

# REAFFIRMATION CHECKLIST

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## Taking the Guesswork Out of Reaffirmations

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- 1.0 Why was my reaffirmation set for hearing?
- 2.0 What do I need to do if my reaffirmation is set for hearing?
- 3.0 Helpful tips on how to complete the Reaffirmation Agreement Official Form 427 and Reaffirmation Agreement Official Form 2400A/B ALT

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## Reaffirmation Hearing

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### 1.0 WHY WAS MY REAFFIRMATION SET FOR HEARING?

In general (but with many exceptions), a reaffirmation agreement is effective upon filing and the Court does NOT need to approve or disapprove the agreement. If your reaffirmation agreement has been set for a hearing, it is because of ONE OR BOTH of the following scenarios:

(1) You do not have an attorney or your attorney failed to sign the attorney certification portion of the Reaffirmation Agreement. In those situations, a hearing is required to be sure that you have been advised of the legal effect of entering into the reaffirmation agreement and the consequences of default. The reaffirmation agreement will also be reviewed to determine whether it is in your best interests and not an undue hardship on you.

OR

(2) Your attorney DID sign the attorney certification, BUT the reaffirmation agreement shows that your expenses exceed your income on a monthly basis, which is a presumption of undue hardship. If you fail to rebut that presumption within the reaffirmation agreement or in a declaration filed in support of the reaffirmation agreement, the Court is required in most cases<sup>1</sup> to determine whether the agreement is in your best interests and is not an undue hardship on you. **You should carefully fill out the Reaffirmation Cover Sheet (Official Form 427), particularly the information regarding your present (post-bankruptcy filing) income and expenses in Part 6.**

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<sup>1</sup> A hearing may not be required if the creditor is a credit union or if the debt is a consumer debt secured by real property.

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## 2.0 WHAT DO I NEED TO DO IF MY REAFFIRMATION IS SET FOR HEARING?

Court Comments	- <u>Take Action</u> -
<p>Review 1.0 above as to “why” a hearing has been set. Typically, this will be because of no attorney signature or an indication of a hardship, but may also be due to errors in completing the reaffirmation agreement.</p>	<ul style="list-style-type: none"><li>• Attorneys should contact their clients immediately and discuss the hardship analysis and compile and file evidence (documents, declarations, etc.) to show why the reaffirmation is not an undue hardship.</li><li>• Debtors acting without an attorney should file a statement or declaration explaining why the reaffirmation is not an undue hardship.</li><li>• All evidence and documents should be filed well in advance of the hearing date.</li><li>• If sufficient evidence is provided, a hearing may not be necessary.</li><li>• If both debtor and joint debtor are reaffirming the debt, both must appear if a hearing is necessary.</li></ul>

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Step 1: CAREFULLY PREPARE a Coversheet for the Reaffirmation Agreement - Official Form 427

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- 1.0 Who is the creditor
- 2.0 How much is the debt
- 3.0 What is Annual Percentage Rate (APR) of interest? (See Bankruptcy Code § 524(k)(3)(E))
- 4.0 Does collateral secure the debt
- 5.0 Does the creditor assert that the debt is nondischargeable
- 6.0 Income and expenses reported on Schedules I and J  
Income and expenses stated on the reaffirmation agreement
- 7.0 Are the income amounts on lines 6a and 6e different
- 8.0 Are the expense amounts on lines 6b and 6f different
- 9.0 Is the net monthly income on line 6h less than 0
- 10.0 Debtor's certification about lines 7-9
- 11.0 Did an attorney represent the debtor negotiating the reaffirmation agreement

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1.0 Who is the creditor?

Court Comments	Reaffirmation Details
	Include the full legal name of the creditor

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2.0 How much is the debt?

