



PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, DC 20301-4000

JAN 28 2011

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS

SUBJECT: Repeal of Don't Ask Don't Tell and Future Impact on Policy

On December 22nd, 2010, the President signed legislation that will lead to the eventual repeal of 10 U.S.C. § 654 and its implementing regulations (commonly known as "Don't Ask, Don't Tell"). The legislation provides that repeal will take effect 60 days after the President, the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff certify to Congress that the Armed Forces are prepared to implement repeal in a manner that is consistent with the standards of military readiness, military effectiveness, unit cohesion, and recruiting and retention of the Armed Forces. Until such time, there are no changes to 10 U.S.C. § 654 nor any existing Department or Service policies.

The purpose of attachment one is twofold: 1) to provide the Department's Policy Guidance that will take effect on the date of repeal (the exact date is not yet known) and 2) to inform the Military Services about the steps each should take immediately in order to prepare for the effective date of repeal.

Additionally, the second attachment contains those changes to Department Instructions and Directives that will be effective on the date of repeal.

It remains the policy of the Department of Defense that sexual orientation is a personal and private matter, to treat all members with dignity and respect, and to ensure maintenance of good order and discipline. Leaders will be essential to implementing this change in policy fairly and consistently. A clear focus on leadership, professionalism, and respect will enable any change in policy to be executed with minimum disruption to the force.

Clifford L. Stanley

Attachments:
As stated

cc:
Chairman of the Joint Chiefs of Staff
Coast Guard, Commandant (CG1)
General Counsel of the Department of Defense



DADT Repeal Policy Guidance

On the effective date of repeal of Don't Ask, Don't Tell (DADT), which is yet to be determined, this policy guidance will apply to all military personnel serving in the Armed Forces of the United States, including those serving in the Reserve components of the Armed Forces.

In order to prepare to implement the below policy guidance on the effective date of repeal of DADT, each Service is immediately directed to identify its specific instructions and regulations related to all policy areas affected by the future repeal of DADT and prepare draft changes based on the below policy guidance. It is critical to reemphasize that these policy changes will not be effective until the date of repeal.

Separations

Upon repeal, Services may no longer separate Service members under the homosexual conduct policy set forth under 10 U.S.C. § 654 and its implementing regulations. Service members will no longer be subject to administrative separation based solely on legal homosexual acts, a statement by a Service member that he or she is a homosexual or bisexual (or words to that effect), or marriage or attempted marriage to a person known to be of the same biological sex. Members who have an approved separation date after the effective date of repeal based on proceedings commenced solely under 10 U.S.C. § 654 and its implementing regulations will have that separation cancelled and will return to duty.

Additionally, on the date of repeal, Services will cease all pending investigations, separations, discharges, or administrative proceedings commenced solely under 10 U.S.C. § 654, and its implementing regulations. Services may reprocess if facts afford another appropriate reason for separation other than 10 U.S.C. § 654 and its implementing regulations. In those cases already begun in which 10 U.S.C. § 654 and its implementing regulations represent one of multiple reasons for separation, Services will make a case-by-case determination as to whether to proceed with the separation or to start the proceedings over again.

DoD discharge codes JB, RA, RB, RC for discharges under 10 U.S.C. § 654 and its implementing regulations will be discontinued.

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Upon repeal, statements about sexual orientation or lawful acts of homosexual conduct will not be considered as a bar to military service or admission to Service academies, ROTC or any other accession program. Sexual orientation will continue to be a personal and private matter. Applicants for enlistment or appointment may not be

asked, or be required to reveal, their sexual orientation. All applicants, regardless of any statements in regard to sexual orientation, will be treated with professionalism and respect.

The required briefings given to applicants for enlistment and appointment regarding standards of personal conduct in the armed forces and separations policy will be amended appropriately to reflect the new policy.

Re-Accessions

Upon repeal, former Service members who were discharged solely under 10 U.S.C. § 654 and its implementing regulations may apply to re-enter the Armed Forces. They will be evaluated according to the same criteria and Service requirements applicable to all prior-Service members seeking re-entry into the military at that time. There will be no preferential treatment for Service members separated solely under 10 U.S.C. § 654 and its implementing regulations. They will be processed as any other re-accession applicant under Service policies. Services shall continue to consider a Service member's previous performance and disciplinary record when determining suitability for re-entry.

Services will waive re-entry codes on DD Forms 214 that are based upon separations under 10 U.S.C. § 654 and its implementing regulations. Applicants will then be processed on a case-by-case basis in accordance with Service policies.

In considering applications for re-accessions, the Services will not consider to the detriment of an applicant any separation that was solely for under 10 U.S.C. § 654, and its implementing regulations. For example, former Service members who were separated with an honorable discharge (or an uncharacterized discharge for those occurring during initial training), and who have a separation code in their records reflecting a separation under 10 U.S.C. § 654 and its implementing regulations, shall be considered for re-entry according to the most favorable re-entry classification. The military requirements of the Services will continue to dictate re-accession criteria.

Standards of Conduct

Upon repeal, existing standards of conduct shall continue to apply to all Service members regardless of sexual orientation. Enforcement of service standards of conduct, including those related to public displays of affection, dress and appearance, and fraternization will be sexual orientation neutral. All members are responsible for upholding and maintaining the high standards of the U.S. military at all times and at all places. Services retain the authority provided by law, Department and Service regulations to counsel, discipline, and involuntarily separate those Service members who fail to obey established standards.

Leaders at all levels are entrusted to ensure the impartial administration of these standards and to hold Service members accountable. In cases where conduct is prohibited, leaders shall be expected to take such appropriate corrective or disciplinary action as they determine may be necessary to preserve morale, good order and discipline, unit cohesion, military readiness, and combat effectiveness.

In order to meet the intent of this policy guidance, each Service is directed to immediately review its standards of personal and professional conduct policies and procedures to ensure that they provide adequate guidance in relevant areas, apply uniformly to all personnel, and promote an environment free from personal, social or institutional barriers that prevent Service members from rising to their highest potential. Place special emphasis in such review on the following areas: public displays of affection (PDA), dress and appearance, nepotism, unprofessional relationships, conflicts of interest, and zero tolerance for harassment and hazing. Standards of conduct shall clearly address the responsibility of leaders, supervisors, and subordinate personnel at all levels to foster unit cohesion, good order and discipline, respect for authority, and mission accomplishment.

