TESTIMONY OF
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National President
Of
THE RETIRED ENLISTED ASSOCIATION
Before a

JOINT HEARING

Of the
HOUSE and SENATE VETERANS AFFAIRS COMMITTEES

On

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DISCLOSURE OF FEDERAL GRANTS OR CONTRACTS

The Retired Enlisted Association (TREA) does not currently receive, nor has it received during the current fiscal year or either of the two previous years any federal money for grants or contracts. All the Association's activities and services are accomplished completely free of any federal funding.

Chairmen Isakson and Roe, Ranking Members Tester and Walz and distinguished members of both Committees

It is an honor for me to speak before this Joint Committee hearing about TREA's legislative goals and concerns for FY2017 and beyond for America's military veterans and retirees as well as their families and survivors.

We are pleased once again to appear before your Committees with our suggestions as to how Congress can improve the lives of the men and women who protect and have protected our nation's safety and freedoms. I am John Adams, National President of The Retired Enlisted Association. TREA was created in 1963 to give the men and women who serve or have served in America's enlisted ranks a voice to speak to our Government. Our members are from all the branches of the Armed Services. They serve or have served on active duty, in the Reserve Components and many of their spouses and surviving spouses are also veterans or are members of our Auxiliary. Of course, many things change in over 50 years. Originally all our members were military retirees or those who were planning to serve a full military career. Then we opened our membership to all veterans from the enlisted ranks as well as retirees. As a Congressionally chartered VSO since 1992 with members who were Department of Defense retirees ***as well as*** veterans we have always worked on and studied veteran issues. And this

year we have had the honor of welcoming to TREA all the enlisted members of the National Association of Uniform Services (NAUS).

Before I begin I must again thank Congress for granting veterans status to Guard and Reserve retirees. This was a long-time goal for both TREA and Ranking Member Walz. We were thrilled when it was finally put into law.

TREA also wishes to thank the members and staffs of both your Committees for your active and crucial oversight of the VA. It is an enormous job we know but without your continual oversight these past several years we would not have dealt with (and sometimes not even know) about the hospital and Veteran Integrated Service Network (VISN) scandals, and backlogs and false reporting that we have all worked to be corrected again, thank you and your terrific staffs.

Veteran Affairs (VA) and Community Healthcare

Improving wait times and scheduling for medical care at the VA will mean nothing if the care itself is not first rate. In many VISNs throughout the country it is terrific. In other parts of the country it is far from it. The quality of the healthcare provided by the VA across the country must be standardized and first rate. We are well aware that the VA is working hard to hire top notch talent doctors, nurses and other healthcare professionals but they are having problems. We know that this is a problem for the United States medical system, not just in the VA but it is a continuing problem in the largest hospital system in the United States.

TREA is also aware that Congress is focused on this issue. We were very pleased last week that the House passed **H.R. 1367** which is meant to and we believe will improve VA's recruitment and retention of first rate medical personnel. We urge the Senate to look at it favorably when it crosses the Hill. We were also pleased to see that this afternoon the House Health Subcommittee will be holding a hearing on the internal failings that make it hard for the VA to recruit and retain first rate medical and administrative personnel.

TREA hope that the Subcommittee will investigate how the hiring freeze is effecting the hiring of professionals. While the VA announced in January that numerous VA positions were exempt from the hiring freeze we have heard that there are still delays in hiring caused by the need to approve the individual position's exemption. We have also heard that the $2.5 billion that Congress provided in the last session of Congress has not been used for the increased hiring. Again, this is why we thank you for your continued oversight.

The VA must not let up in working to improve its quantity and quality of staff. It is a particularly acute problem when it relates to mental health professions. Many Veterans are suffering from many mental health problems after 14 years of war and when one considers the years, of war, numerous tours of duty and present cuts in the size of the military it is surprising there is not much more. Additionally, there has been a dramatic increase in veterans' suicides, including among older veterans. This along with the special issues facing women veterans makes it obvious that the VA must quickly increase their corps of mental health professionals.

The coordination of prescriptions of psychotropic drugs by the VA and DoD must also be addressed. We have heard that a service member being treated for a mental health condition at the Department of Defense may have to deal with a dramatic change in medicine when he or she enters the VA system. This can cause dramatic problems that could be avoided if the two departments coordinate their formularies or at least coordinate their prescribing practices. We know that other solutions to this problem are being considered that we find very hopeful **H.R. 1064** would allow a service member who is transitioning from DOD to the VA to elect to continue to be treated by his or her mental health provider. The VA would pay the Defense Department. This would provide continuity of care and stability and we urge Congress to adopt this elegant and simple solution.

