



Tuesday, April 25, 2023

DeFi Education Fund  
2021 L Street NW Suite 101-294  
Washington, DC 20036  
policy@defieducationfund.org

Dear Legislator:

The DeFi Education Fund (“DEF”) is eager to continue to engage in the legislative process around the Digital Asset Regulation Act (“DARA”), or HB3479, as amended. We believe comprehensive legislation to improve regulation around cryptocurrency and digital assets in Illinois is necessary. As a non-profit advocating for policies welcoming of decentralized finance (“DeFi”) infrastructure, we respectfully hope that lawmakers will adopt reasonable suggestions (Exhibit A) to strengthen the legislation and allow Illinoisans responsibly advancing DeFi can continue to do so in their home state.

This bill includes regulatory obligations to address the risks that consumers face when dealing with **custodial and centralized digital asset businesses** (“CeFi”), and we share the bill’s objectives of protecting consumers and promoting market integrity. However, in addition to the CeFi businesses DARA is designed to regulate, the bill’s ambiguous and broad definitions could capture novel **non-custodial and decentralized finance software protocols** and impose on them obligations that are not fit-for-purpose, i.e. regulatory obligations that do not address their novel functionalities and risks. By failing to differentiate between them, the bill could inadvertently prohibit Illinoisans’ use and development of DeFi software protocols. It is not a matter of regulatory arbitrage but rather of treating unlike systems alike under the law. For example, while a protocol never takes custody of any person’s assets, the current draft’s custody-related regulatory requirements would nevertheless apply, leaving no path to compliance. This unintended consequence can be easily addressed with a refinement of certain definitions so that the bill captures the businesses that it is designed to regulate.

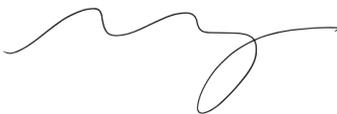
The current bill applies a uniform regulatory framework to both CeFi and DeFi. But because these two “markets” function in different ways, they present different risks to consumers and must be treated differently from a regulatory perspective. Transportation services serve as an extremely oversimplified analogy that demonstrates why CeFi and DeFi need to be treated differently: both cars and airplanes are involved in the same activity, getting people from point A to point B, yet they do not present the same risks to consumers and certainly should not be regulated in the same way. The same principle applies in this instance as well.

Regulators around the world have started to recognize that these differences require a novel regulatory approach, and, in some jurisdictions, have already begun efforts to address them. We believe the Illinois General Assembly should take this same approach in HB3479. Doing so would avoid criminalizing Illinoisans’ development and use of DeFi protocols, which would be a disproportionate regulatory response to the development of novel software tools (first appearing in 2018-19) that currently account for less than 5% of total digital-asset related activities.

Because DeFi protocols are still new and are generally difficult to access and use, Illinois policymakers can accomplish consumer protection objectives with a regulatory framework focused on CeFi businesses (where the vast majority of consumers interact with the digital asset ecosystem) without imposing liability on Illinoisans working in or seeking to access the emerging DeFi space. We hope that Illinois remains a hub of innovation in business and consumer protection and do not wish to see legislation inadvertently incentivize Illinoisans’ to move out of the state.

While we support the broad goals of this bill, we oppose it in its current form due to its overly broad—but easily fixable—definitions. We believe the issues with the language can be addressed through collaboration, and we sincerely appreciate the opportunity to continue to work through these challenges.

Sincerely,

A handwritten signature in black ink, appearing to read 'Miller Whitehouse-Levine', with a large, stylized flourish at the end.

Miller Whitehouse-Levine  
CEO  
DeFi Education Fund

**Exhibit A: Suggested Changes to “Business Activities” Definition** (Page 87, lines 19-26)

"Digital asset business activity" means **the conduct of** any of the following **activities as a customer business**:

1. Exchanging, transferring, or storing a digital asset.
2. Engaging in digital asset administration.
3. Any other business activity involving digital assets designated by rule by the Department as may be necessary and appropriate for the protection of residents.

"Digital asset business activity" does not include the development and dissemination of software in and of itself.

"Exchange", when used as a verb, means to exchange, buy, sell, trade, or convert, on behalf of a resident, either of the following: (1) A digital asset for fiat currency or one or more forms of digital assets. (2) Fiat currency for one or more forms of digital assets.

"Exchange" does not include buying, selling, or trading digital assets for a person's own account in a principal capacity."

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<b>Proposed Changes</b>	<b>04/24/23 Amendment</b>
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