

CBDC ANTI-SURVEILLANCE STATE ACT

MAY 7, 2024.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MCHENRY, from the Committee on Financial Services,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 5403]

The Committee on Financial Services, to whom was referred the bill (H.R. 5403) to amend the Federal Reserve Act to prohibit the Federal reserve banks from offering certain products or services directly to an individual, to prohibit the use of central bank digital currency for monetary policy, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “CBDC Anti-Surveillance State Act”.

SEC. 2. PROHIBITION ON FEDERAL RESERVE BANKS RELATING TO CERTAIN PRODUCTS OR SERVICES FOR INDIVIDUALS AND PROHIBITION ON DIRECTLY ISSUING A CENTRAL BANK DIGITAL CURRENCY.

Section 16 of the Federal Reserve Act is amended by adding at the end the following new paragraph:

“(18) A Federal reserve bank shall not—

“(A) offer products or services directly to an individual;

“(B) maintain an account on behalf of an individual; or

“(C) issue a central bank digital currency, or any digital asset that is substantially similar under any other name or label, directly to an individual.”.

SEC. 3. PROHIBITION ON FEDERAL RESERVE BANKS INDIRECTLY ISSUING A CENTRAL BANK DIGITAL CURRENCY.

Section 16 of the Federal Reserve Act, as amended by section 2, is further amended by adding at the end the following new paragraph:

“(19)(A) A Federal reserve bank shall not offer a central bank digital currency, or any digital asset that is substantially similar under any other name or label, indirectly to an individual through a financial institution or other intermediary.

“(B) Subparagraph (A) may not be construed to prohibit any dollar-denominated currency that is open, permissionless, and private, and fully preserves the privacy protections of United States coins and physical currency.”.

SEC. 4. PROHIBITION ON THE USE OF CENTRAL BANK DIGITAL CURRENCY FOR MONETARY POLICY.

Section 16 of the Federal Reserve Act, as amended by section 3, is further amended by adding at the end the following new paragraph:

“(20) PROHIBITION ON THE USE OF CENTRAL BANK DIGITAL CURRENCY FOR MONETARY POLICY.—The Board of Governors of the Federal Reserve System and the Federal Open Market Committee shall not use any central bank digital currency, or any digital asset that is substantially similar under any other name or label, to implement monetary policy.”.

SEC. 5. CENTRAL BANK DIGITAL CURRENCY.

(a) IN GENERAL.—The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended by inserting after section 16 the following:

“SEC. 16A. CENTRAL BANK DIGITAL CURRENCY.

“(a) IN GENERAL.—The Board of Governors of the Federal Reserve System may not, absent Congressional authorization, issue a central bank digital currency.

“(b) CENTRAL BANK DIGITAL CURRENCY DEFINED.—In this section, the term ‘central bank digital currency’ means a form of digital money or monetary value, denominated in the national unit of account, that is a direct liability of the Federal Reserve System.”.

(b) TREASURY.—Chapter 3 of subtitle I of title 31 of the United States Code is amended by inserting after section 316 the following:

“SEC. 317. CENTRAL BANK DIGITAL CURRENCY.

“(a) IN GENERAL.—The Secretary of the Treasury may not, absent Congressional authorization, direct the Board of Governors of the Federal Reserve System to issue a central bank digital currency.

“(b) CENTRAL BANK DIGITAL CURRENCY DEFINED.—In this section, the term ‘central bank digital currency’ means a form of digital money or monetary value, denominated in the national unit of account, that is a direct liability of the central bank.”.

SEC. 6. PROTECTION FOR OPEN, PERMISSIONLESS, AND PRIVATE CURRENCY.

This Act and the amendments made by this Act shall not apply to any dollar-denominated currency that is open, permissionless, and private, and fully preserves the privacy protections of United States coins and physical currency.”

PURPOSE AND SUMMARY

Introduced on September 12, 2023, by Representative Tom Emmer, H.R. 5403, the *CBDC Anti-Surveillance State Act*, would amend Section 16 of the Federal Reserve Act to prohibit the Fed-

eral Reserve Banks from issuing a central bank digital currency (CBDC), or any substantially similar digital asset, directly or indirectly to individuals. Additionally, the bill would prohibit the Federal Reserve System and the Federal Open Market Committee from using a CBDC to implement monetary policy. H.R. 5403 would also prohibit the Federal Reserve Banks from maintaining an account on behalf of any individual and offering products or services to any individual. The bill does not prohibit the development or issuance of any dollar-denominated currency that is open, permissionless, private, and fully preserves the privacy protections of cash. Representative Emmer first introduced the legislation in the 117th Congress. H.R. 5403 has 164 cosponsors.

BACKGROUND AND NEED FOR LEGISLATION

A CBDC is a type of digital money that is denominated in the national unit of account, a direct liability of the central bank, and is different than traditional reserve bank balances or settlement accounts. A CBDC may use an electronic record or digital “token” to represent a fiat currency.

In general, a CBDC can be structured as a retail CBDC or as a wholesale CBDC. A retail CBDC, either direct or indirect (i.e., intermediated), is a digital liability of the central bank that is widely available to the general public. In contrast, a wholesale CBDC is a digital liability of the central bank that would be restricted to financial institutions for use during interbank settlement.

