










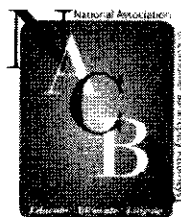
History of the HAVEN Act

8

| | | |
|--------------|---|---|
| MAY 23, 2019 |  | Introduced Bills and resolutions are referred to committees which debate the bill before possibly sending it on to the whole chamber. Read Text » |
| JUN 27, 2019 |  | Source Bill — Passed Senate (House next) This activity took place on a related bill, S. 1790 , possibly in lieu of similar activity on H.R. 2938. |
| JUL 11, 2019 |  | Ordered Reported A committee has voted to issue a report to the full chamber recommending that the bill be considered further. Only about 1 in 4 bills are reported out of committee. Read Updated Text » See Changes » |
| JUL 12, 2019 |  | Source Bill — Passed House (Senate next) This activity took place on a related bill, H.R. 2500 , possibly in lieu of similar activity on H.R. 2938. |
| JUL 19, 2019 |  | On House Schedule The House indicated that this bill would be considered in the week ahead. |
| JUL 23, 2019 |  | Passed House (Senate next) The bill was passed in a vote in the House. It goes to the Senate next. The vote was by voice vote so no record of individual votes was made. Read Updated Text » See Changes » |
| JUL 23, 2019 |  | Reported by House Committee on the Judiciary A committee issued a report on the bill, which often provides helpful explanatory background on the issue addressed by the bill and the bill's intentions. Read Report » |
| AUG 1, 2019 |  | Passed Senate The bill was passed by both chambers in identical form. It goes to the President next who may sign or veto the bill. The vote was by Voice Vote so no record of individual votes was made. Read Updated Text » See Changes » |
| AUG 23, 2019 |  | Enacted — Signed by the President The President signed the bill and it became law. |

"H.R. 2938 — 116th Congress: HAVEN Act." www.GovTrack.us. 2019. August 28, 2019
<<https://www.govtrack.us/congress/bills/116/hr2938>>

HAVEN ACT
Honoring American Veterans in Extreme Need



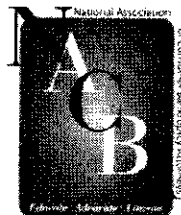
NACBA Actively Supported the HAVEN Act

9

NACBA members Ed Boltz and John Rao testifying
before the House Judiciary Committee, June 2019.



HAVEN ACT
Honoring American Veterans in Extreme Need



The HAVEN Act

10

An Act

To exempt from the calculation of monthly income certain benefits paid by the Department of Veterans Affairs and the Department of Defense.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Honoring American Veterans in Extreme Need Act of 2019" or the "HAVEN Act".

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)(i) 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

"(ii) excludes—

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

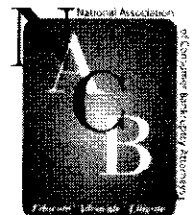
"(II) payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes;

"(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

Honoring American Veterans in Extreme Need



The Text

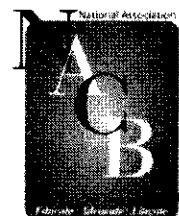
11

- ▶ “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.’

- ▶ Title 10: Armed Forces (Including UCMJ)
- ▶ Title 37: Pay and Allowances of the Uniformed Services
- ▶ Title 38: Veterans' Benefits
- ▶ 10 U.S.C. Ch. 61—RETIREMENT OR SEPARATION FOR PHYSICAL DISABILITY

HAVEN ACT

Honoring American Veterans in Extreme Need



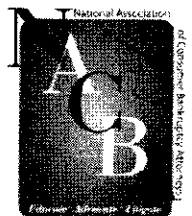
The Text

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- ▶ “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.”

