Serving Those Who Serve

Presented by the ABA Business Law Section and Business Bankruptcy Committee

October 8, 2026
10:30 a.m. – 11:30 a.m. (PT)

Moderator:

Hon. Elizabeth S. Stong
U.S. Bankruptcy Court
Eastern District of New York

Panelists:

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Sponsored by the Pro Bono Services Subcommittee of the Business Bankruptcy Committee

Program Chairs: Hon. Elizabeth S. Stong, U.S. Bankruptcy Court, Eastern District of New York; Megan Adeyemo, Gordon Rees Scully Mansukhani, LLP; Nicole McLemore, DLA Piper LLP (US)

INDEX

A. Abstract

ABSTRACT

Service members and their families make enormous sacrifices for our country, and yet, sometimes they cannot make ends meet. If a service member files for bankruptcy, they may enjoy certain special protections, but may also face additional challenges. This program will explore the intersection of military service and bankruptcy and how pro bono assistance can help. A panel of distinguished practitioners will discuss these issues and offer both high-level perspectives and practical advice.

Veterans and active-duty service members are over-represented in consumer bankruptcy filings, comprising approximately fifteen percent of consumer bankruptcy filers while representing approximately eleven percent of the general population. While the Bankruptcy Code contains a number of tools specifically addressed to the unique circumstances of military debtors, many of these tools are not widely known among practitioners. For example, the Honoring American Veterans in Extreme Need Act of 2019 ("HAVEN Act") amended the "current monthly income" definition in section 101(10A) of the Bankruptcy Code to exclude VA disability compensation, combat-related special compensation, and certain other military disability and survivor benefits from the means test. In addition, the Servicemembers Civil Relief Act ("SCRA"), the Military Lending Act, and the National Guard and Reservists Debt Relief Act provide additional layers of protection, and recent caselaw is instructive with respect to how military income is treated in contexts beyond the means test, including in fee waiver determinations.

Nevertheless, service members still face distinct challenges in the bankruptcy process, including concerns about the impact of a bankruptcy filing on security clearances, complexities arising from frequent relocations affecting domicile, venue, and applicable exemptions, and the need to navigate obscure exceptions to discharge involving repayment of military benefits.

Panelists will draw on their extensive experience, including with the ABI Task Force on Veterans and Servicemembers' Affairs and the ABA's Military Pro Bono Project, to offer practical guidance on representing military clients in financial distress. Topics will include identifying financial distress markers in veteran clients, understanding the interplay of military pay and benefits with bankruptcy income calculations, applying the protections of the SCRA and HAVEN Act, addressing exemption and venue complexities unique to mobile military families, and working effectively with veteran clients in a culturally informed manner. The program will also highlight pro bono resources and opportunities, including law school bankruptcy clinics, veteran service organizations, and the training modules, designed to equip practitioners to serve this population.

This presentation is sponsored by the Pro Bono Services Subcommittee of the Business Bankruptcy Committee.

B. Materials

The court incorporates by reference in this paragraph and adopts as the findings and analysis of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.

Dated: June 26 2026

John P. Gustafson
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In Re:	*	Case No: 26-31106
	*	
Louis A. Diaz, IV	*	Chapter 7
	*	
Debtor(s)	*	Judge John P. Gustafson
	*	

ORDER DENYING DEBTOR(S) APPLICATION FOR WAIVER OF THE CHAPTER 7 FILING FEE AND SCHEDULING INSTALLMENT PAYMENTS

This case came before the Court for hearing on June 23, 2026, upon consideration of the Debtor's Application to Have Chapter 7 Filing Fee Waived [Doc #6]. Counsel for Debtor was present by phone.

The court has the discretion under 28 U.S.C. § 1930(f)(1) to waive the filing fee for a Chapter 7 case where the debtor has income less than 150% of the income official poverty guideline applicable to the size of family involved. The court set the Application for hearing because Debtor did not appear to qualify under the statute for waiver of the $338 filing fee because Debtor's income exceeds 150% of the HHS poverty guidelines.

At the hearing, Debtor's Counsel asserted that the Debtor's military disability benefits should not be considered as income for purposes of determining whether the Debtor was eligible for waiver of the Chapter 7 Filing Fee.

Section 1930(f)(1) provides:

> Under the procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual if the court determines that such individual has income less than 150 percent of the income official poverty line (as defined by the Office of Management

and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved and is unable to pay that fee in installments. For purposes of this paragraph, the term "filing fee" means the filing fee required by subsection (a), or any other fee prescribed by the Judicial Conference under subsections (b) and (c) that is payable to the clerk upon the commencement of a case under chapter 7.

Collier on Bankruptcy states:

> The first prong of the test, whether the debtor's income is less than 150 percent of the poverty line for a family that is the size of the debtor's family, is objective. There is no room for the courts to exercise discretion with respect to whether the debtor satisfies this criterion. If the debtor's income is not less than 150 percent of the applicable poverty line figure, then the debtor is not eligible for the fee waiver.

1 Collier on Bankruptcy, ¶9.05[1][c] (16th ed. 2026)(footnote omitted).

Under the statute, the Judicial Conference of the United States is authorized to set forth procedures for waiver of the filing fee in Chapter 7 cases. The Guide to Judiciary Policy[1] ("GJP") Volume 8, Ch. 8, Section 820, *et seq*., provides guidance where debtors are applying for a waiver of the Chapter 7 filing fee pursuant to 28 U.S.C. §1930(f)(1).

Section 820.20 of the GJP states:

> (B) The income for comparison to the poverty guidelines is the "Total Combined Monthly Income" as reported (or as will be reported) on Schedule I.
>
> (C) Amounts received as non-cash government assistance must be deducted from the total amount reported on Schedule I for fee waiver consideration.

Thus, courts are directed to review the income listed as "Total Combined Monthly Income" on Schedule I, subtracting only "non-cash government assistance".

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[1]/ The reference portion of the text of the Guide to Judicial Policy can be found at:

https://www.uscourts.gov/administration-policies/judiciary-policies/bankruptcy-case-policies

And at 1 Collier on Bankruptcy, Ch. App. 9B at 9-57 to 9-64 (16th ed. 2023).

The question raised here is the relationship between "current monthly income" and "Total Combined Monthly Income"[2] described in the GJP. "Current monthly income" is defined in 11 U.S.C. §101(10A) as income received during a 6-month lookback period. §101(10A)(A). Among the exclusions in the Bankruptcy Code's definition are benefits received under the Social Security Act, and specified types of military monthly compensation associated with "a disability, combat-related injury or disability". §101(10A)(B)(ii). The definition of current monthly income is "a critical component of the means test added to section 707(b) and of the disposable income test under section 1325(b)." 2 Collier on Bankruptcy, ¶101(10A) (16th ed. 2026). In Chapter 7 cases, the Means Test calculations have their own Official Forms – separate from Schedule I. *See*, Official Forms B 122A-1, B 122A-2.

In contrast to the exclusions applicable to reporting "current monthly income", bankruptcy courts have stated that debtor are required to list "all income" on Schedule I, Official Form 106I. *See*, *Marshall v. Blake*, 885 F.3d 1065, 1069 n.2 (7th Cir. 2018)("Schedule I requires the debtor to report gross monthly income from all sources."); *In re Mulholland*, 2011 WL 4352293 at *6, 2011 Bankr. LEXIS 3559 at *24 (Bankr. D.N.M. Sept. 16, 2011)("Schedules I and J require debtors to lists all income and expenses."); *In re Cunningham*, 2008 WL 1696756 at *2, 2008 Bankr. LEXIS 2724 at *8 (Bankr. N.D. Tex. April 9, 2008); *In re Lordy*, 214 B.R. 650, 668 (Bankr. S.D. Fla. 1997).

More specifically, courts have held that income specifically excluded from "current monthly income" by §101(10A)(B)(ii) is still required to be listed as income on Schedule I. *See*, *Baud v. Carroll*, 634 F.3d 327, 335 (6th Cir. 2011)("As required, the Appellees also filed Schedule I, listing gross monthly income of $9,115.63 (including Social Security benefits for one of the Appellees and income from employment for the other) ...."); *In re Williamson*, 2023 WL 2144534 at *12, 2023 Bankr. LEXIS 451 at *26 (Bankr. N.D. Ohio Feb. 21, 2023)("There is no question that a debtor must list their Social Security income on Schedule I."); *In re Damron*, 598 B.R. 350, 354 (Bankr. S.D. Ga. 2019); *In re Scott*, 488 B.R. 246, 249 (Bankr. M.D. Ga. 2013)("social security benefits must be included as income on Schedule I"). This requirement is reflected on Schedule I, Line 8e, which requires: "List all other income regularly received: Social Security".

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[2]/ The current Official Form for Schedule I (B 106I) does not have a line designated as "Total Combined Monthly Income". Previous cases looked to Line 16 of Schedule I. After Schedule I was revised into its present form, the total referred to by the GJP is found at Line 10. *In re Johnson*, 2021 WL 4047460 at *1 n. 2, 2021 Bankr. LEXIS 2447 at *2 n. 2 (Bankr. D. Kan. Sept. 3, 2021)('Schedule I, line 10. "Monthly income" is comprised of monthly take-home pay, plus all other income regularly received on lines 8a-8h, if any; . . .").

Similarly, the instruction for Schedule I specifically states: "Note that the income you report on Schedule I may be different from the income you report on other bankruptcy forms. For example, the *Chapter 7 Statement of Your Current Monthly Income (Official Form 122A-1)*, *Chapter 11 Statement of Your Current Monthly Income (Official Form 122B)*, and the *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period (Official Form 122C-1)* all use a different definition of income and apply that definition to a different period of time. Schedule I asks about the income that you are now receiving, while the other forms ask about income you received in the applicable time period before filing. So the amount of income reported in any of those forms may be different from the amount reported here." These instructions appear to be consistent with the caselaw on the difference between Schedule I income and "current monthly income".

In explaining that IFP applications generally operate under more stringent standards - in terms of including income - this court gave as an example: "social security income, which is excluded from the Means Test, is included in determining eligibility under the 150% of poverty level guidelines." *In re Bussey*, 2014 WL 2765703 at *2, 2014 Bankr. LEXIS 2760 at *4 (Bankr. N.D. Ohio June 18, 2014)(dicta).

Here, Debtor's Schedule I did not list his military disability benefits as either "Pension or retirement income" [Line 8g] or "Other monthly income" [Line 8h]. Thus, no part of the $2,362.30 per month in military income appeared on Line 10, where the sources of income listed above that line are totaled. Instead, Debtor listed "Military Disability Benefits" on Line 11, as "other regular contributions to the expenses that you listed in Schedule J." This is not the proper way or place to list that income – it should have been listed either on Line 8g ("Pension or retirement income") or Line 8h ("Add all other income").[3] If it was included on either of those lines, it would have been included in the total for Line 10. And, as discussed above, if properly included in the total on Line 10, the income would be included in the determination of whether Debtor's income exceeded 150% of the Health and Human Services Poverty Guidelines. *In re Johnson*, 2021 WL 4047460 at *1 n. 2, 2021 Bankr. LEXIS 2447 at *2 n. 2 (Bankr. D. Kan. Sept. 3, 2021).

While the fact that Social Security and Military Disability payments are both excluded from the Means Test by the same provision [§101(10A)(B)(ii)] should be sufficient to find that

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[3]/ Counsel indicated that his software balked at putting this income – otherwise properly excluded from any Means Test calculation – in Schedule I. The statements in this decision are not a criticism of what was done in filing this case or raising this issue. Instead, they are intended as guidance for future cases involving similar issues.

they should be treated in the same manner in evaluating a debtor's income in a Chapter 7 fee waiver request, there is a bankruptcy case that deals specifically with military disability benefits.

The court in *In re Foistner*, 2025 WL 25448, 2025 Bankr. LEXIS 2 (Bankr. D.N.H. Jan. 2, 2025) dealt with the issue of a fee waiver under a different, but related statute: 28 U.S.C. §1915(a), which applies to the waiver of filing fees associated with an appeal. *Foistner* held that federal courts must consider income from all sources when determining fee waivers. *In re Foistner*, 2025 WL 25448, at *1, 2025 Bankr. LEXIS 2 at *4 (Bankr. D.N.H. Jan. 2, 2025). While Congress has "expressly excluded" certain types of income from current monthly income, "Congress has not limited the income types a court can consider in determining fee waivers." *Id.* The *Foistner* decision held that the Debtors must include Social Security and military benefits in their income when applying for a fee waiver. *Id.* Further, "When deciding whether to waive appellate fees and whether to allow an appellant to proceed without prepaying the fees, federal courts generally must consider income from all sources, along with expenses, assets, liabilities, and other factors." *Id.* (citing, *In re Cary*, 2017 WL 1501395, at *1-2, 2017 U.S. Dist.. LEXIS 68268 at **2-5 (E.D.N.C. Apr. 26, 2017) (applying § 1930(f) in affirming denial of appellate fee waiver)).

Applying *Foistner* to the case at hand, it is an additional reason for holding that the Debtor must include his military benefits in his monthly income for his Chapter 7 Filing Fee Waiver Application.

When the $2,362.30 in Military Disability Benefits are included in "Total Combined Monthly Income", the Debtor's monthly income is greater than $1,995, which is income limit for a fee waiver.

Accordingly, the Court **DENIES** the Application to Have Chapter 7 Filing Fee Waived [Doc #6], and instead orders that the Debtor shall pay the Chapter 7 filing fee of $338 under the following terms:

$ 85.00 on or before	July 10, 2026
$ 85.00 on or before	July 31, 2026
$ 85.00 on or before	August 14, 2026
$ 83.00 on or before	September 4, 2026

The entire filing fee will be due even if this case is dismissed, and if not paid in full, Debtor(s) will be prohibited from filing or obtaining relief in another case under any chapter of the Bankruptcy Code unless the unpaid balance due is paid in full.

IT IS SO ORDERED.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION (DETROIT)

In re:	Chapter 13
Ebony L. Gresham,	Case No. 18-56289
Debtor.	Hon. Phillip J. Shefferly

_________________________________/

OPINION REGARDING APPLICATION OF THE HAVEN ACT TO THE DEBTOR'S PROPOSED PLAN MODIFICATION

Introduction

This matter concerns an amendment made to the Bankruptcy Code on August 23, 2019. On that date, Public Law No. 116-52, 133 Stat. 1076, titled Honoring American Veterans in Extreme Need Act ("HAVEN Act"), became law. The issue before the Court is whether the HAVEN Act applies to a proposed plan modification in a Chapter 13 case in which a plan was confirmed before the HAVEN Act became law. For the reasons explained in this opinion, the Court holds that it does.

Jurisdiction

This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (L), and (O), over which the Court has jurisdiction under 28 U.S.C. § 1334(a).

Facts

The following facts are not in dispute.

Ebony Gresham ("Debtor") filed this Chapter 13 case on December 4, 2018. At the time she filed this case, the Debtor had a steady job with stable income. In addition, the Debtor received monthly disability benefits from the Department of Veterans Affairs ("VA") as a result of a combat-related injury that the Debtor suffered while serving in the United States military. On March 27, 2019, the Court confirmed the Debtor's plan. The plan required the Debtor to pay her mortgage directly and required bi-weekly payments of $300.00 to her plan. The plan provided for a 100% distribution to the holders of unsecured claims.

On October 29, 2019, the Debtor filed a proposed plan modification ("Plan Mod") (ECF No. 40) to reduce her plan payments to $250.00 bi-weekly and to reduce the distribution to holders of unsecured claims. On November 19, 2019, the Chapter 13 Trustee filed an objection ("Objection") (ECF No. 44). Among other issues, the Trustee noted in the Objection that the Debtor's amended schedules filed in support of the Plan Mod now deduct $1,789.00 of monthly VA disability benefits from the Debtor's disposable income, even though those benefits had not previously been deducted from the calculation of the Debtor's disposable income used to fund her plan payments.