Perhaps less dramatic but very serious is the problem that many veterans suffer with hearing loss. It is well known that a loss of hearing causes terrible strains to peoples' emotional health. The bills also follow the important development of allowing veterans to be treated in the

private sector when care at VA facilities is not available or sufficient. The result should be happier lives for many veterans.

And of course, the other hope for solving this decade old problem is to create a single, uniform and coordinated program for the VA to provide medical care outside its hospitals and clinics when needed. Sometimes we must go into the civilian community because the VA does not have expertise in the specialty, or as we know waiting time is too long and distances to travel are too far.

Along with the Choice program (which still has money to spend and thus should not be sunset) the VA has several programs (including Fee-Basis, Project Access Received Closer to Home (ARCH), Patient-Centered Community Care (PC3)) that provide medical care in the private sector. Congress directed the VA to develop a plan to combine these programs and create a consistent method to determine when to outsource the care and how to pay for it. At the end of 2015 the VA presented its plan but Congress did not take it up. Now at the end of 3 years is the time we must have a plan that the veteran, the VA, the hospitals, universities, other federal medical programs work together in one system to provide what veterans have earned: a reliable and first rate care.

Oversight and Accountability

The wait list scandal of 2014 still has ramifications that are felt today, particularly in regards to oversight and accountability of VA employees. It should come as no surprise to the committees that the reason it is so hard to establish accountability for bad actors among the VA's employees is not because of partisan politics, but because of decisions made by an entirely separate, but equal, branch of government: The Supreme Court of the United States.

In *Loudermill v. Cleveland Board of Education, 470 U.S. 532 (1985)* the Court held that generally a public employer is required to offer to have a "pre-termination" meeting with the affected employee where the employer presents their grounds for termination and the employee is given the opportunity to respond. This is why all VA employee terminations must go through the Merit Systems Protection Board (MSPB). TREA has been dismayed at the amount of time that the process takes, and is outraged that many of those responsible for the wait list scandal were allowed to retire, with pensions, before they could be terminated.

The VA is not alone in facing these difficulties – these due process rights apply to tenured and full-time employees at the federal, state and local levels because they are employed by the government itself. The Constitution, through the 14th Amendment, governs actions taken by all levels of government. This is why it is so much easier to fire private sector employees. The Supreme Court of the United States has determined that so-called "Loudermill" rights, combined with "Garrity" rights, the right of a public employee not to be compelled to incriminate themselves by their employer, and "Weingarten" rights, the right of a unionized employee to request union representation for any investigatory interview conducted by their employer in which the employee has the reasonable belief that the discussion could lead to disciplinary action, are not partisan issues. They are issues for the courts.

All of that notwithstanding, TREA supports **HR 1259**, the "VA Accountability First Act of 2017." We thank Chairman Roe and Ranking Member Walz for their efforts on behalf of America's veterans, and we hope that Congress will listen to the courts and make any adjustments as they become apparent. This is too important to let slide for another year, as we are quickly coming up on the third anniversary of the wait list scandal.

“Bad-Paper” Discharges

TREA, like the rest of the VSO community, was elated to hear Secretary Shulkin say that he would allow veterans with General or “Other-Than-Honorable” discharges to access mental healthcare at the VA on his own authority. This is a welcome, and drastically needed, change in policy. However, as is often the case, the devil is in the details.

We are aware that the policy has not yet been fully formulated, but we are disheartened to hear that, as far as we can tell, the VA’s news release on the topic offers nothing new to “bad paper” veterans. Vet Centers, counselling locations for combat veterans and survivors of military rape, have been available to bad paper vets since the 1970s. Emergency room access at VA Medical Centers is already accessible to everyone, including “bad paper” veterans and non-veterans. And current VA policy for the Veterans Crisis Line, the toll-free suicide hotline, is for counselors to not hang up on bad paper veterans calling for help.

