

NATIONAL GUARD AND RESERVISTS DEBT RELIEF ACT
OF 2008

JUNE 20, 2008.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. CONYERS, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 4044]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4044) to amend the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 to exempt from the means test in bankruptcy cases, for a limited period, qualifying reserve-component members who, after September 11, 2001, are called to active duty or to perform a homeland defense activity for not less than 60 days, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

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THE AMENDMENTS

The amendments are as follows:
Strike all after the enacting clause and insert the following:

SECTION 1 SHORT TITLE.

This Act may be cited as the “National Guard and Reservists Debt Relief Act of 2008”.

SEC. 2. AMENDMENTS.

Section 707(b)(2)(D) of title 11, United States Code, is amended—

- (1) in clauses (i) and (ii)—
 - (A) by indenting the left margin of such clauses 2 ems to the right, and
 - (B) by redesignating such clauses as subclauses (I) and (II), respectively,
- (2) by striking “if the debtor is a disabled veteran” and inserting the following:
 - “if—
 - “(i) the debtor is a disabled veteran”,
 - (3) by striking the period at the end and inserting “; or”, and
 - (4) by adding at the end the following:
 - “(ii) while—
 - “(I) the debtor is—
 - “(aa) on, and during the 540-day period beginning immediately after the debtor is released from, a period of active duty (as defined in section 101(d)(1) of title 10) of not less than 90 days; or
 - “(bb) performing, and during the 540-day period beginning immediately after the debtor is no longer performing, a homeland defense activity (as defined in section 901(1) of title 32) performed for a period of not less than 90 days; and
 - “(II) if after September 11, 2001, the debtor while a member of a reserve component of the Armed Forces or a member of the National Guard, was called to such active duty or performed such homeland defense activity.”.

SEC. 3. GAO STUDY.

(a) **COMPTROLLER GENERAL STUDY.**—Not later than 2 years after the effective date of this Act, the Comptroller General shall complete and transmit to the Speaker of the House of Representatives and the President pro tempore of the Senate, a study of the use and the effects of the provisions of law amended (and as amended) by this Act. Such study shall address, at a minimum—

- (1) whether and to what degree members of reserve components of the Armed Forces and members of the National Guard avail themselves of the benefits of such provisions,
- (2) whether and to what degree such members are debtors in cases under title 11 of the United States Code that are substantially related to service that qualifies such members for the benefits of such provisions,
- (3) whether and to what degree such members are debtors in cases under such title that are materially related to such service, and
- (4) the effects that the use by such members of section 707(b)(2)(D) of such title, as amended by this Act, has on the bankruptcy system, creditors, and the debt-incurrence practices of such members.

(b) **FACTORS.**—For purposes of subsection (a)—

- (1) a case shall be considered to be substantially related to the service of a member of a reserve component of the Armed Forces or a member of the National Guard that qualifies such member for the benefits of the provisions of law amended (and as amended) by this Act if more than 33 percent of the aggregate amount of the debts in such case is incurred as a direct or indirect result of such service,
- (2) a case shall be considered to be materially related to the service of a member of a reserve component of the Armed Forces or a member of the National Guard that qualifies such member for the benefits of such provisions if more than 10 percent of the aggregate amount of the debts in such case is incurred as a direct or indirect result of such service, and
- (3) the term “effects” means—
 - (A) with respect to the bankruptcy system and creditors—
 - (i) the number of cases under title 11 of the United States Code in which members of reserve components of the Armed Forces and members of the National Guard avail themselves of the benefits of such provisions,
 - (ii) the aggregate amount of debt in such cases,

- (iii) the aggregate amount of debt of such members discharged in cases under chapter 7 of such title,
 - (iv) the aggregate amount of debt of such members in cases under chapter 7 of such title as of the time such cases are converted to cases under chapter 13 of such title,
 - (v) the amount of resources expended by the bankruptcy courts and by the bankruptcy trustees, stated separately, in cases under title 11 of the United States Code in which such members avail themselves of the benefits of such provisions, and
 - (vi) whether and to what extent there is any indicia of abuse or potential abuse of such provisions, and
- (B) with respect to debt-incurrence practices—
- (i) any increase in the average levels of debt incurred by such members before, during, or after such service,
 - (ii) any indicia of changes in debt-incurrence practices adopted by such members in anticipation of benefitting from such provisions in any potential case under such title; and
 - (iii) any indicia of abuse or potential abuse of such provisions reflected in the debt-incurrence of such members.

