

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

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TO: Hon. Lee H. Rosenthal, Chair
Standing Committee on Rules of Practice and Procedure

FROM: Hon. Laura Taylor Swain, Chair
Advisory Committee on Bankruptcy Rules

DATE: December 12, 2008

RE: Report of the Advisory Committee on Bankruptcy Rules

I. Introduction

The Advisory Committee on Bankruptcy Rules met on October 2-3, 2008, in Denver, Colorado. The Committee considered a number of issues as more fully set out in the draft of the minutes of that meeting, which is attached to this report as Exhibit A.

The Committee recommends Standing Committee approval for publication of the preliminary draft of proposed amendments to one Rule and two Official Forms.

Several information items are set out following the action items. They concern the following matters: the status of previously-approved actions relating to the Bankruptcy Rules, action taken after the Denver meeting to implement the National Guard and Reservists Relief Act of 2008, the Committee's new project to revise the appellate provisions of the Bankruptcy Rules, Bankruptcy Rules issues brought to the Standing Committee's attention by Chief Judge Easterbrook and referred to this Committee for study, residential mortgage-related disclosure rules that are currently being developed by the Committee, an update on the Forms Modernization project, and changes in the membership of the Committee.

II. Action Items

A. Preliminary Draft of Proposed Amendment to Bankruptcy Rule 6003.

The Advisory Committee recommends that the Standing Committee approve the attached draft of a proposed amendment to Bankruptcy Rule 6003 for publication for comment.

1. *Synopsis of Preliminary Draft of Proposed Amendment to Bankruptcy Rule 6003.*

Rule 6003 is amended to clarify that the requirement of a 21-day waiting period before a bankruptcy court can enter certain orders at the beginning of a case, including an order approving employment of counsel, does not prevent the court from specifying an effective date for the order that is earlier than the date of its issuance. The amendment also makes clear that the rule restricts only the issuance of orders granting the specified relief, and not the entry of all orders that may relate in some way to the specified motions or applications.

2. *Text of Preliminary Draft of Proposed Amendment to Bankruptcy Rule 6003 Attached as Exhibit B.*

B. Preliminary Draft of Proposed Amendments to Bankruptcy Official Forms 22A and 22C

The Advisory Committee recommends that the Standing Committee approve the attached draft of proposed amendments to Official Forms 22A and 22C for publication for comment.

1. *Synopsis of Preliminary Draft of Proposed Amendments to Official Forms 22A and 22C.*

Official Forms 22A and 22C – Statement of Current Monthly Income and Means Test Calculation for chapter 7 and chapter 13 cases respectively – are amended to delete several references to “household” and “household size” and to replace them with “number of persons” or “family size.” These amendments to the Forms implement more accurately the provisions of § 707(b)(2)(A)(ii)(I) of the Bankruptcy Code that allow means test deductions to be taken from current monthly income based on IRS National and Local Standards.

Allowing the specified deductions to be based on household size leads to results that are both over-inclusive and under-inclusive. If a debtor has dependents who are not members of the debtor’s household, an instruction that the debtor’s deduction take into account only household members results in a smaller

deduction than IRS standards allow. On the other hand, if a debtor lives in a household with persons the debtor does not support, allowing deductions to be based on household size results in a greater deduction than the IRS standards permit.

2. *Text of Preliminary Draft of Proposed Amendments to Bankruptcy Official Forms 22A and 22C Shown in the Attached Excerpted Copies of the Forms as Exhibits C and D.*

III. Information Items

A. Publication of Proposed Amendments to Bankruptcy Rules

At the January 2008 meeting, the Standing Committee authorized the publication of a preliminary draft of amendments to Bankruptcy Rules 1007, 1019, 4004, and 7001. At the June 2008 meeting, the Standing Committee authorized the publication of a preliminary draft of amendments to Bankruptcy Rules 1014, 1015, 1018, 5009, and 9001, and a preliminary draft of proposed new Bankruptcy Rules 1004.2 and 5012. The deadline for the submission of comments on these proposals is February 17, 2009. Thus far, we have received one comment on the proposals. Public hearings on the proposals are scheduled for January 23, 2009, in New York, and February 6, 2009, in San Francisco.

The Advisory Committee will consider all of the comments submitted on these proposals, whether in writing, or at the public hearings, during its March 2009 meeting. The Advisory Committee anticipates that it will present these amendments, with appropriate changes, if any, to the Standing Committee at its June 2009 meeting for approval and transmittal to the Judicial Conference.

B. Interim Rule and Official Form Amendments to Implement National Guard and Reservists Relief Act of 2008

Subsequent to the Committee's Denver meeting, Congress passed and the President signed the National Guard and Reservists Relief Act of 2008, which provides a temporary exclusion from application of the means test for certain members of the National Guard and reserve components of the Armed Services who become debtors in chapter 7 bankruptcy cases. Because the new legislation takes effect on December 19, 2008, changes in the relevant Official Form and Bankruptcy Rule had to be implemented on an expedited basis. The Advisory Committee by means of an email vote approved amendments to Official Form 22A and a new

Interim Rule 1007-I. This recommendation was submitted to the Standing Committee by Judge Rosenthal in an email communication dated November 3, 2008. The Standing Committee approved the proposed Interim Rule and revisions to the Official Form, and sent them to the Judicial Conference for its approval. That approval was obtained on November 18, 2008, thus allowing the changes to Official Form 22A to take effect as of December 19, 2008. Those changes are reflected in section 1C of the form, which is attached to this report as Exhibit C. Interim Rule 1007-I has been sent to the courts for adoption as a local rule. Unless extended by Congress, the Act will apply only to bankruptcy cases filed within the three-year period following its effective date. The new exclusion from means testing applies in a given case only for the period provided in the statute (i.e., while the debtor is on active duty and for 540 days thereafter). Accordingly, the amended form and Interim Rule provide for a delayed means test form filing requirement in appropriate cases, as well as for notice of that requirement.

C. Project to Revise Part VIII of the Bankruptcy Rules

At the Denver meeting, the Advisory Committee voted to undertake a project to revise Part VIII of the Bankruptcy Rules, which governs bankruptcy appeals. The goal of the project is to bring the content, organization, and style of this part of the Bankruptcy Rules into closer alignment with the Federal Rules of Appellate Procedure. A subcommittee of the Advisory Committee has prepared a preliminary draft of a revision of the Part VIII rules, which it presented to the Committee in Denver. In order to obtain the input of practitioners, academics, and judges with substantial bankruptcy appeals experience, the Committee will host a mini-conference on this topic in San Diego prior to its March 2009 meeting.

