

NATIONAL GUARD AND RESERVIST DEBT RELIEF EXTENSION ACT OF 2011

OCTOBER 18, 2011.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SMITH of Texas, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 2192]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2192) to exempt for an additional 4-year 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, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

CONTENTS

	Page
Purpose and Summary	2
Background and Need for the Legislation	2
Hearings	3
Committee Consideration	3
Committee Votes	3
Committee Oversight Findings	3
New Budget Authority and Tax Expenditures	3
Congressional Budget Office Cost Estimate	4
Performance Goals and Objectives	5
Advisory on Earmarks	5
Section-by-Section Analysis	5
Changes in Existing Law Made by the Bill, as Reported	5

Purpose and Summary

Since 2005, the Bankruptcy Code has contained a “means test” that examines whether individual debtors have the financial ability to commit some portion of their monthly income to the repayment of their creditors.¹ If a debtor has the ability to repay, his filing of a chapter 7 bankruptcy case is presumed to be “substantial abuse” and his case may be dismissed.² Compared to a chapter 13 bankruptcy case, in which a debtor with the means to repay creditors obtains a discharge from prepetition debts generally after adhering to a 3- to 5-year repayment plan, a debtor in a chapter 7 case obtains a discharge relatively quickly and without the repayment condition.³ Thus, many debtors prefer to file a chapter 7 case if they are able and have no non-exempt assets of significant value.

In April 2008, the Subcommittee on Commercial and Administrative Law of the House Committee on the Judiciary held a legislative hearing on H.R. 4044, the National Guard and Reservists Debt Relief Act of 2008, which highlighted the unique financial hardships that military reservists and members of the National Guard face upon their return from active service.⁴ Following that hearing, Congress passed a version of that legislation (the “NGRDRA”), which exempts certain members of reserve components of the Armed Forces and members of the National Guard from the means test.⁵ Pursuant to its terms, the Act took effect on December 19, 2008, which was 60 days after its enactment. The Act was temporary; it expires on December 19, 2011.⁶

Background and Need for the Legislation

Reference is made to the report of the House Committee on the Judiciary in the 110th Congress to accompany H.R. 4044.⁷ That report sets forth the substantive basis upon which Public Law 110–438 was enacted and is incorporated herein by reference.

Because of America’s ongoing military conflicts, the degree to which the United States relies upon its military reservists and National Guardsmen has not significantly subsided during the 3 years since the 2008 enactment of the NGRDRA. Between 2001 and July 2010, 776,413 military reservists have either involuntarily or voluntarily been activated to defend American interests abroad.⁸ The financial hardships they face upon their return from the theater of war, described in detail by the witnesses at the *2008 Hearing*, persist in 2011.

¹ 11 U.S.C. § 707(b)(2).

² *Id.* § 707(b)(1).

³ Compare 11 U.S.C. § 1328(a) (granting discharge to chapter 13 debtor “as soon as practicable after completion by the debtor of all payments under the plan”), with 11 U.S.C. § 727 (granting discharge to debtor without any precondition). A bankruptcy court generally waits until the statutory period for filing a complaint objecting to discharge or a motion to dismiss the case for substantial abuse has lapsed, usually about 4 months after the petition date.

⁴ See generally *National Guard and Reservists Debt Relief Act of 2008: Hearing on H.R. 4044 Before the Subcomm. on Commercial & Admin. Law of the H. Comm. on the Judiciary*, 110th Cong. (2008) [hereinafter *2008 Hearing*].

⁵ National Guard and Reservists Debt Relief Act of 2008, Pub. L. No. 110–438, 122 Stat. 5000 (2008).

⁶ *Id.* § 4.

⁷ See generally H.R. REP. NO. 110–726 (2008).

⁸ Lawrence Kapp, *Reserve Component Personnel Issues: Questions and Answers*, Congressional Research Service Report No. RL30802 (2010), available at <http://www.crs.gov/pages/Reports.aspx?PRODCODE=RL30802&Source=cli> (last visited Oct. 3, 2011).

