

United States Senate

WASHINGTON, DC 20510

October 10, 2023

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Ave. NW
Washington, DC 20220

The Honorable Daniel Werfel
Commissioner
Internal Revenue Service
1111 Constitution Ave. NW
Washington, DC 20224

Dear Secretary Yellen and Commissioner Werfel:

We write regarding the Treasury Department and Internal Revenue Service's (IRS) recently proposed rule concerning tax reporting requirements for crypto brokers.¹ Although we are pleased that the Administration has proposed a strong rule that would help close the massive crypto tax gap, we are alarmed by the self-inflicted two-year delay for the rule's implementation, which would contravene the requirements of the bipartisan *Infrastructure Investment and Jobs Act*, disadvantage law-abiding Americans, and cause the federal government to lose out on billions of dollars in tax revenue. We urge your agencies to limit this troubling delay and implement the final rule as swiftly as possible, while maintaining the rule's substance in the face of industry attacks.

The crypto ecosystem has long needed basic broker reporting requirements. As of 2022, experts estimated that the IRS was missing out on approximately \$50 billion a year in tax revenue from the sprawling crypto industry,² either because consumers do not understand the tax implications of crypto transactions³ or because bad actors are willfully trying to avoid paying their taxes.⁴ Reporting rules for crypto brokers address both of these problems by requiring brokers to (1) provide crypto users with the information they need to file their taxes through a modified 1099 form and (2) provide the IRS with income information from crypto trades so that would-be tax avoiders are easier to track down.⁵ In other words, the Treasury Department and IRS's proposed rule will align the crypto industry with every other financial industry in the United States by subjecting brokers to standard tax reporting requirements.⁶

¹ Internal Revenue Service & U.S. Department of Treasury, Federal Register Notice, "Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions," August 29, 2023, <https://www.govinfo.gov/content/pkg/FR-2023-08-29/pdf/2023-17565.pdf>.

² CNBC, "The IRS may be missing out on \$50 billion a year in unpaid crypto taxes—and a crackdown is underway," Nicolas Vega, May 18, 2022, <https://www.cnbc.com/2022/05/18/irs-may-be-missing-out-on-50-billion-dollars-a-year-in-unpaid-crypto-taxes.html>; New York Times, "Tax cheats cost the U.S. \$1 trillion per year, I.R.S. chief says," Alan Rappeport, April 13, 2021, <https://www.nytimes.com/2021/04/13/business/irs-tax-gap.html>.

³ CNBC, "Majority of crypto investors still aren't ready to file their taxes, survey finds," Kate Dore, April 6, 2022, <https://www.cnbc.com/2022/04/06/most-cryptocurrency-investors-still-arent-ready-to-file-their-taxes.html>.

⁴ New York Times, "Tax cheats cost the U.S. \$1 trillion per year, I.R.S. chief says," Alan Rappeport, April 13, 2021, <https://www.nytimes.com/2021/04/13/business/irs-tax-gap.html>.

⁵ The Tax Law Center at NYU Law, "Treasury and the IRS Should Issue Digital Asset Broker Reporting Guidance Quickly," Taylor Cranor and Mike Kaercher, June 21, 2023, <https://medium.com/@taxlawcenter/treasury-and-the-irs-should-issue-digital-asset-broker-reporting-guidance-quickly-f90ca4daac05>.

⁶ *Id.*

We are particularly pleased by several elements of the Administration’s proposed regulations.

First, the rule defines “brokers” to include any party who facilitates crypto sales *while in a position to know* the identity of the seller and the nature of the transaction.⁷ By covering brokers who both actually know and could know basic information about the crypto trades they are facilitating, the rule properly encompasses anyone who functions as a broker—even if the broker chooses to turn a blind eye to customer information in an effort to escape regulatory scrutiny.⁸ This sensible definition reflects the fact that “[c]ustomers need information about gross proceeds and basis to prepare their tax returns,” that “the IRS needs that information in order to collect the taxes that are imposed,” and that brokers have a responsibility to furnish that information to both their customers and the IRS.⁹ We urge the Administration to retain the strength of this definition in the final rule.

Second, the proposed regulation construes “digital asset” to mean “a digital representation of value that is recorded on a cryptographically secured distributed ledger (or similar technology).”¹⁰ The rule’s definition of digital asset tracks the statutory definition contained in the *Infrastructure Investment and Jobs Act*.¹¹ And because it tracks the statutory language—providing no exemptions for particular types of digital assets and encompassing representations of value recorded using similar technology to cryptography—the rule affords sufficient flexibility to the Treasury Department and IRS to adapt its regulations in a fast-moving, constantly evolving sector.¹² We appreciate the thoughtfulness with which the Administration has crafted this definition and expect the Administration to preserve its flexibility.