D. Consideration of Issue Raised by Chief Judge Easterbrook in *Zedan v. Habas*

Chief Judge Frank Easterbrook brought to the attention of a member of the Standing Committee an issue implicating the bankruptcy rules that he raised in a concurring opinion in *Zedan v. Habas*, 529 F.3d 398, 407 (7th Cir. 2008), and Judge Rosenthal referred the matter to the Advisory Committee. The issue raised by Chief Judge Easterbrook concerns Bankruptcy Rule 7001's classification of a proceeding to object to or revoke a discharge as an adversary proceeding, the termination of which constitutes a final decision permitting appellate review under 28 U.S.C. § 158(d). He questioned whether it would be more appropriate to treat such proceedings as contested matters, given their statutory designation as "core proceedings" and the possibility that under the current rule an appeal from the denial of one creditor's objection to discharge could be taken while other objections remain pending.

The Advisory Committee thoroughly considered the issue at the Denver meeting and decided not to recommend an amendment of Rule 7001. Because of the importance of the discharge to a debtor, the Advisory Committee favored the long-held position that the greater

procedural protections available in an adversary proceeding are appropriate for most objections to or attempts to revoke a discharge. The Committee was also of the view that cases in which several different objections to a discharge are litigated sequentially are relatively rare and that existing procedural mechanisms (e.g., consolidation, stay orders) can be employed to prevent premature or piecemeal appeals.

Another bankruptcy rule issue raised by *Zedan* concerns the situation in which a party opposing a debtor's discharge discovers, after the deadline for objecting to discharge but prior to the granting of the discharge, fraud committed by the debtor. Because *Zedan* held that under current Rule 4004 and § 727(d) of the Bankruptcy Code a creditor in this situation can neither object to discharge nor seek revocation of the discharge once it is entered, the Committee concluded that this issue warranted further consideration. It therefore referred the matter to a subcommittee and will discuss it further at its March meeting.

E. Decision to Carry Over to March Meeting Amendments to Bankruptcy Rule 3001 and New Bankruptcy Rule 3002.1

The minutes of the Denver meeting reflect that the Advisory Committee voted to recommend that the Standing Committee approve drafts of proposed amendments to Bankruptcy Rule 3001 and a new Rule 3002.1 for publication for comment. These amendments would require in chapter 13 cases the disclosure and itemization of amounts needed to cure residential mortgage defaults occurring prior to bankruptcy and of changes in mortgage payment amounts occurring during the pendency of the case. They also would create a procedure for bankruptcy court resolution of any disputes over these amounts. Subsequent to the meeting, however, the Chair made the decision to hold the rules for further consideration at the March meeting, in light of a suggestion submitted to the Advisory Committee of the possible need for other amendments to Rule 3001.

F. Forms Modernization Project Update

The Advisory Committee's Forms Modernization Project is continuing its review of the bankruptcy forms and how the forms can be redesigned to improve the gathering and presentation of information needed during bankruptcy cases and proceedings.

The project is currently focusing on three discrete tasks: analyzing existing bankruptcy

forms to identify redundant or unnecessary information; evaluating alternative technologies for getting information into the bankruptcy system and retrieving the information in formats that may improve the ability of judicial users and other stakeholders to use the information in connection with case administration and/or litigation; and considering form and question redesign and simplification. The Advisory Committee believes an outside consultant could provide valuable expertise in forms redesign, with the aim of improving the accessibility of the forms and the accuracy of responses, as well as providing assistance to the Committee in structuring and coordinating the upcoming phases of the project. The Committee has begun the process of exploring the feasibility of retention of a consultant and identifying experts.

G. Committee Membership

The Chief Justice has appointed three new members of the Advisory Committee. They are Chief Bankruptcy Judge Judith Wizmur of the District of New Jersey, Michael St. Patrick Baxter, Esquire, and David A. Lander, Esquire. They replace outgoing members Judge Irene M. Keeley of the Northern District of West Virginia, Bankruptcy Judge Kenneth Meyers of the Southern District of Illinois, and G. Eric Brunstad, Jr., Esquire.

Professor S. Elizabeth Gibson of the University of North Carolina School of Law has succeeded Professor Jeffrey W. Morris of the University of Dayton School of Law as the Advisory Committee's Reporter. Professor Morris served as Reporter for 10 years, including the hectic six-month period after the enactment of the 2005 amendments to the Bankruptcy Code when the Advisory Committee developed the Interim Rules and Forms to implement the new law.

Attachments: Draft of Minutes of the Advisory Committee Meeting of October 2-3, 2008
Text of Preliminary Draft of Proposed Amendment to Bankruptcy Rule 6003
Excerpted Copies of Official Forms 22A and 22C

TAB

COMMITTEE NOTE

The rule is amended to clarify that it limits the timing of the entry of certain orders, but does not prevent the court from providing an effective date for such an order that may relate back to the time of the filing of the application or motion, or to some other date. For example, while the rule prohibits, absent immediate and irreparable harm, the court from authorizing the employment of counsel during the first 21 days of a case, it does not prevent the court from providing in an order entered after expiration of the 21-day period that the relief requested in the motion or application is effective as of a date earlier than the issuance of the order. In addition, it does not prohibit the filing of an application or motion for relief prior to expiration of the 21-day period. Moreover, nothing in the rule prevents a professional from representing the trustee or a debtor in possession pending the approval of an application for the approval of the employment under Rule 2014.

The amendment also clarifies that the scope of the rule is limited to granting the specifically identified relief set out in the subdivisions of the rule. Deleting “regarding” from the rule clarifies that the rule does not prohibit the court from entering orders in the first 21 days of the case that may relate to the motions and applications set out in (a), (b), and (c); it is only prohibited from granting the relief requested by those motions or applications. For example, in the first 21 days of the case, the court could grant the relief requested in a motion to establish bidding procedures for the sale of property of the estate, but it could not, absent immediate and irreparable harm, grant a motion to approve the sale of property.

