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June 3, 2019

The Honorable Jackie Speier
Chairwoman, Military Personnel
Subcommittee
House Armed Services Committee
2465 Rayburn House Office Building
Washington, D.C. 20515

Fax: 202-226-4183

The Honorable Trent Kelly
Ranking Member, Military Personnel
Subcommittee
House Armed Services Committee
1005 Longworth House Office Building
Washington, D.C. 20515

Fax: 202-225-3549

Dear Chairwoman Speier and Ranking Member:

On the eve of your subcommittee markup of its portion of the FY 2020 National Defense Authorization Act (NDAA) the Fleet Reserve Association (FRA) would like to make its recommendations

FRA is a leader in the military/veterans organization community and represents Navy, Marine Corps, and Coast Guard enlisted personnel on compensation, benefits and quality of life programs and works to improve benefits for these service members, their families and survivors.

Before commenting on military benefits, FRA wants to note with growing concern the long-term impact of sequestration. Budget cuts mandated by the Budget Control Act of 2011 pose a threat to national security and will substantially impact member pay and benefits. These automatic cuts, known as Sequestration, require that 50 percent come from Defense, even though Defense only makes up 16 percent of the federal budget. FRA believes the FY 2020 Defense budget should provide adequate funding for “benefits and bullets.” Without legislative changes more sequestration cuts are scheduled for FY 2020 potentially placing national security at risk.

Active Duty/Reserve Issues

Allow Active Duty to Sue Military for Medical Malpractice

FRA strongly supports the “Sergeant First Class Richard Stayskal Military Medical Accountability Act” (H.R. 2422), which would allow military service members to sue the Department of Defense for instances of medical malpractice unrelated to their military duties. Currently, the Feres Doctrine prevents service members from having their day in court when

malpractice by military health care providers unconnected to combat, results in severe injury or even death.

The Feres Doctrine was established in 1950 from *Feres v. United States*, 340 U.S. 135 (1950), in which the Supreme Court of the United States held that the military is not liable under the Federal Tort Claims Act for injuries to members of the armed forces sustained while on active duty resulting from the negligence of others in the armed forces.

The practical effect is that the *Feres doctrine* effectively bars service members from collecting damages from the United States Government for personal injuries experienced in the performance of their duties. It also bars families of service members from filing Wrongful Death actions when a service member is killed or injured. By creating an exemption to the Federal Tort Claims Act to allow service members to sue the military for medical malpractice, the bill would give service members the same right as the fellow citizens they serve and protect. SFC Stayskal developed terminal lung cancer after being misdiagnosed in a military health facility.

Housing Oversight

FRA welcomes recent hearings on Capitol Hill investigating conditions of military base housing. Military base housing was privatized in the mid-1990s due to deployable conditions and the government being unable to manage the maintenance efficiently. Over the past few years, several reports, including years-long investigations by Reuters, have surfaced regarding dirty conditions at military houses run by private management companies. These conditions include faulty wiring, exposed plumbing, poor water quality, vermin infestations, mold and lead contamination, raw sewage, and other toxic exposures that have had negative health impacts for all residents, many of whom are young children.

Some of the companies that operate military housing are often non-responsive, provide only superficial fixes or blame the service member for the problems. In some instances, service members have been charged fees associated with the remediation of their own homes. Military Family Advisory Network survey of active duty personnel found that 56 percent of the more than 17,000 respondents, reported a “negative” or “very negative” opinion of their living conditions, which the Network concluded showed a “systemic problem.”

The former Secretary of the Navy, Richard Spencer and the other military branch secretaries announced earlier that they are preparing a joint Tenant Bill of Rights in an effort to ensure service members and their families have safe, quality homes and communities, and clear rights while living in them. It is intended to increase the accountability of privatized housing companies by putting more oversight authority in the hands of local military leaders. All three service secretaries claimed they have seen firsthand and reviewed problems in housing units. The

Tenant Bill of Rights will be enforced through renegotiated leases with the privatized housing companies.

FRA supports the Tenant Bill of Rights and the “Ensuring Safe Housing for our Military Act” (S.703/H.R. 1792), introduced by Senator Dianne Feinstein (CA), and Rep. Mike Levin that would require installation commanders to withhold the service member’s rent from the landlord after officials have been notified of potential health, safety or environmental hazard, until steps are taken to remedy the problem — and the military housing official and the service member agree that it has been fixed.