SEC. 4. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) **EFFECTIVE DATE.**—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect 60 days after the date of the enactment of this Act.

(b) **APPLICATION OF AMENDMENTS.**—The amendments made by this Act shall apply only with respect to cases commenced under title 11 of the United States Code in the 3-year period beginning on the effective date of this Act.

Amend the title so as to read:

A bill to amend title 11 of the United States Code to exempt for a limited period, from the application of the means-test presumption of abuse under chapter 7, qualifying members of reserve components of the Armed Forces and members of the National Guard who, after September 11, 2001, are called to active duty or to perform a homeland defense activity for not less than 90 days.

PURPOSE AND SUMMARY

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the 2005 Bankruptcy Act) was signed into law by President George W. Bush on April 20, 2005.¹ The 2005 Bankruptcy Act is the most comprehensive overhaul of bankruptcy law in more than 25 years, particularly with respect to consumer bankruptcy. These consumer bankruptcy amendments included, for example, the establishment of a means testing mechanism to determine a debtor’s ability to repay debts. Under this test, a chapter 7 bankruptcy case is presumed to be an abuse if it appears that the debtor has income in excess of certain thresholds.

H.R. 4044, the “National Guard and Reservists Debt Relief Act of 2008,” would exempt certain qualifying National Guard members and reserve component members of the Armed Services from the means test’s presumption of abuse. This bipartisan legislation responds to the fact that some who serve in the National Guard and the Reserves encounter financial difficulties during or in the wake of their service and that they merit relief from the additional proof requirements of the means test.

¹ Pub. L. No. 109–8, 119 Stat. 23 (2005).

BACKGROUND AND NEED FOR THE LEGISLATION

BACKGROUND

Chapter 7 is a form of bankruptcy relief by which an individual debtor may discharge his or her personal liability for certain debts in exchange for relinquishing the debtor's nonexempt assets to a bankruptcy trustee for liquidation and distribution to creditors. A discharge under chapter 7 contrasts with the "conditional discharge" of chapter 13, a form of bankruptcy relief by which a debtor commits to repay some portion of his or her financial obligations in exchange for retaining nonexempt assets and receiving a broader discharge of debt than is available under chapter 7.

As originally enacted in 1978, the Bankruptcy Code provided that a chapter 7 case could only be dismissed for "cause." In 1984, it was amended to permit a court to dismiss a chapter 7 case for "substantial abuse."² This provision, codified in section 707(b) of the Bankruptcy Code,³ was added "as part of a package of consumer credit amendments designed to reduce perceived abuses in the use of chapter 7."⁴ It was intended to respond "to concerns that some debtors who could easily pay their creditors might resort to chapter 7 to avoid their obligations."⁵ In 1986, section 707(b) was further amended to allow a United States Trustee to move for dismissal.⁶

As amended by the 2005 Bankruptcy Act, section 707(b) permits a court, on its own motion, or on motion of the United States trustee, a private trustee, a creditor, or another party in interest, to dismiss a chapter 7 case for abuse if it was filed by an individual whose debts are primarily consumer debts. Alternatively, the chapter 7 case may be converted to a case under chapter 11 or chapter 13 on consent of the debtor. The Act replaces the prior law's presumption in favor of the debtor with a mandatory presumption of abuse under the Act's means test provisions,⁷ which presumption can be rebutted under limited circumstances.⁸

The Act's means test provisions establish an income/expense screening mechanism for the purpose of determining a consumer debtor's ability to repay debts. If a chapter 7 debtor has the ability

² Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 312, 98 Stat. 333, 335 (1984).