As far as TREA can tell, VA-provided psychiatric care, acute care, and neurological care are still off-limits, as are VA’s homelessness prevention and employment training programs. A holistic approach to the problems that present disproportionately in the population of “bad paper” veterans, i.e. substance abuse, unemployment and homelessness is the only chance the VA has to make an appreciable impact in the lives of these people. It is important to get out in front of these problems in a preventative manner. The alternative is, as a society, being forced to foot the bill in the form of excessive hospital bills and incarceration. This price is often many times the price tag of allowing someone, oftentimes a combat veteran, to avoid sleeping on the streets while they receive employment training and mental health counseling.

TREA calls on the committees to force the VA to do the right thing when it comes to this very vulnerable population of veterans who suffer disproportionately from Military Sexual Trauma, Post-Traumatic Stress Disorder and Traumatic Brain Injury.

Veteran Education

TREA continues to hear reports of colleges and universities, usually in the for-profit sector, but not always, who cheat veterans out of their Post-9/11 G.I. Bill benefits by providing substandard educations that do not meet minimum licensing standards, making unrealistic promises about job prospects and sometimes even forging signatures to take unwanted loans out in their names. We are concerned that thousands of veterans are filing complaints with the Department of Veterans' Affairs over aggressive and unfairly deceptive practices. In fact, these issues were brought to Congress' attention in testimony back in 2013. A former employee called out DeVry University as a "bad actor," and the Federal Trade Commission later corroborated that their claims of employment rates for graduates were wildly inflated. Last year DeVry admitted that the testimony was true, and they unilaterally decided to move to a so-called "85-15" standard by July 2017, meaning that no more than 85% of their money will come from federal funds, including the Department of Defense's Tuition Assistance Program, the Post-9/11 G.I. Bill and the Montgomery G.I. Bill.

When the story of DeVry is combined with that of the collapsed Corinthian Colleges, as well as the dissolution of ITT Tech last year, it is clear that there are problems in the for-profit sector. Excluding educational money from the Departments of Defense and Veterans' Affairs in the calculation of the "90-10" rule causes companies to ignore the welfare of student veterans in the service of their own self-interest. It cannot be ignored that valuable education benefits have been stripped from service members and veterans, who are in return receiving "degrees" from institutions that are not worth the paper they are printed on. To prevent this from happening in the future, DoD and VA money should not be exempt from the "90-10" rule any longer.

TREA was very gratified by the passage of **H.R. 6416**, especially the parts that protected and further enhanced the Post-9/11 G.I. Bill and the expansion of the Fry Scholarship for surviving spouses. We were particularly happy to see that, unlike some proposed legislation earlier in the year, there was no cut to the Basic Allowance for Housing (BAH) for dependents of veterans who have not transferred the Post-9/11 GI Bill benefit within 180 days of the enactment of the law.

However, we are troubled by the notion that in order to improve upon the benefits that our country provides for those who have borne the burden of battle, and their loved ones, our country must decide to roll back hard-earned benefits in other areas for America's warfighters.

Last year there was an attempt to force TREA and the other MSO/VSOs to choose to rob Peter to pay Paul. We were asked to support legislation that would cut the BAH stipend for dependents who use the Post-9/11 G.I. Bill in half in order to fund other, equally desirable veteran and survivor programs. If a benefit is important enough that a majority of both the House and Senate will vote for it, then it should not be subject to renegotiation when a newer, though equally deserving, issue bubbles up. Congress, and the country, should be willing to shoulder the extra sacrifice in order to take care of those who have sacrificed so much for this country.

Benefit Claims Backlog

TREA wishes to thank the committees for their steadfast commitment to cutting the claims backlog over the years. In 2013 claims pending over 125 days stood at almost 611,000. Last year at this time it was down to roughly 81,000. It currently stands at roughly 99,000 claims last month. It is clear to TREA that the backlog will never entirely disappear, and that as technological improvements happen veterans will, as is only natural, take advantage of those improvements to submit more claims for things that prior generations might have simply ignored. Fluctuations in the number of “backlogged” claims are to be expected.

TREA is supportive of the National Work Queue and its ability to distribute work throughout the Regional Office (RO) network from overworked ROs to under-burdened ROs. As VA officials recently testified to the House Veterans' Affairs Committee, National Work Queue has helped reduce the backlog of claims waiting for initial review to go from 56,000 pending cases in May 2016 to 18,000 by the end of January 2017. Further, in 2015 VA completed 45 percent of veterans' claims within 125 days. As of January 2017, 66 percent of claims finished within the 125-day standard. These improvements are impressive.

