

November 6, 2024

**Via Online Portal located at:**

**[https://www.reginfo.gov/public/do/PRA/icrPublicCommentRequest?ref\\_nbr=202404-1545-010](https://www.reginfo.gov/public/do/PRA/icrPublicCommentRequest?ref_nbr=202404-1545-010)**

**With copy to:**

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**Re: Comment Request for Digital Asset Proceeds From Broker Transactions; 89 Fed. Reg. 194 at 81151 (October 7, 2024) (the “Second Notice”)**

The Blockchain Association (the “Association”)<sup>1</sup>, the DeFi Education Fund (“DEF”)<sup>2</sup>, and the Texas Blockchain Council (“TBC”)<sup>3</sup> (together, the “Commenters”) submit these comments in response to the above-captioned Second Notice published pursuant to the Paperwork Reduction Act (44 U.S.C. § 3501 *et seq.*, the “PRA”).

On August 29, 2023, the Secretary of the Treasury issued proposed regulations, which purport to interpret and implement the reporting requirements of Section 6045<sup>4</sup> (the “Proposed Regulations”). On November 7, 2023, DEF submitted a comment letter in response to the

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<sup>1</sup> 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.

<sup>2</sup> DEF is a nonpartisan research and advocacy group working to explain the benefits of decentralized finance (“DeFi”), achieve regulatory clarity for the future of the global digital economy, and help realize the potential of DeFi. DEF works to educate regulators and policymakers and advocate for smart approaches.

<sup>3</sup> TBC is a nonprofit, public interest organization working to foster growth, innovation, and sensible regulation in the digital asset industry.

<sup>4</sup> Unless otherwise noted, all section references are to the Internal Revenue Code of 1986, as amended (the “Code”) or Treasury Regulations thereunder.

Proposed Regulations.<sup>5</sup> The Association did the same on November 13, 2023 (the “November Comment”).<sup>6</sup> 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, which was most recently updated on September 9, 2024.<sup>7</sup> Because the Form 1099-DA, once finalized, will prompt a new “collection of information” by a federal agency, Treasury was required to solicit comments pursuant to the PRA.<sup>8</sup>

The PRA requires two phases of public comment. Treasury issued its first notice soliciting comments pursuant to the PRA on April 22, 2024 (the “First Notice”).<sup>9</sup> The Association and DEF submitted responsive comments in June 2024 (the “June Comments”),<sup>10</sup> which Treasury was required to consider before issuing the Second Notice on October 7, 2024. The Commenters now write to reiterate the issues first raised in the June Comments and note that despite its statutory obligations, Treasury failed to adequately address those arguments before moving ahead to this phase of the rulemaking under the PRA.

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 burden on the public to the extent practicable.”<sup>11</sup> Tax forms like the proposed Form 1099-DA are “typical information requests” under the PRA,<sup>12</sup> 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;

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<sup>5</sup> The DeFi Education Fund, Comment Letter on IRS Proposed Rulemaking REG-122793-19 (Nov. 7, 2023), *available at* [https://www.defieducationfund.org/\\_files/ugd/e53159\\_40d4255857d142f2a1744be79f1dab3f.pdf](https://www.defieducationfund.org/_files/ugd/e53159_40d4255857d142f2a1744be79f1dab3f.pdf).

<sup>6</sup> 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>.

<sup>7</sup> I.R.S., 2025 Form 1099-DA (Draft) (Sept. 9, 2024), *available at* <https://www.irs.gov/pub/irs-dft/f1099da--dft.pdf>.

<sup>8</sup> 44 U.S.C. § 3506(c)(2)(A).

<sup>9</sup> 89 FR 29433.

<sup>10</sup> The Blockchain Association, Comment Letter on Digital Asset Proceeds From Broker Transactions, 89 Fed. Reg. 78 at 29433 (June 21, 2024), *available at* <https://www.reginfo.gov/public/do/DownloadDocument?objectID=146866300>; The DeFi Education Fund, Comment Letter on Digital Asset Proceeds from Broker Transactions, 89 Fed. Reg. 78 at 29433 (June 21, 2024), *available at* [https://www.defieducationfund.org/\\_files/ugd/84ba66\\_3d28a7b618dc49cda4f661fa795eed6f.pdf](https://www.defieducationfund.org/_files/ugd/84ba66_3d28a7b618dc49cda4f661fa795eed6f.pdf).

<sup>11</sup> *Dole v. United Steelworkers of America*, 494 U.S. 26, 32 (1990).

<sup>12</sup> *Id.* at 33.

- 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.<sup>13</sup>

The Commenters incorporate each of their previous comments by reference, and note 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 remains, at best, confusing and inaccurate and, at worst, intentionally misleading.

In the First Notice, this burden is listed as 2,146,250 hours.<sup>14</sup> 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).<sup>15</sup>

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 First Notice might have one believe) per *form*.<sup>16</sup>

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.<sup>17</sup> The Form 1099-DA is a per-transaction document. Many "customers" are likely to engage in multiple transactions each

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<sup>13</sup> See First Notice; see also 44 U.S.C. § 3506(c)(2)(A).

<sup>14</sup> See First Notice. 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](https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202311-1545-015). No explanation for (or acknowledgement of) this discrepancy was offered.

<sup>15</sup> See First Notice.

<sup>16</sup> 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).

