

June 21, 2024

SUBMITTED VIA EMAIL

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Internal Revenue Service
Room 6526
1111 Constitution Avenue NW, Washington, D.C. 20224

**Re: Comment Request for Digital Asset Proceeds From Broker Transactions;
89 Fed. Reg. 78 at 29433 (April 22, 2024) (the “Notice”)**

Andreessen Horowitz (“**a16z**”) appreciates the opportunity to submit these comments in response to the above-captioned Notice published pursuant to the Paperwork Reduction Act (the “**PRA**”).¹ Our strong belief is that the blockchain ecosystem must develop in a responsible way that allows for appropriate tax compliance. We hope our recommendations serve as a useful resource to you as you work to address the complexities of an ever-evolving digital asset landscape. We would welcome the opportunity to meet with you to answer any questions you may have.

A16z is a venture capital firm that invests in seed, venture, and late-stage technology companies, focused on bio and healthcare, consumer, crypto, enterprise, fintech, and games. A16z currently has more than \$42 billion in committed capital under management across multiple funds, with more than \$7.6 billion in crypto funds. In crypto, we primarily invest in companies using blockchain technology to develop protocols that people will be able to build upon to launch Internet businesses. Our funds typically have a 10-year time horizon, as we take a long-term view of our investments, and we do not speculate in short-term crypto-asset price fluctuations.

I. Summary

The PRA is one of several statutes that governs agency rulemaking, particularly when an agency seeks to collect information from the public. Form 1099-DA² is a “collection of information” and, therefore, is subject to the PRA.³ In the comments below, we set out the issues that the Form may present under the certification requirements of the PRA⁴ and, in certain cases, we discuss the

¹ On August 29, 2023, the IRS issued proposed regulations on gross proceeds and basis reporting by brokers in the context of digital asset transactions (the “**Proposed Regulations**”). A16z incorporates by reference the comments provided in its November letter on the Proposed Regulations (the “**November Comment Letter**”).

² The IRS posted an early release draft of Form 1099-DA (which we sometimes refer to as the “**Form**”).

³ See *Dole v. Steelworkers*, 494 U.S. 26, 33 (1990) (“Typical information collection requests [subject to the PRA] include tax forms.”).

⁴ The PRA requires the IRS to certify to the Office of Management and Budget that the information requested in the Form 1099-DA: (i) is necessary for the proper performance of the functions of the agency; (ii) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency; (iii) reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities; (iv) is written using plain, coherent language and unambiguous terminology and is understandable to those who are to respond; and (v) is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond. 44 U.S.C. § 3506(c)(3). See *Dole*, 494 U.S. at 33 (“Agencies [subject to the PRA] are also required to minimize the burden on the public to the extent practicable.”). The PRA also requires the IRS to solicit comment from the public to: (i) evaluate whether the information requested in Form 1099-DA is necessary for the proper performance of the

underlying Proposed Regulations where appropriate. We then follow with our recommendations. Our comments and observations are summarized as follows:

- Each digital asset transaction will require multiple brokers to file Form 1099-DA, creating unnecessary, duplicative reporting of information and an unreasonable burden on filers.
- Requiring brokers to report wallet addresses is unnecessary and will put sensitive taxpayer information at substantial risk.
- It will be prohibitively costly, and in some cases impossible, to provide the information required by Form 1099-DA.
- The final regulations should delay or “phase in” the effective date of digital asset information reporting requirements.
- Unhosted wallets and digital asset payment processors should be removed from the categories of “brokers” listed on Form 1099-DA.
- The IRS should not require Form 1099-DA to be filed for dispositions of fiat-backed stablecoins and for most dispositions of non-fungible tokens.
- The requirement to file Form 1099-DA should include a de minimis threshold, and brokers should be permitted to aggregate transactions for reporting purposes.

While the underlying Proposed Regulations are not the central topic of this response, we also reiterate our position from the November Comment Letter that the Proposed Regulations are overly broad and beyond the statutory authority that the Infrastructure Investment and Jobs Act provides to the IRS to enact broker information reporting requirements relating to digital assets, and we strongly encourage the IRS to reevaluate its stance prior to finalizing the rule.