TREA believes that the success in cutting down the backlog of initial claim for benefits is due to the automation of many types of claims, efficiencies made possible by the expansion of the Fully Developed Claims (FDC) process. This has sped up decisions on simpler claims for disability compensation. Additionally, the expanded use of mandatory overtime for VBA employees to handle disability claims – the "all hands-on deck model" has been effective, but to their credit VBA has realized that this is not sustainable. TREA commends VA on recognizing that they must upgrade their IT infrastructure to meet the increased needs of veterans in the 21st century. Buying a commercial, off-the-shelf IT system will allow VA to focus on delivering high-quality service to veterans without forcing them to be something they are not – a Silicon Valley tech giant. Focusing on what VA does well will allow them to quickly provide America's veterans an IT solution that meets their needs. It is good to hear that Secretary Shulkin is moving forward on this path. TREA hopes that the committees give him all of the budget support that he needs to complete the mission.

Appeals Backlog

It currently takes over four years for a pending appeal to work its way through the system; as of December 2016, there were over 465,000 pending appeals. It is expected that over the next ten years the backlog will grow to over two million pending appeals; on average, it will take a veteran six years to work their way through the system if no legislative changes are made to address the problem. Obviously, TREA urges the committees in the strongest possible terms to tackle the problem this year.

TREA believes very strongly that any changes to the appeals process remain favorable to veterans, meaning that the record remains open and subject to amendment almost up to the point of decision by the BVA. It is understandable that VA blames this for increasing the time that it takes to reach a decision, but in seeking to redress the delays caused by allowing veterans to develop new evidence during the appeals process we hope that Congress avoids closing the evidentiary record for all veterans who appeal their claims decision.

Female Veterans

Women presently make up 15% of the active duty and 17% of the Reserve Components. By 2040 the VA projects that women will make up just under 18% of ***all*** living veterans. They are therefore becoming much more of a presence at the VA. The numbers keep growing. There are already over 100,000 women veterans from OIF/OEF and Operation New Dawn, and 52% of these women veterans are enrolled in VA health care.

The VA is well aware that they need to modify their practices to reflect the needs of their changing beneficiary pool. In 2010 the VA Advisory Committee on Women Veterans issued a report, "Women Veterans—A Proud Tradition of Service," and we continue to urge that more of their recommendations be implemented. The VA hospitals and clinics should design their facilities to be more comfortable for women. There should be more focus given to specific female medical needs and there should be areas where children can be cared for while their mothers are seeing a doctor.

These past years have also revealed the serious problem of sexual assault in the military. While the Department of Defense is the present focus on how to solve this terrible problem, it has already become a problem for the VA must deal with. The VA must develop appropriate mental health programs to treat, these female victims (and indeed male victims as well). Again, we call on the VA to create a larger and more sophisticated mental health practice, because this is another group of patients that they must serve.

It has also been discovered that women veterans are less likely to self-identify as veterans as men are. This seems to be especially true of women who did not serve in war zones. Therefore, it is imperative for the VA to study different methods of outreach for women veterans who deserve and need their services.

Survivors Financial Benefits

A small percentage of the American people are fighting her wars, protecting her shores and preserving her freedoms. And their families and loved ones are bearing the terrible loss and loneliness when one of them dies. Of course, America wants to protect and help those who are left behind. It is our duty. As President Lincoln said in his Second Inaugural address it is America's duty to "care for his widow and orphan" This same quote can be found on the front of the Department of Veterans Affairs National Headquarters. We are grateful for all the time and effort both Congress and the VA has spent trying to make this pledge a reality.

SBP/DIC Offset- We yet again strongly urge Congress to end the unfair Survivors Benefit Plan (SBP)/Dependency Indemnity Compensation (DIC) offset and to make DIC equivalent to other federal survivor programs. Currently the flat DIC payment is $1,257.95 a month (for deaths that occurred after January 1st 1993; prior to that date the amount is rank based.) Because of the dollar for dollar offset only the most senior enlisted retirees and higher ranking officers' survivors ever receive a dime of their SBP. In 2009 a Special Survivor Indemnity Allowance (SSIA) was passed to partially deal with this obviously unfair practice. (please see below) There are two groups of widows (and widowers) who are harmed by this offset. The first group is made up of those whose spouses died on active duty and the second group is made up of those whose spouses died of service-connected disabilities or injuries. Both groups should be relieved of this burden.