Additional Guidance

Moral and Religious Concerns/Freedom of Speech

Policies regarding Service members' individual expression and free exercise of religion already exist and are adequate. In today's military, people of different moral and religious values work, live and fight together. This is possible because they treat each one another with dignity and respect. This will not change. There will be no changes regarding Service member exercise of religious beliefs, nor are there any changes to policies concerning the Chaplain Corps of the Military Departments and their duties. The Chaplain Corps' First Amendment freedoms and their duty to care for all will not change. When Chaplains are engaged in the performance of religious services, they may not be required to engage in practices contrary to their religious beliefs. Service members will continue to respect and serve with others who may hold different views and beliefs.

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Sexual orientation will not be considered along with race, color, religion, sex, and national origin as a class under the Military Equal Opportunity (MEO) program and therefore will not be dealt with through the MEO complaint process.

In order to meet the intent of this policy guidance, DoD, Military Departments, and Service MEO programs will immediately review their current MEO Programs as established in DODD 1350.2 *Department of Defense Military Equal Opportunity (MEO) Program* to ensure consistency with this policy.

Collection and Retention of Sexual Orientation Data

Sexual orientation is a personal and private matter. DoD components, including the Services are not authorized to request, collect, or maintain information about the sexual orientation of Service members except when it is an essential part of an otherwise appropriate investigation or other official action.

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The creation of separate bathroom facilities or living quarters based on sexual orientation is prohibited, and Commanders may not establish practices that physically segregate Service members according to sexual orientation.

Personal privacy is a concern for many Service members. Members of the Armed Forces accept living and working conditions that are often austere, primitive, and characterized by forced intimacy with little or no privacy. Consistent with current policy, Commanders will continue to maintain the discretion to alter berthing or billeting assignments in accordance with Service policy in the interest of maintaining morale, good order and discipline, and consistent with performance of the mission.

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There will be no changes at this time to eligibility standards for military benefits, including applicable definitions. Service members and their opposite-sex spouses receive a range of entitlements and benefits depending on eligibility. The Defense of Marriage Act, 1 U.S.C. § 7, and the existing definition of “dependent” in some laws, prohibit extension of many military benefits—such as medical care, travel and housing allowances, and other benefits—to same-sex couples.

All Service members will continue to have various benefits for which they may designate beneficiaries in accordance with the rules governing each program. Some Service members may not have taken full advantage of these designations prior to repeal of DADT. The Services will reemphasize the opportunity to designate beneficiaries for these benefits to all its Service members. Such benefits include the following:

1. Service Member's Group Life Insurance (SGLI) Beneficiary
2. Post Vietnam-Era Veterans Assistance Program (VEAP) Beneficiary
3. G.I. Bill Death Beneficiary
4. Death Gratuity Beneficiary
5. Final Settlement of Accounts Beneficiary
6. Wounded Warrior Act Designated Caregiver
7. Thrift Savings Plan (TSP) Beneficiary
8. Survivor Benefit Plan Beneficiary

Although there will be no changes to benefits eligibility on the date of repeal, the Department will continue to study existing benefits to determine those, if any, that should be revised, based on policy, fiscal, legal, and feasibility considerations, to give the Service member the discretion to designate a person or persons of their choosing as a beneficiary.

Medical Policy

There will be no changes to existing medical policies. The Surgeons General of the Military Departments have determined that repeal of DADT does not affect the military readiness of the force and that changes to medical policies are not necessary.

Duty Assignment

There will be no changes to assignment policies. All Service members will continue to be eligible for world-wide assignment without consideration of sexual orientation. Service members assigned to duty, or otherwise serving in countries in which homosexual conduct is prohibited or restricted, will abide by the guidance provided to them by their local commanders.

Release from Service Commitments

There will be no new policy to allow for release from service commitments for Service members opposed to repeal of 10 U.S.C. § 654 or to serving with gay and lesbian Service members. Service members may request to be voluntarily discharged under the plenary authority of the Military Department Secretary concerned, or other appropriate authority based upon the specific facts of each case. Such discretionary discharge may only be granted when the Military Department Secretary concerned has determined the early separation would be in the best interest of the Service.

Claims for Compensation and Retroactive Full Separation Pay

The Department will not authorize compensation of any type, including retroactive full separation pay, for those previously separated under 10 U.S.C. §654 and its implementing regulations.

ATTACHMENT 2

REVISED AND NEW GUIDANCE BASED UPON REPEAL OF 10 U.S.C. § 654 (DON'T ASK DON'T TELL)

- References:
- (a) DoDI 1332.14, "Enlisted Administrative Separations," August 28, 2008
 - (b) DoDI 1332.30, "Separation of Regular and Reserve Commissioned Officers," December 11, 2008
 - (c) DoDI 1304.26, "Qualification Standards for Enlistment, Appointment, and Induction," September 20, 2005
 - (d) DoDI 1332.29, "Eligibility of Regular and Reserve Personnel for Separation Pay," June 21, 1991 (incorporating change 1, February 23, 1996)
 - (e) DODD 1332.23, "Service Academy Disenrollment," February 19, 1988
 - (f) DODD 1322.22, "Service Academies," August 24, 1994
 - (g) DoDI 6400.06, "Domestic Abuse Involving DoD Military and Certain Affiliated Personnel," August 21, 2007
 - (h) DOD 6400.1-M-1, "Manual For Child Maltreatment and Domestic Abuse Incident Reporting System," July 15, 2005

1. CHANGES TO REFERENCE (a)

- a. Delete "5. Guidelines for Fact-Finding Inquiries into Homosexual Conduct" from the list of Enclosures on page 3.
- b. Delete "8. Homosexual Conduct.....17" from the Table of Contents on page 4.
- c. Delete the entire "GUIDELINES FOR FACT-FINDING INQUIRIES INTO HOMOSEXUAL CONDUCT.....38" section from the Table of Contents on page 4.
- d. Delete paragraph 8 (including all subparagraphs contained under paragraph 8) of Enclosure 3 on pages 17-22 .
- e. Delete Enclosure 5 on pages 38-41.
- f. Delete "homosexual conduct or" from paragraph 2.d.(7) of Enclosure 6 on page 45.

- g. Delete “has recommended separation on the basis of homosexual conduct or” from paragraph 3.e.(7)(c)4 of Enclosure 6.
- h. Delete the following terms and their definitions from the GLOSSARY.
 - (1) bisexual.
 - (2) homosexual.
 - (3) homosexual conduct.
 - (4) sexual orientation.