In re _____
Debtor(s)

Case Number: _____
(If known)

According to the information required to be entered on this statement (check one box as directed in Part I, III, or VI of this statement):

- The presumption arises.
- The presumption does not arise.
- The presumption is temporarily inapplicable.

CHAPTER 7 STATEMENT OF CURRENT MONTHLY INCOME AND MEANS-TEST CALCULATION

In addition to Schedules I and J, this statement must be completed by every individual chapter 7 debtor, whether or not filing jointly. Unless the exclusion in Line 1C applies, joint debtors may complete a single statement. If the exclusion in Line 1C applies, each joint filer must complete a separate statement.

Part I. MILITARY AND NON-CONSUMER DEBTORS

1A	<p>Disabled Veterans. If you are a disabled veteran described in the Declaration in this Part IA, (1) check the box at the beginning of the Declaration, (2) check the box for “The presumption does not arise” at the top of this statement, and (3) complete the verification in Part VIII. Do not complete any of the remaining parts of this statement.</p> <p><input type="checkbox"/> Declaration of Disabled Veteran. By checking this box, I declare under penalty of perjury that I am a disabled veteran (as defined in 38 U.S.C. § 3741(1)) whose indebtedness occurred primarily during a period in which I was on active duty (as defined in 10 U.S.C. § 101(d)(1)) or while I was performing a homeland defense activity (as defined in 32 U.S.C. § 901(1)).</p>
1B	<p>Non-consumer Debtors. If your debts are not primarily consumer debts, check the box below and complete the verification in Part VIII. Do not complete any of the remaining parts of this statement.</p> <p><input type="checkbox"/> Declaration of non-consumer debts. By checking this box, I declare that my debts are not primarily consumer debts.</p>
1C	<p>Reservists and National Guard Members; active duty or homeland defense activity. Members of a reserve component of the Armed Forces and members of the National Guard who were called to active duty (as defined in 10 U.S.C. § 101(d)(1)) after September 11, 2001, for a period of at least 90 days, or who have performed homeland defense activity (as defined in 32 U.S.C. § 901(1)) for a period of at least 90 days, are excluded from all forms of means testing during the time of active duty or homeland defense activity and for 540 days thereafter (the “exclusion period”). If you qualify for this temporary exclusion, (1) check the appropriate boxes and complete any required information in the Declaration of Reservists and National Guard Members below, (2) check the box for “The presumption is temporarily inapplicable” at the top of this statement, and (3) complete the verification in Part VIII. During your exclusion period you are not required to complete the balance of this form, but you must complete the form no later than 14 days after the date on which your exclusion period ends, unless the time for filing a motion raising the means test presumption expires in your case before your exclusion period ends.</p> <p><input type="checkbox"/> Declaration of Reservists and National Guard Members. By checking this box and making the appropriate entries below, I declare that I am eligible for a temporary exclusion from means testing because, as a member of a reserve component of the Armed Forces or the National Guard</p> <p style="margin-left: 40px;">a. <input type="checkbox"/> I was called to active duty after September 11, 2001, for a period of at least 90 days and <input type="checkbox"/> I remain on active duty /or/ <input type="checkbox"/> I was released from active duty on _____, which is less than 540 days before this bankruptcy case was filed;</p> <p style="text-align: center; margin-left: 40px;">OR</p> <p style="margin-left: 40px;">b. <input type="checkbox"/> I am performing homeland defense activity for a period of at least 90 days /or/ <input type="checkbox"/> I performed homeland defense activity for a period of at least 90 days, terminating on _____, which is less than 540 days before this bankruptcy case was filed.</p>

19A	<p>National Standards: food, clothing and other items. Enter in Line 19A the “Total” amount from IRS National Standards for Food, Clothing and Other Items for the applicable number of persons. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) The applicable number of persons is the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.</p>	\$																								
19B	<p>National Standards: health care. Enter in Line a1 below the amount from IRS National Standards for Out-of-Pocket Health Care for persons under 65 years of age, and in Line a2 the IRS National Standards for Out-of-Pocket Health Care for persons 65 years of age or older. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) Enter in Line b1 the applicable number of persons who are under 65 years of age, and enter in Line b2 the applicable number of persons who are 65 years of age or older. (The applicable number of persons in each age category is the number in that category that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.) Multiply Line a1 by Line b1 to obtain a total amount for persons under 65, and enter the result in Line c1. Multiply Line a2 by Line b2 to obtain a total amount for persons 65 and older, and enter the result in Line c2. Add Lines c1 and c2 to obtain a total health care amount, and enter the result in Line 19B.</p> <table border="1" style="width:100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th colspan="3" style="text-align: left;">Persons under 65 years of age</th> <th colspan="3" style="text-align: left;">Persons 65 years of age or older</th> </tr> </thead> <tbody> <tr> <td style="width: 5%;">a1.</td> <td style="width: 40%;">Allowance per person</td> <td style="width: 15%;"></td> <td style="width: 5%;">a2.</td> <td style="width: 40%;">Allowance per person</td> <td style="width: 15%;"></td> </tr> <tr> <td>b1.</td> <td>Number of persons</td> <td></td> <td>b2.</td> <td>Number of persons</td> <td></td> </tr> <tr> <td>c1.</td> <td>Subtotal</td> <td></td> <td>c2.</td> <td>Subtotal</td> <td></td> </tr> </tbody> </table>	Persons under 65 years of age			Persons 65 years of age or older			a1.	Allowance per person		a2.	Allowance per person		b1.	Number of persons		b2.	Number of persons		c1.	Subtotal		c2.	Subtotal		\$
Persons under 65 years of age			Persons 65 years of age or older																							
a1.	Allowance per person		a2.	Allowance per person																						
b1.	Number of persons		b2.	Number of persons																						
c1.	Subtotal		c2.	Subtotal																						
20A	<p>Local Standards: housing and utilities; non-mortgage expenses. Enter the amount of the IRS Housing and Utilities Standards; non-mortgage expenses for the applicable county and family size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court). The applicable family size consists of the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.</p>	\$																								
20B	<p>Local Standards: housing and utilities; mortgage/rent expense. Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; mortgage/rent expense for your county and family size (this information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court) (the applicable family size consists of the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 42; subtract Line b from Line a and enter the result in Line 20B. Do not enter an amount less than zero.</p> <table border="1" style="width:100%; border-collapse: collapse; margin-top: 10px;"> <tbody> <tr> <td style="width: 5%;">a.</td> <td style="width: 60%;">IRS Housing and Utilities Standards; mortgage/rental expense</td> <td style="width: 35%; text-align: right;">\$</td> </tr> <tr> <td>b.</td> <td>Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42</td> <td style="text-align: right;">\$</td> </tr> <tr> <td>c.</td> <td>Net mortgage/rental expense</td> <td style="text-align: right;">Subtract Line b from Line a.</td> </tr> </tbody> </table>	a.	IRS Housing and Utilities Standards; mortgage/rental expense	\$	b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42	\$	c.	Net mortgage/rental expense	Subtract Line b from Line a.	\$															
a.	IRS Housing and Utilities Standards; mortgage/rental expense	\$																								
b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42	\$																								
c.	Net mortgage/rental expense	Subtract Line b from Line a.																								
21	<p>Local Standards: housing and utilities; adjustment. if you contend that the process set out in Lines 20A and 20B does not accurately compute the allowance to which you are entitled under the IRS Housing and Utilities Standards, enter any additional amount to which you contend you are entitled, and state the basis for your contention in the space below:</p> <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/>	\$																								

