

**OFFICE OF THE CHAPTER 13 TRUSTEE  
For District of Puerto Rico & USVI**

**OPERATING GUIDELINES AND REPORTING REQUIREMENTS  
FOR SELF-EMPLOYED DEBTORS ENGAGED IN BUSINESS  
CHAPTER 13 CASES**

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(Revised 02/25/12)**

**Article I. INTRODUCTION**

**Section 1.01 Chapter 13 Trustee's Duties regarding Self-employed Debtors Engaged in Business**

Pursuant to 11 U.S.C. §1302(b) the Chapter 13 Trustee must perform the duties specified in Title 11, §§ 704(a)(2)-(7), and 704(a)(9) in all cases. In relation to debtors engaged in business, the Trustee must also perform the duties specified in §§ 1106(a)(3) and 1106(a)(4). To comply with these duties the Chapter 13 Trustee has prepared these **Operating Guidelines and Reporting Requirements** (the "guidelines") for Chapter 13 Self-employed Debtors Engaged in Business. These reporting requirements also assist debtors' in the compliance of their duties and obligations pursuant to 11 U.S.C. §§ 1304(c) and 704(a)(8), and Rules 1007, 2015(c)(1) and 4002(b) of the Federal Rules of Bankruptcy Procedures ("FRBP"). Accordingly debtors must follow and observe certain operating procedures and file certain financial reports with the Bankruptcy Court and or the Chapter 13 Trustee assigned to the case. Counsel should carefully review these requirements with debtor.

**Section 1.02 Compliance, Amendments, Modifications or Waivers**

Timely compliance with each of the requirements contained herein is essential. Failure to comply with any requirement may result in the filing of a motion to dismiss or convert the case.

Any request for amendments, modifications or waiver of all or part of these requirements, as applied to a particular Chapter 13 case, must be made in writing. To be effective, approval by the Chapter 13 Trustee must be also in writing.

After a review of documents provided by the debtor through his attorney, a meeting with debtor's attorney, or a joint interview

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with the debtor and his attorney, the Trustee may determine that the requirements under these guidelines should not apply, may be modified in part, or waived in its entirety, to adapt it to the particular financial characteristics of the debtor.

### **Section 1.03 Duties of Self-Employed Debtor Engaged in Business**

A debtor is defined as a "debtor engaged in business" ("**DIB**") if he or she is self-employed and incurs in trade credit in the production of income through such activity<sup>i</sup>. With the filing of a Chapter 13 petition, a debtor retains the possession of property of the estate. Accordingly the DIB has the fiduciary and statutory responsibility of preserving and maintaining the estate and of operating his business as efficiently as possible in order to maximize ultimate payments on pre-petition debts while keeping post-petition obligations current. (See: 11 U.S.C. §§ 521, 704(8) and 1304, also see Rule 2015(c)(1) of the FRBP)

### **Section 1.04 Form in which Documents should be provided to the Chapter 13 Trustee - Electronically / Digital Copies**

Digital copies of documents to be provided to the Chapter 13 Trustee shall be uploaded electronically through his electronic filing system in PDF format. Instructions on how to use the application is available in the Chapter 13 Trustee website: <http://www.ch13-pr.net>

## **Article II. SPECIFIC GUIDELINES**

### **Section 2.01 Bank Accounts / Money of the Estate**

- (a) Every DIB must use bank accounts in which all their business transactions and personal expenses should be reflected. All pre-petition Bank accounts must be closed after the petition is filed. If debtor had no bank account as of the petition date, upon filing of the petition, debtor must immediately open the required bank accounts under subsequent paragraphs (b) of this section. No bank accounts, other than the ones required in subsequent paragraphs (b) of this section, should be kept open after the petition date.
- (b) DIB shall open at least two separate accounts: (1) for Business Operations (to include Operations, Payroll, Taxes,

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etc.) and another (2) for Personal Expenses.