2. CHANGES TO REFERENCE (b)

- a. Delete “8. Guidelines for Fact-Finding Inquiries into Homosexual Conduct” from the list of Enclosures on page 4.
- b. Delete “3. Homosexual Conduct.....9” from the Table of Contents on page 5.
- c. Delete “Homosexual Conduct,” from “Discharge for Misconduct, Moral or Professional Dereliction, Homosexual Conduct, or in the Interest of National Security.....”
From the Table of Contents on page 6.
- d. Delete the entire “GUIDELINES FOR FACT-FINDING INQUIRIES INTO HOMOSEXUAL CONDUCT.....23” section from the Table of Contents on page 6.
- e. Delete paragraph 3 (including all subparagraphs of paragraph 3) of Enclosure 2.
- f. Delete paragraph 2.b.(5) of Enclosure 3 on page 12.
- g. Delete “In the case of homosexual conduct, the board shall make specific findings of the reasons warranting retention in accordance with Enclosure 2.” from paragraph 3.d.(1) of Enclosure 3 on page 13.
- h. Delete “homosexual conduct,” from paragraph 4.b.(2) of Enclosure 3 on page 14.

- i. Delete “homosexual conduct,” from paragraph 6.b. of Enclosure 3 on page 14.
- j. Delete “HOMOSEXUAL CONDUCT,” from paragraph 2. of Enclosure 7 on page 21.
- k. Delete paragraph 2.b.(2), including all subparagraphs (a-g), of Enclosure 7 on pages 21-22.
- l. Delete Enclosure 8 on pages 23-26.
- m. Delete the following terms and their definitions from the GLOSSARY on pages 27-29.
 - (1) bisexual
 - (2) homosexual.
 - (3) homosexual act.
 - (4) homosexual conduct.
 - (5) homosexual marriage or attempted marriage.
 - (6) propensity to engage in homosexual acts.
 - (7) sexual orientation.
 - (8) statement that a member is a homosexual or bisexual, or words to that effect.

3. CHANGES TO REFERENCE (c)

- a. Delete paragraph E2.2.8 and all subparagraphs of paragraph E2.2.8. of Enclosure 2.

4. CHANGES TO REFERENCE (d)

- a. Delete paragraph 3.2.3.1.4.

5. CHANGES TO REFERENCE (e)

- a. Delete paragraph 6.1.2.3.

b. Delete paragraph 6.3.

6. CHANGES TO REFERENCE (f)

a. Delete paragraph 3.2. of Enclosure 3.

b. Revise paragraph 3.3. of Enclosure 3: delete “or E3.2.1. through E3.2.3.”

7. CHANGES TO REFERENCE (g)

a. Delete the phrase “of the opposite sex” in paragraph E2.13.

b. Delete both occurrences of the phrase “of the opposite sex” in paragraph E2.14.

8. CHANGES TO REFERENCE (h)

a. Delete the phrase “of the opposite sex” in paragraph C2.1.15.2.4.

b. Delete the phrase “of the opposite sex” in paragraph C2.1.15.2.5

c. Delete the phrase “of the opposite sex” in paragraph AP1.2 of Appendix 1.

d. Delete the phrase “of the opposite sex” in paragraph AP1.10 of Appendix 1.

e. Delete both occurrences of the phrase “of the opposite sex” in paragraph AP1.11 of Appendix 1.

f. Delete the phrase “of the opposite sex” in paragraph AP1. 22 of Appendix 1.

g. Delete the phrase “of the opposite sex” in paragraph AP1. 39 of Appendix 1.



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SEP 20 2011

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS

SUBJECT: Correction of Military Records Following Repeal of Section 654 of Title 10, United States Code

Pursuant to the Don't Ask, Don't Tell Repeal Act of 2010, the President, the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff have certified that the Department of Defense is prepared for the repeal of section 654 of title 10, United States Code, commonly referred to as Don't Ask, Don't Tell (DADT). Repeal will take effect on September 20, 2011. Upon repeal, some former Service members discharged under DADT or prior policies may request a correction of their military records from either their Service Discharge Review Board (DRB) or their Service Board for Correction of Military/Naval Records (BCM/NR). To help ensure consistency across the Services and to address what may be a large number of similar applications arising from the repeal of DADT, this memorandum provides supplemental policy guidance for DRB and BCM/NR action on such applications. As an initial matter, the repeal of DADT will be considered a sufficient basis to support reconsideration of such requests for applicants who have previously filed with either their Service DRB or BCM/NR.

The Service DRBs, provided for in section 1553 of title 10, United States Code, and governed by Department of Defense Directive (DoDD) 1332.41 and Department of Defense Instruction (DoDI) 1332.28, have a relatively limited scope of review and are authorized to provide only specified remedies. In general, if a DRB finds either an inequity or impropriety in a discharge action, it may change the narrative reason for the discharge, upgrade the character of discharge, or take both actions.

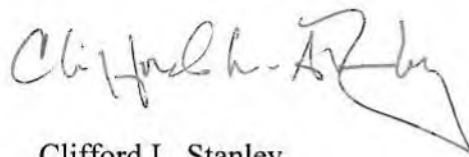
Effective September 20, 2011, Service DRBs should normally grant requests to change the narrative reason for a discharge (the change should be to "Secretarial Authority" (Separation program Designator Code (SPD) code JFF)), requests to re-characterize the discharge to honorable, and/or requests to change the reentry code to an immediately-eligible-to-reenter category (the new RE code should be RE code 1J) when both of the following conditions are met: (1) the original discharge was based solely on DADT or a similar policy in place prior to enactment of DADT and (2) there were no aggravating factors in the record, such as misconduct. Although each request must be evaluated on a case-by-case basis, the award of an honorable or general discharge should normally be considered to indicate the absence of aggravating factors.

Also effective September 20, 2011, with respect to requests in cases where there were multiple reasons for separation including DADT, Service DRBs normally should apply the policy in the previous paragraph to the DADT reason for separation and apply existing DRB policy to the remaining reason(s).