FRA is thankful that the Navy and Marine Corps have taken steps of their own to address the housing issues and to give their sailors and Marines some peace of mind. The Navy has been conducting home inspections and reached out to 100 percent of Sailors and Marines living in government and Public Private Venture (PPV) family housing. These visits will serve as an opportunity to help sailors and their families resolve any outstanding housing issues.

Active Duty Pay and BAH

A top priority of FRA is to secure annual active duty pay increases that are *at least* equal to the Employment Cost Index (ECI) to at least keep pace with the private sector pay. The recent (January/February) online benefit survey of active duty members indicated that more than 81 percent see the threat of cuts to future pay increases as “Very important” (the highest rating).

FRA supports the proposed 3.1 percent activity pay increase in the Administration’s budget which is the largest in a decade but still only keeps pace with civilian pay. Our Nation is still at war and there is no more critical morale issue for active duty warriors than adequate pay. It should be remembered that the past administration provided an annual pay increase 0.5 percent below the Employment Cost Index four times. That is why FRA will support annual active duty pay increases that are at least equal the ECI.

The Association believes that the DoD should provide dislocation allowance for separating and retiring service members, especially those that are separating at the convenience of the government. Moving household goods on government orders can be costly. Active duty personnel endure a number of PCS moves during a career in uniform. Each move requires additional expenses for relocating and establishing a new home.

Retiring personnel are not currently entitled to a dislocation allowance despite the fact that his or her orders can be construed as a permanent change of station that reflect a management decision to order the member’s retirement or transfer. Assuming the member is moving to a new

location, the retiring service member will face the same expenses as if transferring to a new duty station.

FRA strongly opposes cuts to Basic Allowance for Housing (BAH) payments, and wants to restore BAH to 100 percent of housing costs. Further the Association wants to reform enlisted housing standards by allowing E-7s and above to reside in separate homes, track BAH to ensure it is commensurate with actual housing costs, ensure adequate housing inventory and that housing privatization programs are beneficial to service members and their families.

The Association wants to ensure adequate funding of the Transition and Relocation Assistance Programs, and authorization of increased PCS mileage rates and higher household goods weight limits for senior enlisted personnel. Also Congress should provide compensation for shipment of a second POV for accompanied overseas assignments.

Burn Pits Accountability

FRA supports the “Burn Pits Accountability Act” (H.R. 663/S.191). The bill directs DoD to provide service members in Iraq and Afghanistan to have periodic health assessments during deployment and during military separations an evaluation of whether or not a service member has been exposed to open burn pits or toxic airborne chemicals.

If they report being exposed, they will be enrolled in the Burn Pit Registry unless they opt out. The bill seeks to address the widespread exposures of service members to airborne toxins from burn pits during post-9/11 deployments, a problem experienced by many veterans who served in Iraq and Afghanistan. These toxic exposures could potentially impact millions, and many post-9/11 veterans believe this could be the “Agent Orange issue of their generation.”

Commissaries and Exchanges

FRA wants to ensure adequate funding for the Defense Commissary Agency (DeCA) and oppose privatization to preserve the value of the current benefit and access for all patrons, and oppose consolidation or closure of military exchanges. The Administration’s FY 2020 budget reduces the commissary budget by 21 percent, and reduces employees from 14,000 to 12,500 worldwide.

The Association wants to ensure adequate funding for the Defense Commissary Agency (DeCA) and opposes privatization to preserve the value of the current benefit and access for all patrons, and opposes consolidation.

Predatory Lending Protections/SCRA Enforcement

The Association strongly supported the enactment of the Military Lending Act in 2006 and the creation of the Office of Military Affairs as part of the Consumer Financial Protection Bureau (CFPB) in 2010. FRA wants to ensure that the Servicemembers Civil Relief Act (SCRA) is enforced by regulatory agencies, including the CFPB, Office of Military Affairs and work to ensure that active duty personnel are protected from predatory lenders. Further the Association supports making mandatory arbitration agreements in financial contracts unenforceable.

CFPB Director Kathleen Kraninger dispatched a letter asking Vice President Mike Pence, in his role as Senate president, and House Speaker Nancy Pelosi (D-Calif.) to pass legislation that would specifically allow the CFPB to supervise payday lenders, banks and other firms for compliance with the Military Lending Act. Kraninger's predecessor, acting White House Chief of Staff and Office of Management and Budget Director Mick Mulvaney, suspended such supervision last year, arguing that the Dodd-Frank Act did not give the CFPB that authority. Consumer groups claim Mulvaney is misinterpreting the law and that CFPB already has this authority.

