HAVEN Act of 2019
Public Law No. 116-52

NACTT ACADEMY WEBINAR
OCTOBER 23, 2019

Presented by:
Kristina Stanger
Nyemaster Goode, P.C.
Des Moines, Iowa

Jessica Youngberg
Veterans Legal Services
Boston, Massachusetts

Moderated by Naliko Markel
Chapter 13 Trustee
District of Oregon - Eugene
HAVEN Act: Background

ABI Task Force on Veterans and Servicemembers Affairs (https://veterans.abi.org)

- Noted connection between veteran/military-related suicide epidemic and financial distress
- Found that bankruptcy was not always providing much-needed fresh start as intended
- Identified need to amend Bankruptcy Code’s definition of “current monthly income” (CMI) to protect certain military service-related disability and death benefits in bankruptcy
- Sought, informed, and supported legislation

HAVEN Act: Background


- 5/23/2019 Introduced in House
- 7/23/2019 Passed in House
- 8/1/2019 Passed in Senate
- 8/23/2019 Became Public Law No. 116-52
- Effective Immediately

- Strikes and replaces prior subparagraph (B)
- Divides prior text into clauses and subclauses
- Adds fourth category that is excluded from CMI

HAVEN Act: Text

SEC 2. DEFINITION OF CURRENT MONTHLY INCOME.

Section 101(10A) of title 11, United States Code, is amended by striking subparagraph (B) and inserting the following:

“(B) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor’s spouse), on a regular basis for the household expenses of the debtor or the debtor’s dependents (and in a joint case the debtor’s spouse if not otherwise a dependent); and

“(i) excludes—

“(I) benefits received under the Social Security Act (42 U.S.C. 301 et seq.);

“(II) payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes;

“(III) payments to victims of international terrorism or domestic terrorism, as those terms are defined in section 2331 of title 18, on account of their status as victims of such terrorism; and

“(IV) any monthly compensation, pension, pay, annuity, or allowance paid under title 10, 37, or 38 in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services, except that any retired pay excluded under this subclause shall include retired pay paid under chapter 61 of title 10 only to the extent that such retired pay exceeds the amount of retired pay to which the debtor would otherwise be entitled if retired under any provision of title 10 other than chapter 61 of that title.”

HAVEN Act: New CMI Exclusion Text

“Current Monthly Income” now “excludes”:

any monthly compensation, pension, pay, annuity, or allowance paid under title 10, 37, or 38 in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services, except that any retired pay excluded under this subclause shall include retired pay paid under chapter 61 of title 10 only to the extent that such retired pay exceeds the amount of retired pay to which the debtor would otherwise be entitled if retired under any provision of title 10 other than chapter 61 of that title.

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The payment source and basis are key – not an individual’s status such as “veteran.”

Title 10 Armed Forces
Title 37 Pay and Allowances of the Uniformed Services
Title 38 Veterans’ Benefits

### Examples of Excludable Payment Types

#### VA Disability Compensation
- Paid monthly under Title 38 to veterans who have a service-connected disability
- Also known as “Service-Connected Disability Compensation” and “Veterans Compensation”
- Payment amount varies depending upon disability rating (10% to 100%) and whether veteran has “dependents”

#### VA Dependency and Indemnity Compensation (DIC)
- Paid monthly under Title 38 to eligible survivors after a servicemember’s in-service or service-connected death or a veteran’s death due to a service-connected disability (or circumstances that are equated as such)

Additional examples are provided on a chart that is available at veterans.abi.org.

