

HAVEN Act – Frequently Asked Questions

Question: What does the Honoring American Veterans in Extreme Need Act of 2019 (“HAVEN Act” or the “Act”) do?

Answer: The Act excludes certain benefits paid to veterans or their family members from the definition of Current Monthly Income (“CMI”) found in the Bankruptcy Code. 11 U.S.C. § 101(10A). The types of compensation excluded from CMI under the Act include, but are not limited to, the following:

- Disability and death benefits paid by the Veterans Administration under title 38 of the United States Code.
- Monthly special compensation for catastrophic injuries or illnesses paid to servicemembers under 37 U.S.C. § 439.
- Any combat-related special compensation paid by the Department of Defense under 10 U.S.C. § 1413a.
- Disability severance pay paid by the Department of Defense under 10 U.S.C. § 1212.
- Any payment by the Department of Defense to a survivor in connection with the death of a member of the uniformed services. *See* 10 U.S.C. §§ 1431-1456.
- Disability-related military retired pay paid by the Department of Defense to a servicemember retired under 10 U.S.C. §§ 1201-1202, 1204-1205, except that such payments are excluded from CMI only to the extent that they exceed the military retired pay that the servicemember would have received if the servicemember had retired without a disability.

It should be noted, however, that certain benefits to current servicemembers are included in the CMI calculation, for example monthly special compensation from DOD, and retirement pay for people on the temporary disability retired list.

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 veterans or their family members filing for chapter 7 relief under the Bankruptcy Code?

Answer: Veterans 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).

Question: How does the Act affect chapter 13 cases?

Answer: Veterans 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.

Question: Will the USTP require debtors to produce documentation to support any veterans' 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.

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.