sifma
Invested in America

July 31, 2026

[VIA E-MAIL]

The Honorable Kevin Salinger
Assistant Secretary for Tax Policy (Acting), U.S. Department of the Treasury
Chief Counsel (Acting), Internal Revenue Service
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Rebecca Oakes Burch
Deputy Assistant Secretary (International Tax Affairs)
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Qualified Derivative Payments with Respect to Securities Lending Transactions for Purposes of the Base Erosion and Anti-Abuse Tax Rules

Dear Mr. Salinger and Ms. Burch:

On December 18, 2025, the U.S. Department of the Treasury and the Internal Revenue Service (together, "Treasury") released final regulations under Sections 59A and 6038A regarding how taxpayers are required to report qualified derivative payments ("QDPs") with respect to securities lending transactions (the "Final QDP Reporting Regulations") for purposes of the base erosion and anti-abuse tax ("BEAT") rules. These regulations supplement previous guidance regarding the QDP reporting regulations, including proposed regulations regarding reporting of QDPs with respect to securities lending transactions (the "Proposed QDP Reporting Regulations").[1]

The Securities Industry and Financial Markets Association (SIFMA)[2] appreciates the comprehensive guidance that Treasury has provided regarding the QDP reporting

---

[1] 83 Fed. Reg. 65956 (Dec. 21, 2018); 84 FR 66968 (Dec. 6, 2019); 85 Fed. Reg. 64346 (Oct. 9. 2020); Notice 2024-43, 2024-25 I.R.B. 1737; 90 Fed. Reg. 3085 (Jan. 10, 2025).

[2] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

Washington 1099 New York Avenue, NW, 6th Floor | Washington, DC 20001
New York 140 Broadway, 35th Floor | New York, NY 10005
www.sifma.org | www.sifma.org/amg

requirement, including the Final QDP Reporting Regulations. However, there is one aspect of the Final QDP Reporting Regulations, relating to the manner in which taxpayers can specifically identify QDPs on the securities leg of a securities lending transaction, which represents a significant change to, and limitation of, the rules for the specific identification method that were included in the Proposed QDP Reporting Regulations, and which will make it extremely difficult for taxpayers to make use of the specific identification method. We describe this change to the Final QDP Reporting Regulations, and the likely consequences that this change will have on the manner in which taxpayers will be required to report QDPs, to the detriment of both taxpayers and the government, in more detail below. We also set forth a specific recommendation for an amendment to the Final QDP Reporting Regulations which we believe will more appropriately tailor the specific identification method to ensure that QDPs, and only QDPs, are properly reported.

In light of the time it may take for Treasury to amend the Final QDP Reporting Regulations, and because taxpayers will be required to comply with the Final QDP Reporting Regulations for taxable years beginning on or after January 1, 2027, we recommend that Treasury issue a notice as soon as reasonably possible announcing its intention to amend the Final QDP Reporting Regulations to implement the recommendation set forth below and explicitly state in the notice that taxpayers are permitted to rely on the notice until final regulations are promulgated.

I. Executive Summary

- The Final QDP Reporting Regulations impose significant constraints on utilizing the "specific identification" method for reporting QDPs with respect to the securities leg of securities lending transactions.
    - In particular, the "specific identification" method can only be used if the taxpayer can identify either (i) **all** recipients (including domestic and unrelated foreign recipients) of payments from it on the securities leg of securities lending transactions or (ii) the payors (whether the taxpayer or other parties) of **all** payments received by foreign related parties ("FRPs") on the securities leg of securities lending transactions.
- These new requirements pose significant issues.
    - The new requirements are extremely burdensome and do not appear to provide the government with any additional relevant information with respect to QDPs.
    - The new requirements also may incentivize use of an alternative method that is expected to result in overstatement of QDPs.
- We therefore recommend that the government amend Treasury Regulations Section 1.59A-6(b)(3)(iv)(B) to permit a taxpayer to use the

> specific identification method if the taxpayer can specifically identify all ***foreign related*** recipients of the substitute payments and other payments paid by the taxpayer during the taxable year with respect to the securities leg of a securities lending transaction.

II. The Proposed QDP Reporting Regulations

In the Proposed QDP Reporting Regulations, Treasury proposed two methods for determining whether a payment pursuant to the securities leg of a securities lending transaction is made to an FRP and therefore required to be reported under the QDP reporting rules:

1. **Specific identification method** – "The taxpayer may determine the amount of substitute payments or other payments [pursuant to the securities leg of a securities lending transaction] that it has paid to a foreign related party by using the amount actually paid by the taxpayer to the foreign related party if the taxpayer can specifically identify each recipient of the substitute payment or other payment."[3]

2. **Alternative method** – If the taxpayer doesn't qualify for the specific identification method, the taxpayer is required to use the "alternative method," which involves the following steps:[4]

   <u>Step 1</u>: The taxpayer determines the total amount of substitute payments and other payments received by all FRPs with respect to the securities leg of securities lending transactions during the taxable year.

   <u>Step 2</u>: The taxpayer determines the total amount of substitute payments and other payments paid by the taxpayer with respect to the securities leg of securities lending transactions during the taxable year.

