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Via E-mail (pra.comments@irs.gov)

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Re: Comment Request for Digital Asset Proceeds From Broker Transactions; 89 Fed. Reg. 78 at 29433 (April 22, 2024) (the “Notice”)

The Blockchain Association (the “Association”) submits these comments in response to the above-captioned Notice published pursuant to the Paperwork Reduction Act (44 U.S.C. § 3501 *et seq.*, the “PRA”). The Association is the leading nonprofit membership organization dedicated to promoting a pro-innovation policy environment for the digital asset economy. The Association endeavors to achieve regulatory clarity and to educate policymakers, regulators, courts, and the public about how blockchain technology can pave the way for a more secure, competitive, and consumer-friendly digital marketplace. The Association represents nearly 100 member companies reflecting the wide range of the dynamic blockchain industry, including software developers, infrastructure providers, exchanges, custodians, investors, and others supporting the public blockchain ecosystem.

On August 29, 2023, the Secretary of the Treasury issued proposed regulations, which purport to interpret and implement the reporting requirements of Section 6045¹ (the “Proposed Regulations”). On November 13, 2023, the Association submitted a comment letter in response to the Proposed Regulations (the “November Comment”).² On April 18, 2024, in connection with the Proposed Regulations, the U.S. Department of the Treasury (“Treasury”) released a draft of Form 1099-DA.³ Because the Form 1099-DA, once finalized, will prompt a new “collection of information” by a federal agency, Treasury must solicit comments pursuant to the PRA.⁴ Treasury issued its Notice soliciting comments pursuant to the PRA on April 22, 2024.⁵

The PRA protects the public from burdensome regulations that involve the “collection of information” by or on behalf of a federal agency. The PRA requires “[a]gencies ... to minimize the

¹ Unless otherwise noted, all section references are to the Internal Revenue Code of 1986, as amended (the “Code”) or Treasury Regulations thereunder.

² The Blockchain Association, Comment Letter on IRS Proposed Rulemaking REG-122793-19 (Nov. 13, 2023), *available at* <https://theblockchainassociation.org/wp-content/uploads/2023/11/Blockchain-Association-Broker-Comment-Letter-2023-11-13.pdf>.

³ I.R.S., 2025 Form 1099-DA (Draft) (Apr. 18, 2024), *available at* <https://www.irs.gov/pub/irs-dft/f1099da--dft.pdf>.

⁴ 44 U.S.C. § 3506(c)(2)(A).

⁵ Proposed Collection; Comment Request for Digital Asset Proceeds from Broker Transactions, 89 Fed. Reg. 78 at 29,433 (Apr. 22, 2024).

burden on the public to the extent practicable.”⁶ Tax forms like the proposed Form 1099-DA are “typical information requests” under the PRA,⁷ and therefore Treasury must consider comments concerning:

- Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;
- The accuracy of the agency’s estimate of the burden of the collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected;
- Ways to minimize the burden of the collection of information on respondents; and
- Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.⁸

The Association incorporates its November Comment by reference, and notes that the November Comment includes extensive suggestions of ways to enhance the quality of the information collected and reduce the attendant burden. The November Comment also explains why collecting information pursuant to the Proposed Regulations is infeasible for certain market participants.

I. Treasury’s estimate of the burden of the collection of information is inaccurate.

A. Treasury underestimates the time burden associated with the Proposed Regulations.

Treasury’s estimated number of total annual burden hours is, at best, confusing and inaccurate and, at worst, intentionally misleading. In the Notice, this burden is listed as 2,146,250 hours.⁹ That number is the result of multiplying the estimated number of brokers impacted by the rule (5,050) by the estimated number of “responses” per impacted broker (2,833) by the estimated time per “response” (0.15 hours).¹⁰

However, when one attempts to analyze the estimate in reference to the Proposed Regulations, the number begins to fall apart. In the Proposed Regulations, the estimated response time of 0.15 hours was calculated per customer, not (as the Notice might have you believe) per form.¹¹

In other words, the Proposed Regulations make clear that a single completed “response” includes *all* of the forms required per “customer,” not just a single form.¹² The Form 1099-DA is a

⁶ *Dole v. United Steelworkers of America*, 494 U.S. 26, 32 (1990).

⁷ *Id.* at 33.

⁸ See Notice; see also 44 U.S.C. § 3506(c)(2)(A).

