



Digital Assets: From Crypto to Compliance

Key Timeline Considerations: Planning Implementation of Broker Digital Asset Reporting Regulations

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Final regulations on broker digital asset information reporting were issued by the Treasury and the IRS on June 28, 2024. Industry participants will need to assess the applicability of these rules to their operations and consider how to implement these rules within the organization if they fall within the scope of a broker required to report on digital asset sales or payment transactions.

Final Regulations, In General

The final regulations generally require custodial brokers (i.e., brokers that take possession of the digital assets) to report gross proceeds to customers and the IRS beginning with sales occurring on or after January 1, 2025, and provide cost basis information on sales occurring on or after January 1, 2026 (for digital assets acquired on or after that date). Brokers subject to these reporting requirements include operators of custodial digital asset trading platforms, certain digital asset hosted wallet providers, digital asset kiosks, and certain processors of digital asset payments (PDAPs). The final regulations require broker reporting for certain dispositions of digital assets that are made in exchange for cash, different digital assets, stored-value cards, broker services, or property subject to existing broker reporting rules, or any other property in a payment transaction processed by a PDAP. For now, reporting is also generally limited only to U.S. digital asset brokers. Reporting for noncustodial brokers (e.g., certain DeFi platforms) is generally deferred until further guidance is issued. The Treasury stated in the preamble that such guidance would be issued “expeditiously.”

This memorandum discusses some of the key timeline considerations for brokers subject to a reporting requirement under these rules. It also provides a brief overview of certain transactions for which the Treasury and the IRS have provided transitional or other relief rules and exceptions, as these rules and exceptions may be important in planning implementation efforts.

Timeline Considerations

Calendar Year 2025	
Reporting required	<p>Gross proceeds reporting on digital asset sales occurring on or after January 1, 2025, is required.</p> <p>In addition to trading on custodial exchanges, sales can also include a digital asset payment by a customer through a PDAP in a purchase of a good or service, since the payment is treated as a disposition of the digital asset used for payment. However, final regulations provide that PDAPs are required to report on customers generally only where they already may be required to obtain identification from such customers under AML requirements. In addition, if the payment is made in qualifying stablecoins, there is a de minimis threshold of \$10,000 before reporting is triggered. For other PDAP payments, there is a reporting threshold of \$600. Note, however, that even if not reportable, the payments may be subject to backup withholding in certain situations.</p>
Information to be reported	<p>For each digital asset sale, with the exception of a sale of qualified stable coins or specified non fungible tokens (NFTs) for which a broker chooses to use an optional alternative reporting method, a broker is required to file an information return on a transactional basis with the following information on Form 1099-DA, <i>Digital Asset Proceeds from Broker Transactions</i>, or any successor form:</p> <ul style="list-style-type: none"> • Name, address, and taxpayer identification number (TIN) of the customer • Name and number of units of the digital asset sold • Gross proceeds amount (after reduction for the allocable digital asset transaction costs) • Whether the sale was for cash, stored-value cards, or in exchange for services or other property • CUSIP number of the security sold (if applicable) or other security identifier number, any information required related to options, and any information required related to debt instruments • Date of any transfers into a wallet hosted by the broker and the number of units transferred in by the customer • Whether the broker has taken into account customer-provided acquisition information from the customer or the customer's agent when determining the identification of the units sold; and • Any other information required by the form or instructions. <p>The final regulations modify the proposed regulations by not requiring reporting of the time stamp of a sale transaction, transaction ID, or wallet address information. However, in some cases, brokers may be required to retain such information in their records.</p>
Backup withholding	<p>No backup withholding is required for payments on sales proceeds from digital asset sales in 2025. This is a one-year transitional relief provision. Generally, if a payment is reportable by a broker and a broker does not have a certified TIN from the customer on a Form W-9, a broker is required to withhold at the rate of 24% on</p>