³ 11 U.S.C. § 707(b) (2007).

⁴ 6 ALAN N. RESNICK & HENRY J. SOMMER, COLLIER ON BANKRUPTCY § 707.LH[2], at 707-61 (15th ed. rev. 2007).

⁵ *Id.* at § 707.04, at 707-25.

⁶ Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554, § 219, 100 Stat. 3088, 3101 (1986). The United States Trustee Program is responsible for overseeing the administration of bankruptcy cases and private trustees. 28 U.S.C.A. §§ 581-89a (2007). The Program is overseen by the Executive Office for United States Trustees, which provides policy and management direction to United States Trustees. The Program operates through a system of 21 regions nationwide, except for North Carolina and Alabama. Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554, 28 U.S.C.A. § 581 n. (2007). With respect to North Carolina and Alabama, the bankruptcy system is administered by a bankruptcy administrator appointed by the Judicial Conference. *Id.*

⁷ As amended, section 707(b) of the Bankruptcy Code requires a court to presume that abuse exists if the amount of the debtor's remaining income, after certain expenses and other specified amounts are deducted from the debtor's current monthly income (a defined term). 11 U.S.C. § 707(b)(2)(A)(I) (2007).

⁸ 11 U.S.C. § 707(b)(2)(B) (2007). Where the mandatory presumption of abuse does not apply or has been rebutted, the court, in order to determine whether the granting of relief under chapter 7 would constitute an abuse, must consider: (1) whether the debtor filed the chapter 7 case in bad faith; or (2) whether the totality of circumstances of the debtor's financial situation (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection) demonstrates abuse. 11 U.S.C. § 707(b)(3) (2007).

to repay debts and has no special circumstances, the filing of the debtor's case is presumed to be an abuse and therefore subject to dismissal or conversion. The means test takes into consideration the debtor's income and various specified expenses, some of which are determined under Internal Revenue Service expense standards.⁹ The debtor's income, for purposes of the means test, is typically determined by calculating the amount of average monthly income the debtor received during the 6-month period preceding the filing of the bankruptcy case.¹⁰

To determine whether the presumption of abuse applies under the means test, a chapter 7 debtor must complete Official Form 22, a form that requires the debtor to supply substantial financial information and supporting documentation.¹¹ The form requires the debtor to: disclose monthly income from all sources, determine the applicable median family income, calculate his or her current monthly income, determine the applicable Internal Revenue Service expense standards, identify any other applicable expenses, calculate deductions for debt payments, determine whether the presumption of abuse applies based on ability to repay, and describe any additional expense claims. The form must be signed by the debtor under penalty of perjury. The Bankruptcy Code currently includes a limited exception to the means test for a disabled veteran¹² if his or her indebtedness was primarily incurred during a period when the debtor was on active duty or performing a homeland defense activity.¹³

NEED FOR THE LEGISLATION

Between September 11, 2001 and November 30, 2007, 254,894 members of the National Guard and 202,113 Reservists have been deployed to Iraq and Afghanistan.¹⁴ It is estimated that "[m]oney problems related to deployment" may affect up to 26 percent of National Guard soldiers.¹⁵ For example, the Subcommittee on Commercial and Administrative Law last May held an oversight hearing on the second anniversary of the enactment of the 2005 Bankruptcy Act, during which a chapter 13 debtor described the impact of her husband's activation as a member of the Army reserve on their family's financial circumstances.¹⁶ She explained that after her husband was called to active duty and deployed to Iraq, the family income decreased by more than \$1,000 per month, which,

⁹ 11 U.S.C. § 707(b)(2)(A) (2007).

¹⁰ 11 U.S.C. § 101(10A) (2007).

¹¹ Official Bankruptcy Form 22A—Chapter 7 Statement of Current Monthly Income and Means-Test Calculation (Jan. 2008).

