UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN THE MATTER OF

ADOPTION OF INTERIM BANKRUPTCY RULE 1007-I

STANDING ORDER

Whereas, the National Guard and Reservists Debt Relief Act of 2008, Pub.L. 110-438, ("Act",) 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 for at least 90 days after September 11, 2001, and

Whereas, the Act becomes effective on December 19, 2008, and

Whereas, the Judicial Conference has approved transmitting proposed Interim Rule 1007-I to the courts to implement the Act, and

Whereas, the Judicial Conference has also approved an amendment to Official Form 22A, which includes a new Part 1C, where qualifying debtors can invoke the temporary exclusion, such form to become effective on December 19, 2008, the same time that the Act is effective, it is therefore

ORDERED that the attached Interim Rule 1007-I is adopted in its entirety and Official Form 22A as amended is also adopted, to be effective December 19, 2008. This Interim Rule shall remain in effect until further Order of this Court.

IT IS SO ORDERED.

BY THE COURT

Dated: December 11, 2008

HONORABLE CARL L. BUCKI
Chief, U.S. Bankruptcy Judge

HONORABLE MICHAEL J. KAPLAN
U.S. Bankruptcy Judge

HONORABLE JOHN C. NINFO, II
U.S. Bankruptcy Judge

Interim Rule 1007-I. Lists, Schedules, Statements, and Other Documents; Time Limits; Expiration of Temporary Means Testing Exclusion

1 * * * * *

2 (b) SCHEDULES, STATEMENTS, AND OTHER
3 DOCUMENTS REQUIRED.

4 * * * * *

5 (4) Unless either: (A) § 707(b)(2)(D)(i) applies, or
6 (B) § 707(b)(2)(D)(ii) applies and the exclusion from means testing
7 granted therein extends beyond the period specified by Rule 1017(e),
8 an individual debtor in a chapter 7 case shall file a statement of
9 current monthly income prepared as prescribed by the appropriate
10 Official Form, and, if the current monthly income exceeds the median
11 family income for the applicable state and household size, the
12 information, including calculations, required by § 707(b), prepared
13 as prescribed by the appropriate Official Form.

14 * * * * *

15 (c) TIME LIMITS. In a voluntary case, the schedules,
16 statements, and other documents required by subdivision (b)(1), (4),
17 (5), and (6) shall be filed with the petition or within 15 days
18 thereafter, except as otherwise provided in subdivisions (d), (e), (f),
19 ~~and~~ (h), and (n) of this rule. In an involuntary case, the list in
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
23 case, 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 than14 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 than14 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).