- (c) All revenue must flow through these account(s). Necessary fund transfers between the accounts must be properly documented and reconciled each month.
- (d) DIB must maintain bank records, statements and canceled checks. DIB must provide copy of cancelled checks to the Chapter 13 Trustee in support of each Monthly Operating Report to be filed with the court in compliance with Rule 2015(c)(1). Check images should **not** be filed with the Court with the Monthly Operating Reports; they are to be provided separately to the Chapter 13 Trustee through his digital document filing system (TEDFA).
- (e) Within 14 days of the filing of the petition, the DIB must provide the Chapter 13 Trustee with a statement under penalty of perjury describing all pre-petition accounts closed, by their Depository Institution name, account number, and account name, verifying that each such pre-petition account has been closed. A form to comply with this requirement is available in the Chapter 13 Trustee website, [**CH13 Form AB-1**]. Proof of closing pre-petition accounts and opening new accounts must be provided when applicable. [See 11 U.S.C. § 704(4) and Rule 4002(b)(2)(B) of the FRBP]

**Section 2.02 Proof of Insurance:**

- (a) Within 7 days of filing the petition, the debtor must provide the Chapter 13 Trustee with proof of reasonable insurance coverage required by these guidelines.
- (b) Reasonable insurance coverage, under these guidelines, means the customary or prudent insurance coverage for the type of business that debtor is engaged in, or what is required by nonbankruptcy law.
- (c) The proof must disclose, at a minimum, the effective date and the termination date of the coverage; the type and limits of coverage provided, and the identity of all loss payees. Binders must be accompanied by paid receipts.
- (d) DIB must instruct the insurance companies to list the Chapter 13 Trustee as a certificate holder. Upon expiration or other termination of any coverage, the debtor shall immediately provide the Chapter 13 Trustee with adequate proof of replacement coverage. The debtor shall maintain at least, when applicable, the following coverage, where appropriate:

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1. General comprehensive
2. Liability;
3. Property (all personal & realty) [Actual Cash Value];
4. Casualty and theft [Minimum \$100,000 coverage];
5. Workers' Compensation;
6. Product liability;
7. Flood insurance;
8. Professional malpractice;
9. Other coverage customary or prudent in the debtor's business, or required by law.

### **Section 2.03 Business Inventory**

Within 21 days of filing the petition, all DIB, shall provide the Chapter 13 Trustee with a list of the business' inventory as of the petition date. The inventory shall be itemized and indicate cost values. For purposes of this reporting requirement, "inventory" is defined as all goods in possession of the debtor intended for sale to customers. It includes finished goods and unfinished goods. It does not include fixed assets owned by the debtor, but does include tools, equipment, furniture and machinery.

### **Section 2.04 Rental Property Records**

- (a) If the DIB owns rental properties, within 14 days from the filing of the petition, shall provide the Chapter 13 Trustee with a rental operation summary as of the petition date. The rental operation summary shall consist of:
- 1) A description of each property owned,
  - 2) Total number of rental units.
  - 3) Rental installment of each unit,
  - 4) Security or other deposits held,
  - 5) Name of tenant and payment status of each unit,
  - 6) Number of vacant units.
  - 7) Name, address, and phone number of the management company, if any, and
  - 8) The monthly management fee amount for each unit. The debtor shall also provide any agreement with a third party to manage the property.

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**Section 2.05 Taxes and Annual Statement of Income and Expenses**

- (a) **General:** The DIB should keep sufficient funds in the operating account to pay any tax liability associated with the payroll, State and local taxes. Sales and use taxes shall be deposited to the operations account at least weekly. All tax returns and reports must be timely filed and accompanied by payment in full of any liability, particularly the Sales and Use Taxes.
- (b) **Post-Confirmation Income Tax Returns:** The DIB must provide the Trustee with a copy of any income tax returns [or its Official Summary - Federal or PR] that becomes due post-petition, after confirmation, and until the plan is completed, no later than 45 days after the due date for filing the same with the corresponding tax authority. [11 U.S.C. § 521 (f)-(g)]
- (c) **Post Confirmation Statement of Income and Expenses:** The DIB must provide the Trustee, no later than 45 days after filing any income tax return with the corresponding tax authority [Federal or PR] post-petition, after confirmation and until the plan is completed, a statement under penalty of perjury of the monthly income and expenditures during that tax year. The statement must comply with the disclosure requirements of 11 U.S.C. § 521 (g) (1).

