for any services provided by its contractors.

Bureau of the Fiscal Service, Requirements for Statements of Qualifications and Applications to Provide Prepaid Debit Card Services for the U.S. Debit Card and Digital Pay Program (2021).

[87] In light of the difficulty Treasury had with publicizing myRA, there would need to be a significant marketing effort to make people aware of the opportunity. Whether the financial agents and any firms with which they subcontract would provide that marketing support, or whether Treasury would need to develop that effort separately, is a question worth examining. Back at the turn of the millennium, members of Congress raised questions about Treasury's costs in administering its savings bond program, including marketing efforts. See GAO, Savings Bonds: Actions Needed to Increase the Reliability of Cost-Effectiveness Measures (June 1, 2003). In response, the Department removed from its budget requests funds for market paper savings bonds, indicating that it was transition to a new book-entry savings bond program, which now operates as Treasury Direct. See Department of the Treasury, FY2004 Budget Justifications and Performance Plans 435 (Feb. 3, 2003). See also Peter Tufano & Daniel Schneider, *Reinvesting Savings Bonds*, TAX NOTES (Oct. 31, 2005). As best we can tell, however, Congress never imposed statutory restrictions that would prevent the Treasury Department from utilizing otherwise available appropriations for marketing efforts with respect to Treasury Accounts.

[88] See *supra* note 58.

serving as financial agents, including fintech firms that might have superior marketing abilities, under contractual arrangements in accordance with criteria established by the Treasury Department.

An alternative approach would be for the Treasury Department to utilize its savings bond authority to create a new vehicle, similar to the myRA program, through which Treasury Accounts would be invested in a new class of savings bond. This second approach is more comparable to a CBDC in that the savings bonds would be government liabilities.[89] Like myRA accounts, these new Treasury Accounts could earn interest linked to other government securities—perhaps, in the current environment, the inflation-adjusted yield of Series I Savings Bond would be an attractive choice. And as with the myRA program, the outstanding balance of the savings bond underlying each Treasury Account would increase and decrease with the account holder's deposits and withdrawals. Finally, as with the Direct Express Plus approach, the Department would still rely on private financial agents to interface with the public and also to serve as custodians and administrators of the underlying savings bonds.

In terms of account features and customer interfaces, the Direct Express Plus approach and the myRA alternative would be quite similar. The myRA alternative would perhaps be more compelling to those attracted to a retail CBDC, along the lines of FedAccounts, as it would represent a public liability, albeit of Treasury as opposed to the Federal Reserve. Conceivably, the myRA alternative could be more attractive to account holders, as Treasury would control the financial terms of underlying savings bonds. On the other hand, the Direct Express Plus approach is more incremental in nature and provides, as a formal matter, a greater role for the private sector. So we can see arguments in favor of either approach.

B. Treasury Accounts versus a CBDC as a vehicle to promote financial access

Having sketched out the basic contours of a Treasury Account, we return now to a comparison of our approach to other proposals contemplating a CBDC as an attractive vehicle for reaching underserved and financially vulnerable populations. While we remain extremely sympathetic to the concerns of those advocating CBDCs as a mechanism for expanding access to financial services, we believe that Treasury Accounts present a much more practical and feasible path forward, at least over the next few years.[90]

To begin with, and as we have set forth in perhaps excruciating detail in the preceding text and notes, a major advantage that the Treasury Department has over the Federal Reserve is its experience in dealing directly with people—its many years of working to establish electronic payments systems to deliver them benefits and to maintain accounts such as Treasury Direct and myRA. The Fed has no such track record at an operational level, notwithstanding its considerable research expertise on issues of inclusion and consumer finance.

The Treasury Department also has statutory authority to create this program today, either by building onto the Direct Express program or constructing a new vehicle through its savings bond authority. It has the statutory authority to appoint financial agents not only to carry out the customer-facing responsibilities, but also to serve as the intermediaries whose liabilities the accounts represent or as Treasury's custodians for the savings bond approach. In addition, Treasury already has an appropriation to pay the costs of such financial agents, including any firms brought on as subcontractors in accordance with the financial agent contracts.

