

**Amends 11 U.S.C. §
101(10A) "Current
Monthly Income"**

- Strikes and replaces prior subparagraph (B)
- Divides prior text into clauses and subclauses
- Adds fourth category that is excluded from CMI



Kristina
Stanger

SEC. 2. DEFINITION OF CURRENT MONTHLY INCOME.

Section 101(10A) of title 11, United States Code, is amended by striking subparagraph (B) and inserting the following:

"(B)(i) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor's spouse), on a regular basis for the household expenses of the debtor or the debtor's dependents (and in a joint case the debtor's spouse if not otherwise a dependent); and

"(ii) excludes—

"(I) benefits received under the Social Security Act (42 U.S.C. 301 et seq.);

"(II) payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes;

"(III) payments to victims of international terrorism or domestic terrorism, as those terms are defined in section 2331 of title 18, on account of their status as victims of such terrorism; and

"(IV) any monthly compensation, pension, pay, annuity, or allowance paid under title 10, 37, or 38 in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services, except that any retired pay excluded under this subclause shall include retired pay paid under chapter 61 of title 10 only to the extent that such retired pay exceeds the amount of retired pay to which the debtor would otherwise be entitled if retired under any provision of title 10 other than chapter 61 of that title."

HAVEN Act: New CMI Exclusion Text

"Current Monthly Income" now "excludes":

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.

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The payment source and basis are key – not an individual’s status such as “veteran.”

Title 10 Armed Forces

Title 37 Pay and Allowances of the Uniformed Services

Title 38 Veterans’ Benefits

See Pub. L. No. 116-52 (to be codified at 11 U.S.C. § 101(10A)(B)(ii)(IV)).

HAVEN Act:
Application

Payment Sources

- Department of Defense (DOD) pays under Titles 10 and 37
- Department of Veterans Affairs (VA) pays under Title 38

Payment Type Terminology

- DOD and VA use confusingly similar terminology for different payment types.
- Informal names for payment types can further complicate matters.

HAVEN Act: Application

Examples of Excludable Payment Types

VA Disability Compensation

- Paid monthly under Title 38 to veterans who have a service-connected disability
- Also known as "Service-Connected Disability Compensation" and "Veterans Compensation"
- Payment amount varies depending upon disability rating (10% to 100%) and whether veteran has "dependents"

VA Dependency and Indemnity Compensation (DIC)

- Paid monthly under Title 38 to eligible survivors after a servicemember's in-service or service-connected death or a veteran's death due to a service-connected disability (or circumstances that are equated as such)

Additional examples are provided on a chart that is available at veterans.abi.org.

HAVEN Act: Application

Examples of Potentially Excludable Payment Types

Hostile Fire Pay/Imminent Danger Pay (HFP/IDP)

- Paid monthly under Title 37 to servicemembers based upon the actual or potential for exposure to hostile fire and imminent danger situations
 - Such conditions alone would not qualify for CMI exclusion because not being paid "in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services"
- Also paid under Title 37 to servicemember who is "killed, injured, or wounded by . . . hostile action" with payments continuing for up to three months during hospitalization
 - Would be excludable from CMI when paid under such circumstances

Addendum: Military Service-Related Benefits Protected by the HAVEN Act (to be codified at 11 U.S.C. § 101(10A)(B)(ii)(IV))

Below is a noncomprehensive list of benefits that can qualify for protection under the HAVEN Act. Other benefits paid by the Department of Defense and the Department of Veterans Affairs might also be protected under the HAVEN Act, and thus, all income received by a debtor from the DOD and VA should be evaluated to determine whether such income qualifies for protection.¹