**Section 2.06 Checklist of Information and Documents required to be filed with the Court, or the Chapter 13 Trustee. (11 U.S.C. § 1304):**

- (a) Business Questionnaire [CH13 Form AB-4] [11 U.S.C. § 704(a)(8)] to be provided to the Chapter 13 Trustee **within 7 days** after the petition date.
- (b) DIB shall provide the Chapter 13 Trustee, **within 14 days** after the petition date,
- (1) Copies of all financial statements prepared and furnished to a third party, such as a trade creditor or a bank, within the two years preceding the filing of the petition, including, but not limited to, the balance sheet, income statements and cash flow statements.[11 U.S.C. § 704(a)(8)]
  - (2) A profit and loss statement Summary for at least the

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- year preceding the filing; [11 U.S.C. § 704(a)(8); Rule 2015(a)(3); (c)(1)]
- (3) Income Tax Returns for the four years prior to the petition date. [11 U.S.C. §§ 704(a)(8); 521(e)(2)(A) & 1304(c)]
  - (4) A Cash Receipts and Disbursement Summary for 6 months pre-petition. [CH13 Forms AB-2 and AB-3] Also must provide Bank accounts statements for the same period.
  - (5) Copy of all Municipal Permits (Patentes) [11 U.S.C. § 704(a)(8); Rule 2015(a)(3); (c)(1)]
- (c) DIB shall provide the Chapter 13 Trustee, within **21 days** after the petition date, a Current schedule of accounts receivable and accounts payable [Rule 2015(c)(1) FRBP] **[CH13 Form MOR-10]**
- (d) Current books and records of the business, including checks and check registers shall be available for the Trustee examination at the "Initial Debtor Interview" (IDI) before the scheduled 341; [§704(a)(4); Rule 2015(c)(1) FRBP]

**Section 2.07 DIB Monthly Operating Reports (Form A008 MORs):**

The DIB shall file with the Court Monthly Operating Reports not later than the **21<sup>st</sup> day** of the month following the reported month. The MOR shall include the following documents:

- a. Cover Sheet signed by the debtor(s). [CH13 Form MOR-01]
- b. Summary of Cash Receipts and Cash Disbursements [CH13 Form MOR-2]
- c. Household Cash Receipts and Cash Disbursements Statement [CH13 Form MOR-03]
- d. Business Cash Receipts and Cash Disbursements [CH13 Form MOR-4]
- e. Questionnaire / Insurance Information / Case Developments [CH13 Form MOR-5]
- f. Bank Accounts Reconciliation [CH13 Form MOR-6]
- g. Cash Disbursements Details - Household [CH13 Form MOR-7]
- h. Cash Disbursements Details - Business [CH13 Forms MOR-8 and 9]

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- i. Account Receivable Reconciliation / Post Petition Taxes [**CH13 Form MOR-10**]
- j. Account Payable / Post Petition Secured & Lease Payments [**CH13 Form MOR-11**]
- k. Bank Statements for All Bank Accounts [Important: Redact account numbers. **Do not file with the Court check images, they must be provided separately to the Chapter 13 Trustee.**]

[11 U.S.C. §§ 1304(c), 704(a)(8) & Rule 2015(c)(1) FRBP]

**Section 2.08** DIB have a continuing obligation to file monthly operating reports until court confirms the Chapter 13 plan.

**Section 2.09** Initial Debtor Interview (IDI) The Chapter 13 Trustee will schedule and notify an initial debtor interview (IDI) for any debtor that may be a DIB, to be held at the Chapter 13 Trustee Office as soon as practicable before the § 341 meeting of creditors. The IDI will seek to become familiar with the debtor's case as well as with the debtor's business plans and operation, assets, liabilities, and accounting methods. At least five (5) business days prior to the scheduled IDI the debtor must provide the Chapter 13 Trustee with all documents and information described in this Guidelines' Section 2.06.

