

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

**OPERATING GUIDELINES AND REPORTING REQUIREMENTS
FOR SELF-EMPLOYED DEBTORS NOT ENGAGED IN BUSINESS
CHAPTER 13 CASES**

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U.S. Bankruptcy Courts, Federal District of Puerto Rico & USVI

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(Revised 02/25/12)

Article I. INTRODUCTION

Section 1.01 Chapter 13 Trustee's Duties regarding Self-employed Debtors Not 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. To comply with these duties the Chapter 13 Trustees have prepared these **Guidelines** (the "guidelines") for Chapter 13 "self-employed debtors not engaged in business" (the "**SED**"). These guidelines also assist debtors in the compliance of their duties and obligations pursuant to 11 U.S.C. § 521 and Rules 1007, 2015(c)(2) and 4002 of the Federal Rules of Bankruptcy Procedures ("FRBP").

"[R]egardless of whether the debtor is considered "engaged in business" under the Code § 1304 definition, a trustee may request that the debtor provide the following items to assess the case: financial statements the debtor has provided to anyone, including income and expense reports, profit and loss statements, or other monthly operating reports; recent monthly income and expense reports with supporting bank account statements; bank deposits for payroll taxes; recent years' federal and state income tax returns; evidence of federal and state tax withholdings, unemployment tax withholdings, and sales and use tax withholdings; copies of all current insurance policies or binders; and copies of all business licenses. These types of documents can provide a full picture of the debtor's business, including, for example, whether the debtor is indiscriminately using her business bank accounts to funds undisclosed expenses and insurance policies covering undisclosed or undervalued assets.

In addition, the trustee may require the debtor to maintain and provide to the trustee updated financial records on a regular basis after the plan is confirmed. Although nothing in Code § 1304 requires the Chapter 13 debtor to provide information about the business on a postconfirmation basis, many trustees may file a motion to require that the debtor provide updated cash flow reports and bank statements on a regular basis (monthly, quarterly or annually). At a minimum, Code § 521(f) and (g) permit the trustee to require the debtor provide her annual tax returns, updated schedule of income and expenses, and documents supporting this disclosure. Outside of the remittance

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of plan payments, the regular reporting of the debtor's business information will assist the trustee in determining whether the debtor's business is improving or not, thus warranting a motion to modify the plan, and for the debtor, to assist her in properly running her business, whether she is considered "engaged in business" or not. Thus, courts are likely to require a debtor to provide such information to the trustee if she does not do so voluntarily."

Chapter 13 Practice & Procedure § 14:3, West 2011-1 Ed.

Accordingly debtors must follow these guidelines and file certain financial information with the Chapter 13 Trustee. 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 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 NOT Engaged in Business

With the filing of a Chapter 13 petition, a debtor retains the possession of property of the estate. In exchange he will receive a discharge under 11 U.S.C. § 1328 after paying to his prepetition creditors, through a Chapter 13 Plan, not less than what they would have received if the estate was liquidated under a Chapter 7 case. Accordingly and until he has completed the payments under a confirmed Chapter 13 plan, the debtor has the fiduciary and statutory responsibility of preserving and maintaining the estate in order to complete plan payments on pre-petition debts, while keeping post-petition obligations current. (See: 11 U.S.C. §§ 521, 1325, 1327 &

1328)

"Even if a self-employed debtor is not "engaged in business," however, she will as a practical matter have record-keeping and reporting requirements. Because a self-employed debtor, unlike an employee who receives regular payment advices, must maintain records to substantiate her income and expenses in conducting her business, she must have such information not only to satisfy the court and trustee regarding the confirmation requirements of Code §§ 1322 and 1325, but also to prepare and file income tax returns so that she timely pays taxes and does not incur postconfirmation tax liabilities."

Chapter 13 Practice & Procedure § 14:3, West 2011-1 Ed.