The offset takes a dollar from the SBP payment for every dollar the widow receives from DIC. Each payment covers a different purpose and should be treated separately. The DIC is an indemnity (compensation or insurance) payment that is paid by the Department of Veterans Affairs (VA) to the survivor of a member of the military whose service directly causes his or her death. The SPB annuity, paid by the Department of Defense reflects the longevity of the service of the military member. It is ordinarily calculated at 55% of retired pay. Military retirees who elect SPB pay a portion of their retired pay to ensure that their family has a guaranteed income should the retiree die. If that retiree dies due to a service connected disability, only then would their survivor become eligible for DIC.

SBP was created as a purchased annuity- an earned employee benefit. This is a retirement plan. Qualification for SBP for an active duty death was added to stop the grim but extremely well intended practice of medical personnel keeping a lost comrade “technically alive” until he or she could be retired.

There is no offset if a federal civilian retiree dies of a service connected disability. The survivors will receive the civilian SBP and the VA’s DIC without offset. As stated above it takes into account longevity of service. The vast majority of families affected by this offset served a full career in the military. We all now accept the maxim that you recruit a member but you retain a family. This is part of the retirement package. Even the name DIC makes clear that it was created for a very different reason. It is an indemnity program to compensate a family for the loss of a loved one due to his or her military service. Again, they are different programs created to fill different purposes and needs.

The survivor does receive a taxable pro-rated share of the paid SBP premiums back without interest in a lump sum. But that cannot make up for the cost and difficulty paying those premiums all those years of retirement caused. If a disabled veteran earns a civilian pension as a federal civil servant the family will never lose either their survivor payment or their DIC to any

offset. The service member did what he could to provide for his spouse. This is behavior the Federal Government wishes to encourage.

Year after year we (and many other VSOs and MSOs) have asked that this unfair offset be abolished. Hopefully, this may finally be the year. Of course, we are well aware that the VA pays its DIC program and that correction of this problem is under the jurisdiction of the Armed Services Committees. However, we know how much your Committees care about the widows and widowers of our servicemembers and we hope that you can convince your friends and colleagues that this is an injustice that should be corrected.

Indeed, there is one small group of widows/widowers who today may receive both SBP and DIC without an offset. It is those who retain DIC after remarrying at or after the age of 57. The Veterans Benefits Act of 2003 (H.R. 2297, Section 101) provided for DIC with remarriage after age 57 "without a reduction in other federal benefits." (such as SBP). When the Department of Defense refused to implement a lawsuit ensued and in its decision the Federal Court of Appeals ruled: "*As recognized by the trial court, there are many plausible explanations for Congress' decision to repeal the DIC-SBP offset only for surviving spouses who receive DIC by reason of their having remarried after age 57. Perhaps Congress intended to encourage marriage for older surviving spouses.* ***Perhaps section 1311(c) simply represents a first step in an effort to eventually enact full repeal.*** *After all, the service member paid for both benefits: SBP with premiums; DIC with his life. Perhaps it was recognition that the political process is the art of the possible, and that prudence counseled against making the perfect the enemy of the good. Whatever the reason, the government has failed to make the "extraordinary showing of [Congress'] contrary intentions" that would permit this court to construe section 1311c in a way that eviscerates its plain language*. Accordingly, the judgment of the United States Court of Federal Claims is affirmed." (Chief Judge Haldane Robert Mayer)

So, justice is being served for a small group of survivors.

Once again Rep. Joe Wilson (R-SC) and Senator Bill Nelson (D-FL,) have sponsored bills to once and for all end this unfair offset for everyone else affected. When it is studied by different groups again and again it is found to be unfair and unwise. Indeed, even the Military Compensation and Retirement Modernization Commission when studying military compensation/retirement payments saw this as a problem that should be solved.

We urge you to pass **H.R. 846** and **S. 339. And finally end this offset forever.**

Extension and enlargement of SSIA program- As noted above the SSIA allotment has been somewhat ameliorating the SBP/DIC offset's unfairness. Starting at $50 a month in 2009 and increasing in steps to the present $310 per month in 2017. But if we don't either end the SBP/DIC offset completely or extends the SSIA in FY 2018 budget in then the allowance disappears and this unfair, illogical offset will once again be in full force and effect. TREA urges you as strongly as possible the SBP/DIC offset.