Court Comments	Responsibilities
This paragraph tells the judge the amount of the debt and whether it is being modified as a result of the reaffirmation.	On the date that the bankruptcy case was filed \$ _____ To be paid under the reaffirmation agreement \$ _____ \$ _____ per month for _____ months (if fixed interest rate)

### 3.0 What is the Annual Percentage Rate (APR) of interest?

Court Comments	Reaffirmation Details
<p>It is important to know if the creditor is providing the debtor a benefit for the reaffirmation, such as modifying the interest rate</p>	<p>Before the bankruptcy case was filed _____%</p> <p>Under the reaffirmation agreement _____%</p> <p>_____ Fixed Rate</p> <p>_____ Adjustable Rate</p>

### 4.0 Does collateral secure the debt?

Court Comments	Reaffirmation Details
<p>This paragraph informs the court if you have collateral and its value. This is important because the court needs to know if the debt is secured, under-secured, or unsecured.</p>	<p>_____ No</p> <p>_____ Yes. Describe the collateral _____</p> <p>Current market value \$ _____</p>

### 5.0 Does the creditor assert that the debt is nondischargeable?

Court Comments	Reaffirmation Details
	<p>_____ No</p> <p>_____ Yes. Attach an explanation of the nature of the debt and the basis for contending that the debt is nondischargeable.</p>

6.0 Using information from *Schedule I: Your income* (Official Form 106I) and *Schedule J: Your expenses* (Official Form 106J), fill in the amounts

Court Comments	Reaffirmation Details	
<p>This is an <b>important part</b> of the cover sheet. The court needs to know what has changed, if anything since bankruptcy filing to enable debtor to meet the payment obligations. The numbers in the far right columns should match what is in the body of the reaffirmation agreement, which <b>GENERALLY</b> do not match Schedules I and J numbers</p>	<b><u>Income and Expenses on Schedules I and J</u></b>	
	6a. Combined monthly income from line 12 of Schedules I	\$ _____
	6b. Monthly payments from Line 22c of Schedule J	- \$ _____
	6c. Monthly payment on all Reaffirmed debts not listed on Schedule J	- \$ _____
	6d. Scheduled net monthly Income. Subtract lines 6b and 6c from 6a. If The total is less than 0, Put the number in brackets.	\$ _____
<b><u>Income and Expenses on the reaffirmation agreement</u></b>		
	6e. Monthly income from all sources after after payroll deductions	\$ _____
	6f. Monthly expenses	- \$ _____
	6g. Monthly payments on all reaffirmed debts not included in monthly expenses	- \$ _____
	6h. Present net monthly income. Subtract lines 6f and 6g from 6e. If the total is less than 0, put the number in brackets.	\$ _____

7.0 Are the income amounts on lines 6a and 6e different?

Court Comments	Reaffirmation Details
	<input type="checkbox"/> No <input type="checkbox"/> Yes. Explain why they are different and complete line 10. _____

8.0 Are the expense amounts on lines 6b and 6f different?

Court Comments	Reaffirmation Details
	<input type="checkbox"/> No <input type="checkbox"/> Yes. Explain why they are different and complete line 10. _____

## 9.0 Is the net monthly income on line 6h less than 0?

Court Comments	Reaffirmation Details
<p>This is the most important part of the cover sheet. If there is a hardship (deficit) tell how the debtor is going to be able to make the payments. Attach a separate statement or declaration, if appropriate. <b>BE SPECIFIC!</b></p>	<p> <input type="checkbox"/> No  <input type="checkbox"/> Yes. A presumption of hardship arises (unless the creditor is a credit union). Explain how the debtor will make monthly payments on the reaffirmed debt and pay living expenses. Complete line 10.              _____            _____            _____            _____         </p>
<p>Unfortunately, what the court typically sees is...</p>	<p>Examples that <b>DO NOT</b> rebut the presumption of hardship include:</p> <ul style="list-style-type: none"> <li>• “I will reduce spending on miscellaneous and recreational expenses.”</li> <li>• “I will try to get a second (or third) job and/or try to work more hours at my present job.”</li> <li>• “I will spend less on food by shopping sales and using coupons.”</li> <li>• “I will spend less and try to make more money.”</li> </ul>
<p>In summary, to rebut the presumption of undue hardship to the satisfaction of the court: Explain the nature of the debt, any changes in finances, and most importantly <u>be specific</u> on how debtor can make the payments. The rebuttal explanation must be detailed to rebut the presumption of hardship. If you fail to rebut that presumption within the reaffirmation agreement or in a declaration filed in support of the reaffirmation agreement, the Court is required in most cases to hold a hearing to determine whether the agreement is in your best interests and is not an undue hardship on you.</p>	



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## Step 2: PREPARE Reaffirmation Agreement Official Form B2400A/B ALT