COMMITTEE NOTE

Form 22A, lines 19A, 19B, 20A, and 20B, and Form 22C, lines 24A, 24B, 25A, and 25B, are amended to delete the terms “household” and “household size” and to replace them with “number of persons” or “family size.” Under § 707(b)(2)(A)(ii)(I) means test deductions for food, clothing, and other items and for health care are permitted to be taken in the amounts specified in the IRS National Standards, and deductions for housing and utilities are permitted in the amounts specified in the IRS Local Standards. The IRS National Standards are based on numbers of persons, not household size. Similarly, the IRS Local Standards are based on family, not household, size. The IRS itself determines the applicable number of persons or family size for these purposes according to the number of dependents that the debtor claims for federal income tax purposes.

In order for forms 22A and 22C to reflect more accurately the manner in which the specified National and Local Standards are applied by the IRS, the references to “household” and “household size” are deleted, and the substituted terms—“number of persons” and “family size”—are defined in terms of exemptions and the debtor’s federal income tax return and other dependents.

In re _____
Debtor(s)

Case Number: _____
(If known)

According to the calculations required by this statement:

The applicable commitment period is 3 years.

The applicable commitment period is 5 years.

Disposable income is determined under § 1325(b)(3).

Disposable income is not determined under § 1325(b)(3).

(Check the boxes as directed in Lines 17 and 23 of this statement.)

CHAPTER 13 STATEMENT OF CURRENT MONTHLY INCOME AND CALCULATION OF COMMITMENT PERIOD AND DISPOSABLE INCOME

In addition to Schedules I and J, this statement must be completed by every individual chapter 13 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

Part I. REPORT OF INCOME																	
1	<p>Marital/filing status. Check the box that applies and complete the balance of this part of this statement as directed.</p> <p>a. <input type="checkbox"/> Unmarried. Complete only Column A (“Debtor’s Income”) for Lines 2-10.</p> <p>b. <input type="checkbox"/> Married. Complete both Column A (“Debtor’s Income”) and Column B (“Spouse’s Income”) for Lines 2-10.</p>																
	All figures must reflect average monthly income received from all sources, derived during the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If the amount of monthly income varied during the six months, you must divide the six-month total by six, and enter the result on the appropriate line.			Column A Debtor’s Income	Column B Spouse’s Income												
2	Gross wages, salary, tips, bonuses, overtime, commissions.			\$	\$												
3	<p>Income from the operation of a business, profession, or farm. Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 3. If you operate more than one business, profession or farm, enter aggregate numbers and provide details on an attachment. Do not enter a number less than zero. Do not include any part of the business expenses entered on Line b as a deduction in Part IV.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%;">a.</td> <td style="width: 45%;">Gross receipts</td> <td style="width: 10%;">\$</td> <td style="width: 40%;"></td> </tr> <tr> <td>b.</td> <td>Ordinary and necessary business expenses</td> <td>\$</td> <td></td> </tr> <tr> <td>c.</td> <td>Business income</td> <td></td> <td>Subtract Line b from Line a</td> </tr> </table>			a.	Gross receipts	\$		b.	Ordinary and necessary business expenses	\$		c.	Business income		Subtract Line b from Line a	\$	\$
a.	Gross receipts	\$															
b.	Ordinary and necessary business expenses	\$															
c.	Business income		Subtract Line b from Line a														
4	<p>Rent and other real property income. Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 4. Do not enter a number less than zero. Do not include any part of the operating expenses entered on Line b as a deduction in Part IV.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%;">a.</td> <td style="width: 45%;">Gross receipts</td> <td style="width: 10%;">\$</td> <td style="width: 40%;"></td> </tr> <tr> <td>b.</td> <td>Ordinary and necessary operating expenses</td> <td>\$</td> <td></td> </tr> <tr> <td>c.</td> <td>Rent and other real property income</td> <td></td> <td>Subtract Line b from Line a</td> </tr> </table>			a.	Gross receipts	\$		b.	Ordinary and necessary operating expenses	\$		c.	Rent and other real property income		Subtract Line b from Line a	\$	\$
a.	Gross receipts	\$															
b.	Ordinary and necessary operating expenses	\$															
c.	Rent and other real property income		Subtract Line b from Line a														
5	Interest, dividends, and royalties.			\$	\$												
6	Pension and retirement income.			\$	\$												
7	<p>Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor’s dependents, including child support paid for that purpose. Do not include alimony or separate maintenance payments or amounts paid by the debtor’s spouse.</p>			\$	\$												
8	<p>Unemployment compensation. Enter the amount in the appropriate column(s) of Line 8. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%;">Unemployment compensation claimed to be a benefit under the Social Security Act</td> <td style="width: 20%;">Debtor \$ _____</td> <td style="width: 40%;">Spouse \$ _____</td> </tr> </table>			Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ _____	Spouse \$ _____	\$	\$									
Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ _____	Spouse \$ _____															