¹² The term is defined by reference to 38 U.S.C. § 3741(1) (2007), which provides as follows:
The term "disabled veteran" means (A) a veteran who is entitled to compensation under laws administered by the Secretary for a disability rated at 30 percent or more, or (B) a veteran whose discharge or release from active duty was for a disability.

38 U.S.C. § 3741(1) (2007).

¹³ 11 U.S.C. § 707(b)(2)(D) (2007).

¹⁴ Michael Waterhouse & JoAnne O'Bryant, National Guard Personnel and Deployments: Fact Sheet, Congressional Research Report for Congress, RS22451, at 5 (Jan. 17, 2008).

¹⁵ Marilyn Elias, *Iraq War Takes Unique Toll on National Guard*, USA TODAY, Aug. 20, 2007; see, e.g., Lizette Alvarez, *Iraq Looms Closer for 13,000 National Guard Soldiers*, N.Y. TIMES, Apr. 10, 2007 ("In some cases, families face financial hardship when a soldier deploys. In others, the soldiers wind up making more money.")

¹⁶ *Second Anniversary of the Enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005: Are Consumers Really Being Protected Under the Act?: Hearing Before the Subcomm. on Commercial and Administrative Law of the H. Comm. on the Judiciary*, 110th Cong. (2007) (prepared statement of Shirley Jones Burroughs).

among other reasons, caused her and her husband to seek bankruptcy relief.¹⁷

Some servicemembers experience financial distress after they leave active service and resume civilian life.¹⁸ Although the Servicemembers Civil Relief Act¹⁹ enacted in 2003 accords certain protections from some creditor collection efforts for a servicemember who is no longer in active duty status for 90 days,²⁰ this temporary relief can be inadequate for various reasons. Returning servicemembers, for instance, can encounter difficulty obtaining employment upon their return to civil life.²¹ According to a recent Department of Veterans Affairs survey, “Transitioning back into employment, education, and/or training after completing military service can be challenging for some military personnel[.]”²² Specifically, the study found an 18 percent unemployment rate for military personnel discharged in the past 3 years.²³ In addition, it is estimated that up to one-fifth of servicemembers returning from Iraq and Afghanistan “report symptoms of post-traumatic stress disorder or major depression,” and a “little more than half of them have sought mental health treatment,” according to a report released earlier this year by the RAND Corporation.²⁴

Although the means test has been generally criticized for instituting hurdles that debtors must navigate to receive relief under chapter 7,²⁵ it can present particular issues for servicemembers who seek chapter 7 relief shortly after leaving service. While serving in Iraq or Afghanistan, servicemembers often receive higher compensation, in the form of combat pay, and incur fewer expenses. When they return to the United States, these servicemembers no longer receive combat pay. The means test, nevertheless, requires a debtor to calculate his or her income based on the average monthly income that he or she received during the 6-month period preceding the filing date of the bankruptcy case, rather than the debtor’s actual, current income.²⁶

To avoid having his or her chapter 7 case dismissed for abuse, the servicemember must demonstrate “special circumstances.”²⁷ Although special circumstances includes “a call or order to active

¹⁷*Id.*

¹⁸*See, e.g.,* Kimberly Hefling, *VA Estimates Fewer Homeless Vets*, WASH. POST, Mar. 6, 2008 (reporting that the “Veterans Affairs Department estimates that on any given night last year, 154,000 veterans were homeless”); Bina Venkataraman, *Help Lags for Homeless Female Veterans—About 8,000 Women Lack Permanent Shelter. Need is Likely to Rise as More Women Return from War*, CHRISTIAN SCIENCE MONITOR, July 18, 2007.

¹⁹Pub. L. No. 108–189, 117 Stat. 2835, 2842 (2003) (codified in scattered sections of 50 U.S.C. app.).

²⁰*See, e.g.,* 50 U.S.C. app. 522(a)(1) (2007).

²¹*See, e.g.,* Stephen Barr, *Veterans Return to Bleak Job Market*, WASH. POST, Apr. 1, 2008, at D1.

