SO ORDERED.

SIGNED this 7th day of May, 2021.

BENJAMIN A. KAHN
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In re:	)	
	)	
Gwendolyn Charlene Blue,	)	Case No. 21-80059
	)	
Debtor.	)	Chapter 11

MEMORANDUM ORDER OVERRULING BANKRUPTCY ADMINISTRATOR'S OBJECTION TO DEBTOR'S SUBCHAPTER V ELECTION

This case is before the Court on the Bankruptcy Administrator's Objection to Debtor's Subchapter V Election (the "Objection") [ECF No. 28]. Richard M. Hutson II, as subchapter V trustee ("Trustee") joined in the Objection. For the reasons set forth herein, the Court will overrule the Objection, and Debtor's case shall proceed as a case under subchapter V of chapter 11.[1]

[1] The Court conducted a status conference in this case on May 4, 2021. ECF No. 55. At the status conference, the Court announced that it would sustain the Bankruptcy Administrator's objection because, although Debtor established that she was engaged in commercial and business activities, the evidence failed to establish that not less than 50 percent of Debtor's debts arose from commercial or business activities.

On May 7, 2021, the Court held a telephonic status hearing with Debtor's counsel, the Trustee, and the BA to inform the parties of the Court's reconsideration of its oral ruling. For the reasons set forth herein, and because the Court has determined that not less than 50% of Debtor's debts arose from the commercial or business activities of the Debtor, the Court has reconsidered its oral ruling, and will overrule the BA's objection. At the telephonic status hearing, Debtor's counsel requested an extension of time to file a subchapter V plan. Neither the subchapter V trustee, nor the BA objected to the requested extension, and for good cause shown, the Court will grant a 10-day extension of

I. Jurisdiction and Authority

The Court has jurisdiction over the subject matter of this proceeding pursuant to 28 U.S.C. § 1334. Under 28 U.S.C. § 157(a), the United States District Court for the Middle District of North Carolina has referred this case and this proceeding to this Court by its Local Rule 83.11. This is a statutorily core proceeding under 28 U.S.C. § 157(b)(1) and (b)(2)(A) and (O). The Court has constitutional authority to enter this order.

II. Findings of Fact

Debtor's Employment

Debtor previously was the sole owner and president of Wirecentric, Inc. ("Wirecentric"). Through Wirecentric, Debtor provided information transport ("IT") consulting services. Such services included installing wiring, equipment, and other infrastructure to enable data transport for its customers' businesses. Wirecentric ceased operations in May 2019 and has no assets. Debtor has no intention of reinstating Wirecentric.

Since August of 2020, Debtor has worked full-time at Lanier Law Group as a Registered Communications Distributions Designer, for which she is a salaried, W-2 employee. In addition to her employment with the Lanier Law Group, Debtor works as an IT

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the time within which Debtor must file a plan under 11 U.S.C. § 1189(b). The Court will enter a separate order granting the extension.

consultant for two different entities as an independent contractor, Roxboro Housing Authority ("RHA") and Technology Express.[2] She does not hire additional personnel to assist with her work for either RHA or Technology Express.[3]

Debtor has worked with RHA since 2000. Debtor builds and designs RHA's servers, inputs VPNs in RHA employee laptops, and is the project designer implementing Wi-Fi in Roxboro neighborhoods. Debtor also negotiates contracts on behalf of RHA to install hardware.[4] RHA compensates Debtor hourly at a rate of $50.00 for her design services, and through a flat monthly fee to handle service problems. Debtor estimated she receives 3 to 4 service calls per week, which last anywhere from 5 to 15 minutes long. She has also spent twenty-nine hours in total to complete the Wi-Fi project. Debtor receives a Form 1099 from RHA. For her work for RHA, Debtor uses her office space in her residence, personal cell phone and computers, and personal printers. RHA does not reimburse Debtor for any travel expenses, however RHA pays for all hardware expenses during repairs.

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[2] Debtor testified that she does not advertise her IT consulting services. She anticipates helping designing pathways and wiring for newly built large homes, but has not worked on such projects to date. Debtor also stated she does not have a website for her IT consulting services and has not created a separate entity under which she does business.

[3] Debtor's relationships with RHA and Technology Express are governed by verbal contracts.

[4] Debtor testified that she was in the midst of negotiating a contract with a company called "Initec" to have them install hardware.

Debtor has provided troubleshooting assistance, VPN and telephone services, and fiber design for Technology Express factories since the end of 2019. Debtor is compensated at an hourly rate of $50.00. Debtor estimates she earns between $1,000 and $2,000 per month and works approximately 20 hours per week for Technology Express. If Debtor makes repairs, Technology Express pays for any necessary equipment. Debtor is reimbursed for travel expense for trips over 25 miles away. Debtor receives a Form 1099 from Technology express. The activities in which Debtor is engaged as an independent contractor for RHA and Technology Express are similar, if not identical, to those previously performed by her through Wirecentric. Debtor pays taxes on an annual basis, and files a Schedule C in connection with her consulting work.

Post-Bankruptcy Events

Debtor commenced this case on February 16, 2021 by filing a voluntary petition under chapter 11. ECF No. 1 (the "Petition"). On the Petition, Debtor stated she is a "debtor" as defined in 11 U.S.C. § 1182(1) and elected to proceed under subchapter V of chapter 11. Id. at 4. On February 17, 2021, the BA filed a notice of appointment of the Trustee. ECF No. 8. The Court entered an order setting a status conference under 11 U.S.C. § 1188 for March 9, 2021 and directing Debtor to file a status report as required by § 1188(c) on Local Form NCMB-1105. ECF No. 10. On February

23, 2021, the Debtor filed a status conference report (the "Section 1188(c) Report"). ECF No. 20.

