

Exposure Draft Questions for Respondents (QFR)

Due: April 18, 2024

*Technical Bulletin, Seized and Forfeited Digital Assets*

**Please select the type(s) of organization responding to this exposure draft. If you are not responding on behalf of an organization, please select "individual."**

Accounting Firm	<input type="checkbox"/>	
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This proposal would clarify existing guidance in Statement of Federal Financial Accounting Standards (SFFAS) 3, *Accounting for Inventory and Related Property*, for seized and forfeited digital assets.

**QFR 1** The proposed Technical Bulletin (TB) would clarify that reporting entities should treat central bank digital currencies as monetary instruments and treat all other digital assets (such as cryptocurrencies, stablecoins, non-fungible tokens, etc.) as nonmonetary property when applying the seized and forfeited property guidance in SFFAS 3 to digital assets.

**Do you agree or disagree? Please provide the rationale for your answer.**

Agree - The TB clearly defines central bank digital currencies (CBDC) and digital assets which agrees with DOJ's current understanding of digital assets.

While the TB includes clear definitions differentiating CBDC from other digital assets, the DOJ Asset Forfeiture Management Staff (AFMS) recommends including or referencing the definition of monetary instruments in 31 USC § 5312(a)(3) in paragraph 18 to further clarify the distinction between the two categories. Paragraph 18 states "digital assets, other than central bank digital currencies, do not typically possess all monetary characteristics" but does not include a reference to what the monetary characteristics are. The characteristics are critical to the determination of whether an asset is a monetary asset or a nonmonetary asset.

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**QFR 2** The proposed TB would clarify that, for purposes of reporting market value in accordance with the seized and forfeited property guidance in SFFAS 3, reporting entities should translate seized and forfeited foreign central bank digital currencies to U.S. dollars at the relevant exchange rate and report a market value for all other seized and forfeited digital assets only if management can determine that a publicly observable active market exists for the specific digital asset.

**Do you agree or disagree? Please provide the rationale for your answer.**

Agree- DOJ agrees with the proposed language and acknowledges that it aligns with the Department's current valuation process used for foreign currency and other assets.

However, the DOJ AFMS requests that the TB specify that private subscription services (e.g., Bloomberg), which often charge high fees for current and historical values, do not meet the definition of a "publicly observable market." Those private subscriptions are high-cost and preclude use by many government agencies; however, private auditing firms have the resources for these high-cost subscriptions and use these tools to determine whether the agency has accurately valued digital assets.

**QFR 3** The proposed TB would clarify that reporting entities should apply the existing SFFAS 3 disclosure requirements for seized and forfeited digital assets, including digital assets for which reporting entities cannot determine a market value. The proposed TB would also clarify that SFFAS 3 does not require reporting entities to disclose specific information about individual digital asset seizures or forfeitures.

**Do you agree or disagree? Please provide the rationale for your answer.**

Agree - DOJ supports the TB disclosure not requiring specific information about individual digital asset seizures or forfeitures. Due to the sensitive nature of detailed information, permitting agencies to report at a high level will keep sensitive law enforcement information protected and mitigate the risk that reporting detail could compromise investigative activity.

**QFR 4** Do any ambiguous areas remain that could lead to challenges with implementing the SFFAS 3 reporting requirements for seized and forfeited digital assets? If so, please reference the specific issues, applicable guidance, and potential solutions.

Yes-

(A) Paragraph 23 discusses the market value for seized and forfeited digital assets. Due to the unique nature of digital assets, DOJ AFMS recommends the determination of market value be clarified further to state that market value is the end-of-day price on a publicly observable market, to prevent value misstatements due to constant value fluctuations for digital currency and values determined at other times of the day the asset is seized or forfeited.

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(B) Often in cases of digital seizures, the number of units taken from the owner is greater than the number of assets actually seized, due to exchange fees in the form of a percentage of units taken from the original unit count. Government agencies need clarity on how to account for these exchange fees. Does the agency report the number of units taken or the number of units actually received as a seized asset?

**QFR 5** Do you wish to comment on any other specific aspects of this proposal?

Paragraph 21 references SFFAS 3, "Seized property shall be valued at its market value when seized, or if market value cannot be readily determined, as soon thereafter as reasonably possible." We understand that this reference is from SFFAS 3 and not the TB; however, this TB is a good place to start to clarify the exact time a digital asset is to be valued. DOJ AFMS recommends amending this statement to ". . . as soon thereafter as management determines is reasonably possible." AFMS recommends that "when seized" be amended in the TB to "on the date of seizure" or "on the date of forfeiture" to preclude any misinterpretations on the date of valuation.

In addition, to assist in the cohesiveness of the document, recommend Paragraph 26 - "The U.S. government does not currently have a central bank digital currency." be relocated to paragraph 17/18 or the Appendix. This sentence would be more appropriate in another section.