The Court scheduled a hearing on the Plan Mod and Objection, which was adjourned by agreement of the parties until January 16, 2020. At the adjourned hearing, the Debtor and the Trustee told the Court they had resolved all of the issues in the Objection, with one exception: whether the HAVEN Act applies "retroactively."

The Debtor argues that the HAVEN Act applies "retroactively" to bankruptcy cases that were filed prior to the date that the HAVEN Act became law. According to the Debtor, this means that the Debtor's VA disability benefits must be excluded from the calculation of the Debtor's "current monthly income" under § 101(10A) of the Bankruptcy Code. Therefore, the Debtor's VA disability benefits are not part of her "projected disposable income" for purposes of § 1325(b) of the Bankruptcy Code, and need not be contributed to the Debtor's plan. The result is that the Plan Mod, which does not contribute the Debtor's VA disability benefits to her plan, may be approved.

The Trustee argues that the HAVEN Act does not apply "retroactively" to cases — like this one — where a Chapter 13 plan was already confirmed prior to the date that the HAVEN Act became law. According to the Trustee, this means that the Debtor may not now propose a plan modification that does not include her VA disability benefits as part of her "projected disposable income." The result is that the Plan Mod must be denied.

Because the application of the HAVEN Act is an issue of first impression for the Court, the Court set a deadline for the Debtor and the Trustee to brief the issue. The Debtor and the Trustee filed timely briefs and the issue is now ready for decision.

<u>Discussion</u>

<u>The HAVEN Act</u>

Section 101(10A) was added to the Bankruptcy Code by BAPCPA in 2005 to define the term "current monthly income." It starts by casting a wide net to include "the average monthly income from all sources that the debtor receives," but then lists a number of express exclusions, including Social Security benefits, payments to victims of war crimes or crimes against humanity, and payments to victims of international or domestic terrorism. Current monthly income — or "CMI" as it is commonly referred to — is important to individual debtors in bankruptcy cases on a number of issues including: whether it is an abuse under § 707(b) to grant a debtor a Chapter 7 discharge; whether a plan may be confirmed under § 1129(a)(15) for a debtor in a Chapter 11 case; and whether a plan may be confirmed under § 1325(b) for a debtor in Chapter 13. Simply put, CMI is the building block in every bankruptcy case for determining the amount of disposable income of every individual debtor in a bankruptcy case.

The HAVEN Act provides a substantial benefit to veterans who file bankruptcy by adding an express exclusion to CMI for certain compensation, pension, pay, annuity, or allowance paid "in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services." The legislative history to the HAVEN Act reflects Congress's desire to "make sure our bankruptcy system is serving our veterans," who "deserve an opportunity to get back on their feet with dignity." 165 Cong. Rec. H7215-01, 2019 WL 3307644 (July 23, 2019) (statement of Rep. McBath). The HAVEN Act accomplishes this by treating VA benefits the same as Social Security benefits by excluding them from CMI and, therefore, from an individual debtor's projected disposable income.

Does the HAVEN Act apply only to new cases filed after its
passage, or does it also apply to cases pending at the time of its passage?

Before turning to the issue framed by the Debtor and the Trustee — whether the HAVEN Act applies "retroactively" to this case — the Court must first determine whether it applies *at all* to this case, either prospectively or "retroactively."

The HAVEN Act does not state whether it applies only to new cases filed after August 23, 2019 or whether it also applies to cases that were filed before that date. The legislative history to the HAVEN Act is also silent on this question.

However, the Supreme Court has set forth principles that inform federal courts about what law to apply to their decisions in the absence of direction from Congress. In Bradley v. School Board of Richmond, 416 U.S. 696, 711 (1974), the Supreme Court held that "a court is to apply the law in effect at the time it renders its decision, unless doing so would result in manifest injustice or there is a statutory direction or legislative history to the contrary." This principle suggests that the HAVEN Act applies to any CMI decision that the Court makes after August 23, 2019, regardless of the date of filing of the case in which such decision is made, absent manifest injustice or contrary legislative history.

The Trustee does not identify, and the Court is not aware of, any manifest injustice that will result from bankruptcy courts immediately applying the HAVEN Act to all CMI decisions, without regard to whether those cases were filed before or after August 23, 2019. Nor is there any contrary legislative history. If anything, the legislative history that does exist strongly suggests that there will be a manifest injustice if the HAVEN Act is not immediately applied to the Court's CMI decisions in all cases, given the stated congressional intent to "correct" the Bankruptcy Code's "obvious inequity" in failing to exclude VA benefits from CMI in the same way as Social Security benefits are excluded. 165 Cong. Rec. H7215-01, 2019 WL 3307644 (statement of Rep. McBath).

Further, application of the HAVEN Act to all cases — regardless of when filed — is consistent with the policy of the Judicial Conference. On October 1, 2019, Official Forms 122A-1, 122B, and 122C-1 were all amended to reflect the change to CMI under § 101(10A) made by the HAVEN Act. Lines 9 and 10 of each of these forms now expressly exclude VA benefits from CMI. The Judicial Conference requires use of these Official Forms as of October 1, 2019 for all cases, not just cases filed after the passage of the HAVEN Act. The Official Forms make no distinction based on the date of filing the case.

To the extent that the Trustee argues that the HAVEN Act only applies to the decisions that the Court makes in cases filed after August 23, 2019, the Court rejects such argument. The Court knows of no manifest injustice that will result if the HAVEN Act is applied to the decisions that the Court makes after August 23, 2019 in cases that were already pending on August 23, 2019. There is nothing in the HAVEN Act, the legislative history to it, or the Official Forms that implement it, to support the proposition that the HAVEN Act only applies to cases that are filed after the passage of the law.

Bradley dictates that the Court apply the HAVEN Act to the decision that the Court must now make in this case — whether to approve the Plan Mod or sustain the Objection — because the HAVEN Act is the law in effect at the time that the Court will render its decision.

Does the HAVEN Act apply “retroactively?

The Trustee argues in the Objection that the Court cannot apply the HAVEN Act to the Plan Mod and the Objection without violating the presumption against “retroactivity” recognized by the Supreme Court.

For support of their respective arguments on "retroactivity," the Debtor and the Trustee both start with Landgraf v. USI Film Products, 511 U.S. 244 (1994), in which the Supreme Court explained that statutory "retroactivity" is disfavored.

> [T]he presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted. For that reason, the "principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal appeal."

Landgraf, 511 U.S. at 265 (quoting Kaiser Aluminum & Chemical Corp. v. Bonjorno, 494 U.S. 827, 855 (1990)) (footnote omitted).

"When a case implicates a federal statute enacted after the events in suit, the court's first task is to determine whether Congress has expressly prescribed the statute's proper reach. If Congress has done so, of course, there is no need to resort to judicial default rules." Landgraf, 511 U.S. at 280. Absent an "express command, the court must determine whether the new statute would have retroactive effect, *i.e.*, whether it would [i] impair rights a party possessed when he acted, [ii] increase a party's liability for past conduct, or [iii] impose new duties with respect to transactions already completed." Id. "If the statute would operate retroactively, our traditional presumption teaches that it does not govern absent clear congressional intent favoring such a result." Id.

In their arguments regarding "retroactivity," neither the Debtor nor the Trustee contend that "retroactive" application of the HAVEN Act would increase any party's liability for past conduct or impose new duties on any party with respect to transactions already contemplated. Instead, both the Debtor and the Trustee focus on whether a "retroactive" application of the HAVEN Act would impair the rights that a party possessed when they acted — the first of the three inquiries required by the Supreme Court in Landgraf.

The Debtor posits that her unsecured creditors are the "party" for purposes of this inquiry but argues that they only "possess" a "right" to a distribution under a Chapter 13 plan that is equal to what they would receive in a Chapter 7 liquidation, and no more. According to the Debtor, they do not "possess" a "right" to be paid out of a debtor's VA benefits, either in or outside of a bankruptcy. Therefore, "retroactive" application of the HAVEN Act does not impair any right that they had in the Debtor's bankruptcy case.

The Trustee responds that the Debtor's unsecured creditors do "possess" a "right" — the right to rely on the Debtor's schedules I and J that she filed when she requested confirmation of her plan. Further, the Trustee argues that the Debtor's unsecured creditors acted on that right by not objecting to confirmation of the Debtor's plan. Because the Debtor's confirmed plan was based on schedules that included the Debtor's VA benefits in disposable income, and provided her unsecured creditors with a 100% distribution, to now apply the HAVEN Act "retroactively" would impair the rights of those unsecured creditors who otherwise could have objected to confirmation of the Debtor's plan if they knew then that the Debtor would later try to pull her VA benefits out of the calculation of her disposable income.

On this point — whether the HAVEN Act applies "retroactively" to confirmation of the Debtor's plan — the Court agrees with the Trustee. When the Debtor sought and obtained confirmation of her plan, the Trustee and her unsecured creditors had no reason to object because the plan provided for a 100% distribution predicated on the Debtor's schedules I and J that included her VA benefits in her calculation of disposable income available to fund her plan. That was consistent with the law defining CMI at that time. To now go back and apply the HAVEN Act "retroactively" to hold that the Debtor's CMI at the time of confirmation of her plan excluded her VA benefits — and therefore vitiates confirmation of the Debtor's plan[1] — is fundamentally unfair because the time has long passed for the Debtor's unsecured creditors to object to confirmation of her plan. The right of those unsecured creditors to object to confirmation would be impaired by a "retroactive" application of the HAVEN Act to confirmation of the Debtor's plan. Therefore, under Landgraf,

[1] The Debtor has not filed a motion for relief from the confirmation order under Fed. R. Civ. P. 60, which is incorporated in Fed. R. Bankr. P. 9024.

“retroactive” application of the HAVEN Act to confirmation of the Debtor’s plan is not permitted.

The Debtor makes two other arguments in support of the “retroactive” application of the HAVEN Act, but neither are persuasive. The first is that the HAVEN Act’s change to the definition of CMI is procedural rather than substantive. The Debtor notes that Landgraf recognized that changes in procedural rules rather than substantive law do not raise the same concerns about “retroactivity.” According to the Debtor, the HAVEN Act is a procedural change only, much like a change to a rule. The second argument is that the HAVEN Act merely corrects a statutory drafting error in the definition of CMI and, therefore, should be applied “retroactively.”

Changing the definition of CMI to exclude VA benefits marks a significant, substantive change in the law as to who is eligible to obtain bankruptcy relief. While the revision to the Official Form that recognizes this change may be procedural in nature, the change in the law of CMI that is made by the HAVEN Act is anything but. And even though the legislative history to the HAVEN Act explains that its purpose is to correct an “obvious inequity” in the treatment of VA benefits as compared to Social Security benefits, the Debtor points to no statement in the HAVEN Act or its legislative history to suggest that there was some error in the original drafting of the definition of CMI in § 101(10A) that needed to be corrected. Enacting a law to codify a policy to eliminate an inequity is not the same as changing a law to correct a drafting error in the text of an existing law.

The Court concludes that there is no basis to deviate from Landgraf's presumption against "retroactivity" by applying the HAVEN Act "retroactively" to confirmation of the Debtor's plan.

Does the HAVEN Act apply
to the Debtor's proposed plan modification?

To recap, the Court holds that the HAVEN Act applies to all CMI decisions made by the Court after August 23, 2019 regardless of the date of filing of the case. And the Court also holds that the HAVEN Act does not apply "retroactively" to upset confirmation of the Debtor's plan. However, neither of these holdings address whether the HAVEN Act applies to the Plan Mod and the Objection. Stated another way, the real issue before the Court is not whether the HAVEN Act applies "retroactively" to confirmation of the Debtor's plan — it does not — but whether the change in the law made by the HAVEN Act provides sufficient grounds to modify the Debtor's plan.

Section 1327(a) of the Bankruptcy Code provides that a confirmed plan is binding on the debtor and each creditor of the debtor. Despite the plain res judicata effect of this provision, § 1329 of the Bankruptcy Code provides that a plan may be modified after confirmation. Section 1329(a) provides that "[a]t any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim . . . ." Section 1329(a) goes on to describe how a plan may be modified, for example, to "increase or reduce the amount of payments." Significantly, § 1329 is silent on what showing must be made to modify a confirmed plan.

The Sixth Circuit Court of Appeals has not articulated a standard for determining whether a plan may be modified under § 1329, although it has recognized that bankruptcy courts have discretion to approve or reject post-confirmation plan modifications. Jodway v. Fifth Third Bank (In re Jodway), 719 Fed. Appx. 502, 504 (6th Cir. Jan. 5, 2018) (finding no abuse of discretion where the bankruptcy court denied the modification because the proposed modification was futile).

As explained by the District Court for the Eastern District of Michigan in James C. Warr & Associates, LLC v. Ruskin (In re Mallari), No. 12-11599, 2012 WL 4855180, at *6, n.4 (E.D. Mich. Oct. 9, 2012), there is a split in the case law as to what is required for a post-confirmation modification.

> On the one hand, the Fourth Circuit has adopted the view that, to obtain a post-confirmation modification under § 1329(a), the debtor must show a "substantial and unanticipated change" in financial condition. See In re Murphy, 474 F.3d 143, 149 (4th Cir. 2007) ("[T]he doctrine of res judicata prevents modification of a confirmed plan pursuant to § 1329(a)(1) or (a)(2) unless the party seeking modification demonstrates that the debtor experienced a 'substantial' and 'unanticipated' post-confirmation change in his financial condition.").

> On the other hand, the First, Fifth, and Seventh Circuits have held that no such showing is necessary. See Matter of Witkowski, 16 F.3d 739, 746 (7th Cir. 1994) (holding that "the clear and unambiguous language of § 1329 negates any threshold change in circumstances requirement and clearly demonstrates that the doctrine of res judicata does not apply"); Barbosa v. Solomon, 235 F.3d 31, 41 (1st Cir. 2000) (rejecting the "substantial and unanticipated change" standard as "not contemplated by the statute"); In re Meza, 467 F.3d 874, 877-78 (5th Cir. 2006) (agreeing with Witkowski and Barbosa). See also 7 William L. Norton, Jr., Norton Bankruptcy Law & Practice § 150:2 (3d ed. 2012) (noting circuit split).

The Sixth Circuit Bankruptcy Appellate Panel has taken a lenient approach and held that there is no requirement of an unanticipated or substantial change in circumstances for a plan modification under § 1329. See Ledford v. Brown (In re Brown), 219 B.R. 191, 195 (B.A.P. 6th Cir. 1998) ("Although the court may properly consider changed circumstances in the exercise of its discretion, § 1329 does not contain a requirement for unanticipated or substantial change as a prerequisite to modification."). However, the Sixth Circuit Bankruptcy Appellate Panel has also held that "§ 1327 precludes modification of a confirmed plan under § 1329 to address issues that were or could have been decided at the time the plan was originally confirmed. The practical impact of this conclusion is that modification under § 1329(a) will be limited to matters that arise post-confirmation." Storey v. Pees (In re Storey), 392 B.R. 266, 272 (B.A.P. 6th Cir. 2008) (citing Cline v. Welch (In re Welch), No. 97-5080, 1998 WL 773999, at *2 n.1 (6th Cir. Oct. 11, 1998)).