On March 2, 2021, the BA filed a timely objection under Revised Interim Rule 1020(b)[5] to Debtor's subchapter V election (the "Objection"). ECF No. 28. The Court set the BA's Objection for hearing on March 10, 2021 and rescheduled the § 1188 status conference for the same date. ECF Nos. 29 and 30. On March 9, 2021, Debtor responded to the BA's Objection ("the Response"). ECF No. 37.

On March 10, 2021, the Court held the § 1188 status conference[6] and an evidentiary hearing on the BA's Objection. During the hearing, the BA, Trustee, and Debtor's counsel questioned the Debtor to ascertain which debts arose from the commercial or business activities of Debtor as contemplated by § 1182(1)(A). At the conclusion of Debtor's testimony, the BA, Trustee, and Debtor's counsel disagreed about the classification of two categories of debt.

The first disputed category of debt relates to Debtor's real property located in Fayetteville, North Carolina (the "real property" or "former residence"). The real property originally

[5] See M.D.N.C. S.O. Renewed Adoption of Revised Interim Bankruptcy Rule 1020.

[6] At the hearing, the Court noted that Debtor's Section 1188(c) Report did not conform to the requirements or purposes of § 1188(c). The Section 1188(c) Report merely indicating that the Debtor intended to pursue a consensual plan and that Debtor's counsel intended to contact creditors to begin formulating a plan, but had not yet done so.

served as Debtor's personal residence until 2002 when she purchased her current residence. Instead of selling her former residence, she began renting it. In July of 2015, Debtor refinanced her original mortgage on her former residence.[7] She currently owes $58,158.50 under the refinanced mortgage.[8] Debtor rented the real property steadily from 2002 until 2018, but she evicted the tenant in 2018 for non-payment of rent. The tenant also caused substantial damages to the residence. In an attempt to return the property to rentable condition, Debtor incurred debt with GreenSky Credit, Lowes, and Wells Fargo ("home repair debts" or "home repair creditors"). Debtor contends that the repairs all were necessitated by the actions of her tenant. According to the filed proofs of claim, Debtor owes a total of $38,271.31 to the home repair creditors. For the past three years, Debtor neither has rented out the real property, nor sought another tenant because

[7] Debtor testified at the hearing that the real property became rental property in 2002. However, the schedules and the proof of claim filed by NC State Employees Credit Union ("SECU") indicate that Debtor took out a mortgage on the real property in 2015. SECU filed two claims, one for her former residence and one for Debtor's current residence. See Claim Nos. 14 and 15. While both proofs of claim contained a specific financial account of the amount Debtor owes on each mortgage, SECU only attached the Note on the former residence and failed to attach a note related to Debtor's primary residence in Roxboro. Exhibit A to the Note indicates that Debtor purchased her former residence on June 14, 1988.

[8] Debtor's schedules indicate she incurred the debt with SECU on June 1, 2015 and owes $57,418.42. The schedules also estimate the market value of the property at $40,300.00. In contrast, SECU's proof of claim indicates the debt was incurred on June 8, 2015 and Debtor owes $58,158.50. SECU values the property at $111,000.00. The Court has used the amount indicated in SECU's proof of claim for purposes of calculating the amount of debt on the petition date under 11 U.S.C. § 1182. Nothing herein shall be construed as a determination of the amount of the claim.

she has been unable to afford all the renovations necessary to make the house rentable. Nevertheless, Debtor contends the mortgage and the home repair debts should be considered business debt (collectively, the "real property debts") because Debtor previously rented the property, the damages were caused by that rental, and she intends to rent it again in the future. Debtor does not have any current agreement to rent the property and is not currently seeking a tenant because of the condition of the property.

In response, the BA asserts that the real property debts should not be classified as debts arising from the commercial or business activities of the Debtor, because the original mortgage on the real property was taken out for personal, non-business, reasons, and the real property was used by Debtor as her home residence and only temporarily rented. Further, at the time Debtor incurred the home repair debts, no tenant resided there, and Debtor has neither rented the property since she incurred the repair and renovation costs, nor sought any tenant.

The second category of disputed debt relates to Debtor's liability on a $60,000.00 U.S. Small Business Administration loan listed in Section 4 of Schedule E/F of the Petition (the "SBA Loan"). At the hearing, Debtor testified that she was not personally liable on the SBA Loan. In response, the Court expressed concern about certain inconsistencies between Debtor's

testimony and schedules with respect to Debtor's putative liability on the SBA Loan. Therefore, the Court gave Debtor's counsel through and including March 17, 2021 to supplement the record with a declaration from Debtor and supporting documents showing the extent Debtor is personally responsible for the SBA Obligation. The Court also gave the BA or the Trustee three business days after any supplementation submitted by Debtor to give notice of any desire to be heard further. The Court permitted Debtor to supplement the record solely with respect to the liability for the SBA Obligation. At the end of the hearing, the Court took the matter under advisement.

On March 11, 2021, contrary to her testimony at the hearing, Debtor filed a Declaration stating that she was "personally obligated on the Note" and "signed the Note as a borrower." ECF No. 39 at ¶ 5. Debtor contends that she is personally liable because of a provision in the Note that "'all individuals and entities signing this note are Jointly and Severally liable'. (See attached Note)." Id. While Debtor did not initially attach the note to the Declaration, the following day, Debtor filed a copy of the note ("SBA Note"). ECF No. 42. The SBA Note provides that the borrower is Wirecentric. Debtor did not sign the SBA Note in her name, but only in her capacity as the president of Wirecentric. Debtor did not provide any evidence of a personal guaranty of the SBA Note.

