United States Senate

WASHINGTON, DC 20510

August 1, 2023

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

The Honorable Daniel Werfel
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Secretary Yellen and Commissioner Werfel:

We write to seek information regarding the issuance and finalization of regulations implementing new reporting requirements for digital asset brokers, as mandated by the *Infrastructure Investment and Jobs Act* (IIJA).[1] The bipartisan IIJA established new reporting requirements that will help to close the roughly $50 billion crypto tax gap,[2] address runaway tax evasion across the cryptocurrency ecosystem,[3] and ensure that taxpayers have the tools they need to more easily report taxable crypto income.[4] Congress also directed the Treasury Department (Treasury) and the Internal Revenue Service (IRS) to finalize new implementing rules by January 1, 2024.[5] Nearly two years have passed since the law was enacted, and the implementation deadline is less than six months away – but Treasury has yet to publish proposed rules.[6] Without quick action, your agencies are at risk of failing to meet their congressionally-mandated deadlines for implementation of a final rule. We urge you to act swiftly to implement strong tax reporting rules for cryptocurrency brokers.

When Congress passed the IIJA in November 2021,[7] the nation was facing a $1 trillion tax gap.[8] Then-IRS commissioner Charles Rettig attributed the growing tax gap in part to the emergence of the lightly-regulated $2 trillion cryptocurrency sector.[9] As a May 2021 Treasury

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[1] Infrastructure Investment and Jobs Act of 2021, Public Law 117-58.

[2] CNBC, "The IRS may be missing out on $50 billion a year in unpaid crypto taxes— and a crackdown is underway," Nicolas Vega, May 18, 2022, https://www.cnbc.com/2022/05/18/irs-may-be-missing-out-on-50-billion-dollars-a-year-in-unpaid-crypto-taxes.html

[3] Washington Post, "Few crypto gains appear on tax returns. That's changing – but not this year," Julie Zauzmer Weil, December 29, 2022, https://www.washingtonpost.com/business/2022/12/29/cryptocurrency-taxes/

[4] The Tax Law Center at NYU Law, "Treasury and the IRS Should Issue Digital Asset Broker Reporting Guidance Quickly," June 21, 2023, https://medium.com/@taxlawcenter/treasury-and-the-irs-should-issue-digital-asset-broker-reporting-guidance-quickly-f90ca4daac05

[5] Infrastructure Investment and Jobs Act of 2021, Public Law 117-58.

[6] POLITICO, "Crypto mystery: New tax rules are MIA," Brian Faler, June 26, 2023, https://www.politico.com/news/2023/06/26/crypto-tax-regulations-00101937

[7] Infrastructure Investment and Jobs Act of 2021, Public Law 117-58.

[8] New York Times, "Tax cheats cost the U.S. $1 trillion per year, I.R.S. chief says," Alan Rappeport, April 13, 2021, https://www.nytimes.com/2021/04/13/business/irs-tax-gap.html

[9] *Id.*

report stated, crypto "poses a significant detection problem by facilitating illegal activity broadly including tax evasion."[10] Research suggests that crypto tax evaders are cheating the IRS out of at least $50 billion a year – but the figure may be much higher.[11] As a recent Barclays analysis notes, "[w]hile all transactions may be visible on the blockchains, if all the counterparties are anonymous, it is difficult for the IRS to figure out who owes taxes."[12] The result, the analysis states, is that "the $50 billion estimate for the crypto tax gap is probably too small."[13] According to Barclays, at least half the taxes owed on crypto transactions go unpaid every year, and that crypto tax evasion accounts for about 10 percent of total unpaid taxes annually.[14]

The IIJA directed Treasury to require third-party brokers that facilitate crypto transactions to report to the IRS – and to crypto users themselves – relevant information about that user's crypto sales, the gains or losses they have incurred, and certain large transactions.[15] As an analysis by the Tax Law Center at New York University School of Law has outlined, these new rules were designed to ensure that all Americans pay their fair share, and, more specifically, to ensure that:

- **Crypto users can more easily file their taxes.** By requiring third-party crypto intermediaries to provide customers a tax form containing the information they need to file their taxes, the new rules are designed to spare taxpayers from having to keep track of each of their crypto transactions.[16]
- **The IRS can use its resources to go after large-scale tax cheats.** By making it easier for everyday crypto users to file accurate crypto income information, the IRS can put more of its time and resources towards tracking down those who intentionally break the law and use crypto to hide their incomes.[17]

