

HAVEN ACT

SUMMARY of Act

The **H**onoring **A**merican **V**eteran's in **E**xtr**E**m**E** **N**eed Act of 2018 ("HAVEN Act") provides disabled military veterans and their families with greater protections in bankruptcy proceedings by allowing the exclusion of Department of Veteran's Affairs (VA) and Department of Defense Disability payments from the calculation when doing means testing and disposable income calculations. The Haven Act places military disability benefits in the same protected category as Social Security Disability Benefits.

What does the HAVEN Act do?

The Act excludes benefits paid to veterans or their family members from the definition of Current Monthly Income ("CMI") under 11 U.S.C. § 101(10A). The following benefits are excluded from CMI under the ACT

Benefits Protected Under HAVEN Act:

Permanent Disability Retired Pay

Temporary Disability Retired Pay

Retired of Disability Severance Pay for Pre-Existing Conditions

Disability Severance Pay

Combat Related Special Compensation

Survivor Benefit Plan for Chapter 61 Retirees

Special Survivor Indemnity Allowance

Special Compensation for Assistance with Activities of Daily Living

VA Veterans Disability Compensation

VA Dependency and Indemnity Compensation

VA Veterans Pension

Note: Benefits to current service members may still be included. For example, monthly special compensation from Department of Defense (DOD), and retirement pay for people on the temporary disability list.

Chapter 7 Applicability

Veterans or their family members should exclude income covered by the Act from the calculation of CMI under Chapter 7.

Chapter 13 Applicability

Veterans or their family members should exclude income covered by the Act from the calculation of CMI, which may affect the determination of projected disposable income available under a Chapter 13 Plan.

Documentation Requirements

While the Office of United States Trustee (OUST) can speak for themselves on enforcement under the Act, it appears that the OUSTP will limit its requests for documents related to income excluded from CMI under the HAVEN Act so as to not unduly burden these debtors.

This change has been long overdue and it is something debtors' attorneys who represent a large number of disabled veterans have argued for since BAPCPA came into place in 2005. The act now levels the playing field and puts disabled veterans in the same position as those who received Social Security Disability.

Outline prepared by William F. Jaworski, Jr., Esquire for the Delaware Consumer Bankruptcy Forum February 25, 2020.