

**National Guard and Reservists Debt Relief Act of 2008**

On October 20, 2008, the president signed into law the National Guard and Reservists Debt Relief Act of 2008 (Act). The Act provides a temporary exclusion from the bankruptcy means test for Reservists and members of the National Guard called for no less than 90 days to active duty or homeland defense activity after September 11, 2001. The amendment to Bankruptcy Code § 707(b)(2)(D) became effective December 19, 2008. The amendment applies only to individual consumer debtors in chapter 7 cases and originally applied only to cases commenced in the three-year period beginning on the Act’s effective date – December 19, 2008.

On December 13, 2011, the President signed the National Guard and Reservist Debt Relief Extension Act of 2011, Pub. L. No. 112-64, extending for an additional four years the temporary exclusion from the bankruptcy means test. Interim Rule 1007-I has been adopted by the bankruptcy courts to implement the National Guard and Reservists Debt Relief Act of 2008, Public Law No: 110-438, as amended by Public Law No. 112-64. The amended Act, which provides a temporary exclusion from the application of the means test for certain members of the National Guard and reserve components of the Armed Forces, applies to bankruptcy cases commenced in the seven-year period beginning December 19, 2008.

AMENDED [Official Form 22A](#) (effective 12/19/08). An amendment has been made to Official Form 22A, Chapter 7 Statement of Current Monthly Income and Means-Test Calculation. A new Part 1C has been added to the form whereby eligible debtors may claim the temporary exclusion from the means test. Under Part 1C, a debtor would check the appropriate boxes and then check the box at the top of the form that states, “**The presumption is temporarily inapplicable.**” Because the exclusion period applies for a defined period of time (i.e., 540 days from the date the debtor is released from active duty), the exclusion may expire during the course of the debtor’s case.

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 Official Form 22A. If only one joint debtor is eligible for the exclusion in Part 1C, the other joint debtor must complete a separate form in full. See “[Note](#)” below.

Two new docket events have been created, which are accessible under **Bankruptcy-Miscellaneous Events**.

**1. Statement of Debtor’s Temporary Exclusion from Means Test:**

- a. This is a paperless docket entry and no PDF attachment is required.
- b. This new paperless event has been created for use by the debtor’s attorney when the debtor is eligible to claim a temporary exclusion from the means test and checks the box at the top of Official Form 22A that states “**The presumption is temporarily inapplicable.**”
- c. This new event will indicate 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.
- d. During the case opening process and at the appropriate screen, select whether the presumption of abuse arises (YES or NO). If the case is filed on behalf of an individual debtor who is eligible for the exclusion, answer NO. If the case is filed by joint debtors, answer with the value that 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	answer NO to the presumption of abuse
One debtor has an exclusion	there is a presumption of abuse for the second debtor	answer YES to the presumption of abuse
One debtor has an exclusion	the second debtor also claims an exclusion	answer NO to the presumption of abuse

- 1. **Note:** In a joint case in which neither debtor requests an exclusion, only one means test must be filed.

2. In a joint case in which either or both debtors request an exclusion, a separate means test must be filed for each debtor.

2. **Release from Active Duty**

- a. If the debtor is released from active duty or the debtor's homeland defense activity is terminated during the pendency of the case, the debtor's attorney must docket the event "**Released from Active Duty.**" The event will automatically calculate and set the 540-day temporary exclusion deadline(s) from the termination date.
- b. Within 14 days after 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 NEW "**NOTICE TO DEBTOR(S) TEMPORARILY EXCLUDED FROM MEANS TESTING**" should the debtor be required to complete the form as set forth above. The notice would be issued if the exclusion period expires within 60 days after the date set for the section 341 Meeting of Creditors.

Ver. 03/28/2012