Thereafter, Trustee filed a response to the Declaration and Exhibit. ECF No. 45. In his response, Trustee stated that the SBA Note does not substantiate that Debtor is personally obligated because the SBA Note provides that (1) the borrower is Wirecentric; and (2) Debtor signed in her capacity as president of Wirecentric and not individually. Trustee did not wish to be heard further under the Order to Supplement the Record. The following day, the Bankruptcy Administrator ("BA") joined in Trustee's response. ECF No. 46. The evidence is now closed, and the matter is ripe for decision.

III. Discussion

A. Eligibility for Subchapter V

Effective February 19, 2020, the Small Business Reorganization Act of 2019 ("SBRA") provided a new subchapter V of chapter 11 of the Bankruptcy Code. Pub. L. No. 116-54, 133 Stat. 1079 (2019). Together, the SBRA and subchapter V broaden relief available to small businesses, considering the "unique needs of small businesses" and "streamlin[ing] existing reorganization processes." In re Progressive Solutions, Inc., 615 B.R. 894, 897 (Bankr. C.D. Cal. 2020)(citing various public statements from cosponsors of the Senate version of the SBRA, including Grassley, Bipartisan Colleagues Introduce Legislation To Help Small Businesses Restructure Debt, Chuck Grassley (Apr. 9, 2019), https://www.grassley.senate.gov/news/news-releases/grassley-

bipartisan-colleagues-introduce-legislation-help-small-businesses-0); In re Wright, Case No. 20-1035, 2020 WL 2193240, at *3 (Bankr. D.S.C. 2020)(stating that "the brief legislative history of the SBRA indicates it was intended to improve the ability of small businesses to reorganize and ultimately remain in business. . .."); In re Seven Stars on the Hudson Corp., 618 B.R. 333, 336 (Bankr. S.D. Fla. 2020)(stating the purposes of subchapter V was to provide an "an expedited process for small business debtors to reorganize quickly, inexpensively, and efficiently."); H.R. REP. No. 116-171, at 1 (2019), available at https://www.govinfo.gov/content/pkg/CRPT-116hrpt171/pdf/CRPT-116hrpt171.pdf (stating that subchapter V is meant to be a streamlined "process by which small business debtors reorganize and rehabilitate their financial affairs.").

To proceed under subchapter V, a debtor must meet the definition of a debtor under § 1182(1) and must elect its application. 11 U.S.C. § 103(i) ("(i) Subchapter V of chapter 11 of this title applies only in a case under chapter 11 in which a debtor (as defined in section 1182) elects that subchapter V of chapter 11 shall apply."). Section 1182 provides the definition of a debtor under subchapter V. Only § 1182(1)(A) is relevant for purposes of this case. It provides:

(1) Debtor.--The term "debtor"—

> (A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning single asset real estate) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition or the date of the order for relief in an amount not more than $7,500,000 (excluding debts owed to 1 or more affiliates or insiders) not less than 50 percent of which arose from the commercial or business activities of the debtor.

§ 1182(1)(A).[9]

Under Revised Interim Rule 1020(a), a debtor proceeds as a subchapter V or a small business debtor if so indicated by the debtor's statement on the petition "unless and until the court enters an order finding that the debtor's statement is incorrect." The United States Trustee or a party in interest may object to a debtor's subchapter V election "no later than 30 days after the conclusion of the meeting of creditors held under § 341(a) of the Code, or within 30 days after any amendment to the statement,

[9] Under the Coronavirus Aid, Relief, and Economic Security Act Pub. L. No.116-136, § 1113, 134 Stat 281 (2020), (the "CARES Act") Congress moved the definition of a "debtor" for purposes of eligibility to elect to proceed under subchapter V to § 1182(1), and raised the debt limit of debtors that are eligible to elect subchapter V to $7.5 million. Congress did not raise the debt limit for purposes of defining those debtors who constitute small business debtors under § 101[51D]. The CARES Act became effective March 27, 2020 and was set to sunset one year after its enactment. On March 27, 2021, President Biden signed the Covid-19 Bankruptcy Relief Extension Act, Pub. L. No. 117-5, § 2, 135 Stat. 249 (2021), extending the $7,500,000 eligibility threshold through March 27, 2022. No party contests that Debtor's total debts exceed the amounts in §§ 101(51D) or 1182(1)(A).

whichever is later." Id. The BA's Objection in this case was timely.

When a party challenges debtor's eligibility to file under a particular chapter of the United States Bankruptcy Code, the debtor carries the burden of establishing such eligibility. See In re Wright, 2020 WL 2193240 at *2 (quoting In re Voelker, 123 B.R. 749, 750 (Bankr E.D. Mich. 1990)). In Wright, the court extended this general rule to apply to objections to a debtor's eligibility to elect to proceed under subchapter V. Id. The majority of courts similarly has extended this rule when determining a debtor's eligibility to elect subchapter V. See In re Offer Space, LLC, Case No. 20-27480, 2021 WL 1582625, at *2 (Bankr. D. Utah 2021); In re Ikalowych, Case No. 20-17547, 2021 WL 1546547, at *7 (Bankr. D. Colo. 2021) (citing In re Sullivan, Case No. 20-11876, 2021 WL 1250805, at *2 (Bankr. D. Colo. March 30, 2021) and Tenth Circuit precedent for the proposition that debtors who file under chapters 9 and 12 bear the burden of proving eligibility); In re Johnson, Case No. 19-42063, 2021 WL 825156, at *4 (Bankr. N.D. Tex. 2021); In re Thurmon, Case No. 20-41400, 2020 WL 7249555, at *1 n. 4 (Bankr. W.D. Mo. Dec. 8, 2020); In re Blanchard, Case No. 19-12440, 2020 WL 4032411, at *1-2 (Bankr. E.D. La. July 16, 2020) (citing Wright); but see In re Body Transit, Inc., 613 B.R. 400, 409 n. 15 (Bankr. E.D. Pa. 2020)(stating that "[i]t is appropriate to place the burden of proof on [the creditor], as it is the de

facto moving party"). This Court agrees with those courts concluding that the debtor bears the burden of proof to establish eligibility to proceed under subchapter V.

