

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
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December 15, 2008

ATTENTION

NATIONAL GUARD AND RESERVISTS DEBT RELIEF ACT OF 2008
EFFECTIVE DECEMBER 19, 2008

TO ALL BANKRUPTCY PRACTITIONERS

The National Guard and Reservists Debt Relief Act of 2008, Pub.L. 110-438, provides a temporary exclusion from the bankruptcy means test for Reservists and members of the National Guard called to active duty or homeland defense activity after September 11, 2001, for at least 90 days. The amendment to section 707(b)(2)(D) of the Bankruptcy Code will be effective on December 19, 2008, and applies only to cases commenced in the three-year period beginning on the effective date of the Act. The Judicial Conference has approved an amendment to Official Form B22A which includes a new Part 1C where qualifying debtors can invoke the temporary exclusion from the means test. **The amended form will be effective on December 19, 2008**, the same time the statute is effective. The form and Committee Note can be found at <http://www.uscourts.gov/bankform/index.html>. 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).

Attorneys who file for qualifying members of the National Guard and Reserves will do the following:

First: 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 second debtor also claims an exclusion	set the presumption of abuse flag to MEANSNO

Second: Docket a new event called 'Statement of Debtor's Temporary Exclusion from Means Test'.

Third: If the debtor is released from active duty later in the case, the attorney should docket the event 'Release from Active Duty'.