Retail CBDCs

Under a direct retail model, the Federal Reserve would be responsible for developing and maintaining U.S. CBDC accounts. The Federal Reserve would serve, in effect, as a consumer banking entity and would need support from the Federal Reserve Regional Banks to provide traditional banking services. Under existing law, the Federal Reserve is not authorized to establish or maintain accounts for individuals. Providing such accounts would represent a sea change in the Federal Reserve’s role in the financial system and the economy.

Under an indirect retail model, consumers would hold a U.S. CBDC in an account at a financial institution responsible for providing traditional consumer banking services. The financial institution would serve as the central bank’s agent, eliminating the need for the Federal Reserve to provide consumer banking services. The financial institutions would be responsible for wallet design, customer management, customer screening, and transaction monitoring, including anti-money laundering and combatting the financing of terrorism (AML/CFT) controls.

The Federal Reserve does not have the legal authority to implement a retail CBDC model. Congress’ authority over coining money is exclusive. The Supreme Court has recognized Congress’ power to coin money and regulate the value thereof, confirming Congress’ authority to regulate each phase of currency. Indeed, Federal Reserve Chair Powell made clear the Federal Reserve would not implement a retail CBDC “without support from Congress, and [this support] would ideally come in the form of an authorizing law, rather than us trying to interpret our law to enable this.” Chair

Powell confirmed this position on March 15, 2023, during the Committee’s hearing on the Federal Reserve’s Semi-annual Monetary Policy Report.

Committee on Financial Services’ Work on CBDCs

In the 117th Congress, the House Committee on Financial Services’ Task Force on Financial Technology held its first CBDC-focused hearing on June 15, 2021, entitled “Digitizing the Dollar: Investigating the Technological Infrastructure, Privacy, and Financial Inclusion Implications of Central Bank Digital Currencies.” At that hearing, Committee Republicans emphasized that Congress and the Federal Reserve should exercise caution and have a better understanding of the implications a U.S. CBDC would have on the Federal Reserve and its monetary policy tools; potential risks to our existing payments system; private sector competition and innovation; and the impact on American’s privacy, civil liberties, and security.

On November 15, 2021, Committee Republicans issued principles to use to evaluate a U.S. CBDC. These principles held that any potential Federal Reserve-issued digital currency must: (1) maintain the dollar as the world’s reserve currency and the preeminence of the U.S. payment system; (2) not impede ongoing development of stablecoins; (3) promote private sector innovation and foster competition; and (4) address privacy and security protections. Collectively, these principles ensure that any proposal does not allow the Federal Reserve or any other government agency to monopolize or weaponize a CBDC. Further, these principles ensure policymakers thoroughly weigh the risks of a U.S. CBDC.

In January 2022, in response to a Federal Reserve’s discussion paper, Committee Republicans restated their guiding principles and emphasized the need for Congressional authorization. Committee Republicans also requested additional information from the Federal Reserve regarding its work on a CBDC and the January 2022 discussion paper highlighting significant concerns, including:

- **Role of the Federal Reserve and Impact on Monetary Policy:** The Federal Reserve does not have the ability to support a retail CBDC. Expanding central bank activity into retail banking will likely increase politicization of the Federal Reserve, negatively affecting the Federal Reserve’s performance of its monetary and regulatory functions. In addition, a retail CBDC could directly impact monetary policy and interest rate control by altering the supply of reserves in the banking system and the long-term size of the Federal Reserve’s balance sheet. A retail CBDC could also impact credit markets and result in the Federal Reserve offering products and services traditionally reserved for retail banking institutions.

- **Impact to the Structure of our Financial System:** A retail CBDC would fundamentally change the structure of the U.S. financial system. A retail CBDC would reduce the amount of deposits in the banking system, which in turn could increase bank funding expenses. It would also reduce the availability of and raise the cost of credit for individuals and businesses. In addition, the ability to quickly convert bank deposits into a retail CBDC could make bank runs more likely. As emphasized in the Federal Reserve’s January 2022 discussion paper, “pru-

dential supervision, government deposit insurance, and access to central bank liquidity may be insufficient to stave off large outflows of commercial bank deposits into CBDC in the event of financial panic.”

- **Impact to Private Sector Innovation and Digital Assets:** A retail CBDC would inherently compete with private sector efforts to develop widely used stablecoins. If issued under a clear regulatory framework, stablecoins could help provide more efficient retail payments. Stablecoins could be a source of healthy competition and help reach a wider range of consumers. Many traditional financial firms are exploring stablecoin arrangements to increase efficiency in payments. Indeed, the Presidential Working Group and Financial Markets report on stablecoins opined, “several existing stablecoin issuers and entities with stablecoin projects . . . have the stated ambition for the stablecoins they create to be used widely by retail users to pay for goods and services, by corporations in the context of supply chain payments, and in the context of international remittances.”

- **Lack of Increased Financial Inclusion:** A primary argument for retail CBDCs is to foster greater financial inclusion. It is unclear how indirect retail CBDCs would reach this end, as unbanked individuals have difficulty paying banking fees and are often distrustful of financial institutions. Since indirect retail CBDCs still rely on financial institutions for intermediation, unbanked individuals would continue to face the same challenges.

The fact is: the Federal Reserve has failed to identify the current payment system inefficiencies a CBDC will address or what problems a CBDC will solve for Americans. As a result, the CBDC Anti-Surveillance State Act is necessary to prohibit the Federal Reserve from issuing a retail CBDC under a direct or indirect model. This will ensure Federal Reserve cannot transform itself into a retail bank able to collect personal financial data on Americans. This will likewise prevent the Federal Reserve from launching a CBDC intermediated through financial institutions. The bill also prohibits the Federal Reserve from using any CBDC to implement monetary policy, ensuring the Federal Reserve cannot use a CBDC as a tool to control the American economy. As amended, this bill prohibits the Federal Reserve and the Treasury Department from moving forward with a CBDC without authorization from Congress. The legislation also protects innovation and any future development of digital cash.