Calendar Year 2025	
	the proceeds and deposit the same with the IRS. The transitional rule will allow brokers time to set in place backup withholding procedures and systems and test such systems during the 2025 calendar year.
Customer documentation	Because backup withholding is deferred during 2025, brokers will be able to continue to solicit and document customers with appropriate tax documentation (Form W-9 or a Form W-8) during 2025. This may involve solicitation/customer education campaigns, implementing processes for accepting forms electronically,
Cost basis processing	While cost basis information does not need to be reported in returns for sales of digital assets occurring in calendar year 2025, considerations with respect to building or purchasing functionality for cost basis compliance should occur in 2025 since cost basis reporting would be required in 2026.
Coordination with CARF	In terms of systems design, brokers should be aware that additional regulations implementing the OECD Crypt Asset Reporting Framework (CARF) are expected in
Penalty relief	The IRS will not assess penalties for information returns required to be filed and payee statements required to be furnished in 2026 for sales of digital assets effected in 2025, so long as brokers make good faith efforts to file accurate and timely Forms 1099-DA and furnish accurate and timely payee statements.

Calendar Year 2026	
Reporting required	<p>In addition to gross proceeds reporting, the final regulations require reporting of tax basis with respect to sales of digital assets occurring on or after January 1, 2026. However, cost basis is required only for sales of digital assets acquired on or after January 1, 2026. This differs from the proposed regulations which had required that brokers track cost basis back to digital assets purchased on or after January 1, 2023.</p> <p>Broker reporting rules apply to sales of digital assets for real property with dates of closing occurring on or after January 1, 2026. Form 1099-S will be updated for real estate reporting which applies to these transactions.</p>
Information to be reported	Same as calendar year 2025, except with the addition of cost basis information for
Backup withholding	<p>Backup withholding on sales of digital assets begins for sales of digital assets on or after January 1, 2026.</p> <p>For sales transactions effected in 2026, brokers will not have to apply backup withholding on an account opened prior to January 1, 2026, with respect to any payee that furnishes a TIN to the broker (even without a Form W-9) so long as the broker submits the payee's TIN to the IRS's TIN Matching Program and receives a response that the TIN furnished by the payee is correct.</p> <p>Until further guidance is issued, no backup withholding is required for sales of "specified NFTs" (see definition below), digital asset for real property sales effected by real estate reporting persons, or PDAP sales effected by a PDAP.</p>

Calendar Year 2026	
	<p>See also transitional relief for presuming a customer as an exempt foreign person in Customer Documentation (below).</p> <p>In an exchange of a digital asset for another digital asset differing in kind, a broker is allowed under transitional relief provision to withhold on 24% of the digital assets received on the exchange. If the broker immediately liquidates these assets to pay the backup withholding tax, the rule provides relief to the broker in the event the withheld assets decrease in value prior to liquidation and the liquidated amount is less than the required withholding. This is for sales that are effected on or before December 31, 2026.</p>
Customer documentation	<p>Both U.S. and non-U.S. customers should be properly documented with a Form W-9 or Form W-8, as appropriate since backup withholding begins in 2026.</p> <p>However, see transitional relief rule in Backup Withholding (above) for pre-existing accounts that provide a TIN for which the broker implements TIN-Matching.</p> <p>Also, for a sale of a digital asset in a preexisting account effected before January 1, 2027, the broker may treat the customer as an exempt foreign person provided the customer has not previously been classified as a U.S. person by the broker and the information that the broker has in the account opening files or other files pertaining to the account including documentation collected for purposes of an AML program includes a residence address for the customer that is not a U.S. address. Exempt foreign persons are not subject currently to Form 1099-DA reporting (but this may change in the future with CARF implementation regulations).</p> <p>The final regulations added U.S. digital asset brokers (other than certain registered investment advisers) to the list of exempt recipients not subject to reporting, but do not permit a broker to treat a customer as a U.S. digital asset broker unless the broker obtains from that customer a certification on a properly completed exemption certificate (Form W-9) that the customer is a U.S. digital asset broker. Until the Form W-9 is updated to include this certification, a U.S. digital broker can provide an alternate statement.</p>
Cost basis processing	<p>Cost basis processing will require systems that are capable of:</p> <ul style="list-style-type: none"> Identifying the type of digital asset being sold Creating and maintaining tax lots Adjusting tax lots for sales and other events Accommodating tax lot relief methods (such as specific identification of lot to be sold) if applicable <p>Handling basis information for digital assets transferred from outside the broker's systems.</p>
Coordination with CARF	<p>Depending on when CARF implementation guidance is issued, brokers may need to consider changes and enhancements to existing information reporting systems to accommodate CARF reporting requirements.</p>

Optional Aggregate Reporting Methods and Reporting Thresholds

In response to industry comments relating to the nature of stablecoins and certain NFTs, the final regulations also include two optional aggregate reporting methods for “qualified stablecoins” and “specified NFTs.” The final regulations also provide a de minimis threshold for PDAP transaction reporting.