In contrast to the DRBs, the Service BCM/NRs, provided for in section 1552 of title 10, United States Code, and also governed by DoDD 1332.41, have a significantly broader scope of review and are authorized to provide much more comprehensive remedies than are available from the DRBs. Upon finding an error or injustice, BCM/NRs may fashion the remedy they find necessary and appropriate within applicable legal limits. Although the correction boards have wide latitude in determining what constitutes an error or injustice, it is DoD policy that broad, retroactive corrections of records from applicants discharged under DADT are not warranted. Although DADT is repealed effective September 20, 2011, it was the law and reflected the view of Congress during the period it was the law.

Similarly, DoD regulations implementing various aspects of DADT were valid regulations during that same period. Thus, consistent with what we understand is past board practice on changing standards, DADT's repeal may be a relevant factor in evaluating an application (such as requests to change the narrative reason for a discharge, requests to re-characterize the discharge to honorable, and/or requests to change the reentry code to an immediately-eligible-to reenter category) but the issuance of a discharge under DADT or the taking of an action pursuant to DoD regulations related to a discharge under DADT should not by itself be considered to constitute an error or injustice that would invalidate an otherwise proper action taken pursuant to DADT and applicable DoD policy. Thus, remedies such as correcting a record to reflect continued service with no discharge, restoration to a previous grade or position, credit for time lost, or an increase from no separation pay to half or full separation pay or from half separation to full separation pay, would not normally be appropriate.

This policy does not address situations where a correction board determines that DADT (or other prior policy) as applied under the circumstances of a particular case constituted an error or injustice. Under those circumstances, the BCMR would craft an appropriate remedy. Additionally, the Boards should also consider the guidance provided in my Repeal of DADT and Future Impact on Policy memorandum, dated January 28, 2011, (attached) in determining whether a specific requested record correction is necessary or appropriate.



Clifford L. Stanley

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All Service members will continue to have various benefits for which they may designate beneficiaries in accordance with the rules governing each program. Some Service members may not have taken full advantage of these designations prior to repeal of DADT. The Services will reemphasize the opportunity to designate beneficiaries for these benefits to all its Service members. Such benefits include the following:

1. Service Member's Group Life Insurance (SGLI) Beneficiary
2. Post Vietnam-Era Veterans Assistance Program (VEAP) Beneficiary
3. G.I. Bill Death Beneficiary
4. Death Gratuity Beneficiary
5. Final Settlement of Accounts Beneficiary
6. Wounded Warrior Act Designated Caregiver
7. Thrift Savings Plan (TSP) Beneficiary
8. Survivor Benefit Plan Beneficiary

Although there will be no changes to benefits eligibility on the date of repeal, the Department will continue to study existing benefits to determine those, if any, that should be revised, based on policy, fiscal, legal, and feasibility considerations, to give the Service member the discretion to designate a person or persons of their choosing as a beneficiary.

Medical Policy

There will be no changes to existing medical policies. The Surgeons General of the Military Departments have determined that repeal of DADT does not affect the military readiness of the force and that changes to medical policies are not necessary.

Duty Assignment

There will be no changes to assignment policies. All Service members will continue to be eligible for world-wide assignment without consideration of sexual orientation. Service members assigned to duty, or otherwise serving in countries in which homosexual conduct is prohibited or restricted, will abide by the guidance provided to them by their local commanders.

Release from Service Commitments

There will be no new policy to allow for release from service commitments for Service members opposed to repeal of 10 U.S.C. § 654 or to serving with gay and lesbian Service members. Service members may request to be voluntarily discharged under the plenary authority of the Military Department Secretary concerned, or other appropriate authority based upon the specific facts of each case. Such discretionary discharge may only be granted when the Military Department Secretary concerned has determined the early separation would be in the best interest of the Service.

Claims for Compensation and Retroactive Full Separation Pay

The Department will not authorize compensation of any type, including retroactive full separation pay, for those previously separated under 10 U.S.C. §654 and its implementing regulations.

ATTACHMENT 2

REVISED AND NEW GUIDANCE BASED UPON REPEAL OF 10 U.S.C. § 654 (DON'T ASK DON'T TELL)

- References:
- (a) DoDI 1332.14, "Enlisted Administrative Separations," August 28, 2008
 - (b) DoDI 1332.30, "Separation of Regular and Reserve Commissioned Officers," December 11, 2008
 - (c) DoDI 1304.26, "Qualification Standards for Enlistment, Appointment, and Induction," September 20, 2005
 - (d) DoDI 1332.29, "Eligibility of Regular and Reserve Personnel for Separation Pay," June 21, 1991 (incorporating change 1, February 23, 1996)
 - (e) DODD 1332.23, "Service Academy Disenrollment," February 19, 1988
 - (f) DODD 1322.22, "Service Academies," August 24, 1994
 - (g) DoDI 6400.06, "Domestic Abuse Involving DoD Military and Certain Affiliated Personnel," August 21, 2007
 - (h) DOD 6400.1-M-1, "Manual For Child Maltreatment and Domestic Abuse Incident Reporting System," July 15, 2005

1. CHANGES TO REFERENCE (a)

- a. Delete "5. Guidelines for Fact-Finding Inquiries into Homosexual Conduct" from the list of Enclosures on page 3.
- b. Delete "8. Homosexual Conduct.....17" from the Table of Contents on page 4.
- c. Delete the entire "GUIDELINES FOR FACT-FINDING INQUIRIES INTO HOMOSEXUAL CONDUCT.....38" section from the Table of Contents on page 4.
- d. Delete paragraph 8 (including all subparagraphs contained under paragraph 8) of Enclosure 3 on pages 17-22 .
- e. Delete Enclosure 5 on pages 38-41.
- f. Delete "homosexual conduct or" from paragraph 2.d.(7) of Enclosure 6 on page 45.

- g. Delete “has recommended separation on the basis of homosexual conduct or” from paragraph 3.e.(7)(c)4 of Enclosure 6.
- h. Delete the following terms and their definitions from the GLOSSARY.
 - (1) bisexual.
 - (2) homosexual.
 - (3) homosexual conduct.
 - (4) sexual orientation.

