

# IRS Final Cost Basis Regulations – Significant Rules for Transfer Reporting

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On October 12, 2010, the IRS issued the final cost basis reporting regulations (TD 9504) and related Notice 2010-67 (the Final Regs and the Notice—both documents are available at [www.costbasisreporting.com](http://www.costbasisreporting.com)). The Final Regs do not delay any of the effective dates relating to cost basis reporting and almost all of the key aspects of the proposed rules that create compliance complexities for brokers and cost basis systems were retained. However, some transferors of stock may delay transfer reporting due to IRS penalty relief set forth in Notice 2010-67 (the scope of the penalty relief is discussed in a separate article dated October 15, 2010 available at [www.costbasisreporting.com](http://www.costbasisreporting.com)).

The cost basis law and the Final Regs require transferors of stock to provide transferees with transfer statements detailing the cost basis of covered securities and certain other information within 15 days of the date of transfer pursuant to Internal Revenue Code Sec. 6045A. Transferors subject to transfer reporting include brokers, stock transfer agents, custodians, stock issuers, and their agents. Note that this broad definition requires transfer reporting by many persons who are not considered brokers and who are not currently obligated to file or provide Form 1099s.

Brokers, transfer agents and other securities industry participants raised a number of comments and requested changes to various aspects of the proposed rules relating to transfer reporting. Many of the requests were rejected in the Final Regs.

Set forth below is our top 10 list of transfer reporting related changes and retained rules in the Final Regs:

1. Transfer reports do not need to be sent to “exempt recipients” such as corporations, pension, profit sharing plans, IRAs, exempt foreign persons and other entities that do not currently receive Form 1099-B.
2. Transfers of securities in securities lending where the broker acts as principal are exempt from transfer reporting.
3. Penalty relief for failing to provide transfer statements for stock transfers during 2011 does not apply to transfers incidental to purchases & sales.
4. Less personal information and related attributes must be reported on transfer statements and personal data (such as investor name and account number) can be obfuscated with codes instead of providing actual name and account information.
5. Corp action ID will not be provided by issuers for corporate actions reported on issuer statements and transferors will accordingly not be required to report such an ID number.
6. Changes in the reporting of inheritance related transfers – the broker does not need to contact representative of estate and request values as of date of death for transferred securities and the transferor must compute the fair market value of securities as of the date of transfer if values not provided by authorized representative but only to extent fair market values are readily ascertainable
7. A transferor is only required to issue corrected transfer statements for changes in information related to cost basis (such as transfer statements received, issuer corporate action statements and inheritance values provided by authorized representatives) within 18 months of the date a transfer statement was provided.
8. Transferor must adjust cost basis of securities it holds for corporate actions occurring during the time it holds securities. This requirement will force transfer agents and others to correctly adjust cost basis for corporate actions.
9. Receiving transferee must still review transfer statements received and is required to contact the transferor and request a complete transfer statement if the statement received is incomplete unless transferor has no duty to deliver a transfer statement (such as a transfer for an exempt recipient).



10. A transferor must determine if a transfer from an account under one name to an account that does not include the same name is a gift and if so, the transferor must designate the transfer as a gift, determine the fair market value of the transferred securities as of the date of the gift and provide the gift designation, fair market values as of the date of the gift and the date of the gift as additional attributes on the transfer statement. In addition, the receiving transferee must take into account tax law limitations on losses under Code Sec. 1015 in reporting losses if the securities are sold and provide the additional attributes if the securities are transferred to another account of the same investor.

Additional changes relating to transfer reporting that were included in the Final Regs: securities are treated as transferred on a first-in/first-out basis unless the investor communicates specific identification or delivers a standing order before the settlement date of the transfer and securities for which the transferor does not know the acquisition or purchase date are deemed transferred first; noncovered security lots can be aggregated in single transfer statement; clarification of reporting where broker effects purchase but does not receive custody; and no basis reported on transfer statement for lent or borrowed securities for short sales.

Transfer agents will likely also focus on lot identification and averaging rules for dividend reinvestment plans (DRPs). Basis adjustments applicable to corporate actions will also be important for transfer agents because they will be required to adjust basis correctly for corporate actions while securities are held by them. They may also be required to adjust basis for wash sales if securities are sold while held by them. Issues relating to these rules under the Final Regs will be discussed separately.

We will provide additional commentary relating to the Final Regs and other aspects of the cost basis reporting law at later dates.

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