To be eligible to elect to proceed under subchapter V, Debtor must therefore establish that: (1) she meets the definition of a "person"; (2) she is "engaged in commercial or business activities"; (3) she does not have aggregate debt exceeding $7,500,000 as of the date of petition; and (4) at least 50 percent of her debts arise from the commercial or business activities of the debtor. Offer Space, 2021 WL 1582625 at *2 (citing 11 U.S.C. § 1182(1)(A)).

The BA and Trustee contend that Debtor does not qualify to elect to proceed under subchapter V because she is not engaged in commercial or business activities and more than 50 percent of her debts arise from activities other than her commercial or business activities. The objecting parties initially assert that neither her former ownership of Wirecentric, nor her current consulting activities are sufficient because the LLC is defunct and Debtor's IT consulting businesses are not the type or scope of commercial or business activities that Congress intended to fall within the definition. Second, the objecting parties contend that less than fifty percent of Debtor's aggregate noncontingent, liquidated secured and unsecured debts arose from Debtor's commercial or business activities. And third, even if Debtor could satisfy the

first two bases for the objection, there must be a nexus between the business or commercial activities in which Debtor is presently engaged and the business and commercial activities from which the not less than 50% of her debts arose under § 1182(1)(A).

In response, Debtor asserts that: (1) her current IT consulting services are "commercial or business activities" as contemplated by § 1182(1)(A); (2) even though Wirecentric is defunct, neither Congress or the Bankruptcy Code mandate that her business debts must be derived from an entity that is currently operating; (3) at least 50 percent of her debts arose from commercial or business activities; and (4) there is no requirement that there be a nexus between the debtor's current commercial or business activities and the activities that gave rise to the requisite debt.

1. Debtor is a person "engaged in commercial or business activities" on the petition date under § 1182.

The BA points to various aspects of Debtor's consulting services to suggest that her activities do not rise to the level of "commercial or business activity." The BA contends that Debtor does not perform IT consulting services through a separate corporate entity, but rather works as a part-time independent contractor, in addition to her full-time job with Lanier Law. While she earns material additional income from consulting for RHA and Technology Express, Debtor's business expenses are not

reimbursed, she works on an hourly basis, and she does not advertise her services. As for Wirecentric, Debtor is not engaged in commercial or business activities through Wirecentric because Debtor has not operated the entity since 2019 when North Carolina Secretary of State administratively dissolved Wirecentric. Debtor has no intention of reinstating operations under Wirecentric.

Because there is no statutory definition[10] of "commercial or business activities" and scant legislative history exists, the Court turns to the plain language of the statute to determine the meaning of "commercial or business activities" as contemplated by the section. In re Johnson, Case No. 19-42063, 2021 WL 825156, at *5 (Bankr. N.D. Tex. 2021)(citing United States v. Ron Pair Enters., Inc., 489 U.S. 235, 241 (1989) ("The task of resolving statutory disputes begins where all such disputes must begin - with the language of the statute itself.")); In re Ellingsworth Residential Cmty. Ass'n, 619 B.R. 519, 521 (Bankr. M.D. Fla. 2020); In re Thurmon, 625 B.R. 417, 422 (Bankr. W.D. Mo. 2020)("We know that when Congress does not define a term, we rely on the word or phrase's plain meaning or common understanding."). It is a well-settled rule that unless the language of the statute is ambiguous,

[10] As Judge Jennemann noted in In re Ellingsworth Residential Cmty. Ass'n, Inc., the only statutory exclusion to the definition of a small business debtor under 11 U.S.C. § 101(51D)(A), which is equivalent to the subchapter V debtor definition, "is a person whose primary business is owning a single parcel of real estate," which is inapplicable in Debtor's case. 619 B.R. 519, 521 (Bankr. M.D. Fla. 2020).

the "court's analysis must end with the statute's plain language." In re Sunterra Corp., 361 F.3d 257, 265 (4th Cir. 2004) (citations omitted).

The Court in Offer Space examined the plain meaning of "engaged in commercial or business activities":

> Merriam-Webster Online Dictionary defines the term "engaged" as "involved in activity: occupied, busy." *Engaged*, Merriam, https://www.merriam-webster.com/dictionary/engaged (last visited April 15, 2021) (hereinafter, "Merriam-Webster"). The term "commercial" is defined as "occupied with or engaged in commerce or work intended for commerce" and "of or relating to commerce," *Commercial*, Merriam-Webster, and "commerce" is defined as "the exchange or buying and selling of commodities on a large scale involving transportation from place to place," *Commerce*, Merriam-Webster. "Business" is defined as "a usually commercial or mercantile activity engaged in as a means of livelihood," or "dealings or transactions especially of an economic nature." *Business*, Merriam-Webster. And lastly, the term "activity" is defined as "the quality or state of being active: behavior or actions of a particular kind." *Activity*, Merriam-Webster.

Offer Space, 2021 WL 1582625, at *3. Included within these definitions, and without limitation, a person is engaged in commercial or business activities when she participates in the purchasing or "selling of economic goods or services for a profit." Johnson, 2021 WL 825156, at *8.