2. CHANGES TO REFERENCE (b)

- a. Delete “8. Guidelines for Fact-Finding Inquiries into Homosexual Conduct” from the list of Enclosures on page 4.
- b. Delete “3. Homosexual Conduct.....9” from the Table of Contents on page 5.
- c. Delete “Homosexual Conduct,” from “Discharge for Misconduct, Moral or Professional Dereliction, Homosexual Conduct, or in the Interest of National Security.....”
From the Table of Contents on page 6.
- d. Delete the entire “GUIDELINES FOR FACT-FINDING INQUIRIES INTO HOMOSEXUAL CONDUCT.....23” section from the Table of Contents on page 6.
- e. Delete paragraph 3 (including all subparagraphs of paragraph 3) of Enclosure 2.
- f. Delete paragraph 2.b.(5) of Enclosure 3 on page 12.
- g. Delete “In the case of homosexual conduct, the board shall make specific findings of the reasons warranting retention in accordance with Enclosure 2.” from paragraph 3.d.(1) of Enclosure 3 on page 13.
- h. Delete “homosexual conduct,” from paragraph 4.b.(2) of Enclosure 3 on page 14.

- i. Delete “homosexual conduct,” from paragraph 6.b. of Enclosure 3 on page 14.
- j. Delete “HOMOSEXUAL CONDUCT,” from paragraph 2. of Enclosure 7 on page 21.
- k. Delete paragraph 2.b.(2), including all subparagraphs (a-g), of Enclosure 7 on pages 21-22.
- l. Delete Enclosure 8 on pages 23-26.
- m. Delete the following terms and their definitions from the GLOSSARY on pages 27-29.

- (1) bisexual

- (2) homosexual.

- (3) homosexual act.

- (4) homosexual conduct.

- (5) homosexual marriage or attempted marriage.

- (6) propensity to engage in homosexual acts.

- (7) sexual orientation.

- (8) statement that a member is a homosexual or bisexual, or words to that effect.

3. CHANGES TO REFERENCE (c)

- a. Delete paragraph E2.2.8 and all subparagraphs of paragraph E2.2.8. of Enclosure 2.

4. CHANGES TO REFERENCE (d)

- a. Delete paragraph 3.2.3.1.4.

5. CHANGES TO REFERENCE (e)

- a. Delete paragraph 6.1.2.3.

b. Delete paragraph 6.3.

6. CHANGES TO REFERENCE (f)

a. Delete paragraph 3.2. of Enclosure 3.

b. Revise paragraph 3.3. of Enclosure 3: delete “or E3.2.1. through E3.2.3.”

7. CHANGES TO REFERENCE (g)

a. Delete the phrase “of the opposite sex” in paragraph E2.13.

b. Delete both occurrences of the phrase “of the opposite sex” in paragraph E2.14.

8. CHANGES TO REFERENCE (h)

a. Delete the phrase “of the opposite sex” in paragraph C2.1.15.2.4.

b. Delete the phrase “of the opposite sex” in paragraph C2.1.15.2.5

c. Delete the phrase “of the opposite sex” in paragraph AP1.2 of Appendix 1.

d. Delete the phrase “of the opposite sex” in paragraph AP1.10 of Appendix 1.

e. Delete both occurrences of the phrase “of the opposite sex” in paragraph AP1.11 of Appendix 1.

f. Delete the phrase “of the opposite sex” in paragraph AP1. 22 of Appendix 1.

g. Delete the phrase “of the opposite sex” in paragraph AP1. 39 of Appendix 1.



PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

FEB 19 2021

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS

SUBJECT: Implementation of Section 3(b)(ii)-(iv) of Executive Order 14004, "Enabling All Qualified Americans To Serve Their Country in Uniform"

The Department is committed to ensuring all qualified Americans are permitted the opportunity to serve in the Armed Forces of the United States regardless of gender identity. This memorandum implements section 3(b)(ii)-(iv) of Executive Order (EO) 14004, "Enabling All Qualified Americans To Serve Their Country in Uniform," 86 FR 741, January 28, 2021 (attachment 1); the Statement by the Secretary of Defense, dated January 25, 2021, in support of the President's order (attachment 2); and Secretary of Defense Memorandum, "Military Service by Transgender Persons and Persons with Gender Dysphoria," January 29, 2021 (attachment 3).

Section 3(b)(ii) of the EO requires that the Secretary of Defense identify and examine the records of Service members who, as a result of Presidential Memorandum, "Military Service by Transgender Individuals," March 23, 2018 (attachment 4), or Presidential Memorandum, "Military Service by Transgender Individuals," August 25, 2017 (attachment 5), as implemented through DoD Instruction 1300.28, "Military Service by Transgender Persons and Persons With Gender Dysphoria," September 4, 2020 (attachment 6), were "involuntarily separated, discharged, or denied reenlistment or continuation of service on the basis of gender identity or under circumstances relating to their gender identity." Section 3(b)(iii) directs the Secretary to issue guidance to the Secretaries of the Military Departments regarding the correction of military records for Service members who meet the criteria of subsection 3(b)(ii). Subsection 3(b)(iv) requires the Secretaries of the Military Departments to issue supplemental guidance, subject to the approval of the Secretary of Defense, concerning Service members who meet the criteria of subsection 3(b)(ii) for correction of their military records and to offer such individuals an opportunity to rejoin the military should they meet current entry standards and wish to do so.

In accordance with section 3(b)'s directive that the Secretary of Defense prescribe guidance executing these mandates and in accordance with the dictates of subsection 3(b)(ii), I direct the Secretaries of the Military Departments to identify and examine the records of any Service member who was involuntarily separated, discharged, or denied reenlistment or continuation of service in accordance with the former policies referenced above under circumstances relating to gender identity. Once such records are identified, pursuant to subsection 3(b)(iii) of the EO, the Military Departments shall take steps "as necessary to remove an injustice pursuant to section 1552(a) of title 10, United States Code, to the extent permitted by law."

I further direct the Secretaries of the Military Departments to provide supplemental guidance, as appropriate, to their respective Boards of Correction of Military Records/Boards for Correction of Naval Records for review of Service members' records who meet the description

established in subsection 3(b)(ii) of the EO so that, where appropriate, individuals that meet current accession standards, and are otherwise eligible, are offered an opportunity to rejoin the military.

Any supplementary guidance to be issued by the Secretaries of the Military Departments must be submitted to my office for approval prior to publication and in all cases no later than 30 days from the date of this memorandum.

Virginia S. Penrod

Virginia S. Penrod
Acting

cc:
General Counsel of the Department of Defense

Attachments:
As stated

Attachment 1

Presidential Documents

Executive Order 14004 of January 25, 2021

Enabling All Qualified Americans To Serve Their Country in Uniform

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. All Americans who are qualified to serve in the Armed Forces of the United States (“Armed Forces”) should be able to serve. The All-Volunteer Force thrives when it is composed of diverse Americans who can meet the rigorous standards for military service, and an inclusive military strengthens our national security.