RELATED HEARINGS

Pursuant to clause 3(c)(6) of rule XIII, the following hearings were used to develop H.R. 5403:

118TH CONGRESS

—The Subcommittee on Digital Assets, Financial Technology and Inclusion held a hearing on September 14, 2023, titled “Digital Dollar Dilemma: The Implications of a Central Bank Digital Currency and Private Sector Alternatives.”

—The Subcommittee on National Security, Illicit Finance, and International Financial Institutions held a hearing on June 7, 2023, titled “Dollar Dominance: Preserving the U.S. Dollar’s Status as the Global Reserve Currency.”

—The Subcommittee on Digital Assets, Financial Technology and Inclusion held a hearing on May 18, 2023, titled “Putting the ‘Stable’ in ‘Stablecoins:’ How Legislation Will Help Stablecoins Achieve Their Promise.”

—The Subcommittee on Digital Assets, Financial Technology and Inclusion held a hearing on April 19, 2023, titled “Understanding Stablecoins” Role in Payments and the Need for Legislation.”

117TH CONGRESS

—The Committee on Financial Services held a hearing on June 23, 2022, titled “Monetary Policy and the State of the Economy.”

—The Committee on Financial Services held a hearing on May 26, 2022, titled “Digital Assets and the Future of Finance: Examining the Benefits and Risks of a U.S. Central Bank Digital Currency.”

—The Committee on Financial Services held a hearing on April 6, 2022, titled “The Annual Testimony of the Secretary of the Treasury on the State of the International Financial System.”

—The Committee on Financial Services held a hearing on March 2, 2022, titled “Monetary Policy and the State of the Economy.”

—The Committee on Financial Services held a hearing on February 8, 2022, titled “Digital Assets and the Future of Finance: The President’s Working Group on Financial Markets’ Report on Stablecoins.”

—The Committee on Financial Services held a hearing on December 8, 2021, titled “Digital Assets and the Future of Finance: Understanding the Challenges and Benefits of Financial Innovation in the United States.”

—The Subcommittee on National Security, International Development, and Monetary Policy held a hearing on July 27, 2021, titled “The Promises and Perils of Central Bank Digital Currencies.”

—The Committee on Financial Services held a hearing on July 14, 2021, titled “Monetary Policy and the State of the Economy.”

—The Task Force on Financial Technology held a hearing on June 15, 2021, titled “Digitizing the Dollar: Investigating the Technological Infrastructure, Privacy, and Financial Inclusion Implications of Central Bank Digital Currencies.”

—The Committee on Financial Services held a hearing on February 24, 2021, titled “Monetary Policy and the State of the Economy.”

116TH CONGRESS

—The Committee on Financial Services held a hearing on June 17, 2020, titled “Monetary Policy and the State of the Economy.”

—The Task Force on Financial Technology held a hearing on June 11, 2020, titled “Inclusive Banking During a Pandemic: Using Fed accounts and Digital Tools to Improve Delivery Of Stimulus Payments.”

—The Committee on Financial Services held a hearing on February 11, 2020, titled “Monetary Policy and the State of the Economy.”

—The Committee on Financial Services held a hearing on October 23, 2019, titled “An Examination of Facebook and Its Impact on the Financial Services and Housing Sectors.”

—The Committee on Financial Services held a hearing on July 17, 2019, titled “Examining Facebook’s Proposed Cryptocurrency and Its Impact on Consumers, Investors, and the American Financial System.”

—The Committee on Financial Services held a hearing on July 10, 2019, titled “Monetary Policy and the State of the Economy.”

115TH CONGRESS

—The Subcommittee on Monetary Policy and Trade held a hearing on July 18, 2018, titled “The Future of Money: Digital Currency.”

113TH CONGRESS

—The Subcommittee on Monetary Policy and Trade held a hearing on July 11, 2014, titled “The Production and Circulation of Coins and Currency.”

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on September 20, 2023, and ordered H.R. 5403 to be reported favorably to the House as amended by a recorded vote of 27 ayes to 20 nays (Record vote no. FC–108), a quorum being present. Before the question was called to order the bill favorably reported, the Committee adopted an amendment in the nature of a substitute offered by Mr. Emmer by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the order to report legislation and amendments thereto. H.R. 5403 was ordered reported favorably to the House as amended by a recorded vote of 27 ayes to 20 nays (Record vote no. FC–108), a quorum being present.

An amendment offered by Ms. Waters, no. 1, was not agreed to by a recorded vote of 20 ayes to 27 nays, a quorum being present (Record vote no. FC–106).

An amendment offered by Mr. Lynch, no. 2, was not agreed to by a recorded vote of 20 ayes to 27 nays, a quorum being present (Record vote no. FC–107).