"The Bureau is committed to the financial well-being of America's service members. This commitment includes ensuring that lenders subject to our jurisdiction comply with the Military Lending Act so our service members and their families are provided with the protections of that law," Kraninger said in the letter.

The MLA bars companies from offering loans to active duty service members with interest rates higher than 36 percent and makes it illegal to insert mandatory arbitration clauses in consumer loan contracts, among other protections

Tuition Assistance

FRA is concerned about reports that the Navy Tuition Assistance funds are low due to an unexpected increase for active duty Navy. According to press accounts there is a 19 percent increase in sailors receiving TA to pay for 36 percent more courses than anticipated. In part this is due to the Navy eliminating capped TA course work at 16 credits annually and no more than \$250 provided per course credit hour. FRA welcomes the increase in spending for Navy TA included in the Administration's FY 2020 budget request. The Association wants to preserve the military TA program and opposes shifting significant part of the cost to active duty beneficiaries.

Reserve Component Issues

FRA supports the TRICARE Reserve Select Improvement Act (S. 164/H.R. 613) that would expand TRICARE Reserve Select (TRS) eligibility to all federal employees serving in the Reserve Component. This legislation, sponsored by Sen. Steve Daines (MT) and Rep. John Garamendi (CA) respectively, would impact more than 70,000 dual status military technicians in the Reserve Component by providing expanded health care options. Current law prohibits access to TRS for Reserve Component members who serve as federal employees in their civilian employment. This can create confusion and lead to more expensive health care for these service members and their families, as well as prevent continuity of care as service members deploy or transition in or out of the federal workforce. Enactment of this legislation will ensure Reservists, and their families have greater choice and equal access to competitive health coverage premiums arising from their military service.

FRA also supports the “Reserve Component Employer Incentive, Compensation, and Relief Act” (H. R. 801), sponsored by Reps Tim Ryan (OH) and Steven Palazzo (MS). The bill provides employers with a tax credit aimed to offset costs accrued and hardships undertaken when employees that are members of the Reserve Component (National Guard and Reserves) are activated for military duty. This legislation incentivizes employers to hire and retain these service members.

This bill recognizes that the Reserve Component has transitioned from a “Strategic Reserve” to an “Operational Reserve,” the National Guard and Reserves are fully integrated in ongoing national security missions around the globe. This transition has led to increased training requirements which go beyond the statutorily required 39 days of annual training to requirements totaling 80 or more days per year. FRA wants to ensure Congress adequately funds and supports Reserve Component requirements for an operational reserve.

Healthcare Challenges

FRA members believe that the Defense Department must sufficiently investigate and implement other options to make TRICARE more cost-efficient as alternatives to shifting costs to TRICARE beneficiaries, and the Association opposes any indexing of future TRICARE Fee increases beyond CPI indexed to COLA increases.

The Association wants to ensure that pharmacies maintain a broad uniform formulary. FRA supports efforts to reduce prescription costs through “federal pricing” and other discount programs, and will encourage increased utilization of home delivery prescriptions to limit co-pays for beneficiaries and reduce costs as alternatives to higher fees, and co-payments. Many military retirees were encouraged to use generic home delivery by DoD with the promise of no co-pays. Unfortunately, they now pay a \$7 co-pay and that is expected to increase.

FRA is increasingly concerned that the Navy, Army and Air Force are planning to cut more than 17,000 uniform medical billets over several years. Uniformed Navy medical staff will be reduced by almost 5,300, the Army by almost 7,300 and the Air Force by a little more than 5,300. The Navy cuts reduce medical personnel end strength by 3100 in FY 2020 and by 2200 in FY 2021.¹ The current medical staff consists of a combined medical force of 130,000 active-duty and reserve. The planned cuts would lower uniformed medical strength by 14 percent. Senior military staff claims the current medical bureaucracy is bloated and needs trimming. FRA is concerned that these cuts could impact access to and quality of health care. FRA would welcome and support a provision in the FY 2020 NDAA to delay the proposed cuts until concerns are addressed regarding the impact on readiness, access, and availability.

Control of all medical facilities is being transferred to the Defense Health Agency (DHA), where functions of the three separate service medical departments are already being consolidated to streamline health care operations, reduce support costs while standardizing practices and procedures, from scheduling appointments to reporting on provider errors. Meanwhile, the military health system is adopting a new electronic health record system called MHS Genesis.