The Court first turns to the issue of whether Debtor must be currently engaged in commercial or business activities to qualify for subchapter V. For support, the BA cited the recently decided Thurmon and Johnson opinions. Thurmon, 625 B.R. 417 (finding that

retired individual debtors who had sold a pharmacy business were not engaged in commercial or business activities); Johnson, 2021 WL 825156 (finding neither an individual debtor who managed a now-defunct business or an employed officer of a non-debtor business were engaged in commercial or business activities). Prior to the Thurmon decision, some courts determined that subchapter V does not require debtors to be currently engaged in business activities on the petition date. Thurmon, 625 B.R. at 421 n. 13 (citing In re Wright, Case No. 20-01035, 2020 WL 2193240 (Bankr. D.S.C. April 27, 2020) (stating that "nothing [in the legislative history of the SBRA or subchapter V] or in the language of the definition of a small business debtor, limits application to debtors currently engaged in business or commercial activities") (emphasis in original); In re Bonert, 619 B.R. 248, 255–56 (Bankr. C.D. Cal. 2020) (agreeing with Wright that subchapter V designation is not limited to debtors currently engaged in business operations); In re Blanchard, Case No. 19-12440, 2020 WL 4032411, at *2 (Bankr. E.D. La. July 16, 2020) (adopting the reasoning of Bonert and Wright)). The majority of recent cases to examine the issue require subchapter V debtors to be presently engaged in business or commercial activities. See Offer Space, 2021 WL 1582625; Ikalowych, 2021 WL 1546547; Johnson, 2021 WL 825156; and Thurmon, 625 B.R. 417.

The Court agrees with the BA, Trustee, and the majority that the term "engaged" as used in § 1182(1)(A) requires debtors to be presently participating in business or commercial activities as of the petition date. See Offer Space, 2021 WL 1582625, at *4; Ikalowych, 2021 WL 1433241, at *12 (rejecting the "Wright-Bonert-Blanchard line of cases" and finding that "engaged in" means "that a person or entity is presently doings something"); Johnson, 2021 WL 825156, at *6 ("[A]pplying the ordinary meaning of 'engaged' to the language of section 101(51D), a person 'engaged in' commercial or business activities is a person occupied with or busy in commercial or business activities - not a person who at some point in the past had such involvement."); Thurmon, 625 B.R. at 422 ("The plain meaning of 'engaged in' means to be actively and currently involved. In § 1182(1)(A) of the Bankruptcy Code, 'engaged in' is written not in the past or future but in the present tense. To add the word 'currently' to the phrase 'engaged in' would be redundant, because the currency of the involvement or activeness is inherent in the idea of being 'engaged in' something."). As stated by the court in Offer Space, the minority position "contravenes the plain meaning of 'engaged' as it is used in Subchapter V," and the more logical reading of § 1182(1)(A) is to construe the definition to require debtors to be presently engaged in commercial or business activities. Offer Space, 2021 WL 1582625, at *4.

Debtor is currently engaged in commercial or business activities as contemplated by § 1182(1)(A). At a minimum, Debtor's consulting for RHA and Technology Express constitutes such activities. Debtor's IT consulting is clearly the delivery of services in exchange for a profit. As a sole proprietor, Debtor provides various business services to RHA and Technology Express, including building and designing servers, inputting VPNs, designing the implementation of Wi-Fi for residents, and providing troubleshooting assistance, VPN and telephone services, and fiber design. These services provide a material contribution to Debtor's income.

The Court finds the decision and analysis in Offer Space particularly cogent. In re Offer Space, LLC, 2021 WL 1582625 (Bankr. D. Utah 2021). In Offer Space, the debtor was a limited liability company that had previously operated as a vendor marketing solutions company. Id. at *1. After suffering financial difficulties, the debtor sold its proprietary software, its main business asset, and began liquidating assets and paying creditors. Id. The debtor then filed for chapter 11 and elected subchapter V. Id. The Trustee objected, contending that debtor was ineligible to elect subchapter V because the debtor was no longer an operating business as of the petition date, as it had ceased normal business operations and had no intention to reorganize, but only to liquidate remaining assets. Id. at *5.

The court in Offer Space rejected the subchapter V trustee's position that § 1182(1) requires an operating business. Id. at *4. Instead, the definition specifically requires only commercial or business "activities," which is a much broader term than "operations." Id. Even though the debtor had ceased its prior business operations, the debtor clearly remain engaged in business activities, maintaining bank accounts, accounts receivables, and stocks, winding down the business by paying creditors and otherwise realizing value for its assets, and investigating counterclaims in an ongoing lawsuit. Id. The court concluded that these activities were sufficient to fall within the definition of § 1182(1)(A). Id. at *4, *6-7.

Debtor similarly is currently engaged in sufficient commercial or business activities. Unlike the debtor in Offer Space, Debtor continues working as an IT consultant for both RHA and Technology Express, and her business activities are not merely limited to those incident to winding up a previous business. Even though Debtor only works part-time a consultant for her two clients while also being a full time employee at the Lanier Law Group, nothing in the Bankruptcy Code or legislative history of subchapter V mandates that commercial or business activities must be full-time to qualify, and Debtor's activities in this case are substantial and material. Therefore, Debtor is "engaged in

commercial or business activities" as contemplated by § 1182(1)(A).

2. The plain language of § 1182(1)(A) does not mandate that Debtor's scheduled business debts be related to her current business activities.