Record vote no. FC- 108

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. McHenry	X	—	—	Ms. Waters	—	X	—
Mr. Hill	X	—	—	Mrs. Velazquez	—	—	—
Mr. Lucas	—	—	—	Mr. Sherman	—	X	—
Mr. Sessions	X	—	—	Mr. Meeks	—	X	—
Mr. Posey	X	—	—	Mr. Scott	—	X	—
Mr. Luetkemeyer	X	—	—	Mr. Lynch	—	X	—
Mr. Huizenga	X	—	—	Mr. Green	—	X	—
Mrs. Wagner	X	—	—	Mr. Cleaver	—	X	—
Mr. Barr	X	—	—	Mr. Himes	—	X	—
Mr. Williams (TX)	X	—	—	Mr. Foster	—	X	—
Mr. Emmer	X	—	—	Mrs. Beatty	—	X	—
Mr. Loudermilk	X	—	—	Mr. Vargas	—	X	—
Mr. Mooney	X	—	—	Mr. Gottheimer	—	X	—
Mr. Davidson	X	—	—	Mr. Gonzalez	—	X	—
Mr. Rose	X	—	—	Mr. Casten	—	X	—
Mr. Steil	X	—	—	Ms. Pressley	—	X	—
Mr. Timmons	X	—	—	Mr. Horsford	—	—	—
Mr. Norman	—	—	—	Ms. Tlaib	—	X	—
Mr. Meuser	X	—	—	Mr. Torres	—	—	—
Mr. Fitzgerald	X	—	—	Ms. Garcia	—	X	—
Mr. Garbarino	X	—	—	Ms. Williams (GA)	—	X	—
Mrs. Kim	X	—	—	Mr. Nickel	—	X	—
Mr. Donalds	X	—	—	Ms. Pettersen	—	X	—
Mr. Flood	X	—	—				
Mr. Lawler	X	—	—				
Mr. Nunn	X	—	—				
Ms. De La Cruz	X	—	—				
Mrs. Houchin	X	—	—				
Mr. Ogles	X	—	—				

Record vote no. FC-106

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. McHenry	—	X	—	Ms. Waters	X	—	—
Mr. Hill	—	X	—	Mrs. Velázquez	—	—	—
Mr. Lucas	—	—	—	Mr. Sherman	X	—	—
Mr. Sessions	—	X	—	Mr. Meeks	X	—	—
Mr. Posey	—	X	—	Mr. Scott	X	—	—
Mr. Luetkemeyer	—	X	—	Mr. Lynch	X	—	—
Mr. Huizenga	—	X	—	Mr. Green	X	—	—
Mrs. Wagner	—	X	—	Mr. Cleaver	X	—	—
Mr. Barr	—	X	—	Mr. Himes	X	—	—
Mr. Williams (TX)	—	X	—	Mr. Foster	X	—	—
Mr. Emmer	—	X	—	Mrs. Beatty	X	—	—
Mr. Loudermilk	—	X	—	Mr. Vargas	X	—	—
Mr. Mooney	—	X	—	Mr. Gottheimer	X	—	—
Mr. Davidson	—	X	—	Mr. Gonzalez	X	—	—
Mr. Rose	—	X	—	Mr. Casten	X	—	—
Mr. Steil	—	X	—	Ms. Pressley	X	—	—
Mr. Timmons	—	X	—	Mr. Horsford	—	—	—
Mr. Norman	—	—	—	Ms. Tlaib	X	—	—
Mr. Meuser	—	X	—	Mr. Torres	—	—	—
Mr. Fitzgerald	—	X	—	Ms. Garcia	X	—	—
Mr. Garbarino	—	X	—	Ms. Williams (GA)	X	—	—
Mrs. Kim	—	X	—	Mr. Nickel	X	—	—
Mr. Donalds	—	X	—	Ms. Pettersen	X	—	—
Mr. Flood	—	X	—				
Mr. Lawler	—	X	—				
Mr. Nunn	—	X	—				
Ms. De La Cruz	—	X	—				
Mrs. Houchin	—	X	—				
Mr. Ogles	—	X	—				

Record vote no. FC- 107

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. McHenry	—	X	—	Ms. Waters	X	—	—
Mr. Hill	—	X	—	Mrs. Velázquez	—	—	—
Mr. Lucas	—	—	—	Mr. Sherman	X	—	—
Mr. Sessions	—	X	—	Mr. Meeks	X	—	—
Mr. Posey	—	X	—	Mr. Scott	X	—	—
Mr. Luetkemeyer	—	X	—	Mr. Lynch	X	—	—
Mr. Huizenga	—	X	—	Mr. Green	X	—	—
Mrs. Wagner	—	X	—	Mr. Cleaver	X	—	—
Mr. Barr	—	X	—	Mr. Himes	X	—	—
Mr. Williams (TX)	—	X	—	Mr. Foster	X	—	—
Mr. Emmer	—	X	—	Mrs. Beatty	X	—	—
Mr. Loudermilk	—	X	—	Mr. Vargas	X	—	—
Mr. Mooney	—	X	—	Mr. Gottheimer	X	—	—
Mr. Davidson	—	X	—	Mr. Gonzalez	X	—	—
Mr. Rose	—	X	—	Mr. Casten	X	—	—
Mr. Steil	—	X	—	Ms. Pressley	X	—	—
Mr. Timmons	—	X	—	Mr. Horsford	—	—	—
Mr. Norman	—	—	—	Ms. Tlaib	X	—	—
Mr. Meuser	—	X	—	Mr. Torres	—	—	—
Mr. Fitzgerald	—	X	—	Ms. Garcia	X	—	—
Mr. Garbarino	—	X	—	Ms. Williams (GA)	X	—	—
Mrs. Kim	—	X	—	Mr. Nickel	X	—	—
Mr. Donalds	—	X	—	Ms. Pettersen	X	—	—
Mr. Flood	—	X	—				
Mr. Lawler	—	X	—				
Mr. Nunn	—	X	—				
Ms. De La Cruz	—	X	—				
Mrs. Houchin	—	X	—				
Mr. Ogles	—	X	—				