The Association wants to ensure adequate funding and staffing for the DHA in order to meet readiness needs, fully fund TRICARE, and improve access and awareness of benefits for all beneficiaries regardless of age, status or location, including Reservists participating in TRICARE Reserve Select, TRICARE Retired Reserve, and Individual Ready Reserve personnel.

Military Suicide

A total of 321 active-duty military members -- 57 Marines, 68 sailors, 58 airmen and 138 soldiers -- died by suicide in 2018, according to data released recently by the Pentagon. That's the same number of suicide deaths as 2012, the highest number since the military services began closely tracking the issue in 2001.

While the Pentagon has implemented a number of suicide prevention and awareness programs, suicide remains a troubling challenge for the military services. But it's not just the active-duty military community; veterans and the general public also are affected.

Data released by the VA last fall found that the suicide rate for veterans was 1.5 times greater than for the general population in the U.S., amounting to about 20 veterans a day. The rate for veterans aged 18 to 34 increased by more than 10 percent from 2015 to 2016, the most recent VA data available.

¹ [Navy Times](#) April 1, 2019, page 19, Mark Faram

Numbers also released last fall by the Centers for Disease Control and Prevention show the suicide rate in the U.S. is at a 50-year peak. There were more than 47,000 suicides in the U.S. in 2017.

FRA gives the issue of suicide a high priority. That is why the Association welcomed President Donald J. Trump 2018 Executive Order titled, “Supporting Our Veterans during Their Transition from Uniformed Service to Civilian Life.” This Executive Order directs the Departments of Defense (DoD), Veterans Affairs (VA) and Homeland Security (DHS) to develop a plan to ensure that all new veterans receive mental health care for at least one year following their separation from service.

The three agencies will work together to develop a joint action plan to ensure that new veterans who currently do not qualify for enrollment in healthcare — primarily due to lack of verified service connection related to the medical issue at hand — will receive treatment and access to services for mental health care for one year following their separation from service.

The DoD, VA and DHS will work to expand mental health programs and other resources for new veterans for a year following departure from uniformed service, including eliminating prior time limits and:

- Expanding peer community outreach and group sessions in the VA Whole Health initiative from 18 Whole Health Flagship facilities to all facilities. Whole Health includes wellness and establishing individual health goals;
- Extending the DoD’s “Be There Peer Support Call and Outreach Center” services to provide peer support for veterans in the year following separation from service; and
- Expanding the DoD’s Military One Source, which offers resources to active duty members, to include services to separating service members to one year beyond separation.

FRA believes that Congressional oversight of DoD and VA suicide prevention is critical in assuring success of these efforts.

Seamless Electronic Health Record

The Association believes Congressional oversight of ongoing implementation of Defense and Department of Veterans Affairs (VA) technology upgrades is vital to ensuring improvements to the Electronic Health Record (EHR) system for both VA and DoD. FRA wants to ensure adequate funding for DoD and VA health care resource sharing in delivering seamless, cost effective, quality services to personnel wounded in combat and other veterans and their families.

VA Secretary Shulkin in June 2017 announced that the VA will dramatically reform his agency’s EHR system by replacing the old antiquated system with the same system used by the DoD. This change is a shift from the VA's previous plan to develop its own system to digitize records. It will bring the agencies closer to sharing veterans' health information in an effort to solve a problem that has plagued the two departments for decades.

Some members of Congress have expressed concern about the cost. While the EHR modernization effort is necessary, it is very expensive, and a long time to implement (10 years). The cost and the long time for implementation notwithstanding, FRA believes there is tremendous opportunity with the two departments using the same EHR.

Retirement Issues

Concurrent Receipt Reform

FRA Supports legislation authorizing the immediate payment of concurrent receipt of *full* military retired pay and veterans' disability compensation for *all* disabled retirees. Concurrent receipt refers to the simultaneous receipt of two types of monetary benefits: military retired pay and Department of Veterans Affairs (VA) disability compensation.

Current legislation to expand and reform concurrent receipt include:

H.R. 303 (Rep. Gus Bilirakis, FL): Extends Concurrent Retirement and Disability Payments (CRDP) eligibility to retirees rated less than 50 percent disabled.

H.R. 333 (Rep. Bishop Sanford, GA): The "Disabled Veterans Tax Termination Act" is comprehensive concurrent receipt legislation that includes the elements of H.R. 303 and would also give concurrent receipt to CRDP retirees whose disability ratings are below 50 percent and CRDP chapter 61 retirees with less than 20 years of service.

