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**Restructuring, Insolvency &
Distressed Debt Virtual Summit**

SEPTEMBER 16 - OCTOBER 27, 2020

Helping Those Who Have Borne the Battle:

Working with Veterans, Servicemembers, and Their Families on Financial Issues

ABA Pro Bono CLE



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Common Civil Legal Issues

Consumer Debt

- Bankruptcy
- Credit Report Errors
- Debt Collection

Estate Planning

- Power of Attorney
- “Health Care Proxy”
- Will

Family

- Alimony
- Child Custody/Parenting Time
- Child Support
- Divorce

Housing

- Eligibility
- Foreclosure & Eviction
- Landlord/Tenant Disputes
- Voucher Termination

Public & Veterans Benefits

- Denied Application
- Termination
- Overpayment

Records

- Criminal Records
- Military Separation
 - Discharge Upgrade
 - Other Records Corrections

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Identifying Clients Who Have a History of Military Service

Why should you identify clients who have served in the military, as well as clients who have loved ones or household members who have served?

- Might be eligible for financial resources
- Might have additional legal protections
- Might require special considerations before bankruptcy

How should you ask the question?

- “Have you ever served in the military?”

Asking, “Are you a veteran?” is often insufficient because, among other reasons, “veteran” is inconsistently defined by federal and state government programs, nonprofit organizations, and individuals, leading some who have served in the military not to self-identify as a “veteran.”

Common Direct and Indirect Financial Resources

Cash & Cash Equivalent Benefits

- VA Disability Compensation
- VA Veterans Pension
- SNAP
- State Veterans' Benefits

Housing Subsidies and Supports

- HUD-VASH (Section 8)
- SSVF
- DRRTP/DCHV
- Soldiers' Homes

Health Care

- VA Health Care
- Vet Centers
- Tricare
- Medicaid/Medicare

Education & Training

- Forever GI Bill
- Post-9/11 GI Bill
- Montgomery GI Bill
- Vocational Rehabilitation

Legal Protection Examples

Servicemembers Civil Relief Act (SCRA)

- Definitions (50 U.S.C. §§ 3911, 3920)
- Default Judgments (50 U.S.C. § 3931)
 - Affidavit Requirement
 - Defense Manpower Data Center SCRA Website
 - <https://scra.dmdc.osd.mil>
 - Appointment of Attorney
 - Stays
 - Vacating Decisions
- Private Right of Action (50 U.S.C. § 4042)

Chapter 53, Title 38: Special Provisions Relating to [Veterans'] Benefits

- Non-assignability and Exempt Status of Benefits (38 U.S.C. § 5301)
- Waiver of Recovery of Claims by the United States (38 U.S.C. § 5302)

Examples of Pre-Bankruptcy Special Considerations

Is bankruptcy truly necessary?

- “Collection Proof” Debtors
- Disability-Based Student Loan Forgiveness
- Benefit Overpayment Disputes, Waivers, and Payment Plans
- Currently Not Collectible (Hardship)

Could bankruptcy raise or create unusual issues?

- Security Clearance
- VA Home Loan Guaranty
- VA Fraud-Related Overpayment



Select 2019 Bankruptcy Code Amendments

- H.R. 2336, The Family Farmer Relief Act
- H.R. 2938, **The HAVEN Act**
- H.R. 3304, the National Guard and Reservist Debt Relief Extension Act (NGR – DREA)
- H.R. 3311, the Small Business Reorganization Act (SBRA)

All four were introduced on May 23, 2019, and signed into law on August 23, 2019

- First three were effective immediately
- SBRA became effective in February 2020

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HAVEN Act: Background

ABI Task Force

- Identified need to amend definition of CMI to protect certain military service-related disability and death benefits in bankruptcy
- Drafted, educated and advocated for bankruptcy reform legislation, including **H.R. 2938**, which became **Public Law No. 116-52**

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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: Text

- Amended 11 U.S.C. § 101(10A) “Current Monthly Income”
- Prior subparagraph (B) stricken and replaced
- Prior text divided into clauses and subclauses
- Fourth category of funds now excluded from CMI

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.

Pub. L. No. 116-52 (to be codified at 11 U.S.C. § 101(10A)(B)(ii)(IV)).

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Applying the HAVEN Act

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

Payment Sources

- Department of Defense (DOD) pays under Titles 10 and 37
- Department of Veterans Affairs (VA) pays under Title 38

Payment Type Terminology

- DOD and VA often use confusingly similar terminology for different payment types.
- Informal names for payment types can further complicate matters.

Applying the HAVEN Act

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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- Title 10 Armed Forces
 - Chapter 61: retirement and separation due to disability

Note: Disability Severance Pay, resulting from separation (not retirement) due to disability, is not implicated by the HAVEN Act's Chapter 61 limiting language.

Interpreting the HAVEN Act

Cases

- *In re Price*, 609 B.R. 475 (Bankr. N.D. Tex. 2019)
- *In re Gresham*, 616 B.R. 505 (Bankr. E.D. Mich. 2020)

Articles

- Adam D. Herring & Walter W. Theus, *New Laws, New Duties*, Am. Bankr. Inst. J., Oct. 2019, at 12
- Jessica Hopton Youngberg, *HAVEN Act's Amendment to CMI: Broadly Protecting Military Service-Related Disability and Death Benefits in Bankruptcy*, Am. Bankr. Inst. J., Nov. 2019, at 34
- Stephen C. Matthews & William J. Diggs, *Protecting Disabled Veterans in Need of Financial Assistance*, Am. Bankr. Inst. J., Dec. 2019, at 34

Helpful Resources

Records

- U.S. Dep't of Def. & U.S. Dep't of Veterans Affairs, **eBenefits**, <https://www.ebenefits.va.gov/>.
- Def. Fin. & Accounting Serv., **MyPay**, <https://mypay.dfas.mil/>.

Legal

- ABI Task Force on Veterans and Servicemembers Affairs, <https://veterans.abi.org>.
- Stateside Legal, <https://statesidelegal.org>.

Benefits

- U.S. Dep't of Def. Warrior Care, <https://warriorcare.dodlive.mil/benefits/compensation-and-benefits>.
- U.S. Dep't of Veterans Affairs, <https://www.va.gov>.
 - Office of Gen. Counsel's Accreditation Search, <https://www.va.gov/ogc/apps/accreditation/index.asp>.
- Def. Fin. & Accounting Serv., Retired Military & Annuitants, <https://www.dfas.mil/retiredmilitary.html>.
 - Types of Retirement, <https://www.dfas.mil/retiredmilitary/plan/retirement-types.html>.
 - Estimate Your Retirement Pay, <https://www.dfas.mil/retiredmilitary/plan/estimate.html>.

Your help is needed to serve those who have served.

Finding Volunteer Opportunities

- ABI Task Force, <https://veterans.abi.org/gethelp>.
- American Bar Association (ABA) Home Front Directory of Legal Help, https://www.americanbar.org/groups/legal_services/milvets/aba_home_front/directory-programs/.
- Stateside Legal, <https://statesidelegal.org>.
- National Veterans Legal Services Program (NVLSP), <https://www.nvlsp.org/>.
- Swords to Plowshares, <https://www.swords-to-plowshares.org/>.
- Modern Military Association of America (MMAA), <https://modernmilitary.org/portfolio-items/legal/> (serving HIV+ and LGBTQ servicemembers and veterans).

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Questions?

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