Benefit	Citation	Description ²
Disability Retired Pay³ Permanent Disability Retirement Temporary Disability Retirement	10 U.S.C. §§ 1201, 1204 10 U.S.C. §§ 1202, 1205 (Chapter 61, Title 10)	Paid monthly to former or current servicemember upon permanent or temporary military retirement due to disability; pay computed under 10 U.S.C. § 1401 https://www.dfas.mil/retiredmilitary/disability/disability.html
Disability Severance Pay	10 U.S.C. § 1212; <i>see also</i> 10 U.S.C. §§ 1203, 1206	Paid as lump sum to servicemember upon military separation due to disability when circumstances do not meet criteria for disability-based military retirement https://www.dfas.mil/retiredmilitary/plan/separation-payments/disability-severance-pay.html
Combat-Related Special Compensation (CRSC)⁴	10 U.S.C. § 1413a; <i>see also</i> 38 U.S.C. §§ 5304-5305	Paid monthly to military retiree who has a combat-related disability; cannot be paid concurrently with CRDP https://www.dfas.mil/retiredmilitary/disability/crsc.html
Concurrent Retirement & Disability Payment (CRDP)⁵	10 U.S.C. § 1414; <i>see also</i> 38 U.S.C. §§ 5304-5305	Paid monthly to military retiree who is concurrently eligible to receive VA Disability Compensation and who has VA disability rating of at least 50%; cannot be paid concurrently with CRSC https://www.dfas.mil/retiredmilitary/disability/crdp.html
Survivor Benefit Plan Annuity (as to Disability Retirees under Chapter 61 of Title 10 only)	10 U.S.C. § 1448; <i>see also</i> 10 U.S.C. §§ 1201, 1202, 1204, 1205	Paid monthly to military retiree's eligible beneficiary, after retiree's death https://www.dfas.mil/retiredmilitary/provide/sbp.html

¹ In many cases, whether a benefit is protected will be clear. However, because the HAVEN Act does not list specific benefits paid under Titles 10, 37, and 38 that can be excluded from “current monthly income,” some cases will require a practitioner to investigate the basis for the debtor’s receipt of a particular benefit to determine whether the income can arguably be excluded. Additional information about benefits can be found at <https://warriorcare.dodlive.mil/benefits/compensation-and-benefits/> and <https://www.va.gov/>.

² Benefit descriptions, including website links, are provided for basic informational purposes only. The descriptions should not be relied upon in evaluating potential eligibility for a listed benefit because not all eligibility criteria are stated.

³ Military retirements based upon disability are governed by Chapter 61 of Title 10 (10 U.S.C. §§ 1201-1222). The HAVEN Act permits the exclusion of Chapter 61-based retired pay from “current monthly income” **only to the extent that such retired pay exceeds the amount of retired pay that the debtor would be entitled to receive if retired under another provision of Title 10**. Information about retired pay computation can be found in Chapter 71 of Title 10 (10 U.S.C. §§ 1401-1415), as well as on the Defense Finance and Accounting Service’s website at <https://www.dfas.mil/retiredmilitary/plan/estimate.html>.

⁴ CRSC has “Special Rules for Chapter 61 Disability Retirees,” 10 U.S.C. § 1413a(b)(3). Given that the HAVEN Act has Chapter 61-related limiting language, *see supra* note 3, additional analysis could be required for a debtor who receives CRSC.

⁵ CRDP has “Special Rules for Chapter 61 Disability Retirees,” 10 U.S.C. § 1414(b). Given that the HAVEN Act has Chapter 61-related limiting language, *see supra* note 3, additional analysis could be required for a debtor who receives CRDP.

Special Survivor Indemnity Allowance	10 U.S.C. § 1450(c), (m)	Paid monthly to military retiree's surviving spouse or former spouse, after retiree's death, if Survivor Benefit Plan Annuity payments are offset by VA Dependency and Indemnity Compensation payments https://www.dfas.mil/retiredmilitary/survivors/Understanding-SBP-DIC-SSIA.html
Special Compensation for Assistance with Activities of Daily Living	37 U.S.C. § 439	Paid monthly to current or recent servicemember who requires help with activities of daily living due to catastrophic injury or illness incurred or aggravated in line of duty; cannot be paid concurrently with Aid and Attendance Allowance paid under 38 U.S.C. § 1114(r)(2) https://warriorcare.dodlive.mil/benefits/scaadl/
VA Disability Compensation Also known as "Service-Connected Disability Compensation" and "Veterans Compensation"	38 U.S.C. §§ 1104, 1110, 1114(a)-(j), 1115, 1131, 1134	Paid monthly to veteran who has a disability due to disease or injury incurred or aggravated while serving on active duty, or otherwise related to that service; payment amount depends upon disability rating (10% to 100%) and whether the veteran has qualifying dependents https://www.va.gov/disability/ https://www.benefits.va.gov/COMPENSATION/resources_comp01.asp
VA Special Monthly Compensation Can include Aid and Attendance Allowance or Housebound Allowance	38 U.S.C. §§ 1114(k)-(s), 1134	Paid monthly to veteran who receives VA Disability Compensation and who has special circumstances warranting additional compensation such as having specific service-connected anatomical losses or having need for daily in-home personal health care services https://www.benefits.va.gov/COMPENSATION/resources_comp02.asp
VA Dependency and Indemnity Compensation Can include Aid and Attendance Allowance or Housebound Allowance	38 U.S.C. §§ 1304, 1310-1318	Paid monthly to eligible survivors after servicemember's in-service or service-connected death or veteran's death due to service-connected disability (or equated as such) https://www.va.gov/burials-memorials/dependency-indemnity-compensation/
VA Veterans Pension⁶ Also known as "Non-Service-Connected Disability Pension" Can include Aid and Attendance Allowance or Housebound Allowance	38 U.S.C. §§ 1502, 1513, 1521, 5312	Paid monthly as subsistence benefit to veteran who meets low income and net worth criteria, satisfies service requirements, and is either at least age 65 or "permanently and totally disabled" (generally due to non-service-connected disability); payment amount depends upon whether the veteran has qualifying dependents and in-home health care needs https://www.benefits.va.gov/pension/vetpen.asp
VA Vocational Rehabilitation & Employment Subsistence Allowance	38 U.S.C. § 3108	Paid monthly to veteran who has service-connected disability and who is participating in vocational rehabilitation program under Chapter 31 https://www.benefits.va.gov/vocrehab/subsistence_allowance_rates.asp

