

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515**

December 6, 2024

The Honorable Janet Yellen  
Secretary  
Department of the Treasury  
1500 Pennsylvania Avenue NW  
Washington, D.C. 20220

The Honorable Daniel Werfel  
Commissioner of Internal Revenue Service  
Department of the Treasury  
1111 Constitution Avenue NW  
Washington, D.C. 20224

Dear Secretary Yellen and Commissioner Werfel:

We write to you today to express our concern over the Internal Revenue Service's ("IRS") controversial Digital Assets Sale and Exchanges Rule, otherwise known as the "IRS Broker Rule".<sup>1</sup> This June the IRS finalized the Broker Rule for centralized digital asset intermediaries, such as digital asset exchanges. This action fully accomplished Congress' intent in the Infrastructure Investment and Jobs Act ("IIJA") to provide a clear and fair tax reporting regime for digital asset intermediaries that provide services equivalent to those provided by "brokers" as currently defined in the tax code. Having fulfilled Congress' intent to the extent of the authority delegated under the IIJA, the IRS should stop there.

We are concerned by recent reports from the U.S. Department of the Treasury's Office of Tax Policy that the IRS intends to push through additional regulations on self-custodial digital asset wallet providers and other developers of noncustodial software this year.<sup>2</sup> This action would have substantial negative impacts not only on millions of Americans, including many of our constituents, who utilize self-custodial wallets to hold their digital assets, but also on all U.S. taxpayers and the IRS itself.

While the IRS's authority to designate self-custodial wallet providers as brokers when it passed the IIJA is questionable, it is nevertheless inappropriate to impose consumer and technology regulatory policy through the tax code, especially in the absence of an explicit delegation of legislative authority. The fact that the result of this proposal would be to drown the IRS in useless filings, impairing its ability to efficiently administer the tax code on behalf of all Americans, is especially concerning given the IRS's inability to efficiently and effectively handle its current duties and obligations.

If the IRS does not exclude self-custodial wallet providers, the IRS Broker Rule would unfairly ensnare companies that do not meet any reasonable definition of a broker. Self-custodial wallet providers do not have the customer-level transaction data the IRS seeks for reporting, and they cannot obtain this data without fundamentally changing their products and business models. There are other, more accurate and easily

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<sup>1</sup> U.S. Internal Revenue Service, *Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions*, 89 FR 56480 (July 9, 2024).

<sup>2</sup> The IRS Broker Rule release refers to self-custodial wallet providers as "unhosted" digital asset wallet providers. For the purposes of this letter, these terms are interchangeable.

obtainable sources from which the IRS can obtain relevant tax information – specifically the exchanges where purchases and sales of digital assets are made – which are already covered by the Broker Rule this Administration finalized in July 2024. Requiring self-custodial wallet providers to obtain this information would mean the IRS imposing centralization where none exists today. Such forced and unnecessary centralization is of serious concern to us, and it should also be of concern to the IRS and to anyone who values fairness and innovation in this country. Overregulation of these emerging technologies will stifle innovation, and it is not the IRS’s role to pick winners and losers in the marketplace.

The IRS should be cautious so as not to exceed its statutory authority under the IJA by expanding the scope of its final Broker Rule to include self-custodial wallet providers. Failing that, if the IRS proceeds on its present course, it must, at a minimum, allow all digital asset brokers to benefit from the IRS “Multiple Broker Exemption” that traditional brokers in the financial services sector already enjoy.<sup>3</sup> Self-custodial wallet providers should not be discriminated against or unfairly denied access to this exemption. In the Broker Rule proposal release, the IRS identified no legitimate reason to deny entities that are misclassified as “digital asset brokers” to begin with access to this same exemption.<sup>4</sup> Ensuring the applicability of the Multiple Broker Exemption would also considerably benefit the IRS and the public by conserving limited resources, reducing the number of duplicative and erroneous filings, and enhancing the ease of administration of the already sweeping new Broker Rule.

In contrast, applying the Broker Rule to self-custodial wallet providers while denying them the Multiple Broker Exemption would inundate the IRS with billions of duplicative, incomplete, and erroneous transaction filings. According to the IRS’s own estimate, it will receive — *at least* — 8 billion new digital asset information returns on Form 1099-DA.<sup>5</sup> In what some have described as an “avalanche of information returns,” that number is more than double the amount of information returns the IRS currently receives on all other types of Form 1099 combined.<sup>6</sup> Moreover, those 8 billion digital asset returns are estimated to come from only 13-to-16 million taxpayers, compared to the hundreds of millions of taxpayers who receive other types of 1099s.<sup>7</sup> How many billions of digital asset returns will flood into the IRS in a few years when the number of Americans who own digital assets tops 100 million?

The IRS’s Director of Digital Assets, Julie Foerster, conceded last year that the IRS’s “technology, the way it is today, will not support the data and the volume.”<sup>8</sup> Former IRS Commissioner Charles Rettig is even more alarmed, warning that:

The volume of data this would generate for the IRS would overwhelm the agency and have little or no value to effective and efficient tax administration. At best, an untold amount of staff and technological resources would be tasked with processing billions upon billions of data points—most of them irrelevant to payers’ tax obligations. At worst, the agency may not be able to absorb all of the data required under the proposed rules in a reasonable time, creating a backlog of everyday tax returns with unreasonable processing times. This would undermine the mission of

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<sup>3</sup> IRS Broker Rule, 88 FR 59576, at 59598.

<sup>4</sup> *Id.*

<sup>5</sup> Jonathan Curry, “IRS Prepping for at Least 8 Billion Crypto Information Returns”, TaxNotes, October 26, 2023, available at: <https://www.taxnotes.com/featured-news/irs-prepping-least-8-billion-crypto-information-returns/2023/10/25/7hhdp> (Last visited on November 11, 2024).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

the IRS to provide quality customer service, at a moment when the agency has been successfully improving on these essential duties.<sup>9</sup>

One need not be a proponent of digital assets to oppose expanding the IRS Broker Rule; to oppose it, one need only be a proponent of fair and efficient tax administration.

If the IRS expands the application of the Broker Rule to self-custodial wallet providers, it will impose an immense new and needless burden on itself without any corresponding benefit to the IRS's overall revenue receipts. Like you, we all want the IRS to process returns in a timely, efficient manner. All you must do to avoid this nightmare for American taxpayers, and for your own agency, is simply to honor the will of Congress and refrain from any further expansion of the IRS Broker Rule.

We look forward to discussing this matter with you and your staff moving forward. Thank you for your prompt attention to this matter.

Sincerely,



Mike Carey  
Member of Congress

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<sup>9</sup> Charles Rettig, "IRS Digital Assets Plan Would Be a Setback for Taxpayer Services", Bloomberg Tax, December 12, 2023, available at: <https://news.bloombergtax.com/tax-insights-and-commentary/irs-digital-assets-plan-would-be-a-setback-for-taxpayer-services> (Last visited on November 11, 2024).