

## **NOTICE OF TEMPORARY EXCLUSION FROM MEANS TESTING**

**December 19, 2008**

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 Judicial Conference has approved an amendment to Official Form 22A, Statement of Current Monthly Income and Means Test Calculation, which includes a new Part 1C where qualifying debtors could invoke the exclusion. In addition, the Judicial Conference has approved transmitting proposed Interim Rule 1007-I to the courts for adoption as a local rule.

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.

Electronic filers using the Court's Case Management Electronic Case Filing System (CM/ECF) should make themselves familiar with the requirements in cases in which the Act is appropriate. To assist bankruptcy practitioners in applying the provisions of the Act, the U.S. Bankruptcy Court for the Northern District of Florida has posted the following documents on the court's web page:

- A document titled "Attorney Guidance" in filing for temporary exclusion of the means test requirement for Guardsmen and Reservists;
- An copy of Administrative Order 08-002 adopting Interim Rule 1007-I with regard to the Act;
- Official Form 22A (means test form) as modified 12/2008 to include section "1C" wherein the debtor's declare their eligibility for temporary exclusion.