DIC Equality- Dependency and Indemnity Compensation (DIC) sets a flat monthly rate regardless of rank if the service-connected death occurred after January 1, 1993. There have not been significant increases in the rate since that date though there have been regular COLA increases and it is presently $1257.95 a month. In 2009 a GAO report" Military and Veterans' Benefits" (GAO 10-62) found "DIC payments are almost always less than workers' compensation payments for survivors of federal employees who die as a result of job-related injuries". The present DIC monthly payment for a surviving spouse of $1254.19 is only 43% of the disability compensation rate for a fully disabled single veteran, whose rate is $2906.83 per month. Indeed, the DIC monthly rate is 12% below the payment to other surviving spouses of federal employees. $15,000 a year is simply insufficient. We urge you to solve this problem.

DIC Retention at age 55- Finally, we hope that survivors will be permitted to retain DIC if they remarry at or after the age of 55. Presently a survivor may retain DIC upon remarriage if he or

she is at least 57. Most federal survivor programs allow retention of survivors benefits after remarriage if the survivor is at least 55 years old. Indeed, the age to retain CHAMPVA upon remarriage is the normal federal program age of 55. The difference is because the two benefits were reinstated in different years and during different Congressional negotiations. There are no policy reasons for this awkward and unequal distinction and we hope that this year it can finally be corrected.

Survivors' Education Benefits

TREA was once again extremely happy last year when Congress once again improved some of the education benefits for widows and widowers whose spouses had fallen shortly after 9/11/01 by lengthening the time that they could use their newly granted Fry Scholarship benefits. Again, thank you.

Unfortunately, a widow/widower of a service member who died on active duty before 9/11 or who died of a service connected disability has not had their education benefits under Chapter 35 of Title 38 of the U.S. Code improved. Their benefits do not reflect the improvements of the Post 9/11 GI Bill. Nor has it kept up with the Montgomery GI Bill (MGIB). They receive only $ 1,003.00 a month as a full-time student, with no housing allowance and no book stipend.

According to the College Board, the average cost of tuition and fees for the 2016–2017 school year was **$33,480** at private colleges, **$9,650** for state residents at public colleges, and **$24,930** for out-of-state residents attending public universities. 2003 was the last time the Chapter 35 benefits were increases. The College Board said that the "the average 2014-2015 tuition increase was 3.7 percent at private colleges, and 2.9 percent at public universities. However, looking back at the last decade, the 10-year historical rate of increase is approximately 5 percent."

It is time to increase the DEA's monthly stipend. It is also time to henceforth have the DEA program be adjusted proportionally whenever Congress raises the payments for MGIB (Chapter 30) or the Post 9/11 GI Bill (Chapter 33).

Uniformed Services Employment and Re-employment Act (USERRA)

We urge your committees to review the Uniformed Services Employment and Re-employment Rights Act (USERRA) for the purpose of strengthening several of its provisions.

USERRA was enacted not only to ensure fairness for the individual service member or veteran but also to provide for the national defense. With the continued use of the Guard and Reserve as an operational force it is imperative that the laws Congress passed that were meant to protect those servicemembers be reviewed to make sure they are working as intended. We have heard many instances where employers are circumventing the law and as a result the USERRA rights servicemembers thought they had are, in effect, non-existent. In addition, Reserve Component leaders have acknowledged that one of the most important issues they have to deal with is the support, or lack thereof, by employers for their employees who are members of the Reserve Components.

Congress enacted USERRA in 1994, as a long-overdue rewrite of the Veterans' Reemployment Rights Act (VRRA), which went back to 1940. Under USERRA, a person who leaves a civilian job for voluntary or involuntary service, in the Regular military or the National Guard or Reserve, is entitled to reemployment in the civilian job upon release from service, provided he or she meets the five USERRA conditions.

Moreover, USERRA makes it unlawful for an employer to deny a person initial employment, retention in employment, or a promotion or benefit of employment based on membership in a uniformed service, performance of service, or application or obligation to perform service.

If an employer fires or refuses to hire a veteran because of the employer's perception (accurate or otherwise) that the veteran is likely to be called to active duty or because of the employer's stereotypical perceptions (accurate or not) about "mental health issues" among recently

separated veterans, the employer has violated part of the USERRA law. Even if the employer may have had other, lawful reasons for the firing or the refusal to hire, the employer's decision was unlawful if the individual's service or obligation to perform service was a motivating factor (not necessarily the only reason) in the employer's decision.