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the goal of H.R. 5403 is to amend Section 13 of the Federal Reserve Act to prohibit the Federal Reserve Banks from issuing a CBDC, or any substantially similar digital asset, directly or indirectly to individuals, and to prohibit the Federal Reserve System and the Federal Open Market Committee from using a CBDC to implement monetary policy.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

The Committee has requested but not received a cost estimate from the Director of the Congressional Budget Office. However, pursuant to clause 3(d)(1) of House rule XIII, the Committee will adopt as its own the cost estimate by the Director of the Congressional Budget Office once it has been prepared.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

The Committee has requested but not received an estimate from the Director of the Congressional Budget Office. However, pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, once an estimate has been prepared by the Director of the Congressional Budget Office, as required by section 402 of the Congressional Budget Act of 1973, the Committee will adopt as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate.

FEDERAL MANDATES STATEMENT

The Committee has requested but not received an estimate from the Director of the Congressional Budget Office of the Federal mandates pursuant to section 423 of the Unfunded Mandates Reform Act. The Committee will adopt the estimate once it has been prepared by the Director.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of the Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 5403 as the “CBDC Anti-Surveillance State Act of 2023.”

Section 2. Prohibition on federal reserve banks relating to certain products or services for individuals and prohibition on directly issuing a central bank digital currency

This section amends section 16 of the Federal Reserve Act to prohibit any Federal Reserve Bank from offering products or services directly to individuals, maintaining an account on behalf of individuals, or issuing a CBDC directly to individuals. This section also prohibits any Federal Reserve Bank from issuing any digital asset that is substantially similar to a CBDC directly to individuals.

Section 3. Prohibition of federal reserve banks indirectly issuing a central bank digital currency

This section amends section 16 of the Federal Reserve Act to prohibit the Federal Reserve Banks from issuing a CBDC, or any digital asset that is substantially similar, indirectly to individuals, including through a financial intermediary. The prohibition under this section would not apply to any dollar-denominated currency that is open, permissionless, and private.

Section 4. Prohibition on the use of central bank digital currency for monetary policy

This section would prohibit the Board of Governors of the Federal Reserve System and the Federal Open Market Committee from using any CBDC, or any digital asset that is substantially similar, to implement monetary policy.

Section 5. Central Bank Digital Currency

This section amends the Federal Reserve Act by defining a CBDC as a “form of digital money or monetary value, denominated in the national unit of account, that is a direct liability of the Federal Reserve System.” This section prohibits the Board of Gov-

ernors of the Federal Reserve from issuing a CBDC without Congressional authorization.

Further, this section prohibits the Secretary of the Treasury from directing the Board of Governors of the Federal Reserve to issue a CBDC without Congressional authorization.

Section 6. Protection for open, permissionless, and private currency

This section clarifies that all amendments made by H.R. 5403 shall not apply to any dollar-denominated currency that is open, permissionless, and private, and fully preserves the privacy protections of United States coins and physical currency.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

FEDERAL RESERVE ACT

* * * * *

NOTE ISSUES.

SEC. 16. Federal Reserve notes, to be issued at the discretion of the Board of Governors of the Federal Reserve System for the purpose of making advances to Federal Reserve banks through the Federal reserve agents as hereinafter set forth and for no other purpose, are hereby authorized. The said notes shall be obligations of the United States and shall be receivable by all national and member banks and Federal Reserve banks and for all taxes, customs, and other public dues. They shall be redeemed in lawful money on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or at any Federal Reserve bank.

Any Federal Reserve bank may make application to the local Federal Reserve agent for such amount of the Federal Reserve notes hereinbefore provided for as it may require. Such application shall be accompanied with a tender to the local Federal Reserve agent of collateral in amount equal to the sum of the Federal Reserve notes thus applied for and issued pursuant to such application. The collateral security thus offered shall be notes, drafts, bills of exchange, or acceptances acquired under section 10A, 10B, 13, or 13A of this Act, or bills of exchange endorsed by a member bank of any Federal Reserve district and purchased under the provisions of section 14 of this Act, or bankers' acceptances purchased under the provisions of said section 14, or gold certificates, or Special Drawing Right certificates, or any obligations which are direct obligations of, or are fully guaranteed as to principal and interest by, the United States or any agency thereof, or assets that Federal Reserve banks may purchase or hold under section 14 of this Act or any other asset of a Federal reserve bank. In no event shall such collateral security be less than the amount of Federal Reserve notes applied for. The Federal Reserve agent shall each day notify

the Board of Governors of the Federal Reserve System of all issues and withdrawals of Federal Reserve notes to and by the Federal Reserve bank to which he is accredited. The said Board of Governors of the Federal Reserve System may at any time call upon a Federal Reserve bank for additional security to protect the Federal Reserve notes issued to it. Collateral shall not be required for Federal Reserve notes which are held in the vaults of, or are otherwise held by or on behalf of, Federal Reserve banks.

Federal Reserve notes shall bear upon their faces a distinctive letter and serial number which shall be assigned by the Board of Governors of the Federal Reserve System to each Federal Reserve bank. Federal Reserve notes unfit for circulation shall be canceled, destroyed, and accounted for under procedures prescribed and at locations designated by the Secretary of the Treasury. Upon destruction of such notes, credit with respect thereto shall be apportioned among the twelve Federal Reserve banks as determined by the Board of Governors of the Federal Reserve System.

