

Chairman Cicilline, Ranking Member Sensenbrenner, and other distinguished Members of the Subcommittee, I'd like to thank you for the opportunity to speak to you today about some of the military-related bills you are considering in this meeting, most notably the HAVEN Act, H.R. 2938. The HAVEN Act, otherwise known as the Honoring Veterans in Extreme Need Act, was recently introduced by Representatives McBath and Steube of the Judiciary Committee, and I thank them for that and I also thank all of you for taking up this bill so quickly.

Let me start with a little about me and my qualifications to speak to you today. I will say up front that I am not a bankruptcy expert! Also, unlike many people in this room, I am not a lawyer. However, I do have a long history of advocating for the military on consumer financial matters, a history that grew out of my lifetime experience as a military family member. I am the daughter and wife of career Army officers, and also the mother of an Afghanistan veteran. As I lived a life of constant moves and, more recently, frequent combat deployments, I saw the impact those events had on the finances of military personnel and their families, and was moved to do something about it.

During the first year of the Iraq War, in 2003, my husband was Commanding General of the 101st Airborne Division (Air Assault) whose 20,000 Soldiers went to war from their home base of Fort Campbell, Kentucky. I saw the families' financial challenges first-hand during that year of deployment – not just those of the active-duty troops, but also those of the Guard and Reserve families whose Soldiers deployed from Fort Campbell, and who came to our Family Assistance Center for help. I did what I could during that year to help raise awareness about their issues with the many legislators, both Federal and state, who came to visit the Fort Campbell families during that year. I also worked with local business leaders, to include the CEO of the area's Better Business Bureau, and that informal advocacy led to my being offered in 2004 the job of running a national military outreach effort for the Council of Better Business Bureaus: BBB Military Line®.¹

I did that job for 6 years, and it was quite an education for me on the fact that many scammers specifically target the military for their steady paycheck, which is often coupled with youth and financial inexperience. And that is a continuing trend, as a BBB Scam Tracker Annual Risk Report for 2017 found that servicemembers, veterans and their families are more likely to be targeted for scams, and lose an average of 27% more money than other consumer to scams.² At the BBB we developed a number of financial readiness workshops to provide in-person financial education for servicemembers and their families concerning a number of topics such as day-to-day financial management, scams and planning for retirement. BBBs across the United States taught many sessions of the free workshops, and continue to do so to this day.

But, while I feel that education is an important part of financial well-being, the sad truth is that in many cases servicemembers' finances are impacted by events they cannot control: deployments, shoddy loan servicing, inaccurate credit reporting, and the flouting of important consumer financial laws. So when I was offered the opportunity in 2011 to head up the Office of Servicemember Affairs at the newly

¹ <https://www.bbbmarketplacetrust.org/military-and-veterans-initiative>

² <https://www.bbb.org/globalassets/local-bbbs/council-113/media/scam-tracker/risk-report/bbbcamtrackerannualreport-final-2017.pdf>

formed Consumer Financial Protection Bureau³, I jumped at the chance. I knew that the Bureau had the power to enforce approximately 20 consumer financial laws, and to me that was a vital part of protecting military families' hard-earned money. I ran that office for 6 years, and I'm proud to say in that time we saw over \$120 million returned to servicemembers, veterans and their families from financial service providers who broke the law in their dealings with them. We were also able to shine a spotlight on shoddy loan servicing and, through the use of our public complaint database, motivate companies to put more emphasis on customer service than they had ever done before.

The military bankruptcy bill that you're looking at in which I take a particular interest is, of course, the HAVEN Act. I first heard about the issue it addresses when I was approached last year by Ted Gavin, then-President of the American Bankruptcy Institute⁴, who asked me to join a Task Force on Veterans & Servicemembers that he was setting up. The ABI, as you may know, is a non-profit association of bankruptcy professionals, including attorneys, auctioneers, bankers, judges, lenders, professors, turnaround specialists, accountants and others – and I should note that you have another past president of the ABI testifying today: Bob Keach. As Mr. Gavin related it to me, one of the most immediate missions of the task force was to foster legislation that would correct what they saw as a glaring error in the bankruptcy code that was harming disabled veterans. And he hoped that my work on consumer financial matters impacting servicemembers and veterans would provide the task force with insights that might be helpful, both for their legislative and educational efforts.

