

***Marginal Successes, Revised Expectations, Broken Promises
– A Presidency in Review –***

**Part 6: Bankruptcy Relief Extended for
Some Military Families**

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In a July 8, 2008, speech to a Powder Springs, Georgia, audience, Democrat presidential candidate Obama gave his promise to reform existing bankruptcy laws to assist military families in debt.

Obama promised change to the U.S. Bankruptcy Code to create a bankruptcy “fast track” for military service members and their families needing debt relief. At Powder Springs, Obama’s campaign spokesperson, Bill Burton, fed AP reporters this summary of what President Obama would do for debt-ridden military families:

“Protect military service members and their families. If you’re protecting America, America should be protecting you from unfair bankruptcy laws. That’s why Obama will create a ‘fast-track’ bankruptcy process for military families, simplifying the steps and offering greater safeguards.”

These reforms would speed up the bankruptcy process for military families and exempt them from the “harsh means test, unnecessary paperwork, and token counseling.”

This fast track would allow military families to side-step at least two of the procedural requirements of the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), a bill that Senator Obama voted against in 2005. The promised bankruptcy reforms would allow military petitioners to skip over the Means Test, thereby avoiding any presumption of abuse for filing Chapter 7, and also skip the credit counseling – two mandatory requirements for individuals filing Chapter 7 bankruptcy.

Given that credit counseling takes very little time to complete, involves minimal cost (typically less than \$50 per person), and may be conducted online from any location, over the telephone, or in person, it is the lesser issue in Obama’s promised reform. Beneficial? Yes. Important reform? No. Avoiding the Means Test, however, would help many military service members qualify for a Chapter 7 Liquidation, thereby avoiding the complexities of a multi-year plan under a Chapter 11 Reorganization or a Chapter 13

Wage Earner reorganization plan. What is significant though, is the absence of any mention of military bankruptcy reform in the Office of the President-Elect's Obama-Biden Plan.

Obama Promised Reform: Protecting More Service Members and Their Families with Bankruptcy Procedural Relief

Certainly, service members and their families have unique circumstances that can quickly create financial difficulties and exacerbate existing debt problems. Military families relocate with frequency, service men and women are often deployed for very long periods, and these families often find themselves victim to predatory lending techniques. As we know from the Servicemembers Civil Relief Act (SCRA), service members must remain focused on their military missions and be protected from lawsuits while on active duty. We do not want the Armed Forces reservists and National Guard members who are placed in harms way distracted from their missions with financial issues on the home front.

Where Is Congress on Reforming the U.S. Bankruptcy Code to Remove Barriers for Military Families?

There are some protections under BAPCPA for members of the military, making Chapter 7 more accessible to service members and veterans. The bankruptcy court cannot convert a Chapter 7 into a Chapter 13 if the petitioner is a disabled vet with debts incurred primarily while on active duty or in homeland defense, for example. Furthermore, a service member called to active duty may be a special circumstance supporting Chapter 7 relief, something National Guardsmen and reserve members of the Armed Forces also have available. Additional protections for those in the National Guard and Armed Forces reserves became law in 2008 with the National Guard and Reservists Debt Relief Act. Pub. Law 110-438. Of course, these bankruptcy provisions were in place before Obama's promised reform during the presidential campaign.

Congress Passes the National Guard and Reservist Debt Relief Extension Act of 2011

An estimated 40% of the National Guard and Armed Forces reservists deployed overseas experience financial hardship as a consequence of their deployment. Those called to homeland defense duty are also vulnerable to financial difficulties for many of the same reasons. A National Guard or Armed Forces reservist who is called to active duty often leaves the higher-paying civilian job for lesser military pay. A swift and long-lasting reduction in income can wreak havoc with the military families' finances, throwing many into foreclosure and bankruptcy.

With five co-sponsors, Rep. Steve Cohen (D-TN) introduced H.R. 2192 – the *National Guard and Reservist Debt Relief Extension Act of 2011*. The bill overwhelmingly passed the House with a vote of 407 to one (with 25 not voting) on November 29, 2011. On December 1, the bill passed the U.S. Senate by unanimous consent.

When signed into law by President Obama, the National Guard and Reservist Debt Relief Extension Act of 2011 will amend the 2008 legislation to continue an exemption for military reservists and National Guard members by extending suspension of the Means Test requirement through December of 2015.

As H.R. 2192 co-sponsor, Rep. James Randy Forbes (VA-R) stated the need to extend the 2008 Act:

“Every day, service members in the National Guard and military reservists place their lives on the line to protect our country... [T]oo often we overlook the financial sacrifices made by these service members and their families when their civilian careers are put on hold in service of our nation. Such sacrifices include incurring the extra cost of running a second household where their duty station is located or working for a lower income while they are activated rather than receiving their usual civilian salary. One way to recognize this sacrifice is to support continued bankruptcy relief for members of the National Guard and Reservists, who are not immune from the ongoing fiscal and housing crises.”

In brief, the National Guard and Reservist Debt Relief Extension Act of 2011 will exempt Armed Forces reservists and National Guard members from the Means Test presumption of abuse when filing Chapter 7 if they were called to active duty or homeland defense after September 11, 2001, for at least 90 days, and remain eligible for the exemption during the 540-day period following that active duty or homeland defense.

Promise Kept: The National Guard and Reservist Debt Relief Extension Act of 2011 Will Help More Military Families

Albeit a temporary exemption from the Means Test requirement for qualifying reservists and National Guard members, this noncontroversial legislation won complete bi-partisan support in both Chambers of the often-polarized 112th U.S. Congress.

Sources:

Change.gov: [The Obama-Biden Plan -- Economy](#)

Govtrack.us: [H.R. 2192: National Guard and Reservist Debt Relief Extension Act of 2011](#)

Forbes: [Bipartisan National Guard & Reservist Debt Relief Extension Act Approved by House Judiciary Committee](#)