

**Substantive Changes to the
Handbook for Chapter 7 Trustees
Questions and Answers – Set #2**

§ 341(a) Meetings, cont.

13) Certain trustees provide debtors with a questionnaire to complete before the § 341(a) meeting. There are several questions regarding the use of questionnaires.

a. May questionnaires be used to substitute for oral examinations at § 341(a) meetings?

No. The trustee must orally examine debtors at least with respect to the ten mandatory questions specified in Appendix A to the *Handbook for Chapter 7 Trustees*.

b. May questionnaires be used to supplement information obtained from debtors?

Yes.

c. What information from the questionnaires should be recorded on the § 341(a) tape?

The trustee may use discretion with respect to which answers on the questionnaire should be verified or explored further on the § 341(a) tape, which is the official record of the meeting. The trustee should ensure that the record clearly reflects the nature of the matter under discussion without the necessity of referring to the questionnaire, which in most cases will not be part of the official record. When in doubt, the trustee should place the information on the tape.

d. Should the questionnaire become part of the official record?

Generally, questionnaires will be kept with the trustee's files and will not become part of the official record. However, the trustee must

designate the questionnaire as part of the official record if the trustee thinks that is appropriate or if designation is requested. In this rare circumstance, the questionnaire and any attachments must be delivered to the United States Trustee with the tape recording of the meeting.

e. Should the trustee be required to keep the questionnaires?

Yes. The questionnaire becomes part of the trustee's file and should be retained in accordance with pages 9-4 and 9-5 of the Handbook.

Sale of Secured Property

14) On page 8-19, the Handbook appears to permit the trustee to sell fully secured property under certain circumstances. Is this a policy change?

No. The Handbook section on the sale of secured property was updated to clarify, not change, the policy. As stated on page 8-19, administering fully secured property should always be viewed as the exception taking into account the particular circumstances of each case. In determining whether the sale of secured property is appropriate, the trustee must be careful to avoid the diminution of funds otherwise available for distribution to unsecured creditors. The trustee must consider all of the costs associated with the sale, including trustee fees, as well as the possibility of adverse tax consequences.

Auctioneers

15) What is a buyer's premium? (See Auctioneers-Compensation on page 8-25)

In some jurisdictions, auctioneers have begun to take part of their compensation in the form of buyer's premiums. A buyer's premium is a percentage of the purchase price paid by the buyer, in addition to the bid price. To address this issue, the following new language was added to the Handbook: "Any buyer's premium must be fully disclosed in the employment application and considered in determining the reasonableness

of the total compensation.”

Review of Claims

16) Is an untimely filed claim barred from payment?

No. See Handbook pages 8-28 and 8-29.

Final Reports and Final Accounts

17) On page 8-32, the trustee is instructed to submit original bank statements and cancelled checks to the United States Trustee with the Trustee’s Final Report (TFR). On page 8-34, in the section which covers the Trustee’s Final Account (TDR), the trustee is instructed that all original bank statements and cancelled checks since filing the TFR should be attached to or submitted with the TDR. On page 9-2, the trustee is requested to retain all original bank statements, deposit slips and cancelled checks for a period of two years from the closing of the case by the court, unless the original documents are submitted to the court or United States Trustee. Please clarify the proper disposition of original bank statements and cancelled checks.

The disposition of original bank statements and cancelled checks depends upon local rules and practice. Examples of acceptable local practice follow:

1. trustee attaches original bank statements and cancelled checks to the TFR/TDR and submits them to the United States Trustee who forwards them to the court;
2. trustee attaches original bank statements and cancelled checks to the TFR/TDR and submits them to the United States Trustee who keeps them; or
3. trustee attaches original bank statements and cancelled checks to the TFR/TDR and submits them to the United States Trustee who returns them to the trustee after reviewing the TFR/TDR.

18) Is there a national or preferred format for the final report that trustees are supposed to file in converted, dismissed, or reassigned cases?

(Handbook pages 6-3, 8-35, 8-36, and 9-5.)

No.

19) Why does the trustee have to continue filing Forms 1 and 2 after the TFR has been filed? (Handbook page 9-5.)

This Handbook change was made to enable the United States Trustee staff to continue monitoring activity in the case after the TFR has been filed, which is especially crucial when there is a significant delay between the TFR and TDR.

20) If a TDR is filed by the trustee during one semi-annual reporting period, but not approved until the next reporting period, (a) should it be included on the Form 3 for the next reporting period? (b) Is the trustee required to file Forms 1 and 2 as well?

- a. Yes. The case would be reported on the Form 3 for the period during which the TDR was approved. The case is omitted from future Form 3s.
- b. No. The trustee is not required to file Forms 1 and 2 for the period(s) during which the TDR is filed or approved. The case need only be listed on Form 3. See Handbook page 9-4 and Forms - 1.

Banking and Investment of Estate Funds

21) Can a trustee have a personal or business banking relationship with the same institution that holds the trustee's bankruptcy estate funds?

Yes. However, a trustee may not request or receive any favorable treatment, such as special interest rates or loan terms. The authorized depository agreement with the banking institution should include the requirement that the bank will certify, annually or upon request, that the trustee has not and will not receive favorable treatment. (Handbook page 9-3.)

- 22) The Handbook policy on the investment of estate funds appears to have changed. On page 9-1, the Handbook implies that estate funds should be deposited to interest bearing accounts immediately upon receipt. Is this change retroactive? If the longstanding regional policy has allowed trustees to place funds under \$5,000 in non-interest bearing accounts, are the trustees now required to move the funds to interest bearing accounts?**

The updated Handbook provides new guidance for the investment of estate funds, which applies to existing accounts.

