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B-336514

July 24, 2024

The Honorable Ron Wyden
Chairman
The Honorable Mike Crapo
Ranking Member
Committee on Finance
United States Senate

The Honorable Jason Smith
Chairman
The Honorable Richard Neal
Ranking Member
Committee on Ways and Means
House of Representatives

Subject: *Department of the Treasury, Internal Revenue Service: Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Treasury, Internal Revenue Service (IRS) entitled “Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions” (RIN: 1545-BP71). We received the rule on July 8, 2024. It was published in the *Federal Register* on July 9, 2024. 89 Fed. Reg. 56480. The effective date of the rule is September 9, 2024.

IRS states this final rule requires information reporting by brokers for certain digital asset sales and exchanges. IRS further states the rule, among other things, requires real estate reporting persons to file information returns and furnish payee statements with respect to real estate purchasers who use digital assets to acquire real estate.

Enclosed is our assessment of IRS’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

A handwritten signature in black ink that reads 'Shirley A. Jones'.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Oluwafunmilayo A. Taylor
Chief, Publications and Regulations Section
Internal Revenue Service

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE
ENTITLED
“GROSS PROCEEDS AND BASIS REPORTING BY BROKERS AND DETERMINATION OF
AMOUNT REALIZED AND BASIS FOR DIGITAL ASSET TRANSACTIONS”
(RIN: 1545-BP71)

(i) Cost-benefit analysis

In its submission to us, the Department of the Treasury, Internal Revenue Service (IRS) stated it conducted an analysis of costs and benefits of this final rule. IRS did not include a separate cost-benefit analysis in the rule but described the rule’s impacts, including the reporting burdens that will result (as discussed in more detail below regarding compliance with the requirements of the Paperwork Reduction Act of 1995). IRS further stated the rule does not adopt an IRS registration system for U.S. digital asset brokers because IRS is still considering the benefits and burdens of a registration system for both the agency and brokers.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

IRS stated that a determination of whether this final rule will likely have a significant economic impact on a substantial number of small entities requires further study. Because of the possibility of such an impact, IRS stated, it prepared a Final Regulatory Flexibility Analysis. The analysis included (1) a statement of the need for and objectives of the rule and (2) a description of affected small entities, including analyses of the rule’s impact; alternatives considered for small businesses; and duplicate, overlapping, or relevant federal rules.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

IRS determined that this final rule will not impose any mandates on state, local, or tribal governments, in the aggregate, or on the private sector, of \$100 million or more, adjusted annually for inflation, in any one year.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the

OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

IRS did not discuss the Act in this final rule. In its submission to us, IRS indicated it did not prepare a statement regarding compliance with the Act’s requirements.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On August 29, 2023, IRS and the Treasury Department published a proposed rule. 88 Fed. Reg. 59576. IRS stated that it received over 44,000 written comments in response. IRS noted several comments requested an extension of time to file comments regarding the proposed rule. In response, IRS extended the comment period to November 13, 2023, the same day it held a public hearing. IRS stated it did not further extend the comment period but it accepted late comments until April 5, 2024. IRS responded to comments in this final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

IRS determined that this final rule contains information collection requirements under the Act. According to IRS, the information collection for dispositions of real estate in consideration for digital assets will be conducted through revised Form 1099-S, “Proceeds From Real Estate Transactions” (OMB Control Number 1545-0997). IRS further stated the collection of information concerning dispositions of digital assets will be conducted via new Form 1099-DA, “Digital Asset Proceeds From Broker Transactions.” According to IRS, on April 22, 2024, it released and invited comments on draft Form 1099-DA, which is available on <https://www.irs.gov>, and it published a *Federal Register* notice and request for comments regarding the broker regulations with a 60-day comment period. 89 Fed. Reg. 29433. IRS stated there will be another 30-day comment period starting on the date a second such notice and comment request is published. According to IRS, the rule will impact 13 to 16 million customers and approximately 900 to 9,700 brokers, with estimated start-up costs of between five and ten times annual costs. IRS stated the total estimated aggregate annual burden hours is 2,252,500 and the total estimated monetized burden is \$148,400,000.

Statutory authorization for the rule

IRS promulgated this final rule pursuant to section 7805 of title 26, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

IRS stated a regulatory impact assessment is not required because pursuant to the Memorandum of Agreement, *Review of Treasury Regulations under Executive Order 12866* (June 9, 2023), tax regulatory actions IRS issues are not subject to the requirements of section 6(b) of the Order.

Executive Order No. 13132 (Federalism)

IRS determined that this final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Order.