In this case, the Plan Mod is not based on any factual change in the Debtor's circumstances — such as a loss of job, or increased expenses for a medical condition. Here, the Plan Mod is based on a change in the law made by the HAVEN Act after the Debtor confirmed her plan. However, if applied to the calculation of the Debtor's CMI for purposes of the Plan Mod, it would obviously have a substantial impact on the Debtor's financial circumstances by excluding $1,789.00 of VA benefits each month. The passage of the HAVEN Act and its change in the definition of CMI is not something that the Debtor or the Trustee could have anticipated when the Debtor's plan was confirmed. It could not have been litigated at the confirmation hearing, as it only became law post-confirmation. The change that it works is not something that the Debtor somehow contrived to get out from under the terms of her confirmed plan. And there's nothing unfair to the Debtor's creditors about now applying the HAVEN Act to the Plan Mod going forward, as all of those creditors have been given notice and none have objected.

The Court holds that the HAVEN Act provides a legitimate reason for a modification — sufficient under § 1329 and the case law in the Sixth Circuit — to the Debtor's plan for its duration. To hold otherwise would be to shackle the Debtor going forward to a policy — requiring the inclusion of VA benefits in CMI — that Congress has expressly rejected as an "obvious inequity." And to what end? If the Plan Mod is not approved, the Debtor could voluntarily dismiss this case under § 1307(b) and file a new case with no question about the applicability of the HAVEN Act to her CMI, but with more legal fees and delay to erode any distribution to creditors and a fresh start for the Debtor.

Conclusion

The HAVEN Act applies to the Plan Mod. However, the Court's holding that the HAVEN Act applies to the Plan Mod does not necessarily mean that the Plan Mod is approved. The Plan Mod must meet all of the requirements of § 1329(b)(1). That subsection states that § 1322(a), § 1322(b) and § 1323(c), and "the requirements of section 1325(a)" all apply to a plan modification under § 1329(a). By the time of the hearing on January 16, 2020, the Debtor and the Trustee told the Court that they had resolved all of the issues raised by the Plan Mod and the Objection — save the legal issue of the application of the HAVEN Act. If that remains the case, the Debtor and the Trustee shall submit an order approving the Plan Mod. If there are any remaining open issues under the Objection, the Debtor and the Trustee shall notify the Court and the Court will schedule a hearing on those issues. In the meantime, the Court will enter a separate order consistent with this opinion.

Signed on March 10, 2020

/s/ Phillip J. Shefferly

Phillip J. Shefferly
United States Bankruptcy Judge

609 B.R. 475
United States Bankruptcy Court,
N.D. Texas, Lubbock Division.

IN RE: David Dewayne PRICE
and Cheryl Ann Price, Debtors

CASE NO. 19-50149-rlj13
|
Signed November 21, 2019

Synopsis
Background: Chapter 13 trustee objected to confirmation of debtors' plan on ground that plan was not proposed in good faith.

[Holding:] The Bankruptcy Court, Robert L. Jones, J., held that plan was proposed in good faith, even though debtors proposed to retain whole life insurance policies.

Objection overruled.

Procedural Posture(s): Objection to Confirmation of Plan.

West Headnotes (13)

[1] **Bankruptcy**
Claims and assets; propriety and feasibility in general

Above-median-income Chapter 13 debtor's statutorily defined "disposable income" may be rebutted by any party (trustee or debtor) with evidence of known or virtually certain future events that might affect "projected" income. 11 U.S.C.A. § 1325(b).

[2] **Bankruptcy**
Claims and assets; propriety and feasibility in general

The statutory determination of an above-median-income Chapter 13 debtor's disposable income supplants the pre-Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) practice of calculating debtors' reasonable expenses on a case-by-case basis; the purpose of this change was to avoid the varying and often inconsistent outcomes. 11 U.S.C.A. § 1325(b).

[3] **Bankruptcy**
Claims and assets; propriety and feasibility in general

Accumulated cash value of above-median income Chapter 13 debtors' whole life insurance policies was not disposable income to be paid as an additional dividend to creditors with unsecured claims. 11 U.S.C.A. § 1325(b).

[4] **Bankruptcy**
Good Faith in General

"Good faith" required for confirmation of Chapter 13 plan is determined under the totality of the debtor's circumstances. 11 U.S.C.A. § 1325(a)(3).

[5] **Bankruptcy**
Factors considered in determining presence of good faith

The sufficiency of assets devoted to Chapter 13 plan is not a basis for a finding of lack of good faith, for confirmation purposes, unless there is a showing of some sort of manipulation, subterfuge or unfair exploitation of the Bankruptcy Code by the debtor. 11 U.S.C.A. §§ 1325(a)(3), 1325(b).

[6] **Bankruptcy**
Good Faith in General

Good faith, as required for confirmation of Chapter 13 plan, is meant to protect the integrity of the bankruptcy process and prevent a debtor from intentionally exploiting the bankruptcy process to delay creditors or achieve an improper purpose. 11 U.S.C.A. § 1325(a)(3).

[7] **Bankruptcy**

Factors considered in determining presence of good faith

Although a Chapter 13 plan's technical compliance with the Bankruptcy Code is presumed to be asserted in good faith, as required for confirmation, the presumption of good faith may be negated by aggravating circumstances. 11 U.S.C.A. § 1325(a)(3).

[8] **Bankruptcy**

Factors considered in determining presence of good faith

A Chapter 13 plan is not proposed in bad faith, for confirmation purposes, simply because of the ability to pay more than the means test result; there must be something else to trigger a lack of good faith in proposing a plan. 11 U.S.C.A. §§ 1325(a)(3), 1325(b).

[9] **Bankruptcy**

Factors considered in determining presence of good faith

Bankruptcy court should rarely find bad faith, for confirmation purposes, when a debtor's proposed plan complies with technical requirements for Chapter 13 plans; without something more, debtors are not in bad faith merely for doing what the Bankruptcy Code permits them to do. 11 U.S.C.A. §§ 1325(a)(3), 1325(b).

[10] **Bankruptcy**

Particular plans

Debtors' Chapter 13 plan was proposed in good faith, as required for confirmation, even though debtors proposed to retain whole life insurance policies, since their plan complied with the standards for confirmation under the Bankruptcy Code and there was no evidence that their intent to maintain the policies manipulated the bankruptcy process. 11 U.S.C.A. § 1325(a)(3).

[11] **Bankruptcy**

Proceedings in general

Bankruptcy

Evidence

Whether a Chapter 13 plan is proposed in good faith, for confirmation purposes, is a question of fact for which the debtor bears the burden of proof. 11 U.S.C.A. § 1325(a)(3).

[12] **Bankruptcy**

Factors considered in determining presence of good faith

Courts are reluctant to define any per se rules applicable to assessing a good faith attempt to propose a Chapter 13 plan, for confirmation purposes. 11 U.S.C.A. § 1325(a)(3).

[13] **Bankruptcy**

Factors considered in determining presence of good faith

Bankruptcy

Evidence

Presumption that Chapter 13 plan that complies with technical requirements for confirmation is proposed in good faith is rebuttable because there may be times when debtors commit so little income to repaying creditors, relative to their true ability to pay, that their plans show an intent to manipulate the Bankruptcy Code and not to make a good faith effort at repayment. 11 U.S.C.A. §§ 1325(a)(3), 1325(b).

Attorneys and Law Firms

Sammy Clay Gregory, Lubbock, TX, for Debtor.

MEMORANDUM OPINION

Robert L. Jones, Bankruptcy Judge

On September 19, 2019, the Court held a confirmation hearing on the chapter 13 plan of David and Cheryl Price, the debtors. Robert Wilson, the standing chapter 13 trustee, objects to the Prices' plan and opposes confirmation. He argues that the debtors have not proposed their chapter 13 plan in good faith under 11 U.S.C. § 1325(a)(3); the plan fails the good faith requirement because the Prices propose to keep and pay for three whole life insurance policies, an expense that is not "reasonably necessary" under the Bankruptcy Code. The amount of the monthly premium payments should, instead, be considered as disposable income and thus paid into the plan for unsecured creditors, the trustee says.

This is a core proceeding under 28 U.S.C. § 157(b)(2)(L), and the Court has jurisdiction under 28 U.S.C. § 1334.

The Court approves confirmation and thus overrules the trustee's objection.

I.

A.

The facts are not disputed. The Prices, as joint debtors with above-median income, filed this chapter 13 case on June 21, 2019. Their budget reflects $5,255.35 of monthly take-home wage income, with an additional $964.36 per month in VA disability payments that Mr. Price receives. The Prices' Schedule J discloses the $222.25 that they pay each month for three life insurance policies. One is for Mrs. Price, Mr. Price as beneficiary, with a $30.25 monthly premium and a face value of $25,000. The second whole life insurance policy is for Mr. Price, Mrs. Price as beneficiary, with a $160 monthly premium and a face value of $100,000. The third policy is for their non-dependent son, Mr. Price as beneficiary, with a $32 monthly premium and face value of $50,000. The listed surrender or refund value for the three policies is $358.43, $556.10, and $578.33, respectively, according to the Prices' schedules. The three policies were issued in 2003.

B.

The Prices' proposed plan pays administrative expenses, mortgage arrears, two vehicle liens, tax debt to the Internal Revenue Service (IRS), and an unsecured debt dividend. The plan estimates that unsecured creditors will receive $22,700.96 to be distributed pro rata over the life of the plan, resulting in a 31% dividend to general unsecured creditors. Doc. No. 29. The payments to unsecured creditors are based on the Prices' "projected disposable income." The Prices will make plan payments of $1,900 per month for a period of sixty months for a plan base of $114,000.00.

The Prices' projected disposable income, as calculated through completion of Form 122C-2, is $359.27 per month. *See* § 1325(b)(2). As required, the calculation incorporates the applicable IRS National and Local Standards' deductions and the Prices' income, including Mr. Price's VA disability payments. The Prices *did not* deduct their life insurance premium payments as an expense because whole life insurance does not qualify as a necessary expense under IRS guidelines.

The trustee does not assert that, under § 1325(b), the Prices have improperly determined their disposable income. He instead argues that since the Prices are *not* paying-in the $222.25 per month, their plan fails to dedicate *all* their disposable income for payments to creditors. As a result, he contends that their plan fails the good faith requirement of § 1325(a)(3).

II.

Section 1325(a) of the Bankruptcy Code sets the requirements for confirmation of a chapter 13 plan. That the plan be proposed in good faith is one of the requirements. § 1325(a)(3). Subsection (b) of § 1325 provides that if the trustee or an unsecured creditor objects to the proposed plan, the debtor's "projected disposable income to be received in the applicable commitment period" must be used to make payments to unsecured creditors. The Code defines disposable income as the debtor's current monthly income less amounts reasonably necessary to be expended for the maintenance and support of the debtor and the debtor's dependents. § 1325(b)(2). The expenses—those that are reasonably necessary—are determined under subparagraphs (A) and (B) of § 707(b)(2) for above-median income debtors, such as the Prices. § 1325(b)(3).

In a less than concise fashion, § 707(b)(2)(A) and (B) outlines the debtor's allowable expenses, which are pegged to "applicable monthly expense amounts ... under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides." § 707(b)(2)(A)(ii)(I) (There is more to it than this, but this suffices for the issues here.); *In re Gracia*, No. 18-50061, 2018 WL 3726157, at *2 (Bankr. N.D. Tex. Aug. 2, 2018).

The trustee's arguments raise two issues. The first is whether the debtors' Schedule J has any bearing on the § 1325(b) confirmation requirements. (Schedules I and J, which are required to be filed when the case is filed, reflect a debtor's actual monthly income and expenses.) The second issue is whether the Prices fail to satisfy the good faith requirement—despite their technical adherence to the statute and implementing-form Form 122C-2—by proposing a plan that fails to dedicate to creditors both the accumulated cash value of the policies *and* the *$222.25 per month* they pay for whole life policies.

A.

Disposable Income Required Under § 1325(b)

The Code both defines disposable income and tells debtors how to calculate it. If the trustee or an unsecured creditor objects to the debtor's plan, the plan must either pay unsecured debts in full or dedicate all their *projected* disposable income for payments on unsecured debts through the life of the plan. § 1325(b)(1). For above-median debtors—*see* § 1325(b)(3)—their projected disposable income is calculated on required form, Form 122C-2.

[1] Prior to the use of Form 122C-2, as directed by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), bankruptcy courts determined a debtor's disposable income by deducting the debtor's expenses on Schedule J from income shown on Schedule I, subject to the court's review of the necessity and reasonableness of the claimed expenses. *In re Cox*, 393 B.R. 681, 685 (Bankr. W.D. Mo. 2008). With the enactment of BAPCPA, though, Congress developed a standardized, bipartite procedure that eliminated much of the bankruptcy court's discretion in chapter 13 cases of above-median debtors. Now an above-median income chapter 13 debtor must complete Form 122C-1 and Form 122C-2. A completed Form 122C-1 calculates the debtor's current monthly income while a completed Form 122C-2 calculates the debtor's disposable income. This mechanical approach serves as a presumption of the debtor's disposable income that may be rebutted by any party (trustee or debtor) with evidence of known or virtually certain future events that might affect "projected" income. *In re Nowlin*, 576 F.3d 258, 266 (5th Cir. 2009).

[2] The trustee suggests that joint debtors must contribute all their "actual" disposable income—rather than the form-derived amount—to their chapter 13 plan to satisfy the § 1325(b) confirmation requirements. The trustee is asking the Court to return to the pre-BAPCPA evaluation of a debtor's disposable income. This would require the Court to determine what expenses on Schedule J are reasonably necessary and direct that those that are not be "devoted to payments under the plan," even if the debtors did not include such expense as a deduction on their disposable income calculation. Doc. No. 29 at 4. The Court rejects this suggestion. The determination of disposable income under the statute "supplants the pre-BAPCPA practice of calculating debtors' reasonable expenses on a case-by-case basis." *Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61, 65, 131 S.Ct. 716, 178 L.Ed.2d 603 (2011).[1] The purpose of this change was to avoid the "varying and often inconsistent" outcomes. *Id.*

In *In re Uhlig*, the court determined that above-median income chapter 13 debtors are not required to contribute more money to their chapter 13 plans than their projected disposable income to meet the confirmation requirements of § 1325(b). 504 B.R. 916 (Bankr. E.D. Wis. 2014). The sole issue in *In re Uhlig* was whether the cash surrender value increase of a whole life policy over the life of the plan should be considered disposable income to be paid as an additional dividend to unsecured creditors. The court rejected the trustee's argument: "The Bankruptcy Code does not prohibit debtors from saving money during their plan or paying for a type of insurance for which their 'disposable income' equation provides no deduction from income, as long as the debtors' plan proposes to pay no less than their 'disposable income' as determined by section 1325(b)(2)." *Id.* at 918 (citing *Hamilton v. Lanning*, 560 U.S. 505, 130 S.Ct. 2464, 177 L.Ed.2d 23 (2010) (holding disposable income is calculated pursuant to section 1325(b)(2), absent unusual circumstances)).

[3] Courts consistently hold that above-median income chapter 13 debtors may take the standard deductions, notwithstanding their actual expenses. *In re Owsley*, 384 B.R. 739, 743 (Bankr. N.D. Tex. 2008); *see, e.g.*, *In re Smith*, 549 B.R. 188, 191 (Bankr. N.D. Miss. 2016) (confirming an above-median income chapter 13 plan where the debtor's projected disposable income was negative and the plan provided for no distribution to general unsecured creditors, despite the fact that debtor's Schedules I and J reflected that the debtor had surplus monthly net income). The Prices may, therefore, choose to spend less than that allowed by the IRS guidelines and use the extra income for something important to them. With those savings, they may "spend it, save it, or invest it in a whole life insurance policy, but their 'projected disposable income,' as determined by section 1325(b)(1)(B), does not change because of that decision" and their plan still meets the requirements of confirmation. *In re Uhlig*, 504 B.R. at 920–21. The Prices' chapter 13 plan meets the requirements of § 1325(b).