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**Table: Examples of Excludable Payment Types**

<table>
<thead>
<tr>
<th>Benefit</th>
<th>Citation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disability Retired Pay</td>
<td>10 U.S.C. §§ 1201, 1204, 1207</td>
<td>Paid monthly to former or current servicemember, temporary or permanent military retirement due to disability; or retirement pay computed under 10 U.S.C. § 1401.</td>
</tr>
<tr>
<td>Disability Severance Pay</td>
<td>10 U.S.C. §§ 1201, 1204, 1207</td>
<td>Paid as lump-sum to servicemember upon military separation due to disability when circumstances do not meet criteria for disability-based military retirement.</td>
</tr>
<tr>
<td>Combat-Related Special Compensation (CRSC)</td>
<td>10 U.S.C. § 1413(c); see also 38 U.S.C. §§ 5304-5505</td>
<td>Paid monthly to military retirees who have a combat-related disability, cannot be paid concurrently with CRDP.</td>
</tr>
<tr>
<td>Concurrent Retirement &amp; Disability Payment (CRDP)</td>
<td>10 U.S.C. § 1414; see also 38 U.S.C. §§ 5304-5505</td>
<td>Paid monthly to military retiree who is concurrently eligible to receive VA Disability Compensation and who has VA Disability rating of at least 50%, cannot be paid concurrently with CRSC.</td>
</tr>
<tr>
<td>Survivor Benefit Plan Annuity (as to Disability Retirees under Chapter 61 of Title 10 only)</td>
<td>10 U.S.C. § 1448; see also 10 U.S.C. §§ 1201, 1202, 1204, 1205</td>
<td>Paid monthly to military retiree’s eligible beneficiary, after retiree’s death.</td>
</tr>
</tbody>
</table>

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1 In many cases, whether a benefit is protected will be clear. However, because the HAVEN Act does not list specific benefits paid under Titles 10, 38, and 38 that can be excluded from “current monthly income,” some cases will require a practitioner to investigate the basis for the debtor’s receipt of a particular benefit to determine whether the income can arguably be excluded. Additional information about benefits can be found at https://www.va.gov/ benefits/compensation_and_benefits/ and https://www.usajfc. 
2 Benefit descriptions, including website links, are provided for basic informational purposes only. These descriptions should not be relied upon in evaluating potential eligibility for a listed benefit because not all eligibility criteria are stated. 
3 Military retirees based upon disability are governed by Chapter 61 of Title 10 (10 U.S.C. §§ 1201-1222). The HAVEN Act permits the exclusion of Chapter 61-based retired pay from “current monthly income” only to the extent that such retired pay exceeds the amount of retired pay that the debtor would be entitled to receive if retired under another provision of Title 10. Information about retired pay computation can be found in Chapter 71 of Title 10 (10 U.S.C. §§ 1401-1415), as well as on the Defense Finance and Accounting Service’s website at https://www.dfas.mil/. 
4 CRSD has “Special Rules for Chapter 61 Disability Retirees,” 10 U.S.C. § 1413(c)(3). Given that the HAVEN Act has Chapter 61-related limiting language, see supra note 3, additional analysis could be required for a debtor who receives CRSD. 
5 CRDP has “Special Rules for Chapter 61 Disability Retirees,” 10 U.S.C. § 1414(b). Given that the HAVEN Act has Chapter 61-related limiting language, see supra note 3, additional analysis could be required for a debtor who receives CRDP.

### HAVEN Act: Application

#### Examples of Potentially Excludable Payment Types

**Hostile Fire Pay/Imminent Danger Pay (HFP/IPD)**
- Paid monthly under Title 37 to servicemembers based upon the actual or potential for exposure to hostile fire and imminent danger situations
- Such conditions alone would not qualify for CMI exclusion because not being paid “in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services”
- Also paid under Title 37 to servicemember who is “killed, injured, or wounded by . . . hostile action” with payments continuing for up to three months during hospitalization
- Would be excludable from CMI when paid under such circumstances

