



DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-105064-25]

RIN 1545-BR47

Electronic Furnishing of Payee Statements Regarding Digital Asset Sales by Brokers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that would provide digital asset brokers that are required to furnish to their customers written statements reflecting information provided to the IRS with respect to digital asset sale transactions with an alternative process for obtaining consent from their customers to receive these statements in an electronic format without offering a paper delivery alternative.

DATES: Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG-105064-25) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the “Comments and Requests for a Public Hearing” section of this preamble. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish any comments submitted electronically or on paper to the public docket.

Send paper submissions to: CC:PA:01:PR (REG-105064-25), Room 5503, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Roseann Cutrone of the Office of the Associate Chief Counsel (Procedure and Administration) at (202) 317-5436 (not a toll-free number); concerning submissions of comments and requests to participate in the public hearing, the Publications and Regulations Section at (202) 317-6901 (not a toll-free number) or by sending an email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Authority

This document contains proposed regulations that would amend regulations under section 6045 of the Internal Revenue Code (Code). Section 6045(a) provides authority to the Secretary of the Treasury or the Secretary's delegate (Secretary) to require every person doing business as a broker to file an information return in accordance with such regulations as the Secretary may prescribe. Section 6045(a) further provides that such information return must show the name and address of each customer, and details regarding gross proceeds and such other information as the Secretary may by forms or regulations require with respect to such business. The Secretary is further authorized under section 401 of the Job Creation and Worker Assistance Act of 2002 (JCWAA), Public Law 107-147, 116 Stat. 21 (March 9, 2002) to provide the manner of consent for a recipient to receive electronic payee statements.¹ These proposed regulations are also issued under the express delegation of authority

¹ General references in these proposed regulations to payee statements refer to written statements required to be furnished under any information reporting provision under subpart B of part III of subchapter A of chapter 61 of the Code. A person required to furnish such a payee statement generally is referred to as a furnisher. A person required to be furnished the payee statement generally is referred to as a recipient.

under section 7805 of the Code, which directs the Secretary to prescribe all needful rules and regulations for the enforcement of the Code.

Background

Under section 6045 and the regulations thereunder, brokers are required to make a return of information regarding certain digital asset sale transactions to the IRS and furnish payee statements to the person whose identifying number is (or is required to be) shown on Form 1099-DA, *Digital Asset Proceeds From Broker Transactions*.² The existing rules generally applicable to brokers furnishing payee statements require brokers to obtain consent from their customers before the brokers can satisfy their furnishing obligation with an electronically furnished payee statement. The existing rules also require brokers to furnish payee statements on paper to any customer that does not consent to receiving electronically furnished statements or that withdraws a previously provided consent. These proposed regulations would provide brokers with an alternative process for obtaining consent from their customers to receive 1099-DA statements in an electronic format. Unlike the existing rules, these proposed regulations would generally not require brokers to furnish the 1099-DA statements on paper to any customer that does not consent to receiving these statements electronically but, instead, would specifically permit brokers to terminate their business relationship with these customers. Additionally, these proposed regulations would not require brokers to give their customers the ability to withdraw a previously provided consent.

² A payee statement reflecting information required by section 6045 and the regulations thereunder to be reported on Form 1099-DA is referred to in this preamble as a 1099-DA statement. A payee statement reflecting information required by section 6045 and the regulations thereunder to be reported on Form 1099-B, *Gross Proceeds From Broker Transactions*, is referred to in this preamble as a 1099-B statement. A person required to furnish a 1099-B statement or a 1099-DA statement is referred to as a broker. A person required to be furnished a 1099-B statement or a 1099-DA statement is referred to herein as a customer.

I. Information Reporting by Brokers Under Section 6045

Section 6045 and the regulations thereunder generally require brokers to file information returns with the IRS with respect to certain transactions, including sales of digital assets, effected by the broker on behalf of each customer. Brokers required to make these returns must include identifying information of the customer, such as the customer's name and tax identification number (TIN), and such other relevant information, including the gross proceeds from the transaction, as the Secretary may require by forms or regulations. In certain circumstances, the returns must also include the customer's adjusted basis in the assets sold. Brokers must use either Form 1099-B, *Proceeds from Broker and Barter Exchange Transactions*, or Form 1099-DA as appropriate to provide this information to the IRS.

Under section 6045(b) and §1.6045-1(k)(1), a broker (which, where applicable includes a barter exchange) making a return of information under section 6045 must furnish either a 1099-B statement or a 1099-DA statement to the broker's customer showing the information required to be reported to the IRS as well as a legend stating that the information is being reported to the IRS. Under §1.6045-1(k)(1), a payee statement is considered to be furnished to the broker's customer if it is mailed to the customer at the last address of the customer known to the broker. A separate 1099-B statement or 1099-DA statement must be furnished to the customer for each sale transaction effected for that customer during the calendar year. Brokers may furnish these payee statements to customers using Copy B of the official Form 1099 or an acceptable substitute statement if it contains the same information as the official IRS form. See section 4.1.2 of Rev. Proc. 2024-29, 2024-30 I.R.B. 121 (July 22, 2024), which is published as IRS Publication 1179, *General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns* (Publication 1179).

Section 6045(b) requires brokers to furnish payee statements to their customers on or before February 15 of the year following the calendar year for which the return was required to be made. In certain circumstances, filers reporting more than one type of payment during a calendar year with respect to the same customer may furnish a combined payee statement (called a consolidated reporting statement) to that customer that combines different types of payments on the same statement. Section 6045(b) and §1.6045-1(k)(3)(ii) extend the due date for furnishing statements that are furnished with the consolidated reporting statement from the due date set forth in the Code for such other payee statements (generally on or before January 31 of a calendar year) to February 15 of that year. The regulations permit this combination of statements on a consolidated reporting statement only if the statements are based on the same relationship of broker to customer as the statement required to be furnished under section 6045. See §1.6045-1(k)(3)(i). Section 4.2.1 of Publication 1179 provides that 1099-B statements may be combined (in a consolidated statement that Publication 1179 refers to as a composite recipient statement) only with income reported on the following forms: Form 1099-DIV, *Dividends and Distributions* (except for section 404(k) dividends), Form 1099-INT, *Interest Income* (except for interest reportable under section 6041), Form 1099-MISC, *Miscellaneous Information* (only for royalties or substitute payments in lieu of dividends and interest), Form 1099-OID, *Original Issue Discount*, Form 1099-PATR, *Taxable Distributions Received From Cooperatives*, and Form 1099-S, *Proceeds From Real Estate Transactions* (only for royalties). Section 4.2.1 of Publication 1179 does not permit brokers to include any other payee statement on a composite recipient statement with a 1099-B statement.

Section 6722 of the Code imposes a penalty for any failure to furnish a payee statement, including a payee statement required by section 6045, on or before the required furnishing date to the person to whom such statement is required to be

furnished, and for any failure to include all the information required to be shown on the payee statement or for the inclusion of incorrect information on that payee statement.

Section 6724 provides that no penalty shall be imposed under section 6722 if the filer (payor) shows that the failure was due to reasonable cause and was not due to willful neglect.

II. Current Rules Permitting Electronic Furnishing of Payee Statements

Section 401 of the JCWAA provides that any person required to furnish a payee statement under certain information reporting provisions (including section 6045) of the Code “may electronically furnish such statement . . . to any recipient who has consented to the electronic provision of the statement in a manner similar to the one permitted under regulations issued under section 6051 of such Code or in such other manner as provided by the Secretary.” The legislative history to section 401 of JCWAA also makes clear that obtaining consent to the electronic furnishing of payee statements by the recipient is mandatory. The Technical Explanation of the JCWAA provides that the provision “removes the statutory impediment” to electronically furnishing payee statements and that “these copies may be furnished electronically to a recipient who has consented to this.” See Technical Explanation of the “Job Creation and Worker Assistance Act of 2002,” JCX-12-02 at 27 (March 6, 2002). See also Description of Chairman’s Modification to the “Economic Recovery and Assistance for American Workers Act of 2001, JCX-78-01 at 12 (November 8, 2001). Accordingly, payee statements within the scope of section 401 of JCWAA may be furnished electronically only with the consent of the recipient.

When JCWAA was enacted, temporary regulations, 66 FR 10191 (February 14, 2001) (Temporary Regulations), were in effect under section 6051 that generally required furnishers to comply with specific notice and consent requirements before they could electronically furnish payee statements to employee-recipients on Forms W-2,

Wage and Tax Statement, (W-2 payee statements). A Notice of Proposed Rulemaking, 66 FR 10247 (February 14, 2001) (2001 Proposed Regulations), cross-referenced the text of the Temporary Regulations as the text of the 2001 Proposed Regulations. Following the publication of the 2001 Proposed Regulations, the Treasury Department and IRS received several comments seeking the removal of the notice and consent requirements. The Treasury Department and IRS retained the notice and consent requirements in the final regulations. See TD 9114, 69 FR 7567 (February 18, 2004) (2004 Final Regulations). The *Explanation of Revisions and Summary of Comments* to the 2004 Final Regulations explained that the notice and consent requirements were retained for tax administration reasons because “it is important that taxpayers be able to demonstrate the ability to receive the tax statements electronically and then actually receive them.” *Id.* 69 FR at 7568. Additionally, the *Explanation of Revisions and Summary of Comments* to the 2004 Final Regulations explained that the notice and consent requirements were determined to be important to ensuring that electronic furnishing remained voluntary for both furnishers and recipients of payee statements to accommodate recipients who perceive traditional paper delivery of statements to be more secure and private. *Id.* Finally, the *Explanation of Revisions and Summary of Comments* to the 2004 Final Regulations explained that keeping the consent requirement voluntary was consistent with section 401 of the JCWAA, which adopted the notice and consent requirements by cross referencing the Temporary Regulations. *Id.*

The section 6051 regulations referenced by the JCWAA generally permit furnishers that pay remuneration for services to recipients to furnish payee statements to the recipients in an electronic format in lieu of paper if the furnisher obtains the recipient’s consent and meets certain other requirements. See §31.6051-1(j)(1). These other requirements generally require that the furnisher furnish the payee statement on

paper if the recipient does not consent (or withdraws a previously provided consent) to receiving the statement electronically. See for example, §31.6051-1(j)(2)(ii) and (j)(3)(ii). Additionally, because recipients might not be aware that their payee statements have been posted to the furnisher's website, the regulations require the furnisher to provide the recipient with clear notice that this important tax return document is available and to provide the recipient with instructions on how to access it. See §31.6051-1(j)(5). Finally, the regulations contain rules to ensure that recipients have access during the tax filing season to the payee statements reflecting all the information reported to the IRS. See §31.6051-1(j)(4) (format of substitute statements) and (j)(6) (access period).

Section 4.6 of Publication 1179 applies the rules set forth in §31.6051-1(j) regarding the electronic furnishing of payee statements to several different payee statements required to be furnished, including 1099-B statements required by section 6045(b) and §1.6045-1(k). Publication 1179 is generally updated annually but has not yet been revised to include 1099-DA statements.

III. Reasons for New Consent Procedures for 1099-DA Statements Reflecting Digital Asset Sales

Stakeholders have provided comments indicating that transactions involving digital assets, including the purchase, sale, or disposition thereof, are almost exclusively conducted electronically. Customers who buy and sell digital assets using the custodial wallet services and exchange platform services of digital asset brokers must use computers or mobile devices to access their brokers' websites or mobile device applications. Given that customers have this technological capability, the Treasury Department and the IRS are of the view, consistent with that of stakeholder suggestions discussed later in this Part III of the *Background*, that the furnishing of payee statements related to digital asset transactions to these customers is better conducted electronically to relieve potential compliance burdens on brokers.

Congress enacted third party information reporting provisions to increase the IRS's ability to administer and enforce the tax laws and to improve taxpayer compliance with these laws. See e.g., Sen. Rep. No 97-494, 239 (interest), 247 (fixed and determinable or determinable income), and 245 (capital gains) (July 12, 1982). Third party information reporting generally contributes to lowering the income tax gap, which is the difference between taxes legally owed and taxes actually paid. See U.S. Government Accountability Office (GAO), *Tax Gap: Multiple Strategies Are Needed to Reduce Noncompliance*, GAO-19-558T at 6 (May 9, 2019). Information reporting by brokers on their customers' digital asset transactions benefits tax compliance by helping to close the information gap. See TIGTA, Ref. No. 2020-30-066, *The Internal Revenue Service Can Improve Taxpayer Compliance for Virtual Currency Transactions*, 10 (September 2020); GAO, *Virtual Currencies: Additional Information Reporting and Clarified Guidance Could Improve Tax Compliance*, 28, GAO-20-188 (Washington, D.C.: February 2020). First, because brokers are also required to furnish 1099-DA statements to their customers showing the information reported to the IRS, customers receiving these 1099-DA statements are made aware that their digital asset transactions may be taxable transactions and can use these statements as a record to assist with reporting gross proceeds (and, when basis is reported, calculating taxable gains and losses) from the reported transactions. Second, information returns allow the IRS to match the information reported to the IRS with tax returns filed by these customers whose identifying number is shown on the information returns to verify that these customers have properly reported income (or loss) from the reported transactions. Thus, furnishing of 1099-DA statements to customers is essential not only to customers who use the furnished information to accurately file their tax returns but also to reducing the overall tax gap attributable to digital asset sale transactions.