B.

Good Faith Requirement

[4] Section 1325(a)(3) requires that the debtor's chapter 13 plan be "proposed in good faith." Though arguably not explicit under the statute, good faith is construed as a necessary condition for confirmation of a plan. *See, e.g.*, *Pub. Fin. Corp. v. Freeman*, 712 F.2d 219, 221 (5th Cir. 1983). And good faith is determined under the totality of the debtor's circumstances. *Id.*

The parties here are disputing whether the debtors' adherence to § 707(b)(2)(A) and (B) (and Form 122C-2) is sufficient under the circumstances—i.e., their retention of three whole life insurance policies—to satisfy the good faith requirement. As stated, § 1325(a)(3) requires good faith—but good faith is not textually a part of the disposable income requirement of subsection (b). Similarly, § 707(b)(3) states that even when a debtor satisfies subsection (b)(2)(A)—the mathematically derived formula (using prescribed expenses) for determining if a chapter 7 filing is abusive—the court must also consider whether the debtor's filing is otherwise abusive or made in bad faith. *In re Gracia*, 2018 WL 3726157, at *3; *In re Owsley*, 384 B.R. at 750 ("compliance with section 1325(b)(3) and section 707(b)(2)(A) is not dispositive of good faith because good faith embraces more than just lawful compliance with those sections.").

[5] **[6]** **[7]** **[8]** **[9]** Where the court considers both technical compliance with § 1325(b) and good faith under the totality of the circumstances, "the sufficiency of the assets devoted to the plan is not a basis for a finding of lack of good faith under § 1325(a)(3), unless there is a showing of some sort of manipulation, subterfuge or unfair exploitation of the Code by the debtor." *In re Williams*, 394 B.R. 550, 572 (Bankr. D. Colo. 2008). Good faith is meant to protect the integrity of the bankruptcy process and prevent a debtor from intentionally exploiting the bankruptcy process to delay creditors or achieve an improper purpose. *In re Stanley*, 224 F. App'x 343, 346 (5th Cir. 2007). Although a plan's technical compliance with the Code is presumed to be asserted in good faith, the presumption of good faith may be negated by aggravating circumstances. *In re Owsley*, 384 B.R. at 750. Put another way, a plan is not proposed in bad faith "simply because of the ability to pay more than the means test result. There must be something else to trigger a lack of good faith in proposing a plan." *In re James*, 379 B.R. 903, 908 (Bankr. D. Neb. 2007). A court should therefore rarely find bad faith when a debtor's proposed plan complies with § 1325(b). *In re Devilliers*, 358 B.R. 849, 867 (Bankr. E.D. La. 2007). Without something more, debtors "are not in bad faith merely for doing what the Code permits them to do." *In re Ragos*, 700 F.3d 220, 227 (5th Cir. 2012).

[10] **[11]** **[12]** The trustee proffers that a chapter 13 plan is per se bad faith where the debtor proposes to retain a whole life insurance policy, even where the expense is not included as a deduction for their disposable income. But this result is not supported by statute or case law. *See, e.g.*, *In re Rudmose*, No. 10-74514, 2010 WL 4882059, at *7 (Bankr. N.D. Ga. Nov. 8, 2010) (the court declined to find that the purchase of whole life insurance was per se abusive in chapter 7); *In re Mauer*, No. 09-32604, 2009 WL 2461380, at *4 (Bankr. N.D. Ohio Aug. 10, 2009) (finding that a whole life insurance policy was a reasonable expense in a chapter 7 case, while a more expensive term life insurance policy was unreasonable). Specifically, this Court has previously observed that whether or not a chapter 13 plan is proposed in good faith is a question of fact for which the debtor bears the burden of proof, and, as such, "courts are reluctant to define any per se rules applicable to assessing a good faith attempt to propose a plan." *In re Gonzales*, No. 17-50150, 2018 WL 501332, at *2 (Bankr. N.D. Tex. Jan. 19, 2018). Although the Prices may have more disposable income than calculated on their Form 122C-2, without any aggravating factors to suggest that they are seeking to manipulate the bankruptcy process, there cannot be a finding of bad faith.

The trustee's objection to confirmation is misguided. His objection focuses on the classification of whole life insurance under IRS guidelines and argues that it is not reasonably necessary because it embodies a savings component; he admits that he would not object to term policies as they would be allowable "other-necessary" expense items. But such policies would be allowable expenses that are deducted from the Prices' current monthly income, thus decreasing the projected disposable income for unsecured creditors. The trustee argues that the Prices are saving at the expense of creditors by maintaining whole life insurance policies. But if the Prices obtained term life policies, the amount of the premiums would be made at the expense of those same creditors. Their plan is *not* proposed in bad faith where it pays *more* to unsecured creditors by maintaining the whole life insurance policies.

The Prices have proposed their chapter 13 plan in good faith. Their plan complies with the standards for confirmation under the Code; there is no evidence that their intent to maintain whole life insurance policies manipulates the bankruptcy process.

C. HAVEN Act

Additionally, at the hearing, debtors' counsel brought up the potential applicability of a new bankruptcy law. Mr. Price receives $964.36 in VA disability payments each month. At the time of this bankruptcy filing, June 21, 2019, the **HAVEN Act** had only been introduced in the House. The **HAVEN Act**, or the Honoring American Veterans in Extreme Need Act of 2019, is a law that exempts from the calculation of monthly income certain benefits paid by the Department of Veterans Affairs and the Department of Defense. This law amended 11 U.S.C. § 101(10A) to exclude from the definition of current monthly income certain payments made under title 10, 37, or 38 of the United States Code in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services. On July 23, 2019, the **HAVEN Act** passed the House. On August 1, 2019, the bill passed the Senate. A few weeks later, on August 23, 2019, the **HAVEN Act** was signed into law by the President. The Act was effective immediately upon enactment.

There is a strong argument that this law applies to pending chapter 13 cases with unconfirmed plans. While no court has said so, experts have argued this interpretation. *See Not Fake News: Congress Enacts New, Sensible Bankruptcy Reform*, 38 Am. Bankr. Inst. J. 10, 77 (2019) (excerpts from an ABI Webinar where Kristina Stanger, a practicing bankruptcy attorney in Iowa and a member of ABI's Veterans Affairs Task Force, stated that since § 1325(b)(1)(B) addresses confirmation plans and relies on the definition of disposable monthly income, the **HAVEN Act** has immediately changed the meaning of disposable monthly income to exclude disabled veterans' benefits and should be applicable to pending chapter 13 cases with unconfirmed plans). Additionally, on October 1, 2019, new forms for bankruptcy became effective that conform with the **HAVEN Act** changes, including Official Form 122C-1 (current monthly income).

Here, Mr. Price receives payments that are excluded from current monthly income calculations under the new law. While the Court need not decide whether the **HAVEN Act** applies to pending chapter 13 cases with unconfirmed plans, the inclusion of such payments, where modification is possible, weighs in favor of the debtors' good faith.

Conclusion

Under § 1325(b)(1)(B), (b)(2), and (b)(3) of the Bankruptcy Code, the Prices' plan, to be confirmed, must meet the expense standards set forth in § 707(b)(2)(A) and (B). Form 122C-2, the use of which is mandated by the Judicial Conference of the United States under Rule 9009 and prescribed by Rule 1007(b)(6), serves to implement § 707(b) (in accordance with § 1325(b)(3)) and thus incorporates the mandated IRS National and Local Standards for the debtors' calculation of disposable income. The calculation "is not only the starting point in calculating above-median-income Chapter 13 debtor's 'projected disposable income,' but in most cases, it is determinative." *In re Hall*, 559 B.R. 463, 469 (Bankr. S.D. Tex. 2016) (citation omitted).

[13] The Code *prescribes* how disposable income must be determined. The Prices' plan complies with the statute and is thus presumptively proposed in good faith. The good faith presumption is rebuttable because "there may be times when debtors commit so little income to repaying creditors, relative to their true ability to pay, that their plans show an intent to manipulate the Code and not to make a good faith effort at repayment." *In re Uhlig*, 504 B.R. at 921. Such is not the case here. The Prices have met their burden of proof; their plan is proposed in good faith.

The Court overrules the trustee's objection to the Prices' chapter 13 plan and approves confirmation.

All Citations

609 B.R. 475

Footnotes

1 The trustee also submits that the Court should not follow the suggestion of *In re Brown* and compare the cost of term life with whole life insurance in assessing the reasonableness of the expense, because whole life insurance is *not* an allowable, reasonably necessary expense under Form 122C-2. No. 13-35593, 2014 WL 4793243 (Bankr. E.D. Wis. Sept. 24, 2014). The Court agrees that it should not follow *In re Brown*, but not for the reason stated by the trustee. The court in *In re Brown* was assessing the expenses of a below-median income chapter 13 debtor, in which the ad hoc analysis of what are reasonably necessary expenses is required in determining a debtor's disposable income. But the Prices are above-median income debtors; the statute *requires* the mechanical, form-driven calculation of disposable income (except for certain secured debt payments, *In re Gracia*, 2018 WL 3726157, at *3). Such a comparison may have some bearing on the good faith analysis, however.

End of Document

Identifying Financial Distress in Veteran Clinic Clients and Existing Resources to Address Financial Issues

ABI Veterans Task Force Panelists

Hon. Mary Grace Diehl, U.S. Bankruptcy Court, N.D. Ga., Atlanta, Ga.

Hon. Mary Jo Heston, U.S. Bankruptcy Court, W.D. Wa., Tacoma, Wa.

Hon. Charles M. Walker, M.D. Tenn., Nashville, Tenn.

Kristina Stanger, Esq., Nyemaster Goode, P.C. Des Moines, Iowa

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Hon. Mary Grace Diehl – U.S. Bankruptcy Court (Atlanta, GA), MG_Diehl@ganb.uscourts.gov

Following her service as a Bankruptcy Judge for the Northern District of Georgia for 14 years, Judge Diehl now serves as a recalled judge conducting pro-bono mediations in matters assigned to other bankruptcy judges. Prior to her appointment, she was a partner at Troutman Sanders LLP (now Troutman Pepper) where she chaired the Bankruptcy Restructuring Practice. Judge Diehl has received numerous honors and distinctions and has been very active in bankruptcy-related organizations during her career. Judge Diehl is the co-chair of the Education Committee of the ABI Task Force on Veterans and Servicemembers' Affairs.

Hon. Mary Jo Heston – U.S. Bankruptcy Court (Tacoma, WA), Mary_Jo_Heston@wawb.uscourts.gov

Judge Heston serves as a Bankruptcy Judge for the Western District of Washington. Prior to her appointment, she was a shareholder of Lane Powell PC concentrating her practice on business reorganizations, international insolvency, and acquisition of troubled businesses and assets. Judge Heston has also served as a United States Trustee overseeing trustees and fiduciaries in Washington, Oregon, Idaho, Alaska, and Montana. In addition to teaching bankruptcy courses for 35 years, Judge Heston has received many distinctions and served in a variety of bankruptcy-related organizations. She is the co-chair of the ABI Task Force on Veterans and Servicemembers' Affairs.

Hon. Charles M. Walker – U.S. Bankruptcy Court (Nashville, TN)

Judge Walker serves as a Bankruptcy Judge for the Middle District of Tennessee. An extensive life in public service, Judge Walker has served in the Air Force and the Air Force Reserves, as well as a trial attorney for the United States Trustee. Judge Walker has also served in private practice and is active in many bankruptcy-related organizations. Judge Walker serves in a unique capacity as a federal bankruptcy judge and in the Air National Guard as a major general. Judge Walker is a member of the Pro Bono Committee of the Task Force on Veterans and Servicemembers' Affairs.

Kristina Stanger, Esq. – U.S. Army Lieutenant Colonel, Retired

Kristina Stanger is a shareholder at Iowa's largest law firm, Nyemaster Goode, PC. In addition to concentrating her practice in restructuring and insolvency, she also is a combat-experienced and decorated U.S. Army Lieutenant Colonel. She is active in a wide variety of bankruptcy-related organizations and devotes much of her pro bono service to advocating for veterans and their families. Kristina is the Co-Chair of the Legislative Committee of the ABI Task Force on Veterans and Servicemembers' Affairs.

Nancy Whaley, Esq. – U.S. Air Force, Lieutenant Colonel, Retired

Nancy Whaley serves as a Chapter 12 and 13 Trustee for the Northern District of Georgia. In addition to overseeing the administration of cases under chapter 12 and 13 of the U.S. Bankruptcy Code, she is also active in a number of organizations supporting trustees, the legal community in northern Georgia, and as an advocate of women in the profession. Nancy has also retired from the Air Force Reserve as a Lieutenant Colonel. Nancy is a member of the Education Committee of the ABI Task Force on Veterans and Servicemembers' Affairs.

The Task Force – Mission & Value

Mission: To unite and effectively deploy the best of the varied talent resources within the American Bankruptcy Institute (ABI) to understand, respond to, and coordinate with other institutions and organizations to educate, remediate, and prevent adverse debt concerns and impacts on veterans and service members to ensure that we financially strengthen those that strengthen us with the respect and dignity they deserve.

https://veterans.abi.org/

WHY ADDRESSING THE NEEDS OF VETERANS IN FINANCIAL DISTRESS MAY BE DIFFERENT THAN ADDRESSING THE NEEDS OF NON-MILITARY DEBTORS

- Different reasons for financial issues (regular relocation and missions)
- Military culture may impact approach to financial issues
- Different potential impacts – security clearances
- Different solutions and resources including military specific benefits and programs

Our Nation must keep the promises to those that have served and their families.

Markers of Financial Distress – In General

- Credit card late payments
- Mortgage or rent arrears
- Car payments
- Injuries/medical bills
- Lawsuits by creditors

Markers of Financial Distress – In General

- Harassing phone calls/garnishments
- Job loss/hours cut back
- Family separation & divorce
- Child support/alimony payments

Markers of Financial Distress – In General

- Delinquent tax returns
- Borrowing money from family
- Lending money to family
- Cosigning loans for others

Some Types of Assistance Available to Veterans in Financial Distress – In General

- Veteran Service Officers (VSOs) - Find A VSO
- Credit counseling/informal repayment plans (debt consolidation (non-profit only); be aware of scams)
- Debt clinics and other pro bono legal assistance for garnishments and other collection actions
- Formal bankruptcy proceedings: chapter 7, chapter 13, and chapter 11
- Student loan repayment plans

Some Types of Assistance Available to Veterans in Financial Distress – In General

- State Bar Association Military Affairs Committees; State Emergency Relief / Financial Assistance Programs. See web page example at: https://www.oregon.gov/odva/benefits/pages/emergency-assistance.aspx.
- Stand down programs
- Use of retirement savings - beware of scams
- Discharge upgrades
- VA and Disability findings and support – appeals (NVLSP)
- Property tax relief or other government fee waivers or programs (VA home mortgage)

Some Types of Assistance Available to Veterans in Financial Distress – In General

- Financial support for military families & children – i.e., Dole Foundation for summer camps or sports programs
- Military specific credit and collection protections including the Service Members Civil Relief Act, Medical Debt No Suprises Act & Military Lending Act
- USERRA – reemployment protection
- COVID related foreclosure moratorium (ends 12/31/24), veteran specific loan modification programs, and Veterans Affairs Servicing Purchase Program
- Claims under the Fair Credit Reporting Act, Fair Debt Collections Practices Act, and other consumer protection acts

Tips to Identify Vets with Financial Issues

- Intake Questions
    - Form: See Vet Financial Hardship Questionnaire Kundawala example in materials
    - Caution Not to ask: “Are you a Veteran?” Instead try: “Have you or any member of your family ever served in the military?”
- Documents to be examined
    - Credit reports
    - Tax returns
    - Leave and earning statement or DD214ss
    - VA Disability Benefits letter or payments

The Right Solution Depends on Several Factors

- Timing of separation, type of separation, blended retirement, and other factors make a difference
- Extent of financial distress and ability to pay (e.g. is the client judgment proof?)
- Timing of available solutions vs. scope of relief sought (e.g. Chapter 7 bankruptcy should not be filed if the client is still accumulating debts)
- Other factors such as impact on security clearances.