²²*Id.*

²³*Id.*

²⁴Lizette Alvarez, *Nearly a Fifth of War Veterans Report Mental Disorders, a Private Study Finds*, N.Y. TIMES, Apr. 18, 2008. According to the *New York Times*, this 500-page study “is the first exhaustive, private analysis of the psychological and cognitive injuries suffered by service members.” *Id.*

²⁵*Second Anniversary of the Enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005: Are Consumers Really Being Protected Under the Act?: Hearing Before the Subcomm. on Commercial and Administrative Law of the H. Comm. on the Judiciary*, 110th Cong. (2007) (prepared statement of Henry Sommer, President, National Association of Consumer Bankruptcy Attorneys).

²⁶11 U.S.C. §§ 101(10A), 521(a)(1)(B)(ii) (2007); Official Bankruptcy Form 6—Schedule I, Current Income of Individual Debtor(s) (Dec. 2007).

²⁷11 U.S.C. § 707(b)(2)(B)(i) (2007).

duty in the Armed Forces,” the debtor must nevertheless demonstrate that this situation “justif[ies] additional expenses or adjustments of current monthly income for which there is no reasonable alternative.”²⁸ To prove special circumstances, the debtor must:

- (1) itemize each additional expense or adjustment of income;
- (2) document such expense or adjustment to income;
- (3) provide a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable;
- (4) attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustments to income are required;²⁹ and
- (5) establish that such additional expenses or adjustments to income cause the product of the debtor’s monthly income to be less than the threshold substantiating abuse.³⁰

Alternatively, some debtors have tried to deal with this problem by utilizing Bankruptcy Code section 101(10A),³¹ which allows the court itself to calculate a debtor’s current monthly income if the debtor does not file a statement of current income as required by Bankruptcy Code section 521(a)(1)(B)(ii).³² In effect, this alternative would require a debtor to file a motion to obtain the court’s approval excusing him or her from the requirement to file the income schedule.

Still other debtors try to delay filing their bankruptcy cases in order to avoid having to pursue either of these cumbersome procedures. Nevertheless, not all debtors have the luxury of time, particularly if a creditor is imminently executing on a judgment or a home foreclosure sale is pending.

On November 1, 2007, Representative Janice Schakowsky (D–IL) with 28 original bipartisan cosponsors introduced H.R. 4044. The bill currently has 66 bipartisan cosponsors.

HEARINGS

The Committee’s Subcommittee on Commercial and Administrative Law held on April 1, 2008, 1 day of hearings on H.R. 4044. Testimony was received from Representatives Janice Schakowsky (D–IL) and Dana Rohrabacher (R–CA); Raymond C. Kelley, National Legislative Director of AMVETS; Professor Jack Williams on behalf of the American Bankruptcy Institute; and Ed Boltz, Esq. on behalf of the National Association of Consumer Bankruptcy Attorneys.

COMMITTEE CONSIDERATION

On April 24, 2008, the Subcommittee on Commercial and Administrative Law met in open session and ordered the bill, H.R. 4044, favorably reported, with an amendment, by voice vote, a quorum

²⁸ *Id.*

²⁹ 11 U.S.C. § 707(b)(2)(B)(ii), (iii) (2007).

³⁰ 11 U.S.C. § 707(b)(2)(B)(iv) (2007).

³¹ 11 U.S.C. § 101(10A)(A)(ii) (2007); *see, e.g., In re Ingram*, Case No. 06–02714–8–DD (Bankr. E.D.N.C. Nov. 26, 2006).

³² 11 U.S.C. § 521(a)(1)(B)(ii) (2007).

being present. On April 30, 2008 and on June 11, 2008, the Committee met in open session and ordered the bill, H.R. 4044, favorably reported on June 11, 2008, with an amendment, by voice vote, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 4044.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 4044, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 19, 2008.

Hon. JOHN CONYERS, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4044, the National Guard and Reservists Debt Relief Act of 2008.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Leigh Angres, who can be reached at 226-2860.