A significant portion of Debtor's debts arose from Wirecentric operations,[11] rather than from her current IT consulting services. The BA contends this disconnection is disqualifying due to the plain language of § 1182, arguing there must be a nexus between the business or commercial activities in which Debtor currently is engaged, and the business and commercial activities from which the debts on the Petition arose. The BA bases this argument on the language of § 1182(1)(A), which requires that not less than 50 percent of the debtor's debt arise from "the commercial or business activities of the debtor." (emphasis added). The Court disagrees. Such an implication is not required by the language of the statute, and would be far too limiting for the remedial purposes of subchapter V.

Courts have interpreted and applied § 1182(1) much more broadly than proposed by the BA. In re Offer Space, LLC, 2021 WL 1582625, at *2 (Bankr. D. Utah 2021) (observing that, "[w]hile successful reorganizations may be the primary purpose behind SBRA,

[11] Guarantying debt can be a sufficient "business or commercial activity." However, as explained further below, Debtor signed the SBA Loan in her capacity as an officer of Wirecentric, and did not provide any evidence that she personally guaranteed the debt.

that does not indicate that there are not also secondary or even tertiary purposes for SBRA, i.e., providing relief for small business debtors who intend to liquidate their businesses without the cumbersome structure that otherwise exists in Chapter 11."); See also Ellingsworth Residential, 619 B.R. at 521 ("Congress could have chosen different terms or added other exclusions when drafting the SBRA, but instead chose very broad language"); Blanchard, 2020 WL 40323411, at *2 (allowing the debtors to proceed under subchapter V, even though their debts stemmed "from operation of both currently operating businesses and non-operating businesses").

Similar to the debtor in Blanchard, Debtor intends to use subchapter V to address both defunct and non-defunct commercial and business activities, and the more straightforward interpretation of § 1182(1)(A) does not require a connection of debts to current business activities. Nothing in the statute requires that there be a nexus between the qualifying debts and the Debtor's current business or commercial activities. Moreover, such an interpretation could, for example, disqualify meritorious small businesses from the remedial purposes of subchapter V simply by having significant debts from former operations. The Court will not interpret subchapter V as narrowly as suggested by the BA.

3. Debtor satisfies the 50 percent business debt requirement under § 1182(1)(A).

Debtor has established that not less than 50 percent of her debt arose from commercial or business activities as required by § 1182(1)(A). See In re Crilly, Case No. 20-11637, 2020 WL 3549848, at *9 (Bankr. W.D. Okla. 2020)("The key to identifying a small business debtor is . . . whether more than 50% of the debtor's debts arose from commercial or business activities.") (citing In re Ventura, 615 B.R. 1, 13 (Bankr. E.D.N.Y. 2020)).

The evidence showed that, as of the Petition date, Debtors total debts were $908,494.87.[12] Not less than 50 percent of that amount is $454,247.44, the minimum amount of debts arising from commercial or business activities Debtor must have to proceed under subchapter V. The following debts[13] did not arise out of Debtor's commercial or business activities:

[12] The Court has relied on Debtor's schedules and filed proofs of claim. The Court has included the scheduled amount of claims unless the creditor has filed a proof of claim. If a claim has been filed, the Court has used the amounts asserted in the claim. In re Steffens, 342 B.R. 851 (Bankr. M.D. Fla. 2005) (finding the court could look beyond debtors' schedules at the filed proofs of claim to determine whether debtors' debt exceeded the chapter 13 statutory limit); see also In re Ollis, 609 B.R. 459, 465 (Bankr. D.S.C. 2019) (looking beyond the schedules to determine a chapter 13 debtor's aggregate debt "because the evidence demonstrates that certain amounts on [debtor's] Schedules were grossly inaccurate and numerous debts were omitted"); In re Kelly, Case No. 18-13244, 2018 WL 4354653, at *5 (Bankr. D. Md. 2018) ("[I]t would eviscerate the Chapter 13 eligibility requirements if a court could only consider a debtor's schedules regardless of their completion and apparent inaccuracies."); In re Bernick, 440 B.R. 449, 450 (Bankr. E.D. Va. 2010).

[13] Debtor's original schedules contained five duplicate debts which the Court has left out from the calculation of total debts listed above. On Schedule D of the original Petition, claim 2.7 is a duplicate of 2.6, and claim 2.8 is a duplicate of 2.5. On Schedule E/F, claim 4.10 is a duplicate of 4.8, claim 4.20 is a duplicate of 4.14, and claim 4.21 is a duplicate of 4.7. Regarding claim 2.5 on Schedule D, the Court left this claim out of the total calculation

Debts not arising from commercial or business activities	**Amount**
Ally Financial	$25,054.82
NC State Federal Credit Union	$107,412.49
OneMain Financial	$9,323.21
Cumberland County Tax Collector	$33.69
Capital One Bank USA	$3,681.45
Capital One/Walmart	$819.04
Citibank/The Home Depot	$1,378.00
Citicards CBNA	$7,171.00
Comenity Bank/Lane Bryant	$4,277.00
Duke University Federal Credit Union	$4,557.17
Kohls/Capital One	$3,406.51
Merrick Bank/CardWorks	$1,516.23
Online Collections, Duke Energy	$191.00
Springoakcap	$3,492.00
U.S. Department of Education	$221,010.37
Total	**$393,323.98**

The following debts arose out of Debtor's commercial or business activities:

Debts Arising from Commercial or Business Activities	**Amount**
FC Market Place LLC	$156,750.99
TBF Financial LLC	$52,311.77
Internal Revenue Service	$78,922.43
Acsentium Capital	$43,485.20

of debts because Debtor's testimony indicated that half of the $10,838.00 debt arose from her commercial or business activities, and thus would have no impact on the fifty-percent-business-debt threshold.

After the hearing, Debtor filed amended Form 106, Schedule A/B, Schedule D, Schedule E/F, Schedule G, and Official Form 106Dec. ECF No. 47. Debtor removed the duplicates from her original schedules and also deleted claim 4.2 of BB&T for $275.00 on Schedule E/F.