Third, the notice of proposed rulemaking indicates that the Treasury Department and IRS are working to issue a separate rule regarding Section 6045A implementation.¹³ Section 6045A regulations are critical to effectuating Congress’s directives about crypto tax reporting because they will govern the tax information that brokers must provide to other brokers and the IRS when digital assets are transferred.¹⁴ The Administration should issue these regulations without delay so that brokers in the crypto industry are subject to a comprehensive tax reporting scheme.

While we applaud the substance of the proposed regulations and your agencies’ efforts to ensure taxpayers continue to report crypto activity, we are deeply concerned that the final rule will not become effective until 2026.¹⁵ In the 2021 *Infrastructure Investment and Jobs Act*, Congress unambiguously directed that the new crypto broker reporting requirements apply to all tax returns filed

⁷ Internal Revenue Service & U.S. Department of Treasury, Federal Register Notice, “Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions,” August 29, 2023, p. 59585, <https://www.govinfo.gov/content/pkg/FR-2023-08-29/pdf/2023-17565.pdf>.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 59581.

¹¹ Infrastructure Investment and Jobs Act, Public Law 117-58.

¹² Internal Revenue Service & U.S. Department of Treasury, Federal Register Notice, “Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions,” August 29, 2023, pp. 59581-82, <https://www.govinfo.gov/content/pkg/FR-2023-08-29/pdf/2023-17565.pdf>.

¹³ *Id.* at 59595.

¹⁴ *Id.*

¹⁵ *Id.* at 59616.

starting in 2024.¹⁶ Yet, the Treasury Department and IRS waited almost two years to issue rules regarding these requirements, making it exceedingly unlikely that the Administration will implement the rules in accordance with Congress’s directive.¹⁷ An additional two-year delay not only contravenes this statutory directive; it runs counter to the interests of American taxpayers and the federal government.¹⁸ The Joint Committee on Taxation has projected that the reporting requirements would generate billions of dollars in tax revenue in the first several years of implementation.¹⁹ But if the rule’s effective date is delayed until 2026, that revenue would be entirely lost to the federal government. Moreover, any delay would give crypto lobbyists even more opportunity to undermine the Administration’s efforts to impose basic reporting requirements on the nearly unregulated crypto sector, at a time when the industry is already pushing to repeal the recently enacted reporting requirements.²⁰ The time to act is now.²¹

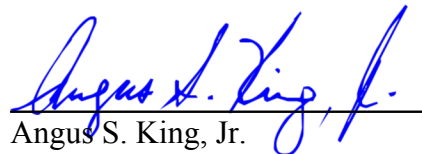
Limiting any further delay in the implementation of the Administration’s proposed rule would combat industry efforts to evade regulation, provide clarity to law-abiding taxpayers, and generate billions in tax revenue from a chronically tax-avoidant industry. Accordingly, we request that the Treasury Department and IRS implement the proposed crypto broker reporting rule as rapidly as possible and ask that you provide an update by October 24, 2023 on your efforts to do so.

Thank you for your attention to this important matter.

Sincerely,



Elizabeth Warren
United States Senator



Angus S. King, Jr.
United States Senator

¹⁶ Infrastructure Investment and Jobs Act, Public Law 117-58.


¹⁷ The Tax Law Center at NYU Law, “U.S. Will Likely Lose Billions Due to Unacceptably Long Delay for Digital Asset Reporting Requirements,” Chye-Ching Huang, August 25, 2023, <https://medium.com/@taxlawcenter/u-s-will-likely-lose-billions-due-to-unacceptably-long-delay-for-digital-asset-reporting-d7087ba170e5>.

¹⁸ *Id.*

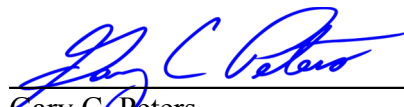
¹⁹ The Joint Committee on Taxation, “Estimated Revenue Effects Of The Provisions In Division H Of An Amendment In The Nature Of A Substitute To H.R. 3684, Offered By Ms. Sinema, Mr. Portman, Mr. Manchin, Mr. Cassidy, Mrs. Shaheen, Ms. Collins, Mr. Tester, Ms. Murkowski, Mr. Warner And Mr. Romney, The ‘Infrastructure Investment And Jobs Act,’” <https://www.jct.gov/publications/2021/jcx-33-21>.

²⁰ The Hill, “Proposed crypto tax rules draw ire from industry groups,” Taylor Giorno, August 25, 2023, <https://thehill.com/business/4171232-proposed-crypto-tax-rules-draw-ire-from-industry-groups>.

²¹ Letter from Senator Elizabeth Warren to Treasury Secretary Janet Yellen & IRS Commissioner Daniel Werfel, August 1, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.08.01%20Letter%20to%20Treasury%20and%20IRS%20re%20Crypto%20Tax%20Reporting%20Requirements.pdf>.



Richard Blumenthal
United States Senator



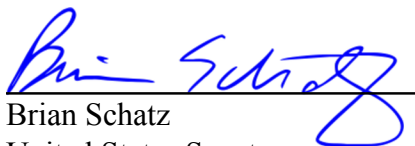
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