⁹ See *id.* Adding to the confusion, on April 14, 2024, Treasury filed an Information Collection Requirement with the Office of Information and Regulatory Affairs that attributed 700 million burden hours to the Proposed Regulations. See ICR Summary of Burden for ICR Ref. No. 202311-1545-015, *available at* https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202311-1545-015. No explanation for (or acknowledgement of) this discrepancy was offered.

¹⁰ See Notice.

¹¹ See Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions, 88 Fed. Reg. 166 at 59,573, 59,619 (Aug. 29, 2023).

¹² See *id.* (“A reasonable burden estimate for the average time to complete **these forms for each customer** is between 7.5 minutes and 10.5 minutes, with a mid-point of 9 minutes (or 0.15 hours)” (emphasis added)).

per-transaction document. Many “customers” are likely to engage in multiple transactions each year and thus are likely to receive more than one Form 1099-DA.¹³ Therefore, the vast majority of “responses” will likely encompass some indeterminate number of individual forms.¹⁴ Julie Foerster, the Director of Digital Assets for the Internal Revenue Service, has stated publicly that the agency anticipates processing an **additional eight billion Forms 1099-DA** in the event the Proposed Regulations are finalized as written.¹⁵ Assuming this is true, the Notice implies that the amount of time it will take a broker to fill out a single Form 1099-DA is approximately one second – a major and obvious understatement.¹⁶

A more accurate estimate is that the Proposed Regulations will result in **at least four billion total annual burden hours** for preparation of Forms 1099-DA. Treasury considers the Form 1099-DA to be similar to the preexisting Form 1099-B.¹⁷ The time required to fill out a single Form 1099-B is, according to Treasury, approximately 30 minutes.¹⁸ So, if the actual number of Forms 1099-DA per year is eight billion, and the time required to fill out each Form 1099-DA is in the ballpark of what is required to complete a Form 1099-B (i.e., 30 minutes per form), the true time burden created by the Proposed Regulations is about four billion hours.¹⁹ This would increase the total paperwork burden created by the entire United States government by about one-third – all for the preparation of a single form.²⁰ This does not take into account the burden imposed on the taxpayers who receive these forms from brokers and must determine how to incorporate the forms into their tax returns. It also does not consider the burden imposed on the IRS for collecting, storing, and reviewing the forms.

Any agency proposal that introduces four billion annual burden hours and an additional eight billion forms to the to-do lists of both taxpayers and the federal government does not comply with the PRA as a matter of common sense—particularly when the agency’s official notice under the PRA does not even acknowledge or attempt to justify this burden.

¹³ See I.R.S., 2025 Form 1099-DA (Draft) (Apr. 18, 2024), *available at* <https://www.irs.gov/pub/irs-dft/f1099da--dft.pdf> (calling for information for a single transaction).

¹⁴ Note that the IRS does have rules allowing for a “substitute statement,” whereby information technically required to be reported on separate “forms” may instead be reported in a single statement with more than one transaction per page. This is the case for 1099-Bs, for example. The number of “forms” required is technically the same, and the information required is the same, but you can meet the obligation to file these multiple forms with a single “substitute statement.”

¹⁵ Jonathan Curry, *IRS Prepping for at Least 8 Billion Crypto Information Returns*, Tax Notes (Oct. 26, 2023), <https://www.taxnotes.com/featured-news/irs-prepping-least-8-billion-crypto-information-returns/2023/10/25/7hhdp>.

¹⁶ $2.15 \text{ million hours} / 8 \text{ billion forms} = 7.74 \text{ billion seconds} / 8 \text{ billion forms} = \sim 1 \text{ second per form}$.

¹⁷ See *Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions*, 88 Fed. Reg. at 59,619 (Aug. 29, 2023) (stating that estimates are based on data collected from filers of “similar information returns” such as Form 1099-B) (emphasis added).

¹⁸ See I.R.S., *General Instructions for Certain Information Returns (2024)*, Cat. No. 27976F (Jan. 26, 2024), *available at* <https://www.irs.gov/pub/irs-pdf/i1099gi.pdf> at page 25.

¹⁹ $8 \text{ billion forms} \times .5 \text{ hours per form} = 4 \text{ billion hours}$. This itself is an understatement given that, as described in our November Comment, the information required to be reported is far more complicated, if not impossible, to collect.

²⁰ See *Inventory of Currently Approved Information Collections*, OIRA, <https://www.reginfo.gov/public/do/PRARReport?operation=11> (total annual reporting burden is currently about 11.92 billion hours) (last visited June 21, 2024).

