CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

October 24, 2012

S. 3322
Servicemembers' Protection Act of 2012

As ordered reported by the Senate Committee on Veterans' Affairs on September 12, 2012

SUMMARY

S. 3322 would delay foreclosures on mortgages of certain military servicemembers, retirees, and surviving spouses of servicemembers who die on active duty. Because some of those mortgages are guaranteed by the Department of Veterans Affairs (VA) and the Federal Housing Administration (FHA), implementing the bill would increase both direct spending and spending subject to appropriation. CBO estimates that enacting the bill would increase direct spending by $16 million over the 2013-2022 period, and that implementing the bill would increase discretionary costs by $1 million over the 2013-2017 period, assuming availability of the necessary amounts. The bill would increase revenues by an insignificant amount as a result of civil penalties that would be imposed for violating certain mortgage protections.

Pay-as-you-go procedures apply because enacting the legislation would affect direct spending and revenues.

The bill would impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) by adding and expanding protections for servicemembers under the Servicemembers Civil Relief Act (SCRA) and the Uniformed Services Employment and Reemployment Rights Act (USERRA). CBO estimates that the cost to comply with most of the mandates would be small. However, one mandate would invalidate standing agreements that require employees and employers to participate in mandatory arbitration to resolve USERRA disputes. Because little information exists about the number of USERRA claims settled under binding arbitration and the amount of compensation awarded under those agreements, CBO cannot determine the aggregate cost to public and private entities to comply with that mandate. Consequently, we cannot determine whether the aggregate costs of mandates in the bill would exceed the annual thresholds for intergovernmental or private-sector mandates ($73 million and $146 million, respectively, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 3322 is shown in the following table. The costs of this legislation fall within budget functions 700 (veterans benefits and services), 370 (commerce and housing credit), and 750 (administration of justice).

	By Fiscal Year, in Millions of Dollars											
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2013-2017	2013-2022
CHANGES IN DIRECT SPENDING												
Estimated Budget Authority	7	*	*	1	1	1	1	2	2	2	8	16
Estimated Outlays	7	*	*	1	1	1	1	2	2	2	8	16

Notes: In addition to the costs shown above, enacting S. 3322 would increase revenues by an insignificant amount as a result of civil penalties that would be imposed for violating certain mortgage protections (section 102). Implementing the bill also would increase spending subject to appropriation by an insignificant amount each year and by $1 million over the 2013-2017 period, assuming availability of the necessary amounts.

* = less than $500,000.

BASIS OF ESTIMATE

For this estimate, CBO assumes that S. 3322 will be enacted near the start of fiscal year 2013, and that outlays will follow historical spending patterns for existing programs.

Direct Spending

S. 3322 would increase direct spending for federal loan guarantees by $16 million over the 2013-2022 period.

Section 102 would prohibit lenders from initiating or completing foreclosure proceedings on mortgages issued to certain servicemembers and surviving spouses. Lenders could not foreclose on mortgages held by military personnel while they are receiving hostile-fire or imminent-danger special pay and for 12 months thereafter. Veterans who are medically retired and rated as totally disabled would be protected from foreclosure for 12 months after their date of retirement. Finally, surviving spouses of servicemembers who die from a service-connected cause while in military service would be protected from foreclosure for 12 months on a property that was jointly owned.

Some of the loans that would be affected by the enhanced foreclosure protection in section 102 are guaranteed by VA or FHA. Under its mortgage guarantee program, VA pays lenders up to 25 percent of the outstanding loan debt (subject to some limitations on the original loan amount) in the event that the borrower defaults. Unpaid interest can be added to the guaranteed debt, within certain limits. FHA provides a similar guarantee on mortgages it insures, compensating lenders for up to 100 percent of the loss. Unpaid interest can be added to FHA-guaranteed debt, but accrues at a rate similar to federal borrowing, rather than the interest rate of the defaulted loan.

Delaying foreclosure on borrowers who default would lengthen the period during which unpaid interest accrues, increasing the indebtedness of the borrower. If the loan is eventually terminated, the claim filed by the lender would be larger by the amount of the additional interest and the subsequent claim payment from VA or FHA would rise as a result. The larger claim payments would raise the loan subsidy costs of both agencies.[1] For loans that were originated before enactment of S. 3322, such changes would be treated as loan modifications and the increased subsidy costs would be recorded as direct spending when the modifications become effective—that is, upon enactment of the bill. The higher subsidy costs for loans made subsequent to enactment would increase mandatory costs for VA loans and discretionary costs for FHA loans in the year those new loans are originated.

Based on information from the Department of Defense, CBO estimates that approximately 470,000 servicemembers, retirees, and surviving spouses would be eligible for the enhanced foreclosure protection in 2013. (The majority of those beneficiaries are personnel who are currently receiving hostile-fire or imminent-danger pay or received such pay in the previous year.) However, some of those eligible personnel currently receive similar protection under the national mortgage settlement, an agreement regarding foreclosure practices that was signed by the five largest mortgage servicers, the Department of Justice, and state attorneys general. Under that settlement, the servicers agreed not to foreclose without a court order on property owned by servicemembers who deployed and received hostile-fire or imminent-danger pay, during their deployment and for nine months thereafter. That agreement expires in October 2015.