I must confess that I had no particular knowledge of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA)⁵ or its specific provisions, but I was shocked to discover that there was language in the code that was effectively denying disabled veterans the protections it provided to all other disabled Americans. To give you my layman's summary, after BAPCPA was signed into law, bankruptcy judges no longer were permitted to decide what would constitute "disposable income" in a debtor's case. Instead they had to adhere to a broad definition of "current monthly income" that included virtually all income the debtor received. There were only three sources of income excluded from "current monthly income": (1) benefits received under the Social Security Act; (2) payments to victims of war crimes; and (3) payments to victims of terrorism.⁶

That first item, "benefits received under the Social Security Act," is the problem. Disabled American civilians receive disability benefits from the Social Security Administration, but disabled servicemembers and veterans do not. They get their disability benefits from the Veterans Administration or, in some cases, from the Department of Defense. So, by using specific language referencing the Social Security Act, Congress effectively denied those who had become disabled in the service of their country the rights given to other disabled Americans who did not serve. To paint a picture, if you compare two people who are both receiving Federal disability benefits – one a civilian who was hurt in a car wreck and gets Social Security disability benefits, the other a veteran who receives VA disability benefits for a similar injury sustained in an IED attack in Iraq – only the civilian gets to exclude his disability benefits from "current monthly income" calculations in bankruptcy. And that is obviously just not right.

³ <https://www.consumerfinance.gov/practitioner-resources/servicemembers/>

⁴ <https://www.abi.org/about-us>

⁵ <https://www.congress.gov/109/plaws/publ8/PLAW-109publ8.pdf>

⁶ 11 U.S.C. Section 101(10A)

I cannot imagine that anyone in Congress who worked on the bankruptcy code in 2005 specifically intended to slam the door in the face of veterans in this way, forcing their disability pensions to be pledged to creditors, and denying them the fresh start” that the Bankruptcy Code makes available to every US citizen.⁷ But that is the effect that the BAPCPA language has had. With their disability pensions counted as “current monthly income,” veterans may be told that they fail the bankruptcy “means test” and make too much money to qualify for Chapter 7 bankruptcy, which would allow for a quick disposal of their assets and an immediate fresh start thereafter. Instead, they must file for Chapter 13 bankruptcy, which requires a three-to-five-year payment plan that they have to fund with the bulk of their current monthly income – including their military disability pension. Certainly it is my sense that Congress never intended that a military disability benefit should go into the pockets of creditors, but rather should go to support the daily needs of the disabled veteran. But what appears to be a simple oversight from 2005 has led to a dramatic and inequitable outcome that systemically discriminates against our country’s disabled veterans.

So what is the scope of this problem? It’s hard to find military-specific data on bankruptcies because filers are not required to identify veteran status, but there are some indicators that veterans are over-represented in the bankruptcy population. A study⁸ by Jonathan Fisher found that approximately 125,000 veterans filed for bankruptcy in 2017. And he stated that while veterans comprise 10.3 percent of the national population, they comprise 14.7 percent of chapter 7 filers and 15.0 percent of chapter 13 filers. Fisher thinks that veteran’s over-representation in bankruptcy could potentially be explained by lower earnings, higher debt, and lower net worth. And he states something very pertinent to this hearing, which is that “25-26 percent of bankruptcy filers report some kind of disability, which is more than 10 percentage points higher than the national average.”⁹

I must commend the bankruptcy attorneys who first raised awareness about this disparity in the bankruptcy code, after seeing at least five bankruptcy court rulings against disabled veterans on this issue¹⁰. In some cases the judges specifically noted that the bankruptcy code left them with no discretion to rule in favor of the disabled veteran. The bankruptcy professionals – led by the tireless efforts of Jay Bender of Birmingham, Alabama – have dedicated significant time and effort to trying to right this wrong. There is no financial benefit to them in doing so – by my observation they are doing this for the best of motives.