II. Form 1099-DA does not meet the Certification Requirements of the PRA.

A. Each digital asset transaction will require multiple brokers to file Form 1099-DA, creating unnecessary, duplicative reporting of information and an unreasonable burden on filers.

Requiring multiple brokers to provide Form 1099-DAs for each digital asset transaction is “unnecessarily duplicative” and does not satisfy the PRA requirement to “reduce to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency.”⁵ Digital asset transactions often include various software touchpoints.⁶ For example, a seller of a digital asset may (i) hold digital assets in an unhosted wallet, (ii) use a software interface (i.e., an application built on top of a decentralized protocol) to access decentralized protocols, and (iii) self-execute a trade using protocols developed by multiple developers. As written, the Proposed Regulations may inappropriately classify each of the unhosted wallet, the software interface, the decentralized protocol, and the developers as brokers and require them to each report the sale of the

functions of the IRS; (ii) evaluate the accuracy of the IRS’s estimate of burden of Form 1099-DA; (iii) enhance the quality, utility and clarity of the information requested in Form 1099-DA; and (iv) minimize the burden on those required to file Form 1099-DA. 44 U.S.C. § 3506(c)(2).

⁵ *Supra* 4.

⁶ We understand that the IRS will receive broker reporting information from centralized intermediaries in the blockchain ecosystem, such as centralized digital asset exchanges.

digital asset on Form 1099-DAs.⁷ Any reporting regime that requires multiple parties to file identical forms with respect to the same transaction on a per-transaction basis with the same information is by definition “unnecessarily duplicative.”

Requiring duplicative Form 1099-DAs will confuse taxpayers, significantly increase compliance costs for businesses, and overwhelm IRS resources. A recent estimate found that the Proposed Regulations could cause over 8 billion Form 1099-DAs to be filed every year.⁸ The IRS has also indicated that the average time required to file Form 1099-DA will be similar to the preexisting Form 1099-B, which takes, on average, 30 minutes to file.⁹ This implies that the annual time burden for preparation of Form 1099-DA will exceed 4 billion hours. This dramatically exceeds the Proposed Regulations’ estimate of approximately 2.15 million hours. The Proposed Regulations also estimate that the financial burden of filing Form 1099-DA will be about \$136 million dollars, or \$63.53 an hour. Applying this hourly rate to a more accurate estimate of the time required to complete Form 1099-DA implies the actual cost could be much larger than the current projection. These costs are not only excessive, but they also threaten to negate much of the efficiencies gained by the ability to conduct transactions with digital assets.

B. Requiring brokers to report wallet addresses is unnecessary and will put sensitive taxpayer information at substantial risk.

Form 1099-DA and the Proposed Regulations require brokers to provide a wallet address for all reported digital asset transactions. This information is irrelevant in determining the gain or loss on the transaction, and does not further identify the taxpayer, who will already be identified by reference to their taxpayer identification number listed earlier on the Form. Therefore, collecting wallet address information in the Form is unnecessary for the functioning of the IRS and violative of the PRA.

Moreover, providing a taxpayer’s wallet address raises serious privacy and security concerns. As we explained in the November Comment Letter, since most blockchain networks are transparent, matching a taxpayer’s identification number with their wallet address will allow someone to identify *every single transaction* on the blockchain that has ever occurred in connection with that taxpayer’s wallet address. This is essentially equivalent to giving the IRS the entire transaction history associated with a taxpayer’s bank account. While other information reporting forms (e.g., 1099-INT) include a box for the taxpayer’s “account number,” an account number is very different from a digital asset wallet address. Traditional account numbers are not published on open blockchains and do not allow the IRS or anyone else to access the taxpayer’s entire transaction history with respect to that account (absent further legal process, such as a subpoena). The same is not true for a digital asset wallet address. On blockchains, publicly available addresses would allow someone who links a user’s identity to their wallet address to see the user’s transaction history on a network.

