

NATIONAL GUARD AND RESERVISTS DEBT RELIEF EXTENSION ACT OF 2019

JULY 23, 2019.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 3304]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3304) 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.

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Purpose and Summary

H.R. 3304, the “National Guard and Reservists Debt Relief Ex-
tension Act of 2019,” would extend the temporary authorization ex-
empting certain qualifying reserve component members of the

Armed Services and National Guard members from the Bankruptcy Code’s means test for four years. This bipartisan measure was introduced by Representative Steve Cohen (D–TN), together with Representatives Ben Cline (R–VA), Madeline Dean (D–PA), and Tim Burchett (R–TN) as original cosponsors.

Background and Need for the Legislation

BACKGROUND

I. Overview of financial challenges faced by servicemembers and veterans

According to a 2018 lifestyle survey of servicemembers and veterans, financial issues was the top lifestyle stressor.¹ In fact, 62 percent of the more than 10,000 individuals surveyed reported that they experienced stress because of their current financial situation.² Similarly, the National Foundation for Credit Counseling found in its survey of military personnel that “[n]early 9 in 10 active service members and 84% of spouses or partners have worries about personal finances.”³ That survey also found “service members today are twice as likely not to be able to pay all their bills on time than they were in 2014 (34% vs. 16%), and 3 in 10 spouses or partners of service members (29%) say they do not pay their bills on time. About 1 in 10 (11% vs. 3% in 2014) say they currently have debts in collection.”⁴ As one financial advisor explained, “Almost half of service members are under the age of 25, and a high percentage are married with children. They don’t get paid a lot and they must deploy repeatedly to difficult places, many times where their lives are on the line.”⁵

Servicemembers can also experience financial distress once they leave active service. The U.S. Department of Housing and Urban Development, according to its 2017 report, estimates that 40,056 veterans are homeless on any given night.⁶ In addition, approximately “1.4 million other veterans, meanwhile, are considered at risk of homelessness due to poverty, lack of support networks, and dismal living conditions in overcrowded or substandard housing.”⁷

Although the 2003 Servicemembers Civil Relief Act⁸ affords certain protections from creditor collection efforts for a servicemember

¹*Blue Star Families Military Family Lifestyle Survey Results*, ServingTogether, <https://servingtogetherproject.org/blue-star-families-military-family-lifestyle-survey-results/> (last visited June 3, 2019).

²*Id.*

³Press Release, Nat’l Foundation for Credit Counseling, Harris Poll Shows Military Service Members, Spouses and Partners Rely on the Gig Economy to Supplement Household Income (May 21, 2019) [hereinafter NFCC Survey], <https://www.nfcc.org/press/harris-poll-shows-military-service-members-spouses-and-partners-rely-on-the-gig-economy-to-supplement-household-income>; see Sharon Epperson et al., *Military Families Say This Is Their Top Concern*, CNBC (May 25, 2019, 10:00 a.m.), <https://www.cnbc.com/2019/05/24/for-military-families-financial-concerns-outweigh-deployment-issues.html>.

⁴NFCC Survey, *supra* note 3.

⁵Dick Powers, Opinion, *Military Families Find Money Matters Complex*, NBC NEWS (May 23, 2019), <https://www.nbcnews.com/veteran-services/next-steps-for-vets/military-families-financial-edge-find-money-matters-complex-n1009231>.

⁶Press Release, U.S. Dep’t of Housing & Urban Dev. Exchange, Homelessness Declines in Most Communities of the U.S. with Increases Reported in High-Cost Areas (Dec. 6, 2017), <https://www.hudexchange.info/news/homelessness-declines-in-most-communities-of-the-u-s-with-increases-reported-in-high-cost-areas>.

⁷*Background & Statistics—FAQ About Homeless Veterans*, Nat’l Coalition for Homeless Veterans, http://nchv.org/index.php/news/media/background_and_statistics (last visited June 3, 2019).

⁸Pub. L. No. 108–189, 117 Stat. 2835, 2842 (2003) (codified in scattered sections of 50 U.S.C. app.).

who is no longer in active duty status for 90 days,⁹ this temporary relief is inadequate in certain instances and, as a result, these former servicemembers must sometimes seek bankruptcy protection under chapter 7. With respect to servicemembers who seek chapter 7 relief shortly after leaving service, the means test presents particular issues. Servicemembers on active duty may receive higher compensation in the form of combat pay, while they incur fewer expenses.