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<table>
<thead>
<tr>
<th>Description</th>
<th>Relevant Code(s)</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Special Survivor Indemnity Allowance</strong></td>
<td>10 U.S.C. § 1450(c), (m)</td>
<td>Paid monthly to military retiree’s surviving spouse or former spouse, after retiree’s death, if Survivor Benefit Plan annuity payments are offset by VA Dependency and Indemnity Compensation payments. <a href="https://www.ifan.us/va/education/military-survivors-understanding-ship-dic-ssia.shtml">https://www.ifan.us/va/education/military-survivors-understanding-ship-dic-ssia.shtml</a></td>
</tr>
<tr>
<td><strong>Special Compensation for Assistance with Activities of Daily Living</strong></td>
<td>37 U.S.C. § 439</td>
<td>Paid monthly to current or recent servicemember who requires help with activities of daily living due to catastrophic injury or illness incurred or aggravated in line of duty, cannot be paid concurrently with Aid and Attendance Allowance paid under 38 U.S.C. § 1114(a)(2) [<a href="https://www.gpo.gov/fdsys/pkg/CP-2019-01-06/pdf/CP-2019-01-06.pdf">https://www.gpo.gov/fdsys/pkg/CP-2019-01-06/pdf/CP-2019-01-06.pdf</a>]</td>
</tr>
<tr>
<td><strong>VA Disability Compensation</strong></td>
<td>Also known as “Service-Connected Disability Compensation” and “Veterans Compensation”</td>
<td>Paid monthly to veteran who has a disability due to disease or injury incurred or aggravated while serving on active duty, or otherwise related to that service; payment amount depends upon disability rating (10% to 100%) and whether the veteran has qualifying dependents [<a href="https://www.va.gov/disability">https://www.va.gov/disability</a>]</td>
</tr>
<tr>
<td><strong>VA Special Monthly Compensation</strong></td>
<td>Can include Aid and Attendance Allowance or Housebound Allowance</td>
<td>Paid monthly to veteran who receives VA Disability Compensation and who has special circumstances warranting additional compensation such as having specific service-connected anatomical losses or having need for daily in-home personal health care services [<a href="https://www.va.gov/disability">https://www.va.gov/disability</a>]</td>
</tr>
<tr>
<td><strong>VA Dependency and Indemnity Compensation</strong></td>
<td>Can include Aid and Attendance Allowance or Housebound Allowance</td>
<td>Paid monthly to eligible survivors after servicemember’s in-service or service-connected death or veteran’s death due to service-connected disability (or equated as such) [<a href="https://www.va.gov/burials-memorials/dependency-indemnity-compensation">https://www.va.gov/burials-memorials/dependency-indemnity-compensation</a>]</td>
</tr>
<tr>
<td><strong>VA Veterans Pension</strong></td>
<td>Also known as “Non-Service-Connected Disability Pension”</td>
<td>Paid monthly as subsistence benefit to veteran who meets low income and net worth criteria, satisfies service requirements, and is either at least age 65 or “permanently and totally disabled” (generally due to non-service-connected disability); payment amount depends upon whether the veteran has qualifying dependents and in-home health care needs [<a href="https://www.va.gov/veteransbenefits">https://www.va.gov/veteransbenefits</a>]</td>
</tr>
<tr>
<td><strong>VA Vocational Rehabilitation &amp; Employment Subsistence Allowance</strong></td>
<td>38 U.S.C. § 3108</td>
<td>Paid monthly to veteran who has service-connected disability and who is participating in vocational rehabilitation program under Chapter 31 [<a href="https://www.benefits.va.gov/vrerehab/subsistence_allowance_rates.asp">https://www.benefits.va.gov/vrerehab/subsistence_allowance_rates.asp</a>]</td>
</tr>
</tbody>
</table>

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* As indicated in the description, this benefit can be paid based upon age without a qualifying disability. If so paid, the income would not be excludable from “current monthly income” under the HAVEN Act. It’s veteran is eligible for the benefit based upon age and, apparently, based upon a qualifying disability, it might be possible to rely upon the latter eligibility to exclude his income from “current monthly income.” See 38 U.S.C. § 1513(b)
HAVEN Act: Application

Examples of Potentially Excludable Payment Types

VA Veterans Pension
- Paid monthly as a subsistence benefit to veterans who meet low income and net worth criteria, among other requirements, and are either at least age 65 or "permanently and totally disabled"
  - Excludable from CMI if paid based on disability
  - If eligible based upon age and, separately, based upon disability, should be able to rely upon disability for CMI exclusion