- ▶ Title 10: Armed Forces (Including UCMJ)
- ▶ Title 37: Pay and Allowances of the Uniformed Services
- ▶ Title 38: Veterans' Benefits
- ▶ 10 U.S.C. Ch. 61—RETIREMENT OR SEPARATION FOR PHYSICAL DISABILITY

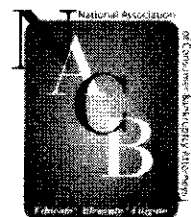
HAVEN ACT
Honoring American Veterans in Extreme Need



What is excluded?

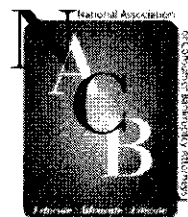
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| Benefit | Citation | Description |
|---|--|--|
| Disability Retired Pay Permanent Disability Retirement Temporary Disability Retirement | 10 U.S.C. §§ 1201, 1204 10 U.S.C. §§ 1202, 1205 (Chapter 61, Title 10) | Paid monthly to former or current servicemember upon permanent or temporary military retirement due to disability; pay computed under 10 U.S.C. § 1401 https://www.dfas.mil/retiredmilitary/disability/disability.html |
| Disability Severance Pay | 10 U.S.C. § 1212; <i>see also</i> 10 U.S.C. §§ 1203, 1206 | Paid as lump sum to servicemember upon military separation due to disability when circumstances do not meet criteria for disability-based military retirement https://www.dfas.mil/retiredmilitary/plan/separation-payments/disability-severance-pay.html |
| Combat-Related Special Compensation (CRSC) | 10 U.S.C. § 1413a; <i>see also</i> 38 U.S.C. §§ 5304-5305 | Paid monthly to military retiree who has a combat-related disability; cannot be paid concurrently with CRDP https://www.dfas.mil/retiredmilitary/disability/crsc.html |
| Concurrent Retirement & Disability Payment (CRDP) | 10 U.S.C. § 1414; <i>see also</i> 38 U.S.C. §§ 5304-5305 | 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 https://www.dfas.mil/retiredmilitary/disability/crdp.html |
| Survivor Benefit Plan Annuity (as to Disability Retirees under Chapter 61 of Title 10 only) | 10 U.S.C. § 1448; <i>see also</i> 10 U.S.C. §§ 1201, 1202, 1204, 1205 | Paid monthly to military retiree's eligible beneficiary, after retiree's death https://www.dfas.mil/retiredmilitary/provide/sbp.html |



What is excluded?

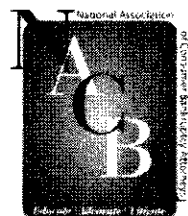
| Benefit | Citation | Description |
|--|--|--|
| Special Survivor Indemnity Allowance | 10 U.S.C. § 1450(c), (m) | Paid monthly to military retiree's surviving spouse or former spouse, after retiree's death, if Survivor Benefit Plan Annuity payments are offset by VA Dependency and Indemnity Compensation payments https://www.dfas.mil/retiredmilitary/survivors/Understanding-SBP-DIC-SSIA.html |
| Special Compensation for Assistance with Activities of Daily Living | 37 U.S.C. § 439 | 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(r)(2) https://warriorcare.dodlive.mil/benefits/scaadl/ |
| VA Disability Compensation Also known as "Service-Connected Disability Compensation" and "Veterans Compensation" | 38 U.S.C. §§ 1104, 1110, 1114(a)-(j), 1115, 1131, 1134 | 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 https://www.va.gov/disability/ https://www.benefits.va.gov/COMPENSATION/resources_comp01.asp |



What is excluded?