II. The Bankruptcy Code's means test

Although the Bankruptcy Code as originally enacted in 1978 provided that a chapter 7 case could only be dismissed for “cause,” the Code was amended in 1984 to permit the court to dismiss a chapter 7 case for “substantial abuse.”¹⁰ This provision, codified in section 707(b) of the Bankruptcy Code,¹¹ was added “as part of a package of consumer credit amendments designed to reduce perceived abuses in the use of chapter 7.”¹² 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.”¹³ In 1986, section 707(b) was further amended to allow a United States Trustee to move for dismissal.¹⁴

Among its various amendments to the Bankruptcy Code, the “Bankruptcy Abuse Prevention and Consumer Protection Act of 2005” (BAPCPA)¹⁵ included the establishment of a means or needs-based testing mechanism to determine a debtor’s ability to repay debts for the purpose of determining whether the filing of the bankruptcy case should be presumed to be abusive. As amended by that Act, Bankruptcy Code section 707(b) provides that if a chapter 7 debtor has the ability to repay debts and has no special circumstances, the filing of the debtor’s case is presumed to be an abuse and subject to dismissal or conversion to a chapter 13 case based on the debtor’s income and various specified expenses, some of which are determined under Internal Revenue expense standards.¹⁶ The debtor’s income, for purposes of this test, is typically determined by calculating the amount of average monthly income the debtor received during the six-month period preceding the filing of the bankruptcy case.¹⁷

To satisfy this ability-to-repay analysis, a chapter 7 debtor, with limited exception, must complete a series of forms requiring detailed financial information and supporting documentation with re-

⁹ See, e.g., 50 U.S.C. app. § 522(a)(1) (2019).

¹⁰ Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98–353, § 312, 98 Stat. 333, 335 (1984).

¹¹ 11 U.S.C. § 707(b) (2019).

¹² 6 Alan N. Resnick & Henry J. Sommer, *Collier On Bankruptcy* § 707.LH[2], at 707–61 (15th ed. rev. 2006).

¹³ *Id.* at § 707.04.

¹⁴ 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. §§ 581–589a (2019). 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 (1986); 28 U.S.C. § 581 n. (2019). With respect to North Carolina and Alabama, the bankruptcy system is administered by a bankruptcy administrator appointed by the Judicial Conference. *Id.*

¹⁵ Pub. L. No. 109–8, 119 Stat. 23. (2005).

¹⁶ 11 U.S.C. § 707(b)(2)(A) (2019).

¹⁷ 11 U.S.C. § 101(10A) (2019).

gard to the debtor's income¹⁸ and expenses.¹⁹ Specifically, for purposes of determining whether the debtor's bankruptcy case triggers a presumption of abuse under the means test, the debtor must complete a form used to calculate his or her current monthly income.²⁰ Then, using the information supplied in response to these forms, the debtor must complete a form consisting of 43 questions requiring the debtor to calculate whether his or her annualized current monthly income exceeds the applicable median family income.²¹

NEED FOR THE LEGISLATION

Unless otherwise exempted, servicemembers and veterans must complete the required forms and submit the specified paperwork under the Bankruptcy Code's means test. This requirement applies even with respect to servicemembers who have returned to the United States from active service and thus no longer receive combat pay. Under the means test, such servicemember would have to calculate his or her income based on the average monthly income that he or she received during the six-month period preceding the filing date of the bankruptcy case, rather than the debtor's actual income, which may be much less because of the debtor's non-combat status.²²

The means test has two exemptions with respect to servicemembers and veterans.²³ First, it does not apply if the debtor is a disabled veteran²⁴ whose indebtedness was incurred primarily during a period in which he or she was on active duty²⁵ or while the debtor was performing a homeland defense activity.²⁶

Second, it does not apply to a member of the Armed Services or the National Guard who was called to active service or to perform a homeland security activity for more than 90 days after September 11, 2001. This temporary exemption applies while the debtor is on active service and for the 540-day period after he or she completes such service or activity. If the debtor so qualifies, he or she must complete a form claiming such exemption.²⁷

Bipartisan legislation authorizing this temporary exemption was first enacted for three years.²⁸ This measure also included a directive to the Government Accountability Office (GAO) to examine the impact of this exemption. Pursuant to this directive, the GAO

¹⁸Official Bankruptcy Form 106I, Schedule I: Your Income (Dec. 1, 2015), <https://www.uscourts.gov/forms/individual-debtors/schedule-i-your-income-individuals>.

