UNITED STATES SENATE COMMITTEE ON
BANKING, HOUSING, & URBAN AFFAIRS
★ ★ ★ ★ ★ ★ Senator Elizabeth Warren, Ranking Member

National Security Issue Brief:
The Clarity Act Weakens Law Enforcement Authorities to Address Decentralized Mixers

As the U.S. Secret Service warned last year, "criminals are increasingly using cryptocurrency mixers, also known as tumblers, to commingle illicit funds with monies from other sources which makes any investigation and potential seizure more difficult for law enforcement." In particular, "decentralized mixing services" have features that benefit "criminals who want to further distance themselves from potential law enforcement detection."

Mixers have helped terror groups, state-affiliated hackers, and other illicit actors launder billions. A recent report from the Trump Administration and G7+ partners found that North Korea used "mixers, decentralized cryptocurrency exchanges, cross-chain bridges, and swap services" to fund its weapons of mass destruction and missile programs. One notorious mixer known as Tornado Cash laundered more than $7 billion for North Korea and criminal organizations from 2019 to 2022 alone and now continues to generate millions in fees per year.

The minority staff of the Senate Banking Committee analyzed the recent text of the Clarity Act. Below are several ways that the Clarity Act would weaken law enforcement tools related to decentralized mixers—and would signal that other countries can do the same in their own laws.

1. **Section 10301 changes U.S. law to exempt the businesses behind decentralized platforms (like decentralized mixers) from having basic responsibilities to counter money laundering and terrorist financing**. Even when businesses are making millions in fees from the operation of a decentralized platform, they would be carved out. For example, the bill says future anti-money laundering and countering the financing of terrorism (AML/CFT) rulemaking can apply only to a person that "controls the operation of" a "non-decentralized finance trading protocol" identified in rulemaking, among other conditions they must also meet. Many DeFi actors would not be covered under these standards, and others would be incentivized to decentralize further to escape any AML/CFT requirements—accelerating a trend Treasury had already been warning about since 2023.

2. **Section 10303 fails to restore U.S. sanctions authority to effectively isolate decentralized mixers** that are known to be laundering hundreds of millions for criminals or U.S. adversaries—beyond merely ignoring preventive AML/CFT responsibilities. All Democrats on the Banking Committee voted to fix a problem that a court ruled only Congress could address: closing a statutory gap preventing Treasury from applying sanctions to specific decentralized mixers. But the Clarity Act leaves Treasury without sanctions authority that had cut down transactions involving Tornado Cash. The bill instead includes a "special measure" that would leave anyone in the United States free to transact with targeted platforms using their own wallets, and it would present zero sanctions risk for non-U.S. persons that use an identified platform.

3. **Section 10604 removes the requirement to register with Treasury for businesses behind decentralized mixers, and takes away tools used to prosecute actors behind the worst decentralized mixers like Tornado Cash.** Unregistered digital asset services are known to present high illicit finance risk, and Congress specifically strengthened the U.S. registration requirement after 9/11 to cover those who set up informal money transfer systems or networks of people who facilitate transfer of money outside of the conventional financial system. But the bill broadly exempts businesses engaged in software development (DeFi businesses) from that registration requirement in 31 U.S.C. § 5330. Moreover, a failure to register under 31 U.S.C. § 5330 is one way that prosecutors can initiate investigations and bring charges under 18 U.S.C. § 1960. One advocacy group circulated documents urging Congress to pass Clarity to catch up to other jurisdictions, but a jurisdiction they named as an example has updated its AML/CFT law (including registration) to explicitly cover those who facilitate the transmission of digital assets, "even where the service provider does not come into possession" of assets.