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- 1.0 Presumption Box**
- 2.0 Part A Disclosure Statement**
- 3.0 Part A Instructions and Notice to Debtor**
- 4.0 Right to Rescind**
- 5.0 Part B Reaffirmation Agreement**
- 6.0 Part C Certification by Debtor's Attorney (if any)**
- 7.0 Part D Debtor's Statement in Support of Reaffirmation Agreement**
- 8.0 Deadline for Filing/Making Reaffirmation Agreement**

1.0 Presumption Box; Check Boxes Part A, B, C, D, and E; Creditor Name; and Check Box if Reaffirmation is with a Credit Union

Court Comments	Reaffirmation Details
	<div style="border: 1px solid #ccc; padding: 5px;"> <p style="font-size: small;">B2400A/B ALT (Form 2400A/B ALT) (12/15)</p> <div style="border: 1px solid black; padding: 5px; margin: 5px 0;"> <input type="checkbox"/> Presumption of Undue Hardship  <input type="checkbox"/> No Presumption of Undue Hardship  <small>(Check box as directed in Part D: Debtor's Statement in Support of Reaffirmation Agreement.)</small> </div> <p style="text-align: center;"><b>UNITED STATES BANKRUPTCY COURT</b> District of _____</p> <p>In re _____ Case No. _____ Debtor Chapter _____</p> <p style="text-align: center;"><b>REAFFIRMATION AGREEMENT</b></p> <p style="font-size: x-small;"><i>[Indicate all documents included in this filing by checking each applicable box.]</i></p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Part A: Disclosures, Instructions, and Notice to Debtor (pages 1 - 5)  <input type="checkbox"/> Part B: Reaffirmation Agreement  <input type="checkbox"/> Part C: Certification by Debtor's Attorney         </div> <div style="width: 45%;"> <input type="checkbox"/> Part D: Debtor's Statement in Support of Reaffirmation Agreement  <input type="checkbox"/> Part E: Motion for Court Approval         </div> </div> <p style="font-size: x-small;"><i>[Note: Complete Part E only if debtor was not represented by an attorney during the course of negotiating this agreement. Note also: If you complete Part E, you must prepare and file Form 2400C ALT - Order on Reaffirmation Agreement.]</i></p> <p>Name of Creditor: _____</p> <input type="checkbox"/> <i>[Check this box if]</i> Creditor is a Credit Union as defined in §19(b)(1)(a)(iv) of the Federal Reserve Act         </div>





	<p>b. If the debt is an extension of credit other than under than an open end credit plan, the creditor may disclose the annual percentage rate shown in (I) below, or, to the extent this rate is not readily available or not applicable, the simple interest rate shown in (ii) below, or both.</p> <p>(i) The Annual Percentage Rate under §128(a)(4) of the Truth in Lending Act, as disclosed to the debtor in the most recent disclosure statement given to the debtor prior to entering into the reaffirmation agreement with respect to the debt or, if no such disclosure statement was given to the debtor, the annual percentage rate as it would have been so disclosed: _____%.</p> <p style="text-align: center;">--- And/Or ---</p>				
	<p>(ii) The simple interest rate applicable to the amount reaffirmed as of the date this disclosure statement is given to the debtor: _____%. If different simple interest rates apply to different balances included in the amount reaffirmed, the amount of each balance and the rate applicable to it are:</p> <div style="text-align: center; border: 1px solid black; padding: 10px; margin: 10px auto; width: fit-content;"> <p>\$ _____ @ _____ %;</p> <p>\$ _____ @ _____ %;</p> <p>\$ _____ @ _____ %.</p> </div>				
<p>Identify the collateral and original loan amount.</p>	<p>c. If the underlying debt transaction was disclosed as a variable rate transaction on the most recent disclosure given under the Truth in Lending Act:</p> <p style="padding-left: 40px;">The interest rate on your loan may be a variable interest rate which changes from time to time, so that the annual percentage rate disclosed here may be higher or lower.</p> <p>d. If the reaffirmed debt is secured by a security interest or lien, which has not been waived or determined to be void by a final order of the court, the following items or types of items of the debtor's goods or property remain subject to such security interest or lien in connection with the debt or debts being reaffirmed in the reaffirmation agreement described in Part B.</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; border-bottom: 1px solid black; width: 50%;"><u>Item or Type of Item</u></th> <th style="text-align: left; border-bottom: 1px solid black; width: 50%;"><u>Original Purchase Price or Original Amount of Loan</u></th> </tr> </thead> <tbody> <tr> <td style="height: 40px;"> </td> <td> </td> </tr> </tbody> </table> <p><i>Optional</i>---At the election of the creditor, a repayment schedule using one or a combination of the following may be provided:</p>	<u>Item or Type of Item</u>	<u>Original Purchase Price or Original Amount of Loan</u>		
<u>Item or Type of Item</u>	<u>Original Purchase Price or Original Amount of Loan</u>				
	<p><b><u>Repayment Schedule:</u></b></p> <p>Your first payment in the amount of \$ _____ is due on _____ (date), but the future payment amount may be different. Consult your reaffirmation agreement or credit agreement, as applicable.</p> <p style="text-align: center;">— Or —</p> <p>Your payment schedule will be: _____ (number) payments in the amount of \$ _____ each, payable (monthly, annually, weekly, etc.) on the _____ (day) of each _____ ( week, month, etc.), unless altered later by mutual agreement in writing.</p> <p style="text-align: center;">— Or —</p> <p>A reasonably specific description of the debtor's repayment obligations to the extent known by the creditor or creditor's representative.</p>				