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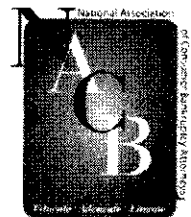
| Benefit | Citation | Description |
|--|-------------------------------------|---|
| VA Special Monthly Compensation Can include Aid and Attendance Allowance or Housebound Allowance | 38 U.S.C. §§ 1114(k)-(s), 1134 | Paid monthly to veteran who receives VA Disability Compensation and who has special circumstances warranting additional compensation such as having specific service-connected anatomical losses or having need for daily in-home personal health care services https://www.benefits.va.gov/COMPENSATION/resources_comp02.asp |
| VA Dependency and Indemnity Compensation Can include Aid and Attendance Allowance or Housebound Allowance | 38 U.S.C. §§ 1304, 1310-1318 | 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) https://www.va.gov/burials-memorials/dependency-indemnity-compensation/ |
| VA Veterans Pension Also known as "Non-Service-Connected Disability Pension" Can include Aid and Attendance Allowance or Housebound Allowance | 38 U.S.C. §§ 1502, 1513, 1521, 5312 | 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 https://www.benefits.va.gov/pension/vetpen.asp |
| VA Vocational Rehabilitation & Employment Subsistence Allowance | 38 U.S.C. § 3108 | Paid monthly to veteran who has service-connected disability and who is participating in vocational rehabilitation program under Chapter 31 https://www.benefits.va.gov/vocrehab/subsistence_allowance_rates.asp |



Determining whether benefits are excluded

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- Award letters
- Paystubs
- Service Records



eBenefits

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A Service of the Department of
Veterans Affairs and the
Department of Defense

Log in

Register

Apply

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National Resource Directory

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Contact

Search



For feature and outage events, refer to the Outage Calendar link at the bottom of the page.

To ensure your security and privacy, when using a shared or public computer, make sure you always log out of VA/DoD eBenefits and then close all browser windows when finished accessing the site.

What do you want to do?

Need help? Appoint a claims agent, attorney, or
Veteran Service Organization (VSO) to assist you.



Apply

Disability Compensation ▶

Add or Remove Dependent ▶

VA Health Care □

Education Benefits

Pension Benefits

Vocational Rehabilitation and
Employment

See all applications for benefits



Manage Benefits

Compensation Claim Status ▶ □

Personal Contact and Direct Deposit ▶

Military Personnel File ▶ □

VA Letters ▶

Certificate of Eligibility for Home Loan ▶

Supporting Document Upload for
Claims ▶ □

See all options to manage benefits



Manage Health

Share Your VA Medical Records

VA Prescription Refills ▶ □

VA Appointments ▶ □

Hearing Aid Batteries and Prosthetic
Socks ▶

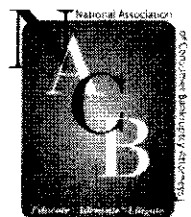
SECURE MESSAGING on
MyHeathVet ▶ □

DoD TRICARE® Health Insurance ▶ □

See all options to manage your health

www.ebenefits.va.gov/ebenefits/homepage

HAVEN ACT
Honoring American Veterans in Extreme Need





Simpler | Streamlined | Mobile-Friendly



Sign In

Login ID

Password

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[Forgot or Need a Password?](#)



System Availability

Recurring Weekly System Maintenance:

All myPay Customers:

- Access to myPay is unavailable between 0000 ET - 0100 ET daily Monday - Friday
- Access to Travel Advice of Payment (AoP) unavailable between 1200 and 1700 ET every Sunday
- Access to Travel Advice of Payment (AoP) unavailable between 0400 and 1900 ET every fourth Sunday of the month

Marine Corps Customers:

- Access to LES and W-2 is unavailable between 2200 ET every Friday and 0400 ET every Saturday
- Access to all transactions are unavailable between 2500 ET every Friday and 0400 ET every Saturday

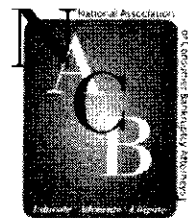
New User

New to myPay? Read how new accounts are added
Create your myPay Profile. Start here



<https://mypay.dfas.mil/#/>

HAVEN ACT
Honoring American Veterans in Extreme Need



Sample VA Award Letter

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DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Ave NW
Washington, D.C. 20420

July 18, 2017

Dear Mr. _____:

This letter is a summary of benefits you currently receive from the VA. Providing this letter to disabled Veterans to use in applying for bene relief, civil service preference, to obtain housing entitlements, free c any other program or entitlement in which verification of VA benefit document. This letter is considered an official record of your VA onl

Our records contain the following information:

Personal Claim Information

Your VA claim number is: xxx-xx-xxxx

You are the Veteran.