⁷ We disagree that the aforementioned categories of software and developers should be considered “brokers” under the Proposed Regulations. See November Comment Letter at 4-9.

⁸ See Jonathan Curry, *IRS Prepping for at Least 8 Billion Crypto Information Returns*, Tax Notes (Oct. 26, 2023).

⁹ See 88 Fed. Reg. at 59,619 (stating estimates are based on data collected from filers of “similar information returns” such as Form 1099-B) (emphasis added); 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.

While the IRS has had its own recent issues with maintaining the confidentiality of taxpayer information, taxpayers' wallet addresses (and as a result transaction history information) would also be in the hands of any participant in a digital asset transaction that meets (or could meet) the definition of a "broker" under the Proposed Regulations. Even assuming all of these persons are "good actors," the collection of this sensitive information across multiple parties creates numerous potentially attractive targets for hackers and cybercriminals. This is a significant security and privacy risk, at no benefit to the IRS with respect to the transactions at issue.¹⁰ Since this information is both unnecessary for the purpose for which the information is collected and dangerous to disseminate to every person that meets (or could meet) the definition of "broker," it is antithetical to the PRA and should be removed from the Form.

C. It will be prohibitively costly, and in some cases impossible, to provide the information required by Form 1099-DA.

Form 1099-DA requires brokers to report identifying information about the sellers of digital assets (e.g., names, addresses, taxpayer identification numbers, and account numbers) and descriptions of digital asset transactions (e.g., the name and number of digital assets sold, the date and time of the transactions, gross proceeds amounts, transaction identification numbers and, in some cases, basis information). As drafted, many "brokers" (as defined by the Proposed Regulations) will be unable to meet these requirements. For example, non-custodial application front-ends do not have account relationships with users, and therefore, do not have information about the seller of a digital asset or visibility into the nature of a transaction. Specifically, blockchain-based applications built on decentralized protocols do not typically hold proprietary user information, maintain custody over users' digital assets, or engage in other actions vis-à-vis their users that would otherwise reflect a traditional account relationship. Developers of applications and protocols likewise do not have this information.

The instructions to Form 1099-DA also indicate that brokers will be required to backup withhold if certain information is not provided by sellers of digital assets.¹¹ Many persons and software that may be considered brokers under the Proposed Regulations cannot conduct backup withholding because they never have custody over the subject of the transaction (i.e., the digital asset) or any other assets of the seller or buyer. For example, an "unhosted wallet provider," one of the categories listed on Form 1099-DA has no ability to access customer funds or to know the nature of particular transactions. Unhosted wallet providers do not in fact "effectuate" digital asset transactions, as we explained in the November Comment Letter, so in any event should not be considered brokers.¹² Forcing unhosted wallets to have access to the contents of the wallet (e.g., to retain a private key) would, in effect, convert the unhosted wallet into a custodial wallet, undermining the essential benefits of this innovation.

¹⁰ Indeed, the IRS would still be able to gain access to a taxpayer's more detailed transactional information as needed, for example, in an audit or an investigation, where the request for and production of a wallet address in a more controlled circumstance to verify information would not pose the same cybersecurity and privacy risks.

¹¹ See Form 1099-DA Instructions at Box 4 ("Generally, a filer must backup withhold if [a taxpayer] did not furnish [a] TIN to the filer.").

¹² See *Sec. & Exch. Comm'n v. Coinbase, Inc.*, 2024 WL 1304037, at *35 (S.D.N.Y. Mar. 27, 2024) ("The factual allegations concerning [Coinbase] Wallet are insufficient to support the plausible inference that Coinbase 'engaged in the business of effecting transactions in securities for the account of others' through its Wallet application.").

The PRA requires the IRS to certify that (i) Form 1099-DA be implemented “in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond” and (ii) it has reduced to the extent practicable the burden on persons filing Form 1099-DA. As currently drafted, Form 1099-DA would impose reporting obligations on certain “brokers” that cannot possibly achieve compliance and require other “brokers” to adopt an entirely different business model to achieve compliance.

