

118TH CONGRESS }  
1st Session } HOUSE OF REPRESENTATIVES { REPORT  
118-283

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NATIONAL GUARD AND RESERVISTS DEBT RELIEF  
EXTENSION ACT OF 2023

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NOVEMBER 29, 2023.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 3315]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3315) 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, reports favorably thereon without amendment and recommends that the bill do pass.

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## Purpose and Summary

H.R. 3315, the National Guard and Reservists Debt Relief Extension Act of 2023, introduced by Rep. Steve Cohen (D-TN), would extend the temporary authorization exempting certain qualifying National Guard members and reserve component members of the Armed Services from the Bankruptcy Code's means test for four years.

## Background and Need for the Legislation

Among other things, Chapter 7 bankruptcy allows consumer debtors to seek broad forgiveness for their debts and pursue a "fresh start" financially.<sup>1</sup> One important consideration for bankruptcy policy is that an unlimited ability to pursue debt forgiveness would create moral hazard and a system ripe for abuse.<sup>2</sup> Without adequate checks and balances, some consumers might seek to have their debts canceled despite having the ability to repay them. Stemming from concerns about such abuse, the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) of 2005 established a "means test" to gauge an individual consumer debtor's eligibility for Chapter 7 bankruptcy.<sup>3</sup>

Under the means test, to qualify for Chapter 7 debt forgiveness, a consumer debtor must submit six months of financial statements that show income and expenses.<sup>4</sup> The information is then used to determine a debtor's ability to repay debts.<sup>5</sup> The debtor is eligible for Chapter 7 debt forgiveness only if the debtor's income is less than the median income for his or her state,<sup>6</sup> or if the debtor's disposable income is less than the statutory thresholds.<sup>7</sup>

The income and expenses of guardsmen and reservists vary based on whether they are placed on active duty. When called to active duty, guardsmen and reservists may receive significantly different salaries than in their civilian careers.<sup>8</sup> They may also have different expenses during active duty.<sup>9</sup> Because the means test looks at income and expense data for the six months prior to a debtor's filing for bankruptcy, the result of a means test calculation for a guardsman or reservist, following an active duty tour, may inaccurately indicate an ability to repay their debts. Such a result penalizes those reservists and members for their service. If they were to be subject to the Chapter 7 means test requirement, National Guard members and Armed Services reservists, therefore, would be

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<sup>1</sup> See Michael D. Contino, *Bankruptcy Basics: A Primer*, R45137, CONG. RESEARCH SERV. 11 (Oct. 2022).

<sup>2</sup> See Mary A. DeFalaise, *Means Testing and Preventing Abuse by Consumer Debtors*, U.S. ATT'YS' BULL., Jul. 2006, at 2.

<sup>3</sup> *Bankruptcy Basics*, *supra* note 1, at 12.

<sup>4</sup> 11 U.S.C. § 101 (10A); see also *Means Testing*, U.S. DEPT OF JUST., <https://www.justice.gov/ust/means-testing> (last accessed Nov. 20, 2023).

<sup>5</sup> *Bankruptcy Basics*, *supra* note 1, at 12.

<sup>6</sup> 11 U.S.C. § 707(b)(6).

<sup>7</sup> 11 U.S.C. § 707(b)(2)(A)(i); see United States Trustee Program, *Statement of the U.S. Trustee Program's Position on Legal Issues Arising Under the Chapter 7 Means Test*, U.S. DEPT OF JUST (2012).

<sup>8</sup> See *How the National Guard and Reserves May Impact your Budget*, USAA (Jul. 7, 2023), <https://www.usaa.com/inet/wc/advice-military-how-the-national-guard-and-reserves-may-impact-your-budget> (last accessed Nov. 20, 2023).

<sup>9</sup> See, e.g., *Combat Zone Tax Exclusion (CZTE)*, U.S. ARMY, [https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/Combat-Zone-Tax-Exclusion-\(CZTE\)-?serv=122](https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/Combat-Zone-Tax-Exclusion-(CZTE)-?serv=122) (last accessed Nov. 20, 2023).

placed at a disadvantage compared to their civilian colleagues who never served.