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

Digital copied of documents to be provided to the Chapter 13 Trustee shall be uploaded electronically through the Trustee's electronic filing systems in PDF format (TEDFA). Instructions on how to use this 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 SED 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 paragraph (b) of this section. No bank accounts, other than the ones required in subsequent paragraph (b) of this section, should be kept open after the petition date.
- (b) Every SED shall open at least two separate accounts: (1) for Business Operations (to include Operations, Payroll, Taxes, 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) Every SED must maintain bank records, statements and

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anceled checks. SED must provide copy of cancelled checks to the Chapter 13 Trustee in support of claimed monthly expenses.

- (e) Within 14 days of the filing of the petition, the SED 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(a)(4)]

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) SED 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:
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 SED, 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 SED 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.

Section 2.05 Taxes and Annual Statement of Income and Expenses

(a) **General:** The SED 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.

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- (b) **Post-Confirmation Income Tax Returns:** The SED 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 Expenditures:** The SED 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). [You must use **CH13 Form AB-5.**]

Section 2.06 Information and Documents required to be filed with the Court, or the Chapter 13 Trustee.:

(a) Business Questionnaire [CH13 Form AB-4] [11 U.S.C. § 704(a)(4)] to be provided to the Chapter 13 Trustee **within 7 days after the petition date.**

(b) SED 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)(4)]
- (2) A profit and loss statement Summary for at least the year preceding the filing; [11 U.S.C. §§ 704(a)(4) & 1302(b)(1); Rule 2015(c)(2)]
- (3) Income Tax Returns for the four years prior to the petition date. [11 U.S.C. §§ 704(a)(4); 521(e)(2)(A) & 1302(b)(1)]
- (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. [11 U.S.C. §§ 704(a)(4); & 1302(b)(1)]

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- (5) Copy of all Municipal Permits (Patentes) [11 U.S.C. §§ 704(a)(4); & 1302(b)(1)]
- (c) SED 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)(2) 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 before the scheduled 341; [§704(a)(4); Rule 2015(c)(2) FRBP]

Section 2.07 SED Monthly Operating Reports (Form A008 MORs):

The SED shall file with the Court Monthly Operating Reports not later than the **21st 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]**
- 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. §§ 1302(b), 704(a)(4) & Rule 2015(c)(2) FRBP]

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

Section 2.09 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.

Section 2.10 Change of Address

It is the debtor's 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.

Chapter 13 Self-employed Not engaged in Business – Timetable Checklist ✓ of Documents and Information
(02/25/12)

✓	Documents or Information	§§	CH13 Form No.	Deadline
	Business Questionnaire	2.06(a)	AB-4	To the Trustee within 7 days of petition date
	Proof of Insurance	2.02(a)		To the Trustee within 7 days of petition date
	Sworn statement describing all pre-petition bank accounts closed or retain.	2.01(e)	AB-1	To the Trustee within 14 days of petition date
	Rental Operation Summary	2.04		To the Trustee within 14 days of petition date
	Copies of Pre-Petition Financial Statements	2.06(b)(1)		To the Trustee within 14 days of petition date
	Profit & Loss Statement Summary (1 year pre-petition)	2.06(b)(2)		To the Trustee within 14 days of petition date
	Copy of Income Tax Returns – Pre Confirmation	2.06(b)(3)		To the Trustee within 14 days of petition date
	Cash Receipts and Disbursement Summary (6 months pre- petition)	2.06(b)(4)	AB-2 AB-3	To the Trustee within 14 days of petition date
	Municipal Permits (<i>Patentes</i>)	2.06(b)(5)		To the Trustee within 14 days of petition date
	Business Inventory	2.03		To the Trustee within 21 days of petition date
	Current Schedule of Account Receivables and Account Payable	2.06(c)	MOR-10	To the Trustee within 21 days of petition date
	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.
	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)
	Monthly Operation Reports (Pre- Confirmation)	2.07 and 2.08	MOR-1-11	File with the Court Not later than the 21 st day of the month following the reported month, starting reporting the month when the petition was filed
	Change of Address or Telephone	2.10		Within 7 days after any change