III. Recommendations for the Filing of Form 1099-DA

A. The final regulations should delay or “phase in” the effective date of digital asset information reporting requirements.

Requiring brokers to file Form 1099-DA for every digital asset transaction represents a major change in information reporting, and it will not be possible for many market participants to properly comply by January 2025.¹³ Businesses should be given time to update their technology, implement systems to collect and safely store the information that Form 1099-DA requires, and build other compliance functions.

Delaying implementation of information reporting, when necessary to ensure appropriate taxpayer and IRS concerns are properly taken into account, is consistent with how Treasury and the IRS have approached other large-scale changes to information reporting regimes. For example, Congress enacted legislation in 2010 applying broad information reporting on assets held overseas by U.S. persons (“FATCA”). As enacted, FATCA was generally effective for any payments made after December 31, 2012. “Recognizing [the] costs associated with the implementation of any new withholding and reporting regime,” the IRS and Treasury opted for a phased implementation of FATCA.¹⁴ Information reporting was not required for calendar year 2013, and calendar years 2014 and 2015 were designated as a “transition period” during which information reporting requirements were limited.¹⁵ Withholding on certain payments was delayed until July 1, 2014, and withholding on other payments was ultimately eliminated entirely.¹⁶ The IRS also recently announced the delay of the new \$600 Form 1099-K reporting threshold for third-party settlement obligations.¹⁷ According to IRS Commissioner Danny Werfel, after “gathering feedback from third-party groups and others, and it became increasingly clear we need additional time to effectively implement the new reporting requirements Taking [a] phased-in approach is the right thing to do for the purposes of tax administration, and it prevents unnecessary confusion.”¹⁸

¹³ These reporting requirements generally are proposed to become effective for sales and exchanges of digital assets effected on or after January 1, 2025.

¹⁴ IRS, Treasury Decision, Final Rule, TD 9610, 78 FR 5873; *see* I.R.S. Notice 2011-53, 2011-2 C.B. 124; I.R.S., Announcement 2012-42, 2012-47 I.R.B. 561; I.R.S. Notice 2013-43, 2013-2 C.B. 113.

¹⁵ *See* I.R.S. Notice 2014-33, 2014-21 I.R.B. 1033; I.R.S. Notice 2015-66, 2015-41 I.R.B. 541.

¹⁶ *See* Treas. Reg. § 1.1471-2(a)(1), § 1.1472-1(b)(1); Prop. Reg. § 1.1473-1(a)(1).

¹⁷ *See* I.R.S. Notice 2023-74.

¹⁸ *IRS Announces Delay in Form 1099-K Reporting Threshold*, IRS Press Release, (Nov. 21, 2023), available at <https://www.irs.gov/newsroom/irs-announces-delay-in-form-1099-k-reporting-threshold-for-third-party-platform-payments-in-2023-plans-for-a-threshold-of-5000-for-2024-to-phase-in-implementation> (last visited June 21, 2024).

FATCA and Form 1099-K reporting each represented significant changes to information reporting, but the relative complexity of reporting on digital asset transactions dwarfs the issues presented under FATCA and Form 1099-K. The structure of the transactions, the parties thereto, and the type of assets involved in the transaction all present new and complicated issues. As we stated at the outset of our letter, a16z strongly believes the blockchain ecosystem must develop in a way that furthers, not circumvents, tax compliance. However, as described above, particularly with respect to reporting by other than centralized exchanges or custodians, the current Form 1099-DA and the Proposed Regulations cannot be squared with the IRS’s obligations under the PRA. For all of these reasons, we strongly recommend that the IRS delay the effective date with respect to filing Form 1099-DAs.