It is my conviction as Commander in Chief of the Armed Forces that gender identity should not be a bar to military service. Moreover, there is substantial evidence that allowing transgender individuals to serve in the military does not have any meaningful negative impact on the Armed Forces. To that end, in 2016, a meticulous, comprehensive study requested by the Department of Defense found that enabling transgender individuals to serve openly in the United States military would have only a minimal impact on military readiness and healthcare costs. The study also concluded that open transgender service has had no significant impact on operational effectiveness or unit cohesion in foreign militaries.

On the basis of this information, the Secretary of Defense concluded in 2016 that permitting transgender individuals to serve openly in the military was consistent with military readiness and with strength through diversity, such that transgender service members who could meet the required standards and procedures should be permitted to serve openly. The Secretary of Defense also concluded that it was appropriate to create a process that would enable service members to take steps to transition gender while serving.

The previous administration chose to alter that policy to bar transgender persons, in almost all circumstances, from joining the Armed Forces and from being able to take steps to transition gender while serving. Rather than relying on the comprehensive study by a nonpartisan federally funded research center, the previous administration relied on a review that resulted in a policy that set unnecessary barriers to military service. It is my judgment that the Secretary of Defense’s 2016 conclusions remain valid, as further demonstrated by the fact that, in 2018, the then-serving Chief of Staff of the Army, Chief of Naval Operations, Commandant of the Marine Corps, and Chief of Staff of the Air Force all testified publicly to the Congress that they were not aware of any issues of unit cohesion, disciplinary problems, or issues of morale resulting from open transgender service. A group of former United States Surgeons General, who collectively served under Democratic and Republican Presidents, echoed this point, stating in 2018 that “transgender troops are as medically fit as their non-transgender peers and that there is no medically valid reason—including a diagnosis of gender dysphoria—to exclude them from military service or to limit their access to medically necessary care.”

Therefore, it shall be the policy of the United States to ensure that all transgender individuals who wish to serve in the United States military and can meet the appropriate standards shall be able to do so openly and free from discrimination.

Sec. 2. Revocation. The Presidential Memorandum of March 23, 2018 (Military Service by Transgender Individuals), is hereby revoked, and the Presidential Memorandum of August 25, 2017 (Military Service by Transgender Individuals), remains revoked.

Sec. 3. Agency Roles and Responsibilities. In furtherance of the policy described in section 1 of this order, I hereby direct the following:

(a) The Secretary of Defense, and Secretary of Homeland Security with respect to the Coast Guard, shall, after consultation with the Joint Chiefs of Staff about how best to implement this policy and consistent with applicable law, take all necessary steps to ensure that all directives, orders, regulations, and policies of their respective departments are consistent with this order. These steps shall include establishing a process by which transgender service members may transition gender while serving, along with any further steps that the Secretary of Defense and Secretary of Homeland Security deem appropriate to advance the policy described in section 1 of this order.

(b) The Secretary of Defense shall:

(i) immediately prohibit involuntary separations, discharges, and denials of reenlistment or continuation of service on the basis of gender identity or under circumstances relating to their gender identity;

(ii) identify and examine the records of service members who have been involuntarily separated, discharged, or denied reenlistment or continuation of service on the basis of gender identity or under circumstances relating to their gender identity;

(iii) issue guidance to the Secretaries of each military department regarding the correction of the military records of individuals described in subsection (b)(ii) of this section as necessary to remove an injustice, pursuant to section 1552(a) of title 10, United States Code, to the extent permitted by law; and

(iv) direct the Secretaries of each military department to provide supplemental guidance, subject to the approval of the Secretary, to the boards for the correction of military records, instructing such boards on how to review applications for the correction of records of individuals described in subsection (b)(ii) of this section. Where appropriate, the department concerned shall offer such individuals an opportunity to rejoin the military should they wish to do so and meet the current entry standards.

(c) The Secretary of Homeland Security with respect to the Coast Guard shall:

(i) immediately prohibit involuntary separations, discharges, and denials of reenlistment or continuation of service, on the basis of gender identity or under circumstances relating to their gender identity;

(ii) identify and examine the records of service members who have been involuntarily separated, discharged, or denied reenlistment or continuation of service, on the basis of gender identity or under circumstances relating to their gender identity;

(iii) issue guidance regarding the correction of the military records of individuals described in subsection (c)(ii) of this section as necessary to remove an injustice, pursuant to section 1552(a) of title 10, United States Code, to the extent permitted by law; and

(iv) provide supplemental guidance to the Board for Correction of Military Records of the Coast Guard, instructing the Board on how to review applications for the correction of records of individuals described in subsection (c)(ii) of this section. Where appropriate, the Secretary of Homeland Security shall offer such individuals an opportunity to rejoin the Coast Guard should they wish to do so and meet the current entry standards.

(d) The Secretary of Defense and the Secretary of Homeland Security shall report to me within 60 days of the date of this order on their progress in implementing the directives in this order and the policy described in section 1 of this order.

Sec. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 25, 2021.

Attachment 2

IMMEDIATE RELEASE

Statement by Secretary of Defense Lloyd J. Austin III on Transgender Service in the Military

JAN. 25, 2021

I fully support the President's direction that all transgender individuals who wish to serve in the United States military and can meet the appropriate standards shall be able to do so openly and free from discrimination.

The Department will immediately take appropriate policy action to ensure individuals who identify as transgender are eligible to enter and serve in their self-identified gender. These changes will ensure no one will be separated or discharged, or denied reenlistment, solely on the basis of gender identity. Prospective recruits may serve in their self-identified gender when they have met the appropriate standards for accession into the military services. This revised policy will also ensure all medically-necessary transition related care authorized by law is available to all Service members and will re-examine all cases of transgender Service members that may be in some form of adverse administrative proceedings.

Over the next 60 days, I look forward to working with the senior civilian and military leaders of the Department as we expeditiously develop the appropriate policies and procedures to implement these changes.

The United States Armed Forces are in the business of defending our fellow citizens from our enemies, foreign and domestic. I believe we accomplish that mission more effectively when we represent all our fellow citizens. I also believe we should avail ourselves of the best possible talent in our population, regardless of gender identity. We would be rendering ourselves less fit to the task if we excluded from our ranks people who meet our standards and who have the skills and the devotion to serve in uniform.