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[89] The Treasury Department has wide latitude to design savings bonds in 31 U.S.C. § 3105. In particular, "The Secretary may prescribe for savings bonds and savings certificates issued under this section— (1) the form and amount of an issue and series; (2) the way in which they will be issued; (3) the conditions, including restrictions on transfer, to which they will be subject; (4) conditions governing their redemption; (5) their sales price and denominations; (6) a way to evidence payments for or on account of them and to provide for the exchange of savings certificates for savings bonds; and (7) the maximum amount issued in a year that may be held by one person." Id. § 3105(c). The inclusion of an emergency savings feature for Treasury Accounts could be an important factor in aligning the program with this statutory authority.

[90] As we noted earlier, our Treasury Accounts proposal does not involve new payments technology, and while that is similar to the CBDC proposal known as FedAccounts discussed earlier, other CBDC designs involve implementing faster technologies based on blockchain. We acknowledge that faster payments would improve financial services for the underserved to some extent, as discussed *supra* text at note 23. But as noted below, a Treasury Accounts proposal is compatible with, or could even be a stepping stone to, a CBDC that incorporates faster payment technology. *See infra* text at notes 91-93.

As noted earlier, the Fed does not believe it has the authority to create digital accounts for retail customers and has said it wants, if not new legislation, at least some kind of express support from the president and Congress before moving forward with any form of CBDC.[91] More generally, the Treasury Department historically has had a broad mandate to carry out the president's agenda in running the country's finances, routinely changing the structure of the public debt and reforming the terms of government securities. The Federal Reserve, in contrast, is understood to operate under a much narrower mandate, albeit an extremely important one. To the extent that outreach to underserved communities necessarily entails political choices and distributional consequences, there are additional advantages of locating experimentation in this area more directly within the executive branch with a higher degree of democratic accountability.

C. Treasury Accounts as a stepping stone to a well-designed CBDC

The foregoing notwithstanding, one might quite plausibly support the eventual creation of a CBDC designed explicitly to increase financial access, but see Treasury Accounts as nevertheless a productive and immediately available first step.[92] Viewed in this light, the issue simply becomes one of timing, but it also suggests that the creation of Treasury Accounts in the short term could help the Federal Reserve learn how best to design a CBDC to reach targeted populations. Indeed, if this were the goal, there are ways in which the Treasury Account program might be structured to facilitate such learning. Conceivably, the Department could coordinate with personnel from the two Federal Reserve District Banks charged with working on financial inclusion and digital payments for underserved populations.[93] To facilitate this work, the Bureau of the Fiscal Service might, with Fed agreement, appoint one or the other of these Fed Banks to serve as a fiscal agent for certain aspects of Treasury Accounts, perhaps charged with working with Fintech firms to devise mobile banking solutions and account take-up. Or perhaps the Fed Banks could assist the Department with pilot programs for Treasury Accounts. No doubt other forms of collaboration would be possible were Treasury Accounts envisioned as a precursor rather than a substitute for a CBDC.

Of course, one must also recognize that the creation of a successful Treasury Accounts program (coupled with further advances on the private side) might counsel a different approach for a U.S. CBDC. To the extent that issues of financial access were largely addressed, CBDC planners could focus more on other design criteria, such as transactional capacity and cross-border payment capabilities. In certain respects, CBDC design would be simpler if features such as an inflation-adjusted interest rate and a cap on maximum account balances were implemented through a separate Treasury Accounts program rather than imbedded in a CBDC. Or perhaps not, but at least experiences gained from a Treasury Account program could provide useful input to the development of a robust and fully-vetted CBDC.

Conclusion

CBDCs may well become a major innovation in payment technology, for both retail and wholesale markets. But the deployment of a CBDC in the United States is inevitably going to be a prolonged and complicated process. Private stablecoins could also speed up payments, but it is not clear whether or when financial regulators might permit their expanded use.[94] The problem of providing financial services to underserved communities is too important and too urgent to wait the years that it will take for Congress to authorize and the Fed to implement a CBDC, or to wait and see whether private stablecoins might someday help. Rather, the Treasury Department should be given the green light to pursue Treasury Accounts now. The Department has both the experience and the tools to make this initiative work. It's time to get started.

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[91] *See supra* text at note 58.
[92] Professor Robert Hockett, in his writing, has advocated sequencing of this sort. See sources cited *supra* note 344.
[93] See Fed white paper, *supra* note 7 at 24.
[94] See *supra* note 33.

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