Payment Type Confirmation and Documentation

Documentation to confirm payment type is generally available.
- Award Letters & Payment History
  - DOD & VA’s eBenefits website (ebenefits.va.gov)
- Leave and Earnings Statements
  - DFAS’s MyPay website (mypay.dfas.mil)
- Military Discharge Document (e.g., DD Form 214) and Records
  - DOD & VA’s eBenefits website (ebenefits.va.gov)
- Bank Statements
VA Benefit Summary Letter (Excerpt)

Military Information
Your most recent, verified periods of service (up to three) include:

<table>
<thead>
<tr>
<th>Branch of Service</th>
<th>Character of Service</th>
<th>Entered Active Duty</th>
<th>Released/Discharged</th>
</tr>
</thead>
<tbody>
<tr>
<td>Army</td>
<td>Honorable</td>
<td>February 27, 2008</td>
<td>October 20, 2014</td>
</tr>
</tbody>
</table>

(There may be additional periods of service not listed above.)

VA Benefit Information

- You have one or more service-connected disabilities: Yes
- Your combined service-connected evaluation is: 70%
- Your current monthly award amount is: $1590.71
- The effective date of the last change to your current award was: July 01, 2017
- You are considered to be totally and permanently disabled due solely to your service-connected disabilities: No


HAVEN Act: Application

Payment Type Confirmation and Documentation

The **USTP Position** on Documentation:

- “The USTP will limit its requests for documents related to income excluded from CMI under the HAVEN Act to avoid unduly burdening debtors.”
- “The USTP does not routinely request from debtors documents not otherwise required by the Bankruptcy Code or Rules without a specific need for additional information.”
- “The USTP will advise chapter 7 and 13 trustees, as a best practice, to similarly limit their HAVEN Act-related document requests to what is necessary for proper administration of the case.”

“Current Monthly Income” now “excludes”:

any monthly compensation, pension, pay, annuity, or allowance paid under title 10, 37, or 38 in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services, except that any retired pay excluded under this subclause shall include retired pay paid under chapter 61 of title 10 only to the extent that such retired pay exceeds the amount of retired pay to which the debtor would otherwise be entitled if retired under any provision of title 10 other than chapter 61 of that title.

HAVEN Act: Application

Military Retirement & Retired Pay Overview

- Retired after serving at least minimum time necessary for retirement, typically 20 years but can be as few as 15 years
- Retired due to disability
  - “retired pay paid under chapter 61 of title 10” = Disability Retired Pay
  - Disability Retired Pay is initially calculated under two formulas, and most favorable amount is paid.
    - One formula considers disability severity
    - One formula considers time in service

DOD/DFAS Letter (Excerpt)

<table>
<thead>
<tr>
<th>Service for Percent:</th>
<th>06 Years, 08 Months, 14 Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>In accordance with 10 USC 1401, you are entitled to receive retired pay computed using your Percentage of Disability (Method A) or, using your Years of Active Service (Method B), as follows:</td>
<td></td>
</tr>
<tr>
<td>Active Duty Base Pay</td>
<td>Method A 2,651.37 Method B 2,651.37</td>
</tr>
<tr>
<td>Percentage of Disability</td>
<td>70%</td>
</tr>
<tr>
<td>Percent Multiple (Maximum Percent Multiple is 75%)</td>
<td>Method A Calculation (2,651.37 x 0.7000) 1,855.00 Method B Calculation (2,651.37 x 0.1668) 442.00</td>
</tr>
<tr>
<td>Cost of Living Adjustment</td>
<td>.00 .00</td>
</tr>
<tr>
<td>Gross Monthly Retired Pay</td>
<td>Method A is most beneficial 1,855.00 442.00</td>
</tr>
</tbody>
</table>

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HAVEN Act: Application

Retirement-related Examples

Retired after serving 25 years (not chapter 61) and receives Retired Pay
  ◦ Cannot exclude Retired Pay from CMI because it is not “paid . . . in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services”