Currently—under the National Guard and Reservists Debt Relief Act of 2008,<sup>10</sup> as amended—guardsmen or reservists called to active duty for 90 days or more after September 11, 2001, are exempt from the means test requirement if they meet the following criteria: (1) the service member is currently serving an active-duty tour; or (2) the service member finished an active-duty tour within the 540 days preceding the bankruptcy filing.<sup>11</sup>

The current exemption from the means test is set to expire on December 19, 2023. Congress created the exemption in 2008, and extended it in 2011, 2015, and 2019. In 2008, the vote for the exemption was unanimous. In 2011, 2015, and 2019, the bill passed on suspension, without amendment, and with near unanimous support.<sup>12</sup>

### **Hearings**

For the purposes of clause 3(c)(6)(A) of House rule XIII, the Committee states that no hearings were held to assist in the formulation of H.R. 3315.

### **Committee Consideration**

On November 2, 2023, the Committee met in open session and ordered the bill, H.R. 3315, favorably reported by a roll call vote of 24 to 0, a quorum being present.

### **Committee Votes**

In compliance with clause 3(b) of House rule XIII, the following roll call votes occurred during the Committee's consideration of H.R. 3315:

1. Vote on favorably reporting H.R. 3315—passed 24 ayes to 0 nays.

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<sup>10</sup> Pub. L. No. 110–438, 122 Stat. 5000 (2008).

<sup>11</sup> 11 U.S.C. § 707(b)(2)(D).

<sup>12</sup> In 2011, the bill passed 407–1. In 2015, the bill passed 419–1. In 2019, the bill passed 417–1.

## COMMITTEE ON THE JUDICIARY

Date: 11/21/23

118<sup>th</sup> CONGRESS

25-19

## ROLL CALL

Vote on: Final Passage of HR 3315

Roll Call #: 3

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>				MR. NADLER (NY) <i>Ranking Member</i>	✓		
MR. ISSA (CA)	✓			MS. LOFGREN (CA)			
MR. BUCK (CO)				MS. JACKSON LEE (TX)			
MR. GAETZ (FL)	✓			MR. COHEN (TN)	✓		
MR. BIGGS (AZ)	✓			MR. JOHNSON (GA)	✓		
MR. McCLINTOCK (CA)	✓			MR. SCHIFF (CA)			
MR. TIFFANY (WI)				MR. SWALWELL (CA)			
MR. MASSIE (KY)	✓			MR. LIEU (CA)			
MR. ROY (TX)				MS. JAYAPAL (WA)			
MR. BISHOP (NC)				MR. CORREA (CA)	✓		
MS. SPARTZ (IN)	✓			MS. SCANLON (PA)			
MR. FITZGERALD (WI)	✓			MR. NEGUSE (CO)	✓		
MR. BENTZ (OR)				MS. McBATH (GA)	✓		
MR. CLINE (VA)	✓			MS. DEAN (PA)	✓		
MR. GOODEN (TX)	✓			MS. ESCOBAR (TX)			
MR. VAN DREW (NJ)				MS. ROSS (NC)	✓		
MR. NEHLS (TX)				MS. BUSH (MO)			
MR. MOORE (AL)				MR. IVEY (MD)	✓		
MR. KILEY (CA)	✓			MS. BALINT (VT)	✓		
MS. HAGEMAN (WY)							
MR. MORAN (TX)							
MS. LEE (FL)	✓						
MR. HUNT (TX)							
MR. FRY (SC)	✓						
VACANT							

Roll Call Totals:

Ayes: 24

Nays: 0

Present:

Passed: X

Failed: \_\_\_\_\_

## Committee Oversight Findings

In compliance with clause 3(c)(1) of House rule XIII, 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 does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the *Congressional Budget Act of 1974* has been timely submitted prior to filing of the report and is included in the report. Such a cost estimate is included in this report.