19	<p>Marital adjustment. If you are married, but are not filing jointly with your spouse, enter on Line 19 the total of any income listed in Line 10, Column B that was NOT paid on a regular basis for the household expenses of the debtor or the debtor's dependents. Specify in the lines below the basis for excluding the Column B income (such as payment of the spouse's tax liability or the spouse's support of persons other than the debtor or the debtor's dependents) and the amount of income devoted to each purpose. If necessary, list additional adjustments on a separate page. If the conditions for entering this adjustment do not apply, enter zero.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align: center;">a.</td> <td style="width:75%;"></td> <td style="width:20%; text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td></td> <td style="text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td></td> <td style="text-align: right;">\$</td> </tr> </table> <p>Total and enter on Line 19.</p>	a.		\$	b.		\$	c.		\$	\$
a.		\$									
b.		\$									
c.		\$									
20	Current monthly income for § 1325(b)(3). Subtract Line 19 from Line 18 and enter the result.										
21	Annualized current monthly income for § 1325(b)(3). Multiply the amount from Line 20 by the number 12 and enter the result.	\$									
22	Applicable median family income. Enter the amount from Line 16.	\$									
23	<p>Application of § 1325(b)(3). Check the applicable box and proceed as directed.</p> <p><input type="checkbox"/> The amount on Line 21 is more than the amount on Line 22. Check the box for "Disposable income is determined under § 1325(b)(3)" at the top of page 1 of this statement and complete the remaining parts of this statement.</p> <p><input type="checkbox"/> The amount on Line 21 is not more than the amount on Line 22. Check the box for "Disposable income is not determined under § 1325(b)(3)" at the top of page 1 of this statement and complete Part VII of this statement. Do not complete Parts IV, V, or VI.</p>										

Part IV: CALCULATION OF DEDUCTIONS FROM INCOME

Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)

24A	<p>National Standards: food, apparel and services, housekeeping supplies, personal care, and miscellaneous. Enter in Line 24A the "Total" amount from IRS National Standards for Allowable Living Expenses for the applicable number of persons. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) The applicable number of persons is the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.</p>	\$																									
24B	<p>National Standards: health care. Enter in Line a1 below the amount from IRS National Standards for Out-of-Pocket Health Care for persons under 65 years of age, and in Line a2 the IRS National Standards for Out-of-Pocket Health Care for persons 65 years of age or older. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) Enter in Line b1 the applicable number of persons who are under 65 years of age, and enter in Line b2 the applicable number of persons who are 65 years of age or older. (The applicable number of persons in each age category is the number in that category that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.) Multiply Line a1 by Line b1 to obtain a total amount for persons under 65, and enter the result in Line c1. Multiply Line a2 by Line b2 to obtain a total amount for persons 65 and older, and enter the result in Line c2. Add Lines c1 and c2 to obtain a total health care amount, and enter the result in Line 24B.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th colspan="3" style="text-align: left;">Persons under 65 years of age</th> <th colspan="3" style="text-align: left;">Persons 65 years of age or older</th> </tr> </thead> <tbody> <tr> <td style="width:5%; text-align: center;">a1.</td> <td style="width:30%;">Allowance per person</td> <td style="width:30%;"></td> <td style="width:5%; text-align: center;">a2.</td> <td style="width:30%;">Allowance per person</td> <td style="width:30%;"></td> </tr> <tr> <td style="text-align: center;">b1.</td> <td>Number of persons</td> <td></td> <td style="text-align: center;">b2.</td> <td>Number of persons</td> <td></td> </tr> <tr> <td style="text-align: center;">c1.</td> <td>Subtotal</td> <td></td> <td style="text-align: center;">c2.</td> <td>Subtotal</td> <td></td> </tr> </tbody> </table>		Persons under 65 years of age			Persons 65 years of age or older			a1.	Allowance per person		a2.	Allowance per person		b1.	Number of persons		b2.	Number of persons		c1.	Subtotal		c2.	Subtotal		\$
Persons under 65 years of age			Persons 65 years of age or older																								
a1.	Allowance per person		a2.	Allowance per person																							
b1.	Number of persons		b2.	Number of persons																							
c1.	Subtotal		c2.	Subtotal																							
25A	<p>Local Standards: housing and utilities; non-mortgage expenses. Enter the amount of the IRS Housing and Utilities Standards; non-mortgage expenses for the applicable county and family size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court). The applicable family size consists of the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.</p>	\$																									

25B	<p>Local Standards: housing and utilities; mortgage/rent expense. Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; mortgage/rent expense for your county and family size (this information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court) (the applicable family size consists of the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 47; subtract Line b from Line a and enter the result in Line 25B. Do not enter an amount less than zero.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align: center;">a.</td> <td style="width:60%;">IRS Housing and Utilities Standards; mortgage/rent expense</td> <td style="width:35%; text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Average Monthly Payment for any debts secured by your home, if any, as stated in Line 47</td> <td style="text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Net mortgage/rental expense</td> <td style="text-align: right;">Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Housing and Utilities Standards; mortgage/rent expense	\$	b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 47	\$	c.	Net mortgage/rental expense	Subtract Line b from Line a.	\$
a.	IRS Housing and Utilities Standards; mortgage/rent expense	\$									
b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 47	\$									
c.	Net mortgage/rental expense	Subtract Line b from Line a.									
26	<p>Local Standards: housing and utilities; adjustment. If you contend that the process set out in Lines 25A and 25B does not accurately compute the allowance to which you are entitled under the IRS Housing and Utilities Standards, enter any additional amount to which you contend you are entitled, and state the basis for your contention in the space below:</p> <hr style="border: 0.5px solid black;"/> <hr style="border: 0.5px solid black;"/> <hr style="border: 0.5px solid black;"/>	\$									
27A	<p>Local Standards: transportation; vehicle operation/public transportation expense. You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation.</p> <p>Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 7. <input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>If you checked 0, enter on Line 27A the “Public Transportation” amount from IRS Local Standards: Transportation. If you checked 1 or 2 or more, enter on Line 27A the “Operating Costs” amount from IRS Local Standards: Transportation for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (These amounts are available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</p>	\$									
27B	<p>Local Standards: transportation; additional public transportation expense. If you pay the operating expenses for a vehicle and also use public transportation, and you contend that you are entitled to an additional deduction for your public transportation expenses, enter on Line 27B the “Public Transportation” amount from IRS Local Standards: Transportation. (This amount is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</p>	\$									
28	<p>Local Standards: transportation ownership/lease expense; Vehicle 1. Check the number of vehicles for which you claim an ownership/lease expense. (You may not claim an ownership/lease expense for more than two vehicles.) <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>Enter, in Line a below, the “Ownership Costs” for “One Car” from the IRS Local Standards: Transportation (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 47; subtract Line b from Line a and enter the result in Line 28. Do not enter an amount less than zero.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align: center;">a.</td> <td style="width:60%;">IRS Transportation Standards, Ownership Costs</td> <td style="width:35%; text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47</td> <td style="text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Net ownership/lease expense for Vehicle 1</td> <td style="text-align: right;">Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Transportation Standards, Ownership Costs	\$	b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47	\$	c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs	\$									
b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47	\$									
c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.									