On Schedule E/F claim 2.2, Debtor valued the "Internal Revenue Trust Fund" claim at $87,000.00. However, on Form 106Sum, Debtor valued the claim in amount of $87,033.69 on both the originally filed and amended petition. On March 15, 2021, the IRS filed its claim in the amount of $78,922.43. The Court has used the amount in the filed claim.

BB&T[14]	$3,238.96
Best Egg	$7,122.80
WeBank c/o CAN Capital Asst Servicing, Inc. as Servicer	$76,908.93
Total	**$418,741.08**

These allocations and amounts were undisputed, but Debtor and the BA disagreed about whether certain other debts arose out of Debtor's commercial or business activities. The following debts are related to Debtor's former residence:

Former Residence Debts	**Amount**
NC State Federal Credit Union	$58,158.50
GreenSky Credit	$11,209.22
Lowes	$12,531.89
Wells Fargo Advantage	$14,530.20
Total	**$96,429.81**

The BA and the Trustee contend that all of these debts are personal, rather than arising out of Debtor's commercial or business activities.

[14] Debtor deleted the BB&T claim listed as claim 4.2 on Schedule E/F on her original Petition. On March 3, 2021, BB&T, now Truist, filed a proof of claim in the amount of $3,238.96 related to a loan to Wirecentric. See Proof of Claim No. 4. BB&T attached a business bankcard application to the proof of claim, which was signed by Debtor on behalf of Wirecentric and in her individual capacity. The application indicated that Debtor personally guaranteed all transactions on the account. Therefore, the Court concludes this debt arose from the business activities of the Debtor and will include the debt in the total debt calculation.

a. Debtor's obligations arising out of her original mortgage did not arise from commercial or business operations, but the renovation expenses did.

Debtor claims that the debts related to her former residence are business debts and the Court should include the full $96,429.81 among the debts arising from her commercial or business activities. Beginning with NC State Federal Credit Union's claim for $58,158.50 related to the mortgage, the totality of the circumstances indicate that this debt did not arise from Debtor's commercial or business activities. Debtor did not present any evidence that she incurred the debt with a profit motive or in connection with a business transaction. In re Kestell, 99 F.3d 146, 149 (4th Cir. 1996). Debtor testified, and the Court so finds, that she incurred the original mortgage debt on the real property for the purpose of residing in the property, and that it is a personal, non-business debt. ECF No. 41 at 59:20-59:35.

At least one court has permitted a debtor to modify a mortgage debt used primarily to acquire property used for her residence under § 1190(3), concluding that the acquisition was primarily for business purposes of establishing a bed and breakfast, rather than acquiring her residence. See In re Ventura, 615 B.R. 1, 19 (Bankr. E.D.N.Y. 2020). In Ventura, the debtor's primary residence was a mansion that she also operated as a bed and breakfast. At the time she purchased the property, she intended to operate it as a

bed and breakfast. Id. at 20. The town in which the mansion was located required the debtor to live in the property, and debtor had a long history of working in the hotel business. Id. at 19-20. The bankruptcy court found that debtor's primary purpose in incurring the debts linked to the property was to operate a bed and breakfast, and therefore the debt was not used primarily to acquire her principal residence. Id. at 24.

This case is unlike Ventura for a number of reasons. While Debtor may have later leased the real property, the mortgage debt was incurred primarily for debtor to acquire her residence, and there is no evidence suggesting Debtor intended to lease the property at the time she purchased it. As such, the Court finds the $58,158.50 debt owed to N.C. State Credit Union did not arise from Debtor's commercial or business activities.

Unlike the refinanced mortgage debt, the debts owed to GreenSky Credit, Lowes, and Wells Fargo arose out of Debtor's commercial or business activities. Debtor testified that the renovation expenses were incurred due to the damage the tenant caused to the real property. Specifically, she incurred the Greensky Credit debt to repair the bathroom and flooring,[15] the

[15] ECF No. 41 at 1:29:00-1:29-20. Debtor also testified that the hardwood flooring in three rooms and the hallways had gashes. ECF No. 41 at 1:31:35-1:31-50.

Lowes debt to replace damaged doors and windows,[16] and the Wells Fargo debt to renovate and remodel the real property as a result of the damages from rental. Debtor incurred the home repair debts while the real property was being used as rental property, but after she evicted the tenant in December of 2018 for non-payment of rent. ECF No. 41 at 1:08:30-1:16:05; 1:26:00-1:26:35. Debtor has not rented the real property since, and the property has been vacant. Id. at 1:09:53-1:10:10; 1:15:25-1:16:05. Debtor has not leased the real property since evicting the tenant in 2018 because of the condition of the property. Id. at 1:29:47-1:30:10. Debtor stated she was still renovating the real property, but had paused the renovations due to COVID-19 and her financial circumstances giving rise to her bankruptcy case. Id. at 10:30:10-1:30:40. Further, Debtor stated that she intends to lease the real property when she is able to complete the renovations in the future.