### Congressional Budget Office Cost Estimate

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has received the enclosed cost estimate for H.R. 3315 from the Director of the Congressional Budget Office:

<b>H.R. 3315, National Guard and Reservists Debt Relief Extension Act of 2023</b>			
As ordered reported by the House Committee on the Judiciary on November 2, 2023			
By Fiscal Year, Millions of Dollars	2024	2024-2028	2024-2033
Direct Spending (Outlays)	*	*	*
Revenues	*	*	*
Increase or Decrease (-) in the Deficit	*	*	*
Spending Subject to Appropriation (Outlays)	*	*	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	*	Statutory pay-as-you-go procedures apply?	Yes
		<b>Mandate Effects</b>	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

\* = between -\$500,000 and \$500,000.

H.R. 3315 would exempt, through the middle of December 2027, National Guard members and reservists who are serving on active duty (or whose service has ended within 540 days) from meeting the income requirements necessary to qualify for Chapter 7 bankruptcy protection. Under current law, that exemption will expire in December 2023.

CBO expects that enacting the bill would result in some people filing under Chapter 7 who otherwise will either file under Chapter 13 or will not file at all. Filing under Chapter 7 is generally more attractive because there are no limits on the amount of debt that the filer can have, and filers are not required to enter a repayment plan as they are under Chapter 13. However, borrowers applying under Chapter 7 have to meet income requirements that limit who

can apply under that chapter; Chapter 13 does not have any income requirements.

Using information from the Government Accountability Office and the Administrative Office of the U.S. Courts, CBO estimates that 0.5 percent of all bankruptcy filers are National Guard members and reservists. Under the bill, CBO estimates that each year about 100 people who otherwise would file for bankruptcy under Chapter 13 would instead file under Chapter 7. CBO also expects that a smaller number would file under Chapter 7 who would not otherwise file for bankruptcy.

People who file for bankruptcy protection pay fees to the federal judiciary. The Chapter 7 fees are slightly higher than those for Chapter 13. Filing fees are classified in the budget as a combination of revenues and as collections that offset appropriations for the U.S. Trustee System, which oversees bankruptcy filings. The judiciary can spend any revenues credited to them without further appropriation to cover its administrative costs. The trustee system is permitted to spend the offsetting collections to cover its costs to the extent that authority is provided in an appropriations act.

Because the expected number of affected filers would be small, CBO estimates that, on net, the budgetary effects would not be significant.

The CBO staff contact for this estimate is Jon Sperl. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,  
*Director, Congressional Budget Office.*

### **Committee Estimate of Budgetary Effects**

With respect to the requirements of clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the *Congressional Budget Act of 1974*.

### **Duplication of Federal Programs**

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H.R. 3315 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

### **Performance Goals and Objectives**

The Committee states that pursuant to clause 3(c)(4) of House rule XIII, H.R. 3315 would extend the temporary authorization exempting certain qualifying National Guard members and reserve component members of the Armed Services from the Bankruptcy Code's means test for four years.

### **Advisory on Earmarks**

In accordance with clause 9 of House rule XXI, H.R. 3315 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e), or 9(f) of House rule XXI.

### **Federal Mandates Statement**

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the *Unfunded Mandates Reform Act*.

### **Advisory Committee Statement**

No advisory committees within the meaning of section 5(b) of the *Federal Advisory Committee Act* were created by this legislation.

### **Applicability to Legislative Branch**

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the *Congressional Accountability Act* (Pub. L. 104-1).

### **Section-by-Section Analysis**

#### *Sec. 1. Short title*

Section 1 sets forth the short title of the bill as the “National Guard and Reservists Debt Relief Extension Act of 2023.”

#### *Sec. 2. National Guard and Reservists Debt Relief Amendment*

Section 2 amends the National Guard and Reservists Debt Relief Act to further extend the temporary exemption for four years.

### **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, and 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) **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 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 [15-year] 19-year period beginning on the effective date of this Act.

