

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NORTH DAKOTA

QUENTIN N. BURDICK UNITED STATES COURTHOUSE
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Re: National Guard and Reservists Debt Relief Act of 2008 Effective December 19, 2008

On October 20, 2008, the President signed the National Guard and Reservists Debt Relief Act of 2008, Pub.L. 110-438. The Act provides a temporary exclusion from the bankruptcy means test for National Guardsmen and Reservists called to a minimum of 90 days active duty or homeland defense activity after September 11, 2001. The amendment to section 707(b)(2)(D) of the Bankruptcy Code will be effective on December 19, 2008, which is 60 days after enactment and shall apply only with respect to cases commenced under title 11 of the United States Code in the 3-year period beginning on the effective date of this Act.

The Judicial Conference has approved an amendment to Official Form 22A, Statement of Current Monthly Income and Means Test Calculation, which includes a new Part 1C where qualifying debtors could invoke the exclusion. In addition, the Judicial Conference has approved transmitting proposed Interim Rule 1007-I to the courts for adoption as a local rule.

Because the temporary exclusion expires 540 days after the debtor is released from active duty or is no longer performing homeland defense activities, the exclusion could expire while a chapter 7 debtor's case is pending and while a motion to dismiss the case may still be filed under section 707(b)(2). If the exclusion expires in those circumstances, the Interim Rule requires that the clerk give the debtor notice of the need to complete the means test and that the debtor do so no later than 14 days after the exclusion has expired.

Electronic filers using the Court's Case Management Electronic Case Filing System (CM/ECF) should make themselves familiar with the new events created to implement the Act. For additional information regarding the events, see attachment.

The proposed amendment to Form 22A and the proposed Interim Rule have been posted on the Internet at <http://www.uscourts.gov/bankform>.

Dianne G. Schmitz
Clerk, U.S. Bankruptcy Court

Attorney Guidance re: Chapter 7 Means Test with
Exclusion for Reservists and National Guard Members

Setting the Presumption of Abuse Flag

1. Open the case as usual and set the presumption of abuse flag. If the case is filed by an individual debtor who qualifies for the exclusion as a member of the National Guard or Reserves, set the presumption of abuse flag to MEANSNO. If the case is filed by joint debtors, set the flag to whatever value is appropriate for the debtor who is not in the National Guard or Reserves as shown in the table below.

If:	And:	Then:
One debtor has an exclusion	there is no presumption of abuse for the second debtor	set the presumption of abuse flag to MEANSNO
One debtor has an exclusion	there is a presumption of abuse for the second debtor	set the presumption of abuse flag to MEANSYES
One debtor has an exclusion	the presumption of abuse is unknown	set the presumption of abuse flag to MEANSU
One debtor has an exclusion	the second debtor also claims and exclusion	set the presumption of abuse flag to MEANSNO

Completing & Filing Means Test with Exclusion

Note:

- In Joint Cases where neither debtor requests an exclusion, only one Means Test must be filed.
- In Joint Cases where either or both debtors request an exclusion, separate Means Tests must be filed for each debtor.

1. Because the exclusion period applies only for a defined period of time, it may expire during the course of the Chapter 7 case. For that reason, a new check box is added to the top of Form B22A (12/08) that states the ‘presumption is temporarily inapplicable.’ A debtor who is entitled to claim the exclusion at the commencement of the Chapter 7 case may check this box.

In a joint case in which the exclusion in part 1C is claimed by either or both filers, each joint filer must complete and file a separate Form B22A statement. If only one joint debtor qualifies for the exclusion in part 1C, the other joint debtor must complete a separate form in full.

Debtors claiming the exclusion must complete all check boxes and dates in part 1C, but are not required to complete the remaining parts of the form for so long as the exclusion remains applicable. Failure to complete all information in part 1C will result in the Means Test being considered defective.

2. Docket a new text-only event called “**Statement of Debtor’s Temporary Exclusion from Means Test**” (Category: Misc/Other). This new event will set a flag (MEANSTEMPEX) indicating that the debtor is temporarily excluded from the means test. If the debtor is no longer on active duty, the event sets the date on which the temporary exclusion ends.

Miscellaneous

1. If the debtor is released from active duty later in the case, docket the event “**Released from Active Duty**” (Category: Misc/Other). The event will set the date on which the temporary exclusion ends.

2. Within 14 days of the expiration of the exclusion period, the debtor may be required to complete the remaining parts of the Means Test . The court will issue a Notice Requiring Filing of Means Test.