Stablecoins are included in the definition of digital assets. However, in certain circumstances, the final regulations allow for aggregate reporting of sales of certain stablecoins as well as a de minimis reporting

threshold. This method includes a \$10,000 overall annual de minimis threshold for qualifying stablecoin sales and permit sales over this amount to be reported on an aggregate basis rather than a transactional basis. A qualified stablecoin is generally a stablecoin that is designed to track a fiat currency, accepted by third parties for payment, and has either a specified stabilization mechanism or is subject to redemption by the issuer on a one-to-one basis with respect to the convertible currency which the stablecoin is designed to track. In addition, under the optional reporting method for qualifying stablecoins, no reporting is required for certain non-designated sales of qualifying stablecoins. This refers generally to the exchange of a qualifying stablecoin for another digital asset that is not a qualifying stablecoin.

Similarly, the definition of digital assets in the final regulations continues to include nonfungible tokens (NFTs) without regard to the nature of the underlying asset, if any, referenced by the NFT. However, for certain NFTs, the final regulations provide an alternative aggregate reporting methodology. If the customer's total gross proceeds (after reduction for any allocable digital asset transaction costs) from sales of "specified NFTs" exceed \$600 for the year, a broker may report those sales on an aggregate basis in lieu of reporting those sales under the transactional reporting rules. Moreover, no reporting is required for sales of specified NFTs to a customer if the total proceeds for the customer does not exceed \$600 for the year.

A specified NFT for this purpose means a digital asset that is (A) indivisible (cannot be subdivided into smaller units without losing its intrinsic value or function); and (B) unique (digital asset itself includes a unique digital identifier, other than a digital asset address, that distinguishes that digital asset from all other digital assets); (C) is not and does not provide the holder any interest in certain "excluded property" including a security or commodity.

The final regulations also provide that PDAPs would not have to report PDAP sales of digital assets with respect to a customer if those sales did not exceed \$600 for the calendar year.

Transactions Exempt from Reporting until Further Guidance

The final regulations reserve and do not finalize rules on the treatment of decentralized exchanges and certain unhosted digital asset wallet providers and when such industry participants would be treated as brokers.

In addition, certain transactions are not subject to reporting under the final regulations until further guidance. A broker is not required to report on the following identified transactions and will not be subject for penalties for failure to report these transactions correctly until further guidance is issued:

- Wrapping and unwrapping transactions
- Liquidity provider transactions
- Staking transactions
- Transactions described by digital asset market participants as lending of digital assets
- Transactions described by digital asset market participants as short sales of digital assets
- Notional principal contract transactions

Transactions that are Out-of-Scope under Final Regulations

Under the final regulations (as was the case in the proposed regulations), validators (e.g., miners) on a blockchain are not treated as brokers, if they are not providing other functions or services. Neither are persons that are solely engaged in the business of selling hardware, or licensing certain software, for which the sole function is to permit persons to control private keys which are used for accessing digital assets on a distributed ledger are not digital asset brokers.

In addition, the final regulations provide that certain transactions involving closed-loop digital assets are excluded from reportable sales. This exception is intended to apply to the type of virtual assets that exists in a closed system and cannot be sold or exchanged outside that system for fiat currency. This rule would have implications for certain gaming and similar platforms.

Upcoming KPMG Writeups

We are in the process of drafting additional write-ups providing analysis relating to other aspects of these final broker digital asset reporting regulations, including on such topics as stablecoins and NFTs, backup withholding and documentation processes, PDAP and payment settlement entities, and real estate.

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