   <u>Step 3</u>: All payments under Step 2 are treated as made to FRPs up to the amount of payments determined under Step 1 (*i.e.*, the amount treated as paid to FRPs is the lower number of the Step 1 amount and the Step 2 amount).

While not entirely clear, the Proposed QDP Reporting Regulations implied that if the taxpayer could specifically identify (i) all FRPs that received substitute payments and other payments with respect to the securities legs of securities lending transactions from the taxpayer during the taxable year, and (ii) all of the substitute payments and other payments with respect to the securities legs of securities lending transactions that it made to such FRPs during such taxable year, the taxpayer could uses the specific identification method. And this was true even if the taxpayer could not specifically identify all remaining recipients (*i.e.*, domestic related parties and unrelated parties) of substitute

---

[3] Prop. Treas. Reg. § 1.59A-6(b)(3)(iv)(B).

[4] Prop. Treas. Reg. § 1.59A-6(b)(3)(iv)(C).

payments and other payments with respect to the securities legs of securities lending transactions made by the taxpayer during such taxable year. This interpretation of the Proposed QDP Reporting Regulations was consistent with the underlying purpose of the QDP reporting requirement, which is to require the taxpayer to properly report QDPs, which by definition consist of payments to – and only to – FRPs. Payments to recipients other than FRPs are *not* QDPs, and the amount of those payments is therefore irrelevant to the proper implementation and administration of the QDP reporting rules.

III. The Final QDP Reporting Regulations

The preamble to the Final QDP Reporting Regulations (the "Preamble") states that the final regulations include "clarifying edits" to the specific identification method. The Preamble indicates that the specific identification method "was intended to be available to a taxpayer only if the taxpayer is able to identify all of the recipients of the substitute payments and other payments that taxpayer made with respect to the securities leg of a securities lending transaction during the taxable year." The Preamble further states that the final regulations therefore clarify this rule and also expand the situations when a taxpayer may use the specific identification method to include when a "taxpayer can specifically identify the payor for all substitute payments or other payments with respect to the securities leg of a securities lending transaction received by foreign related parties."

Accordingly, the Final QDP Reporting Regulations revised the specific identification method in Treasury Regulations Section 1.59A-6(b)(3)(iv)(B) to provide that the taxpayer may determine the amount of the substitute payments or other payments with respect to the securities leg of a securities lending transaction that it has paid to FRPs if either (i) the taxpayer can specifically identify "all recipients" of such payments paid by the taxpayer during the taxable year, or (ii) the taxpayer can specifically identify the payor for "all substitute payments or other payments" received by FRPs during the taxable year with respect to the securities leg of a securities lending transaction. The Final QDP Reporting Regulations therefore make it clear that, in order for a taxpayer to use the specific identification method, it is not sufficient that a taxpayer maintain records that allow it to specifically identify all FRPs to which it makes substitute or other payments (and the amounts of such payments) on the securities leg of securities lending transactions. Rather, it must maintain records that allow it to specifically identify either (i) **<u>all</u>** recipients (including domestic and unrelated foreign recipients) of payments from it on the securities leg of securities lending transactions or (ii) the payors (whether the taxpayer or other parties) of **<u>all</u>** payments received by FRPs on the securities leg of securities lending transactions.

IV. Issues with Respect to the Revised Specific Identification Method

As explained above, in order to utilize the specific identification method, the Final QDP Reporting Regulations require taxpayers to track and retain information regarding the specific recipients of all payments by a taxpayer on the securities legs of securities loan transactions. This new requirement is both unnecessary and extremely burdensome.

Unnecessary. The new requirement does not appear to provide the government with any additional relevant information, because payments to domestic and unrelated foreign recipients are not QDPs. Although the government has an understandable interest in confirming that all relevant payments to FRPs were included in the reporting based on the specific identification method, there are methods for such confirmation that do not impose this additional burden. For example, a financial institution may have dedicated information tracking specifically for inter-affiliate transactions that can be reliably used to differentiate between payments to FRPs and payments to unrelated parties.

Burdensome. The new requirement would be an enormous, time-consuming and costly undertaking for financial institutions, because transaction-level and customer-specific information typically is not currently retained in any form that will be readily available in future years. Although financial institutions have contemporaneous documentation for all of the securities loans they enter into with both FRPs and other parties, that transaction-level and customer-specific information is not always a part of the institution's general ledger or other financial accounting systems. Accordingly, it will often be very difficult to trace substitute or other payments by customer or by transaction on an isolated basis within the finance layer data used for financial accounting purposes, on which taxpayers in turn typically rely for tax reporting purposes.[5] Therefore, if a financial institution were required on audit, years later, to prove the identity of each recipient of a substitute payment or other payment on the securities leg of a securities lending transaction (and the amount thereof), it would have to access and provide to the IRS transaction-specific information, on a transaction-by-transaction basis, from the institution's archived trade-tracking systems or otherwise build out new tracking and storage platforms.