B. *Treasury underestimates the financial expense associated with the Proposed Regulations.*

The Proposed Regulations calculated the financial burden of completing Forms 1099-DA to be \$136,350,000 annually or \$63.53 per hour. Applying this hourly rate to the more accurate four billion hours estimate results in an annual financial burden of **at least \$254 billion**.²¹ Recently, the IRS estimated that “global crypto revenue” is between \$1 billion and \$37 billion per year, with only about 25% of transactions currently reported.²² It did not analyze how much of global crypto revenue is taxable in the United States. However, even assuming that all global crypto revenue is taxable in the United States at the highest individual tax bracket (37%), the tax gap for digital assets would be approximately \$10 billion per year. To require the industry to spend over \$250 billion per year to help lower a tax gap that is, at the highest conceivable level, \$10 billion per year, is completely unreasonable.

II. This collection of information is not necessary for the proper performance of the functions of Treasury and offers no practical utility.

As the Association pointed out in its November Comment, much of the information that will be collected by the Form 1099-DA is precisely the type of highly burdensome, practically useless trivia the PRA seeks to avoid. For example, the Proposed Regulations do not include a *de minimis* exception.²³ Therefore, a large number of Forms 1099-DA will report on trivial transactions, and the Proposed Regulations require reporting even of transactions resulting in no gain or loss whatsoever. The cost of compliance for brokers and affected taxpayers who will be required to wade through a deluge of small-value transactions to ensure that each one is accurately reported greatly outweighs the immaterial amount of income tax that may be remitted to the fisc as a result of their inclusion. The absence of a threshold will not meaningfully contribute to closing the tax gap and is, therefore, of minimal practical utility to Treasury.

Similarly, the broad definition of “digital asset” in the Proposed Regulations captures assets whose value is pegged to an underlying currency, commodity, or financial instrument, including stablecoins.²⁴ Notwithstanding that transactions in stablecoins are functionally equivalent to electronic transfers of currencies, which are generally not required to be reported, and that it would be extremely unusual for a holder to recognize gain or loss on stablecoins, the Proposed Regulations would subject stablecoins whose value is pegged to the dollar to the same reporting obligations as other assets held purely for investment. This bizarre treatment will flood Treasury with reporting on transactions that reflect minimal value fluctuation, which, even when taken all together, are unlikely to have any significant practical utility (particularly when compared to the countervailing burden). Were this type of reporting of any actual use to Treasury, one would expect to see it required across all comparable asset classes. Instead, transactions in currencies are generally not required to be reported.

²¹ As explained in the November Comment, Treasury also significantly undercounts the financial burden in other ways, including, for example, by failing to take into account the “start-up” burdens of creating the reporting systems required by the Proposed Regulations. See *November Comment* at 32–33.

²² See I.R.S. Pub. 5901, Cat. No. 94564D at 4 (Feb. 2024), available at <https://www.irs.gov/pub/irs-pdf/p5901.pdf>.

²³ See November Comment at 16–17.

²⁴ See *id.* at 15–16.

The Proposed Regulations also require reporting on the exact date and time of each and every digital asset transaction.²⁵ Reporting the exact transaction time is unnecessary, will add to the voluminous nature of the reports received by taxpayers and the IRS, and will create additional difficulty with implementing the use of a single time zone, particularly given that digital asset markets operate 24/7. This information is not required to accurately determine tax liability, as evidenced by the fact that it is not required for transactions of non-digital assets. The utility of this information is practically inconceivable, yet brokers may soon be required to document it on Forms 1099-DA.

Finally, the Proposed Regulations result not only in the reporting of inconsequential minutiae but also in duplicative reports. The Proposed Regulations decline to apply the “multiple broker rule” that protects against duplicative reporting of non-digital assets to transactions in digital assets.²⁶ In other words, the Proposed Regulations will result in multiple parties reporting on the same transaction. To state the obvious, receiving the same information on the same transaction from several different brokers is unlikely to enhance the proper performance of Treasury.

III. Conclusion

For the reasons set forth above, the Proposed Regulations run directly afoul of the PRA, and the Notice itself provides inadequate, facially absurd estimates of the paperwork burden associated with the Proposed Regulations. The Association encourages Treasury to acknowledge the true burdens of the Proposed Regulations, to reconsider certain aspects of the Proposed Regulations, and to re-propose rules that would better account for practical considerations in the digital asset ecosystem.

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We appreciate the opportunity to comment on these regulations and would be happy to discuss further any of the issues discussed here.

Respectfully submitted,



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²⁵ See *id.* at 17–18.

²⁶ See *id.* at 18.

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