



2023: Year in Review

A fundamental part of our work at the DeFi Education Fund (“DEF”) is to educate lawmakers and regulators about the promise of decentralized finance (“DeFi”) and, on a practical level, exactly how this technology works. We compiled the following summary to illustrate our efforts over the past year to achieve clarity for the DeFi ecosystem.

2023 was challenging: FTX’s collapse and the recent Binance settlement renewed calls for tighter, punitive controls on crypto and emboldened regulators to take a harsher line on any perceived malfeasance within the ecosystem. Crypto, along with permissionless, decentralized systems more broadly, continues to serve as convenient scapegoats for larger, long-term issues within the traditional financial and regulatory system. Regardless of the underlying reasons, the last year has energized DeFi’s critics and distorted the debate about the fundamental benefit of this technology. That’s the bad news, and if we had written this letter two months ago, our perspective may have remained gloomy.

However, greenshoots are evident. Congress passed multiple pro-crypto bills out of committee and is poised to continue debating this topic in 2024. Additionally, several court cases involving major questions relevant to the broader crypto ecosystem could be decided in the coming year (more on our view on those cases below). These are not yet signs of victory for regulatory clarity for DeFi, but they are markers for the value of persistence in making the case for those rules.

We remain committed to fight for DeFi, in the courts, across relevant federal and international regulatory bodies, and on Capitol Hill. Here’s a summary of our work in 2023:

Filing amicus briefs: as amicus curiae in precedent setting cases, we detail to courts the workings and importance of DeFi and advocate for positions favorable to its development. We take a tech-first approach to ensure judges understand the nuances of DeFi and to help prevent regulators’ attempts to apply inapplicable old laws to a new technology and industry.

- *Coin Center v. Treasury* - In June, we filed an [amicus brief](#) in the Northern District of Florida in support of the plaintiffs’ motion for summary judgment. In October 2022, Coin Center and several individuals sued Treasury, challenging OFAC’s designation of Tornado Cash smart contracts. The plaintiffs argued that doing so exceeded the Treasury’s authority, and violated the Administrative Procedure Act (APA) and the First Amendment. Our brief supported these arguments and made the point that Tornado Cash is an important privacy-protection tool and the sanctions designations made no sense when considering the realities of the technology at issue.
- *SEC v. Coinbase* - In August, we filed an [amicus brief](#) in the U.S. District Court for the Southern District of New York in support of Coinbase’s motion for judgment on the



pleadings against the Securities and Exchange Commission (SEC). We explained how wallets and staking actually work and supported Coinbase's arguments that it is not a broker through its Wallet software, nor did it offer securities through its Staking program.

- *Harper v. Internal Revenue Service* - In October, we filed an [amicus brief](#) to the U.S. Court of Appeals for the First Circuit in support of Harper's appeal of the lower court's order dismissing his case. This case involves Harper's challenge to a "John Doe" summons the IRS sent to Coinbase that resulted in the collection of information about 14,355 Americans (none of whom were accused of any wrongdoing prior to the summons) over a three-year period. Our brief explained the sweeping Fourth Amendment implications of indiscriminately collecting digital asset transaction information and how doing so is more revealing than in the context of TradFi.
- *Van Loon v. Treasury* - In November, we filed an [amicus brief](#) in the U.S. Court of Appeals for the Fifth Circuit in support of the plaintiffs' appeal seeking to reverse the district court's dismissal of the suit. The plaintiffs are challenging the Office of Foreign Asset Control's (OFAC) assertion that it has the authority to designate smart contracts. We argued that the use of privacy-protecting technology is normal and not inherently illicit and that OFAC exceeded its statutory authority in issuing sanctions that included purely domestic transactions.