### 3.0 PART A: Instructions and Notices to Debtor

Court Comments	Reaffirmation Details
<p>Reaffirming a debt is a serious financial decision. The law requires you to take certain steps to make sure the decision is in your best interest. If these steps are not completed, the reaffirmation agreement is not effective, even though you have signed it. It is important for the debtor to read the instructions and notices.</p>	<ol style="list-style-type: none"> <li>1. Read the disclosures in this Part A carefully. Consider the decision to reaffirm carefully. Then, if you want to reaffirm, sign the reaffirmation agreement in Part B (or you may use a separate agreement you and your creditor agree on).</li> <li>2. Complete and sign Part D and be sure you can afford to make the payments you are agreeing to make and have received a copy of the disclosure statement and a completed and signed reaffirmation agreement.</li> <li>3. If you were represented by an attorney during the negotiation of your reaffirmation agreement, the attorney must sign the certification in Part C.</li> <li>4. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, you must complete and sign Part E.</li> <li>5. The original of this disclosure must be filed with the court by you or your creditor. If a separate reaffirmation agreement (other than the one in Part B) has been signed, it must be attached.</li> <li>6. <u>If the creditor is not a Credit Union</u> and you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court unless the reaffirmation is presumed to be an undue hardship as explained in Part D. <u>If the creditor is a Credit Union</u> and you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court.</li> <li>7. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, it will not be effective unless the court approves it. The court will notify you and the creditor of the hearing on your reaffirmation agreement. You must attend this hearing in bankruptcy court where the judge will review your reaffirmation agreement. The bankruptcy court must approve your reaffirmation agreement as consistent with your best interests, except that no court approval is required if your reaffirmation agreement is for a consumer debt secured by a mortgage, deed of trust, security deed, or other lien on your real property, like your home.</li> </ol>

## 4.0 PART A: Right to Rescind (Cancel) Your Reaffirmation Agreement

Court Comments	Reaffirmation Details
Attorneys should carefully explain this right to their clients.	You may rescind (cancel) your reaffirmation agreement at any time before the bankruptcy court enters a discharge order, or before the expiration of the 60-day period that begins on the date your reaffirmation agreement is filed with the court, whichever occurs later. To rescind (cancel) your reaffirmation agreement, you must notify the creditor that your reaffirmation agreement is rescinded (or canceled).

## 5.0. PART B: Reaffirmation Agreement

Court Comments	Reaffirmation Details
	<ul style="list-style-type: none"> <li>• All parties reaffirming the debt should sign the reaffirmation agreement.</li> <li>• If only one debtor has an obligation on the underlying debt, a joint debtor <u>should not</u> be a party to the agreement.</li> <li>• The agreement must be signed and dated by the creditor.</li> </ul>