The Internal Revenue Service Advisory Committee (IRSAC) in its public report for 2024 (IRSAC Report)³ stated that the current rules requiring that payee statements be furnished on paper if the statement recipient does not affirmatively consent (or withdraws a previously provided consent) to receiving the statement electronically would be impractical if applied to digital asset brokers required to furnish 1099-DA statements to their customers reflecting the information reported to the IRS with respect to each digital asset transaction effected during the calendar year. See IRSAC Report at 130. According to the IRSAC Report, many customers engage in a significant number of digital asset transactions each year. Furnishing separate 1099-DA statements for each digital asset transaction (or even a single substitute statement that includes information about each transaction) by mail would impose avoidable compliance burdens on digital asset brokers that would be forced to furnish to many customers hundreds or even thousands of pages of paper statements annually. *Id.*

The current regulations in §1.6045-1(k) and the guidance in Publication 1179, when revised to apply to brokers effecting sales of digital assets pursuant to the 2024 final regulations (TD 10000, 89 FR 56480 (July 9, 2024)), would require brokers to furnish 1099-DA statements on paper for any customer that does not affirmatively consent (or withdraws a previously provided consent) to receiving the 1099-DA statements in an electronic format. The Treasury Department and the IRS acknowledge that the cost of furnishing 1099-DA statements on paper for customers that do not provide their consent under the existing rules may be unnecessarily burdensome for brokers that effect sales of digital assets because of the large number of digital asset transactions that some customers engage in each year and because digital asset customers almost exclusively conduct transactions electronically. Consequently, these

³ Public Report, Internal Revenue Service Advisory Council, Publication 5316 (Rev. 11-2024) available at <https://www.irs.gov/pub/irs-pdf/p5316.pdf> (IRSAC Report).

proposed regulations propose alternative rules that would allow digital asset brokers to obtain customer consent to the electronic furnishing of 1099-DA statements without having to offer customers the choice of receiving the 1099-DA statements on paper. To ensure that customers are made aware that an important tax return document has been furnished in an electronic format and have continuing access to their 1099-DA statement, these proposed alternative rules would, however, require these brokers to meet certain enhanced electronic notice and delivery requirements and to provide customer access to the statements for a longer period of time.

Explanation of Provisions

These proposed regulations would provide guidance under proposed §1.6045-1(k)(5) regarding the ability of brokers to obtain consent from their customers to furnish 1099-DA statements in an electronic format without offering a paper delivery alternative. For the reasons discussed in Part III. of this *Explanation of Provisions*, these proposed regulations are limited to consent procedures only for 1099-DA statements and accordingly do not extend to any other payee statements, such as 1099-B statements.

I. Electronic Furnishing of 1099-DA Statements

Proposed §1.6045-1(k)(5)(i) would permit brokers required to furnish 1099-DA statements to obtain consent to furnish those statements in an electronic format in lieu of paper either (1) pursuant to guidance provided by the IRS in the Internal Revenue Bulletin or other publications (such as under section 4.6.2 of Publication 1179) applicable to other information return filers or (2) under the rules proposed in these proposed regulations. The rules proposed in these proposed regulations would not require the broker to furnish paper payee statements if the customer does not consent but, instead, would specifically permit brokers to terminate their business relationship with these customers. Additionally, unlike the existing rules, the rules proposed in these proposed regulations would not require brokers to permit customers to withdraw a

previously provided consent. Customers not permitted to withdraw previously provided consents would need to move their digital asset investments to other brokers willing to furnish 1099-DA statements on paper in order to receive their 1099-DA statements on paper. Because customers would not have the right to have their 1099-DA statements furnished on paper, these proposed regulations would impose enhanced notification requirements on brokers to increase the likelihood that customers receive the communication that their 1099-DA statements have been transmitted or otherwise made available.

A. In general

Proposed §1.6045-1(k)(5)(i) would permit brokers to furnish 1099-DA statements to customers in an electronic format in lieu of a paper format (and without the requirement to offer the paper format) if the broker obtains consent from the customer, uses one of two qualified electronic delivery methods, and meets certain other requirements relating to continuing disclosure, format, notice, and access period.

The proposed consent requirements are generally modeled after the consent requirements under §31.6051-1(j) for W-2 payee statements but modify those rules where appropriate to reflect the technological knowledge of digital asset investors and traders and the significantly greater number of 1099-DA statements that must be furnished to each customer. Under the proposed regulations, brokers would be required to obtain the customer's positive consent to receiving the 1099-DA statement in an electronic format after receiving certain information from the broker regarding the scope of consent, the methods (including hardware and software requirements) necessary to access the electronically provided 1099-DA statements, the qualified electronic delivery method that will be used to furnish the 1099-DA statements, and other important information necessary for the customer to make an informed consent. Unlike the consent requirements under §31.6051-1(j) for W-2 payee statements, these proposed

regulations would not require brokers to give customers the option to receive their 1099-DA statements on paper nor would they require brokers to give customers the ability to withdraw a previously provided consent while remaining customers. Nevertheless, as further described in Part I.C.3.b. of this *Explanation of Provisions*, if a broker's email of an original 1099-DA statement is returned as undeliverable, the broker may be required to send the original 1099-DA statement to the customer by mail within 30 days of receiving that undeliverable response.

Brokers that obtain the customer's positive consent would be required to furnish 1099-DA statements either by posting them to a specified location that is electronically accessible, such as the broker's website, mobile device application, or other online platform, or by attaching them to an email. Brokers that furnish 1099-DA statements by posting them to an electronically accessible specified location would be required to send customers a notice by email that the statements are available and, if requested by the customer, another notice using a communication method other than email. Brokers that furnish 1099-DA statements by attaching them to emails would not be required to send the customer a notice unless the customer requests a notice of that transmittal using a communication method other than email. Because brokers may not know if their customers, in fact, accessed their electronically furnished 1099-DA statements, proposed §1.6045-1(k)(5)(i) would treat a broker that posts the 1099-DA statement to a specified location that is electronically accessible and that meets the consent, delivery, and other requirements in the proposed regulations as furnishing the 1099-DA statement as of the last of the following dates: (1) the date that the broker posts the 1099-DA statement to the specified location; (2) the date that the broker sends the customer a notice by email that the 1099-DA statement has been made available; and (3) the date that the broker sends the requested notice using a communication method other than email, if requested by the customer. For a broker that sends the customer an

email with a 1099-DA statement attached and that meets the consent, delivery, and other requirements in the proposed regulations, proposed §1.6045-1(k)(5)(i) would generally treat the broker as furnishing the 1099-DA statement as of the later of the date that the broker sends to the customer an email with a 1099-DA statement attached or the date that the broker sends the requested notice informing the customer that the customer's 1099-DA statement has been transmitted using a communication method other than email. See Part I.C. of this *Explanation of Provisions* for a discussion of the proposed rule that would require brokers to provide customers with additional methods to receive requested notices regarding their 1099-DA statements and the rationale behind this proposed rule.

B. Consent

The proposed consent requirements are generally modeled after the consent requirements under §31.6051-1(j) for W-2 payee statements. For example, like the consent requirements under §31.6051-1(j), the proposed consent requirements in these proposed regulations are designed to ensure that the customer is made aware that the customer is providing this specific consent to receive the 1099-DA statement in an electronic format. Additionally, like the consent requirements under §31.6051-1(j), the proposed rules would require that customers be provided with a disclosure statement, prior to or at the time of this consent, setting forth important information regarding the consequences of consent and non-consent.⁴

The proposed regulations would differ from the rules under §31.6051-1(j), however, where appropriate to reflect the technological knowledge of digital asset traders and the significantly higher number of 1099-DA statements that might be

⁴ The Electronic Signatures in Global and National Commerce Act (E-SIGN Act) Public Law No. 106-229, 114 Stat. 464 (2000), 15 U.S.C. sections 7001 through 7006 (2000), provides rules permitting businesses to furnish to consumers legally required records in an electronic format with the consent of the consumer. The consent rules in these proposed regulations are largely consistent with the consent rules in the E-SIGN Act.

furnished to each customer in comparison to the single-page W-2 payee statements that are required to be furnished to employees under §31.6051-1(j). For example, the proposed regulations would not include the requirement in §31.6051-1(j)(2)(i) that the recipient's consent be provided in a way that reasonably demonstrates the recipient's ability to access the statement in the electronic format. In addition, the proposed regulations would not include the requirements in §31.6051-1(j)(3)(ii) and (v) that furnishers inform recipients that recipients will receive paper statements if they do not provide their consent or that recipients may withdraw a previously provided consent under specified procedures. See Parts I.B.1. through 5. of this *Explanation of Provisions* for a more detailed explanation of the consent requirements included in proposed §1.6045-1(k)(5)(iii) and how they compare to the consent requirement in §31.6051-1(j).

1. Positive Consent

To achieve the objective that customers be made aware of what they are consenting to, proposed §1.6045-1(k)(5)(iii)(A) would require that the customer provide positive consent to receive the 1099-DA statement in an electronic format. Positive consent would be treated as obtained, for this purpose, if the customer performs an explicit action to provide consent, such as by checking a box, clicking a button, or completing a fill-in screen. See proposed §1.6045-1(k)(5)(iii)(A). This proposed requirement to take an explicit action to provide positive consent is included to ensure that customers are made aware that they will receive their 1099-DA statements in an electronic format. This requirement that the customer perform an explicit action is similar to the affirmative consent requirement in the current regulations in §1.6045-1(k) and the guidance in Publication 1179. Use of the adjective "positive" in the proposed regulations instead of "affirmative" is meant to distinguish the overall consent rules in the proposed regulations from the overall consent rules under §31.6051-1(j) and as provided in section 4.6.2 of Publication 1179, which, unlike the proposed regulations,

require the customer to demonstrate that the customer can access the electronically provided statement. See Part I.B.2. of this *Explanation of Provisions* for a discussion of the demonstration requirement of §31.6051-1(j) and why it is not included in these proposed regulations.

Proposed §1.6045-1(k)(5)(iii)(A) would also require that the broker's solicitation of the customer's consent meet specific requirements designed to ensure that customers are aware of what they are agreeing to when they provide their consent. As discussed in Part III. of the *Background*, the furnishing of 1099-DA statements to customers provides these customers with a record that they can use to assist with reporting gross proceeds (and when basis is reported calculating and reporting taxable gains and losses) from the reported sales. If these customers are not made aware that their 1099-DA statements will be furnished electronically, they might fail to access those statements and report their taxable gains (and losses) from the reported sales correctly, thus thwarting the benefits of third-party information reporting. Accordingly, to address the importance of making customers aware that their 1099-DA statements will be electronically furnished, proposed §1.6045-1(k)(5)(iii)(A) would require that the customer's consent to receiving the 1099-DA statements in an electronic format be separate from any other consent provided by the customer. The solicitation of the customer's consent to receive 1099-DA statements electronically may be included in another communication, including a communication that solicits consent on other issues, for example a broker's terms and conditions, but the customer's response to the 1099-DA consent solicitation may relate only to consent to receiving the 1099-DA statement electronically.

Additionally, to ensure that the customer's consent is an informed consent, proposed §1.6045-1(k)(5)(iii)(A) would require that a clear and conspicuous disclosure statement be provided to the customer prior to or at the time of consent. See Part I.B.3.

of this *Explanation of Provisions*, for a discussion of the information that must be disclosed to the customer prior to or at the time of consent and for the rules detailing how this information must be provided to the customer.

2. Demonstration of Ability to Access the 1099-DA Statement

The rules under §31.6051-1(j) and the guidance under section 4.6 of Publication 1179 require furnishers of payee statements to obtain the consent of each recipient to receiving the payee statement electronically before the statement can be furnished electronically to that recipient. Consent, for this purpose, requires that the recipient reasonably demonstrate the recipient's ability to access the payee statement in the electronic format.⁵ Examples 1 and 2 under §31.6051-1(j)(2)(iv) demonstrate the application of this rule with facts showing recipients who are directed to give their consent on documents that are provided in the same electronic format as that in which the payee statements will be furnished. Because the recipients give their consent using the same electronic format as that in which the payee statements will be furnished, Examples 1 and 2 conclude that the recipients' consent demonstrates that the recipients are able to access the electronic format in which the payee statements will be furnished. *Id.* Example 3 under §31.6051-1(j)(2)(iv) shows facts under which a recipient must give consent on the same website that the recipient's electronically furnished payee statement will be posted. Example 3 concludes that because the recipient demonstrated the ability to access the website on which the payee statement will be posted, the recipient's consent demonstrated the recipient's ability to access the payee statement in the electronic format. *Id.*

Taxpayers who buy and sell digital assets using the custodial wallet services and exchange platform services of digital asset brokers must use computers or mobile devices to access their brokers' websites or mobile device applications. Consequently,

⁵ See §31.6051-1(j)(2)(i); see also 15 U.S.C. 7001(c)(1)(C)(ii).

these taxpayers have already demonstrated that they can access their brokers' websites or mobile device applications to retrieve information posted to these locations, such as a 1099-DA statement. Therefore, it is not necessary for customers to demonstrate their ability to access their broker's websites or mobile device applications. Similarly, by definition, if a taxpayer provides the broker with the taxpayer's email address, the taxpayer has confirmed that the taxpayer can access communications sent to this address. Therefore, it is not necessary for customers to demonstrate their technical ability to access their email accounts. By not adopting these requirements from §31.6051-1(j), the Treasury Department and the IRS anticipate that these proposed regulations will be less burdensome on electronic commerce without materially increasing the risk of harm to consumers. Accordingly, these proposed regulations do not require the method by which a customer provides consent to include a demonstration that the customer has the technical ability to access electronically furnished 1099-DA statements in the format in which it will be furnished.

