

**Revisions to Forms 1, 2, and 3
Questions and Answers – Set #2**

General

65) May the Q's and A's be given to panel trustees?

Yes.

Form 1 - Estate Property Record and Report

66) The trustee is required to show the initial and current projected final report dates at the bottom of Form 1. May the trustee ever change the initial date of final report?

No. In fact, the trustee's software system should, if possible, prevent an inadvertent change to this date.

67) When the final report (TFR) has been filed, the phrase "current projected date of final report" is no longer accurate. May the software be programmed to eliminate the words "current projected" on any Form 1s printed after the TFR has been filed?

Yes. However, this is not required. The trustee does not need to change the "current projected date of final report" after it has been filed, even though the TFR is returned for corrections. The TFR is considered to be filed on the date it is submitted to the United States Trustee for approval.

68) Scenario: a no-asset case has been open longer than 60 days past the initial examination of the debtor at the § 341(a) meeting and the trustee is preparing the 180-day report for the current period. The trustee will include the case on Form 3 and submit a Form 1. No Form 2 is required because there is no estate bank account.

a. Is it acceptable for the trustee to submit a blank Form 1?

No. The Form 1 should contain all of the required information from

the petition, schedules, and statement of affairs, and be completely filled out.

b. What if the trustee does not expect the case to be an asset case?

If the case is not expected to be an asset case, the trustee should still complete Form 1 and explain under Notes or Major Activities Affecting Case Closing why the no-asset report has not been filed.

69) Some software programs print a total at the bottom of Column 2, Petition/Unscheduled Values. Is it permissible to continue to print this total, even though it is not shown on the sample in the Handbook?

Yes. A total at the bottom of Column 2 may be shown, but it is not required.

70) If an asset description takes up two lines in Column 1, does the second line need to be indented?

This is not required. The concern is that the asset descriptions are legible and contain sufficient information to describe the asset.

71) Can you provide additional instructions on the “type” of descriptions that should be included on Form 1?

The Sample Form 1 in the Handbook illustrates the type of asset descriptions that trustees should provide. They should be informative, brief, and descriptive, without being overly long. One to three lines should be sufficient.

72) Which of these asset descriptions is correct?

1234 Main Street, City, State or Homestead	Homestead 1234 Main Street, City State
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Both are acceptable. The Sample Form 1 shows 55 Lake Drive/ ½ int. homestead, for example.

- 73) In Appendix G, the Handbook states that escrow deposits are not posted to Form 1 until the related sale is consummated. Therefore, these deposits must be recorded on Form 2 without a reference number and a corresponding entry on Form 1. Is it acceptable to record some receipts on Form 2 without a corresponding Form 1 reference number?**

Yes. There are certain circumstances when deposits are recorded without a reference number. Escrow deposits are one example. Deposits to the wrong estate and bond premium refunds are other examples.

- 74) If some deposits are recorded on Form 2 and not on Form 1, then the total of Column 5 (Sales/Funds Received by the Estate) on Form 1 will not match the total of Column 5 (Deposits) on Form 2. Aren't these two totals supposed to match?**

No. The two totals will not match for a variety of reasons. Some are mentioned above. Another reason is the method for recording real estate sales. The gross sale proceeds are recorded in Column 5 on Form 1, while the net proceeds are recorded in Column 5 on Form 2.

- 75) Which total should be used to calculate a trustee's maximum allowable compensation: Form 1, Column 5 or Form 2, Column 5?**

Neither. While either total can be used as a starting point for calculating a trustee's maximum allowable compensation, adjustments will almost always be necessary to arrive at the correct figure.

- 76) The trustee's software assigned consecutive reference numbers as assets are entered. If an asset is later deleted, a "permanent hole" in the numbering system is created. Is this acceptable?**

Yes. Actually, this is mandatory. Trustees should not be able to delete assets and re-use the reference numbers. While trustees need to be able to correct data entry errors, assets must never be completely deleted, and reference numbers cannot be re-used if the original entries were voided. If a

trustee made an error entering assets on Form 1 and no longer needs to use one of the assigned reference numbers, the trustee should enter "void" in Column 1 to indicate that there is no asset associated with the reference number.

77) The instructions for Column 3, Estimated Net Value, require that a trustee enter a value by the end of the second reporting period. There is a concern about disclosing a value for litigation such as personal injury cases. In some jurisdictions, the 180-day reports are filed with the court and are readily available to members of the public, including defense counsel. If a trustee is required to disclose an estimated value for a personal injury suit, it may prejudice the trustee's settlement negotiations.

a. Can an exception be made to allow the trustee to use "unknown" in Column 3, under these circumstances?