## 6.0 PART C: Certification by Debtor's Attorney (if any)

Court Comments	Reaffirmation Details
<p>If the debtor is represented by counsel during the course of negotiating the agreement, counsel shall sign the Reaffirmation Agreement and check the box if a presumption of undue hardship has been established and the debtor is able to make the required payment.</p> <p>Some attorneys choose to include language qualifying this certification.</p>	<p><b>PART C: CERTIFICATION BY DEBTOR'S ATTORNEY (IF ANY).</b></p> <p><i>[To be filed only if the attorney represented the debtor during the course of negotiating this agreement.]</i></p> <p>I hereby certify that (1) this agreement represents a fully informed and voluntary agreement by the debtor; (2) this agreement does not impose an undue hardship on the debtor or any dependent of the debtor; and (3) I have fully advised the debtor of the legal effect and consequences of this agreement and any default under this agreement.</p> <p><input type="checkbox"/> <i>[Check box, if applicable and the creditor is not a Credit Union.]</i> A presumption of undue hardship has been established with respect to this agreement. In my opinion, however, the debtor is able to make the required payment.</p> <p>Printed Name of Debtor's Attorney: _____</p> <p>Signature of Debtor's Attorney: _____</p> <p>Date: _____</p>

## 7.0 PART D: Debtor's Statement in Support of Reaffirmation Agreement

Court Comments	Reaffirmation Details
<p>The debtor's present (post bankruptcy filing) income and expenses should be used when completing Part D 1. See 6e., 6f., 6g., and 6h. of the Coversheet for Reaffirmation Agreement.</p> <p>If a presumption of undue hardship exists explain how debtor will make the payments. See court comments and examples that <b>do not</b> rebut the hardship in section 9 of the Coversheet for Reaffirmation Agreement.</p>	<p style="text-align: center;"><b>PART D: DEBTOR'S STATEMENT IN SUPPORT OF REAFFIRMATION AGREEMENT</b></p> <p style="text-align: center;"><i>[Read and complete sections 1 and 2, <b>OR</b> if the creditor is a Credit Union and the debtor is represented by an attorney, read section 3. Sign the appropriate signature line(s) and date your signature. If you complete sections 1 and 2 and your income less monthly expenses does not leave enough to make the payments under this reaffirmation agreement, check the box at the top of page 1 indicating "Presumption of Undue Hardship." Otherwise, check the box at the top of page 1 indicating "No Presumption of Undue Hardship"]</i></p> <p>1. I believe this reaffirmation agreement will not impose an undue hardship on my dependents or me. I can afford to make the payments on the reaffirmed debt because my monthly income (take home pay plus any other income received) is \$_____, and my actual current monthly expenses including monthly payments on post-bankruptcy debt and other reaffirmation agreements total \$_____, leaving \$_____ to make the required payments on this reaffirmed debt.</p> <p style="text-align: center;">I understand that if my income less my monthly expenses does not leave enough to make the payments, this reaffirmation agreement is presumed to be an undue hardship on me and must be reviewed by the court. However, this presumption may be overcome if I explain to the satisfaction of the court how I can afford to make the payments here: _____</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">(Use an additional page if needed for a full explanation.)</p>
<p>The debtor(s) must sign and date the statement in support of the Reaffirmation Agreement acknowledging receipt of the Reaffirmation Disclosure Statement in Part A of the agreement.</p>	<p>2. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.</p> <p>Signed: _____ (Debtor)</p> <p>_____ (Joint Debtor, if any)</p> <p>Date: _____ — Or —</p> <p style="text-align: center;"><i>[If the creditor is a Credit Union and the debtor is represented by an attorney]</i></p> <p>3. I believe this reaffirmation agreement is in my financial interest. I can afford to make the payments on the reaffirmed debt. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.</p> <p>Signed: _____ (Debtor)</p> <p>_____ (Joint Debtor, if any)</p> <p>Date: _____</p>

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## 8.0 Deadline to File/Make Reaffirmation Agreement

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Court Comments	Reaffirmation Details
Any reaffirmation filed after the 60 <sup>th</sup> day is rendered unenforceable, unless debtor files a timely Motion to Defer/Delay Entry of Discharge to file a reaffirmation agreement.	“A reaffirmation agreement shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a) of the Code.” Fed. R. Bankr. P. 4008. “The court may, at any time and in its discretion, enlarge the time to file a reaffirmation agreement.”
In addition...	Section 524(c)(1) provides that a reaffirmation agreement will only be effective if it is “made” <b>before discharge</b> .