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CONGRESS OF THE UNITED STATES
1ST DISTRICT, MAINE

COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEES:
AGRICULTURE, RURAL DEVELOPMENT, AND
RELATED AGENCIES
INTERIOR, ENVIRONMENT, AND RELATED
AGENCIES

April 13, 2016

The Honorable James R. Clapper, Jr.
Director of National Intelligence
Office of the Director of National Intelligence
Washington, DC 20511

Dear Director Clapper,

I write to you today to formally request an update on Question 21 on the Standard Form 86 (SF 86). Specifically, I want to express my urgent concern that the counseling exemption for MST survivors included in your interim guidance—and that has proven to be so successful and so significant for survivors of rape in the military—is poised for elimination.

As you know, in 2011, 2012, and 2013, I wrote to you urging you to re-evaluate the national security clearance process to better protect service members who wanted to seek counseling for sexual trauma. This came after hearing from individuals across the country who needed help to heal, but would not seek counseling because of concerns over their security clearances and their desire to still serve. I, along with MST survivors and advocates across the country, was very pleased with the interim guidance you issued on Question 21 that was released in April 2013.

"Executive Branch departments and agencies should instruct all individuals completing the SF 86 that the instructions for Question 21 have been modified to advise victims of sexual assault who have received mental health counseling strictly related to this assault to respond 'no' to this question. Other than as authorized by this revised instruction, all individuals completing the SF 86 should continue to answer Question 21 using the existing exemptions found under the question when it applies to them."

"I also want to emphasize that an individual's decision to seek mental health counseling should not, in and of itself, adversely impact that individual's ability to obtain or maintain eligibility to hold a national security sensitive position or eligibility for access to sensitive information. In fact, a person's decision to seek personal wellness and recovery may favorably affect a person's eligibility determination. Further, mental health counseling alone cannot form the basis for the denial of a security clearance."

I wrote to you again in September of 2013, expressing concern that the final version of SF 86 published in the Federal Register did not include this interim guidance on Question 21. Your response indicated that this published version of Question 21 reflected an inter-agency's group efforts to obtain mental health information relevant to national security—and—ensure that the question was sensitive and did not stigmatize those seeking mental health counseling or dissuade them from seeking care. You further noted that the goal was to eliminate the need for any exemptions.

Throughout this process, I, along with survivors and advocacy groups supporting MST survivors, have expressed concerns about the subjectivity of survivors being asked to self evaluate past judgment and reliability. Additionally, I understand that the proposed final guidance suggests that an affirmative answer to these questions would again trigger a question related to mental health counseling.

On February 17th of this year, I instructed my staff to obtain an update on the status of a final rule. Some weeks later they were told, "We will continue to keep you apprised once the final guidance is issued. Unfortunately, ODNI is not able to provide any additional information at this time, since it is 'deliberative' status." As a Member of Congress and a driving force behind these necessary changes, I find this unacceptable. I do not want to be informed only after this process is complete, particularly as I am concerned about the current direction.

I am aware that proposed changes for the final rule with Question 21 have been focused on the ability to function in the work place vs. having received mental health counseling. I know that, as Security Executive Agent, you have convened a team from the Department of Defense, OPM, OMB, and other Federal agencies for the purported purpose of "clarifying support for mental health treatment and encouraging pro-active management of mental health conditions to support wellness and recovery." And I appreciate the desire to find alternative methods to evaluate an individual's ability to function in the work place and be trusted to protect national security information. However, changes that default to questions about counseling—thereby removing the exemption for marital and grief counseling, combat trauma, and MST—are very concerning to me.

Here are the words of veterans who have reached out to me for help and who feel the current interim guidance was lifesaving:

- *"As I look back over the past year, I am again reminded of where I was and how much better I am. My periodic renewal for my secret clearance comes up next year, so as I'm thinking about that, I am yet again flooded with gratitude to you and your staff. Every action I take as a leader, every Soldier I'm able to help, every day I'm able to continue in uniform, I'm grateful. Thank you again—I'm doing so much better these days. If this is the struggle a field grade officer experienced, I can't imagine what younger, lower enlisted Soldiers must go through; you guys are literally lifesavers."*

- *“I would have never had the courage to get help if it weren't for folks like you. Any time I get discouraged by the tone of our political discourse, I remember folks like you and your colleagues grinding away behind the scenes, correcting one injustice at a time. It's enough to make anyone proud to be an American. A few months ago, I did have the opportunity to speak with a junior officer about getting help with an issue she was struggling with. Though she didn't tell me directly what it was, I had a sense it was a similar issue that I had dealt with. I literally had the opportunity to pull out the Secretary's instruction to DoD on how security clearances were supposed to be conducted (I've had it in my desk drawer in order to reassure myself) and demonstrate that getting help was okay and shouldn't have any effect on her career. We were able to find several resources the same day. Thank you again for all of your help. Please pass along my regards and heartfelt thanks to your team.”*

And sadly, here are the words of those who worry about changes in the final guidance:

- *“I am a sexual assault survivor in the military. Last year I went and got help for nightmares from a psychologist when I finally thought it was safe to do so because of the change in Question 21. My friend, who also works for the federal government, told me that OPM is thinking of changing the form not to exempt this kind of counseling any more. I would really be devastated to think that I put my faith in such a change only to have it changed back. I know you worked hard on this issue. Can you assure me it will not change back? I am really worried—I've heard of people losing positions because it takes so long to get verification after you answer 'yes' to Question 21. This terrifies me. Why should I have to pay the price for getting counseling for something bad someone else did to me? Why would I be treated like a criminal when all of the messages from DoD are that getting counseling is good?”*
- *“There is something fundamental about the crime of sexual assault that ruins your faith in everything. You keep expecting the institutions and people you know and love to betray you. Aside from my family, my God, and my country, I love the Army above all things. I would be disappointed, but not surprised, if it went back to its previous policy. That would be devastating, of course, and a reconfirmation that the military believes getting help is a sign of brokenness.”*

There is no doubt that the unacceptably high number of sexual assaults occurring in our military has far-reaching consequences for survivors' lives and military careers. I hear from them every day. You have concurred that we should be encouraging trauma survivors—including those who have experience MST—to seek treatment. I credit your interim guidance with helping de-stigmatize mental health counseling and, more importantly, helping survivors heal and get on with their lives and careers.

I ask that you do not go back, changing the rules yet again and expecting that the best of intentions will somehow eliminate the stigma of counseling or the fear that any mention of counseling will derail a career. The women and men that have reached out to me will not believe you, and going forward, they will not get the help they need.

You and I have a shared national security goal of protecting access to classified information and facilities. In the press briefing announcing the interim guidance in 2013, former ODNI staffer, Charlie Sowell, noted that “this exemption significantly enhances national security because people who were in cleared positions and may not have been getting the help that they need can do so, and we think that this is a great outcome.”

I want to say unequivocally that your interim guidance on Question 21 has worked. Should there be a pending decision on the final guidance that is slated to remove the current exemption, I ask that I am not only informed about when and why, but also ask that any security failures resulting from the interim guidance be reported to me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chellie R", with a long horizontal flourish extending to the right.

Chellie Pingree
Member of Congress

cc: Shaun Donovan, Director, Office of Management and Budget
cc: Lynn Rosenthal, Office of the Vice President