3. Pre-Consent Disclosure Statement

a. Information included in the pre-consent disclosure statement

As noted in Part I.B.1. of this *Explanation of Provisions*, proposed §1.6045-1(k)(5)(iii)(A) would require brokers to provide customers with a clear and concise disclosure statement prior to or at the time of consent (pre-consent disclosure statement). Proposed §1.6045-1(k)(5)(iii)(C) would require that this disclosure statement contain seven information items described in proposed §1.6045-1(k)(5)(iii)(C)(1) through (7). Two of these proposed disclosure requirements are the same as the disclosure requirements set forth in §31.6051-1(j)(3)(iii) (scope and duration of consent) and (viii) (hardware and software requirements) and described in section 2.6.2 of Publication

1179.⁶ Specifically, proposed §1.6045-1(k)(5)(iii)(C)(1) would require the pre-consent disclosure statement to inform the customer that the provided consent will apply to all 1099-DA statements required to be furnished by the broker. Additionally, proposed §1.6045-1(k)(5)(iii)(C)(2) would require the pre-consent disclosure statement to describe the method by which the customer will need to access, download, and print the 1099-DA statement furnished in the electronic format, including the hardware or software the customer will need to conduct these functions.

Proposed §1.6045-1(k)(5)(iii)(C) also includes five pre-consent disclosure requirements that are not included in (or are different from) the pre-consent disclosures required by §31.6051-1(j)(3) and described in section 2.6.2 of Publication 1179. For example, proposed §1.6045-1(k)(5)(iii)(C)(3) would require the pre-consent disclosure statement to describe the specific qualified electronic delivery method that the broker will use to furnish the 1099-DA statement to the customer. The purpose of this disclosure is to ensure that customers will know which method brokers will use to deliver their 1099-DA statements. Customers can use this information to evaluate whether, in their view, the delivery method chosen by the broker is a secure or otherwise convenient method of delivery. See Part I.C. of this *Explanation of Provisions* for a discussion of the qualified electronic delivery methods.

If the broker chooses the qualified electronic delivery method that would require the broker to send a notice to the customer that the 1099-DA statement has been posted to a specified location that is electronically accessible, proposed §1.6045-1(k)(5)(iii)(C)(4) would require the disclosure statement to state that the notice will be sent to the customer by email and that the customer may ask for another notice using

⁶ See also 15 U.S.C. 7001(c)(1)(B)(ii) and (c)(1)(C)(i). Many of the pre-consent disclosure requirements in §31.6051-1(j)(3) are not included in the proposed regulations because they are not applicable. For example, §31.6051-1(j)(3)(ii), (iv), and (v) require disclosures associated with the paper statement option that furnishers are required to provide under §31.6051-1(j). Similarly, §31.6051-1(j)(3)(vi) is not applicable to these proposed regulations because it requires furnishers to inform recipients of the conditions under which payee statements will no longer be electronically furnished.

an additional communication method (referred to as requested notice). Alternatively, if the broker chooses the qualified electronic delivery method that would require the broker to transmit the customer's 1099-DA statement by way of attachment to an email, proposed §1.6045-1(k)(5)(iii)(C)(4) would require the disclosure statement to inform the customer that the customer may ask for a notice using an additional communication method when the customer's 1099-DA statement has been transmitted (also referred to as requested notice). Additionally, regardless of which qualified electronic delivery method the broker chooses, proposed §1.6045-1(k)(5)(iii)(C)(4) would require the disclosure statement to inform the customer that the customer may ask the broker to change the additional communication method used by the broker to send the requested notices. See Part I.C. of this *Explanation of Provisions* for a discussion of the proposed rule that would require brokers to provide customers with additional methods to receive requested notices regarding their 1099-DA statements and the rationale behind this proposed rule. The purpose of this disclosure requirement is to inform customers that they may request a communication method other than email by which they will receive notices regarding their 1099-DA statements.

Additionally, if the broker intends to limit the services available to customers that do not provide their consent, such as not effecting future sales for such customers, proposed §1.6045-1(k)(5)(iii)(C)(5) would require that the disclosure statement inform the customer of this intention. The purpose of this disclosure requirement is to ensure that customers are made aware of the consequences of their decision, not to limit the decisions brokers can make regarding these consequences. For example, under the proposed regulations, a broker may decide to not effect sales for customers that do not provide their consent or could alternatively decide to continue to effect sales for customers up to a certain limit to ensure that any paper 1099-DA statements sent to non-consenting customers would be short. See Part I.B.5.b. of this *Explanation of*

Provisions for a further discussion of this requirement and why the disclosure of this consequence would not invalidate a consent.

Proposed §1.6045-1(k)(5)(iii)(C)(6) would require that the disclosure statement inform the customer of the broker's policy regarding the withdrawal of a previously provided consent. If a broker does not offer customers the opportunity to withdraw a previously provided consent, proposed §1.6045-1(k)(5)(iii)(C)(6) would require that the disclosure statement inform the customer of this policy. Conversely, if the broker does choose to offer customers the opportunity to withdraw a previously provided consent, the disclosure statement must inform the customer of the procedures the customer must follow to withdraw a previously provided consent and when such withdrawal will be effective. The purpose of this disclosure requirement is to ensure that customers are made aware of the consequences of their decision, not to limit the decisions brokers can make regarding consent withdrawals.

Finally, proposed §1.6045-1(k)(5)(iii)(C)(7) would require that the disclosure statement provide a document or describe a location, such as on the broker's website, mobile device application, or other online platform, where the customer can find the information included in the pre-disclosure statement after providing consent. The purpose of this proposed disclosure requirement is to ensure that customers will be able to obtain answers to their questions about their 1099-DA statements if they are unable to remember the information provided at the time of consent.

Section 31.6051-1(j)(3)(ii) and (iv) require the furnisher to inform the recipient that a paper statement will be furnished if the recipient does not consent and the procedures the recipient must follow to obtain a paper statement after giving consent. These disclosures have not been added to the proposed regulations' disclosure requirements because these proposed rules do not require the broker to offer the customer a paper 1099-DA statement. Instead, as discussed earlier in this Part I.B.3,

under the proposed regulations brokers may refuse to offer a paper statement and may decline to continue or begin their business relationship with customers that do not provide their consent. See Part I.B.5 of this *Explanation of Provisions* for a further discussion of the rationale behind not requiring brokers to offer customers a paper option. For similar reasons, the proposed regulations also do not require brokers to disclose to customers the information included in §31.6051-1(j)(3)(ii), which requires furnishers to inform recipients that they have a right to withdraw a previously provided consent, the procedures the recipient must follow to do so, and when a withdrawn consent will be effective. Instead, as discussed earlier in this Part I.B.3, the proposed regulations would require the broker to inform the customer of whether it will permit customers to withdraw consent. Only if a broker does permit customers to withdraw consent would the broker need to inform the customer of the procedures the customer must follow to do so.

b. Method of providing the pre-consent disclosure statement

Proposed §1.6045-1(k)(5)(iii)(C) would provide that the pre-consent disclosure statement may be provided by the broker in any manner that is part of the consent solicitation. For example, the broker could include the information required to be disclosed on a pop-up screen shown to the customer as part of the request for the customer's consent or on another page on the broker's website, mobile device application, or other online platform to which the pop-up consent screen provides a direct link.

The Treasury Department and the IRS are concerned, however, that customers that transact with brokers exclusively through one or more physical electronic terminals or kiosks might not remember the name or URL of the broker's website, mobile device application, or other online platform if it was only accessed using the broker's kiosk. Similarly, customers that transact with brokers that effect sales of digital assets as a

processor of digital asset payments as defined in §1.6045-1(a)(22) (PDAP broker), where the digital assets that the customer uses for payment are held in an account at a different custodial broker, might not be aware of the PDAP broker's website, mobile device application, or other online platform. Accordingly, to ensure that customers using kiosks or PDAP brokers to effect sales of their digital assets have continuing access to this initial disclosure statement, proposed §1.6045-1(k)(5)(iii)(C) would require that PDAP brokers and brokers that transact exclusively with customers through one or more physical electronic terminals or kiosks also provide the disclosure statement to these customers by email or by using any mail or private delivery service within five business days of the customer's explicit action to provide positive consent. This five business-day requirement would ensure that the customer is familiar with the context of the communication when it is received. Additionally, proposed §1.6045-1(k)(5)(iii)(C) would require that these brokers also provide customers with the opportunity to receive this disclosure statement using an additional communication method described in Part I.C. of this *Explanation of Provisions* if requested by the customer at the time of consent. See Part I.C. of this *Explanation of Provisions* for a discussion of why the customer should be given the opportunity to request communications sent by email using an additional communication method.

Comments are requested regarding these additional rules requiring the provision of the disclosure statement in the case of customers that transact with brokers that operate physical terminals or kiosks. For example, comments are requested on whether these customers regularly visit the broker's website, mobile device application, or other online platform when they are not at the broker's physical terminal or kiosk. Comments are also requested regarding the need for this rule in the case of customers that transact with PDAP brokers. For example, comments are requested on whether these customers regularly visit the broker's website, mobile device application, or other online

platform. Finally, comments are requested regarding whether the requirement that brokers send the disclosure statements to the customer within five business days of the customer's explicit action to provide consent provides brokers with sufficient time to comply with this requirement.

4. Change in Hardware or Software Requirements

Under §31.6051-1(j)(2)(iii) and the guidance in section 4.6.2 of Publication 1179, if the furnisher changes the hardware or software that the recipient will need to access the payee statement and that change creates a material risk that the recipient will not be able to access the payee statement, the furnisher must obtain a new consent from the recipient to receive the payee statement electronically after notifying the recipient of the new hardware or software requirements. Because taxpayers who buy and sell digital assets are likely to have the technological wherewithal to access statements provided using the qualified electronic delivery methods described in proposed §1.6045-1(k)(5)(ii) (posted to an electronically accessible specified location or by direct transmittal), the condition that recipients be notified if there is a material risk that the recipient will not be able to access the payee statement has been revised. Specifically, if an intended change in the method by which the customer will need to access, download, and print the 1099-DA statement furnished in the electronic format, including a change in the hardware or software required to conduct these functions, would create a material risk that the customer will need to obtain new hardware or software to access the 1099-DA statement, proposed §1.6045-1(k)(5)(iii)(B) would require the broker to obtain a new consent from the customer to receive the 1099-DA statement using the new hardware or software before implementing the change. The broker would be required to obtain this new consent regardless of whether the necessary new hardware to be obtained or software required to be downloaded are available at a price or are generally offered to consumers for free. This requirement, however, is not intended to apply to the simple

case in which the customer is provided minor upgrades in existing software that do not impede the customer's ability to access the 1099-DA statement. Comments are requested regarding how this distinction can be expressed in regulatory text. In addition, the broker would be required to obtain this consent in the same manner as that described in proposed §1.6045-1(k)(5)(iii)(A) and would be required to furnish the customer with updated pre-consent disclosures described in Part I.B.3. of this *Explanation of Provisions*. Brokers would be required to furnish 1099-DA statements in the old hardware or software format to customers that do not provide their consent to receiving the 1099-DA statements in the new hardware or software format until they receive that consent.

5. Not Offering a Paper 1099-DA Statement Alternative

a. In general

The rules under §31.6051-1(j)(3)(ii) and (v) as applied by section 4.6.2 of Publication 1179 require furnishers to inform recipients that payee statements will be furnished on paper if the recipient does not consent to receiving the payee statement electronically and that the recipient has the right to withdraw a previously provided consent. Additionally, §31.6051-1(j)(2)(ii) as applied by section 4.6.2 of Publication 1179 provides that a previously provided consent from a recipient is not valid once a recipient's withdrawal of that consent takes effect. The Treasury Department and the IRS explained in the *Explanation of Revisions and Summary of Comments* to the 2004 Final Regulations that it was important that the electronic furnishing of payee statements remain voluntary (that is, that recipients be provided with a paper option) to accommodate recipients who perceive traditional paper delivery of statements to be more secure and private. See 2004 Final Regulations 69 FR at 7568. This accommodation, according to this explanation, was consistent with Congressional intent

as reflected by the reference in section 401 of the JCWAA to the regulations under section 6051. *Id.*

In mandating that a paper delivery option be offered, the rules under §31.6051-1(j) struck a balance between the desire of furnishers to reduce costs by furnishing W-2 payee statements electronically and the tax administration concerns associated with recipients being unable to access electronically furnished W-2 payee statements for use in filing accurate income tax returns. Unlike many of the single-page payee statements subject to the rules under §31.6051-1(j) that reflect an aggregation of all reportable payments made within the calendar year, the §1.6045-1 regulations require brokers to furnish a separate 1099-DA statement for each transaction (or a single substitute statement that includes information about each transaction) effected for customers within a calendar year. Given the number of digital asset transactions that may be effectuated by a single customer in a given year, even substitute 1099-DA statements that reflect each of these transactions, if printed, may be quite lengthy.