¹⁹Official Bankruptcy Form 106J, Schedule J: Your Expenses (Dec. 1, 2015), <https://www.uscourts.gov/forms/individual-debtors/schedule-j-your-expenses-individuals>.

²⁰Official Bankruptcy Form 122A-1, Chapter 7 Statement of Your Current Monthly Income (Dec. 1, 2015), <https://www.uscourts.gov/forms/means-test-forms/chapter-7-statement-your-current-monthly-income>.

²¹Official Bankruptcy Forms 122A-2, Chapter 7 Means Test Calculation (Dec. 1, 2015), <https://www.uscourts.gov/forms/means-test-forms/chapter-7-means-test-calculation>.

²²11 U.S.C. 101(10A), 521(a)(1)(B)(ii) (2019); Official Bankruptcy Form 106I, Schedule I: Your Income (Dec. 1, 2015), <https://www.uscourts.gov/forms/individual-debtors/schedule-i-your-income-individuals>.

²³11 U.S.C. § 707(b)(2)(D) (2019).

²⁴The term is defined by reference to 38 U.S.C. § 3741(1) (2019), 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.

²⁵As defined in 10 U.S.C. 101(d)(1) (2019).

²⁶As defined in 32 U.S.C. 901(1) (2019).

²⁷Official Bankruptcy Form 121A-1Supp, Statement of Exemption from Presumption of Abuse Under § 707(b)(2) (Dec. 1, 2015).

²⁸Pub. L. No. 110-438, 122 Stat. 5000 (2008).

found that among the 2,122 eligible servicemembers who filed for chapter 7 relief during the first year the law was in effect “only 8 percent, or 176 eligible servicemembers, claimed the means test exemption.”²⁹

Subsequently, this exemption was further extended in 2011 for an additional four years³⁰ and thereafter in 2015 for another four years.³¹ The current extension is due to expire on December 19, 2019.

Hearings

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress, the following hearing was used to consider H.R. 3304: “Oversight of Bankruptcy Law and Legislative Proposals,” which was held on June 25, 2019 by the Committee’s Subcommittee on Antitrust, Commercial, and Administrative Law.³² The hearing considered various legislative measures. Of pertinence to H.R. 3304, the following witnesses testified: Hollister K. Petraeus, former Assistant Director, Consumer Financial Protection Bureau’s Office of Servicemember Affairs, testified in support of this legislation.³³

Committee Consideration

On July 11, 2019, the Committee met in open session and ordered the bill, H.R. 3304, favorably reported without 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 no rollcall votes occurred during the Committee’s consideration of H.R. 3304.

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 and Congressional Budget Office Cost Estimate

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements 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 requested but not received a cost estimate

²⁹ U.S. Gov’t Accountability Office, Military Personnel: Observations on the Use and Effects of the National Guard and Reservists Debt Relief Act of 2008, GAO-10-1014R, at 13 (Sept. 30, 2010), <https://www.gao.gov/assets/100/97122.pdf>.

³⁰ Pub. L. No. 112-64, 125 Stat. 766 (2011).

³¹ Pub. L. No. 114-107, 129 Stat. 2223 (2015).

³² *Oversight of Bankruptcy Law and Legislative Proposals: Hearing Before the Subcomm. on Antitrust, Commercial, & Admin. Law of the H. Comm. on the Judiciary*, 116th Cong. (2019).

³³ See Omnibus Bankruptcy Hearing Tr. at 38-42.

for this bill from the Director of Congressional Budget Office. The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

Duplication of Federal Programs

No provision of H.R. 3304 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

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. 3304 would extend the temporary authorization exempting certain qualifying reserve component members of the Armed Services and National Guard members from the Bankruptcy Code’s means test for four years.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 3304 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 Extension Act of 2019.”

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. The current extension is due to expire on December 19, 2019.

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

NATIONAL GUARD AND RESERVISTS DEBT RELIEF ACT OF 2008

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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 **【11-year】** *15-year* period beginning on the effective date of this Act.

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