Military Information

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

| Branch of Service | Character of Service | Entered Active Duty |
|-------------------|----------------------|---------------------|
| Army | Honorable | February 27, 2008 |

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

VA Benefit Information

You have one or more service-connected disabilities:

Your combined service-connected evaluation is:

Your current monthly award amount is:

The effective date of the last change to your current award

You are considered to be totally and permanently disabled due solely to your service-connected disabilities:

You should contact your state or local office of Veterans' affairs for benefits for which you may be eligible. State offices of Veterans' aff <http://www.va.gov/stateofva.htm>.

How You Can Contact Us

- If you need general information about benefits and eligibility, please visit us at <https://www.ebenefits.va.gov> or <http://www.va.gov>.
- Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the number is 1-800-

Military Information

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

Branch of Service
Army

Character of Service
Honorable

Entered Active Duty
February 27, 2008

Released/Discharged
October 20, 2014

(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:

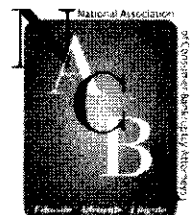
July 01, 2017

You are considered to be totally and permanently disabled due solely to your service-connected disabilities:

No

HAVEN ACT

Honoring American Veterans in Extreme Need



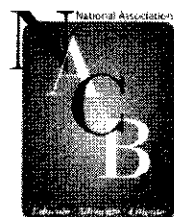
The Text

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- ▶ “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.”

- ▶ Title 10: Armed Forces (Including UCMJ)
- ▶ Title 37: Pay and Allowances of the Uniformed Services
- ▶ Title 38: Veterans' Benefits
- ▶ 10 U.S.C. Ch. 61—RETIREMENT OR SEPARATION FOR PHYSICAL DISABILITY

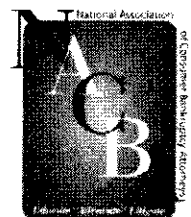
HAVEN ACT
Honoring American Veterans in Extreme Need



Translation...

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- ▶ If disability pay exceeds what the veteran would have received in retirement pay, then the amount excluded from the means test is the difference between what the veteran receives in disability less what he or she would have received for retirement.
- ▶ Example: Veteran is receives \$1500 in disability benefits, but would have qualified for \$1000 in retirement benefits. $\$1500 - \$1000 = \$500$. The \$500 is excludable from the means test.



Sample DOD Letter

22



DEFENSE FINANCE AND ACCOUNTING SERVICE
RETIRED AND ANNUITY PAY

Certified-RRR

Dear Sir:

Welcome to the Retired roll. Based on official information initiated your disability retirement summary. However, an accurate establishment of you as soon as these documents are systematically reviewed and overpayments.

Net pay in the amount of \$130 entitlement will be transmitted monthly net pay will be processed will also be transmitted to you.

We have provided a link to you requesting changes to your account should bear your signal ensure proper identification of an address change, please for payment and/or correspondence.

For questions concerning your 1080. If living outside the The Call Center Phone Lines at 8:00 a.m. - 5:00 p.m. Eastern addressed to:
Defense Finance and Accounting U.S. Military Retirement 8899 E 56th Street Indianapolis IN 46249-120

There is an easy, fast and efficient military retired pay account. This is an innovative, automated convenient, secure way to view retirement data. It is available anywhere in the world. Through your IRS 1099-R tax statement Account Statement. Rather than you may make routine changes to data online through myPay at h

RETIRED
Defense Finance and Accounting

NAME:
SSN:

SUMMARY OF RETIRED PAY ACCOUNT
Date of Retirement: 08 JAN 20

Gross Pay -

Retired Pay Rating: SGT P
Service for Basic Pay: 06 Y

Since you entered the Military pay is computed using your most active duty basic pay (10 USC designated below as Active Duty 36 highest monthly basic pay rate if you were on active duty for average monthly basic pay you

Service for Percent: 06 Yea

In accordance with 10 USC 14 retired pay computed using y (Method A) or, using your Ye as follows:

Active Duty Base Pay
Percentage of Disability

| | | |
|---|----------|--------|
| Percent Multiple (Maximum Percent Multiple is 75%) | | |
| Method A Calculation(2,651.37 x 0.7000) | 1,855.00 | 442.00 |
| Method B Calculation(2,651.37 x 0.1668) | | |
| Cost of Living Adjustment | .00 | .00 |
| Gross Monthly Retired Pay | 1,855.00 | 442.00 |
| *Method A is most beneficial | | |

The maximum percentage factor is 75 percent under any of the pay computation formulas regardless of the number of years of active service you may have or the percentage of disability assigned you.

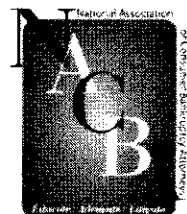
Service for Percent: 06 Years, 08 Months, 14 Days

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:

| | Method A | Method B |
|---|----------|----------|
| Active Duty Base Pay | 2,651.37 | 2,651.37 |
| Percentage of Disability | 70% | |
| Percent Multiple (Maximum Percent Multiple is 75%) | 70.00% | 16.68% |
| Method A Calculation(2,651.37 x 0.7000) | 1,855.00 | |
| Method B Calculation(2,651.37 x 0.1668) | | 442.00 |
| Cost of Living Adjustment | .00 | .00 |
| Gross Monthly Retired Pay | 1,855.00 | 442.00 |
| *Method A is most beneficial | | |

HAVEN ACT

Honoring American Veterans in Extreme Need

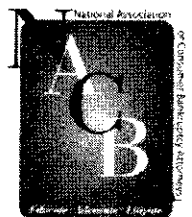


Effective Date

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- ▶ Bill was signed by the President on August 23, 2019.
- ▶ Because no future effective date is specified, it becomes effective when the President signs it.

August 23, 2019



Prospective or Retrospective?

Will it affect my existing cases or only those filed after August 23, 2019?

- ▶ Two rules concerning the effect of intervening changes in the law:
- ▶ “The first is the rule that “a court is to apply the law in effect at the time it renders its decision,” *Bradley*, 416 U.S. at 711.” *Landgraf v. Usi Film Prods.*, 511 U.S. 244, 264, 114 S. Ct. 1483, 1496 (1994).
- ▶ “The second is the axiom that ‘retroactivity is not favored in the law,’ and its interpretive corollary that ‘congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result.’ *Bowen*, 488 U.S. at 208.” *Landgraf v. Usi Film Prods.*, 511 U.S. 244, 264, 114 S. Ct. 1483, 1496 (1994).

Prospective or Retrospective?

Will it affect my existing cases or only those filed after August 23, 2019?

- ▶ Chapter 7 filed before August 23, can the Means Test now be amended?
- ▶ Chapter 13, impact on unconfirmed cases? CMI Reset revived?
 - ▶ CMI reset per 11 U.S.C. § 101(10a)(A)(ii).
 - ▶ See *In re Ingram*, No. 06-02714-8-RDD, 2006 WL 6070518 (Bankr. E.D.N.C. Nov. 20, 2006) and *In re Hoff*, 402 B.R. 683 (Bankr. E.D.N.C. 2009).
- ▶ Chapter 13 modifications.
- ▶ Conversion to Chapter 7, If there is a Means Test, how is this impacted?