COMMITTEE NOTE

Form 22A, lines 19A, 19B, 20A, and 20B, and Form 22C, lines 24A, 24B, 25A, and 25B, are amended to delete the terms “household” and “household size” and to replace them with “number of persons” or “family size.” Under § 707(b)(2)(A)(ii)(I) means test deductions for food, clothing, and other items and for health care are permitted to be taken in the amounts specified in the IRS National Standards, and deductions for housing and utilities are permitted in the amounts specified in the IRS Local Standards. The IRS National Standards are based on numbers of persons, not household size. Similarly, the IRS Local Standards are based on family, not household, size. The IRS itself determines the applicable number of persons or family size for these purposes according to the number of dependents that the debtor claims for federal income tax purposes.

In order for forms 22A and 22C to reflect more accurately the manner in which the specified National and Local Standards are applied by the IRS, the references to “household” and “household size” are deleted, and the substituted terms—“number of persons” and “family size”—are defined in terms of exemptions and the debtor’s federal income tax return and other dependents.

TAB



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

ANTHONY J. SCIRICA
CHAIRMAN, EXECUTIVE COMMITTEE

(215) 597-2399
(215) 597-7373 FAX
ascirica@ca3.uscourts.gov

Memorandum of Action

Executive Committee Judicial Conference of the United States

November 18, 2008

By mail ballot concluded on November 18, 2008, the Executive Committee, on recommendation of the Committee on Rules of Practice and Procedure, approved on behalf of the Judicial Conference two items to take effect on December 19, 2008: 1) revisions to Official Bankruptcy Form 22A; and 2) distribution to the district courts of proposed Interim Bankruptcy Rule 1007-I with a recommendation that it be adopted through a local rule or standing order. The revisions to the Official Form are technical and necessary to conform to changes made by the National Guard and Reservists Debt Relief Act of 2008 (Pub. Law No. 110-438), which amends the Bankruptcy Code to exclude, in cases commenced in the three-year period after the effective date of the Act, certain members of the National Guard and Reserves from means testing in chapter 7 cases. Expedited action was required to accommodate rules vendors who need significant lead time to make changes.

Anthony J. Scirica

Committee:

Danny J. Boggs
Charles R. Breyer
James C. Duff
Alan B. Johnson
Paul R. Michel
Lawrence L. Piersol
David Bryan Sentelle

November 19, 2008

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

LEE H. ROSENTHAL
CHAIR

PETER G. McCABE
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

CARL E. STEWART
APPELLATE RULES

LAURA TAYLOR SWAIN
BANKRUPTCY RULES

MARK R. KRAVITZ
CIVIL RULES

RICHARD C. TALLMAN
CRIMINAL RULES

ROBERT L. HINKLE
EVIDENCE RULES

MEMORANDUM

To: Honorable Anthony J. Scirica

From: Honorable Lee H. Rosenthal

Date: November 10, 2008

RE: REQUEST JUDICIAL CONFERENCE APPROVAL OF REVISIONS TO OFFICIAL
BANKRUPTCY FORM 22A AND INTERIM BANKRUPTCY RULE 1007-I

The Committee on Rules of Practice and Procedure requests the Judicial Conference, or the Executive Committee acting on its behalf, approve proposed revisions to Official Form 22A to take effect on December 9, 2008, and approve distributing to the courts proposed Interim Rule 1007-I with a recommendation that it be adopted as a local rule or standing order also to take effect on December 19, 2008. The proposed changes implement the National Guard and Reservists Debt Relief Act of 2008, which was enacted on October 20, 2008. The Act amends the Bankruptcy Code to exempt from means testing for the next three years certain members of the National Guard and Reserves. The December 19 effective date is consistent with the effective date of the Act. The Interim Rule and the Official Form revisions would remain in effect for all cases begun in the three years covered by the Act. The proposed changes are technical to conform to the change in the Code and not controversial.

The attached memorandum from Judge Laura Taylor Swain, chair of the Advisory Committee on Bankruptcy Rules, provides additional information on the Act, a copy of the Act, proposed language revising the Official Form, and the proposed Interim Rule and Committee Note. A quick turnaround is requested to accommodate form vendors who require significant lead time to make the changes.

Thank you for considering our request.

Attachments

cc: Laura Minor
Peter McCabe

OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

LEE H. ROSENTHAL
CHAIR

PETER G. McCABE
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

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CRIMINAL RULES

ROBERT L. HINKLE
EVIDENCE RULES

TO: Hon. Lee H. Rosenthal, Chair
Standing Committee on Rules of Practice and Procedure

FROM: Hon. Laura Taylor Swain, Chair
Advisory Committee on Bankruptcy Rules



DATE: October 29, 2008

RE: Report of the Advisory Committee on Bankruptcy Rules Recommending
Approval of Amendment to Official Form 22A and Interim Rule 1007-I

On October 20, 2008, the President signed the National Guard and Reservists Debt Relief Act of 2008, Pub.L. 110-438, which amends § 707(b)(2)(D) of the Bankruptcy Code to exempt from means testing National Guard members and Reservists called for at least 90 days to active duty or homeland defense activity after September 11, 2001. The Act prohibits courts from dismissing chapter 7 cases of qualifying National Guard members or Reservists, during the active duty or homeland defense activity or within 540 days after the cessation of the active duty or homeland defense activity, based on any form of means testing.

The amendment to § 707(b)(2)(D) takes effect on December 19, 2008, 60 days after enactment, and will apply in cases filed during the ensuing three years. The Advisory Committee recommends that a new Interim Rule 1007-I – Lists, Schedules, Statements, and other Documents; Time Limits; Expiration of Temporary Means Testing Exclusion – be approved and

that Official Form 22A – Statement of Current Monthly Income and Means Test Calculation – be amended to permit qualifying debtors to invoke the exclusion.