(a) Failure to attend this meeting or to provide the required documents would represent a debtor's failure to comply with her/his/their duties and may constitute cause for the conversion or dismissal of the case. [11 USC §§ 1307(c)]

### **Section 2.10 Additional Notice Requirements**

The Chapter 13 Trustee must be advised immediately of any significant change in the debtor's business. Significant changes include, but are not limited to, casualty or theft losses, changes in insurance coverage, or allegations of violations of laws, ordinances, or regulations, including but not limited to, the failure to pay taxes, the imposition of fines which could affect the continued operation of the debtor's business.

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## **Section 2.11 Change of Address**

It is the debtor's duty and responsibility to notify the Chapter 13 Trustee and the bankruptcy court of any change of address or telephone number within 7 days of the change. Notice to the Clerk of the Court and the Chapter 13 Trustee must be in writing.

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<sup>i</sup> See *In re Whitcomb*, 310 B.R. 428, 431 n.5 (Bankr. W.D. Ark. 2004) (citing Black's Law Dictionary and *Rice v. Bol*, 116 S.W.3d 599, 605 (Mo. Ct. App. W.D. 2003) for the definition of trade credit as being "credit that firms extend to other firms in the ordinary course of business through the creation of receivables or payables" and "trade credit involves the exchange of goods and services for other goods and services without the payment of money. This includes the extension of credit by the debtor to his clients or the extension of a creditor's supplies to the debtor."). *Chapter 13 Practice and Procedure* West 2011-1 Ed., §14:3 "§ 1302(c): Duties when the debtor is engaged in business"

**Chapter 13 Self-employed Engaged in Business – Timetable Checklist ✓ of Documents and Information**  
(02/25/2012)

✓	Documents or Information	§§	CH13 Form No.	Deadline
	Business Questionnaire	2.06(a)	AB-4	To the Trustee within <b>7 days</b> of petition date
	Proof of Insurance	2.02(a)		To the Trustee within <b>7 days</b> of petition date
	Rental Operation Summary	2.04		To the Trustee within <b>14 days</b> of petition date
	Sworn statement describing all pre-petition bank accounts closed or retain.	2.01(e)	AB-1	To the Trustee within <b>14 days</b> of petition date
	Copies of Pre-Petition Financial Statements	2.06(b)(1)		To the Trustee within <b>14 days</b> of petition date or 5 working days prior to the scheduled IDI, whichever is earlier
	Profit & Loss Statement Summary (1 year pre-petition)	2.06(b)(2)		To the Trustee within <b>14 days</b> of petition date or 5 working days prior to the scheduled IDI, whichever is earlier
	Copy of Income Tax Returns – Pre Petition	2.06(b)(3)		To the Trustee within <b>14 days</b> of petition date or 5 working days prior to the scheduled IDI, whichever is earlier
	Cash Receipts and Disbursement Summary (6 months pre-petition)	2.06(b)(4)	AB-2 AB-3	To the Trustee within <b>14 days</b> of petition date or 5 working days prior to the scheduled IDI, whichever is earlier
	All documents required in Sections 2.06	2.09		To the Trustee <b>5 working days</b> prior to the scheduled IDI
	Business Inventory	2.03		To the Trustee within <b>21 days</b> of petition date
	Current Schedule of Account Receivables and Account Payable	2.06(c)	MOR-10	To the Trustee within <b>21 days</b> of petition date or 5 working days prior to the scheduled IDI, whichever is earlier
	Monthly Operation Reports (Pre- Confirmation)	2.07 and 2.08	MOR-1- 11	File with the Court Not later than the <b>21<sup>st</sup> day of the month</b> following the reported month, starting reporting the month when the petition was filed
	Statement of Monthly Income and Expenditures	2.05(c)	AB-5	No later than 45 days after the due date for filing of each year Tax Return with the corresponding Tax authority. §521(g)(1)
	Copy of Income Tax Returns – Post Confirmation	2.05(b)		No later than 45 days after the due date for filing the Tax Return with the corresponding Tax authority.
	Change of Address or Telephone	2.11		Within 7 days after any change