Improving USERRA and its enforcement mechanism will have a beneficial effect on the employment prospects of recently separated young veterans and National Guard and Reserve members of all ages, a situation which is imperative if the Guard and Reserve are going to be able to fulfill their roles as operational forces.

To that end, USERRA's enforcement mechanism must be improved.

Federal courts have held that USERRA does not override employer-employee agreements that purport to force employees to submit future disputes about USERRA rights to binding arbitration, in lieu of filing suit or filing a formal complaint with the Veterans' Employment and Training Service of the United States Department of Labor (DOL-VETS).

Therefore, employment agreements to submit future USERRA disputes to binding arbitration should be made unenforceable because employers can make a mockery of USERRA by demanding that individuals agree to binding arbitration as a condition of initial employment or continued employment. This change is necessary to ensure effective enforcement of USERRA.

Second, the law should be changed to require states to waive 11th Amendment immunity to suits in federal court, under USERRA, as a condition for the receipt of federal assistance because employees, former employees, and prospective employees of a state should have the same USERRA rights as employees of local governments and private employers.

Approximately 10 percent of serving Reserve Component (RC) members have civilian jobs for state governments.

They should have the right to prosecute their lawsuits in federal court, in their own names and with their own counsel. States that receive federal financial assistance (and they all receive such assistance) should not be permitted to flout USERRA and hide behind the 11th Amendment, while continuing to receive such assistance.

Third, improve upon USERRA's provision for actual damages incurred as a result of willful violations.

Under current law, if it is established that an employer (state, local, or private sector) has willfully violated USERRA, the court can award monetary damages in the amount of the actual financial damages. In some cases, the actual damages may be very small if, for example, the fired employee or the former employee unlawfully denied reemployment has quickly found another job with another employer paying just as much or more.

In order to promote USERRA compliance, an employer found to have violated USERRA willfully should be required to pay a substantial penalty, even if the affected veteran or military member has quickly found other employment which has limited the damages to a small amount.

Fourth, provide for the Merit Systems Protection Board (MSPB) to require federal agencies to pay monetary damages for willful violations.

Federal employees, former federal employees, and prospective federal employees who were unlawfully denied hiring should have the same rights and remedies as are available against a private employer. Indeed, they should receive greater rights, because USERRA's very first section expresses the "sense of Congress that the Federal Government should be a model employer in carrying out the provisions of this chapter."

Under current law, there is no provision for requiring a federal agency to pay monetary damages for willful violations. This proposal would close that loophole.

Fifth, in federal sector USERRA cases, amend USERRA law to provide for the awarding of attorney fees for the successful representation of USERRA plaintiffs in the United States Court of Appeals for the Federal Circuit, as well as the MSPB.

USERRA cases involving federal executive agencies as employers are currently adjudicated by the MSPB, rather than federal district court. The aggrieved veteran or service member can appeal an unfavorable MSPB decision to the United States Court of Appeals for the Federal Circuit, a specialized federal appellate court here in our nation's capital. Under current USERRA law, the MSPB is authorized to award attorney's fees to a successful USERRA plaintiff in the MSPB, if the person proceeded with private counsel and prevailed.

Sixth, we propose that Congress amend USERRA law to provide for the awarding on nonpecuniary compensatory damages and punitive damages against employers that violate USERRA willfully.

Under current USERRA law only pecuniary damages can be awarded to the successful USERRA plaintiff.

Seventh, make the award of attorney fees to the prevailing USERRA plaintiff mandatory rather than discretionary in the non-federal sector.

USERRA claimants need attorneys to represent them in securing their rights, and attorneys cannot be expected to do this work solely as charity projects. The attorney fee provision was included to give attorneys an incentive to undertake these cases, on behalf of USERRA claimants. The value of the incentive is considerably lessened if there is no assurance that the MSPB will award attorney fees, even if the claimant prevails with the attorney's assistance. It is necessary to make the award of attorney fees mandatory rather than discretionary, in order to provide a meaningful incentive to attorneys to undertake these cases.

Eight, in federal sector USERRA cases, amend the law to provide for the awarding of attorney fees for the successful representation of USERRA plaintiffs in the United States Court of Appeals for the Federal Circuit, as well as the MSPB.

