

## The HAVEN Act, A Primer

### I. The HAVEN Act – Honoring American Veterans in Extreme Need (HAVEN) Act of 2019

- A. Redefined 11 U.S.C. 101(10A) “Current Monthly Income” to also EXCLUDE

–

“(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.”

- B. Signed into law on August 23, 2019 and became effective immediately.  
C. The HAVEN Act overturns decisions holding that, under the U.S. bankruptcy laws as previously written, disabled veterans were required to include their VA disability benefits in their disposable income for bankruptcy purposes – even though recipients of Social Security disability benefits were not required to do the same with their benefits.

### II. Benefit is Not Limited to “Veterans”

- A. Department of Defense pays under Titles 10 & 37.  
B. Department of Veterans Affairs pays under Title 38.  
C. Examples and additional potentially excludable receipts excluded from “Current Monthly Income” are discussed here: [http://abi-org.s3.amazonaws.com/Newsroom/HAVENActTPMAddendum\\_Aug\\_2019.pdf](http://abi-org.s3.amazonaws.com/Newsroom/HAVENActTPMAddendum_Aug_2019.pdf).

### III. Application to Cases Pending Upon Enactment?

- A. Applies to cases filed after August 23, 2019.  
B. Arguments in support of applying the revised Current Monthly Income definition to cases and payment plans that were pending on that date include:  
1. *Landgraf v. USI Film Prod.*, 511 U.S. 244 (1994) (setting forth the standard as to application of a statute before its enactment);

---

<sup>1</sup> Courtesy of the NCBJ 2019 Annual Conference.

2. *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);
3. *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).

#### **IV. Implementation**

- A. Official Forms for Schedules are being revised.
- B. Bankruptcy Rules, Local Rules and Procedures are being updated.

#### **V. Find Supporting Documentation**

- A. DOD & VA's eBenefits website ([www.ebenefits.va.gov](http://www.ebenefits.va.gov)) for Award Letters and Payment History, Military Discharge Document (e.g., DD Form 214) and Records.
- B. DFAS's MyPay website ([www.mypay.dfas.mil](http://www.mypay.dfas.mil)) for Leave and Earnings Statements.

#### **VI. Additional Resources**

- A. ABI Task Force on Veterans and Servicemembers Affairs, <https://veterans.abi.org>; webinar - <https://veterans.abi.org/podcast/webinar-experts-discuss-new-bankruptcy-laws-help-distressed-small-businesses-disabled>.
- B. Stateside Legal, <https://statesidelegal.org>.
- C. American Bar Association Standing Committee on Legal Assistance for Military Personnel, [https://www.americanbar.org/groups/legal\\_assistance\\_military\\_personnel/](https://www.americanbar.org/groups/legal_assistance_military_personnel/).
- D. U.S. Dep't of Def. Warrior Care, <https://warriorcare.dodlive.mil/benefits/compensationand-benefits/>.
- E. 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>.

#### **VII. Also - Administrative Discharge of Student Loans for Disabled Veterans**

- A. President signed an executive action requiring the Dep't of Ed. and VA to develop a more streamlined process to administratively discharge the federal student loan debt of disabled veterans with the designation of "totally and permanently disabled."
- B. See Memorandum for the Secretary of Education the Secretary of Veterans Affairs, WHITE HOUSE (Aug. 21, 2019), <https://www.whitehouse.gov/presidentialactions/presidential-memorandum-discharging-federal-student-loan-debt-totallypermanently-disabled-veterans/>; codified at Discharging the Federal Student Loan Debt of Totally and

Permanently Disabled Veterans, 84 Fed. Reg. 44,677, 2019 WL 3996836  
(Aug. 21, 2019).