The Treasury Department and the IRS are of the view that recipients have become increasingly able to access electronically furnished payee statements since the 2004 Final Regulations were first published. Compared to the early 2000s, most U.S. adults today say they use the internet (95%), have a smartphone (90%) or subscribe to high-speed internet at home (80%).⁷ This is especially true for digital asset investors and traders who generally communicate with their digital asset brokers solely through electronic means. As such, the risk of harm to recipients who are asked to consent to receiving payee statements in an electronic format has materially diminished since those regulations were first published. Additionally, the Treasury Department and the IRS are sympathetic to the potentially substantial compliance costs for digital asset

⁷ See Pew Research Center, *Americans' Use of Mobile Technology and Home Broadband*, <https://www.pewresearch.org/internet/2024/01/31/americans-use-of-mobile-technology-and-home-broadband/> (accessed January 12, 2026).

brokers, and the burden those costs place on electronic commerce, that would result if digital asset brokers were required to offer customers paper 1099-DA statements. According to the IRSAC Report, the printing and mailing costs that physical delivery of 1099-DA statements would require could create unmanageable burdens for brokers because of the large quantity of trades engaged in by some digital asset investors. Moreover, customers that inadvertently fail to provide their consent to receiving the statements electronically or that do not appreciate the length of these statements when they choose to receive paper statements could potentially be significantly inconvenienced by this choice because they may need to scan potentially lengthy paper statements to computer files for transmission to tax return preparers or for use by tax return preparation software. The significant cost of printing and mailing paper 1099-DA statements to customers also imposes material burdens on small business brokers, who may incur substantial expenses to meet paper-furnishing requirements. As such, the tax administration benefits of not requiring brokers to offer a paper delivery option for 1099-DA statements outweigh the costs to digital asset investors and traders of not having that option because digital asset investors and traders have the technological capability to receive electronic communications and to visit their brokers' websites or mobile device applications to access their electronically furnished 1099-DA statements.⁸

b. Changes to the parties' relationship if the customer does not consent

There may be customers that refuse to consent to receiving the 1099-DA statement in an electronic format even though the broker does not offer the customer an option to receive the 1099-DA statement on paper (or limits that option to customers with transaction numbers below a certain threshold). As discussed in Part II. of the

⁸ The E-SIGN Act permits a Federal agency to promulgate consent rules that deviate from the consent rules in the E-SIGN Act if it makes a determination that this deviation is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers. 15 U.S.C. 7004(d).

Background, section 401 of the JCWAA mandates that the recipient consent to receiving a payee statement electronically before the furnisher may electronically furnish that statement. Therefore, if a broker is unwilling to furnish paper 1099-DA statements to customers that do not consent to electronic furnishing, the broker would need to cease effecting sales for these customers to avoid being penalized for the failure to furnish 1099-DA statements under section 6722. If a broker makes the business decision to limit its services, for example by not effecting any future sales for all such customers or for those customers with transaction numbers above a certain threshold, proposed §1.6045-1(k)(5)(iii)(C)(5) would require that the broker disclose this business decision to customers prior to obtaining their consent.⁹ Disclosure of the consequences to not providing consent when those consequences are legally permitted does not invalidate an otherwise valid consent. See, e.g., *Ballard v. Comm’r*, T.C. Memo. 1987-471 (Commissioner’s statement that IRS Appeals conference would not be allowed if taxpayer failed to consent to extending statute of limitation does not invalidate signed consent because such statements are nothing more than notice that the Commissioner intends to use lawful means at his disposal to assess the tax); *Hall v. Commissioner*, T.C. Memo. 2013-93 (signed consent valid where taxpayer faced choice of whether to accept plea agreement or go on trial and face significantly worse consequences). Accordingly, a broker may inform customers that the broker has determined it will not effectuate sales with, or will otherwise limit the business relationship with, a customer that does not consent to receiving electronic 1099-DA statements.

⁹ Informing customers of these consequences is consistent with the E-SIGN Act, which requires that furnishers inform consumers of any consequences (including termination of the parties’ relationship) if the consumer withdraws consent. See 15 U.S.C. 7001(c)(1)(B)(i)(II).

c. Withdrawal of consent

The rules under §31.6051-1(j) and the guidance under section 4.6 of Publication 1179 require furnishers of payee statements to inform recipients that they have the right to withdraw consent. See §31.6051-1(j)(3)(v). Additionally, once a recipient withdraws consent and that withdrawal is effective, the furnisher must provide the payee statement on paper. See §31.6051-1(j)(2)(ii) and (j)(7). For the same reason that these proposed regulations do not require a broker to provide a paper delivery option at the time of consent, these proposed regulations also do not require brokers to offer customers the opportunity to withdraw a previously provided consent. See Part I.B.5.a. of this *Explanation of Provisions* for a discussion of the paper option. Despite this conclusion, the proposed regulations would require brokers to inform customers if they will not be given the opportunity to withdraw a consent once provided. See Part I.B.3. of this *Explanation of Provisions* for a general discussion of the information that a broker must disclose to the customer prior to or at the time of consent.

C. Qualified electronic delivery methods

The rules under §31.6051-1(j) when originally proposed would have only permitted furnishers to furnish payee statements electronically by posting them to a website accessible to the recipient. See Temporary Regulations 69 FR at 1193 (proposed §31.6051-1(j)(5)). In response to this proposed rule, two commenters recommended that the regulations allow furnishers to provide payee statements as attachments to emails, and one commenter stated that providing tax statements by email raised security and privacy concerns. See *Explanation of Revisions and Summary of Comments* to the 2004 Final Regulations 69 FR at 7568. In response to these comments, the 2004 Final Regulations did not restrict furnishers solely to the use of website technology, but the Treasury Department and the IRS noted that, although website technology provided the most secure method of furnishing payee statements

electronically, it was not the Secretary's intention to limit the technology to be used in furnishing payee statements electronically. *Id.*

The 2004 Final Regulations do not provide any rules for brokers that fulfill their furnishing obligations by attaching payee statements to emails. In contrast, these proposed regulations include proposed rules for brokers that furnish 1099-DA statements by attaching them to emails because these furnishing rules are necessary to ensure customers receive their 1099-DA statements no matter how they are furnished. Additionally, furnishing rules for 1099-DA statements are necessary for all delivery methods because 1099-DA statements will be new to digital asset investors and traders who might not otherwise seek to obtain their statements if they do not receive an email regarding these statements. Given these considerations, it is important to provide brokers with clear rules for whichever electronic delivery method they use to furnish 1099-DA statements. Accordingly, these proposed regulations include rules for brokers that furnish 1099-DA statements by posting them to electronically accessible specified locations as well as for brokers that furnish 1099-DA statements by attaching them to emails. These methods are collectively referred to as qualified electronic delivery methods.

As discussed in Part I.A. of this *Explanation of Provisions*, proposed §1.6045-1(k)(5)(i) would require brokers furnishing 1099-DA statements in an electronic format to use a qualified electronic delivery method to do so. Proposed §1.6045-1(k)(5)(ii) would define a *qualified electronic delivery method*, for this purpose, as falling within one of two broad types of delivery methods. First, under proposed §1.6045-1(k)(5)(ii)(A), the broker would be permitted to post the 1099-DA statement to a specified location that is electronically accessible, such as the furnisher's website, mobile device application, or other online platform. Brokers using this qualified electronic delivery method would also be required to notify the customer by email that the 1099-DA statement has been so

posted. Alternatively, under proposed §1.6045-1(k)(5)(ii)(B), the broker would be permitted to transmit the 1099-DA statement directly to the customer by attaching it to (or otherwise including it with) an email to the customer. Comments are requested addressing whether there are any other practical methods of electronically furnishing the 1099-DA statements other than the two methods described in proposed §1.6045-1(k)(5)(ii)(A) and (B) that should be included in the definition of a qualified electronic delivery method.

Regardless of which of these two proposed qualified electronic delivery methods the broker chooses to furnish 1099-DA statements electronically, the broker would be required to send an email to the customer either to provide notice that the statement has been made available in an electronically accessible specified location or to transmit the 1099-DA statement directly. The Treasury Department and the IRS considered whether brokers should be given the ability to choose a different communication method for these notices and transmittals but decided against providing brokers with this choice for several reasons. First, email is a ubiquitous method of communication with which most people are familiar. Because it is essential to tax administration that customers actually receive these important communications and view and use their 1099-DA statements, it is essential that the most broadly used and well-known method of communication be required. Second, most email providers have policies to prevent the reuse of previously used addresses and will return as undeliverable messages sent by email to an address that is not assigned to any user. In contrast, if a broker sent a communication by way of text message to a customer regarding the customer's 1099-DA statement, the broker might not be informed if the customer's mobile phone number was no longer in service or was reassigned to another mobile phone customer.

The Treasury Department and IRS considered whether a customer's in-account messaging system with the broker (also referred to in certain circumstances as in-

application messaging) should be permitted as a default communication method. This communication method was not proposed as a default method, however, because of the concern that this method did not provide a sufficient level of certainty that the communication will be received by most customers because it is unclear if all customers would even be aware that communications have been sent to their in-account messaging system. The Treasury Department and IRS also considered whether communications sent to a customer's cellular device in a manner that can be viewed even when the account application with the broker is not open (sometimes referred to as push notifications) should be permitted as a default communication method for this purpose. Because customers can turn off push notifications on their device without the broker's knowledge, the Treasury Department and the IRS also concluded that this method does not provide a sufficient level of certainty that the communication will be received by most customers. See Parts I.C.1. and 2. of this *Explanation of Provisions* for a discussion of the requirement that brokers provide customers with the opportunity to request certain additional communications regarding their 1099-DA statements using other methods of communication, including in-account messaging and push notifications.

1. Posting a 1099-DA Statement to an Electronically Accessible Specified Location

The first type of qualified electronic delivery method is described in proposed §1.6045-1(k)(5)(ii)(A)(1). Under proposed §1.6045-1(k)(5)(ii)(A)(1), a qualified electronic delivery method would require the broker to post the 1099-DA statement to a specified location that is electronically accessible, such as the broker's website, mobile device application, or other online platform. Once the 1099-DA statement has been posted, proposed §1.6045-1(k)(5)(ii)(A)(1) would also require the broker to send the customer an email notice, containing the information described in proposed §1.6045-1(k)(5)(ii)(A)(4), to inform the customer that the 1099-DA statement has been so posted.

Like the information required to be included in notices sent to recipients under §31.6051-1(j)(5) and the guidance in section 4.6.2 of Publication 1179, proposed §1.6045-1(k)(5)(ii)(A)(4) would require the broker to include in the notice instructions on how the customer can access and print the 1099-DA statement. The notice would also be required to include the following statement in capital letters, "IMPORTANT TAX RETURN DOCUMENT AVAILABLE." This statement would also be required to be included on the subject line of the email. These rules are designed to make the customer aware that the customer's 1099-DA statements are available and to provide information on how to access those statements.

The Treasury Department and the IRS are concerned that some customers may not regularly check whether emails have been sent to an address that the customer provided to the broker or may not be aware if the customer's email provider filters out as unsolicited an important email from the broker. For example, a customer may regularly access a broker's website to carry out transactions but only occasionally check whether emails have been sent to an email address that the customer has provided to the broker. Additionally, some customers may not open emails from their broker because they are concerned that the emails may be compromised and could give rise to a phishing attack. Finally, some customers may find it useful to receive notices regarding their 1099-DA statements using a different communication method to remind them that they may have taxable digital asset transactions that need to be reported on their tax returns. Accordingly, proposed §1.6045-1(k)(5)(ii)(A)(1) would require the broker to provide the customer with the opportunity to receive another notice from the broker using an additional communication method if the customer requests this notice not later than the end of the calendar year to which the 1099-DA statement relates (requested notice). These requested notices would also be required to include the following statement in capital letters, "IMPORTANT TAX RETURN DOCUMENT AVAILABLE."

This statement must also be included prominently in the message of the requested notice. See proposed §1.6045-1(k)(5)(ii)(B)(4).

Requiring brokers to provide customers with a choice of additional communication methods regarding these important communications is important to tax administration. First, providing customers that do not find email to be the best communication method with the ability to choose an additional communication method that is better suited to their needs will increase the likelihood that these customers actually receive these important communications and view and use their 1099-DA statements. Second, because 1099-DA statements will be new for digital asset investors and traders, it is more likely that these customers will not be experienced in knowing when they should look for email communications about their 1099-DA statements. For these reasons, the proposed regulations would require brokers to provide customers with the opportunity to receive a requested notice from the broker regarding the posting of their 1099-DA statements using an additional communication method. Because brokers would only be required to send requested notices to those customers that take the initiative to ask for these notices, the cost of this rule for the broker should be limited to those customers that need to receive the notice using another communication method.

If the customer asks for this requested notice by the required deadline, proposed §1.6045-1(k)(5)(ii)(A)(1) would require that the broker provide the customer with certain choices of communication methods. Under proposed §1.6045-1(k)(5)(ii)(C), the broker must always offer the customer the choice of receiving the requested notice on paper using the physical delivery method chosen by the broker (that is by mail or any private delivery service). The broker may, but is not required to, offer customers additional choices of electronic delivery using any electronic delivery method described in proposed §1.6045-1(k)(5)(ii)(C)(1) that the broker chooses to offer. These electronic

delivery methods include messages sent to the customer's cellular phone number (sometimes referred to as text messaging), to the customer's in-account messaging system with the broker (sometimes also referred to as in-application messaging), to the customer's cellular device in a manner that can be viewed even when the account application with the broker is not open (sometimes referred to as push notifications), or to any other electronic messaging address of the customer.

Although sending notices by mail or private delivery service may be more costly to brokers than sending them electronically, the Treasury Department and the IRS have proposed that brokers always offer customers this option because mail is likely the most common communication method for important tax documents other than email.