V. The Alternative Method Overstates QDPs

As noted above, it is not clear why requiring additional information regarding the recipients of payments that are not FRPs is helpful to the government. The QDP reporting rules presumably are meant to provide insight to the government regarding the quantum of QDPs made to FRPs. If the government makes it difficult for financial institutions to use the specific identification method, it is possible, if not likely, that financial institutions will conclude that they need to use the alternative method. Use of the alternative method could result in reporting of an amount of QDPs with respect to the securities legs of securities lending transactions that is significantly in excess of the

[5] When taxpayers try to reverse engineer the finance layer data to isolate substitute payments by leg or by counterparty for a bespoke tax purpose, taxpayers will often be required to engage in a manual reconciliation process or lack identifiers that allow for sorting. Sub-ledgers, such as operating ledgers or product processors, typically create and support data on payment specifics by trade and counterparty, but sub-ledgers report out raw data. Raw data may not reflect all settlement processes or adjustments made as part of ordinary operations with closing controls (*e.g.*, corrections for errors). Moreover, detailed data from operating ledgers and product processors may be overwritten and permanently lost once entries are posted to the finance layer as part of a month-end or year-end closing process. Across the industry, reporting out capabilities and data retention policies from general ledgers and subledgers differ. Nonetheless, SIFMA is concerned that specific tracing of substitute payments for actively traded fungible securities within a global financial services group creates operational burdens beyond sound tax administration.

actual amount of QDPs that are paid on the securities legs of securities lending transactions to FRPs.

The example below highlights why the alternative method may result in the reporting of a distorted amount of QDPs:

1. A U.S. broker-dealer ("Domestic BD") pays $100x in aggregate payments on the securities legs of securities lending transactions in a taxable year. Of those payments, $10x are paid to a foreign related broker dealer ("Foreign BD"), and $90x are paid to unrelated payees. During that taxable year, Foreign BD receives in the aggregate $50x of payments on the securities legs of securities lending transactions, $10x from Domestic BD and $40x from unrelated payors.

2. If Domestic BD does not believe that it will be able to reliably identify either (i) all payees with respect to the securities legs of securities lending transactions or (ii) all payors to Foreign BD with respect to the securities legs of securities lending transactions – especially on audit years after the relevant taxable year – it may conclude that it needs to use the alternative method for QDP reporting *even if it could accurately identify all of the payments that it made on such transactions to foreign related parties* (*i.e.*, *to Foreign BD)*.

3. Under the alternative method, the amount of QDPs on the securities legs of securities lending transactions that Domestic BD would be required to report would be $50x – the lesser of (A) the aggregate amount of payments made by Domestic BD ($100x) and (B) the aggregate amount of payments received by Foreign BD ($50x). *This significantly overstates (by $40x) the amount of QDPs on the securities leg of securities lending transactions that Domestic BD actually pays to Foreign BD ($10x).*

There generally are no tax consequences under the BEAT rules associated with QDPs that are properly reported. QDPs that are properly reported are excluded from both the numerator and denominator of the BEAT fraction and therefore have no impact on the BEAT calculation. Therefore, it is difficult to see why it would benefit the government to encourage the use of the alternative method for reporting QDPs on securities lending transactions, which would include amounts that are demonstrably *not* QDPs and would generally result in the overreporting of QDPs, as opposed to the use of the specific identification method, which will result in the reporting of the actual amount of QDPs on securities lending transactions.

VI. Recommendation

For the reasons set forth above, we recommend that the government amend Treasury Regulations Section 1.59A-6(b)(3)(iv)(B) to permit a taxpayer to use the specific identification method if the taxpayer can specifically identify (additions in ***bold italics*** and deletions in red strike-through) ". . . all ***foreign related*** recipients of the substitute payments and other payments paid by the taxpayer during the taxable year with respect to the securities leg of a securities lending transaction~~ or the taxpayer can specifically identify the payor for all substitute payments or other payments received by foreign related parties during the taxable year with respect to the securities leg of a securities lending transaction~~." Corresponding changes would also be required to the example in Treasury Regulations Section 1.59A-6(b)(3)(iv)(D).

VII. Conclusion

Again, we appreciate all of the thoughtful guidance the government has provided with respect to QDPs and the BEAT. As we believe the government knows, the BEAT reporting requirements require the tracking, segregation and provision of information, relating to a huge volume of transactions involving billions of dollars, that was not previously required before the BEAT was enacted. We are committed to implementing and complying with the BEAT reporting requirements in a practical manner that provides the government with sufficient assurance that such compliance is occurring. Over time, as both taxpayers and the government gain experience with how the BEAT reporting rules are working in practice, it may be appropriate for taxpayers and the government to engage in further dialogue about these rules, which we will approach in the same spirit of transparency and cooperation that has been the hallmark of our engagement with the government to date.

Should you have any questions or wish to further discuss, please feel free to contact me at jbarker@sifma.org.

Respectfully submitted,

Jessica Barker

Jessica Barker
Managing Director, Tax & Associate General Counsel

cc: Sheila Ramaswamy, Office of Associate Chief Counsel (International), Internal Revenue Service