⁶ As indicated in the description, this benefit can be paid based upon age without a qualifying disability. If so paid, the income would not be excludable from "current monthly income" under the HAVEN Act. If a veteran is eligible for the benefit based upon age and, separately, based upon a qualifying disability, it might be possible to rely upon the latter eligibility and to exclude the income from "current monthly income." See 38 U.S.C. § 1513(b).

HAVEN Act: Application

Examples of Potentially Excludable Payment Types

VA Veterans Pension

Paid monthly as a subsistence benefit to veterans who meet low income and net worth criteria, among other requirements, and are either at least age 65 or "permanently and totally disabled"

Excludable from CMI if paid based on disability

If eligible based upon age and, separately, based upon disability, should be able to rely upon disability for CMI exclusion



HAVEN Act: Application

Payment Type Confirmation and Documentation

Documentation to confirm payment type is generally available.

- ✓ Award Letters & Payment History
 - DOD & VA's eBenefits website (ebenefits.va.gov)
- ✓ Leave and Earnings Statements
 - DFAS's MyPay website (mypay.dfas.mil)
- ✓ Military Discharge Document (e.g., DD Form 214) and Records
 - DOD & VA's eBenefits website (ebenefits.va.gov)
- ✓ Bank Statements

VA Benefit Summary Letter (Excerpt)

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

Source: National Association of Consumer Bankruptcy Attorneys Webinar: Recent Bankruptcy Code Amendment: Learn How the New HAVEN Act Can Help Your Clients (Sept. 25, 2019)

HAVEN Act: Application



Jessica Youngberg

Payment Type Confirmation and Documentation

The **USTP Position** on Documentation:

- "The USTP will limit its requests for documents related to income excluded from CMI under the HAVEN Act to avoid unduly burdening debtors."
- "The USTP does not routinely request from debtors documents not otherwise required by the Bankruptcy Code or Rules without a specific need for additional information."
- "The USTP will advise chapter 7 and 13 trustees, as a best practice, to similarly limit their HAVEN Act-related document requests to what is necessary for proper administration of the case."


Adam D. Herring & Walter W. Theus, *New Laws, New Duties*, Am. Bankr. Inst. J., Oct. 2019, at 12.

HAVEN Act: New CMI Exclusion Text

“Current Monthly Income” now “excludes”:

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.**

Pub. L. No. 116-52 (to be codified at 11 U.S.C. § 101(10A)(B)(ii)(IV)).



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Title 10 Armed Forces

- Chapter 61: retirement and separation due to disability

Pub. L. No. 116-52 (to be codified at 11 U.S.C. § 101(10A)(B)(ii)(IV)).