Combating crypto patent trolls: In September, we took action to protect DeFi and crypto from invalid patent infringement claims. We filed a [petition](#) with the U.S. Patent and Trademark Office seeking to initiate an *inter partes* review and cancellation of all claims in a patent owned by True Return Systems LLC. TRS is a patent troll who first tried to sell the patent as an NFT, and when that didn't work, sued both MakerDAO and Compound Protocol in federal court for alleged infringement of [U.S. Patent No. 10.025.797](#). Our petition argued that the technology that TRS purported to patent was not in fact TRS's invention, but was instead very similar to oracle technology that had been in development and use for years prior to the patent.

Regulatory action: DEF submits comment letters in response to proposed rulemakings by government agencies in the U.S. and abroad to advocate for outcomes welcoming of DeFi.

- In June, we filed our [third comment letter](#) on the SEC's proposed "exchange" rulemaking. Our brief made two primary arguments: first, the proposal improperly reads and misapplies the Exchange Act and exceeds the SEC's statutory authority and mandate under the Act; and second, the SEC has flatly failed to comply with numerous procedural and statutory rulemaking requirements.
- In June, we submitted a [response](#) to Banque of France's Autorité de Contrôle Prudentiel et de Résolution (ACPR) regarding their discussion paper: "Decentralised' or



‘Disintermediated’ Finance: What Regulatory Response?” Our primary arguments included that ACPR should not directly regulate miners and validators by establishing standards for public blockchains; a policy that would “force centralization” would eliminate the core innovations of public blockchains; and a framework for smart contract certification would require centralization and the inappropriate regulation of speech.

- In June, we submitted a [response](#) to a consultation from HM Revenue and Customs, the United Kingdom’s tax, payments, and customs authority, regarding “the taxation of DeFi involving the lending and staking of cryptoassets.” At a high-level, our submission noted that any changes to the tax regime that concern DeFi must: be flexible to account for future innovation; exhibit clarity and simplicity to promote compliance by minimizing the burden on taxpayers; and align with the underlying economic substance of a typical DeFi transaction.
- In September, we [responded](#) to a request for comment from the Senate Finance Committee regarding the taxation of digital assets. In our submission, we recommended the following:
 - Revise Section 6050I so that it does not “deputize recipients of digital assets to collect and report information about their payers.”
 - Do not tax staking rewards until a sale or other disposition.
 - Do not apply wash sale rules to taxpayers who utilize digital assets as a form of currency.
 - Ask Congress to explicitly extend the application of section 1058’s nonrecognition rule to “loans” of actively traded fungible tokens.
- In October, we [responded](#) to France’s Autorité de Marchés Financiers (AMF) concerning their DeFi regulatory discussion paper. Our comment letter addressed many topics including permissionless blockchain protocols, legal enforceability of smart contracts, off-chain elements, etc. Importantly, we addressed the legal liability of smart contract developers, arguing that smart contracts’ code is open-source for anyone to audit and make informed decisions. Furthermore, we argued that open-source code is a form of expression as it conveys ideas for societal change and demands protection. We also informed the AMF that smart contract certifications are ineffective as anyone can take open-source code and create a deployment transaction for the network to validate and include in the blockchain — illustrating DeFi’s permissionless nature.
- In November, we filed a [comment letter](#) regarding the Treasury Department’s proposed “broker” rulemaking. The proposed rule would introduce a brand new category of broker called a “digital asset middleman,” a new term that is essentially limitless in scope and creates brokers out of thin air and, as we argue, runs contrary to the statute and legislative history. Furthermore, we argued that the proposal violates the Fourth



Amendment's prohibition on warrantless searches and seizures of a person's papers and effects because individuals do not voluntarily turn over their personal data to "digital asset middlemen" who themselves neither collect nor have any legitimate business reason to collect that information.

- For a plain language review of our issues with the rulemaking, read: "[Congress Gets the Runaround From Regulators, Again.](#)"

Check out the "[Resources](#)" tab on the DEF website for a complete list of DEF's comment letters.