Additionally, because these requested notices should be short communications, as opposed to potentially lengthy 1099-DA statements, the tax administration benefits for the IRS and customers choosing to receive these notices by mail or private delivery service should outweigh the higher costs of mailing these notices. As noted, the Treasury Department and the IRS intend for this mailing requirement, as well as the other mailing requirements throughout the proposed regulations, to permit the broker to choose the particular mail or private delivery service that best meets the broker's business needs. Comments are requested regarding whether there is a more reasonable amount of time (other than the proposed end of the calendar year to which the 1099-DA statement relates) for the customer to ask for a requested notice using an additional communication method. Comments are also requested addressing whether there are any other practical methods of delivering these important notices.

2. Direct Transmittal of the 1099-DA Statement

The second type of qualified electronic delivery method is described in proposed §1.6045-1(k)(5)(ii)(B)(1) as a direct transmittal of the 1099-DA statement to the customer. Under this method, the 1099-DA statement would be attached to, or

otherwise included with, an email to the customer. The rules under §31.6051-1(j)(5) and the guidance in section 4.6.2 of Publication 1179 do not include information requirements for emails sent directly to recipients to which payee statements are attached. It is important that customers that are sent emails to which payee statements are attached be made aware that important documents related to their tax compliance obligations are attached to an email. Accordingly, proposed §1.6045-1(k)(5)(ii)(B)(4) would require the broker's email to which the 1099-DA statement has been attached to include instructions on how the customer can access, download, and print the 1099-DA statement. Additionally, proposed §1.6045-1(k)(5)(ii)(B)(4) would also require that this electronic communication include the following statement in capital letters, "IMPORTANT TAX RETURN DOCUMENT AVAILABLE" and that this statement be on the subject line of the electronic communication.

Additionally, as discussed in Part I.C.1. of this *Explanation of Provisions*, the Treasury Department and the IRS are concerned that some customers may not regularly check whether emails have been sent to an email address that the customer provided to the broker. Because some customers may find it useful to receive an electronic communication using an additional communication method or a paper document that reminds them that they may have taxable digital asset transactions that need to be reported on their tax returns, proposed §1.6045-1(k)(5)(ii)(B)(1) would require the broker to provide the customer with the opportunity to request a notice from the broker informing the customer that the customer's 1099-DA statement has been transmitted (requested notice). See Part I.C.1. of this *Explanation of Provisions*, for a discussion of the definition of an additional communication method. If the customer requests this requested notice by the end of the calendar year to which the 1099-DA statement relates, proposed §1.6045-1(k)(5)(ii)(B)(1) would require the broker to send this requested notice to the customer on paper using the physical delivery method

chosen by the broker (that is by mail or any private delivery service). The broker may also offer to send this requested notice to the customer using any of the electronic delivery methods described in proposed §1.6045-1(k)(5)(ii)(C)(1)(i) through (iv). Regardless of whether the broker offers to send the notice by electronic delivery, proposed §1.6045-1(k)(5)(ii)(C) would require brokers to offer at least one type of physical delivery method. See Part I.C.1. of this *Explanation of Provisions*, for a discussion of the definition of an additional communication method. As discussed in Part I.C.1. of this *Explanation of Provisions*, the tax administration benefits for the IRS and customers requesting these requested notices should outweigh the costs to brokers of providing them because these requested notices should be short communications as opposed to potentially lengthy 1099-DA statements. Finally, proposed §1.6045-1(k)(5)(ii)(B)(4) would require these requested notices include the following statement in capital letters, "IMPORTANT TAX RETURN DOCUMENT AVAILABLE." In addition, the email to which a 1099-DA statement is attached must include this statement on the subject line of the email. If the customer requests a requested notice, this statement must be included prominently in the message of that requested notice. This rule is included to ensure that these customers are made aware that they have received these important communications.

3. Undeliverable Communications Regarding 1099-DA Statements

Proposed §1.6045-1(k)(5)(ii)(A)(2) and (k)(5)(ii)(B)(2) set forth rules for what a broker must do if the broker's electronically delivered notice or transmittal is returned to the broker as undeliverable.

a. Communications regarding posted 1099-DA statements

Under proposed §1.6045-1(k)(5)(ii)(A)(2), if a broker's electronically delivered notice regarding an original 1099-DA statement posted to an electronically accessible specified location is returned to the broker as undeliverable, the broker would generally

be required to send the notice by mail or private delivery service within 30 days of receiving that undeliverable response. Under proposed §1.6045-1(k)(5)(ii)(A)(2)(ii), the broker would be able to avoid sending the notice by mail or private delivery service if the broker resends the emailed notice to a corrected email address for the customer within 30 days of the receipt of the undeliverable communication and that resent notice is not returned as undeliverable. These rules are included to ensure that the customer will receive the notice regarding the 1099-DA statement in a timely fashion.

Proposed §1.6045-1(k)(5)(ii)(A)(3) would require the broker to send a notice regarding the posting of a corrected 1099-DA statement by mail or private delivery service if the broker previously received a communication that the original notice (regarding the original 1099-DA statement) was returned as undeliverable and the broker was unable to obtain a correct email address for the customer. This proposed rule requiring the mailing of the notice in this case is similar to the notice requirement rule for corrected W-2 payee statements in §31.6501-1(j)(5)(iii).¹⁰ Unlike the rules in §31.6501-1(j)(5)(iii), proposed §1.6045-1(k)(5)(ii)(A)(3) would enable a broker to avoid sending the notice regarding the posting of a corrected 1099-DA statement by mail or private delivery service if the broker sends the customer within five business days of the posting of the corrected 1099-DA statement an email notice regarding that statement to a corrected email address for the customer that is not returned as undeliverable. These rules are included in these proposed regulations to ensure that the customer will receive the notice regarding the corrected 1099-DA statement in a timelier fashion.

The Treasury Department and the IRS considered but declined to propose a rule that would allow brokers that send requested notices to customers to avoid mailing notices to customers when emailed notices are returned as undeliverable for several

¹⁰ Section 4.6 of Publication 1179 does not specifically address the notice requirements for corrected payee statements, but cross references readers to §31.6051-1(j) for more information.

reasons. First, mail and email are the most common communication methods, with most digital asset customers at least aware that unexpected communications could be sent in this manner. Second, many of the additional communication methods do not have an undeliverable feature that would enable the broker to know whether the customer received the communication. Third, while brokers might be able to use technology to determine if the communication was opened, monitoring which customers opened these communications would likely be more burdensome than mailing the notices. Comments are requested regarding the reliability of these other communication methods in making the customer aware about their important tax documents.

b. Communications regarding direct transmittals of 1099-DA statements

As discussed in Part I.C.2. of this *Explanation of Provisions*, the 2004 Final Regulations under section 6051 did not provide any rules for brokers that attach payee statements to emails. Because it is important to provide brokers with clear rules for whichever qualified electronic delivery method they adopt, these proposed regulations would include rules for brokers that furnish 1099-DA statements by attaching them to emails that are similar to those that apply to brokers that furnish 1099-DA statements by posting them to electronically accessible specified locations. Accordingly, proposed §1.6045-1(k)(5)(ii)(B)(1) would require the email to which the 1099-DA statement is attached to contain information similar to that which the notice required under proposed §1.6045-1(k)(5)(ii)(A)(1) would be required to contain. Additionally, under proposed §1.6045-1(k)(5)(ii)(B)(2), if a broker's direct transmittal of an original 1099-DA statement is returned to the broker as undeliverable, the broker would be required to send the original 1099-DA statement to the customer by mail or private delivery service within 30 days of receiving that undeliverable response unless the broker sends another email to which the 1099-DA statement is attached within five business days of receipt of the

undeliverable communication to a corrected email address for the customer that is not returned as undeliverable.

The Treasury Department and the IRS are aware that the consequence of an undeliverable direct transmittal of a 1099-DA statement by email under this rule could be costly if the broker is unable to obtain a corrected email address for the customer that is not returned as undeliverable because the broker would be required to provide a paper 1099-DA statement to the customer. Comments are requested regarding whether brokers anticipate using the direct transmittal method of delivery, whether this consequence of an undeliverable direct transmittal of a 1099-DA statement makes the direct transmittal method not viable, and whether the direct transmittal method should be removed from the final regulations as a qualified electronic delivery method. Comments are also requested regarding whether there are other less burdensome alternatives for brokers choosing to furnish 1099-DA statements using the direct transmittal method when emails to which the 1099-DA statements are attached are returned as undeliverable. Finally, comments are requested addressing whether there are any other methods of electronically delivering the 1099-DA statements that should be included as a qualified electronic delivery method.

4. Corrected 1099-DA Statements

The regulations under §31.6051-1(j) include rules for furnishers that are required to furnish corrected payee statements. Specifically, under §31.6051-1(j)(5)(iii), if the furnisher electronically furnished the original payee statement, the furnisher must also electronically furnish the corrected payee statement. The proposed rules adopt a similar rule for brokers required to furnish corrected 1099-DA statements. Thus, under proposed §1.6045-1(k)(5)(ii), if a broker has corrected a customer's 1099-DA statement, the broker would be required to furnish the corrected 1099-DA statement using the

same delivery method that the broker used to furnish the original 1099-DA statement for that delivery method to be treated as a qualified electronic delivery method.

Additionally, under the proposed regulations, any required or requested notice that the broker was required to provide to the customer regarding the availability of the original 1099-DA statement (either because it has been posted to an electronically accessible specified location or directly transmitted) must also be provided with respect to the availability of the corrected 1099-DA statement. See proposed §1.6045-1(k)(5)(ii)(A)(3) and (k)(5)(ii)(B)(3). In addition, proposed §1.6045-1(k)(5)(ii)(A)(3) and (k)(5)(ii)(B)(3) would require the broker to provide any required and requested notices regarding the availability of the corrected 1099-DA statement within five business days from the date the corrected 1099-DA statement has either been posted to an electronically accessible specified location or attached to, or otherwise included with, an email sent to the customer. This five-business day rule, instead of the 30-day rule generally applicable to communications relating to the original 1099-DA statement, is proposed to provide customers enough time to prepare and timely file their tax returns after receiving the corrected 1099-DA statements. Accordingly, under these proposed rules, if the original 1099-DA statement was posted on the broker's website, then the broker must also post the corrected 1099-DA statement on the broker's website and provide to the customer the required notice and, if applicable, the requested notice regarding that corrected posting within five business days of that posting. Alternatively, if the original 1099-DA statement was directly transmitted to a customer, the broker must directly transmit the corrected 1099-DA statement and, if applicable, the requested notice notifying the customer of that transmittal, within five business days of that transmittal. Comments are requested regarding the shortened notice requirement for corrected 1099-DA statements.

See Part I.C.3. of this *Explanation of Provisions* for a discussion of the broker's obligations with respect to the corrected 1099-DA statement if a previous email regarding the original 1099-DA statement was returned as undeliverable.

D. Continuing disclosures

The rules under §31.6051-1(j)(3) and the guidance under section 4.6.2 of Publication 1179 do not include any continuing disclosure requirements after consent is given. However, because certain information that is included in the pre-consent disclosure as well as certain other information is more relevant to customers after the consent is provided, this information should be available to customers on an ongoing basis (continuing disclosures) after consent is provided so that customers can get the answers to their questions or change their contact information when appropriate. Accordingly, proposed §1.6045-1(k)(5)(iv)(A) would require the broker to provide a location, such as on the broker's website, mobile device application, or other online platform, where customers can generally find updated versions of the pre-consent disclosure information proposed §1.6045-1(k)(5)(iii)(C)(1) through (7) through the period of time that customers would need to access their 1099-DA statements. See Part I.B.3. of this *Explanation of Provisions* for a discussion of this pre-consent disclosure information and Part I.F. of this *Explanation of Provisions* for a discussion of the access period through which this updated information should be provided.

In addition, proposed §1.6045-1(k)(5)(iv)(A) would also require the broker to provide to the customer on an ongoing basis four additional items of information that are typically not relevant to the customer at the time of consent. Proposed §1.6045-1(k)(5)(iv)(A) would permit the information included in the continuing disclosures to generally be provided by the broker to the customer on the broker's website, mobile device application, or other online platform.

Like the concern discussed in Part I.B.3. of this *Explanation of Provisions* with respect to customers that transact with brokers exclusively through one or more physical electronic terminals or kiosks and customers that transact with PDAP brokers, the Treasury Department and the IRS are concerned that these customers will not have access to the continuing disclosures if they are made available only on the broker's website, mobile device application, or other online platform. Accordingly, to ensure that these customers have access to the continuing disclosures, proposed §1.6045-1(k)(5)(iv)(A) would provide that PDAP brokers and brokers that transact exclusively with a customer through one or more physical electronic terminals or kiosks must also provide the continuing disclosures to their customer by email, mail, or private delivery service within five business days of the customer's explicit action to provide consent. Additionally, if a PDAP broker or a broker that transacts exclusively with a customer through one or more physical electronic terminals or kiosks updates the information in the continuing disclosures, proposed §1.6045-1(k)(5)(iv)(A) would provide that the broker must also provide updated versions of the continuing disclosures to the customer by email, mail, or private delivery service within five business days of posting the updated version of the continuing disclosures to the broker's website, mobile device application, or other online platform. Finally, to the extent the customer requested to receive the disclosure statement using an additional communication method at the time of consent or anytime thereafter, proposed §1.6045-1(k)(5)(iv)(A) would require the broker to also send the continuing disclosure statement and any updated versions of that statement to the customer using the additional communication method requested by the customer. See Part I.C. of this *Explanation of Provisions* for a discussion of why customers should be given the opportunity to request that these disclosure statements be sent using an additional communication method. Comments are requested regarding

this additional requirement for continuing disclosures for PDAP brokers and brokers that transact with customers exclusively through one or more physical terminals or kiosks.

