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B-336975

January 21, 2025

The Honorable Mike Crapo
Chairman
The Honorable Ron Wyden
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 Reporting by Brokers That Regularly Provide Services Effectuating Digital Asset Sales*

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) titled "Gross Proceeds Reporting by Brokers That Regularly Provide Services Effectuating Digital Asset Sales" (RIN: 1545-BR39). We received the rule on December 27, 2024. It was published in the *Federal Register* on December 30, 2024. 89 Fed. Reg. 106928. The stated effective date of the rule is February 28, 2025.

According to IRS, this rule contains regulations regarding information reporting by brokers that regularly provide services effectuating certain digital asset sales and exchanges. IRS stated that the rule requires these brokers to file information returns and furnish payee statements reporting gross proceeds on dispositions of digital assets effected for customers in certain sale or exchange transactions.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). This rule was published in the *Federal Register* on December 27, 2024. 89 Fed. Reg. 106928. The House of Representatives received the rule on December 31, 2024. 170 Cong. Rec. H7439 (daily ed. Jan. 3, 2025). The Senate received the rule on January 3, 2025. 171 Cong. Rec. S66 (daily ed. Jan. 8, 2025). The rule has a stated effective date of February 28, 2025. Therefore, the rule does not have the required 60-day delay in its effective date.

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 cursive script that reads "Shirley A. Jones". The signature is written in black ink and is positioned above the typed name and title.

Shirley A. Jones
Managing Associate General Counsel
Enclosure

cc: Kalle Wardlow
Federal Register Liaison
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
TITLED
“GROSS PROCEEDS REPORTING BY BROKERS
THAT REGULARLY PROVIDE SERVICES EFFECTUATING DIGITAL ASSET SALES”
(RIN: 1545-BR39)

(i) Cost-benefit analysis

The Department of the Treasury, Internal Revenue Service (IRS) estimates the average time burden imposed by this rule to be approximately 360 hours, per covered entity. IRS also estimates the start-up costs to be between 1,800 to 3,600 hours. 89 Fed. Reg. 106928, 106957 (Dec. 30, 2024).

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

IRS stated that it has not conclusively determined whether this rule will have a significant economic impact on a substantial number of small entities. IRS also stated that because there is a possibility of a significant impact on a substantial number of small entities, it prepared a final regulatory flexibility analysis. 89 Fed. Reg. at 106955–106957.

(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 rule will not have an effect on state, local, or tribal governments, in the aggregate, nor on the private sector, of \$100 million in 1995 dollars, updated annually for inflation, in any one year. 89 Fed. Reg. at 106957.

(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 rule or in its submission to us.

(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 issued a proposed rule. 88 Fed. Reg. 59576. IRS stated that it received over 44,000 comments. See 89 Fed. Reg. at 106928. IRS also stated that it held a hearing on November 13, 2023. *Id.* On July 9, 2024, IRS issued a final rule. 89 Fed. Reg. 56480. That rule did not finalize the definition of digital asset middleman in the proposed rule. 89 Fed. Reg. at 106929. This rule finalized the definition. *Id.* IRS summarized and addressed relevant comments in the rule. See *id.*

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

IRS determined that this rule contains information collection requirements under the Act. 89 Fed. Reg. at 106954–106955.

Statutory authorization for the rule

IRS promulgated this rule pursuant to section 80603 of the Infrastructure Investment and Jobs Act, Public Law 117-58, 135 Stat. 429, 1339. 89 Fed. Reg. at 106928.

Executive Order No. 12866 (Regulatory Planning and Review)

IRS stated that tax regulatory actions are not subject to the requirements of section 6(b) of the Order. Therefore, according to IRS, a regulatory impact assessment is not required for this rule. 89 Fed. Reg. at 106954.

Executive Order No. 13132 (Federalism)

IRS determined that this rule does not have federalism implications, does not impose substantial direct compliance costs on state and local governments, and does not preempt state law within the meaning of the Order. 89 Fed. Reg. at 106957.