USERRA cases involving federal executive agencies as employers are adjudicated by the MSPB, rather than federal district court. The aggrieved veteran or service member can appeal an unfavorable MSPB decision to the United States Court of Appeals for the Federal Circuit, a specialized federal appellate court here in our nation's capital. Under current USERRA law the MSPB is authorized to award attorney's fees to a successful USERRA plaintiff in the MSPB, if the person proceeded with private counsel and prevailed.

Ninth, Congress should amend section the USERRA law to provide for the awarding of attorney fees in the Federal Circuit, as well as the MSPB.

Federal sector USERRA plaintiffs need effective legal representation in the Federal sector, as well as the MSPB. It will be difficult for them to obtain that representation if lawyers must be told that there is no prospect for collecting attorney fees for that portion of the litigation that occurs in the Federal courts.

Tenth, make the award of attorney fees mandatory rather than discretionary – non-federal sector.

Just as federal sector USERRA claimants need attorneys to represent them, so do USERRA claimants in the private sector and with respect to state and local governments. Making the award of attorney fees mandatory rather than discretionary is necessary to give attorneys a sufficient incentive to undertake these cases.

Eleventh, make federal intelligence agencies, as employers, subject to USERRA and to the USERRA enforcement mechanism, just like other federal agencies.

In a July 1991 meeting at the New Executive Office Building, the intelligence agencies asked for and were granted an exemption from the USERRA enforcement mechanism, through the Merit Systems Protection Board (MSPB), but not from USERRA itself. The agencies promised to establish their own internal mechanisms for enforcement of USERRA rights within such agencies, and current law requires the agencies to establish these mechanisms. However, the agencies have failed to establish these mechanisms and have flouted USERRA. It is necessary to change the law in order to give intelligence agency employees, former employees, and prospective employees effective USERRA rights.

CHAMPVA until the Age of 26

Of course, none of us really know what will happen to the ACA. But there is one thing that we can bet on with some sureness- there will be some protection for those with a preexisting condition AND young adult will be able to stay on their parents' healthcare insurance until they reach the age of 26. This is one of the few things that everyone seems to agree on. Young adults (through the age of 25) under TRICARE have this option. (though at a dramatic cost that we will speak to House and Senate Armed Services Committees about.) Young Adults on Federal Employee Health Benefit Plan (FEHBP) have this option. Young adults in all private insurance plans have this option. And that is why TREA strongly urges your Committees and Congress to support Senator Tester's (D-MT) **S.423** and Rep. Brownley's (D-CA) **H.R. 92** or other legislation that would cover this last very small group of deserving young adults.

Conclusion

We wish to thank the Senate and House Committees on Veteran Affairs for the honor of testifying before you. We are grateful for the opportunity to speak of our concerns and legislative goals. We are also grateful for the opportunity of working with you and your terrific staffs throughout the year.

The VA is a crucial institution for helping to preserve our Nation's freedoms by serving those who protect all from danger. We know that it is a heavy burden for the members of both

Committees to take on the oversight duties for such a huge, far flung, and critical Government Department requires. We know that there are literally hundreds of thousands of dedicated men and women working at the VA that try every day to provide the first-class care that American patriots deserve. But we also know that there is a great deal wrong with some of the systems, the business model, the coordination, and yes some of the people who work there. What we must all do is work to identify the bad apples and not allow them to be or stay in positions of power, or to keep bonuses for substandard work.

TREA knows that you will do all in your power to assure the continuing improvement of all aspects of the VA's mission. We look forward to working with you, your staffs and our fellow VSOs work as a team to assure that the VA will move forward and that the veterans who have given so much will be provided the programs and services that they have earned and rightly deserve

John I. Adams is the newly elected National President of The Retired Enlisted Association. He joined TREA as a Life Member after serving 24 ½ years in the United Air Force and retiring as a Master Sergeant. In the Air Force, he served as a Telecommunications Center Specialist, an automatic digital technician and a Communications Computer Software Programmer.

President Adams received both a MBA in Project Management and a Master's of Science in Computer Sciences from Colorado Technical University. Since joining TREA he served as a member of the Board of Directors and as 3rd, 2nd and 1st Vice Presidents. He has been awarded both TREA's National Founders Award for Distinguished Service and the TREA Member of the Year Award. He is currently a Senior Software Engineer contractor at Schriever AFB, CO.

He and his wife, Nenita presently reside in Colorado Springs Colorado.