On page 30 of the 1992 Handbook, the trustee was advised to keep funds in excess of day-to-day requirements in an interest bearing account or instrument, as long as it would not delay case closure. Today, with the advent of money market accounts that are linked with checking accounts, it is possible to keep estate funds in an interest bearing account right up until the funds are needed to pay the costs of administration or for distribution to creditors.

If a trustee currently has estate funds in non-interest bearing accounts and the TFR will not be submitted in the near future, the trustee should move the funds to an interest bearing account, regardless of the amount, unless local rules or court orders provide otherwise.

Banking, Computer System and Computer Security

- 23) The Handbook includes the following statement: “The (trustee’s) computer system may not be used for extraneous applications unrelated to the chapter 7 operation.” (Handbook page 9-7.) This appears to be impractical. If a trustee has a computer, it is likely that the trustee would not have a computer solely for chapter 7 operations and another computer for everything else.**

The Chapter 7 Subcommittee has taken this question under consideration for the coming year.

- 24) A trustee discovers that a transaction was posted to the Form 2 for the**

wrong estate. Can the transaction be deleted?

No. The transaction may not be deleted by the trustee, the trustee's administrator, or the software vendor. The trustee must enter a correcting entry to provide the appropriate audit trail. The trustee's software should not contain a feature that allows anyone to delete a transaction after it has been entered.

25) Should the trustee have the ability to close an estate account opened electronically?

No. Because the trustee is a fiduciary, the trustee and the trustee's administrator must not have the ability to close estate accounts electronically. The trustee should ask the bank, in writing, to close the account.

26) Assume that the trustee does not have on-line banking. To open a new estate account, the trustee or assistant contacts the bank for an account number. When the trustee or assistant enters the new account number in the chapter 7 computer system, numbers are transposed. The error is detected before any transactions (i.e., deposits or checks) have been entered in the system and linked to the bank account. May the software give the trustee or assistant the ability to delete or change the account number entered in error?

Yes. As long as no activity has been entered for the account, the trustee or assistant may either change the incorrect account number or delete the incorrect account number and re-input the correct account number.

27) Same facts as above, but numerous transactions occurred before the account number error was detected.

a. May the software allow the trustee or assistant to change the account number?

No.

- b. May the computer software provider assist the trustee with correcting the account number?**

Yes. With the trustee's written authorization, which should explain how the error occurred, the computer software provider can write a software program to correct the account number for the trustee.

- c. Is there another way that the trustee can correct the problem?**

Yes. The trustee can void and reverse all of the transactions entered to the incorrect account and re-enter the transactions using the correct account number. In order to provide an audit trail, the original incorrect account may not be deleted since there are transactions linked to it.

- 28) Assume that a trustee transposes part of the case number upon entering a new case in the chapter 7 computer system. The error is detected the same day, before any additional information has been entered concerning the case. May the software give the trustee or assistant the ability to change the case number entered in error?**

Yes. As long as no activity (e.g., assets, claims, deposits, checks) has been entered for the case, the trustee or assistant may change the incorrect case number.

- 29) Same facts as above, but the trustee does not discover the case number error for six months. All of the assets, bank accounts, transactions, and claims are linked to the wrong case number.**

- a. May the software allow the trustee or assistant to change the incorrect case number?**

No.

- b. May the computer software provider assist the trustee with correcting the case number?**

Yes. With the trustee's written authorization, which should explain how the error occurred, the computer software provider can write a software program to correct the case number for the trustee.

30) A trustee discovers that estate funds were deposited to the wrong bank account. How should the trustee correct the error?

If the deposits were made to the wrong estate, the trustee must write an estate check equal to the amount deposited in error and deposit the check to the correct estate. The trustee cannot ask the bank to transfer the funds to the correct estate account.

If the deposits were made to the wrong account, but the correct estate, the trustee may authorize the bank, in writing, to transfer the funds to the correct account.

31) May the trustee's administrator be responsible for opening bank accounts on-line or through the computer system?

The trustee must exercise extreme caution here. The trustee is responsible to ensure that only valid estate accounts are opened. Ideally, only the trustee would open estate bank accounts. At most, only one person other than the trustee should have the password necessary to open an account via the chapter 7 computer system. The bank should periodically confirm that the trustee has approved new accounts.

Internal Controls

32) Under Handling Currency on page 9-12, the trustee is advised that when currency payments cannot be avoided and it is not possible to immediately deposit the funds, the currency should be converted to a cashier's check or money order and kept in a secure location until deposited. How should the trustee pay for the service charges incurred to secure the cashier's check or money order?

The trustee should first try to obtain the cashier's check or money order free of charge. If this is not possible, the service charge may be deducted from

the funds received, with the cashier's check or money order issued for the net amount. The service charge would be considered a cost of administering the estate. The trustee should record the gross amount received and the amount of the service charge in the transaction description on Form 2 and the receipts log.

33) Is it really necessary to obtain United States Trustee approval for wire transfers or cashier's checks? (Handbook page 9-14.)

Yes. These transactions are extremely difficult to trace and, accordingly, require close monitoring.

34) Under what circumstances would a United States Trustee approve the use of wire transfers or cashier's checks?

The United States Trustee may approve the use of a wire transfer or cashier's check in extraordinary circumstances, such as when immediate payment by a trustee is necessary to prevent loss to the estate or injury to a person or property and the service provider will not accept a check, or when a wire transfer or cashier's check is required by applicable law or regulations (e.g., certain types of tax deposits must be made by wire transfer).