Because the prohibition against dismissing these cases based on means testing expires 540 days after a debtor is released from active duty or is no longer performing homeland defense activities, the exclusion may expire while a debtor's case is pending, and at a point when a timely motion to dismiss the debtor's case may still be filed under § 707(b)(2). The Advisory Committee recommends that a debtor whose exclusion expires under such circumstances be required to complete the means test computation form no later than 14 days after the expiration of the exclusion and that the clerk be required to give such debtors notice of the need to complete the means test. Because the law takes effect before the normal rule-making process can be completed, the Advisory Committee recommends the adoption of an Interim Rule.

The Advisory Committee requests that the Standing Committee:

- (1) approve the Interim Rule and submit it to the Judicial Conference with a recommendation that the Conference approve transmission of the Interim Rule to the courts for adoption as a local rule; and
- (2) approve the revisions to Official Form 22A and submit the amended Official Form to the Judicial Conference with a recommendation that the revisions be adopted.

The Advisory Committee requests that the Interim Rule and the revisions to Official Form 22A take effect on December 19, 2008, and remain in effect for all cases commenced while the amendments made by Pub.L. 110-438 to § 707(b)(2)(D) are applicable, as provided in that statute or any subsequent extension thereof.

(The Interim Rule, an excerpt of the Official Form with the revisions highlighted, and committee notes are attached.)

20 subdivision (a)(2), and the schedules, statements, and other
21 documents required by subdivision (b)(1) shall be filed by the debtor
22 within 15 days of the entry of the order for relief. In a voluntary case,
23 the documents required by paragraphs (A), (C), and (D) of
24 subdivision (b)(3) shall be filed with the petition. Unless the court
25 orders otherwise, a debtor who has filed a statement under
26 subdivision (b)(3)(B), shall file the documents required by
27 subdivision (b)(3)(A) within 15 days of the order for relief. In a
28 chapter 7 case, the debtor shall file the statement required by
29 subdivision (b)(7) within 45 days after the first date set for the
30 meeting of creditors under § 341 of the Code, and in a chapter 11 or
31 13 case no later than the date when the last payment was made by the
32 debtor as required by the plan or the filing of a motion for a discharge
33 under § 1141(d)(5)(B) or § 1328(b) of the Code. The court may, at
34 any time and in its discretion, enlarge the time to file the statement
35 required by subdivision (b)(7). The debtor shall file the statement
36 required by subdivision (b)(8) no earlier than the date of the last
37 payment made under the plan or the date of the filing of a motion for
38 a discharge under §§ 1141(d)(5)(B), 1228(b), or 1328(b) of the Code.
39 Lists, schedules, statements, and other documents filed prior to the
40 conversion of a case to another chapter shall be deemed filed in the
41 converted case unless the court directs otherwise. Except as provided

42 in § 1116(3), any extension of time to file schedules, statements, and
43 other documents required under this rule may be granted only on
44 motion for cause shown and on notice to the United States trustee,
45 any committee elected under § 705 or appointed under § 1102 of the
46 Code, trustee, examiner, or other party as the court may direct.
47 Notice of an extension shall be given to the United States trustee and
48 to any committee, trustee, or other party as the court may direct.

49 * * * * *

50 (n) TIME LIMITS FOR, AND NOTICE TO, DEBTORS
51 TEMPORARILY EXCLUDED FROM MEANS TESTING.

52 (1) An individual debtor who is temporarily excluded from
53 means testing pursuant to § 707(b)(2)(D)(ii) of the Code shall file any
54 statement and calculations required by subdivision (b)(4) no later
55 than 14 days after the expiration of the temporary exclusion if the
56 expiration occurs within the time specified by Rule 1017(e) for filing
57 a motion pursuant to § 707(b)(2).

58 (2) If the temporary exclusion from means testing under §
59 707(b)(2)(D)(ii) terminates due to the circumstances specified in
60 subdivision (n)(1), and if the debtor has not previously filed a
61 statement and calculations required by subdivision (b)(4), the clerk
62 shall promptly notify the debtor that the required statement and

63 calculations must be filed within the time specified in subdivision
64 (n)(1).

COMMITTEE NOTE

This rule is amended to take account of the enactment of the National Guard and Reservists Debt Relief Act of 2008, which amended § 707(b)(2)(D) of the Code to provide a temporary exclusion from the application of the means test for certain members of the National Guard and reserve components of the Armed Forces. This exclusion applies to qualifying debtors while they remain on active duty or are performing a homeland defense activity, and for a period of 540 days thereafter. For some debtors initially covered by the exclusion, the protection from means testing will expire while their chapter 7 cases are pending, and at a point when a timely motion to dismiss under § 707(b)(2) can still be filed. Under the amended rule, these debtors are required to file the statement and calculations required by subdivision (b)(4) no later than 14 days after the expiration of their exclusion.

Subdivisions (b)(4) and (c) are amended to relieve debtors qualifying for an exclusion under § 707(b)(2)(D)(ii) from the obligation to file a statement of current monthly income and required calculations within the time period specified in subdivision (c).

Subdivision (n)(1) is added to specify the time for filing of the information required by subdivision (b)(4) by a debtor who initially qualifies for the means test exclusion under § 707(b)(2)(D)(ii), but whose exclusion expires during the time that a motion to dismiss under § 707(b)(2) may still be made under Rule 1017(e). If, upon the expiration of the temporary exclusion, a debtor has not already filed the required statement and calculations, subdivision (n)(2) directs the clerk to provide prompt notice to the debtor of the time for filing as set forth in subdivision (n)(1).

In re _____
Debtor(s)

Case Number: _____
(If known)

According to the information required to be entered on this statement (check one box as directed in Part I, III, or VI of this statement):

- The presumption arises.
- The presumption does not arise.
- The presumption is temporarily inapplicable.

CHAPTER 7 STATEMENT OF CURRENT MONTHLY INCOME AND MEANS-TEST CALCULATION

In addition to Schedules I and J, this statement must be completed by every individual chapter 7 debtor, whether or not filing jointly. Unless the exclusion in Line 1C applies, joint debtors may complete a single statement. If the exclusion in Line 1C applies, each joint filer must complete a separate statement.