The additional information that would be included in the continuing disclosures are described in proposed §1.6045-1(k)(5)(iv)(B) through (E). First, proposed §1.6045-1(k)(5)(iv)(B) would require the broker to provide a description of the procedures for customers to update the information needed by the broker to send the customer the required and requested notices that the 1099-DA statement has been posted to a specified location that is electronically accessible, the email to which the 1099-DA is attached, or the requested notice informing the customer that the customer's 1099-DA statement has been transmitted. Second, proposed §1.6045-1(k)(5)(iv)(C) would require the broker to provide the broker's contact information in the event the customer has questions about the consent or about the customer's 1099-DA statement. Third, proposed §1.6045-1(k)(5)(iv)(D) would require the broker to provide a description of the procedures for asking for the requested notices required to be offered by proposed §1.6045-1(k)(5)(ii)(A)(1) (that the customer's 1099-DA statements have been posted to an electronically accessible specified location) or by proposed §1.6045-1(k)(5)(ii)(B)(1) (that the customer's 1099-DA statement has been transmitted) using an additional communication method. Finally, for brokers that will furnish 1099-DA statements by posting them to an electronically accessible specified location, proposed §1.6045-1(k)(5)(iv)(E) would require the broker to provide information about the period of time that the broker will keep 1099-DA statements and corrected 1099-DA statements posted to that specified location. This must include the date when the 1099-DA statements will no longer be available at the specified location and a description of the procedures for customers to obtain 1099-DA statements and corrected 1099-DA statements that are no longer available at the specified location.

E. Format

Like the format requirement in §31.6051-1(j)(4), proposed §1.6045-1(k)(5)(v) would require that the electronic version of a 1099-DA statement furnished to a customer contain all required information and comply with applicable revenue procedures relating to substitute statements.

F. Access period

Once electronically furnished 1099-DA statements have been posted to an electronically accessible specified location, such as the broker's website, mobile device application, or other online platform, it is essential that 1099-DA statements remain available for customers' use throughout the tax return filing season. Accordingly, similar to the access rules provided in §31.6051-1(j)(6), proposed §1.6045-1(k)(5)(vi) would require brokers to maintain access for customers to 1099-DA statements posted on a website through October 15 of the year following the calendar year to which the 1099-DA statements relate. Additionally, proposed §1.6045-1(k)(5)(vi) would require brokers to maintain access for customers to corrected 1099-DA statements that are posted on the broker's website through October 15 of the year following the calendar year to which the statements relate or the date that is 90 days after the corrected statements are posted, whichever is later. The normal rules under section 7503 of the Code for when the last day prescribed for performing an act falls on a Saturday, Sunday or a legal holiday would apply to these deadlines. Thus, for example, if October 15 falls on a Saturday, Sunday, or legal holiday, the 1099-DA statements would be required to be retained on the broker's website until the first business day after such October 15.

Finally, it is important that customers seeking to amend their timely filed tax returns have access to their 1099-DA statements during the general three-year period of limitations on assessment under section 6501(a) and also during the six-year period of limitations on assessment under section 6501(e) for substantial omissions from gross income. These statute of limitations periods will generally begin to apply for most

individual taxpayers after the April 15 filing due date for Federal income tax returns. Accordingly, because the due date for furnished 1099-DA statements is February 15 of the calendar year following the year of the digital asset sale transaction, proposed §1.6045-1(k)(5)(vi) would require brokers to retain and make available to customers upon request previously furnished 1099-DA statements for seven years from the date the 1099-DA statements are required to be furnished or (if later) the date that the 1099-DA statements are actually furnished to ensure that ensure their customers will have access to all the records they need during the six years that the period of limitations is open. Requiring brokers to provide access to these statements for seven years from their furnishing would also assist taxpayers who have not complied with Federal tax return filing obligations, and for whom the statute of limitations is open indefinitely under section 6501(c)(3). Seven years strikes a reasonable balance for individual taxpayer compliance and the burden on brokers for retaining this information.

Comments are requested regarding whether this additional retention requirement creates any undue burdens for brokers.

II. Electronic Furnishing of Consolidated Reporting Statements

The proposed regulations generally leave in place the existing consolidated reporting statement rules in §1.6045-1(k)(3), which requires that any furnished statements included with a consolidated reporting statement required to be furnished under section 6045 be based on the same relationship of broker or barter exchange to customer as the statement required to be furnished under section 6045. Proposed §1.6045-1(k)(3) would amend existing §1.6045-1(k)(3) by adding paragraph headings to existing §1.6045-1(k)(3)(i) and (ii).

Proposed §1.6045-1(k)(3)(iii) would add rules regarding when a consolidated reporting statement is permitted to be furnished electronically. Under these proposed rules, a broker would be permitted to furnish a consolidated reporting statement in an

electronic format in lieu of on paper if it has obtained consent from the customer under the applicable rules for consent for each of the statements to be included in the consolidated reporting statement. Therefore, to combine a 1099-B statement with respect to a sale of stock and a 1099-DA statement with respect to a sale of digital assets in an electronically furnished consolidated reporting statement, the broker would need to obtain consent from the customer with respect to the electronic furnishing of the 1099-B statement under the guidance set forth in section 4.6.2 of Publication 1179 (which generally follows the rules under §31.6051-1(j)) and consent from the customer with respect to the electronic furnishing of the 1099-DA statement either under the guidance set forth in section 4.6.2 of Publication 1179 (when updated) or the rules set forth in proposed §1.6045-1(k)(5). Proposed §1.6045-1(k)(5)(vii) would provide an example illustrating the application of this rule to facts involving a broker required to furnish both a 1099-B statement and a 1099-DA statement to the same customer. Comments are requested regarding whether the receipt from the same broker of a paper statement with respect to some payments and an electronic statement with respect to other payments could potentially lead to confusion for customers and whether brokers should be required to include a clear communication with each statement in such circumstances that another statement will be provided separately to minimize the risk of confusion.

III. Electronic Furnishing of 1099-B Statements and Other Payee Statements

The cost of furnishing 1099-B statements and other payee statements on paper can also result in compliance burdens to brokers. This is particularly true when customers engage in significant daily, and in some cases algorithmic, trading. However, unlike transactions involving digital assets, which are almost exclusively conducted through electronic means by a population comfortable transacting in such medium, it is likely that some investors who engage in securities and commodities transactions will

not have a similar level of comfort. Because it is essential to effective tax administration that all investors, including those uncomfortable with website technology, mobile device applications or other online platforms, or emailed attachments, have the ability to conveniently access their furnished 1099-B statements, these proposed regulations would only apply to brokers that are required to furnish 1099-DA statements reflecting information reportable to the IRS on Form 1099-DA and would not apply to any other payee statements.

The sale by a customer of an interest in a widely held fixed investment trust (WHFIT) that holds digital assets is reported to the IRS on Form 1099-B instead of on Form 1099-DA, and brokers are not required to furnish statements to customers reflecting information reportable to the IRS on Form 1099-DA. Accordingly, these new proposed consent rules would not apply to brokers that report information regarding their customers' sales of interests in WHFITs that hold digital assets to the IRS on Form 1099-B.

The Treasury Department and the IRS are, however, considering whether to propose less burdensome consent procedures for customers that receive a 1099-B statement and recipients that receive certain other payee statements. To facilitate the receipt of comments from the public regarding the issues involved with electronic furnishing of 1099-B statements and certain other payee statements more broadly, Notice 2026-4 is being issued contemporaneously with these proposed regulations to request comments on the broader issues involved in these other circumstances. This notice will be published in the Internal Revenue Bulletin. Comments regarding these other payee statements should not be submitted in response to these proposed regulations but instead should be submitted in accordance with the instructions provided in Notice 2026-4. Comments submitted on 1099-B statements or other payee

statements will not be considered or incorporated into any final regulation that results from these proposed regulations.

Applicability Dates

The proposed regulations would apply to 1099-DA statements required to be furnished on or after January 1 of the calendar year immediately following [date of publication of final regulations in the **Federal Register**].

Special Analyses

I. Regulatory Planning and Review

These proposed regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (July 4, 2025) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (PRA) generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the OMB.

The collection of information in these proposed regulations contain third party information reporting and recordkeeping requirements. The collection of information contained in proposed §1.6045-1(k) is required only if a person required to furnish a taxpayer with a 1099-DA statement chooses to furnish that statement electronically under the proposed regulations instead of on paper or electronically under existing guidance set forth in Publication 1179 permitting electronic furnishing of payee statements. The collected information will be used by the broker to determine whether

the broker's customer has consented to receive the 1099-DA statement electronically. Additionally, if a broker's customer has consented to receive the 1099-DA statement electronically, proposed §1.6045-1(k) would require the retention of information for a period that is longer than the access period required under §1.6051-1(j)(6) and set forth in section 4.3.6 of Publication 1179.

The proposed regulations mention third party information reporting and recordkeeping requirements related to the dispositions of digital assets, as detailed in §1.6045-1(k). The burden for these requirements is included with the Form and Instructions for Form 1099-DA, *Digital Asset Proceeds From Broker Transactions*. The Form and Instructions for Form 1099-DA are already approved by OMB under control number 1545-2330. These proposed regulations are not creating or changing these already approved collections.

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The proposed regulation would affect brokers, which may meet the definition of "small entity" in 5 U.S.C. 601(6). However, because these proposed regulations would provide brokers with an additional option for electronically furnishing payee statements, the certification is based on this proposed regulation not imposing any additional obligations on small entities than that which is already imposed by existing regulations and Form 1099-DA.

IV. Submission to Small Business Administration

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

V. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. This proposed regulation does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

VI. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This proposed regulation does not have federalism implications, does not impose substantial direct compliance costs on State and local governments, and does not preempt State law within the meaning of the Executive order.

Comments and Requests for a Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments that are submitted by the public will be made available at <https://www.regulations.gov>. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing also are

encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, Notices and other guidance cited in this document are published in the Internal Revenue Bulletin and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

Drafting Information

The principal authors of these regulations are Roseann Cutrone and Jessica Chase, Office of the Associate Chief Counsel (Procedure and Administration). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the first occurrence of the entry for §1.6045-1 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

Section 1.6045-1 also issued under 26 U.S.C. 6045(a).

* * * * *

Par. 2. Section 1.6045-0 is amended by, in the table of contents for §1.6045-1:

1. Adding entries for paragraphs (k)(3)(i) through (iv);

2. Removing and reserving the entry for paragraph (k)(4); and

3. Adding entries for paragraphs (k)(5) through (7).

The revisions and additions read as follows:

§1.6045-0 Table of contents.

* * * * *

§1.6045-1 Returns of information of brokers and barter exchanges.

* * * * *

(k) * * *

(3) * * *

(i) In general.

(ii) Due date for furnishing consolidated reporting statements.

(iii) Electronic furnishing of consolidated reporting statements.

(iv) Examples.

* * * * *

(5) Electronic furnishing of 1099-DA statements.

(i) In general.

(ii) Qualified electronic delivery method.

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(1) In general.

(2) Undeliverable address.

(3) Corrected 1099-DA statement.

(4) Required information for notices.

(B) Direct transmittal.

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(4) Required information for emails and notices.

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(1) Scope of consent.

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(3) Qualified electronic delivery method.

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(6) Withdrawal of consent.

(7) Further information.

(D) Examples.

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(A) In general.

(B) Updating information.

(C) Broker information.

(D) Additional communication methods for requested notices.

(E) Access procedures for statements posted to an electronically accessible specified location.

(v) Format.

(vi) Access period for statements posted to an electronically accessible specified location.

(vii) Example of rules for electronic furnishing of consolidated reporting statements.

(6) Applicability date.

(7) Cross-reference to penalty.

* * * * *

Par. 3. Section 1.6045-1 is amended by:

1. Revising and republishing paragraph (k)(1);

2. Adding paragraph headings to paragraphs (k)(3)(i) and (ii);

3. Redesignating paragraph (k)(3)(iii) as paragraph (k)(3)(iv);

4. Adding new paragraph (k)(3)(iii);

5. In newly redesignated paragraph (k)(3)(iv), designating *Examples 1* through *4* as paragraphs (k)(3)(iv)(A) through (D), respectively;

6. In newly designated paragraph (k)(3)(iv)(B), removing the language “Assume the same facts as in *Example 1*” and adding the language “The facts are the same as in paragraph (k)(3)(iv)(A) of this section (the facts in *Example 1*)” in its place;

7. In newly designated paragraph (k)(3)(iv)(D), removing the language “Assume the same facts as in *Example 3*” and adding the language “The facts are the same as in paragraph (k)(3)(iv)(C) of this section (the facts in *Example 3*)” in its place;

8. Redesignating paragraph (k)(4) as paragraph (k)(7);

9. Adding and reserving new paragraph (k)(4); and

10. Adding paragraphs (k)(5) and (6).

The revisions and additions read as follows:

§1.6045-1 Returns of information of brokers and barter exchanges.