Sincerely,

PETER R. ORSZAG,
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.
Ranking Member

H.R. 4044—National Guard and Reservists Debt Relief Act of 2008.

CBO estimates that implementing this bill would have no significant impact on the federal budget. Enacting H.R. 4044 could affect

the collection of offsetting receipts (a credit against direct spending) and revenues; however, CBO estimates that any net effect would be insignificant.

H.R. 4044 would exempt National Guard members and active reservists from meeting certain income requirements to qualify for Chapter 7 bankruptcy protection. This exemption would apply to cases filed within three years of the bill's enactment. Under current law, a debtor's income, less certain expenses, must fall below a certain threshold relative to the outstanding debt to qualify for protection under Chapter 7 of the bankruptcy code. Those who do not qualify can file under Chapter 13. Disabled veterans are not required to satisfy this means testing. The bill would extend this benefit to members of the National Guard and reservists that are called to active duty for at least 90 days.

Because H.R. 4044 would exempt National Guard members and active reservists from means testing for Chapter 7 bankruptcy filings, CBO expects that enacting this legislation would enable some individuals to file for bankruptcy that would not do so under current law. Fees collected from those individuals would increase revenues and offsetting receipts to the federal government.

CBO also expects that, under the bill, some reservists that would apply for Chapter 13 bankruptcy under current law would instead apply under Chapter 7. Based on information from the Government Accountability Office and the Administrative Office of the United States Courts, CBO estimates that National Guard members and active reservists make up about one-tenth of one percent of all bankruptcy filers, and that fewer than 500 people who would otherwise file for Chapter 13 protection would file for Chapter 7 under this bill. Because filing fees for Chapter 7 are lower than those for Chapter 13, a shift of cases from Chapter 13 to Chapter 7 would slightly reduce the amount of revenues and offsetting receipts received by the federal government. CBO estimates that this reduction would approximately equal the increase in revenues and offsetting receipts that would result from new filers under the bill—resulting in no significant net effect on the federal budget.

H.R. 4044 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on State, local, or tribal governments.

The staff contact for this estimate is Leigh Angres, who can be reached at 226–2860. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 4044 eases the burden on certain qualifying members of reserve-components of the Armed Forces and members of the National Guard to obtain bankruptcy relief under chapter 7 by exempting them for a limited period, from the application of the means-test presumption of abuse under chapter 7.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clause 4 of the Constitution.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 4044 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

SECTION-BY-SECTION ANALYSIS

The following discussion describes the bill as reported by the Committee.

Sec. 1. Short title. Section 1 sets forth the short title of the bill as the “National Guard and Reservists Debt Relief Act of 2008.”

Sec. 2. Amendment. Section 2 amends Bankruptcy Code section 707(b)(2), which sets out the grounds for which a chapter 7 case may be presumed to be an abuse. Section 707(b)(2)(D) currently provides a limited exception to the presumption of abuse for certain disabled veterans. Section 2 of the bill amends Bankruptcy Code section 707(b)(2)(D) to exempt a debtor from the presumption of abuse if he or she is on active duty³³ or is performing a homeland defense activity³⁴ for at least 90 days as a member of a reserve component of the Armed Forces or as a member of the National Guard, if such service commenced after September 11, 2001. In addition, section 2 temporarily exempts such debtor for a 540-day period following the date on which his or her service terminates.

Sec. 3. GAO Study. Section 3(a) of the bill directs the Comptroller General to complete and transmit to the Speaker of the House of Representatives and the President *pro tempore* of the Senate a study of the use and effects of the amendments effectuated by the Act. The study must address:

- (1) whether and to what degree members of reserve components of the Armed Forces and members of the National Guard avail themselves of the benefits of the Act;
- (2) whether and to what degree such members sought bankruptcy relief because of factors that were substantially related to their service;

³³The term, “active duty,” is defined by reference to section 101(d)(1) of title 10 of the United States Code. Section 101(d)(1) of title 10 defines “active duty” as follows:

The term “active duty” means full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.

