

110TH CONGRESS  
2D SESSION

# H. R. 4044

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IN THE SENATE OF THE UNITED STATES

JUNE 24 (legislative day, JUNE 23), 2008

Received; read twice and referred to the Committee on the Judiciary

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## AN ACT

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.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

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

6       **SEC. 2. AMENDMENTS.**

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

9               (1) in clauses (i) and (ii)—

10                       (A) by indenting the left margin of such  
11                       clauses 2 ems to the right, and

12                       (B) by redesignating such clauses as sub-  
13                       clauses (I) and (II), respectively,

14               (2) by striking “if the debtor is a disabled vet-  
15       eran” and inserting the following:

16       “if—

17               “(i) the debtor is a disabled veteran”,

18               (3) by striking the period at the end and insert-  
19       ing “; or”, and

20               (4) by adding at the end the following:

21       “(ii) while—

22               “(I) the debtor is—

23                       “(aa) on, and during the 540-day pe-  
24                       riod beginning immediately after the debt-  
25                       or is released from, a period of active duty

1 (as defined in section 101(d)(1) of title 10)  
2 of not less than 90 days; or

3 “(bb) performing, and during the  
4 540-day period beginning immediately  
5 after the debtor is no longer performing, a  
6 homeland defense activity (as defined in  
7 section 901(1) of title 32) performed for a  
8 period of not less than 90 days; and

9 “(II) if after September 11, 2001, the  
10 debtor while a member of a reserve component  
11 of the Armed Forces or a member of the Na-  
12 tional Guard, was called to such active duty or  
13 performed such homeland defense activity.”.

14 **SEC. 3. GAO STUDY.**

15 (a) COMPTROLLER GENERAL STUDY.—Not later  
16 than 2 years after the effective date of this Act, the Comp-  
17 troller General shall complete and transmit to the Speaker  
18 of the House of Representatives and the President pro  
19 tempore of the Senate, a study of the use and the effects  
20 of the provisions of law amended (and as amended) by  
21 this Act. Such study shall address, at a minimum—

22 (1) whether and to what degree members of re-  
23 serve components of the Armed Forces and members  
24 of the National Guard avail themselves of the bene-  
25 fits of such provisions,

1           (2) whether and to what degree such members  
2       are debtors in cases under title 11 of the United  
3       States Code that are substantially related to service  
4       that qualifies such members for the benefits of such  
5       provisions,

6           (3) whether and to what degree such members  
7       are debtors in cases under such title that are materi-  
8       ally related to such service, and

9           (4) the effects that the use by such members of  
10      section 707(b)(2)(D) of such title, as amended by  
11      this Act, has on the bankruptcy system, creditors,  
12      and the debt-incurrence practices of such members.

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

14           (1) a case shall be considered to be substan-  
15      tially related to the service of a member of a reserve  
16      component of the Armed Forces or a member of the  
17      National Guard that qualifies such member for the  
18      benefits of the provisions of law amended (and as  
19      amended) by this Act if more than 33 percent of the  
20      aggregate amount of the debts in such case is in-  
21      curred as a direct or indirect result of such service,

22           (2) a case shall be considered to be materially  
23      related to the service of a member of a reserve com-  
24      ponent of the Armed Forces or a member of the Na-  
25      tional Guard that qualifies such member for the ben-

1       efits of such provisions if more than 10 percent of  
2       the aggregate amount of the debts in such case is  
3       incurred as a direct or indirect result of such serv-  
4       ice, and

5           (3) the term “effects” means—

6                (A) with respect to the bankruptcy system  
7           and creditors—

8                (i) the number of cases under title 11  
9                of the United States Code in which mem-  
10               bers of reserve components of the Armed  
11               Forces and members of the National  
12               Guard avail themselves of the benefits of  
13               such provisions,

14               (ii) the aggregate amount of debt in  
15               such cases,

16               (iii) the aggregate amount of debt of  
17               such members discharged in cases under  
18               chapter 7 of such title,

19               (iv) the aggregate amount of debt of  
20               such members in cases under chapter 7 of  
21               such title as of the time such cases are  
22               converted to cases under chapter 13 of  
23               such title,

24               (v) the amount of resources expended  
25               by the bankruptcy courts and by the bank-

1           ruptcy trustees, stated separately, in cases  
2           under title 11 of the United States Code in  
3           which such members avail themselves of  
4           the benefits of such provisions, and

5                   (vi) whether and to what extent there  
6           is any indicia of abuse or potential abuse  
7           of such provisions, and

8           (B) with respect to debt-incurrence prac-  
9           tices—

10                   (i) any increase in the average levels  
11           of debt incurred by such members before,  
12           during, or after such service,

13                   (ii) any indicia of changes in debt-in-  
14           currence practices adopted by such mem-  
15           bers in anticipation of benefitting from  
16           such provisions in any potential case under  
17           such title; and

18                   (iii) any indicia of abuse or potential  
19           abuse of such provisions reflected in the  
20           debt-incurrence of such members.

21 **SEC. 4. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

22           (a) **EFFECTIVE DATE.**—Except as provided in sub-  
23 section (b), this Act and the amendments made by this  
24 Act shall take effect 60 days after the date of the enact-  
25 ment of this Act.

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

Passed the House of Representatives June 23, 2008.

Attest:                   LORRAINE C. MILLER,  
*Clerk.*