Referrals & Resources

- ABI Vet Task Force: https://veterans.abi.org/legal-resource-database
- American College List (attached)
- Child care expenses: VA Child Care Subsidy Program
- Local bankruptcy court websites, which include local pro bono resources (e.g., wawb.uscourts.gov)
- Career support & job training: Veteran Readiness & Employment Program
- Housing: VA.gov safe housing solutions
- County VSO's
- Warrior Alliance: www.thewarrioralliance.org
- Bfine Bankruptcy+Finance: www.bfine.org

Reliable Self-Help Resources

- Free @NCLC: Surviving Debt and Other Publications
- ABI Task Force for Military Servicemembers & Veterans website including https://veterans.abi.org/faq
- CFPB Financial Resources: https://www.consumerfinance.gov/consumer-tools/educator-tools/servicemembers/

The Veteran Bankruptcy Clinic Gap and Ask

- Lack of lead agent or single source for support and financial services
  - The ABI Task Force has attempted to be a culminating resource: https://veterans.abi.org/resources
  - We are in search of partners and leaders to support this need
  - Could your clinic be this Leader?
  - Good model - Veteran Legal Services in Boston:
  - https://www.veteranslegalservices.org/about-us
- Professor Ishaq Kundawala (kundawala_i@law.mercer.edu), Associate Dean for Academic Affairs, Professor of Law & Southeastern Bankruptcy Law Institute and W. Homer Drake, Jr. Endowed Chair in Bankruptcy Law at Mercer University School of Law is a wonderful resource and is willing to help set up a bankruptcy clinic. Watch for his upcoming article on this topic in Emory Bankruptcy Developments Journal, Volume 40, Issue 3.

Questions?

REPRESENTING ACTIVE MILITARY & MILITARY VETERANS

ON BANKRUPTCY AND DEBTOR-CREDITOR RELATED ISSUES[1]

Prepared for: NCBJ Behind the Bench Program, November 28, 2023

Moderator: Ted Gavin, Gavin/Solmonese, Wilmington, DE

Speakers: Mary Jo Heston, U.S. Bankruptcy Judge, WDWA, Tacoma, WA

Kristina M. Stager, Nyemaster Goode, Des Moines, IA

Steve M. Berman, Shumaker, Miami, FL.

1. Bankruptcy is Unsurprisingly Generally Not Part of the Military Culture. Bankruptcy and financial distress are not generally understood or discussed within the military. Yet, like any demographic, servicemembers and military veterans may need assistance with financial issues and in seeking remedies for financial distress including bankruptcy remedy at some point in their lives. The Task Force has used several means to address this issue including working on legislative matters affecting military and veterans such as the HAVEN Act (excluding most disability pay from the means test) and the extension of the National Guard and Reservists Debt Relief Act of 2008 (which provides a 540 day safe harbor from the means test income for active duty income as well as income of Armed Forces reservists and National Guard members called to active duty or for performing homeland defense activity),[2] providing bankruptcy specific information to help train JAG officers, connecting volunteers with expertise in financial distress to the ABA LAMP Program to meet the needs of active service members, expanding the reach of pro bono services available to include debtor-creditor and bankruptcy issues in various jurisdictions and presenting programs at military stand down programs and other similar programs. The Task Force also has been active in preparing military specific financial literacy and bankruptcy specific information for dissemination on its website, through various organizations including the American Legion, certain Native American organizations, and the Warrior Scholar Project.[3] Most recently,

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[1] This issue list was compiled for educational purposes and is based on knowledge gained and information collected from both ABI's Task Force on Veterans and Servicemembers Affairs (the Task Force) as well as other outside military and veteran available resources. The Task Force's Pro Bono and Education Subcommittees continue to develop comprehensive materials and resources for attorney and financial advisor volunteers and clients who are willing to provide pro bono assistance to active military members and veterans.

Legal Disclaimer: Any person using these resources does so without any reliance on the information provided by the speakers on this panel. Participants are encouraged to exercise independent diligence in making decisions with respect to their clients.

[2] See Verstanding, Maurice, "Soldiers and Recent Veterans May Soon Be Subject to the Means Test, ABI Journal Vol. XLII, No. 11, November 2023.

[3] Warrior-Scholar Project programs empower enlisted student veterans and transitioning service members to succeed in higher education and beyond with their alumni. See https://www.warrior-scholar.org/our-programs/.

the Task Force has been working towards helping to identify financial advisor mentors for participants in the VETRN Programs on starting and running veteran owned businesses.[4]

2. Retention or Acquisition of Security Clearances May be a Major Concern. Both military and veteran clients may be worried about their current or future ability to obtain a security clearance in connection with any debtor related creditor issues including bankruptcy. The availability of security clearances may be an important part of an active military serviceman or woman's career in terms of advancement. Additionally, many veterans after leaving the military gravitate to jobs in security and other similar sectors such as government contractor positions which may require security clearances. Bankruptcy is not a *per se* disqualifying factor for security clearances by the DoD because clearances are evaluated using thirteen different factors including several factors and conditions that could mitigate such factors that are relevant. *See*: Code of Federal Regulations, 32 C.F.R. 154, App. H (2012) (updating and codifying the guidelines attached to DoD Directive 5220.6) & Guideline F. It is important to understand and be prepared to address these factors as part of addressing a servicemember or veteran's financial issues including the bankruptcy planning process. For example, the inability or unwillingness to satisfy debts, evidence of a history of not meeting financial obligations, failure to file tax returns and consistent spending beyond means are among the factors used to evaluate security clearances. These factors may be mitigated by the passage of time, the fact that the financial problems were largely caused by factors beyond the client's control, and evidence of responsible action taken in connection with such financial difficulties, including proof of good faith efforts to repay creditors and otherwise resolve debts the receipt of counseling and other clear indications that the problem is controlled and resolved. For more detailed information, *See* Emily Connor Kennedy, "Discharges and the DoD: The Interplay between Bankruptcy & Security Clearances," ConsiderChapter13.org, March 6, 2022 (found in NACTT Academy).

3. Servicemembers Get Moved Regularly and Sometimes Are Deployed for Active Duty. Because these factors may affect financial resources, certain bankruptcy claims, rights against third parties, budgets, timing and availability of resources and remedies and other financial issues, availability for court appearances and preparation for defending court matters, it is a good idea to ask any active military clients questions about periods of prior deployment, periods of service and types of service as well as known upcoming moves and deployments. For example, verified, active deployment which makes a servicemember unavailable for appearance appears to be grounds for waiving the requirement that a debtor appear and testify at a Section 341 Meeting. *See e.g.,* Memorandum from Region

[4] For more information on VETRN and their ongoing programs see https://vetrn.org/.

7 United States Trustee dated April 7, 2003, Richard W. Simmons, U.S. Trustee Region 7 to trustees in Southern and Western District of Texas which states that: "The Executive Office of the United States Trustee has concluded that as a "matter of the Program Policy, United States Trustees should excuse unavailable Active Duty Servicemembers from attendance at the 341 meeting in appropriate circumstances."[5]

4. Servicemembers' Residence May Be Different From their Domicile Making Filing Potentially Available in More Than One Judicial District. The debtor's residence is where the debtor lives as of the date of the filing. The debtor's domicile is a permanent place of residence where the debtor intends to return following a temporary departure. A debtor may file in any judicial district where they have their domicile, residence, or principal assets within the 180 days prior to bankruptcy, or the longest portion of such period, as applicable. It's not uncommon for military servicemembers to have different places of domicile and residence while on active duty and for some period after leaving the service. There could also be more than one residence or domicile for such clients based on their prior moves and change in plans. Based on the facts, counsel should give some thought to the best venue for the bankruptcy cases, where applicable. *See also* #5 below regarding issues related to applicable exemptions.

5. Exemption Choice Is Made According to a Debtor's Domicile, Not Residence. The choice of which state's exemptions apply is based on domicile not residence. As noted above, a servicemember may have more than one domicile. Section 522(b)(3)(A) provides that a debtor that has more than one domicile in the 730 days prior to filing for bankruptcy, the applicable state exemptions will be for the state where the debtor's domicile was located for the 180 days prior to the petition date or the longer portion of such 180-day period, as applicable. Depending on the facts there may be timing and other issues which could affect a debtor's available exemptions. One issue that may come up is the availability under the applicable state exemptions of exempting property located in another state as this may be a common fact pattern existing for military families that have moved. In sum, the debtor's counsel should both understand the facts and fully analyze the possible exemption issues that could arise for their servicemember clients. For a much more thorough discussion of these issues, *See* attached article, Louis M. Bubala III and Joseph E. Dagher, *"Homestead Exemptions for Military Members on Assignment,"* 34 ABI Journal, p. 34-36.

[5] This memo was issued after 9-11 and the commencement of the war in Iraq. There is no reason to believe that the policy has changed since that time. It appears that regional U.S. Trustee's drive policy in this area in specific cases. The U.S. Trustee's office hopefully will be sympathetic to an active servicemember's situation and adjust the regional requirements accordingly.

6. Understanding Your Client's Military and Disability Pay is Important to Chapter Choice and Other Bankruptcy Issues. The Haven Act dramatically impacted the scope of COMI for many veterans and servicemembers (and in some circumstances the COMI of their family members) by excluding from COMI "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**." Section 101(10A). It is important for you to understand the nature and scope of your military or veteran client's income by accessing the DOD & VA's eBenefits website for award letters, payment history and military discharge documents and other records at www.ebenfits.va.gov. *See also* DFA's MyPay website for leave and earnings statements www.mypay.dfas.mil.

7. Be Aware of Those Obscure Exceptions to Discharge That Might be Lurking at the Back of Section 523. It is important to review specific debts owed to the government including the obligation to repay overpayments of military benefits to determine the scope of your client's discharge. There are certain obscure and infrequently encountered exceptions to the discharge that otherwise may be overlooked. See e.g., In re Fagan, 559 B.R. 718 (Bankr. E.D. CA. 2016).

8. There Are Special Protections Provided to Active Military and Veterans on Collection Activity Including SCRA that may affect Claims Asserted in a Bankruptcy Case. There are many protections including the Servicemembers Civil Relief Act (SCRA) which may be available to your servicemember clients (including reservists and inductees) and in some instances their families where the servicemember has been called to duty. Counsel needs to understand how these protections could impact the allowability of certain claims filed in the bankruptcy case, the validity of default judgments obtained prior to bankruptcy, as well as your client's rights in relation to pending litigation in both the bankruptcy court as well as non-bankruptcy courts. Some remedies are self-executing while other remedies must be affirmatively sought to protect your client's rights. The ABI Task Force website includes a comprehensive article by former bankruptcy judge Robert E. Gerber that provides a good summary of the SCRA's provisions: Robert E. Gerber, "Protections Afforded by the Servicemembers Civil Relief Act." Additionally, agencies such as the VA may adjust collection actions on VA Mortgages. For example, it was recently announced that the VA ordered a six-month halt on foreclosures of homes with VA Loans through May of 2024 based on issues arising in connection with COVID-19 moratoria on payments.

9. Unique Resources Available to Military, Veterans, Dependents, and Survivors Which May Help Your Client to Improve Their Financial Difficulties. Your clients may have access to resources unique to either active military and/or veterans which may impact your decisions on the best remedies to address their debtor-creditor issues. The nature and extent of these resources may depend on the client's military or dependent status, career history, character of discharge from service (i.e., Honorable, Other Than Honorable, Dishonorable), and disability claim status. The available resources for veterans and servicemembers unfortunately are extensive, balkanized and dispersed in many locations which makes them difficult to locate particularly because different locales may have different levels and types of resources. Finding *credible* resources[1] that regularly work with military members, veterans, dependents, and survivors can assist you in getting your clients the help they need to address issues they are facing and perhaps avoid bankruptcy. There are many resources and benefits currently available and listed on the Veteran's Affairs Department and Department of Defense websites such as www.va.gov, within local bar associations, or law school legal clinics. You can search for National Law Schools with veterans' clinics here: https://nlsvcc.org/members-list/. Another powerful and centralized individual resource is your local accredited VA Veterans Service Officer who help with benefit eligibility and claims processes. You can search for a VSO in your area by zip code here: https://www.va.gov/ogc/apps/accreditation/index.asp. Additionally, certain information unique to military and veterans' issues is regularly posted on the Task Force's section of the ABI Website. *See* https://veterans.abi.org. *See also* https://veterans.abi.org/faq (frequently asked questions oriented to the client). For more information on the Task Force's projects or volunteer opportunities please contact the Co-Chairs of the Task Force:
Mr. John Ames, john.ames@dentons.com and Mary Jo Heston, Mary_Jo_Heston@wawb.uscourts.gov

[1] Just because it has military in the name doesn't mean that it is legitimate. There are several scams, and some organizations prey on military comraderies and target active military, veterans, and their families particularly, in the employment areas.

VETERANS, SERVICEMEMBERS AND CONSUMER LAW: A Primer for the Practitioner

National Association of Consumer Bankruptcy Attorneys

3.12.2026

ABI Veteran's Task Force

Webinar Objectives

- Introduce the audience to the ABI Veteran Task Force. Explain the mission, the history and the current initiatives.
- Provide a legal primer for the consumer practitioner on key issues that relate to Veterans, Servicemembers and families and bankruptcy such as HAVEN Act, SCRA, USERRA, the VA's FINVET and more.
- Provide practical resources to the audience for follow up questions and invite participation and support.

National Association of Consumer Bankruptcy Attorneys

Panelists

- LTC (Ret U.S. Army) Kristina Stanger (JD; Iowa)
- Honorable Mary Jo Heston (WA BK)
- Honorable Mary Grace Diehl (NDGA BK)
- Ted Gavin (CTP, NCPM)
- Ryan "Clay" Claymore (Technical Sergeant, US Air Force)

National Association of Consumer Bankruptcy Attorneys

American Bankruptcy Institute – Veteran's Task Force

- **History and Mission**
  - Ted Gavin - vision
  - Now with over 100 members – Judges, Attorneys, Financial Advisors, 1 Trustee, Legal Clinics, VLP Directors, Volunteers; spouses, children, former military members and advocates
  - Geographically – all across the country

- 2 In Person Meetings each year
- Multiple subcommittees and year-round efforts
- Historical Successes: Education Committee;

Tribal Committee; HAVEN Act

National Association of Consumer Bankruptcy Attorneys

ABI Veteran's Task Force – HAVEN Act (1 of 5)

- *Expanding on one key Task Force Effort*

Honoring American Veterans in Extreme Need Act of 2019

Motives
- Epidemic of Veteran Suicide
- Financial Distress
  Backlogged Veterans' Administration claims (average 125 days – more than 70,000 backlogged claims as of August 2024
- Security Clearance & Training Opportunities
- Veterans are Over-represented in Suicide and Bankruptcy Cases
  11% of population
  15 % of consumer bankruptcy filers

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ABI Veteran's Task Force – HAVEN Act (2 of 5)

- Principal Educators & Advocates
  American Bankruptcy Institute ("ABI") Task Force for Veterans' & Servicemembers' Affairs
  ABA Military Assistance Programs
  Veterans' Clinics
  Veterans Treatment Courts
  Consumer Financial Protection Bureau – Office of Servicemember Affairs
- Signed into law on August 23, 2019
  4 of only 0.7% bills enacted in that Congress as of that date
- Bankruptcy Courts' application since 2019

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ABI Veteran's Task Force – HAVEN Act (3 of 5)

The Problem

- DOD and VA disability income payments included in a Debtors' "current monthly income" and required to be included in the "means test" calculation of income used to repay creditors
- Post-BAPCPA, only three income types excluded from CMI (11 U.S.C. §101(10A))
  - (i) Funds received through the Social Security Act (Social Security Disability)
  - (ii) Funds received by victims of war crimes directly related to the victim's status of such crime
  - (iii) Funds received by victims of terrorism directly related to the victim's status of such act of terrorism
- Failure to exclude Veterans' Disability believed to be unintentional, arose because Veterans' disability payments do not come from the Social Security Administration

- Bankruptcy courts and Trustees found the "unintentional" argument unpersuasive
  Brah (562 B.R. 922); Hedge (394 B.R. 463); Waters (384 B.R. 432), Wyatt (2008 WL 4572506); Redmond (2008 WL 1752133).
  HAVEN Act now supersedes these cases

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ABI Veteran's Task Force – HAVEN Act (4 of 5)

The Fix.
Amend definition of "Current Monthly Income" at 11 U.S.C. §101(10A) to include a fourth exception. *Act introduced by Sen. Baldwin (WI) and Sen. Cornyn (TX)*

- **HAVEN Act language added as 11 U.S.C. 101(10A)(B)(ii)(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* any retired pay excluded under this subclause shall include retired pay paid under chapter 61 of title 10 only to the extend 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."

