DeFi Education Fund

<u>The Blockchain Regulatory Certainty Act (BRCA)</u>

First introduced in 2023 by Representative Tom Emmer (R-MN) and reintroduced this Congress with Representative Ritchie Torres as co-sponsor,[1] the bipartisan BRCA includes the following safe harbor, which is critical for protecting software developers:

> *"No blockchain developer or provider of a blockchain service shall be treated as a money transmitter or as engaging in "money transmitting", . . . a financial institution . . ., or triggering liability for unlicensed or unregistered conduct, unless the developer or provider has, in the regular course of business, control over digital assets to which a user is entitled under the blockchain service or the software created, maintained, or disseminated by the blockchain developer or provider."*

What It Does: Protects developers of non-custodial peer-to-peer (p2p) software protocols with no control over user assets from being unreasonably treated as operators of an unlicensed money services business (MSB).

Why It Matters: Despite Congress' intent to apply the BSA's requirements only to intermediaries such as financial institutions or businesses that take control of customer funds, software developers have been accused of running unlicensed MSBs even when they create software that enables peer-to-peer financial transactions. The BRCA makes it clear that is not Congress' intent.

- **Clear guidance:** The BRCA reflects and codifies part of the Financial Crime Enforcement Network's (FinCEN) 2019 Guidance, which the digital asset industry has relied on for 6 years, that explained that software developers who write and provide software tools for people to execute their own p2p financial transactions – and do not *accept* and *transmit* funds *on behalf of* others – are not MSBs.
- **Protect innovation in the US:** Treating software developers who create non-custodial p2p protocols as operators of MSBs will force innovation off-shore because such developers do not collect or save user information and are not able to comply with BSA information reporting requirements.
- **Protect Privacy:** When people engage in user-directed, self-custodial, p2p financial transactions on blockchain, they enjoy privacy similar to cash transactions. But if developers of such technology were forced to comply with BSA requirements for "money transmitters," it would necessitate changing the nature of such software to collect transaction information and essentially ban software enabling financial privacy on-chain.

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[1] H.R.3533 - Blockchain Regulatory Certainty Act, www.congress.gov/bill/119th-congress/house-bill/3533/text