This is the right thing to do. It is also the smart thing to do.

Attachment 3



THE SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

JAN 29 2021

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS

SUBJECT: Military Service by Transgender Persons and Persons with Gender Dysphoria

On January 25, 2021, the President signed an Executive Order entitled, "Enabling All Qualified Americans to Serve Their Country in Uniform," establishing as the policy of the United States that all Americans who are qualified to serve in the Armed Forces of the United States should be eligible to serve and that all transgender individuals who wish to serve in the U.S. military and can meet the appropriate standards shall be able to do so openly and free from discrimination. Further, the President directed me to take the steps necessary to ensure that all directives, orders, regulations, and policies of the Department are consistent with this order.

Over the next 60 days, I will work with the senior civilian and military leaders of the Department as we expeditiously develop the appropriate policies and procedures to implement these changes. Until such policy is established, effective immediately, any adverse personnel actions initiated under DoD Instruction (DoDI) 1300.28, "Military Service by Transgender Persons and Persons with Gender Dysphoria," shall be held in abeyance unless personally approved by the Under Secretary of Defense for Personnel and Readiness in coordination personally with the General Counsel of the DoD; these approval and coordination authorities may not be delegated. Adverse personnel actions include all administrative separations, denial of accession or reenlistment, disability evaluation, or petition to serve in one's preferred gender as a member of the "exempt population" as defined in DoDI 1300.28. This approval requirement supersedes any contrary approval authority provided for in DoDI 1300.28.

This requirement shall remain in effect until such time as a new policy allowing for the open service of transgender individuals is re-established. If questions relating to the service of transgender members arise, the Military Departments should address them to the Under Secretary of Defense for Personnel and Readiness.

cc:
Chairman of the Joint Chiefs of Staff
Under Secretaries of Defense
General Counsel of the Department of Defense
Assistant Secretary of Defense for Legislative Affairs
Assistant to the Secretary of Defense for Public Affairs



OSD000637-21/CMD001247-21

Attachment 4

Presidential Documents

Memorandum of March 23, 2018

Military Service by Transgender Individuals

Memorandum for the Secretary of Defense [and] the Secretary of Homeland Security

Pursuant to my memorandum of August 25, 2017, "Military Service by Transgender Individuals," the Secretary of Defense, in consultation with the Secretary of Homeland Security, submitted to me a memorandum and report concerning military service by transgender individuals.

These documents set forth the policies on this issue that the Secretary of Defense, in the exercise of his independent judgment, has concluded should be adopted by the Department of Defense. The Secretary of Homeland Security concurs with these policies with respect to the U.S. Coast Guard.

Among other things, the policies set forth by the Secretary of Defense state that transgender persons with a history or diagnosis of gender dysphoria—individuals who the policies state may require substantial medical treatment, including medications and surgery—are disqualified from military service except under certain limited circumstances.

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby order as follows:

Section 1. I hereby revoke my memorandum of August 25, 2017, "Military Service by Transgender Individuals," and any other directive I may have made with respect to military service by transgender individuals.

Sec. 2. The Secretary of Defense, and the Secretary of Homeland Security, with respect to the U.S. Coast Guard, may exercise their authority to implement any appropriate policies concerning military service by transgender individuals.

Sec. 3. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Secretary of Defense is authorized and directed to publish this memorandum in the *Federal Register*.

A handwritten signature in black ink, appearing to be "Andrew M. Ross", located in the upper right quadrant of the page.

THE WHITE HOUSE,
Washington, March 23, 2018

[FR Doc. 2018-06426
Filed 3-27-18; 11:15 am]
Billing code 5001-06-P

Attachment 5

Presidential Documents

Memorandum of August 25, 2017

Military Service by Transgender Individuals

Memorandum for the Secretary of Defense [and] the Secretary of Homeland Security

Section 1. Policy. (a) Until June 2016, the Department of Defense (DoD) and the Department of Homeland Security (DHS) (collectively, the Departments) generally prohibited openly transgender individuals from accession into the United States military and authorized the discharge of such individuals. Shortly before President Obama left office, however, his Administration dismantled the Departments' established framework by permitting transgender individuals to serve openly in the military, authorizing the use of the Departments' resources to fund sex-reassignment surgical procedures, and permitting accession of such individuals after July 1, 2017. The Secretary of Defense and the Secretary of Homeland Security have since extended the deadline to alter the currently effective accession policy to January 1, 2018, while the Departments continue to study the issue.

In my judgment, the previous Administration failed to identify a sufficient basis to conclude that terminating the Departments' longstanding policy and practice would not hinder military effectiveness and lethality, disrupt unit cohesion, or tax military resources, and there remain meaningful concerns that further study is needed to ensure that continued implementation of last year's policy change would not have those negative effects.

(b) Accordingly, by the authority vested in me as President and as Commander in Chief of the Armed Forces of the United States under the Constitution and the laws of the United States of America, including Article II of the Constitution, I am directing the Secretary of Defense, and the Secretary of Homeland Security with respect to the U.S. Coast Guard, to return to the longstanding policy and practice on military service by transgender individuals that was in place prior to June 2016 until such time as a sufficient basis exists upon which to conclude that terminating that policy and practice would not have the negative effects discussed above. The Secretary of Defense, after consulting with the Secretary of Homeland Security, may advise me at any time, in writing, that a change to this policy is warranted.

Sec. 2. Directives. The Secretary of Defense, and the Secretary of Homeland Security with respect to the U.S. Coast Guard, shall:

(a) maintain the currently effective policy regarding accession of transgender individuals into military service beyond January 1, 2018, until such time as the Secretary of Defense, after consulting with the Secretary of Homeland Security, provides a recommendation to the contrary that I find convincing; and

(b) halt all use of DoD or DHS resources to fund sex-reassignment surgical procedures for military personnel, except to the extent necessary to protect the health of an individual who has already begun a course of treatment to reassign his or her sex.