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ABI Veteran's Task Force – HAVEN Act (5 of 5)

- "[T]he USTP will work to ensure that its approach is faithful to the language of the statute and, if ambiguities arise, will generally resolve them in favor of the recipients of benefits covered by the Act."
- What benefits are covered by HAVEN Act and excluded from CMI?
  - Payment Source is Key
    - Title 10: Armed Forces
      - Ch. 61 – Retirement or Separation for Physical Disability
    - Title 37: Pay and Allowances of the Uniformed Services
    - Title 38: Veterans' Benefits
- Applicability based on the SOURCE of funds, not the status of the recipient

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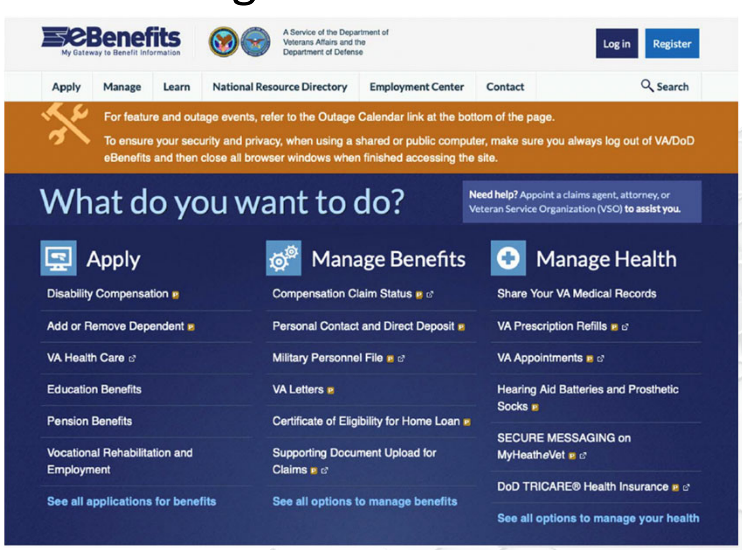
Understanding Veterans' Current Income



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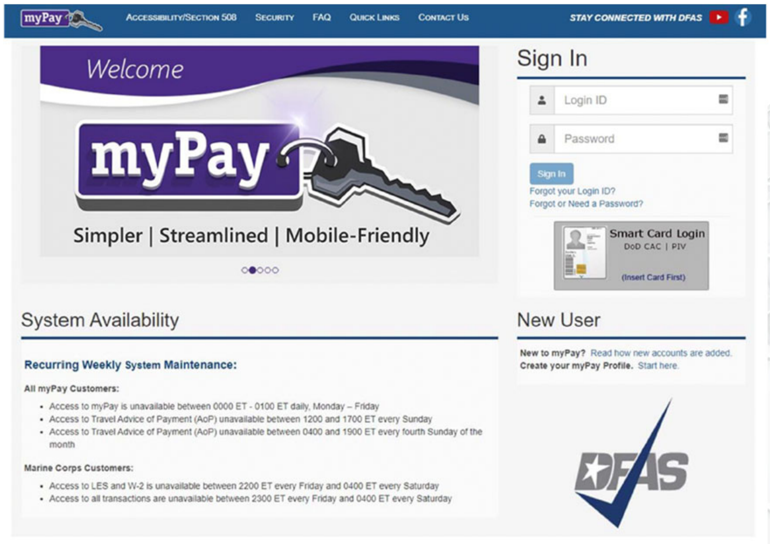
Understanding Veterans' Current Income



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ABI Veteran's Task Force – HAVEN Act (3 of 6)

Disability: Two major compensatory programs

- VA Disability Compensation
  - Not based on need or income
  - Must have disability due to disease or injury incurred or aggravated while serving on active duty or otherwise related to that service
  - Partial disability (0% - 100%) is compensable
- VA Veterans' Pension
  - Needs-based program
  - Wartime service (no combat or deployment requirement)
  - Total and permanent disability (or age 65+)
  - Disability need not be connected to military service

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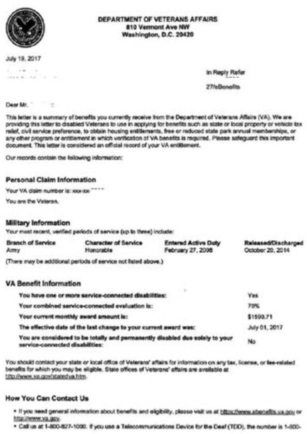
- Character of Discharge from Service

VA Award Letter



Military Information

Your most recent, verified periods of service (up to three) include:

Branch of Service	Character of Service	Entered Active Duty	Released/Discharged
Army	Honorable	February 27, 2008	October 20, 2014

(There may be additional periods of service not listed above.)

VA Benefit Information

You have one or more service-connected disabilities:	Yes
Your combined service-connected evaluation is:	70%
Your current monthly award amount is:	$1590.71
The effective date of the last change to your current award was:	July 01, 2017
You are considered to be totally and permanently disabled due solely to your service-connected disabilities:	No

13

Sample DOD/DFAS Letter


```
Service for Percent:  06 Years, 08 Months, 14 Days

In accordance with 10 USC 1401, you are entitled to receive
retired pay computed using your Percentage of Disability
(Method A) or, using your Years of Active Service (Method B),
as follows:
                                              Method A  Method B
Active Duty Base Pay                          2,651.37  2,651.37
Percentage of Disability                         70%

Percent Multiple                                70.00%    16.68%
 (Maximum Percent Multiple is 75%)
Method A Calculation( 2,651.37 x 0.7000)      1,855.00
Method B Calculation( 2,651.37 x 0.1668)                  442.00

Cost of Living Adjustment                          .00       .00

Gross Monthly Retired Pay                     1,855.00    442.00
  *Method A is most beneficial
```

14

Key Issues and Legal Needs (1 of 5)

1. Military Status, Culture and Core Documents

- Confirm 3 items: (1) current duty status; (2) discharge character; & (3) any VA disability rating.
- Status impacts benefits and protections
- Discharge character governs access to VA health care and compensation
- Advice on income caps, defaults, loan eligibility or discharge or bankruptcy will hinge on these threshold determinations
- “Veteran” is a specifically defined term – ask “have you or your family ever served” not “Are you a Veteran”

THINGS TO AVOID!

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Key Issues and Legal Needs – Culture (2 of 5)

- Access and bases are highly protected
- Security Clearance concerns
- Authenticity and respect. Be clear about your role, avoid overidentifying, and understand their experiences. https://www.equaljusticeworks.org/news/7-things-every-public-interest-lawyer-should-know-about-working-with-veterans/
- Veterans often encounter trauma, loss of identity, and skepticism toward civilian institutions. Trust can be earned through respectful engagement and genuine communication.
- Move frequently – “Legal Shield” use; or “barracks lawyers”

Practical steps for advice:

- Be transparent about your background and expertise. Admitting what you don’t know builds trust
- Let Veterans lead in telling their story; listen actively and respectfully.
- Acknowledge and normalize potential distrust of legal systems.
- Ask open questions (e.g. “Tell me about your service?”) and pause for processing or emotions
- Provide **written** summaries and follow-up to reinforce understanding.
- Offer referrals to veteran-specific supports such as VSOs

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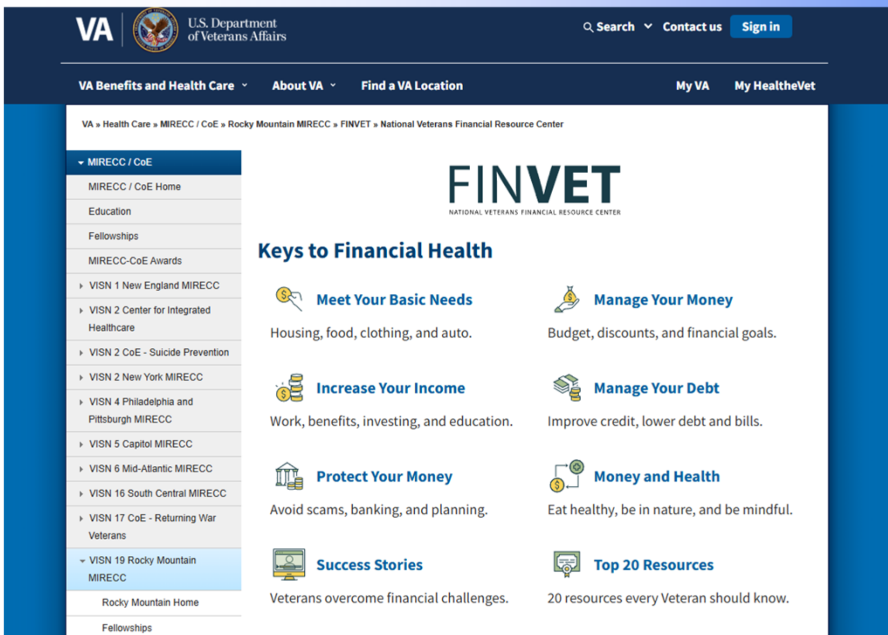

**** US Dept of Veterans Affairs – FINVET website**

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Key Issues and Legal Needs (3 of 5)

1. Military Status, Culture, and Core Documents

2. SCRA – Servicemembers Civil Relief Act: 50 U.S.C. §§ 3901-4043 protections for members on federal orders which include: 6% on pre-service loans, lease termination rights (car and residential), court protections against default judgments, Professional License portability*, enables cancellation of memberships like phone plans and gyms.

3. MLA – Military Lending Act and housing / foreclosure protections: enacted in 2016 cited at 10 U.S.C. § 987 protects certain military members from consumer lending practices (disclosures, cap on APR 36%, no mandatory arbitration, limits fees, etc)

4. Exemptions and Venue

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Key Issues and Legal Needs (4 of 5)

4. Exemptions and Venue

11 U.S.C. § 522(b)(3)(A) - applicable state exemptions are those of the state where the debtor was domiciled for the 730 days before filing.

- > 1 State during that period = the controlling law is the state the debtor lived in during the 180 days preceding
- Servicemembers often keep legal domicile in a home-of-record state even while stationed elsewhere, and under 50 U.S.C. § 4025 a change of station does not alter domicile for tax or voting purposes.
- 3 Venue Choices: where the debtor resides, where the debtor is domiciled, or where principal assets have been located for the greater part of the past 180 days. 28 U.S.C. § 1408.
- Many states grant special exemptions. (i.e. full protection of VA benefits by statute similar to 38 U.S.C. § 5301, or enhanced homestead allowances for 100% disabled Veterans)

Things to Avoid!

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Key Issues and Legal Needs (5 of 5)

5. The National Guard and Reserves
   - NGRDRA: *National Guard and Reservists Debt Relief Act* - income differences
   - USERRA: *Uniformed Services Employment and Reemployment Rights Act*

6. VA Disability Claims and Discharge Upgrades – use the experts; should NOT have to pay for this support (i.e. NVLSP)

5. "*Project Safe Harbor*" - new effort (3/11/2026) with the VA and DOJ to implement Guardianships for homeless and mentally ill Veterans

5. State and Law School Legal Clinics

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ABI Veterans and Servicemembers' Task Force – Current Projects & Future Vision

- ABI Task Force project focused vs. committees
- Bankruptcy Legal Clinics:
  - 30 law schools contacted so far
  - Professor Ishaq Kundawala (kundawala_i@law.mercer.edu), Associate Dean for Academic Affairs, Professor of Law at Mercer University School of Law
  - *Access to Justice – A Roadmap to Creating and Launching Consumer Bankruptcy Experiential Programs in Law Schools,* 40 EMORY BANKR. DEV. J. 411 (2024)

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ABI Vet Task Force – Current Projects (cont)

- Training other legal and financial advisor partners
  - Judge Heston's Extern created 10 Modules of training in various aspects of Veteran financial issues. Very similar to this session. Partners: NACBA; Trustees; NCBJ
  - Partnered with Washington State AG's office and did this training in various neighborhood clinics.
  - ABI Annual Spring Meeting – "Next Generation" program
- Financial Education to the Veteran and Warriors
  - Warrior Scholars Program
  - Staff Judge Advocate CLE seminars
  - CARE

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ABI Vet Task Force – Current Projects (Cont)

- Pro Bono and Outreach: Veterans Village Pop-Up Legal (zoom) clinic
- Regional and Local Veteran Service Fairs and Partners (also called "stand downs") – ex: GA, United Military Care, Inc. and Warrior Alliance
  - www.unitedmilitarycare.org
  - www.thewarrioralliance.org
  - www.wecarevetfair.com
  - Led by Melissa Davey (standing Ch 13 Trustee in Georgia) along with Consumer Attorneys (Metro Atlanta Consumer Bankruptcy Attorneys)
  - Supported about 400 Veterans

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ABI Vet Task Force – Current Projects (Cont)

- American College of Bankruptcy and ABI Vet Task force - Grants available for this work

- Pension and other scam protections awareness
- Entrepreneur empowerment
- ABA LAMP (Legal Assistance for Military Personnel) - Weekly Pro Bono email for active duty members – family law & consumer issues
- Legislative / Government Affairs Subcommittee

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Questions and Answers / Discussion

Website: https://veterans.abi.org

RESOURCES

- ABI Task Force on Veterans' & Servicemembers' Affairs - https://veterans.abi.org
- U.S. Department of Veterans' Affairs - https://www.va.gov
  - ** FINVET ** NEW as of 2024: https://www.mirecc.va.gov/visn19/finvet/
  - Office of General Counsel's Accreditation Search (https://www.va.gov/ogc/apps/accreditation/index.asp)
- Veteran Service Officers (VSOs) - Find A VSO
- Stateside Legal – www.statesidelegal.org
- Military OneSource – www.militaryonesource.mil
- VA Child Care Subsidy Program
- Career Support and Job Training – VETS through the Dept of Labor
- CFPB Financial Resources: https://www.consumerfinance.gov/consumer-tools/educator-tools/servicemembers/
- U.S. Department of Defense, Warrior Care – and helps care givers
  - https://warriorcare.dodlive.mil
  - https://warriorcare.dodlive.mil/benefits/compensation-and-benefits
  - Warrior Care > Care Coordination > National Resource Directory (NRD)

National Resource Directory

National Association of Consumer Bankruptcy Attorneys

THANK YOU

Invitation to Join Us!

