

June 4, 2019

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Senator Elizabeth Warren
2400 JFK Federal Building
15 New Sudbury Street
Boston, MA 02203

Re: HAVEN Act (S. 679)

Dear Senator Warren,

I write as President of the Boston Bar Association (BBA), a volunteer organization of nearly 13,000 members drawn from private practice, corporations, government agencies, legal-aid organizations, the courts, and law schools. Our mission is to advance the highest standards of excellence for the legal profession, facilitate access to justice, serve the community at large and promote diversity and inclusion. I am writing to respectfully request your support for the Honoring American Veterans in Extreme Need Act of 2019 (HAVEN Act), S. 679, as introduced by Sen. Baldwin.

This bill aims to address an inexplicable loophole in current bankruptcy law that excludes Social Security disability benefits, but not veterans' disability benefits, from the calculation of disposable income when a debtor files for bankruptcy. Because of this disparate treatment, disability benefits received through the Department of Veterans Affairs (VA) and the Department of Defense (DoD) may be accessible by creditors, unlike similar benefits that happen to be administered through the Social Security Administration.

It is unclear why this oversight occurred when significant Bankruptcy Code reforms were last enacted in 2005. Prior to that, bankruptcy courts had discretion when deciding whether to count disability-related income from the VA/DoD as "current monthly income".

The Bankruptcy Code, as currently written, provides that if a debtor seeks protection under a Chapter 7 liquidation, that debtor must pass a "means test", such that if the debtor earns too much "monthly income" in comparison with expenses, they cannot proceed via Chapter 7 but must instead use a more-protracted Chapter 13 proceeding, which involves pledging a percentage of future income, usually for three or five years, to pay creditors.

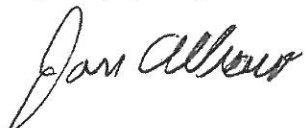
Because of the disparate treatment of disability benefits under the current means test, more disabled veterans will be pushed into Chapter 13, and their future veterans' disability benefits will be applied to pay creditors. Recipients of Social Security disability payments, however, will not suffer the same consequences.

The proposed amendment would rectify this imbalance by excluding veterans' disability benefits from that calculation of monthly income.

The HAVEN Act has been identified as a priority by our Bankruptcy Law Section, reviewed by our Active Duty Military & Veterans Forum, and formally endorsed by our board. We ask for your help in securing its enactment, to ensure equal treatment of disabled veterans in bankruptcy proceedings.

Thank you for your careful consideration of this issue.

Very truly yours,

A handwritten signature in black ink that reads "Jonathan Albano". The signature is written in a cursive style with a large, sweeping initial "J".

Jonathan Albano
President

cc: Senator Tammy Baldwin
Senator John Cornyn