

# Putting the Final 6045 Regulations and Form 1099-DA into Practice

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## Panelists

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## Overview of § 6045 Reporting

- **Section 6045(a)** provides that “[e]very person doing business as a broker” must file an information return showing the name and address of each customer, gross proceeds, and such other information as the Secretary may require.
- **Section 6045(g)** provides that additional information must be reported for “covered securities,” including adjusted basis and whether gain is long-term gain or short-term gain.
- **Section 6045A** provides that if a broker transfers custody of a specified security to another broker, it must furnish a transfer statement containing the name, address, and phone number of the customer and transferor broker, CUSIP number, transfer dates, adjusted basis, and acquisition date.
- The **Infrastructure Investment and Jobs Act of 2021** extended this reporting regime to digital assets. Also added rules regarding receipt of digital assets in the course of one’s trade or business (§ 6050I).

3

## Final Regulations & Other Guidance Under § 6045

- In June/July 2024, the Treasury Department and the IRS released:
  - Final regulations that require **custodial brokers** to report sales and exchanges of digital assets.
  - Notice 2024-56, providing transitional relief from reporting penalties and backup withholding for transactions occurring during 2025.
  - Notice 2024-57 delays information reporting for certain enumerated transactions until further guidance is issued.
  - Rev. Proc. 2024-28 permits taxpayers to rely on any reasonable allocation of unused basis to digital assets held within each wallet or account of the taxpayer as of 1/1/2025.
- In December 2024, the Treasury Department and the IRS released:
  - Final regulations implementing broker reporting to certain decentralized service providers.
  - Notice 2025-03 provides transitional relief for certain transactions occurring in 2027 and 2028.
  - Notice 2025-07 provides temporary relief for identification under § 1012 of digital assets sold or transferred during 2025.

4

## Implementation Timeline – 2025

- The first set of compliance for custodial brokers under this regime begins starting **January 1, 2025**:
  - Brokers must track gross proceeds for transactions that occur in 2025.
  - Backup withholding by brokers is not required on any digital asset sale during 2025.
  - Penalty waivers in place for good faith efforts
  - No 1099-DA filing is required during 2025 - just the collection of information for later filing.

5

## Notice 2025-7 – Temporary Relief for making adequate specific identification.

- Treas. Reg. § 1012-1(j) of the Final Regulations provides ordering rules for determining which units of the same digital asset should be treated as sold, disposed of, or transferred when a taxpayer holds multiple units of that same digital asset within the same wallet that were acquired on different dates or at different prices.
  - Treas. Reg. § 1.1012-1(j)(3)(ii) generally permits a taxpayer to make an adequate identification of digital asset units held by a custodian to be sold, disposed of, or transferred by specifying to the custodial broker, no later than the date and time of the sale, disposition, or transfer, the particular units of the digital asset to be sold, disposed of, or transferred.
  - The regulation also permits taxpayers to make an adequate identification of such units by using a standing order or instruction communicated to their custodial broker.
- Several commentators noted that digital asset brokers may not have in place, by January 1, 2025, the technology needed to accept specific instructions or standing orders communicated by taxpayers, which would cause a default to the FIFO rule.
- **Notice 2025-7** provides temporary relief allowing taxpayers to use additional methods for making an adequate identification within the meaning of Treas. Reg. § 1.1012-1(j)(3)(ii) during 2025.

6

## Implementation Timeline – 2026

- The next set of compliance for custodial brokers begins starting **January 1, 2026**:
  - Brokers must report gross proceeds from 2025 transactions to the IRS.
  - Brokers are required to continue to track gross proceeds, and begin to track cost basis, for transactions that occur in 2026.
  - Brokers must collect a Form W-9 or the appropriate Form W-8 for any new account.
    - Must use the IRS taxpayer identification number (TIN) matching system in lieu of a Form W-9 for pre-existing accounts.
  - Backup withholding (currently equal to 24% of total proceeds):
    - On all new accounts that lack a Form W-9 or the appropriate Form W-8
    - On all pre-existing accounts with a TIN mismatch.

7

## Implementation Timeline – 2027

- The next set of compliance for custodial brokers begins starting **January 1, 2027**:
  - Brokers must report gross proceeds **and cost basis** from 2026 transactions to the IRS.
  - Brokers must document all pre-existing and new accounts with a Form W-9 or the appropriate Form W-8.
  - Backup withholding (currently equal to 24% of total proceeds) on all accounts that either:
    - Lack a Form W-9 or W-8, or
    - Have a TIN mismatch.

8

## Issuer's Perspective

- What will the Issuer need to do for each year?
  - **2024 tax year** - No change. Proceed as usual.
  - **2025 tax year** – Collect gross proceeds information and file Forms 1099-DA (only proceeds)
  - **2026 tax year** – Collect gross proceeds and cost basis information and file Forms 1099-DA (Proceeds and cost basis)
- Enormous volume of Forms to be reported – could be more than 3x total of all current Forms 1099 filed.
- Technology questions – how to implement collecting this information?
- Specific ID (to discuss later regarding Notice 2025-7) – despite rumors to the contrary online, all reporting has not been postponed.

9

## Taxpayer's Perspective

- Expectations vs. Reality:
  - Broker rules provide a bare minimum of reporting, but not what many users may be expecting.
    - Still may require complicated tax services, despite form 1099-DA
  - Taxpayers will receive first form for 2025 (in early 2026) – but without basis information.
- Tight deadline to meet filing requirements of Rev. Proc. 2024-28.
- Confusion around Rev. Proc. 2024-28 vs. Accounting methods (FIFO, LIFO, HIFO)
- How to deal with mismatches between user records, broker records and Forms 1099-DA

10

## Potential Disconnects w/r/t Forms 1099-DA

- Issuer obligations on Form 1099-DA vs. Taxpayer's expectations on Form 1099-DA.
- Lack of clarity about timing of Form 1099-DA obligations.
- Brokers lack obligations over certain types of transactions – might not be complete “crypto” report on Form 1099-DA

11

## Tax preparer's perspective

- Understand taxpayer's involvement with digital assets
- Understand taxpayer's activities using digital assets
- Understand taxpayer's record keeping
- Obtain complete information from taxpayer
- Understand current tax reporting requirements and guidelines related to digital assets

12