Task Force Membership Requests
Email: Kmstanger@nyemaster.com ; Nancy.rapoport@unlv.edu

National Association of Consumer Bankruptcy Attorneys

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VETERANS AND CONSUMER LAW: A Primer for the Practitioner

March 12, 2026

Authors:
Honorable Mary Jo Heston - Washington
LTC (R) Kristina M. Stanger - Nyemaster Goode, P.C., Des Moines, Iowa

IMPORTANT GOALS & TAKE AWAYS

Goals:

- Introduce the audience to the ABI Veteran Task Force. Explain the mission, the history and the current initiatives.
- Provide a legal primer for the consumer practitioner on key issues that relate to Veterans, Servicemembers and families and bankruptcy such as HAVEN Act, SCRA, USERRA updates, the VA's FINVET and more.
- Provide practical resources to the audience for follow up questions and invite participation and support.

Takeaways:

- Identify the mission of the ABI Veteran Task Force.
- Where can you locate resources and referrals to support legal needs that may impact Veterans, Servicemembers and families related to bankruptcy or financial distress issues.
- Explain the HAVEN Act and its importance.
- Identify other key issues and cultural contexts that relate to Veterans, Servicemembers and families.
- Join the efforts.

RESOURCES

ABI Veteran’s Task Force + Warrior Scholars

10 Training Modules

Train-the-Lawyer Guide: Working with Veterans

Module 1 – Military Status and Core Documents

Overview: At the beginning of a 30- to 60-minute advice session confirm three data points: (1) current duty status, (2) discharge character, and (3) any VA disability rating. Active-duty status activates the Servicemembers Civil Relief Act and Military Lending Act. Discharge character governs access to VA health care and compensation. A documented disability rating shows protected VA income that is excluded from the bankruptcy means test under the HAVEN Act. The two core records are the DD-214 (service dates and character of discharge) and the VA Benefits Verification letter listing disability percentage and payment amount.

Why it matters: Later advice on interest-rate caps, default judgments, loan eligibility, or bankruptcy hinges on these facts. Missing active-duty status means overlooking SCRA rights such as the six-percent interest cap. Accepting “veteran” status without a DD-214 may lead to recommending benefits the client cannot receive. Assuming protected VA income for a client with a dishonorable discharge can distort any budget or debt-relief strategy.

Avoid:

- Accepting self-reported status without documents.
- Ignoring Guard or Reserve mobilizations that qualify only when orders are federal Title 10 for 30 days or more.
- Forgetting that VA disability income is excluded under the HAVEN Act Pub. L. 116-52 (HAVEN Act).
- Giving timing advice on lawsuits or collections before reviewing Leave and Earnings Statements or current orders.

Practical steps for advice:

- Ask for the DD-214 or current mobilization orders. If missing, they can retrieve them from VA.gov > My VA > Records.
- Veterans can retrieve military payment history from Ask DFAS. (https://corpweb1.dfas.mil/askDFAS/welcome.action)
- With the client’s consent print an active-duty status certificate from the DoD SCRA site for use with creditors (https://scra.dmdc.osd.mil).

- Review the DD-214 discharge block. If it shows other-than-honorable or bad-conduct, explain that a discharge upgrade may be necessary and refer to a VA-accredited veterans service organization for upgrade counseling (https://www.va.gov/ogc/apps/accreditation).
- Help the client download a Benefits Verification letter showing disability percentage and monthly amount. Explain that 38 U.S.C. § 5301 protects these payments from garnishment and that the HAVEN Act excludes them from means-test income.
- Record branch, service dates, current status, discharge type, and VA rating on the intake sheet for reference in any follow-up.

Key laws and references: 10 U.S.C. § 101(d) (definition of active duty); 50 U.S.C. § 3911(2) (SCRA definition of servicemember); 38 U.S.C. § 5301 (non-assignability of VA benefits); Public Law 116-52 HAVEN Act amending 11 U.S.C. § 101(10A) (https://www.congress.gov/116/plaws/publ52/PLAW-116publ52.pdf); eBenefits portal (https://www.ebenefits.va.gov).

Module 2 – Servicemembers Civil Relief Act (SCRA)

Overview: The SCRA, 50 U.S.C. §§ 3901-4043, offers financial and procedural protections to servicemembers on federal active duty for at least 30 days and, in limited cases, to their dependents (https://www.consumerfinance.gov). The most relevant are:

- A six-percent cap on interest for pre-service loans and credit cards during active service and for twelve months after separation, 50 U.S.C. § 3937 (https://www.consumerfinance.gov).
- A requirement that courts verify military status and appoint counsel before entering a default judgment, 50 U.S.C. § 3931 (https://www.consumerfinance.gov).
- The right to terminate residential and vehicle leases without penalty upon qualifying deployment or permanent change-of-station orders, 50 U.S.C. § 3955 (https://www.consumerfinance.gov).
- A prohibition on nonjudicial foreclosure of pre-service mortgages during service and for one year afterward without a court order, 50 U.S.C. § 3953 (https://uscode.house.gov).

Why it matters: Identifying SCRA applicability lets the attorney show the client low-effort steps that can reduce interest, set aside a default judgment, end an expensive lease, or delay foreclosure. These actions can stabilize finances quickly and may avoid the need for bankruptcy or litigation.

Avoid:

- Assuming every loan qualifies for the six-percent cap; the debt must predate active duty.
- Forgetting that the servicemember must send written notice with orders within 180 days after separation to enforce the rate reduction.
- Treating protections as automatic. Creditors are not obligated to adjust terms until the servicemember asserts rights.
- Overlooking that foreclosure protection applies only to pre-service mortgages.
- Advising that SCRA rights extend indefinitely; the one-year post-service period is critical.

Practical steps for advice:

- Confirm the dates the financial obligation was incurred and the dates of active-duty orders.
- Explain how to write a short interest-rate-reduction request, attaching copies of orders, and to send it by certified mail to each lender. Provide a sample letter if available.

- If facing foreclosure on a pre-service mortgage, advise the client to inform the lender in writing of SCRA rights and to seek immediate assistance from base legal assistance or a housing counselor approved by HUD.

For drafting motions, negotiating with lenders, or representing the client in court, refer to a consumer-law practitioner experienced in SCRA cases.

Key laws and references: 50 U.S.C. §§ 3931, 3937, 3953, 3955; CFPB SCRA guide (https://www.consumerfinance.gov); DoD active-duty status verifier for creditors (https://scra.dmdc.osd.mil).

Module 3 – Military Lending Act (MLA)

Overview: The Military Lending Act, 10 U.S.C. § 987, protects active-duty servicemembers (including Guard or Reserve on federal orders of more than 30 days) and their dependents from high-cost consumer credit. The Department of Defense rule at 32 C.F.R. part 232 sets a 36 percent Military Annual Percentage Rate that includes interest, fees, credit-insurance premiums, and many ancillary costs (https://www.consumerfinance.gov/consumer-tools/educator-tools/servicemembers/military-lending-act-mla/). Covered credit includes most payday loans, vehicle-title loans, refund-anticipation loans, personal installment loans, and credit cards. Lenders must give oral and written MLA disclosures and may not impose mandatory arbitration, require repayment by allotment, or charge prepayment penalties. A loan that violates the Act is void from inception, and the borrower may recover statutory damages of at least five hundred dollars plus costs and attorney fees.

Why it matters: In a short advice session you may discover a client paying more than 36 percent effective interest or bound by an arbitration clause. Informing the client that such a loan is void can stop unnecessary payments and prevent default judgments on an unenforceable debt. Educating the client also discourages future use of predatory credit products.

Avoid:

- Assuming every loan to a servicemember is covered. Mortgages, purchase-money auto loans, and certain secured property loans are exempt.
- Calculating only the stated interest rate. The MAPR includes most fees, so an apparent 29 percent loan might exceed 36 percent when fees are added.
- Overlooking prohibited contract terms such as mandatory arbitration or allotment requirements.
- Advising on enforcement beyond brief counseling. Litigation for damages requires referral.

Practical steps:

- Confirm the client's active-duty status at the time each loan was made using the DoD MLA database (https://mla.dmdc.osd.mil).
- Review the loan agreement. Include fees, credit-insurance charges, and application fees to compute the MAPR. If it exceeds 36 percent or includes a banned term, explain that the contract is void under 10 U.S.C. § 987(f).
- Advise the client to submit a complaint to the CFPB Office of Servicemember Affairs, which monitors MLA compliance (https://www.consumerfinance.gov/complaint).
- If further legal assistance is needed, you can refer to the state attorney general's office for possible enforcement (OMVLS for WA).

Key laws and references: 10 U.S.C. § 987 (statutory text); 32 C.F.R. part 232 (DoD MLA rule); CFPB MLA fact sheet (https://files.consumerfinance.gov/f/documents/cfpb_military-lending-fact-sheet.pdf); DoD MLA covered-borrower database (https://mla.dmdc.osd.mil).

Module 4 – Bankruptcy Income Rules: HAVEN Act and Guard or Reservist Waiver

Overview: The HAVEN Act, Public Law 116-52, excludes VA disability compensation, Dependency and Indemnity Compensation, Combat Related Special Compensation, most medical retirement pay under 10 U.S.C. 1201, and certain survivor benefits from both current monthly income under 11 U.S.C. 101(10A)(B)(ii) and disposable income under 11 U.S.C. 1325(b)(2). Separately, 11 U.S.C. 707(b)(2)(D) waives the Chapter 7 means test for National Guard or Reserve members who served at least ninety days of federal active duty after September 11, 2001, if the petition is filed during service or within five hundred forty days (18 months) after release. Congress most recently extended this waiver to December 19, 2027, in the National Guard and Reservists Debt Relief Extension Act of 2023, Public Law 118-24.

Why it matters: In a brief advice session you can quickly determine whether a disabled veteran need not complete the means test or can pass it after removing protected income. This may allow a straightforward Chapter 7 instead of a Chapter 13 repayment plan.

Avoid:

- Counting VA or DoD disability pay as income on Form 122A or 122C.
- Forgetting that disability retirement must be split into the ordinary pension portion and the disability enhancement; only the enhancement is excluded.
- Missing the 18-month filing window for the Guard or Reserve waiver.
- Failing to document excluded amounts with award letters or DFAS statements.

Practical steps:

- Ask whether the client receives VA compensation, military disability retirement, Combat Related Special Compensation, or Dependency and Indemnity Compensation.
- Review the VA award letter or DFAS statement while meeting with the client. Mark any disability payments as HAVEN-excluded for future use on bankruptcy forms.
- If the client is Guard or Reserve, confirm dates of the most recent federal activation. Track the time since release to see if the filing will fall inside the 18-month waiver period.
- You may have to refer the client to a bankruptcy attorney, noting a possible HAVEN exclusion and, if applicable, the Reserve/Guard waiver will apply.

Key laws and references: Public Law 116-52 HAVEN Act (https://www.congress.gov/116/plaws/publ52/PLAW-116publ52.pdf); 11 U.S.C. § 101(10A)(B)(ii); 11 U.S.C. § 707(b)(2)(D); Department of Justice U.S. Trustee Program HAVEN guidance and FAQs (https://www.justice.gov/ust).

Module 5 – Exemptions and Venue

Overview: Under 11 U.S.C. § 522(b)(3)(A) the applicable state exemptions are those of the state where the debtor was domiciled for the seven hundred thirty days before filing. If the debtor lived in more than one state during that period the controlling state is the one in which the debtor was domiciled for the majority of the one hundred eighty days preceding the seven hundred thirty-day window. Servicemembers often keep legal domicile in a home-of-record state even while stationed elsewhere, and under 50 U.S.C. § 4025 a change of station does not alter domicile for tax or voting purposes. Venue may be proper where the debtor resides, where the debtor is domiciled, or where principal assets have been located for the greater part of the past one hundred eighty days, 28 U.S.C. § 1408. Many states grant special exemptions to military or disabled veterans, for example full protection of VA benefits by statute similar to 38 U.S.C. § 5301, or enhanced homestead allowances for one hundred percent disabled veterans.

Why it matters: Selecting the best venue and exemption scheme can mean preserving a homestead, a modified vehicle, or protected VA funds. Filing in the wrong district or claiming the wrong exemptions risks loss of property and unnecessary litigation. For clients overseas or on deployment convenience of telephone appearance may also drive venue choice.

Avoid:

- Defaulting to current residence without confirming legal domicile.
- Forgetting the 730/180-day look-back and the resident-only limitation in some exemption statutes.
- Missing special veteran exemptions (for example, statutes that fully exempt VA benefits or add a disabled-veteran homestead bonus).
- Ignoring local rules on telephonic appearances when a chosen venue is far from the client.

Practical steps:

- Determine the veteran's domicile. Ask about driver's license, voter registration, state income taxes, and intent to return.
- Create a simple timeline of the client's locations for the past two years; apply the 730-day rule to see which state's exemptions control.
- Compare that state's exemptions with the federal set if the state permits an election. Note any special protections for VA benefits or military pensions.
- Remind the client that VA disability and survivor benefits are protected from creditors by federal law and can be claimed as exempt even if state law is silent, citing 38 U.S.C. § 5301.
- If the preferred exemption set is tied to domicile in a distant state discuss practicality of filing there.

- For complex multi-state fact patterns or homestead questions refer the client to a specialist in the relevant jurisdictions.

Key laws and references: 11 U.S.C. § 522(b)(3)(A) (730/180-day rule); 11 U.S.C. § 522(d) (federal exemptions, including § 522(d)(10)(A)–(B) for VA and Social Security benefits); 28 U.S.C. § 1408 (venue); 38 U.S.C. § 5301 (federal protection of VA benefits); 50 U.S.C. § 4025 (domicile preserved despite military orders; formerly § 571); example state provisions: Texas Prop. Code § 42.0022 (full VA-benefit exemption); Fla. Const. art. X § 4 (disabled-veteran homestead boost).

Module 6 – VA and DFAS Overpayments

Overview: Veterans Affairs or the Defense Finance and Accounting Service may demand repayment when benefits or military pay were issued in error. Typical triggers include VA disability compensation overlapping with drill pay, GI Bill housing stipends after school withdrawal, or separation pay miscalculations. A collection letter states the overpayment amount and warns of offset from future benefits or tax refunds. These debts are unsecured and, unless procured by fraud, dischargeable in bankruptcy. VA offers an administrative remedy: a waiver or compromise under 38 U.S.C. § 5302 and 38 C.F.R. §§ 1.962-1.965 (https://www.govinfo.gov). The veteran must submit a waiver request within 180 days of notice. DFAS has parallel waiver or remission procedures under 10 U.S.C. § 2774, each service using its own form.

Why it matters: In a short clinic meeting the attorney can identify whether the client is still inside the 180-day window to request a waiver and can explain the basic steps. Stopping or reducing offsets while a waiver is pending can preserve critical income. When the deadline has passed or the waiver is denied the client may consider bankruptcy; knowing the debt is usually dischargeable helps frame next steps.

Avoid:

- Missing the waiver deadline; after 180 days VA frequently denies on timeliness grounds.
- Assuming all overpayments are innocent; if VA alleges fraud or misrepresentation waiver is barred and the debt may be nondischargeable under 11 U.S.C. § 523(a)(2).
- Overlooking that offsets may continue unless the debtor requests hardship suspension.