10 U.S.C. § 101(d)(1) (2007).

³⁴Section 1 defines a “homeland defense activity” by reference to section 901(1) of title 32 of the United States Code, which provides as follows:

The term “homeland defense activity” means an activity undertaken for the military protection of the territory or domestic population of the United States, or of infrastructure or other assets of the United States determined by the Secretary of Defense as being critical to national security, from a threat or aggression against the United States.

32 U.S.C. § 901(1) (2007).

- (3) whether and to what degree such members sought bankruptcy relief because of factors that were materially related to their service;
- (4) the effects that use of Bankruptcy Code section 707(b)(2)(D), as amended by this Act, has on the bankruptcy system, creditors, and such members' debt-incurrence practices.

Subsection (b)(1) provides that a bankruptcy case is to be considered to be substantially related to the service of such member if more than 33 percent of the aggregate amount of debts in such case was incurred as a direct or indirect result of such service.

Subsection (b)(2) provides that a bankruptcy case is to be considered to be materially related to the service of such member if more than 10 percent of the aggregate amount of debts in such case was incurred as a direct or indirect result of such service.

Subsection (b)(3)(A) provides that the term "effects" with respect to the bankruptcy system and creditors means:

- (1) the number of bankruptcy cases in which members of reserve components of the Armed Forces and members of the National Guard avail themselves of the benefits of Bankruptcy Code section 707(b)(2)(D), as amended by this Act;
- (2) the aggregate amount of debt in such cases;
- (3) the aggregate amount of debt discharged in such cases under chapter 7;
- (4) the aggregate amount of debt in such cases if and when they are converted from chapter 7 to chapter 13;
- (5) the amount of resources expended by the bankruptcy courts and by bankruptcy trustees, stated separately, in bankruptcy cases where such members avail themselves of Bankruptcy Code section 707(b)(2)(D), as amended by this Act; and
- (6) whether and to what extent there is any indicia of abuse or potential abuse of such provisions.

Subsection (b)(3)(B) provides that the term "debt-incurrence practices" means:

- (1) any increase in the average levels of debt incurred by such members before, during, or after such service;
- (2) any indicia of changes in debt-incurrence practices adopted by such members in anticipation of benefitting from Bankruptcy Code section 707(b)(2)(D), as amended by this Act, in any potential bankruptcy case; and
- (3) any indicia of abuse or potential abuse of such provisions reflected in the debt-incurrence of such members.

Sec. 4. Effective Date. Application of Amendments. Section 4(a) provides that the amendments made by the Act take effect 60 days after the Act's date of enactment.

Subsection (b) provides that the amendments made by the Act apply to cases commenced under title 11 of the United States Code during the 3-year period beginning on the Act's effective date.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 707 OF TITLE 11, UNITED STATES CODE

§ 707. Dismissal of a case or conversion to a case under chapter 11 or 13

- (a) * * *
- (b)(1) * * *
- (2)(A) * * *

* * * * *

(D) Subparagraphs (A) through (C) shall not apply, and the court may not dismiss or convert a case based on any form of means testing, **[if the debtor is a disabled veteran]** *if—*

(i) the debtor is a disabled veteran (as defined in section 3741(1) of title 38), and the indebtedness occurred primarily during a period during which he or she was—

[(i)] *(I) on active duty* (as defined in section 101(d)(1) of title 10); or

[(ii)] *(II) performing a homeland defense activity* (as defined in section 901(1) of title 32)**].**; or

(ii) while—

(I) the debtor is—

(aa) on, and during the 540-day period beginning immediately after the debtor is released from, a period of active duty (as defined in section 101(d)(1) of title 10) of not less than 90 days; or

(bb) performing, and during the 540-day period beginning immediately after the debtor is no longer performing, a homeland defense activity (as defined in section 901(1) of title 32) performed for a period of not less than 90 days; and

(II) if after September 11, 2001, the debtor while a member of a reserve component of the Armed Forces or a member of the National Guard, was called to such active duty or performed such homeland defense activity.

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