

CM/ECF

**National Guard
And Reservists
Debt Relief Act
2008**

National Guard and Reservists Debt Relief Act of 2008

- October 20, 2008 President signed the Debt Relief Act of 2008.
- December 19, 2008 Effective date of Relief Act
- Amends §707(b)(2)(D) of the Bankruptcy Code
- Only for chapter 7 individual consumer bankruptcy debtors.

National Guard and Reservists Debt Relief Act of 2008

- Provides temporary exclusion from chapter 7 bankruptcy means test for:
 - National Guardsmen
 - Reservists
- Who were called to active duty or homeland defense activity after September 11, 2001
 - for at least 90 days

National Guard and Reservists Debt Relief Act of 2008

- Temporary exclusion expires 540 days after the debtor is released from active duty or no longer performing homeland defense activities.
- The amendment applies only to cases commenced in the three-year period beginning on the effective date of the Act.

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- This exclusion could expire while a chapter 7 debtor's case is pending and while a motion to dismiss the case may still be filed.
 - Interim Rule – Requires the clerk give the debtor notice of the need to complete the means test and the debtor must do so no later than 14 days after the exclusion has expired.

National Guard and Reservists Debt Relief Act of 2008

Process for temporary exclusion in CM/ECF

- Open the case
 - Single debtor case
 - set the means test flag to NO
 - Joint debtor case
 - If other debtor has the presumption of abuse, set the means test flag to YES
 - If both debtors have the exclusion, set the means test flag to NO

National Guard and Reservists Debt Relief Act of 2008

- Statement of Debtor's Temporary Exclusion From Means Test event
 - Can be used for single or joint debtor cases
 - Sets another flag MEANSTMPEX
 - Permanent flag
 - Can set date on which the temporary exclusion ends if debtor is no longer on active duty.
 - Can set separate deadlines for each debtor

National Guard and Reservists Debt Relief Act of 2008

ECF Bankruptcy Adversary Query Reports Utilities Search Logout

Miscellaneous

[08-10131 Frank T. Hammock and Carol J. Hammock](#)

Type: bk Chapter: 7 v Office: 1 (Pleasantville)
Assets: n Judge: ca Case Flag: MEANSNO

st Click your selection, or use arrows to highlight it and press Enter. Hold down Ctrl to add additional items.

Available Events (click to select events)

- Cash Flow Statement
- Chapter 11 Statement of Current Monthly Income
- Chapter 13 Statement of Current Monthly and Disposable Income
- Reaffirmation Disclosure Statement
- Small Business Statement
- Statement in Support of Reaffirmation Agreement
- Statement of Corporate Ownership
- Statement of Debtor's Temporary Exclusion from Means Test**
- Statement of Financial Affairs
- Statement of Good Faith
- Statement of Intent
- Statement of Operations
- Statistical Summary of Certain Liabilities
- Stipulation
- Update EOUST Stats
- Update Statistical Data

Selected Events (click to remove events)

- Statement of Debtor's Temporary Exclusion from Means Test

Docket new event -
Statement of Debtor's Temporary Exclusion from Means Test

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Type: bk Chapter: 7 v Office: 1 (Pleasantville)
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Select the Party:

 [Add/Create New Party](#)

The event is appropriate for single or joint debtor cases. This slide shows both debtors filing this statement.

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Type: bk	Chapter: 7 v	Office: 1 (Pleasantville)
Assets: n	Judge: ca	Case Flag: MEANSNO

Which debtor served in the reserves or in homeland defense activities?

- debtor
- joint debtor
- both debtors

If both debtors are selected on this screen, the following process is repeated for each party so separate deadlines are created.

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Type: bk	Chapter: 7 v	Office: 1 (Pleasantville)
Assets: n	Judge: ca	Case Flag: MEANSNO

Is the debtor claiming the temporary exclusion serving on active duty?

Yes ▾

Yes

No

Clear

If both debtors have been selected, this query will be presented separately for each debtor. In the example above the debtor is still serving on active duty.

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CM ECF [Bankruptcy](#) [Adversary](#) [Query](#) [Reports](#) [Utilities](#) [Search](#) [Logout](#) ?

Miscellaneous:

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Type: bk	Chapter: 7 v	Office: 1 (Pleasantville)
Assets: n	Judge: ca	Case Flag: MEANSNO, MEANSTMPEX

Is the joint debtor claiming the temporary exclusion serving on active duty?

Yes
No

In our example, the joint debtor is no longer on active duty so we have selected "No" to this question.

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Miscellaneous:

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Type: bk	Chapter: 7 v	Office: 1 (Pleasantville)
Assets: n	Judge: ca	Case Flag: MEANSNO, MEANSTMPEX

Enter the date released from active duty

For the joint debtor, the system is now requesting the date of release from active duty.

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The screenshot shows the ECF system interface. At the top is a blue navigation bar with the ECF logo and menu items: Bankruptcy, Adversary, Query, Reports, Utilities, Search, and Logout. Below the navigation bar is a section titled "Miscellaneous:". Under this section, the case number "08-10131" and the names "Frank T. Hammock and Carol J. Hammock" are displayed. Below the case information, there are three columns of data: "Type: bk", "Chapter: 7 v", and "Office: 1 (Pleasantville)"; "Assets: n", "Judge: ca", and "Case Flag: MEANSNO, MEANSTMPEX". At the bottom of the form, there is a text field labeled "The temporary exclusion for the joint debtor ends on:" with a date input field containing "04/29/2010" and a calendar icon. Below the date field are two buttons: "Next" and "Clear".

The system next calculates the exclusion deadline for the joint debtor which is the release date + 540 days.

National Guard and Reservists Debt Relief Act of 2008

- If a debtor is released from active duty later in the case
 - attorney should docket the event “Release from Active Duty”
 - sets the temporary exclusion deadline for one or both debtors in a joint case
- Court must monitor this deadline

National Guard and Reservists Debt Relief Act of 2008

- Official Form 22A is revised (December 1, 2008)
 - New Part 1C added to Form 22A, Statement of Current Monthly Income and Means Test Calculation
 - For National Guard or Reservists claiming exemption from the means test

National Guard and Reservists Debt Relief Act of 2008

B22A (Official Form 22A) (Chapter 7) (12/08)

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

Part I. MILITARY AND NON-CONSUMER DEBTORS

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 of Part VIII. Do not complete any of the remaining parts of this statement.

1A

- 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)).

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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.

1B

Declaration of non-consumer debts. By checking this box, I declare that my debts are not primarily consumer debts.

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.

1C

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

- a. I was called to active duty after September 11, 2001, for a period of at least 90 days and
- I remain on active duty /or/
 - I was released from active duty on _____, which is less than 540 days before this bankruptcy case was filed:

OR

- b. I am performing homeland defense activity for a period of at least 90 days /or/
- 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.

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REVIEW

1. Open the case as usual and set the presumption of abuse flag to no (MEANSNO).

NOTE: If the case is joint, and the exclusion applies to one debtor and the other debtor has the presumption of abuse, the case should be opened with the means YES.

2. Docket a new event called 'Statement of Debtor's Temporary Exclusion from Means Test.'
3. If the debtor is released from active duty later in the case, the attorney should docket the event 'Release from Active Duty.'
4. Monitor deadline if appropriate.
5. Do not remove MEANSTMPEX flag.
 - Will be used to monitor exclusion activity