No. The trustee should use his or her best judgment not to jeopardize the trustee's position. The trustee may include the demand amount, the amount of the prayer, or some lesser amount in Column 3. Thereafter, the amount in Column 3 is not changed.

b. According to the Instructions, Column 6 should reflect the trustee's current best estimate of the gross value remaining to be collected or administered. The amount in Column 6 is adjusted as the trustee's current best estimate changes. Is the trustee required to adjust the value in Column 6 to reflect current settlement discussions? Again, this may jeopardize the trustee's negotiations.

See answer above. The trustee should use his or her best judgment and disclose a value without jeopardizing the settlement discussions. The Column 6 value should be changed when appropriate, such as when the amount of the demand changes or when the litigation has been settled (but the settlement amount has not been paid as of the 180-day period ending date).

78) The Sample Form 1 shows an asset entitled “Interest earned” (Asset No. 15). There are several questions concerning this asset.

a) What does this asset represent?

This unscheduled asset represents post-petition interest on the estate account(s), certificates of deposit(s), and other investments. (See Forms - 4.)

b) Should the interest earned on each investment be listed as a separate unscheduled asset on Form 1?

No. All post-petition interest on the estate accounts and investments should be combined as a single line item on Form 1.

c) If the trustee invests estate funds with multiple depositories, should there be a separate unscheduled asset for the interest from each depository?

No. See the answer to b.

d) The Sample Form 1 indicates that a reference number should be assigned to the “Interest earned” asset. Some chapter 7 computer vendors said that it will be difficult to program their Forms to provide a reference number for interest earned. May a computer vendor use the code “INT” instead of the reference number?

Yes. “INT” may be used, but it is not required.

e) If the trustee earns interest on a promissory note or other estate asset, should this interest be included in the asset entitled “Interest earned”?

No. “Interest earned” is only used for post-petition interest earned on estate funds that are invested. Interest on a promissory note, for example, should be recorded on Form 1 and Form 2 with the reference number assigned to the promissory note.

Form 2 – Cash Receipts and Disbursements Record

- 79) Several software programs provide “memo” disbursement totals at the end of Form 2. These totals summarize the disbursements eligible for a trustee’s maximum allowable compensation, and may be different from the totals illustrated on the sample Form 2. Is it acceptable for these “memo” totals to continue to be shown on Form 2? Trustees find them beneficial.**

Yes. The “memo” totals are not required, but may continue to be shown, as long as the Form 2 remains legible.

- 80) The instructions (Handbook page Forms - 8) indicate that the trustee should record the date that the transaction occurred in Column 1. For deposits, this is the date that the funds were sent or taken to the bank. For disbursements, this is the date that the check was written by the trustee or printed by the computer.**

- a. If the trustee enters the transaction several days after it occurred, which date should be recorded in column 1: the date of entry or the original transaction date?**

The trustee is expected to enter transactions contemporaneously with their occurrence, so the date of entry should be the same as the original transaction date. However, if data entry is unavoidably delayed, the trustee should enter the date that the transaction actually occurred.

- b. On Monday, the trustee may input the information to run disbursement checks, but not print the checks until Friday. Which date should appear on Form 2?**

Form 2 should reflect the date that the checks were printed, not the date they were entered into the system.

81) The Sample Form 2 in the Handbook shows Check Nos. 1005 and 1006 used twice. Is it acceptable for there to be duplicate check numbers?

No. Checks should be consecutively numbered within the case. The numbers of voided checks may not be re-used. The number sequence on manual checks should not duplicate computer-generated numbers. (See Handbook page 9-8.) In addition, if the trustee can write checks on multiple accounts within the same case (e.g., checks can be written on the money market account as well as the checking account), the numerical check sequence should be distinct for each account.

The error on the Sample Form 2 will be corrected in the next Handbook update.

82) The totals at the end of each Form 2 include a line item to deduct payments to debtors. We assume that this line item includes exemptions and excess funds paid to the debtor. If the debtor is paid as a claimant, is this amount excluded from the line item “less payments to debtors”?

Yes.

Form 3 - Summary Interim Asset Report

83) The Handbook states on pages 9-4 and Forms-1 that “at least every six months, each chapter 7 trustee must submit to the United States Trustee an interim report for each case that is either expected to be or declared to be an asset case by the trustee.... (emphasis added).”

a. Is there a distinction between “expected to be” and “declared to be”?

No. The phrases “expected to be” and “declared to be” are not meant to imply two classifications of asset cases. The language is meant to

be inclusive of all cases that the trustee considers to be asset cases.

- b. Are the United States Trustee reviewers expected to monitor trustees to ensure that they report all cases that they “expect” will be asset cases?**

No. However, if the reviewer learns of cases that should be reported by the trustee and are not, the reviewer should bring these cases to the trustee’s attention. An example of this situation is when the reviewer has seen a notice of sale in a case that has been open less than sixty days past the initial examination of the debtor at the § 341(a) meeting, and the case is still designated as a no-asset case on ACMS and was not reported by the trustee on the 180-day report.