The Board of Governors of the Federal Reserve System shall have the right, acting through the Federal Reserve agent, to grant in whole or in part, or to reject entirely the application of any Federal Reserve bank for Federal Reserve notes; but to the extent that such application may be granted the Board of Governors of the Federal Reserve System shall, through its local Federal Reserve agent, supply Federal Reserve notes to the banks so applying, and such bank shall be charged with the amount of the notes issued to it and shall pay such rate of interest as may be established by the Board of Governors of the Federal Reserve System on only that amount of such notes which equals the total amount of its outstanding Federal Reserve notes less the amount of gold certificates held by the Federal Reserve agent as collateral security. Federal Reserve notes issued to any such bank shall, upon delivery, together with such notes of such Federal Reserve bank as may be issued under section 18 of this Act upon security of United States 2 per centum Government bonds, become a first and paramount lien on all the assets of such bank.

Any Federal Reserve bank may at any time reduce its liability for outstanding Federal Reserve notes by depositing with the Federal Reserve agent its Federal Reserve notes, gold certificates, Special Drawing Right certificates, or lawful money of the United States. Federal Reserve notes so deposited shall not be reissued, except upon compliance with the conditions of an original issue. The liability of a Federal Reserve bank with respect to its outstanding Federal Reserve notes shall be reduced by any amount paid by such bank to the Secretary of the Treasury under section 4 of the Old Series Currency Adjustment Act.

Any Federal Reserve bank may at its discretion withdraw collateral deposited with the local Federal Reserve agent for the protection of its Federal Reserve notes issued to it and shall at the same time substitute therefor other collateral of equal amount with the approval of the Federal Reserve agent under regulations to be prescribed by the Board of Governors of the Federal Reserve System. Any Federal Reserve bank may retire any of its Federal Reserve notes by depositing them with the Federal Reserve agent or with the Treasurer of the United States, and such Federal Reserve bank shall thereupon be entitled to receive back the collateral deposited

with the Federal Reserve agent for the security of such notes. Any Federal Reserve bank shall further be entitled to receive back the collateral deposited with the Federal Reserve agent for the security of any notes with respect to which such bank has made payment to the Secretary of the Treasury under section 4 of the Old Series Currency Adjustment Act. Federal Reserve notes so deposited shall not be reissued except upon compliance with the conditions of an original issue.

All Federal Reserve notes and all gold certificates, Special Drawing Right certificates, and lawful money issued to or deposited with any Federal Reserve agent under the provisions of the Federal Reserve Act shall hereafter be held for such agent, under such rules and regulations as the Board of Governors of the Federal Reserve System may prescribe, in the joint custody of himself and the Federal Reserve bank to which he is accredited. Such agent and such Federal Reserve bank shall be jointly liable for the safekeeping of such Federal Reserve notes, gold certificates, Special Drawing Right certificates, and lawful money. Nothing herein contained, however, shall be construed to prohibit a Federal Reserve agent from depositing gold certificates and Special Drawing Right certificates with the Board of Governors of the Federal Reserve System, to be held by such Board subject to his order, or with the Treasurer of the United States for the purposes authorized by law.

In order to furnish suitable notes for circulation as Federal reserve notes, the Secretary of the Treasury shall cause plates and dies to be engraved in the best manner to guard against counterfeits and fraudulent alterations, and shall have printed therefrom and numbered such quantities of such notes of the denominations of \$1, \$2, \$5, \$10, \$20, \$50, \$100, \$500, \$1,000, \$5,000, \$10,000 as may be required to supply the Federal reserve banks. Such notes shall be in form and tenor as directed by the Secretary of the Treasury under the provisions of this Act and shall bear the distinctive numbers of the several Federal reserve banks through which they are issued.

When such notes have been prepared, the notes shall be delivered to the Board of Governors of the Federal Reserve System subject to the order of the Secretary of the Treasury for the delivery of such notes in accordance with this Act.

The plates and dies to be procured by the Secretary of the Treasury for the printing of such circulating notes shall remain under his control and direction, and the expenses necessarily incurred in executing the laws relating to the procuring of such notes, and all other expenses incidental to their issue and retirement, shall be paid by the Federal reserve banks, and the Board of Governors of the Federal Reserve System shall include in its estimate of expenses levied against the Federal reserve banks a sufficient amount to cover the expenses herein provided for.

The Secretary of the Treasury may examine the plates, dies, bed pieces, and other material used in the printing of Federal Reserve notes and issue regulations relating to such examinations.

Any appropriation heretofore made out of the general funds of the Treasury for engraving plates and dies, the purchase of distinctive paper, or to cover any other expense in connection with the printing of national-bank notes or notes provided for by the Act of

May thirtieth, nineteen hundred and eight, and any distinctive paper that may be on hand at the time of the passage of this Act may be used in the discretion of the Secretary for the purposes of this Act, and should the appropriations heretofore made be insufficient to meet the requirements of this Act in addition to circulating notes provided for by existing law, the Secretary is hereby authorized to use so much of any funds in the Treasury not otherwise appropriated for the purpose of furnishing the notes aforesaid: *Provided, however,* That nothing in this section contained shall be construed as exempting national banks or Federal reserve banks from their liability to reimburse the United States for any expenses incurred in printing and issuing circulating notes. (Omitted from U.S. Code)