Retired due to disability (chapter 61) after serving 25 years and receives Disability Retired Pay based upon time-in-service calculation
  ◦ Because Disability Retired Pay does not exceed “the amount of retired pay to which the debtor would otherwise be entitled if retired under any provision of title 10 other than chapter 61 of that title,” cannot exclude Disability Retired Pay from CMI
HAVEN Act: Application

Retirement-related Examples
Retired due to disability (chapter 61) after serving 25 years and receives $3,000 per month Disability Retired Pay based upon severity-of-disability calculation but would have received $2,500 per month based upon time-in-service calculation
- Can exclude $500 of Disability Retired Pay from CMI because that is “the extent that such retired pay exceeds the amount of retired pay to which the debtor would otherwise be entitled if retired under any provision of title 10 other than chapter 61 of that title”

 Arguably, can exclude entire $1,855 of Disability Retired Pay from CMI because with only 6 years in service, could not have “retired under any provision of title 10 other than chapter 61” and would not “otherwise be entitled” to receive retired pay under title 10
HAVEN Act: Application

Retirement-related Examples

Retired after serving 25 years (not chapter 61) and is eligible to receive $2,500 per month Retired Pay (taxable and paid by DOD under Title 10) but is separately entitled to receive $617.73 per month VA Disability Compensation (nontaxable and paid by VA under Title 38) based upon a 40% service-connected disability rating and having no dependents

◦ Is not one who qualifies to receive both payments in full concurrently and has waived $617.73 Retired Pay to instead receive VA Disability Compensation (reducing tax liability)
◦ Cannot exclude $1,882.27 Retired Pay from CMI
◦ Can exclude $617.73 VA Disability Compensation from CMI

Retirement-related Examples

Retired after serving 25 years (not chapter 61) and is eligible to receive $2,500 per month Retired Pay (taxable and paid by DOD under Title 10) but is separately entitled to receive $1,113.86 per month VA Disability Compensation (nontaxable and paid by VA under Title 38) based upon a 60% service-connected disability rating and having no dependents

◦ Rather than waiving Retired Pay to receive VA Disability Compensation, qualifies to receive both payments in full concurrently through eligibility for Concurrent Retirement and Disability Pay (CRDP) (taxable and paid by DOD under Title 10 based upon various criteria including a VA disability rating of at least 50%)
◦ Cannot exclude $1,386.14 Retired Pay from CMI
◦ Can exclude $1,113.86 VA Disability Compensation from CMI
◦ Can exclude $1,113.86 CRDP from CMI
HAVEN Act: Application

The **USTP Position** on Resolving Ambiguities:

> “[T]he USTP will work to ensure that its approach is faithful to the language of the statute and, if ambiguities arise, will generally resolve them in favor of the recipients of benefits covered by the Act.”

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**Practice & Procedure**

**Prospective Application**

- Chapter 13 debtor can use new CMI exclusion for their Plan or for possible conversion (11 U.S.C. § 1307(a))
- Applies to pending cases
- Applies to closed cases with ongoing repayment plans

*See 165 Cong. Rec. H7215-01 (2019); Landgraf v. USI Film Prod., 511 U.S. 244 (1994) (setting forth the standard as to application of a statute before its enactment); Rivers v. Roadway Exp., Inc., 511 U.S. 298, 311 (1994) (applying narrow error-correcting statutes to pending cases where a contrary reading renders the statute ineffective); In re Padilla, 365 B.R. 492, 503 (Bankr. E.D. Pa. 20017) (quoting 11 U.S.C. § 350(b)) (providing a bankruptcy case may be reopened to accord relief to the debtor).*

**Excluding and Disclosing Excluded Income**

- Schedules, forms, local rules and programs are being revised
- Excluded income should be disclosed, as would be done when excluding, for example, income under the Social Security Act

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Jessica Youngberg

Kristina Stanger
Legal

ABI Task Force on Veterans and Servicemembers Affairs, [https://veterans.abi.org](https://veterans.abi.org).

Benefits

U.S. Dep’t of Veterans Affairs, [https://www.va.gov](https://www.va.gov).

Helpful Resources

This and other resources can be found at [ConsiderChapter13.org](https://ConsiderChapter13.org)

Questions?