Practical steps:

- Determine the source and date of the overpayment notice. If within 180 days advise the client to complete VA Form 5655 and a short waiver request explaining lack of fault and financial hardship; suggest certified mail submission. Provide the VA Debt Management Center address (P. O. Box 11930, St. Paul, MN 55111).
- If the notice is older than 180 days advise the client that an untimely waiver is unlikely and may need to consider another relief option.
- Explain that the automatic stay in bankruptcy usually halts collection. However, the agency may claim ongoing recoupment is permitted; recommend the client consult a bankruptcy attorney to decide strategy.
- For DFAS debts direct active-duty or recently separated clients to the finance or legal office on base for the correct service-specific waiver or remission form.

- If the client cannot manage the waiver packet within the brief session give them a referral to a veterans service organization accredited for debt-waiver assistance (https://www.va.gov/ogc/apps/accreditation).

Key laws and references: 38 U.S.C. § 5302; 38 C.F.R. §§ 1.962-1.965 (waiver standards & 180-day rule); 38 C.F.R. § 1.912a (suspension/reduction pending waiver); VA Form 5655 Financial Status Report; VA Debt Management Center (800-827-0648, vcadmc.ops@va.gov, ask.va.gov); DD Form 2789 (DFAS pay waiver); 10 U.S.C. § 2774 (waiver) & §§ 4837/6161/9837 (service-specific remission); Fed. R. Bankr. P. 2002(j) (government-creditor notice).

Module 7 – Security Clearance Impact

Overview: Some veteran debtors still work for defense contractors or in federal positions that require a national-security clearance. Under Security Executive Agent Directive 3 (SEAD-3), both bankruptcy and debt delinquency over 120 days are required to be reported. However, taking responsible action (like a good faith bankruptcy filing) is an accepted mitigating factor.

Why it matters: A veteran may hesitate to pursue bankruptcy out of fear it will cost a clearance-dependent job. A concise explanation that (1) unresolved debt is the bigger clearance problem and (2) bankruptcy is usually viewed as a favorable resolution lets the veteran make an informed decision and prevents unnecessary delay.

Avoid:

- Repeating the misconception that bankruptcy automatically revokes a clearance.
- Neglecting to advise clients that they must truthfully report major financial events, including bankruptcy, on the SF-86 and during periodic reinvestigations. Failure to report can itself be disqualifying under Guideline E (personal conduct).
- Ignoring that large unresolved debts are more damaging than resolved debts.

Practical steps for advice

- Ask early whether the client holds or needs a clearance.
- Summarize SEAD-3: bankruptcy and over 120 days of debt delinquency requires report.
- Emphasize that bankruptcy undertaken in good faith is a recognized mitigating factor and is often better for clearance than continuing default.
- Remind the client to update the SF-86 or self-report significant financial changes through their security manager if required.
- Suggest assembling documentation such as credit-counseling certificates, proof of payments, or bankruptcy discharge orders to show investigators evidence of remediation.
- For complex clearance questions or pending revocation proceedings refer to a security-clearance attorney or the base legal office's ethics counselor.

Key laws and references: Security Executive Agent Directive 3; 18 U.S.C. § 1001 (false-statement liability on clearance forms); 11 U.S.C. § 525 (no blanket license discrimination for bankruptcy).

Module 8 – Housing and Foreclosure Protections

Overview: Servicemembers receive special mortgage and tenancy protections. For any mortgage that originated before active duty a creditor cannot complete a nonjudicial foreclosure during service or for twelve months after service without a court order, 50 U.S.C. § 3953 (https://uscode.house.gov). VA-guaranteed loan servicers must attempt every reasonable alternative to foreclosure including special forbearance, repayment plans, and loan modification under 38 C.F.R. § 36.4350 (https://www.ecfr.gov). The Department of Veterans Affairs assigns loan technicians to borrowers sixty-one days delinquent; the borrower or adviser can call 877-827-3702 for help (https://www.va.gov/housing-assistance/home-loans/troubleshoot-payments). Servicemembers may terminate residential or vehicle leases after receiving qualifying deployment or PCS orders under 50 U.S.C. § 3955.

Why it matters: In a single advice session attorneys can identify the relevant protection, tell the client how to invoke it, and direct them to the proper VA or housing-counseling channel. Early intervention may stop an impending sale, gain time for a workout, or let a tenant exit an unaffordable lease.

Avoid:

- Assuming SCRA foreclosure protection applies to mortgages taken while on active duty; it covers only pre-service obligations.
- Overlooking the requirement that the servicemember or counsel must raise SCRA rights; lenders do not pause foreclosures automatically.
- Allowing the client to believe forbearance eliminates missed payments; unpaid amounts must still be addressed in a repayment or modification agreement.
- Drafting court motions or negotiating loan modifications in the clinic; these exceed advice scope and require referral.

Practical steps for advice:

- Identify the mortgage type. Ask if the client paid a VA funding fee or has a Certificate of Eligibility; if so, it is likely a VA loan.
- If the loan is VA-guaranteed, direct the client to call the VA loan technician line at 877-827-3702 to discuss forbearance or modification (https://www.va.gov/housing-assistance/home-loans/troubleshoot-payments).
- If the client is on active duty or recently separated within twelve months and the mortgage predates service, explain the SCRA foreclosure protection. Advise the client to notify the lender's attorney in writing and, if foreclosure is pending, seek help from a JAG office or housing lawyer to request a stay.
- For renters with deployment or PCS orders, outline the SCRA lease-termination process: written notice plus copy of orders delivered to the landlord; termination is effective thirty days after the next rent due date.

- Provide links to CFPB servicemember mortgage resources for further reading (https://www.consumerfinance.gov/servicemembers/).
- Refer clients who need formal representation to a HUD-approved housing counselor, Legal Aid housing unit, or a foreclosure-defense attorney experienced in SCRA and VA loans.

Key laws and references: 50 U.S.C. § 3953 (foreclosure stay); 50 U.S.C. § 3955 (lease termination); 38 C.F.R. § 36.4350 (VA servicer duties); VA loan technician assistance (877-827-3702); CFPB servicemember mortgage page (https://www.consumerfinance.gov/servicemembers).

Module 9 – Enforcement and Complaint Channels

Overview: When a servicemember faces predatory lending, debt-collection abuse, or SCRA and MLA violations, federal and state enforcement agencies can intervene after an advice session. The Consumer Financial Protection Bureau's Office of Servicemember Affairs was created under 12 U.S.C. § 5493(e) to track military consumer complaints and coordinate enforcement (https://www.consumerfinance.gov/servicemembers). The CFPB accepts online complaints that companies must answer within fifteen days (https://www.consumerfinance.gov/complaint). State attorneys general often operate military-consumer units that enforce unfair-practice statutes and may sue violators. The Department of Justice enforces the SCRA in civil court under 50 U.S.C. § 4041 (https://www.justice.gov/crt).

Why it matters: In a brief clinic you will rarely litigate or draft long demand letters. Instead, you can show the client how to document wrongdoing and route it to the regulator that can compel a response, obtain refunds, or impose penalties. Complaints also help regulators spot patterns that harm the larger military community.

Avoid
• Trying to negotiate a complex settlement during the short session rather than guiding the client to the proper enforcement channel.
• Assuming JAG attorneys will sue private businesses; they generally cannot appear in civilian court for individual claims.
• Filing a complaint without the client's informed consent to share facts.
• Omitting key documents when submitting the complaint; regulators need contracts, billing statements, or letters showing the violation.

Practical steps for advice

- Identify the issue. MLA high-cost loan, SCRA foreclosure, credit-report error, or abusive debt collection each has a matching complaint path.
- Walk the client through the CFPB complaint portal. Select the product, check the "servicemember" box, upload supporting documents, and note the confirmation number for follow-up (https://www.consumerfinance.gov/complaint).
- For systemic or egregious SCRA violations direct the client to email DOJ's Servicemembers Civil Relief Act enforcement team or to ask a base legal-assistance attorney to forward the matter (https://www.justice.gov/crt).
- Provide the website of the state attorney general's consumer division that handles military complaints. Use the NAAG directory to locate the right office (https://www.naag.org).
- Advise the client to keep originals of all contracts, correspondence, and proof of mailing.

- If the client needs individual representation in court refer to a consumer-law attorney experienced in SCRA or MLA litigation or to a legal-aid organization with that specialty.

Key laws and references: 12 U.S.C. § 5493(e) establishing the CFPB Office of Servicemember Affairs; CFPB complaint portal (https://www.consumerfinance.gov/complaint); 50 U.S.C. § 4041 (DOJ SCRA enforcement authority); DOJ Servicemember and Veterans Initiative (https://www.justice.gov/crt); NAAG military and veterans consumer-protection directory (https://www.naag.org).

Module 10 – Practical Tips for Working with Veteran Clients

Overview: Building trust and rapport is essential. According to Equal Justice Works, veterans appreciate authenticity and respect. Be clear about your role, avoid overidentifying, and understand their experiences https://www.equaljusticeworks.org/news/7-things-every-public-interest-lawyer-should-know-about-working-with-veterans/

Why it matters: Effective representation depends on establishing credibility and empathy. Veterans often encounter trauma, loss of identity, and skepticism toward civilian institutions. Trust can be earned through respectful engagement and genuine communication.

Avoid:

- Overgeneralizing about military service.
- Pretending to “speak military.”
- Minimizing or ignoring past trauma or unique culture.
- Assuming their identity is fully defined by military service.

Practical steps for advice:

- Be transparent about your background and expertise. Admitting what you don’t know builds trust https://www.equaljusticeworks.org/news/7-things-every-public-interest-lawyer-should-know-about-working-with-veterans/.
- Learn basic military terminology and structure, but don’t pretend insider status.
- Let veterans lead in telling their story; listen actively and respectfully.
- Use clear and direct communication; avoid jargon.
- Acknowledge and normalize potential distrust of legal systems.
- Ask open questions (e.g. “Tell me about your service?”) and pause for processing or emotions.
- Provide written summaries and follow-up to reinforce understanding.
- Offer referrals to veteran-specific supports such as VSOs or mental health resources.

Here are some military basics lawyers should know when working with veterans:

- **Branches vs roles**: Soldiers serve in the Army; Sailors in the Navy or Coast Guard; Airmen in the Air Force; Marines in the Marine Corps
- **Enlisted vs officer**: Enlisted (E-1 to E-10) vs. Warrant Officer (W-1 to W-5), and Commissioned Officer (O-1 to O-10). Enlisted personnel can join with a high school diploma/GED and perform technical roles. Warrant Officers were enlisted members who had additional training to “warrant” commission and are subject-matter experts in their field (no degree required). Commissioned Officers require

a bachelor's degree and only hold leadership and command roles. Although Commissioned Officers always outrank Warrant Officers, who always outrank Enlisted members, the military is a very diverse organization and there should never be assumptions on skill, education, or work ethic. For instance, a 23-year-old O-1 may *technically* outrank a 55-year-old E-9, but military members are still people who recognize differences in experience and capability.

- **Not all veterans self-identify as veterans**: Some may not recognize benefits or protections if they don't label themselves as such
- **Avoid personal trauma questions**: Never ask about combat experiences, mental health issues, or traumatic events
- **Official terminology matters**: Use "veteran," "servicemember," "active duty," "reserve," or "Guard" with precision. Not all veterans fall under the umbrella of active-duty veteran.
- **Branch-specific acronyms**: Common terms include MOS (Army), AFSC (Air Force), rating (Navy), NEC (Coast Guard). Those all mean areas of specialty or their "job."
- **Uniform and ID relevance**: Veteran IDs list discharge status and branch, but you *cannot* scan or make copies of DoD IDs.
- **Peak commitment vs career**: Enlisted personnel usually have term-limited, renewable contracts; Officers serve by commission and leave the service any time after fulfilling their obligation (not automatic).
- **Domicile vs residence**: Veterans may retain home-of-record for legal purposes even when stationed elsewhere. Servicemembers who enter active duty will *usually* maintain their domicile in the place they entered service for the entire length of their active service time. (e.g., An enlisted member who signed an initial contract in FL is stationed at bases across VA, WA, and NY throughout their career. However, they maintain their permanent residence or domicile as FL throughout that entire period).

Key references: Equal Justice Works, Five Things Every Public Interest Lawyer Should Know about Working with Veterans https://www.equaljusticeworks.org/news/7-things-every-public-interest-lawyer-should-know-about-working-with-veterans/
A Veteran's Perspective: 5 Things to Know When Working with Veteran Clients equaljusticeworks.org.

References

10 U.S.C. § 101(d) (definition of active duty).

50 U.S.C. § 3911(2) (definition of servicemember for SCRA).

38 U.S.C. § 5301 (federal protection of VA benefits from assignment, levy, or seizure).

Public Law 116-52, Honoring American Veterans in Extreme Need Act of 2019 (HAVEN Act) (https://www.congress.gov/116/plaws/publ52/PLAW-116publ52.pdf).

Department of Veterans Affairs and Department of Defense, eBenefits portal for service records and award letters (https://www.ebenefits.va.gov).

Defense Finance and Accounting Service, MyPay system for Leave and Earnings Statements (https://mypay.dfas.mil).

Department of Defense SCRA active-duty status certificate site (https://scra.dmdc.osd.mil).

Servicemembers Civil Relief Act, 50 U.S.C. §§ 3931, 3937, 3953, 3955 (https://uscode.house.gov).

Consumer Financial Protection Bureau, "Servicemembers Civil Relief Act" resources (https://www.consumerfinance.gov).

Military Lending Act, 10 U.S.C. § 987.

Department of Defense, "Limitations on Terms of Consumer Credit Extended to Service Members and Dependents," 32 C.F.R. part 232.

CFPB, "Military Lending Act – Key Facts" fact sheet (https://files.consumerfinance.gov/f/documents/cfpb_military-lending-fact-sheet.pdf).

DoD MLA covered-borrower database (https://mla.dmdc.osd.mil).

11 U.S.C. § 101(10A)(B)(ii) (exclusion of VA and DoD disability income).

11 U.S.C. § 707(b)(2)(D) (National Guard and Reservist means-test waiver).

United States Trustee Program, HAVEN Act guidance and FAQs (https://www.justice.gov/ust).

28 U.S.C. § 1408 (bankruptcy venue statute).

11 U.S.C. § 522(b)(3)(A) and § 522(b)(3)(C) (state exemption choice and retirement funds).

50 U.S.C. § 4025 (domicile preserved despite military orders).

Texas Property Code § 42.0022 (state example fully exempting VA benefits).

38 U.S.C. § 5302 and 38 C.F.R. §§ 1.962-1.965 (VA overpayment waiver standards) (https://www.govinfo.gov).

VA Form 5655, Financial Status Report (https://www.va.gov/find-forms/about-form-5655).

10 U.S.C. § 2774 (authority for DFAS to waive erroneous pay debts).

United States Trustee Program, Region 7 memorandum on excusing active-duty debtors from § 341 meetings, 7 April 2003 (https://www.justice.gov/ust).

50 U.S.C. § 3953 (SCRA protection against foreclosure of pre-service mortgage).

50 U.S.C. § 3955 (SCRA lease-termination right).

38 C.F.R. § 36.4350 (VA-guaranteed loan servicer loss-mitigation requirements).

Department of Veterans Affairs, "Troubleshoot VA Home Loan Payments or Foreclosure" page and loan-technician hotline 877-827-3702 (https://www.va.gov/housing-assistance/home-loans/troubleshoot-payments).

CFPB, Servicemember mortgage resources (https://www.consumerfinance.gov/servicemembers).

12 U.S.C. § 5493(e) (statutory authority for CFPB Office of Servicemember Affairs).

CFPB consumer-complaint portal (https://www.consumerfinance.gov/complaint).

50 U.S.C. § 4041 (Department of Justice civil enforcement authority for the SCRA).

National Association of Attorneys General, military and veterans consumer-protection directory (https://www.naag.org).