While the Committee recognizes the unique financial struggles of returning reservists and Guardsmen, the Government Accountability Office (GAO) report commissioned by section 3 of the NGRDRA suggests that the NGRDRA has provided only little relief.⁹ Only 8% of eligible servicemembers—a total of 176 individuals—claimed the means test exemption.¹⁰ Additionally, only 32% of the aggregate debt reported by servicemembers could potentially be discharged.¹¹ The GAO further reported that 10 of the 11 servicemembers it interviewed did not attribute their debt to military service,¹² and that the NGRDRA has had “no impact” on servicemembers’ debt incurrence practices.¹³ The GAO was “unable to identify any clear indications of abuse or potential abuse of the exemption.”¹⁴

Though the GAO concluded that the NGRDRA has had only a modest effect, the United States is still engaged in military conflicts around the world and at least some reservists continue to benefit from the means test exemption. H.R. 2192 extends the exemption for a period of 4 years to December 19, 2015.

Hearings

The Committee on the Judiciary held no hearings on H.R. 2192.

Committee Consideration

On September 21, 2011, the Committee met in open session and ordered the bill H.R. 2192 favorably reported 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. 2192.

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.

⁹ GOV’T ACCOUNTABILITY OFFICE, MILITARY PERSONNEL: OBSERVATIONS ON THE USE AND EFFECTS OF THE NATIONAL GUARD AND RESERVISTS DEBT RELIEF ACT OF 2008, 13 (2010) (finding only 8% of eligible servicemembers who filed for bankruptcy relief under chapter 7 have claimed the means test exemption).

¹⁰ *Id.*

¹¹ *Id.* at 16–19.

¹² *Id.* at 20–22.

¹³ *Id.* at 25–26.

¹⁴ *Id.* at 18.

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. 2192, 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, October 5, 2011.

Hon. LAMAR SMITH, 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. 2192, the "National Guard and Reservist Debt Relief Extension Act of 2011."

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

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 2192—National Guard and Reservist Debt Relief Extension Act of 2011.

Under current law, National Guard members and active reservists are exempt from meeting certain income requirements to qualify for Chapter 7 bankruptcy protection. That exemption expires after the beginning of fiscal year 2012. H.R. 2192 would extend that exemption through 2016.

CBO estimates that implementing this bill would have no significant impact on the Federal budget. Enacting H.R. 2192 would affect direct spending and revenues; therefore, pay-as-you-go procedures apply. However, CBO estimates that any net effects would be insignificant for each year.

CBO expects that enacting this legislation would lead some individuals to file for bankruptcy who would not do so under current law. Bankruptcy filing fees collected from those individuals would increase both Federal revenues and offsetting receipts, because portions of such fees are classified in the budget as revenues and offsetting receipts.

CBO also expects that, by extending the exemption, some reservists who would apply for Chapter 13 bankruptcy under current law would instead apply under Chapter 7. (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.)

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 a year 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, shifting cases from Chapter 13 to Chapter 7 would slightly reduce net Federal revenues and offsetting receipts. CBO estimates that those reductions would roughly offset 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. 2192 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 CBO staff contact for this estimate is Martin von Gnechten. 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. 2192 extends the effectiveness of Public Law 110–438 by 4 years.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 2192 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Section-by-Section Analysis

Section 1 sets forth the short title of the bill as the “National Guard and Reservist Debt Relief Extension Act of 2011.”

Section 2 extends the effective date of Public Law 110–438 by 4 years. Under current law, the means test exemption for military reservists and National Guardsmen expires on December 19, 2011. Section 2 extends that date to December 19, 2015.

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 italic, existing law in which no change is proposed is shown in roman):

NATIONAL GUARD AND RESERVISTS DEBT RELIEF ACT OF 2008

* * * * *

SEC. 4. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) * * *

(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】** *7-year* period beginning on the effective date of this Act.

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