Every Federal reserve bank shall receive on deposit at par from depository institutions or from Federal reserve banks checks and other items, including negotiable orders of withdrawal and share drafts and drafts drawn upon any of its depositors, and when remitted by a Federal reserve bank, checks and other items, including negotiable orders of withdrawal and share drafts and drafts drawn by any depositor in any other Federal reserve bank or depository institution upon funds to the credit of said depositor in said reserve bank or depository institution. Nothing herein contained shall be construed as prohibiting a depository institution from charging its actual expense incurred in collecting and remitting funds, or for exchange sold to its patrons. The Board of Governors of the Federal Reserve System shall, by rule, fix the charges to be collected by the depository institutions from its patrons whose checks and other items, including negotiable orders of withdrawal and share drafts are cleared through the Federal reserve Bank and the charge which may be imposed for the service of clearing or collection rendered by the Federal reserve bank.

The Board of Governors of the Federal Reserve System shall make and promulgate from time to time regulations governing the transfer of funds and charges therefor among Federal reserve banks and their branches, and may at its discretion exercise the functions of a clearing house for such Federal reserve banks, or may designate a Federal reserve bank to exercise such functions, and may also require each such bank to exercise the functions of a clearing house for depository institutions.

The Secretary of the Treasury is hereby authorized and directed to receive deposits of gold or of gold certificates or of Special Drawing Right certificates with the Treasurer or any Assistant Treasurer of the United States when tendered by any Federal Reserve bank or Federal Reserve agent for credit to its or his account with the Board of Governors of the Federal Reserve System. The Secretary shall prescribe by regulation the form of receipt to be issued by the Treasurer or Assistant Treasurer to the Federal Reserve bank or Federal Reserve agent making the deposit, and a duplicate of such receipt shall be delivered to the Board of Governors of the Federal Reserve System by the Treasurer at Washington upon proper advices from any Assistant Treasurer that such deposit has been made. Deposits so made shall be held subject to the orders of the Board of Governors of the Federal Reserve System and deposits of gold or gold certificates shall be payable in gold certificates, and deposits of Special Drawing Right certificates shall be payable in

Special Drawing Right certificates, on the order of the Board of Governors of the Federal Reserve System to any Federal Reserve bank or Federal Reserve agent at the Treasury or at the sub-treasury of the United States nearest the place of business of such Federal Reserve bank or such Federal Reserve agent. The order used by the Board of Governors of the Federal Reserve System in making such payments shall be signed by the chairman or vice chairman, or such other officers or members as the Board may by regulation prescribe. The form of such order shall be approved by the Secretary of the Treasury.

The expenses necessarily incurred in carrying out these provisions, including the cost of the certificates or receipts issued for deposits received, and all expenses incident to the handling of such deposits shall be paid by the Board of governors of the Federal Reserve System and included in its assessments against the several Federal reserve banks.

Nothing in this section shall be construed as amending section six of the Act of March fourteenth, nineteen hundred, as amended by the Acts of March fourth, nineteen hundred and seven, March second, nineteen hundred and eleven, and June twelfth, nineteen hundred and sixteen, nor shall the provisions of this section be construed to apply to the deposits made or to the receipts or certificates issued under those Acts.

(18) *A Federal reserve bank shall not—*

(A) *offer products or services directly to an individual;*

(B) *maintain an account on behalf of an individual; or*

(C) *issue a central bank digital currency, or any digital asset that is substantially similar under any other name or label, directly to an individual.*

(19)(A) *A Federal reserve bank shall not offer a central bank digital currency, or any digital asset that is substantially similar under any other name or label, indirectly to an individual through a financial institution or other intermediary.*

(B) *Subparagraph (A) may not be construed to prohibit any dollar-denominated currency that is open, permissionless, and private, and fully preserves the privacy protections of United States coins and physical currency.*

(20) **PROHIBITION ON THE USE OF CENTRAL BANK DIGITAL CURRENCY FOR MONETARY POLICY.**—*The Board of Governors of the Federal Reserve System and the Federal Open Market Committee shall not use any central bank digital currency, or any digital asset that is substantially similar under any other name or label, to implement monetary policy.*

SEC. 16A. CENTRAL BANK DIGITAL CURRENCY.

(a) **IN GENERAL.**—*The Board of Governors of the Federal Reserve System may not, absent Congressional authorization, issue a central bank digital currency.*

(b) **CENTRAL BANK DIGITAL CURRENCY DEFINED.**—*In this section, the term “central bank digital currency” means a form of digital money or monetary value, denominated in the national unit of account, that is a direct liability of the Federal Reserve System.*

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TITLE 31, UNITED STATES CODE

SUBTITLE I—GENERAL

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CHAPTER 3—DEPARTMENT OF THE TREASURY

SUBCHAPTER I—ORGANIZATION

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SEC. 317. CENTRAL BANK DIGITAL CURRENCY.

(a) IN GENERAL.—The Secretary of the Treasury may not, absent Congressional authorization, direct the Board of Governors of the Federal Reserve System to issue a central bank digital currency.

(b) CENTRAL BANK DIGITAL CURRENCY DEFINED.—In this section, the term “central bank digital currency” means a form of digital money or monetary value, denominated in the national unit of account, that is a direct liability of the central bank.