Advocating for DeFi on Capitol Hill: 2023 yielded some fruit in the industry's push for crypto-specific legislation. In July, The House Agriculture Committee and the House Financial Services Committee (HFSC) voted, with bipartisan support, to advance the [Financial Innovation Technology for the 21st Century Act](#), a bill that would create a regulatory framework for crypto in the U.S. That same month, the HFSC advanced a bill to establish a [federal regulatory regime](#) for stablecoins. More recently, the House Committee on Energy and Commerce passed the [Deploying American Blockchains Act](#) (by a 46-0 margin), which would direct the chief of the Department of Commerce "to promote the competitiveness of the United States related to the deployment, use, application, and competitiveness of blockchain technology or other distributed ledger technology."

Beyond the details of these pieces of legislation, it is notable that Congress has reached a point where members are willing to engage in substantive debate and that bipartisan support for these bills is not only theoretically possible, but has been expressed in on-the-record votes. While these bills are not perfect, we're pleased that Congress has taken a serious approach to these matters.

In addition to these heartening votes, there's another factor that gives us hope for the long-term chances of good legislation passing both chambers. And that is the willingness of Congressional offices and policymakers to engage with DEF and learn about the foundational aspects of the technology. Over the past year, we've held numerous "DeFi Demos" on Capitol Hill and in various offices of key regulators. The conversations touched on why we believe in DeFi and why government officials and elected representatives should be just as curious as we are as to how this technology can improve the lives of their constituents. Away from sensational media headlines and televised hearings, one can see that a better, more open future for DeFi is developing.

Looking Ahead

While there has been a measurable impact over the past year, there are a number of issues that will be top of mind for us in 2024.

First, looking at issues at the executive branch of government:



FinCEN's NPRM and action against cryptocurrency mixers: In October, the U.S. Department of the Treasury's Financial Crimes Enforcement Network issued a [Notice of Proposed Rulemaking](#) that, if advanced, would label cryptocurrency mixers a "primary money laundering concern." If the Treasury Department proceeds to finalize the rule (which would be the first time they would apply a designation on a *type* of transaction versus an actual *entity*), they can impose special measures on U.S. financial firms' dealings with such mixers, which "range from requiring additional due diligence and special attention concerning particular account transactions among U.S. financial institutions to prohibiting the opening or maintenance of any correspondent or payable-through accounts." We plan to file a comment letter in this matter in early 2024, but it is a reminder that anti-money laundering concerns remain a major focus of both Congress and regulatory agencies.

Finalizing the "broker" and "exchange" rules: Now that the comment period for both of these NPRMs has closed, the relevant agencies have the ability to finalize and put the proposed rules into effect. We will be watching both of these rulemakings closely and will take appropriate action if they are finalized without any substantial changes.

Moving on to the judicial branch:

Getting clarity through the Courts: We will consider filing suit in cases where we think the government has overreached or misapplied rules. As we have seen in recent court cases, crypto has a strong case to make on a variety of issues, including First, Fourth, and Fifth Amendment protections. While making policy through litigation is not ideal, crypto needs to be able to fight back, and win. We will lead that fight where possible. Outside of proactive litigation, we await rulings in other high-profile cases, like Coinbase, where the outcome, regardless of who "wins," will have a tremendous impact on the industry.

And lastly, keeping an eye on the legislative branch:

Continuing debate around providing the industry with clarity: While we lack a crystal ball into what might come out of Congress in 2024, we expect more of the same. It was encouraging to see multiple pieces of legislation move out of committee in 2023, but to provide the clarity that the industry needs, we need more. We expect debate to continue on market structure, stablecoins, and anti-money laundering and countering the financing of terrorism, and we remain committed to working with both parties to ensure that innovation is not stymied and policymakers are able to vindicate their policy objectives in ways that are effective and responsive to the functionality of differing technologies.



Thank You!

We want to express our gratitude and appreciation for your engagement on the core issues that matter for the broader DeFi community. 2024 promises to be even more eventful for DeFi and we want to be able to act against all threats to our ecosystem. To do that effectively, we rely on support and [donations](#) from you.

We are believers in DeFi's transformative potential for humankind, and we hope you will join us as we continue to make that case to our elected officials and federal regulators in the coming year.

Sincerely,
The DEF Team

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