I’d also like to thank the Congressional staff in both the Senate and the House who worked on the HAVEN Act, and crafted language that would fix the disparity in the statute. It’s certainly my hope that every single member of Congress will see the logic of a speedy passage of this law. There are veterans anxiously waiting to see that outcome. The spouse of one recently emailed a colleague: “We...had to file

⁷ Of note, under Federal law and most states’ law, these disability payments are exempt from the reach of creditors outside of bankruptcy. 38 U.S.C. § 5301(a)(1) generally prohibits garnishment of VA disability benefits. Because their disability payments are protected outside of bankruptcy, some veterans have been coached to suffer through a foreclosure or other creditor harassment and avoid a bankruptcy filing so they may protect their disability benefits.

⁸ <https://www2.census.gov/ces/wp/2017/CES-WP-17-54.pdf>

⁹ Id.

¹⁰ <https://www.bradley.com/-/media/files/insights/publications/2018/11/defending-our-veterans.pdf?la=en>

Ch. 13... in early March and were shocked to find out that his Veterans Disability would be subject to the means test and used to pay back creditors....We have set every alert, on every website, in order to get updates on [the HAVEN Act] as it moves along....This will not only help us, but the many men and women that fight for our country and live the rest of their lives re-adjusting to life outside the military.”

Before I close, let me mention another issue that I first learned about during my time at the BBB: the fact that, for many National Guard and Reserve members who are small business owners, combat deployment, while a source of extra pay and allowances, can have a catastrophic impact on their civilian small business back at home. Without the ability to do the work or directly supervise day-to-day operations, many have seen their businesses languish and ended up in the position of having no option but to shut down and declare bankruptcy when they got home. But at that point they ran afoul of the bankruptcy “means test,” which calculated their income over a several-year period and included all their military income in that calculation. With the inclusion of deployment’s special pay and allowances, even though the servicemember was no longer eligible for nor receiving them when filing for bankruptcy, the servicemember’s income was often declared to be too high for bankruptcy eligibility, denying them the ability to make a fresh start.

Congress fixed that issue with the National Guard and Reservists Debt Relief Act of 2008¹¹, providing exemptions from the means test for certain qualifying Guard and Reserve members. In 2015, when those protections were due to expire, they were extended until December of 2019¹². Today this subcommittee is looking at a bill to extend the protections once again, for another 4 years, and I’d like to express my support for that effort, as the Reserve Component continues to be an operational force around the world. Our citizen Soldiers who leave their civilian jobs to put on the uniform and serve our country should not be financially penalized for doing so.

To close, I’d like to thank the subcommittee for considering two important bills today designed to protect in bankruptcy those who have served our country. Ideally, no one should need to declare bankruptcy, but the truth is that it happens, and it happens at a higher rate for veterans than for the general population. Their financial situation is not improved by the fact that many of them leave the service with disabilities that make it difficult to earn a living wage, and may limit the wage-earning capabilities of their spouse, who serves as a caregiver for them. Given the recent high levels of veteran suicide and mental health issues, no veteran should face the added stress of pledging their disability benefits to creditors or suffering under a cloud of financial distress outside of bankruptcy. It surely is the right thing to do to eliminate roadblocks that make it harder for them to discharge their debts and get a fresh start, and I commend those who realized that and set these bills in motion.

Thank you.

¹¹ <https://www.congress.gov/110/plaws/publ438/PLAW-110publ438.pdf>

¹² <https://www.govinfo.gov/content/pkg/BILLS-114hr4246enr/pdf/BILLS-114hr4246enr.pdf>