HAVEN Act: Application

Military Retirement & Retired Pay Overview

- Retired after serving at least minimum time necessary for retirement, typically 20 years but can be as few as 15 years
- Retired due to disability
 - "retired pay paid under chapter 61 of title 10" = Disability Retired Pay
 - Disability Retired Pay is initially calculated under two formulas, and most favorable amount is paid.
 - One formula considers disability severity
 - One formula considers time in service

DOD/DFAS Letter (Excerpt)

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		


Source: National Association of Consumer Bankruptcy Attorneys Webinar: Recent Bankruptcy Code Amendment: Learn How the New HAVEN Act Can Help Your Clients (Sept. 25, 2019)

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Pub. L. No. 116-52 (to be codified at 11 U.S.C. § 101(10A)(B)(ii)(IV)).




HAVEN Act: Application

Retirement-related Examples

Retired after serving 25 years (not chapter 61) and receives Retired Pay

- Cannot exclude Retired Pay from CMI because it is not “paid . . . in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services”

Retired due to disability (chapter 61) after serving 25 years and receives Disability Retired Pay based upon time-in-service calculation

- Because Disability Retired Pay does not exceed **“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,”** cannot exclude Disability Retired Pay from CMI
- 

HAVEN Act: Application

Retirement-related Examples

Retired due to disability (chapter 61) after serving 25 years and receives \$3,000 per month Disability Retired Pay based upon severity-of-disability calculation but would have received \$2,500 per month based upon time-in-service calculation

- Can exclude \$500 of Disability Retired Pay from CMI because that is “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”

HAVEN Act: Application

Retirement-related Examples

Retired due to disability (chapter 61) after serving 6 years, 8 months, 14 days, and receives \$1,855 per month Disability Retired Pay based upon severity-of-disability calculation but would have received \$442 per month based upon time-in-service calculation


- ❖ Arguably, can exclude entire \$1,855 of Disability Retired Pay from CMI because with only 6 years in service, could not have “retired under any provision of title 10 other than chapter 61” and would not “otherwise be entitled” to receive retired pay under title 10

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:		
Active Duty Base Pay	Method A	Method B
Percentage of Disability	2,651.37	2,651.37
	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		

HAVEN Act: Application

Retirement-related Examples


Retired after serving 25 years (not chapter 61) and is eligible to receive \$2,500 per month Retired Pay (taxable and paid by DOD under Title 10) but is separately entitled to receive \$617.73 per month VA Disability Compensation (nontaxable and paid by VA under Title 38) based upon a 40% service-connected disability rating and having no dependents

- Is not one who qualifies to receive both payments in full concurrently and has waived \$617.73 Retired Pay to instead receive VA Disability Compensation (reducing tax liability)
 - Cannot exclude \$1,882.27 Retired Pay from CMI
 - Can exclude \$617.73 VA Disability Compensation from CMI
- 

HAVEN Act: Application

Retirement-related Examples

Retired after serving 25 years (not chapter 61) and is eligible to receive \$2,500 per month Retired Pay (taxable and paid by DOD under Title 10) but is separately entitled to receive \$1,113.86 per month VA Disability Compensation (nontaxable and paid by VA under Title 38) based upon a 60% service-connected disability rating and having no dependents

- Rather than waiving Retired Pay to receive VA Disability Compensation, qualifies to receive both payments in full concurrently through eligibility for Concurrent Retirement and Disability Pay (CRDP) (taxable and paid by DOD under Title 10 based upon various criteria including a VA disability rating of at least 50%)
 - Cannot exclude \$1,386.14 Retired Pay from CMI
 - Can exclude \$1,113.86 VA Disability Compensation from CMI
 - Can exclude \$1,113.86 CRDP from CMI
- 

HAVEN Act: Application

The USTP Position on Resolving Ambiguities:

➤ “[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.”

Jessica
Youngberg



Adam D. Herring & Walter W. Theus, *New Laws, New Duties*, Am. Bankr. Inst. J., Oct. 2019, at 12.

HAVEN Act: Application



Kristina
Stanger

Practice & Procedure

Prospective Application

- Chapter 13 debtor can use new CMI exclusion for their Plan or for possible conversion (11 U.S.C. § 1307(a))
- Applies to pending cases
- Applies to closed cases with ongoing repayment plans

See 165 Cong. Rec. H7215-01 (2019); *Landgraf v. USI Film Prod.*, 511 U.S. 244 (1994) (setting forth the standard as to application of a statute before its enactment); *Rivers v. Roadway Exp., Inc.*, 511 U.S. 298, 311 (1994) (applying narrow error-correcting statutes to pending cases where a contrary reading renders the statute ineffective); *In re Padilla*, 365 B.R. 492, 503 (Bankr. E.D. Pa. 20017) (quoting 11 U.S.C. § 350(b)) (providing a bankruptcy case may be reopened to accord relief to the debtor).