Alternatively, the IRS should consider phasing in the effective date with respect to certain market participants that more clearly meet the statutory definition of broker, many of which are already reporting through existing information reporting forms the digital asset transactions they effectuate. For example, in most digital asset transactions, only one centralized exchange or other digital asset custodian will be involved. Centralized exchanges and other digital asset custodians are in a position to know all of the relevant facts of the digital asset transaction, and so are in the best position to provide Form 1099-DAs. It is estimated that over 90% of digital asset transactions occur on centralized exchanges.¹⁹ By limiting initial reporting to centralized exchanges and digital asset custodians, the IRS would collect information reporting on almost every digital asset transaction. The IRS could then determine how to ensure transactions that are not effected through centralized exchanges do not go unreported and how to accomplish that without the problems the draft Form 1099-DA and the Proposed Regulations present; namely, duplicative reporting; privacy and security risks with respect to sensitive taxpayer information that is unnecessary for and irrelevant to the transaction at issue; and a system that is impossible to comply with for certain software and developers (e.g., unhosted wallet providers). a16z would welcome the opportunity to discuss these issues and to help develop solutions.

B. Unhosted wallets and digital asset payment processors should be removed from the categories of “brokers” listed on Form 1099-DA.²⁰

1. Unhosted wallets

Unhosted wallets provide a means for users to safely manage their digital assets using private keys and often provide additional functionality allowing users to access other platforms and protocols.²¹ However, because developers of unhosted wallets do not hold private keys, they do not have the ability to access customer funds or to know the nature of or parties to any particular

¹⁹ See The Block, *DEX to CEX Spot Trading Volume (%)*, <https://www.theblock.co/data/decentralized-finance/dex-non-custodial/dex-to-cex-spot-trade-volume> (last visited June 21, 2024).

²⁰ As mentioned in our November Comment Letter, we also do not believe that decentralized protocols, software applications that provide access to decentralized protocols, software developers, and tokenholders should be considered “brokers,” and therefore, should not have to file Form 1099-DA as “other” under the Form’s listed categories of brokers. See *supra* note 7.

²¹ For further information on unhosted wallets, see November Comment Letter at 7-8.

transaction. Without this information, it will be impossible for developers of unhosted wallets to file Form 1099-DA.²²

Developers of unhosted wallets also cannot conduct backup withholding because they never have custody over digital assets or any other assets of the seller or buyer in digital asset transactions. This is the critical feature that makes a wallet “unhosted” as opposed to “custodial” or “hosted.” In other words, as mentioned above, requiring unhosted wallet providers to effect backup withholding would turn unhosted wallets into custodial wallets, a completely different type of software and business model.

2. Digital asset payment processors

Requiring digital asset payment processors to file Form 1099-DA will lead to duplicative reporting. When customers use digital assets to pay merchants in commercial transactions, digital asset payment processors are already required to file Form 1099-K reporting information about the identity of the merchants and nature of the commercial transactions.²³ Under the Proposed Regulations, brokers effectuating the transaction on behalf of the customers will also be required to file Form 1099-DA reporting information about the identity of the customer and the nature of the digital asset sale. Accordingly, the IRS will already have all of the information that it needs to properly tax both the commercial transaction and the digital asset sale, and there is no need for digital asset payment processors to also file Form 1099-DA. Where a digital asset is used as payment (rather than held for investment purposes), transactional reporting under section 6050W—instead of gross proceeds reporting under section 6045—better reflects the actual relationship of the payment processor and its customer.

Requiring digital asset payment processors to file Form 1099-DAs also risks stifling a growing industry that provides significant value to businesses and their customers. The use of digital assets in common commercial transactions is becoming increasingly common in the United States and can significantly lower the risk to consumers of identity theft and other forms of fraud. When digital asset payment processors’ business relationship is with merchants, there is no infrastructure in place for digital asset payment processors to collect taxpayer information upon the disposition of digital assets. Requiring them to do so will necessitate a significant reworking of the way they operate and risk restraining the growth of an industry providing significant value to consumers.

C. The IRS should not require Form 1099-DA to be filed for dispositions of fiat-backed stablecoins and for most dispositions of non-fungible tokens.