* * * * *

(k) * * *

(1) *General requirements.* A broker or barter exchange making a return of information under this section must furnish to the person whose identifying number is (or is required to be) shown on the return (customer) a written statement showing the information required to be reported under this section and containing a legend stating that the information is being reported to the Internal Revenue Service. If the return of information is not made on magnetic media or in electronic form, this requirement may be satisfied by furnishing to the customer a copy of all Forms 1099 or any successor form for the customer filed with the Internal Revenue Service Center. A statement is considered to be furnished to a customer if it is mailed to the customer using any mail or private delivery service chosen by the broker at the last address of the person known to the broker or barter exchange. See paragraph (k)(5) of this section for rules regarding when certain written statements described in this paragraph (k)(1) may be furnished to a customer in an electronic format.

* * * * *

(3) * * *

(i) *In general.* * * *

(ii) *Due date for furnishing consolidated reporting statements.* * * *

(iii) *Electronic furnishing of consolidated reporting statements.* A broker may furnish a consolidated reporting statement described in this paragraph (k)(3) in an electronic format in lieu of a paper format if it has met the applicable requirements for consent and other associated rules under either the procedures set forth in the applicable revenue procedures relating to electronic delivery of payee statements generally or by following the rules set forth in paragraph (k)(5) of this section relating to electronic delivery by a broker of payee statements showing the information required to be reported to the IRS on Form 1099-DA, *Digital Asset Proceeds From Broker Transactions*, or successor form (1099-DA statements), as applicable, to be treated as

furnishing each of the statements included in the consolidated reporting statements in a timely manner.

* * * * *

(4) [Reserved]

(5) *Electronic furnishing of 1099-DA statements*—(i) *In general.* A broker required by section 6045(b) and this paragraph (k) to furnish a written statement showing the information required to be reported to the IRS on Form 1099-DA, *Digital Asset Proceeds From Broker Transactions*, or successor form (1099-DA statement) to a customer may furnish the 1099-DA statement in an electronic format in lieu of a paper format either by following the procedures set forth in the applicable revenue procedures relating to electronic delivery of payee statements or by using a qualified electronic delivery method as defined in paragraph (k)(5)(ii) of this section and meeting the requirements set forth in paragraphs (k)(5)(iii) through (vi) of this section. A broker that meets the requirements set forth in paragraphs (k)(5)(iii) through (vi) of this section and that furnishes a 1099-DA statement using a qualified electronic delivery method described in paragraph (k)(5)(ii)(A)(1) of this section (posting to an electronically accessible specified location) is treated as furnishing the required 1099-DA statement on the last of the following three dates: the date that the broker sends to the customer the required notice by email informing the customer that the customer's 1099-DA statement has been so posted; the date that the broker sends to the customer the requested notice, if requested by the customer in the manner described in paragraph (k)(5)(ii)(A)(1) of this section; and the date that the broker posts the customer's 1099-DA statement to an electronically accessible specified location as described in paragraph (k)(5)(ii)(A)(1) of this section. A broker that meets the requirements set forth in paragraphs (k)(5)(iii) through (vi) of this section and who furnishes a 1099-DA statement using a qualified electronic delivery method described in paragraph (k)(5)(ii)(B)(1) of this section (direct

transmittal) is treated as furnishing the required 1099-DA statement on the later of the date that such transmittal is sent to the customer or the date that the broker sends to the customer the requested notice informing the customer that the customer's 1099-DA statement has been transmitted as described in paragraph (k)(5)(ii)(B)(1) of this section, if requested by the customer in the manner described in paragraph (k)(5)(ii)(B)(1) of this section.

(ii) *Qualified electronic delivery method.* For purposes of this paragraph (k)(5), a *qualified electronic delivery method* means either of the delivery methods described in paragraphs (k)(5)(ii)(A) and (B) of this section. If the broker has corrected a customer's 1099-DA statement, to be treated as furnishing the corrected 1099-DA statement using a qualified electronic delivery method, the corrected 1099-DA statements must be furnished using the same qualified electronic delivery method by which the original 1099-DA statement was furnished.

(A) *Posted to an electronically accessible specified location—(1) In general.* A *qualified electronic delivery method* means the posting of a 1099-DA statement to an electronically accessible specified location, such as the broker's website, mobile device application, or other online platform, if the broker provides the customer with a notice containing the information described in paragraph (k)(5)(ii)(A)(4) of this section that the 1099-DA statement has been posted. Except as provided in paragraph (k)(5)(ii)(A)(2) of this section, this notice must be sent to the customer by email. In addition, the broker must provide the customer with the opportunity to receive another notice from the broker using an additional communication method described in paragraph (k)(5)(ii)(C) of this section if requested by the customer not later than the end of the calendar year to which the 1099-DA statement relates (requested notice).

(2) *Undeliverable address.* Except in the case of a notice that a corrected 1099-DA statement has been posted to an electronically accessible specified location, the

broker must furnish to the customer a notice that an original 1099-DA statement has been posted to the electronically accessible specified location by any mail or private delivery service chosen by the broker within 30 days after an emailed notice is returned to the broker as undeliverable unless prior to that date the broker sends to the customer another email notice to a corrected email address that is not returned as undeliverable.

(3) *Corrected 1099-DA statement.* If the broker has corrected a customer's 1099-DA statement, the broker must provide the customer with notice that the corrected 1099-DA statement has been posted to the electronically accessible specified location within five business days of such posting. The broker must send this notice to the customer by email. In addition, if the customer asked for a requested notice described in paragraph (k)(5)(ii)(A)(1) of this section, the broker must also send the notice regarding the posting of the corrected 1099-DA statement to the customer using the same additional communication method as that used for the requested notice regarding the original 1099-DA statement. A notice that a corrected 1099-DA statement has been posted to the electronically accessible specified location must be sent to the customer using any mail or private delivery service chosen by the broker if the emailed notice regarding the original 1099-DA statement was returned as undeliverable unless the broker sends within five business days of such posting an email notice regarding the corrected 1099-DA statement to a corrected email address for the customer that is not returned as undeliverable.

(4) *Required information for notices.* Any notice required by paragraphs (k)(5)(ii)(A)(1) through (3) of this section must include instructions on how to access, download, and print the 1099-DA statement. The notice must also include the following statement in capital letters, "IMPORTANT TAX RETURN DOCUMENT AVAILABLE." A notice provided by email must include the foregoing statement on the subject line of the

email. A requested notice described in paragraph (k)(5)(ii)(A)(1) of this section must include the foregoing statement prominently in the message of that requested notice.

(B) *Direct transmittal—(1) In general.* A qualified electronic delivery method also includes the transmittal of a 1099-DA statement directly to the customer by means of being attached to, or otherwise included with, an email containing the information described in paragraph (k)(5)(ii)(B)(4) of this section. A broker that transmits the 1099-DA statement to the customer under this paragraph (k)(5)(ii)(B)(1) must offer the customer the opportunity to request a notice from the broker informing the customer that the customer's 1099-DA statement has been transmitted by email (requested notice). If this notice is requested by the customer by the end of the calendar year to which the 1099-DA statement relates, the broker must send the requested notice to the customer using the customer's choice of additional communication methods described in paragraph (k)(5)(ii)(C) of this section. This requested notice must also contain the information described in paragraph (k)(5)(ii)(B)(4) of this section.

(2) *Undeliverable address.* Except in the case of a direct transmittal of a corrected 1099-DA statement, the broker must furnish the original 1099-DA statement to the customer using any mail or private delivery service chosen by the broker within 30 days after the email to which the 1099-DA statement is attached is returned as undeliverable unless the broker sends another email to which the 1099-DA statement is attached within five business days of receipt of the undeliverable communication to a corrected email address for the customer that is not returned as undeliverable.

(3) *Corrected 1099-DA statement.* If the broker has transmitted a corrected 1099-DA statement to a customer that has asked for a requested notice described in paragraph (k)(5)(ii)(B)(1) of this section by the end of the calendar year to which the 1099-DA statement relates, the broker must also provide that customer within five business days of the transmittal with the requested notice of the transmittal of the

corrected 1099-DA statement using the same additional communication method as that used for the requested notice regarding the original 1099-DA. The broker must furnish a corrected 1099-DA statement using any mail or private delivery service chosen by the broker if the email to which the original 1099-DA statement was attached was returned as undeliverable unless the broker sends another email to which the corrected 1099-DA statement is attached within five business days of receipt of the undeliverable communication to a corrected email address for the customer that is not returned as undeliverable.

(4) *Required information for emails and notices.* An email to which a 1099-DA statement is attached and any requested notice required by paragraphs (k)(5)(ii)(B)(1) and (3) of this section must include instructions on how to access, download, and print the 1099-DA statement. The email to which a 1099-DA statement is attached and the requested notice must also include the following statement in capital letters, "IMPORTANT TAX RETURN DOCUMENT AVAILABLE." The email to which a 1099-DA statement is attached must include the foregoing statement on the subject line of the email. A requested notice described in paragraph (k)(5)(ii)(B)(1) of this section must include the foregoing statement prominently in the message of that requested notice.

(C) *Additional communication method.* For purposes of this section, a communication will be treated as sent using an *additional communication method* if the broker sends the communication to the customer using the customer's choice of physical delivery in the manner described in paragraph (k)(5)(ii)(C)(2) of this section or, to the extent offered by the broker, electronic delivery to the locations in the manner described in paragraph (k)(5)(ii)(C)(1) of this section.

(1) *Electronic delivery.* A communication is sent by electronic delivery if it is sent to any of the following locations--

(i) To the customer's cellular phone number;

(ii) To the customer's in-account messaging system with the broker (including in-application and in-website messaging);

(iii) To the customer's cellular device in a manner that can be viewed when the customer's account application with the broker is not open;

(iv) To any other electronic messaging address.

(2) *Physical delivery.* A communication is sent by physical delivery if it sent by way of any mail or private delivery service chosen by the broker.

(iii) *Consent—(A) In general.* The customer must positively consent to receive the 1099-DA statement in an electronic format. The consent may be made electronically in any manner that requires the customer to take an explicit action to provide consent, such as by checking a box, clicking a button, or completing a fill-in screen. The customer's consent to receive the 1099-DA statement in an electronic format must relate solely to the 1099-DA statement and be separate from any other consent provided by the customer. In addition, prior to, or at the time of, a customer's consent, the broker must provide to the customer a clear and conspicuous disclosure statement in the manner set forth in paragraph (k)(5)(iii)(C) of this section, containing each of the disclosures set forth in paragraphs (k)(5)(iii)(C)(1) through (7) of this section.

(B) *Change in hardware or software requirements.* If the broker intends to adopt a change in the method by which the customer will need to access, download, and print the 1099-DA statement furnished in the electronic format, including the hardware or software the customer will need to conduct these functions, and that change creates a material risk that the customer would need to purchase or otherwise obtain new hardware or acquire or otherwise download new software to access the 1099-DA statement in the new electronic format, before implementing the change, the broker

must obtain a new consent to receive the 1099-DA statement in the new electronic format from the customer in the manner described in paragraph (k)(5)(iii)(A) of this section and must provide to the customer a disclosure statement containing updated disclosures of the information set forth in paragraph (k)(5)(iii)(C) of this section through the access period described in paragraph (k)(5)(vi) of this section with respect to that customer.

(C) *Disclosure statement.* The clear and conspicuous disclosure statement required to be provided to the customer prior to, or at the time of, a customer's consent pursuant to paragraph (k)(5)(iii)(A) of this section, may be provided by the broker in any manner that is part of the consent solicitation, including as a link to another page on the broker's website, mobile device application, or other online platform. Notwithstanding the previous sentence, a broker that transacts with a customer exclusively through one or more physical electronic terminals or kiosks and a broker that effects sales of digital assets for a customer as a processor of digital asset payments as defined in paragraph (a)(22) of this section must also send this disclosure statement to the customer by email or using any mail or private delivery service chosen by the broker within five business days of the customer's explicit action to provide consent as described in paragraph (k)(5)(iii)(A) of this section. Additionally, the broker must provide the customer with the opportunity to receive the disclosure statement using an additional communication method described in paragraph (k)(5)(ii)(C) of this section if requested by the customer at the time of consent. The disclosure statement provided to the customer prior to, or at the time of, a customer's consent must include the information described in paragraphs (k)(5)(iii)(C)(1) through (7) of this section.

(1) *Scope of consent.* The disclosure statement must inform the customer that the provided consent shall apply to all 1099-DA statements required to be furnished by the broker.

(2) *Hardware and software requirements.* The disclosure statement must describe the method by which the customer will need to access, download, and print the 1099-DA statement furnished in the electronic format, including the hardware or software the customer will need to conduct these functions.

(3) *Qualified electronic delivery method.* The disclosure statement must describe the specific qualified electronic delivery method that the broker will use to furnish the 1099-DA statement to the customer.

(4) *Notification method.* If the broker will furnish the 1099-DA statements using a qualified electronic delivery method described in paragraph (k)(5)(ii)(A) of this section (posting to an electronically accessible specified location), the disclosure statement must specify that the broker will notify the customer by email that the 1099-DA statement has been posted to the electronically accessible specified location and that the customer may ask for a requested notice described in paragraph (k)(5)(ii)(A)(1) of this section using an additional communication method pursuant to procedures set forth at a location described in paragraph (k)(5)(iii)(C)(7) of this section. The disclosure statement must also provide that the customer may change the additional communication method selected for this requested notice pursuant to procedures set forth at a location described in paragraph (k)(5)(iii)(C)(7) of this section. If the broker will furnish the 1099-DA statements using a qualified electronic delivery method described in paragraph (k)(5)(ii)(B)(1) of this section (direct transmittal), the disclosure statement must offer the customer the opportunity to ask for a requested notice using an additional communication method informing the customer that the customer's 1099-DA statement has been transmitted. The disclosure statement must provide that the customer may change the additional communication method selected for this requested notice pursuant to procedures set forth at a location described in paragraph (k)(5)(iii)(C)(7) of this section.

