



# Notice



November 19, 2008

**SUBJECT: TEMPORARY EXCLUSION FROM MEANS TESTING (INFORMATION)**

On October 20, 2008, the President signed the National Guard and Reservists Debt Relief Act of 2008, Pub. L. No. 110-438. 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 following 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. The amendment applies only to cases commenced in the three-year period beginning on the effective date of the Act.

The Advisory Committee on Bankruptcy Rules has requested approval of an amendment to Official Form 22A, Statement of Current Monthly Income and Means Test Calculation, and new Interim Rule 1007-I. As amended, Form 22A would include a new Part 1C where qualifying debtors could invoke the exclusion. **The amended form requires approval by the Committee on Rules of Practice and Procedure and the Judicial Conference.** If approved, the Interim Rule will be transmitted to the courts for adoption as a local rule, as was done with the Interim Bankruptcy Rules that implemented the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

Because the temporary exclusion expires 540 days after the debtor is released from active duty or is no longer performing homeland defense activity, 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 proposed 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.

In addition to the amendment to the form, it may be necessary to modify CM/ECF to capture efficiently information at filing relating to the temporary exclusion granted under the Act. Administrative Office staff is currently analyzing what new CM/ECF events need to be created or new deadlines adopted. Detailed information about any necessary modifications to CM/ECF will be forthcoming shortly. A copy of the Act is attached. The proposed amendment to Form 22A and the proposed Interim Rule are posted on the Internet at <http://www.uscourts.gov/bankform/index.html>.

Attachment

A handwritten signature in black ink, appearing to read "R. Oda".

Richard S. Oda  
Clerk of Court

One Hundred Tenth Congress  
of the  
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Thursday,  
the third day of January, two thousand and eight*

An Act

A bill to amend title 11, United States Code, to exempt for a limited period, from the application of the means-test presumption of abuse under chapter 7, qualifying members of reserve components of the Armed Forces and members of the National Guard who, after September 11, 2001, are called to active duty or to perform a homeland defense activity for not less than 90 days.

*Be it enacted by the Senate and House of Representatives of  
the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “National Guard and Reservists Debt Relief Act of 2008”.

**SEC. 2. AMENDMENTS.**

Section 707(b)(2)(D) of title 11, United States Code, is amended—

(1) in clauses (i) and (ii)—

(A) by indenting the left margin of such clauses 2 ems to the right, and

(B) by redesignating such clauses as subclauses (I) and (II), respectively,

(2) by striking “testing, if the debtor is a disabled veteran” and inserting the following:

“testing—

“(i) if the debtor is a disabled veteran”,

(3) by striking the period at the end and inserting “; or”,

and

(4) by adding at the end the following:

“(ii) with respect to the debtor, while the debtor is—

“(I) on, and during the 540-day period beginning immediately after the debtor is released from, a period of active duty (as defined in section 101(d)(1) of title 10) of not less than 90 days; or

“(II) performing, and during the 540-day period beginning immediately after the debtor is no longer performing, a homeland defense activity (as defined in section 901(1) of title 32) performed for a period of not less than 90 days;

if after September 11, 2001, the debtor while a member of a reserve component of the Armed Forces or a member of the National Guard, was called to such active duty or performed such homeland defense activity.”.

**SEC. 3. GAO STUDY.**

(a) **COMPTROLLER GENERAL STUDY.**—Not later than 2 years after the effective date of this Act, the Comptroller General shall

complete and transmit to the Speaker of the House of Representatives and the President pro tempore of the Senate, a study of the use and the effects of the provisions of law amended (and as amended) by this Act. Such study shall address, at a minimum—

(1) whether and to what degree members of reserve components of the Armed Forces and members of the National Guard avail themselves of the benefits of such provisions,

(2) whether and to what degree such members are debtors in cases under title 11 of the United States Code that are substantially related to service that qualifies such members for the benefits of such provisions,

(3) whether and to what degree such members are debtors in cases under such title that are materially related to such service, and

(4) the effects that the use by such members of section 707(b)(2)(D) of such title, as amended by this Act, has on the bankruptcy system, creditors, and the debt-incurrence practices of such members.

(b) FACTORS.—For purposes of subsection (a)—

(1) a case shall be considered to be substantially related to the service of a member of a reserve component of the Armed Forces or a member of the National Guard that qualifies such member for the benefits of the provisions of law amended (and as amended) by this Act if more than 33 percent of the aggregate amount of the debts in such case is incurred as a direct or indirect result of such service,

(2) a case shall be considered to be materially related to the service of a member of a reserve component of the Armed Forces or a member of the National Guard that qualifies such member for the benefits of such provisions if more than 10 percent of the aggregate amount of the debts in such case is incurred as a direct or indirect result of such service, and

(3) the term “effects” means—

(A) with respect to the bankruptcy system and creditors—

(i) the number of cases under title 11 of the United States Code in which members of reserve components of the Armed Forces and members of the National Guard avail themselves of the benefits of such provisions,

(ii) the aggregate amount of debt in such cases,

(iii) the aggregate amount of debt of such members discharged in cases under chapter 7 of such title,

(iv) the aggregate amount of debt of such members in cases under chapter 7 of such title as of the time such cases are converted to cases under chapter 13 of such title,

(v) the amount of resources expended by the bankruptcy courts and by the bankruptcy trustees, stated separately, in cases under title 11 of the United States Code in which such members avail themselves of the benefits of such provisions, and

(vi) whether and to what extent there is any indicia of abuse or potential abuse of such provisions, and

(B) with respect to debt-incurrence practices—

(i) any increase in the average levels of debt incurred by such members before, during, or after such service,

(ii) any indicia of changes in debt-incurrence practices adopted by such members in anticipation of benefitting from such provisions in any potential case under such title; and

(iii) any indicia of abuse or potential abuse of such provisions reflected in the debt-incurrence of such members.

**SEC. 4. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect 60 days after the date of enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this Act 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.

*Speaker of the House of Representatives.*

*Vice President of the United States and  
President of the Senate.*