Excluding and Disclosing Excluded Income

- Schedules, forms, local rules and programs are being revised
- Excluded income should be disclosed, as would be done when excluding, for example, income under the Social Security Act

Legal

ABI Task Force on Veterans and Servicemembers Affairs, <https://veterans.abi.org>.

Stateside Legal, <https://statesidelegal.org>.

Benefits

U.S. Dep't of Def. Warrior Care, <https://warriorcare.dodlive.mil/benefits/compensation-and-benefits>.

U.S. Dep't of Veterans Affairs, <https://www.va.gov>.

- Office of Gen. Counsel's Accreditation Search, <https://www.va.gov/ogc/apps/accreditation/index.asp>.

Def. Fin. & Accounting Serv., Retired Military & Annuitants, <https://www.dfas.mil/retiredmilitary.html>.

- Types of Retirement, <https://www.dfas.mil/retiredmilitary/plan/retirement-types.html>.
- Estimate Your Retirement Pay, <https://www.dfas.mil/retiredmilitary/plan/estimate.html>.

Helpful Resources

This and other
resources can be found
at
ConsiderChapter13.org



Questions?



Sample



DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Ave NW
Washington, D.C. 20420

June 04, 2019

In Reply Refer to:
xxx-xx-1
27/eBenefits

Dear

This letter is a summary of benefits you currently receive from the Department of Veterans Affairs (VA). We are providing this letter to disabled Veterans to use in applying for benefits such as state or local property or vehicle tax relief, civil service preference, to obtain housing entitlements, free or reduced state park annual memberships, or any other program or entitlement in which verification of VA benefits is required. Please safeguard this important document. This letter is considered an official record of your VA entitlement.

Our records contain the following information:

Personal Claim Information

Your VA claim number is: xxx-xx-
You are the Veteran.

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	June 23, 2004	October 13, 2012

(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:	100%
Your current monthly award amount is:	\$3437.1
The effective date of the last change to your current award was:	December 01, 2018
You are considered to be totally and permanently disabled due solely to your service-connected disabilities:	No

You should contact your state or local office of Veterans' affairs for information on any tax, license, or fee-related benefits for which you may be eligible. State offices of Veterans' affairs are available at <http://www.va.gov/statedva.htm>.

How You Can Contact Us

- If you need general information about benefits and eligibility, please visit us at <https://www.ebenefits.va.gov> or <http://www.va.gov>.
- Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the number is 1-800-829-4833.

CRSC PAY STATEMENT

STATEMENT EFFECTIVE DATE
May 21, 2019

PAYMENT DATE
MAY 31, 2019

SSN
-**-*

RETIREE'S NAME AND ADDRESS

PLEASE REMEMBER TO NOTIFY DFAS IF YOUR ADDRESS CHANGES

PAYMENT ADDRESS
DIRECT DEPOSIT

HOW TO CONTACT US

Defense Finance and Accounting Service
US Military Retirement Pay
8899 E 56th Street
Indianapolis, IN 46249-1200

COMMERCIAL (216) 522-5955
TOLL FREE 1-800-321-1080
TOLL FREE FAX 1-800-469-6559

myPay
<https://myPay.dfas.mil>

*included
in CMT*

PAYMENT INFORMATION

CRSC Amount *exempt* 624.00
CRSC Debt Deduction 0.00
CRSC Garnishment Deduction 0.00
CRSC Net Pay 624.00

ENTITLEMENT INFORMATION

Retired Pay Before Deductions 1,907.00
Retired Pay Offset By DVA Compensation 3,437.10
CRSC Debt Balance 0.00
Branch of Military Service ARMY
Garnishment Being Withheld NO

THE DVA OR YOUR BRANCH OF SERVICE PROVIDED THE FOLLOWING

CRSC Special Monthly Compensation Code 00
Unemployable NO
DVA Disability % 100
Combat Related Disability % 70
Purple Heart %
CRSC Start Date MAY 01, 2018
Special Monthly Compensation Start Date

exempt

REMARKS

Please refer to DFAS.mil for information about CRSC and this statement.