Questions

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- ▶ Question: How does the Act affect enforcement under section 707(b)(2) of the Bankruptcy Code and the determination of whether the presumption of abuse arises for servicemembers or their family members filing for chapter 7 relief under the Bankruptcy Code?
- ▶ Answer: Servicemembers or their family members who file for bankruptcy relief under chapter 7 should exclude income covered by the Act from the calculation of CMI. The calculation of CMI is the starting point for determining whether a chapter 7 bankruptcy case is presumed abusive under section 707(b)(2).

▶ From "HAVEN Act – Frequently Asked Questions" found at https://www.justice.gov/ust/file/haven_act_faqs.pdf/download

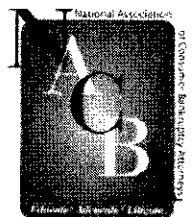
Questions

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- ▶ Question: How does the Act affect chapter 13 cases?
- ▶ Answer: Servicemembers and their family members who file for bankruptcy relief under chapter 13 should exclude income covered by the Act from the calculation of CMI, which may affect the determination of projected disposable income available for a chapter 13 plan.

▶ From "HAVEN Act – Frequently Asked Questions" found at https://www.justice.gov/ust/file/haven_act_faqs.pdf/download

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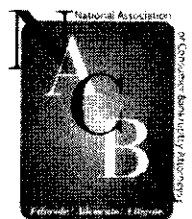


Questions

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- ▶ Question: Will the USTP require debtors to produce documentation to support any servicemembers' benefits that they exclude from the calculation of CMI?
- ▶ Answer: The USTP will limit its requests for documents related to income excluded from CMI under the HAVEN Act so as to not unduly burden 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.
- ▶ From "HAVEN Act – Frequently Asked Questions" found at https://www.justice.gov/ust/file/haven_act_faqs.pdf/download

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Honoring American Veterans in Extreme Need



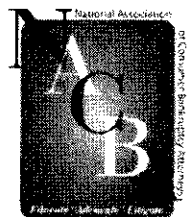
Questions

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- ▶ Question: How does the Act affect the USTP's enforcement under section 707(b)(3) of the Bankruptcy Code (bad faith and the totality of the circumstances), and the determination of a debtor's actual ability to repay creditors?
- ▶ Answer: By modifying the definition of "current monthly income," the HAVEN Act does not directly impact section 707(b)(3)'s provisions providing for dismissal of cases based on the debtor's bad faith or under the totality of the circumstances.

▶ From "HAVEN Act – Frequently Asked Questions" found at https://www.justice.gov/ust/file/haven_act_faqs.pdf/download

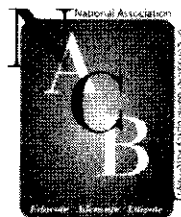
HAVEN ACT
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Questions

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- ▶ 1. Only applies to disability payments, not income labeled as retirement?
- ▶ 2. Is it treated just like social security income? Disclosed on I then deducted on J? No need to disclose at all, or disclose where...?
- ▶ 3. Does regular combat pay qualify?
- ▶ 4. Will it be bad faith to not include disability benefits on Sched. I?



Questions

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- ▶ 1. Does it apply retroactively to chapter 13 cases already confirmed?
- ▶ 2. If yes, do we modify or convert old cases where this caused them to require a 13 instead of a 7?
- ▶ 3. If yes, can we modify a confirmed 5 year plan to be a 3 year plan?
- ▶ 4. Is it no longer going to be used as ongoing disposable monthly income that we are permitted to not be taken into account for funding chapter 13 plan payments?
- ▶ 5. Would it be grounds for converting a confirmed chapter 13 case if we can exclude the entire amount, such as with social security and the In re Ragos case of the 5th Cir.?

Questions

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- ▶ Since VA disability is now exempt like SSD disability, all the case law says you can also exempt SSD on J as well, do you think you can exempt VA disability on J too? Also I believe SSI retirement is exempt from the means test, but is VA retirement not exempt and is the new law only affecting VA disability?