

**From:** [Art Davis](#)  
**To:** [\\*TS M&P TFP PRA Comments](#)  
**Subject:** [EXT] Digital Asset Proceeds From Broker Transactions  
**Date:** Thursday, June 20, 2024 1:33:03 PM

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June 20, 2024

**BY ELECTRONIC TRANSMISSION ONLY TO:**

[pra.comments@irs.gov](mailto:pra.comments@irs.gov)

Re: Digital Asset Proceeds From Broker Transactions

Andres Garcia  
Internal Revenue Service  
Room 6526  
1111 Constitution Avenue NW  
Washington DC 20224

Dear Mr. Garcia:

The American Escrow Association has previously commented on Paperwork Reduction Act considerations of this new collection (now designated as under OMB Number 1545-NEW for new Form Number 1099-DA). The prior comments can be found at [regulations.gov](https://www.regulations.gov) and were posted on November 3, 2023 under the proposed rule: “Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions,” with our submission shown as “*Comment from American Escrow Association AEA-IRS-2023-0041-0001-PRA-SEND*”. We incorporate those comments by reference. In addition, we reply to this request for comments by summarizing our key points of concern and burden-related recommendations below.

It is our understanding from the proposal that our members would be required starting on, and then after, the effective date to report key information of a real estate transaction we close, on both the seller’s receipt of digital assets in the case of a digital wallet- to- wallet transfer—on Form 1099-S as that form will be revised regarding proceeds received information; as well as on the new 1099-DA in such a wallet-to wallet transfer-- for the buyer’s realization event from disposition of the digital assets directly transferred to the seller as all or part of

the purchase price of the real estate.

Under comment request (a) we agree some collection of information is necessary for the proper performance of the functions of IRS operations and offer an alternative solely for real estate reporting persons required to apply the broker reporting rules under section 6045 of the Internal Revenue Code to certain digital transactions involving real estate.

We believe the proposal understates the burden of the reporting (1099-S and 1099-DA combined). Each escrow operation would need to either purchase or self-develop a new system for the new Form 1099-DA and the modified Form 1099-S even if only required for a single transaction once a year or even less often than that. The alternative we have suggested of a modified and enhanced 1099-S with a new check box for digital assets received by the seller along with buyer name, address and a certified TIN process and number added to the same 1099-S would be an adequate alternative consistent with current burdens of the 1099-S and utility to the Service and will cover both seller and buyer sides without the added need of the 1099-DA with respect to the buyer's disposition and realization event for the digital asset(s).

Mechanically, if there is a wallet-to-wallet direct transfer of digital asset(s), this will occur through what is referred to as a POC (paid outside of closing) event which we would agree has important tax consequences including potential taxable gain to the buyer as a realization event. There are also tax basis consequences. However, the reporting person will have to rely on other third-party information obtained to attempt to report details. In the standard case, of a real estate closing, with cash applied for the purchase price from buyer funds and/or loan proceeds and other cash, the reporting is fairly straight forward. The funds are collected in the escrow operation's pooled trust account, most commonly by wire transfer, sufficient to constitute settled good funds in the account prior to closing and then applied to closing including for closing costs and net proceeds to the seller. Thus, broker reporting for real estate reporting persons has historically been limited to proceeds detailed by dollar amount only in the form of cash paid and received and other property designated by a check box without further details. This serves an important and sufficient purpose of

advising the taxpayers and the Service what fundamentally has occurred in the transaction and forcing the taxpayers to use qualified advisors if not themselves to determine taxable gain if any and report the results on their own return. Taxable gain on disposition for the buyer using digital assets to pay for the real estate will be adequately reported through this recommendation. In summary, digital asset disposition gain, tax basis on acquisition of real estate and gross proceeds to the seller will all be sufficiently reported in a relatively non-burdensome way through our alternative.

The latest Paperwork Reduction Act burden-related update to the 1099-S (OMB 1545-0997), specifically the update Supporting Statement from 2022-03-01, includes the statement that follows and which we believe should continue to be the guiding principle for both the 1099-S and the new Form 1099-DA for transactions required to be reported by real estate reporting persons.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

Small businesses should not be disadvantaged as the form has been structured to request the least amount of information and still satisfy the requirements of the statute and the needs of the Service.

The proposed regulatory approach, which makes applicable the new 1099-DA to real estate reporting persons, greatly adds small business burden which is not necessary to serve the basic needs of the Service. Rather if the principle laid out in 5. above is followed, the 1099-S for digital proceeds transferred by wallet-to-wallet means, will have more specificity of other consideration to indicate (along with the cash proceeds amount if any) digital assets are part or all of the consideration paid, and the Form 1099-S will have added to it buyer name, address and TIN (certified) and the 1099-DA will thus not be required of the real estate reporting person and the system. We are convinced this approach balances burden against utility of the information reported in the aggregate and with respect to both seller and buyer.

Our submitter Mr. Davis can be reached at 703-625-9288 to respond to any questions or requests for additional comments.

Respectfully submitted  
American Escrow Association  
June 20, 2024