CBO estimates that newly eligible beneficiaries under the bill would total 230,000 in 2013. That population would decline to 215,000 per year by 2016 and thereafter, as the projected number of deployed personnel falls. On the basis of information from VA, CBO estimates that about 25 percent of potential beneficiaries have loans guaranteed by VA and another

1. Under the Federal Credit Reform Act of 1990, the subsidy cost of a loan guarantee is the net present value of estimated payments by the government to cover defaults and delinquencies, interest subsidies, or other expenses, offset by any payments to the government, including origination fees, other fees, penalties, and recoveries on defaulted loans. Such subsidy costs are calculated by discounting those expected cash flows using the rate on Treasury securities of comparable maturity. The resulting estimated subsidy costs are recorded in the budget when the loans are disbursed.

5 percent have loans guaranteed by FHA. Of those loans, about 1.5 percent would default, for a total of almost 1,000 loans annually, CBO estimates. Under S. 3322, the average claim payments for those defaults would increase by about $2,000 for VA loans and by about $3,000 for FHA loans.

In 2013, the increased subsidy costs for loans originated in prior years would total $5 million for VA-guaranteed loans and about $1 million for FHA-backed loans. Higher subsidy costs for new loans guaranteed by VA would increase direct spending by less than $500,000 initially, growing to $2 million by 2020. In total, section 102 would increase direct spending by almost $7 million in 2013 and $16 million over the 2013-2022 period. (Higher subsidy costs for loans guaranteed by FHA in 2013 and later years would result in an increase in discretionary spending, assuming appropriation action necessary to implement FHA's single-family program. Those costs are described in the section on discretionary spending below.)

Revenues

Section 102 would establish civil penalties for lenders who foreclose on property in violation of the enhanced mortgage protection that would be provided by the bill. Civil fines are recorded as revenues. CBO expects that any additional revenues would not be significant because of the relatively small number of cases likely to be affected.

Spending Subject to Appropriation

As described above, section 102 would increase the subsidy costs of FHA loans guaranteed in 2013 and later years by increasing the amount of unpaid interest that could accrue on defaulted loans before those loans are terminated. CBO estimates that the annual subsidy rate for the FHA single-family program would increase by less than 0.1 percent relative to the rates estimated under current law. The subsidy rate for that program is negative, resulting in net receipts to the federal government. Discretionary credit programs with negative subsidy rates do not require a subsidy appropriation, but an appropriation act must specify the maximum amount of loans that an agency can commit to guarantee. As a result of the provisions in section 102, net receipts under the FHA program would decrease by less than $500,000 each year, and by $1 million over the 2013-2017 period, assuming enactment of the commitment limit at baseline levels.

Sections 107, 203, and 205 would increase the Department of Justice's reporting requirements under the Uniformed Services Employment and Reemployment Rights Act. Those new requirements would increase discretionary spending by an insignificant amount each year.

PAY-AS-YOU-GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO Estimate of Pay-As-You-Go Effects for S. 3322 as ordered reported by the Senate Committee on Veterans' Affairs on September 12, 2012

	By Fiscal Year, in Millions of Dollars											
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2013-2017	2013-2022
NET INCREASE OR DECREASE (-) IN THE DEFICIT												
Statutory Pay-As-You-Go Impact	7	0	0	1	1	1	1	2	2	2	8	16

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

The bill would impose a number of mandates, as defined in UMRA, on employers, landlords, public and private-lending institutions, and individuals. CBO estimates that the cost to comply with most of the mandates would be small. However, because of limited information about claims that allege a violation of USERRA, CBO cannot estimate the costs of section 202 of the bill. Consequently, we cannot determine whether the aggregate costs of mandates in S. 3322 would exceed the annual thresholds for intergovernmental or private-sector mandates ($73 million and $146 million, respectively, adjusted annually for inflation).

Section 202 would invalidate standing agreements that require employees and employers to participate in mandatory arbitration to resolve USERRA disputes. The nullification of such agreements, both present and future, would be a mandate on public and private entities. (Arbitration agreements entered into after a dispute arises would still be valid.) Little information exists about the number of USERRA claims settled under binding arbitration or the amount of compensation awarded under those agreements. Consequently, CBO has no basis for estimating the potential increase or decrease in compensation that would be awarded under S. 3322, if any, or the net cost of the mandate.

The bill would prohibit landlords from imposing an early termination fee on servicemembers who end a residential lease because they are reassigned or relocated to

housing under the jurisdiction of a uniformed service. Because such fees are uncommon, CBO estimates that the costs to landlords, in forgone fees, would be small.

The bill would require public and private-lending institutions that are subject to SCRA to:

- Comply with new standards that would prohibit denying credit to servicemembers simply on the grounds that the servicemembers are eligible for credit protection under SCRA,

- Extend the length of stay of civil proceedings relating to real or personal property, mortgages, evictions, and foreclosures for servicemembers, medical retirees who are totally disabled, and

- Expand stays of civil proceeding for surviving spouses.

CBO estimates the cost of complying with the stay of civil proceedings would be small because relatively few servicemembers, retirees, and surviving spouses of servicemembers who die on active duty would face foreclosure within the periods specified in the bill. Some of those costs would be offset by claim payments from VA and FHA.

Finally, S. 3322 would amend SCRA and USERRA to authorize the Attorney General to issue civil orders to further investigations arising from those acts. Individuals, including public officials, would be subject to those orders and would be required to produce documents for review and duplication and to respond to questioning. However, CBO estimates the costs to comply with those orders would be small.

PREVIOUS CBO ESTIMATE

On September 21, 2012, CBO transmitted a cost estimate for H.R. 5747, the Military Family Home Protection Act, as ordered reported by the House Committee on Veterans' Affairs on July 11, 2012. Section 1 of H.R. 5747 is similar to section 102 of S. 3322. Differences in the estimated costs for those provisions reflect differences in the affected populations.

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