(5) *Consequences of non-consent.* If the broker intends to limit the services available to a customer that does not provide consent, such as not effecting future sales for the customer, the disclosure statement must inform the customer of this intention.

(6) *Withdrawal of consent.* If the broker does not offer the customer the opportunity to withdraw a previously provided consent, the disclosure statement must inform the customer of this intention. Additionally, if the broker does offer the customer the opportunity to withdraw a previously provided consent, the disclosure statement must inform the customer of the procedures the customer must follow to withdraw a previously provided consent and when such withdrawal will be effective.

(7) *Further information.* The statement must describe the location, such as on the broker's website, mobile device application, or other online platform, where the customer can find the information included in the disclosure statement described in this paragraph (k)(5)(iii)(C) after providing the consent described in paragraph (k)(5)(iii)(A) of this section.

(D) *Examples.* The following examples illustrate the rules of this paragraph (k)(5)(iii):

(1) *Example 1—(i) Facts.* Broker (B) is a broker that operates a digital asset trading platform and provides hosted wallet services for customers. B's general terms and conditions shown to all customers using B's website or mobile device application include a "check box" which all customers must check to provide their agreement. During calendar year 1 (CY1), to obtain customer consent to receiving 1099-DA statements in an electronic format, B updates its general terms and conditions to include a clear and concise disclosure statement that provides the information described in paragraphs (k)(5)(iii)(C)(1) through (7) of this section. The updated general terms and conditions include a separate "check box" which all customers must check to provide their consent to receiving 1099-DA statements in an electronic format.

Customer J (J) accesses B's mobile device application to make a transaction and checks a "check box" to agree to B's general terms and conditions and also checks the "check box" to consent to receiving 1099-DA statements in an electronic format.

(ii) Analysis. B's updated terms and conditions disclose to J all the information described in paragraphs (k)(5)(iii)(C)(1) through (7) of this section. Accordingly, B has satisfied the disclosure requirements set forth in paragraph (k)(5)(iii)(C) of this section. Additionally, by checking a box that relates solely to consenting to receiving 1099-DA statements in an electronic format and that is separate from any other consent provided by the customer, J has positively consented to receiving J's 1099-DA statements in an electronic format as required under paragraph (k)(5)(iii)(A) of this section.

(2) Example 2—(i) Facts. Broker (F) is a broker that operates a digital asset trading platform and provides hosted wallet services for customers. During calendar year 1 (CY1), F adds a pop-up screen that is shown to all customers and potential customers using F's website or mobile device application seeking consent from such customers to receiving 1099-DA statements in an electronic format. The pop-up screen includes a clear and concise disclosure statement that provides the information described in paragraphs (k)(5)(iii)(C)(1) through (7) of this section. The pop-up screen includes an "I agree" button that is separate from any other consent provided by the customer and on which all customers and potential customers must click to provide their consent. Customer R accesses F's mobile device application to make a transaction and clicks on the "I agree" button.

(ii) Analysis. F's pop-up screen discloses to R all the information described in paragraphs (k)(5)(iii)(C)(1) through (7) of this section. Accordingly, F has satisfied the disclosure requirements set forth in paragraph (k)(5)(iii)(C) of this section. Additionally, by clicking on the "I agree" button on F's pop-up screen, which is separate from any other consent provided by the customer, R has positively consented to receiving R's

1099-DA statements in an electronic format as required under paragraph (k)(5)(iii)(A) of this section.

(3) *Example 3—(i) Facts.* The facts are the same as in paragraph (k)(5)(iii)(D)(2) of this section (the facts in *Example 2*), except that the disclosure statement includes a statement that F will not effect future sales for customers that do not provide their consent to receive their 1099-DA statements in an electronic format. Additionally, R does not click on the “I agree” button.

(ii) *Analysis.* Because R did not click on the “I agree” button on F’s pop-up screen, R has not consented to receive the 1099-DA statements electronically. Accordingly, although F may not be obligated to continue the business relationship with R, F must furnish R’s 1099-DA statements reflecting any of R’s sales previously effected by F in CY1 in a paper format.

(4) *Example 4—(i) Facts.* The facts are the same as in paragraph (k)(5)(iii)(D)(2) of this section (the facts in *Example 2*), except the disclosure statement provided to the customer includes language indicating that the 1099-DA statements will be furnished in XYZ electronic format and a statement that F will not effect future sales for customers that do not provide their consent to receive their 1099-DA statements in an electronic format. In calendar year 2 (CY2), after F effected digital asset sales on behalf of R, F makes the decision to change the software used to furnish the 1099-DA statements from XYZ software to ABC software. This change creates a material risk that existing customers would need to download new software to access the 1099-DA statements in the new ABC electronic format. F adds a revised pop-up screen to solicit a new consent to receiving 1099-DA statements in the new ABC electronic format. This pop-up screen will be shown to all customers and potential customers using F’s website or mobile device application. The revised pop-up screen includes a clear and concise disclosure statement that provides the updated information set forth in paragraphs (k)(5)(iii)(C)(1)

through (7) of this section, including a disclosure of the software needed to access the 1099-DA statements in the new ABC electronic format and a statement that F will not effect future sales for customers that do not provide their consent to receive their 1099-DA statements in the ABC electronic format. The revised pop-up screen includes an “I agree” button on which all customers and potential customers must click to provide their consent to receiving 1099-DA statements in an electronic format and does not address any other issues. Customer R does not click on this “I agree” button.

(ii) *Analysis.* Because R did not click on the “I agree” button, R has not consented to receive the 1099-DA statements electronically in the ABC format. Accordingly, although F may not be obligated to continue the business relationship with R, F must furnish R’s 1099-DA statements reflecting any of R’s sales previously effected by F in CY2 in the XYZ format.

(5) *Example 5—(i) Facts.* Broker (K) is a broker that operates physical electronic terminals (kiosks) that customers use to purchase and sell digital assets. During calendar year 1 (CY1), K adds a pop-up screen that is shown to all customers and potential customers using K’s kiosk seeking consent from such customers to receiving 1099-DA statements in an electronic format. The pop-up screen includes a clear and concise disclosure statement that provides the information described in paragraphs (k)(5)(iii)(C)(1) through (7) of this section. The pop-up screen includes an “I agree” button on which all customers and potential customers must click to provide their consent. Customer J visits K’s kiosk to make a transaction and clicks on the “I agree” button, which is separate from any other consent provided by the customer and does not address any issues other than consenting to electronic receipt of 1099-DA statements. K does not send the disclosure statement to J by email, mail, or private delivery service. Additionally, K does not provide J with the opportunity to request that

the disclosure statement be provided using an additional communication method. J does not engage in any other transactions using K's services.

(ii) *Analysis.* Under paragraph (k)(5)(iii)(A) of this section, K is required to provide a clear and conspicuous disclosure statement to the customer prior to, or at the time of, a customer's consent. Under paragraph (k)(5)(iii)(C) of this section, that statement may be provided in any manner that is part of the consent solicitation. K's pop-up that provides the information described in paragraphs (k)(5)(iii)(C)(1) through (7) of this section satisfies this requirement. In addition, however, because K transacts with J only through K's kiosk, K is also required to send this disclosure statement to J by email, mail, or private delivery service and is required to provide J with the opportunity to request that the disclosure statement be provided using an additional communication method. Accordingly, because K failed to provide this disclosure statement to J by email, mail, or private delivery service, J has not positively consented to receiving J's 1099-DA statements in an electronic format as required under paragraph (k)(5)(iii)(A) of this section.

(iv) *Continuing disclosures—(A) In general.* The broker must provide a location where the customer can generally find updated versions of the information described in paragraphs (k)(5)(iii)(C)(1) through (7) of this section through the access period described in paragraph (k)(5)(vi) of this section with respect to such customer. In addition, this location must also include the information described in paragraphs (k)(5)(iv)(B) through (E) of this section. A broker may generally provide the information described and cross-referenced in this paragraph (k)(5)(iv)(A) on the broker's website, mobile device application, or other online platform. Notwithstanding the previous sentence, a broker that transacts with a customer exclusively through a physical electronic terminal or kiosk and a broker that effects sales of digital assets for a customer as a processor of digital asset payments as defined in paragraph (a)(22) of

this section must also send this disclosure statement by email, mail, or private delivery service within five business days of the customer's explicit action to provide consent as described in paragraph (k)(5)(iii)(A) of this section. Additionally, if a broker described in the previous sentence updates the information described in paragraphs (k)(5)(iii)(C)(1) through (7) of this section during the access period described in paragraph (k)(5)(vi) of this section with respect to a customer, the broker must also send updated versions of the information to the customer by email, mail, or private delivery service within five business days of posting the updated version to the broker's website, mobile device application, or other online platform. Finally, to the extent the customer requested at the time of consent or anytime thereafter that the disclosure statement be provided using an additional communication method described in paragraph (k)(5)(ii)(C) of this section, the broker must also send the continuing disclosure statement and any updated versions of the information included on that statement to the customer using the additional communication method requested by the customer.

(B) *Updating information.* The broker must provide a description of the procedures the customer may use to update the information needed by the broker to deliver to the customer, as applicable, the notice(s) described in paragraph (k)(5)(ii)(A)(1) of this section that the 1099-DA statement has been posted to an electronically accessible specified location, the email to which the 1099-DA statement is attached, or the requested notice described in paragraph (k)(5)(ii)(B)(1) of this section informing the customer that the customer's 1099-DA statement has been transmitted.

(C) *Broker information.* The broker must provide the broker's contact information in the event the customer has questions about the consent or about the customer's 1099-DA statement.

(D) *Additional communication methods for requested notices.* The broker must provide a description of the procedures for asking for the requested notices as required

to be offered by paragraphs (k)(5)(ii)(A)(1) and (k)(5)(ii)(B)(1) of this section using the customer's choice of additional communication method.

(E) *Access procedures for statements posted to an electronically accessible specified location.* If the broker will furnish the 1099-DA statements using a qualified electronic delivery method described in paragraph (k)(5)(ii)(A) of this section (posting to an electronically accessible specified location), the broker must provide information about the period of time that the broker will retain the 1099-DA statement and any corrected 1099-DA statement at that electronically accessible specified location. In addition, the broker must provide the date when the 1099-DA statements will no longer be available at the electronically accessible specified location and a description of the procedures for the customer may use to obtain 1099-DA statements and corrected 1099-DA statements that are no longer available at the electronically accessible specified location.

(v) *Format.* The electronic version of the 1099-DA statement must contain all required information and comply with applicable revenue procedures relating to substitute statements to the customer.

(vi) *Access period for statements posted to an electronically accessible specified location.* The broker must maintain access to 1099-DA statements posted to an electronically accessible specified location through October 15 of the year following the calendar year to which the 1099-DA statements relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday). The broker must maintain access for the customer to corrected 1099-DA statements that are posted to an electronically accessible specified location through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected statements are posted, whichever is later. The broker must

retain 1099-DA statements for seven years from the date the 1099-DA statements are required to be furnished under paragraph (k)(2) of this section or (if later) the date that the 1099-DA statements are actually furnished and must make them available to the customer upon request.

(vii) *Example of rules for electronic furnishing of consolidated reporting statements—(A) Facts.* Customer C has an account with B, a broker, consisting of stock in a single corporation and digital assets. In calendar year 1, C sells the stock and digital assets held within C's account. Under this section, B must furnish a statement reflecting the information reported to the IRS on Form 1099-B, *Proceeds From Broker and Barter Exchange Transactions*, and Form 1099-DA, *Digital Asset Proceeds From Broker Transactions*, to C for the sale of stock (1099-B statement) and digital assets (1099-DA statement). B obtains consent from C for C to receive the 1099-DA statement in an electronic format under the rules set forth in paragraph (k)(5)(iii) of this section and meets the requirements set forth in paragraphs (k)(5)(iii) through (vi) of this section and this paragraph (k)(5)(vii) to be treated as furnishing the required 1099-DA statements in a timely manner. B does not obtain consent from C to receive the 1099-B statement in an electronic format under the applicable revenue procedures relating to electronic delivery of payee statements. With respect to calendar year 1, B electronically furnishes the 1099-DA statement and the 1099-B statement to C in a consolidated reporting statement. B does not separately furnish the 1099-B statement to C on paper.

(B) *Analysis.* Under paragraph (k)(3)(iii) of this section, because B did not obtain consent from C to receive the 1099-B statement in an electronic format under the applicable revenue procedures relating to electronic delivery of payee statements, the electronic furnishing to C of the 1099-B statement in a consolidated reporting statement with the 1099-DA statement does not satisfy B's obligation under this paragraph (k) to furnish a 1099-B statement to C with respect to C's sales of stock. Accordingly, the

failure to furnish penalty under section 6722 and §301.6722-1 of this chapter would apply to B with respect to B's failure to furnish a 1099-B statement to C with respect to C's sales of stock.

(6) *Applicability date.* The rules of paragraph (k)(5) of this section regarding electronic furnishing of 1099-DA statements apply to 1099-DA statements required to be furnished on or after January 1 of the calendar year immediately following [date of publication of final regulations in the **Federal Register**].

* * * * *

Frank J. Bisignano,
Chief Executive Officer.

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