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MINORITY VIEWS

H.R. 5403's misguided premise does not accurately portray the potential goals of a central bank digital currency (CBDC). A CBDC is a digital currency that is issued by a country's central bank and the value of which is pegged to the national currency. 130 countries around the world, representing 98% of global GDP, are at various stages of exploring a CBDC.¹ This includes the U.S., which has been researching a CBDC following an executive order from the Biden administration. The misguided premise of this bill is based on the Chinese CBDC, the eCNY, which was among the first CBDCs to be implemented, and the design of which included additional government surveillance. However, there is nothing inherent about a CBDC that necessitates additional surveillance. In fact, there are design features that could be built in (and that Congress could mandate) that would ensure transparency regarding the lack of surveillance.²

H.R. 5403 would effectively prohibit the issuance of a CBDC in the U.S. before we have even had a chance to fully explore the benefits, challenges, and design options. As other countries race ahead and compete to develop and implement CBDCs to harness what could prove to be critical in the evolving global financial landscape, this bill would keep the U.S. behind the starting line. To the extent that cryptocurrencies offer certain benefits, a CBDC could offer those same benefits while having a greater potential to gain broad public trust and utilization (especially after numerous digital assets have been used to defraud Americans), overcome challenges with regard to interchangeability, avoid volatility in value, and prioritize financial inclusion and consumer protection. CBDCs may also have the potential to provide faster payment transactions and lower transaction fees for consumers and small businesses.

Importantly, many have pointed out that the primacy of the U.S. dollar could be challenged if CBDCs issued by other central banks or cryptocurrencies pegged to other national currencies gain traction as the preferred method of payment in international trade transactions.³ For example, in a 2019 letter to the Federal Reserve Chair Jerome H. Powell, Rep. French Hill and Rep. Bill Foster echoed these issues stating: "With the potential for digital currencies to further take on the characteristics and utility of paper money, it may become increasingly imperative that the Federal Reserve take up the project of developing a U.S. dollar digital currency. We are concerned that the primacy of the U.S. Dollar could

¹Atlantic Council, *Central Bank Digital Currency Tracker* (Accessed Sept. 7, 2023).

²House Financial Services Committee (HFSC), *Testimony of Raúl Carrillo, Digital Dollar Dilemma: The Implications of a Central Bank Digital Currency and Private Sector Alternatives*, 118th Cong. (Sept. 14, 2023).

³International Monetary Fund (IMF), *The Global Currency Power of the US Dollar: Problems and Prospects* (Mar. 2022); see also Congressional Research Service (CRS), *Central Bank Digital Currencies: Policy Issues* (Feb. 7, 2022).

be in long-term jeopardy from wide adoption of digital fiat currencies.”⁴

Moreover, this bill is poorly drafted to achieve its purported purposes, reflecting the rushed process by which this bill has moved forward. For example, during the debate of the bill, Representative Lynch pointed out that the addition of Section 5 in the Amendment in the Nature of a Substitute effectively negates parts of Section 2 and all of Sections 3 and 4 in the bill. Specifically, Section 5 would prohibit the issuance of a CBDC altogether absent Congressional authorization, whereas Sections 2, 3, and 4 would only prohibit the issuance of a CBDC subject to certain terms. Rep. Lynch also highlighted how sweeping the bill’s definition for a CBDC was, and how it could materially interfere with the Fed’s ability to conduct monetary policy. Specifically, the ANS defines a CBDC as a “form of digital money or monetary value, denominated in the national unit of account, that is a direct liability of the Federal Reserve System.”⁵ Under this definition, a CBDC may extend beyond a central bank digital currency to broadly cover *all* liabilities of the Fed, including paper currency and bank deposits held by the Fed, which would raise significant issues with the Fed’s ability to conduct monetary policy more generally, outside of issues pertaining to digital currencies. During the debate, Rep. Pressley also pointed out that Section 2 of the bill is also overly broad, affecting the Fed’s activities far beyond the provision of CBDCs. Specifically, Section 2 would prevent the Fed’s 12 Federal Reserve banks from offering *any* products or services directly to an individual or maintaining an account on behalf of an individual.

In the markup, Democrats proposed two amendments to this bill that were rejected by Republicans:

- Ranking Member Waters proposed an amendment that would ensure that nothing in the bill would take effect unless Treasury makes the determination and reports to Congress that the absence of a U.S. CBDC would not enable the Chinese Yuan to replace the U.S. dollar as the principal global reserve currency.
- Representative Lynch proposed an amendment that would ensure that nothing in the bill would take effect unless Treasury determines that a CBDC cannot be designed in a manner that promotes consumer data privacy.

Finally, Committee Democrats unanimously rejected this bill, and it is opposed by Americans for Financial Reform, Demand Progress, Public Citizen, and Take on Wall Street.

For these reasons, we oppose H.R. 5403.

Sincerely,

MAXINE WATERS,
*Ranking Member, Committee
on Financial Services.*

NYDIA M. VELÁZQUEZ,
GREGORY W. MEEKS,
STEPHEN F. LYNCH,
EMANUEL CLEAVER, II,

⁴LETTER from Rep. French Hill and Rep. Bill Foster to the Honorable Jerome H. Powell, Chairman of the Board of Governors of the Federal Reserve System (Sept. 30, 2019).

⁵HFSC, ANS to H.R. 5403 (Sept. 20, 2023).

JOYCE BEATTY,
BRAD SHERMAN,
DAVID SCOTT,
AL GREEN,
BILL FOSTER,
JUAN VARGAS,
SEAN CASTEN,
SYLVIA R. GARCIA,
BRITTANY PETERSEN,
RASHIDA TLAIB,
NIKEMA WILLIAMS,
Members of Congress.

