

Crypto Reg Delay Ruffles Lawmakers

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By Lauren Loricchio

Treasury is taking more time than usual to issue proposed regulations for cryptocurrency, puzzling observers and troubling some members of Congress who are eager for the industry to comply with tax reporting requirements.

The Office of Management and Budget's Office of Information and Regulatory Affairs [finished reviewing](#) proposed regulations on cryptocurrency broker reporting requirements on February 23 — six weeks after receiving them from Treasury. At press time the proposed regs hadn't been released.

Susan Dudley of George Washington University's Trachtenberg School of Public Policy & Public Administration said the amount of time it is taking to release the proposed rules seems "unusually long."

"Is it possible that the formatting of the rule for publication in the *Federal Register* is complicated? Even if that were the case, there shouldn't be anything to stop Treasury from posting the final draft," Dudley, who served as administrator of OIRA, told *Tax Notes*.

The proposed regs would provide guidance on the reporting obligations of brokers under [section 6045](#) that affect the sale of virtual currency as well as the reporting obligations under [section 6050W](#) for third-party settlement organizations.

The [Infrastructure Investment and Jobs Act](#), enacted in November 2021, expanded the [section 6045](#) definition of broker to capture any entity that is "regularly providing any service effectuating transfers of digital assets on behalf of another" for consideration. That will require those brokers to report information on cryptocurrency transactions to both the IRS and individuals making the transfers.

The reporting requirements were initially set to begin January 1, but Treasury announced December 23, 2022, that brokers [won't be required](#) to report additional information regarding dispositions of digital assets until final regulations are issued.

Tax professionals have expressed concern over the [broad statutory language](#), which appears to include unintended third parties — such as crypto miners and stakers — under the definition of broker. Some are hoping that Treasury limits the scope of broker reporting via regulation.

Lisa M. Zarlenga of Steptoe & Johnson LLP told *Tax Notes* that the government could be working out some additional issues identified by OIRA, within Treasury and the IRS, or by another administrative agency.

"This is much longer than would be the normal course, so I suspect some other thing is holding them up," Zarlenga said.

Head-Scratcher

Noting that government officials have expressed concern to Congress about compliance and underreporting related to cryptocurrency, Zarlenga said the Biden administration now has the authority to increase compliance through Form 1099 reporting.

"To the extent that the government is concerned about underreporting and lack of compliance in this area, getting these regs out and finalized would help," Zarlenga said. "The delay kind of has me scratching my head."

Still, Zarlenga said that "nobody is particularly worried about the regs not being out because they don't have to comply with them until they're final."

Garrett L. Brodeur of Kostelanetz LLP said the proposed broker reporting regulations under [section 6045](#) are the first set of tax regulations dealing with digital assets, so there is tremendous pressure to get it right.

According to Brodeur, the delay is understandable because Treasury is grappling with numerous technical details and competing interests in a rapidly changing industry.

However, John Schoenecker of TaxBit said that digital asset platforms are in limbo, trying to understand what their reporting requirements will be and when they will need to start complying.

Mishkin Santa of the Wolf Group PC told *Tax Notes* that he doesn't blame Treasury for wanting to take its time. "It's a big onion that they have to peel," he said.

But Santa said his clients in the crypto sector have been asking for guidance, and it might be helpful to know when the regs are expected to be released.

"Everyone wants to do the right thing. They want to report correctly. They want to pay the right amount of tax. But it's hard to do that when you don't really know the rules that you need to follow," Santa said.

Santa said the digital asset space has "moved so fast, and it feels like Treasury and the IRS are just like light years behind."

"The guidance that they've given out is not at the level that it needs to be to really match what's happening currently in the industry," Santa said.

In the Spotlight

In a [June 5 letter](#) to Treasury Secretary Janet Yellen and IRS Commissioner Daniel Werfel, Reps. Brad Sherman, D-Calif., and Stephen F. Lynch, D-Mass., urged Treasury and the IRS to "promptly release

the proposed regulations” and expressed concern that the industry “has been a major source of tax evasion and a significant part of the nation’s tax gap.”

“The cryptocurrency industry had all of 2022 to prepare for the infrastructure law’s tax reporting requirements and now it apparently gets 2023 off as well,” they wrote.

During a June 13 House Financial Services Committee hearing, Sherman brought up the letter and asked Yellen when the regulations will be released.

“We will get back to you on that shortly,” Yellen replied.

Schoenecker said that cryptocurrency was also in the spotlight on Capitol Hill during the recent debt ceiling debate, as Congress looked at the possibility of applying the tax code’s wash sale rule to digital assets. Under that rule, investors can’t take a tax deduction if they sell stocks or securities at a loss and repurchase the same investment or a comparable one 30 days before or after the sale.

“Policymakers should keep in mind that adding a wash sale rule to crypto without having a broker reporting requirement in place would create a lot of complexity for individual taxpayers,” Schoenecker said.

“Making changes to the tax code for crypto is really only practical once there’s a system in place for broker 1099 reporting,” he added.

The OMB [recently signed](#) a [memorandum of agreement](#) with Treasury stipulating that regulations issued by the IRS will no longer be subject to OIRA review, effective immediately.

Before the change, OIRA typically reviewed regulations twice — when they were proposed and when they were finalized.

Zarlenga said the memorandum probably won’t have much of an effect on the proposed crypto rules because OIRA has already reviewed them. But she said it would mean that OIRA won’t have to review them again if they change significantly or review the final rules.

A Treasury spokesperson said in a statement to *Tax Notes* that “Treasury is working diligently to finalize these important and complicated regulations.”

Mary Katherine Browne contributed to this article.