Part I. MILITARY AND NON-CONSUMER DEBTORS

1A	<p>Disabled Veterans. If you are a disabled veteran described in the Declaration in this Part IA, (1) check the box at the beginning of the Declaration, (2) check the box for “The presumption does not arise” at the top of this statement, and (3) complete the verification in Part VIII. Do not complete any of the remaining parts of this statement.</p> <p><input type="checkbox"/> Declaration of Disabled Veteran. By checking this box, I declare under penalty of perjury that I am a disabled veteran (as defined in 38 U.S.C. § 3741(1)) whose indebtedness occurred primarily during a period in which I was on active duty (as defined in 10 U.S.C. § 101(d)(1)) or while I was performing a homeland defense activity (as defined in 32 U.S.C. §901(1)).</p>
1B	<p>Non-consumer Debtors. If your debts are not primarily consumer debts, check the box below and complete the verification in Part VIII. Do not complete any of the remaining parts of this statement.</p> <p><input type="checkbox"/> Declaration of non-consumer debts. By checking this box, I declare that my debts are not primarily consumer debts.</p>
1C	<p>Reservists and National Guard Members; active duty or homeland defense activity. Members of a reserve component of the Armed Forces and members of the National Guard who were called to active duty (as defined in 10 U.S.C. § 101(d)(1)) after September 11, 2001, for a period of at least 90 days, or who have performed homeland defense activity (as defined in 32 U.S.C. § 901(1)) for a period of at least 90 days, are excluded from all forms of means testing during the time of active duty or homeland defense activity and for 540 days thereafter (the “exclusion period”). If you qualify for this temporary exclusion, (1) check the appropriate boxes and complete any required information in the Declaration of Reservists and National Guard Members below, (2) check the box for “The presumption is temporarily inapplicable” at the top of this statement, and (3) complete the verification in Part VIII. During your exclusion period you are not required to complete the balance of this form, but you must complete the form no later than 14 days after the date on which your exclusion period ends, unless the time for filing a motion raising the means test presumption expires in your case before your exclusion period ends.</p> <p><input type="checkbox"/> Declaration of Reservists and National Guard Members. By checking this box and making the appropriate entries below, I declare that I am eligible for a temporary exclusion from means testing because, as a member of a reserve component of the Armed Forces or the National Guard</p> <p style="margin-left: 40px;">a. <input type="checkbox"/> I was called to active duty after September 11, 2001, for a period of at least 90 days and</p> <p style="margin-left: 80px;"><input type="checkbox"/> I remain on active duty /or/</p> <p style="margin-left: 80px;"><input type="checkbox"/> I was released from active duty on _____, which is less than 540 days before this bankruptcy case was filed;</p> <p style="margin-left: 40px;">OR</p> <p style="margin-left: 40px;">b. <input type="checkbox"/> I am performing homeland defense activity for a period of at least 90 days /or/</p> <p style="margin-left: 80px;"><input type="checkbox"/> I performed homeland defense activity for a period of at least 90 days, terminating on _____, which is less than 540 days before this bankruptcy case was filed.</p>

COMMITTEE NOTE

The chapter 7 form is amended to implement the temporary exclusion from means testing created by the National Guard and Reservists Debt Relief Act of 2008. That law amended § 707(b)(2)(D) for a period of three years by adding a new subsection (ii) to provide a temporary exclusion from the application of the means test for certain members of the National Guard and reserve components of the Armed Forces. The new temporary exclusion would last for the period that the qualifying debtor is on active duty or is performing a homeland defense activity, and for 540 days thereafter.

Because the exclusion for Reservists and National Guard members applies only for a defined period of time, it may expire during the course of the chapter 7 case filed by a debtor initially entitled to the exclusion. For that reason, a new check box is added to the top of the form that states that the “presumption is temporarily inapplicable.” A debtor who is entitled to claim the Reservists and National Guard exclusion at the commencement of the chapter 7 case may check that box.

The new exclusion applies only to a debtor who satisfies all of the requirements of § 707(b)(2)(D)(ii), and its expiration date depends on facts specific to each debtor. Therefore, in a joint case in which the exclusion in part 1C is claimed by either or both filers, each joint filer must complete a separate statement. If only one joint debtor qualifies for the exclusion in part 1C, the other joint debtor must complete the form.

Part 1C is added to the form to allow qualifying debtors to claim the temporary exclusion under § 707(b)(2)(D)(ii). Debtors who declare under penalty of perjury that they satisfy all of the requirements of that provision are directed to verify their declaration in Part VIII and to check the “temporary presumption” box at the beginning of the form. They are not required to complete the remaining parts of the form for so long as the exclusion remains applicable.

A debtor who is or has been a Reservist or a National Guard member may qualify for the exclusion described in part 1C by being called to active duty service after September 11, 2001, for a period of at least 90 days, or while performing homeland defense activity for a period of at least 90 days. After the debtor has been released from active duty or has ceased performing homeland defense activity, the exclusion applies for a period of 540 days

after the release date or cessation of homeland defense activity. Under those circumstances the debtor must state the date of release from active duty or the date on which the performance of homeland defense activity terminated.

If the Reservist and National Guard exclusion terminates during the course of a chapter 7 case – because of the expiration of the 540 day period following the release from active duty or the cessation of homeland defense activity – then the debtor may be required to complete the remaining parts of the form that are applicable to the debtor. If the exclusion terminates while a timely motion to dismiss under § 707(b)(2) may still be filed, Interim Rule 1007-I(n) requires that the debtor complete the remaining parts of the form no later than 14 days after the termination. If the obligation to complete the form arises in these circumstances and the debtor has not previously completed the form, the clerk is required to give the debtor notice of the obligation.

UNITED STATES PUBLIC LAWS
110th Congress - Second Session
Convening January 04, 2008

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Additions and Deletions are not identified in this database.
Vetoed provisions within tabular material are not displayed

PL 110-438 (S 3197)
October 20, 2008
NATIONAL GUARD AND RESERVISTS DEBT RELIEF ACT OF 2008

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,

<< 11 USCA § 101 NOTE >>

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)--

<< 11 USCA § 707 >>

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

<< 11 USCA § 707 >>

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

<< 11 USCA § 707 >>

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

"testing--

"(i) if the debtor is a disabled veteran",

<< 11 USCA § 707 >>

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

<< 11 USCA § 707 >>

(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 *5001 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--

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(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.

<< 11 USCA § 707 NOTE >>

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.

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