<sup>17</sup> 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)).

year and thus are likely to receive more than one Form 1099-DA.<sup>18</sup> It beggars belief that customers transacting with digital assets make exactly one transaction per year. Therefore, the vast majority of “responses” will likely encompass some indeterminate number of individual forms.<sup>19</sup> Julie Foerster, the former 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.<sup>20</sup> Assuming this is true, the First 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.<sup>21</sup>

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.<sup>22</sup> The time required to fill out a single Form 1099-B is, according to Treasury, approximately 30 minutes.<sup>23</sup> 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.<sup>24</sup> This would increase the total paperwork burden created by the entire United States government by about

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<sup>18</sup> 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).

<sup>19</sup> 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.”

<sup>20</sup> 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>; see also Zlatkin, L. (2024, Sept. 25). Cryptocurrency Task Force [CLE session]. American Bar Association, online. <https://events.americanbar.org/hub/events/b6660c8b-b3e9-4216-b9aa-1f22063cc471/sessions/bdae821f-4722-42ed-be58-d2204a5e4810?autoplay=true> (Coinbase Vice President, Tax stating: “We are expecting to file, at Coinbase alone, one billion transactions”).

<sup>21</sup>  $2.15 \text{ million hours} / 8 \text{ billion forms} = 7.74 \text{ billion seconds} / 8 \text{ billion forms} = \sim 1 \text{ second per form}$ .

<sup>22</sup> 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).

<sup>23</sup> 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.

<sup>24</sup>  $8 \text{ billion forms} \times .5 \text{ hours per form} = 4 \text{ billion hours}$ . 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.

one-third – all for the preparation of a single form.<sup>25</sup> 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.

Treasury's Second Notice and accompanying Supporting Statement do nothing to address these issues. The Second Notice includes a slightly increased burden estimate of 2,252,500 hours, but contains no explanation as to why this number changed.<sup>26</sup> The Supporting Statement explains that the method for computing the burden estimate is essentially the same as in the First Notice: the burden estimate is the result of multiplying the estimated number of brokers impacted by the rule (5,300) by the estimated number of "responses" per impacted broker (2,736) by the estimated time per "response" (0.15 hours or nine minutes). The Supporting Statement clarifies that the nine-minute estimate per "response" is *actually* an estimate "for each customer" and is *not* based on the "number of Forms 1099-DA that the broker must file."<sup>27</sup> That makes no sense: The burden is on the *broker* to prepare a form for each *transaction*, not each customer—so the burden must be assessed from the broker's vantage point. And, again, this is inconsistent with Treasury's estimate of the burden for other forms that Treasury believes are "similar": Treasury's burden estimate for the Form 1099-B is based on the number of forms, not customers. Treasury has provided no explanation at all, let alone a reasoned explanation, why the burden for the Form 1099-DA should be calculated differently in a manner that greatly reduces the estimated (but not the real) burden.

Treasury then suggests—without support—that once a single Form 1099-DA is completed for one customer, all subsequent forms will be easier.<sup>28</sup> There is no reason to believe that will be the case, and Treasury has provided none. Here too, that unsupported assertion is inconsistent with Treasury's treatment of the Form 1099-B.

Treasury also attempts to disavow the eight billion Forms 1099-DA estimate in its Supporting Statement, claiming: "The reference to 8 billion returns was not an estimate of the number of forms the IRS expected to receive under the proposed or final regulations."<sup>29</sup> But Treasury does not provide any alternative explanation of what this number was intended to describe. The Commenters invite the OMB to draw its own conclusion as to what was meant by the former Director of Digital Assets for the IRS when she said: "Our estimate right now is that we

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<sup>25</sup> 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).

<sup>26</sup> See Second Notice.

<sup>27</sup> See Supporting Statement, IRS, Form 1099-DA, Digital Asset Proceeds Form Broker Transactions, OMB Control Number 1545-NEW, *available at* <https://www.reginfo.gov/public/do/DownloadDocument?objectID=146984100>, at 10, 13.

<sup>28</sup> Supporting Statement at 10.

<sup>29</sup> *Id.*

will ingest — don't fall off your chairs — 8 billion information returns, and that's just the in-development Form 1099-DA.”<sup>30</sup>

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.

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. The Supporting Statement increases the hourly estimate to \$65.49 per hour. Applying this hourly rate to the more accurate four billion hours estimate results in an annual financial burden of **at least \$261 billion**.<sup>31</sup> 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.<sup>32</sup> 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 \$260 billion per year to help lower a tax gap that is, at the highest conceivable level, \$10 billion per year, is completely unreasonable.

## II. Conclusion

For the reasons set forth above and in the letters previously submitted, the Proposed Regulations run directly afoul of the PRA, and both notices provide inadequate, facially absurd estimates of the paperwork burden associated with the Proposed Regulations. The Commenters encourage Treasury and OMB 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.

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<sup>30</sup> 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>.

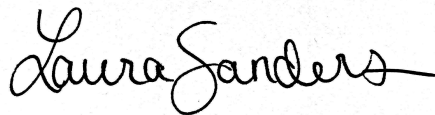
<sup>31</sup> As explained in the November Comment, Treasury also significantly undercounts the financial burden in other ways, including, for example, by failing to take into account the “start-up” burdens of creating the reporting systems required by the Proposed Regulations. See *November Comment* at 32–33.

<sup>32</sup> See I.R.S. Pub. 5901, Cat. No. 94564D at 4 (Feb. 2024), available at <https://www.irs.gov/pub/irs-pdf/p5901.pdf>.

Respectfully submitted,



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