

United States Senate  
WASHINGTON, DC 20510

December 14, 2021

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

Dear Secretary Yellen,

President Biden signed the Infrastructure Investment and Jobs Act (IIJA) into law on November 15, 2021. Now that this bill has become law, Congress has a responsibility to ensure that it is implemented effectively and in accordance with congressional intent.

Section 80603 of the IIJA standardizes information reporting by brokers of digital assets to the Internal Revenue Service (IRS) for tax purposes by modifying Section 6045 of the Internal Revenue Code. The aim of this provision is to provide more certainty for Americans looking to invest in these digital assets, ensuring that crypto investors receive the same tax documents, generally a Form 1099-B, from their brokers that stock traders receive, which in turn will enable them to file their taxes more easily and promote higher compliance. This provision is one of the first efforts by the Federal government to better incorporate digital assets, like virtual currency, into our nation's tax code.

Some market participants have expressed concern that an overly-broad interpretation of this provision's definition of "broker" could capture certain individuals who are solely involved with validating distributed ledger transactions through mining, staking, or other methods, and entities solely providing software or hardware solutions enabling users to maintain custody of their own digital asset wallets.

As Senator Portman and Senator Warner articulated in a colloquy on the floor of the Senate on August 9, 2021, "[t]he purpose of this provision is not to impose new reporting requirements on people who do not meet the definition of brokers." Further, our understanding from both the Administration and the Joint Committee on Taxation is that they shared the same interpretation of the provision as its authors: that the reporting requirements only cover brokers who enable the transfer of digital assets for consideration —and not other parties which are ancillary to the process unless they are serving in an additional capacity as brokers.

We urge you to engage in rulemaking under the Administrative Procedure Act (APA) in an expeditious manner. However, because of the need for certainty and the time required for rulemaking under the APA, we urge the Department of the Treasury to provide information or informal guidance as soon as possible – no later than the end of the current calendar year – regarding the definition of “broker” as discussed during the legislative process. We are also prepared to offer legislation to further clarify that intent.

We thank you and your team for working with us in implementing this IJA provision. We ask that you carefully consider the characteristics of the technologies which drive this space, which may include differences in the consensus mechanisms of various distributed ledgers and second layer protocols. We have conveyed to our constituents that we will continue working with you to ensure that the provision is implemented as Congress intended, and we look forward to doing so.

Digital assets could be impactful technological developments in certain sectors, and clear guidelines on tax reporting requirements will be important to those in this ecosystem. It will be important that we continue to work to provide further clarity, and to help ensure that the United States remains a global leader in financial innovation and development, while ensuring that this technology does not become a vector for illicit finance, tax evasion, or other criminal activity.

Sincerely,



ROB PORTMAN  
United States Senator



MARK R. WARNER  
United States Senator



MIKE CRAPO  
United States Senator



KYRSTEN SINEMA  
United States Senator



PAT TOOMEY  
United States Senator



CYNTHIA M. LUMMIS  
United States Senator

cc: Lily Batchelder, Assistant Secretary for Tax Policy