[10] U.S. Department of the Treasury, "The American Families Plan Tax Compliance Agenda," May 2021, p. 20, https://home.treasury.gov/system/files/136/The-American-Families-Plan-Tax-Compliance-Agenda.pdf
[11] Bloomberg, "Crypto Investors Are Likely Paying Less Than Half the Taxes They Owe," Laura Davison, May 11, 2022, https://www.bloomberg.com/news/articles/2022-05-11/crypto-investors-likely-paying-less-than-half-the-taxes-they-owe
[12] CNBC, "The IRS may be missing out on $50 billion a year in unpaid crypto taxes—and a crackdown is underway," Nicolas Vega, May 18, 2022, https://www.cnbc.com/2022/05/18/irs-may-be-missing-out-on-50-billion-dollars-a-year-in-unpaid-crypto-taxes.html
[13] *Id*.
[14] Bloomberg, "Crypto Investors Are Likely Paying Less Than Half the Taxes They Owe," Laura Davison, May 11, 2022, https://www.bloomberg.com/news/articles/2022-05-11/crypto-investors-likely-paying-less-than-half-the-taxes-they-owe
[15] Infrastructure Investment and Jobs Act of 2021, Public Law 117-58.
[16] The Tax Law Center at NYU Law, "Treasury and the IRS Should Issue Digital Asset Broker Reporting Guidance Quickly," June 21, 2023, https://medium.com/@taxlawcenter/treasury-and-the-irs-should-issue-digital-asset-broker-reporting-guidance-quickly-f90ca4daac05
[17] *Id.*

- **The IRS can close the crypto tax gap and raise revenue.** The Joint Committee on Taxation estimates that these new rules will result in $1.5 billion in tax revenue in 2024 alone and almost $28 billion over the next 8 years.[18]

The IIJA established tax reporting requirements for crypto brokers to prevent the emergence of a system of institutionalized tax evasion and ensure that they have the same reporting responsibilities as brokers who facilitate the buying and selling of other kinds of assets.[19] To prevent the entrenchment of such a system, Treasury and IRS must publish draft regulations and then finalize and implement reporting rules that maintain the breadth that Congress intended, covering all of the third-party intermediaries facilitating the purchase and sale of digital assets. These new rules were urgently needed when President Biden signed them into law in 2021.[20] Over the past two years, that urgency has only intensified.

If your agencies fail to implement the new crypto tax reporting rules by December 31, 2023 – the deadline established by Congress – you will risk losing an estimated $1.5 billion in tax revenue in 2024.[21] This is an unacceptable outcome. Given the chance, tax evaders and the crypto intermediaries willing to aid them will continue to game the system, exploit loopholes, and siphon off billions of dollars a year from the U.S. government. You must not give them that chance. We therefore urge you to swiftly implement strong rules to close the crypto tax gap, as Congress directed, and ask that you respond to the following questions, no later than August 15, 2023:

1. When does Treasury intend to issue proposed regulations to implement the crypto tax reporting requirements passed by Congress as part of the IIJA?

2. How long does Treasury intend to accept public comments on these proposed rules once they are published?

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[18] The Tax Law Center at NYU Law, "Treasury and the IRS Should Issue Digital Asset Broker Reporting Guidance Quickly," June 21, 2023, https://medium.com/@taxlawcenter/treasury-and-the-irs-should-issue-digital-asset-broker-reporting-guidance-quickly-f90ca4daac05; The Joint Committee on Taxation, "Estimated Revenue Effects Of The Provisions In Division H Of An Amendment In The Nature Of A Substitute To H.R. 3684, Offered By Ms. Sinema, Mr. Portman, Mr. Manchin, Mr. Cassidy, Mrs. Shaheen, Ms. Collins, Mr. Tester, Ms. Murkowski, Mr. Warner And Mr. Romney, The "Infrastructure Investment And Jobs Act"," https://www.jct.gov/publications/2021/jcx-33-21/

[19] The Tax Law Center at NYU Law, "Treasury and the IRS Should Issue Digital Asset Broker Reporting Guidance Quickly," June 21, 2023, https://medium.com/@taxlawcenter/treasury-and-the-irs-should-issue-digital-asset-broker-reporting-guidance-quickly-f90ca4daac05

[20] NPR, "Biden signs the $1 trillion bipartisan infrastructure bill into law," Brian Naylor and Dierdre Walsh, November 15, 2021, https://www.npr.org/2021/11/15/1055841358/biden-signs-1t-bipartisan-infrastructure-bill-into-law

[21] The Tax Law Center at NYU Law, "Treasury and the IRS Should Issue Digital Asset Broker Reporting Guidance Quickly," June 21, 2023, https://medium.com/@taxlawcenter/treasury-and-the-irs-should-issue-digital-asset-broker-reporting-guidance-quickly-f90ca4daac05; The Joint Committee on Taxation, "Estimated Revenue Effects Of The Provisions In Division H Of An Amendment In The Nature Of A Substitute To H.R. 3684, Offered By Ms. Sinema, Mr. Portman, Mr. Manchin, Mr. Cassidy, Mrs. Shaheen, Ms. Collins, Mr. Tester, Ms. Murkowski, Mr. Warner And Mr. Romney, The "Infrastructure Investment And Jobs Act"," https://www.jct.gov/publications/2021/jcx-33-21/

3. Should Treasury fail to implement crypto tax reporting rules by the December 31, 2023 deadline established by Congress, how much tax revenue does the Department estimate it would risk losing in the 2024 calendar year?

4. Will Treasury and/or IRS provide a briefing to our offices on these propose rules once they are published? Will the agencies provide another briefing to our offices once the proposed rules are finalized and implemented?

Thank you for your attention to this matter.

Sincerely,

Elizabeth Warren
United States Senator

Robert P. Casey, Jr.
United States Senator

Richard Blumenthal
United States Senator

Bernard Sanders
United States Senator