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Why does the bankruptcy code discriminate against disabled veterans?

BY NANCY RAPOPORT AND MARY LANGSNER, OPINION CONTRIBUTORS — 01/24/19 04:00 PM EST
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When a person files for bankruptcy, it's a sad day. Although the bankruptcy code was enacted to give a "fresh start to the honest but unfortunate debtor" and a single point of contact for creditors (and to keep our economy going), admitting that your debts are out of control is difficult. So why would Congress make it harder for disabled veterans who need bankruptcy protection?

In 2005, Congress changed the bankruptcy code to force those with income levels at or above the median in their geographic area into Chapter 13 (reorganization), rather than Chapter 7 (liquidation). Chapter 7 is traditionally a fast process, but Chapter 13 takes three to five years.

The rationale was that debtors who could pay part of their debts in Chapter 13 were getting fast discharges in Chapter 7 instead. Although there had been abusive Chapter 7 filings, these amendments have created unintended consequences, especially for disabled veterans. Here's how: "Payments to victims of war crimes or crimes against humanity . . . , and payments to victims of international terrorism ... or domestic terrorism . . ." are excluded from the "current monthly income" calculation. Social security benefits are also excluded. That's fair. But veterans' military disability benefits are included in calculating their current monthly income. That's unfair.

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There is ample data and thoughtful analysis on the challenges of veterans in financial distress. One excellent example is Dr. Jack F. Williams, [Vets and Debts](#), published in 2017 by the American Bankruptcy Institute Law Review.

Yet the “current monthly income” definition prevents disabled veterans’ parity with other disabled Americans. Military service is service in its purest sense. Why should disabled veterans be treated worse than other disabled people, victims of war crimes, and victims of terrorism? Disabled Americans should not worry that their Chapter 7 cases, and their hope for a swift “fresh start,” will be dismissed without receiving their “clean slate” discharge.

If you think that everyone should repay their debts and no one should ever seek bankruptcy protection, imagine what would happen if you or a family member received bad medical news or a layoff notice. Maybe you (or they) could weather the financial deluge of hundreds of thousands of dollars in medical bills or of competing to re-enter the workforce against hundreds of your former work colleagues. We doubt that we could.

Here’s an example: Take a veteran who is married to a teacher. This veteran is considered fully disabled by reason of his service (and receives 100 percent military disability). His debts would make him an ideal candidate for Chapter 7, except that his military disability must be included in his “current monthly income” calculation.

When his military disability is combined with his wife’s income, the total is large enough to eliminate eligibility for Chapter 7 relief — even though his creditors could never attach his military disability. (His creditors cannot attach his military disability under 38 U.S.C. § 5301, a different part of the United States Code). Veterans have run toward danger to protect the rest of us. Should we exclude them from the protections available to those receiving Social Security disability benefits, victims of war crimes, and victims of international and domestic terrorism?

There is a simple fix. Congress can exclude military disability from being counted toward “current monthly income” for bankruptcy purposes. Sens. Tammy Baldwin (D-Wisc.) and John Cornyn (R-Texas) co-sponsored the Honoring American Veterans in Extreme Need (HAVEN) Act. The HAVEN Act would exclude certain veterans’ benefits (including disability benefits) from the definition of “current monthly income.”

The HAVEN Act is the single best way to ensure that our disabled veterans are treated equally with other disabled Americans under the bankruptcy code and is an easy bipartisan win.

We both have relatives who have served our country. We’re extraordinarily proud of them and grateful for their service. Everyone who knows a veteran is just as proud and grateful. Gratitude isn’t enough. It’s time to fix this issue and get the HAVEN Act passed, and soon.

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