S. 208 (Sen. Jon Tester, MT) "The Retired Pay Restoration Act" is different language from H.R. 303 but essentially achieves the same result of extending Concurrent Retirement and Disability Payments (CRDP) eligibility to retirees rated less than 50 percent disabled.

FRA strongly supports improvements to expand concurrent receipt.

Allow Survivors to Draw Full Month's Retired Pay for Month in Which Retirees Die

FRA also supports the retention of the full final month's retired pay by the surviving spouse (or other designated survivor) of a military retiree for the month in which the member was alive for at least 24 hours. FRA strongly supports "The Military Retiree Survivor Comfort Act" (HR 464), introduced by Rep. Walter Jones (NC), that achieves this goal.

This proposal is in response to complaints from surviving spouses who were unaware that the Defense Finance and Accounting Service (DFAS) should be notified immediately on the death of the military retiree. Those who had joint bank accounts, in which retirement payments

were made electronically, gave little if any thought that DFAS could swoop down on the joint account and recoup any overpayments of retirement pay. This action could easily clear the account of any funds remaining whether they were retirement payments or money from other sources.

Current regulations require survivors of deceased military retirees to return any retirement payment received in the month the retiree passes away or any subsequent month thereafter. Upon the demise of a retired service member in receipt of military retired pay, the surviving spouse is to notify DoD of the death. DFAS then stops payment on the retirement account, recalculates the final payment to cover only the days in the month the retiree was alive, forwards a check for those days to the surviving spouse (beneficiary) and, if not reported in a timely manner, recoups any over payment(s) made for periods subsequent to the retiree's death. The recouping is made without consideration of the survivor's financial status.

To offset some of the costs, if the spouse is entitled to survivor benefit annuities (SBP) on the retiree's death, there will be no payment of the annuity for the month the retirement payment is provided the surviving spouse.

The measure is related to a similar pay policy enacted by the VA. Congress passed a law in 1996 that allows a surviving spouse to retain the veteran's disability and VA pension payments issued for the month of the veteran's death. FRA believes military retired pay should be no different.

Repeal SBP/DIC Offset

Sen. Doug Jones (AL) introduced legislation (S. 622) that repeals the SBP/DIC offset for survivors, sometimes referred to as the "military widow's tax." Earlier, Rep. Joe Wilson (SC) introduced a similar bill the "Military Surviving Spouses Equity Act" (H.R. 553).

SBP and DIC payments are paid for different reasons. The Survivor Benefit Plan (SBP) is purchased by the retiree and is intended to provide a portion of retired pay to the survivor. Dependency and Indemnity Compensation (DIC) is a special indemnity compensation paid to the survivor when a member's service causes his or her premature death. In such cases, the VA DIC should be added to the SBP the retiree paid for, not substituted for it. It should be noted as a matter of equity that surviving spouses of federal civilian retirees who are disabled veterans and die of military-service-connected causes can receive DIC without losing any of their federal civilian SBP benefits.

FRA strongly supports legislation to repeal the SBP/DIC offset for surviving spouses of personnel who die of service-connected causes. The Association can also support increasing the

Special Survivor Indemnity Allowance (SSIA) which should continue to be increased gradually to pay at least a portion of the SBP/DIC offset.

No Cuts to COLA

FRA will fight efforts to reduce military retired or retainer pay and ensure equitable cost-of-living adjustments (COLAs) for all military retirees commensurate with their service and sacrifices. FRA advocates for rounding up to the next dollar for retired pay and other benefits.

Blended Retirement System

The Association rejects any initiatives to “civilianize” the military retirement system without adequate consideration of the unique and extraordinary demands and sacrifices inherent in a military vice a civilian career. That is why FRA opposed the enactment of Blended Retirement System. FRA wants to ensure the Defense Department implements a high-quality education program that assists members under the new system in developing prudent investment strategies. Military spouses should be included as fully as possible in the BRS education program.

FRA is grateful for the opportunity to provide these recommendations to the Chair and Ranking Member of this distinguished Subcommittee.

Sincerely,

A handwritten signature in black ink that reads "Thomas J. Snee". The signature is written in a cursive, flowing style.

THOMAS J. SNEE
National Executive Director

Cc: Chairman Rep. Adam Smith, & Ranking Member Rep. Mac Thornberry,