Like her IT consulting services, and for many of the reasons stated above and below, Debtor's rental of the real property falls within the broad scope of commercial or business activities contemplated by subchapter V. Debtor contends that the Internal Revenue Code, 26 U.S.C. § 1 et seq. ("IRC") further supports a determination that the real property debts are business obligations, and the Court agrees. Under the IRC, "[t]he rental

[16] Debtor stated the previous tenant had cracked the side-panel windows on the doors and completely kicked out other windows. Id. at 1:10:40-1:11-34; 1:27:50-1:28:10; 1:29:16-1:29-31.

of real estate is a trade or business if the taxpayer-lessor engages in regular and continuous activity in relation to the property . . . even if the taxpayer rents only a single p[i]ece of real estate.. . . If the taxpayer, personally or through his agent, continuously operates the rental property without deviation from the planned use, the trade or business is sufficiently regular to satisfy the § 122(d)(5) requirement that it be 'regularly carried on by the taxpayer.'" Alvary v. U.S., 302 F.2d 790, 796-97 (2d Cir. 1962)(internal citations omitted); see also Curphey v. Commissioner of Internal Revenue, 73 T.C. 766, 774 (1980) (observing that the court "has held repeatedly . . . that the rental of even a single piece of real property for production of income constitutes a trade or business"). Courts have refused to find, as a matter of law, that the ownership and management of rental property constitutes a trade or business, but rather look to the factual circumstances of the ownership and management activities. Id. at 775 (analyzing IRC § 280).

Here, Debtor's activities in connection with renting her former residence constitute commercial or business activity. Courts allow a single rental property to qualify as a trade or business for tax purposes when there is regular and continuous rental. Here, Debtor has a single property that has been continuously rented out since 2002. Although Debtor has not rented out the real property since 2018, the facts indicate this is due

to her inability to fully finance and complete the necessary renovations. Moreover, the damage to the property occurred at the time she was actively renting the property and, therefore, "arose from the commercial and business activities of the debtor" as contemplated by § 1182(1)(A), even if she incurred the expenses to partially repair those damages after the tenant left. As such, the Court finds that the debt owed to Greensky Credit, Lowes, and Wells Fargo Advantage in the amount of $38,271.31 arose from Debtor's commercial or business activities.

b. Debtor's evidence did not establish that any obligation owed to the SBA is her personal obligation.

The last consideration is whether Debtor established that the SBA loan is a noncontingent, liquidated debt owed by Debtor. At the hearing, Debtor testified that the SBA Loan was made to Wirecentric and that she did not sign a personal guaranty. ECF No. 41 at 1:06:30-1:06:43. However, in the Declaration she filed after the hearing, Debtor states that after reviewing the SBA Loan documentation, she now remembers that she is personally obligated as a borrower. The Court agrees with the Trustee and BA that the Declaration is inconsistent with her testimony at the hearing and the documentary evidence presented, and finds that Debtor did not establish that the SBA Loan is her personal obligation for purposes of determining her eligibility to elect to proceed under subchapter V.

Here, the SBA Note unambiguously indicates that Debtor signed in her representative capacity as the President of Wirecentric, and Debtor is not individually liable based on the terms of the note. Specifically, the signature line on the note lists Wirecentric as the "borrower," and Debtor affixed her signature atop a signature line with a below description of "Gwendolyn C. Blue, President of Wirecentric, Inc." Under North Carolina law, in order for an officer to be personally liable, the contract must contain two separate signatures – one on behalf of the company and one on behalf of the guarantor individually, or the officer must execute a separate guaranty. Keels v. Turner, 45 N.C.App. 213, 218 (finding corporate officer individually liable on a contract when he signed the agreement once with his unqualified signature and once as a representative of corporation "Homestead Builders by W.E. Turner") (citation and quotation marks omitted), disc. review denied, 300 N.C. 197 (1980); Tucker Materials, Inc. v. Safesound Acoustics, Inc., 2012 WL 1687689, at *4 (N.C. App. 2012)(unpublished opinion) (citing Keels in stating that "where individual responsibility is demanded, the nearly universal practice in the commercial world is that the corporate officer signs twice, once as an officer and again as an individual."); see also Southern Nat. Bank of North Carolina v. Pocock, 29 N.C. App. 52, 56 (N.C. App. 1976) (stating that generally, when an obligation names the corporation and is signed by officers in a representative

capacity, liability rests solely with the corporation, but finding individuals in the case at bar were personally liable when they signed a contract guarantying payment as representatives of the corporation without naming the corporation). Based on the evidence presented by Debtor, she signed the SBA Loan solely in her capacity as a corporate officer. While "[t]he intent of the parties as revealed in the transaction as a whole, and not the signatures alone, determines liability," there is no evidence in the record indicating that Debtor intended to personally guaranty the SBA Loan or that the SBA engaged with Debtor in any capacity other than as an officer of Wirecentric. Industrial Air, Inc. of Greensboro v. Bryant, 23 N.C. App. 281, 285 (N.C. App. 1974) (citations omitted) (in breach of contract action, the mere fact that the president of corporate defendant executed agreement as president on the contract and word "Owner" was printed on form below his name, was insufficient to demonstrate president signed contract as an individual, given that all other evidence, including negotiations and execution of the contract, indicated that the plaintiff dealt with corporate officer as an executive officer of the company, not an individual). Therefore, Debtor failed to show that the SBA Loan is a personal obligation of Debtor, and the

Court has excluded it in calculating Debtor's obligations for purposes of eligibility.[17]

VI. Conclusion

For the reasons set forth herein, Debtor is a "debtor" as defined under § 1182(1)(A). Debtor is engaged in commercial or business activities. At least 50 percent of Debtor's debts arose from the commercial or business activities of the debtor as contemplated under § 1182(1)(A). Half of her total debt is $454,247.44. Adding the real property renovation debt ($38,271.31) to the other undisputed business debts ($418,741.08), the sum is $457,012.39, which is not less than 50 percent of Debtor's noncontingent, liquidated debts. As such, Debtor has met her burden to demonstrate that she is eligible to elect application of subchapter V. Debtor's case shall proceed as a case under subchapter V.

[END OF ORDER]

[17] Nothing herein shall be construed as a determination of any claim that may be asserted by the SBA.