1. Stablecoins

Information reporting for fiat-backed stablecoins is unnecessary because no taxable gain should be recognized on the disposition of a fiat-backed stablecoin. Provided the stablecoin peg holds, the value received by a taxpayer on the disposition of the stablecoin should equal the amount

²² As a threshold matter, unhosted wallet providers do not in fact effect digital asset transactions, so in any event should not be considered brokers. *See supra* note 12.

²³ *See* 26 U.S.C. § 6050W; Treas. Reg. § 1.6050W-1; I.R.S., *Instructions for Form 1099-K*, Cat. No. 54721E (Dec. 4, 2023).

of value the taxpayer paid for the stablecoin. Accordingly, the compliance burden of requiring Form 1099-DAs to be filed for dispositions of stablecoins is not necessary.²⁴

The preamble to the Proposed Regulations concludes that stablecoins should be subject to information reporting because it is possible the stablecoin's peg will not hold. We do not find the IRS's logic convincing for two reasons. First, although it is theoretically possible that a stablecoin's peg breaks, that theoretical possibility does not justify the compliance burden of requiring Form 1099-DAs to be filed for the vast majority of stablecoin transactions that do not give rise to taxable gains or losses. Second, in the event that theoretical possibility becomes a reality, market participants will almost certainly have losses, not gains, and the few market participants who have gains can report them on an individual basis. Not requiring reporting with respect to stablecoins is consistent with current regulations that exclude money market funds from information reporting, even though dispositions of a money market fund could also become taxable if it broke the peg.²⁵

2. Non-fungible tokens

We recommend only requiring Form 1099-DA to be filed for dispositions of non-fungible tokens ("NFTs") representing ownership rights to fungible financial instruments. NFTs represent the right to own an underlying asset, and in most cases, dispositions of the underlying asset would not be subject to information reporting. If a disposition of the underlying asset would not be subject to information reporting, then dispositions of a related NFT should also not be subject to information reporting. We note that this approach is consistent with the "look-through" analysis the IRS applied to NFTs in Notice 2023-27. In addition, the value of most NFTs is de minimis, and many NFT transactions involve an exchange of NFTs that do not have readily ascertainable values. Requiring Form 1099-DA to be filed for dispositions of such NFTs will not significantly increase tax revenue, making the compliance burden unjustified.

D. The requirement to file Form 1099-DA should include a de minimis threshold, and brokers should be permitted to aggregate transactions for reporting purposes.

As described above in Section II, the Proposed Regulations are expected to dramatically increase the number of Form 1099s filed with the IRS each year.²⁶ Requiring reporting for transactions of less than a certain amount unnecessarily increases the taxpayer burden for minimal added value. This will also create significant economic costs for brokers and a significant administration burden on the IRS. To reduce these burdens, we recommend that information reporting should not be required for digital asset transactions beneath a certain threshold.²⁷ In addition, transaction aggregation would reduce the burden of reporting and facilitate greater compliance. Specifically, sales of a single asset type should be aggregated into one Form 1099-DA. Accordingly, we believe the IRS should apply a de minimis threshold and allow transaction

²⁴ Money market funds generally are pegged against the U.S. dollar, and the current regulations do not require information reporting for money market funds. *See* Treas. Reg. § 1.6045-1(c)(3)(vi). It makes sense to apply the same rule to stablecoins.

²⁵ *Id.*

²⁶ *Supra* note 8.

²⁷ For example, the Crypto-Asset Reporting Framework released by the OECD includes a per transaction \$50,000 de minimis threshold before information reporting is required.

aggregation to reduce the compliance burden, simplify tax administration, and allow the IRS to focus its resources on larger taxpayers entering into higher-value transactions.

IV. Conclusion

a16z appreciates the opportunity to respond to the request for comments on Form 1099-DA. We understand the importance of information reporting for digital assets and the unique challenges the evolving digital asset landscape presents to taxing authorities crafting these rules. We hope our comments serve as a helpful resource as you continue to refine Form 1099-DA and would welcome the opportunity to meet with you to discuss our comments in more detail.

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