Sec. 3. Effective Dates and Implementation. Section 2(a) of this memorandum shall take effect on January 1, 2018. Sections 1(b) and 2(b) of this memorandum shall take effect on March 23, 2018. By February 21, 2018, the Secretary of Defense, in consultation with the Secretary of Homeland Security, shall submit to me a plan for implementing both the general policy set forth in section 1(b) of this memorandum and the specific directives

set forth in section 2 of this memorandum. The implementation plan shall adhere to the determinations of the Secretary of Defense, made in consultation with the Secretary of Homeland Security, as to what steps are appropriate and consistent with military effectiveness and lethality, budgetary constraints, and applicable law. As part of the implementation plan, the Secretary of Defense, in consultation with the Secretary of Homeland Security, shall determine how to address transgender individuals currently serving in the United States military. Until the Secretary has made that determination, no action may be taken against such individuals under the policy set forth in section 1(b) of this memorandum.

Sec. 4. Severability. If any provision of this memorandum, or the application of any provision of this memorandum, is held to be invalid, the remainder of this memorandum and other dissimilar applications of the provision shall not be affected.

Sec. 5. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Secretary of Defense is authorized and directed to publish this memorandum in the *Federal Register*.

A handwritten signature in black ink, appearing to be the name of the Secretary of Defense, is located on the right side of the page.

THE WHITE HOUSE,
Washington, August 25, 2017

Attachment 6



DoD INSTRUCTION 1300.28

MILITARY SERVICE BY TRANSGENDER PERSONS AND PERSONS WITH GENDER DYSPHORIA

Originating Component: Office of the Under Secretary of Defense for Personnel and Readiness

Effective: September 4, 2020

Releasability: Cleared for public release. Available on the Directives Division Website at <https://www.esd.whs.mil/DD/>.

Reissues and Cancels: DoD Instruction 1300.28, "In-Service Transition for Transgender Service Members," October 1, 2016

Incorporates and Cancels: Directive-type Memorandum 19-004, "Military Service by Transgender Persons and Persons with Gender Dysphoria," March 12, 2019

Approved by: Matthew P. Donovan, Under Secretary of Defense for Personnel and Readiness

Purpose: In accordance with the authority in DoD Directive 5124.02, this issuance establishes policy, assigns responsibilities, and prescribes procedures regarding the standards for military service accession, retention, separation, in-service transition, and medical care for Service members and applicants for accession to the Military Services with gender dysphoria or who are transgender, as applicable.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY.

This issuance:

a. Applies to OSD, the Military Departments (including the United States Coast Guard (USCG) at all times, including when it is a Service in the Department of Homeland Security, by agreement with that Department), the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD.

b. The requirement in Paragraph 2.3.d. of this issuance does not apply to the USCG.

1.2. POLICY.

a. Service in the Military Services is open to all persons who can meet the high standards for military service and readiness without special accommodations.

b. All Service members and applicants for accession to the Military Services must be treated with dignity and respect. No person, solely on the basis of his or her gender identity, will be:

- (1) Denied accession into the Military Services;
- (2) Involuntarily separated or discharged from the Military Services;
- (3) Denied reenlistment or continuation of service in the Military Services; or
- (4) Subjected to adverse action or mistreatment.

c. Service members who accessed in their preferred gender or received a diagnosis of gender dysphoria from, or had such diagnosis confirmed by, a military medical provider before April 12, 2019, are allowed to continue serving in the military pursuant to the policies and procedures in Section 4 of this issuance.

d. Except where a provision of policy has granted an exception, transgender Service members or applicants for accession to the Military Services must be subject to the same standards as all other persons.

(1) When a standard, requirement, or policy depends on whether the individual is a male or a female (e.g., medical fitness for duty, physical fitness and body fat standards; berthing, bathroom, and shower facilities; and uniform and grooming standards), all persons will be subject to the standard, requirement, or policy associated with their biological sex.

(2) Transgender persons may seek waivers or exceptions to these or any other standards, requirements, or policies on the same terms as any other person; additional policy guidance on such waivers or exceptions is in Paragraph 5.1. of this issuance.

e. Accession and retention standards for gender dysphoria and the treatment of gender dysphoria, including stability periods and surgical procedures, will be aligned with analogous conditions and treatments.

SECTION 2: RESPONSIBILITIES

2.1. UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS (USD(P&R)).

The USD(P&R):

a. Updates existing DoD issuances, or publishes new issuances, as necessary, related to military service by transgender persons and persons with gender dysphoria in accordance with the provisions of this issuance.

b. Ensures that any proposed new Military Department and Military Service regulations, policies, and guidance related to military service by transgender persons and persons with gender dysphoria, or revisions to existing such regulations, policies and guidance, are consistent with this issuance.

2.2. ASSISTANT SECRETARY OF DEFENSE FOR MANPOWER AND RESERVE AFFAIRS.

Under the authority, direction, and control of the USD(P&R), the Assistant Secretary of Defense for Manpower and Reserve Affairs coordinates with the Assistant Secretary of Defense for Health Affairs (ASD(HA)) in the review of the accession standards in Paragraph 3.b. of this issuance. Such review will be initiated no later than 24 months from the effective date of this policy, and conducted subsequently every 24 months thereafter. The accession standards may be maintained or changed, as appropriate to ensure:

a. Consistency with applicable medical standards and clinical practices.

b. The readiness and combat effectiveness of the Military Services.

2.3. SECRETARIES OF THE MILITARY DEPARTMENTS AND COMMANDANT, USCG.

The Secretaries of the Military Departments and the Commandant, USCG:

a. Adhere to all provisions of this issuance.

b. Administer their respective Military Department's, or in the case of the USCG, their Service's programs and update its regulations, policies, and guidance related to military service by transgender persons and persons with gender dysphoria, and publish such new regulations, policies, and guidance, as necessary, to implement the provisions of this issuance.

c. Maintain a Service Central Coordination Cell (SCCC) to provide multi-disciplinary (e.g., medical, legal, military personnel management) expert advice and assistance to commanders with regard to military service by transgender Service members and Service members with

gender dysphoria, and to assist commanders in the execution of DoD, Military Department, and Military Service policies and procedures.

d. Submit to the USD(P&R) any proposed revision to existing Military Department and Military Service regulations, policies, and guidance related to military service by transgender persons and persons with gender dysphoria, and any new such regulations, policies, and guidance, no less than 15 calendar days in advance of the proposed publication date. In accordance with Paragraph 1.1.b. of this issuance, this requirement does not apply to the USCG.

e. Ensure in the implementation of this issuance and any Military Department and Military Service regulations, policies, and guidance related to military service by transgender persons and persons with gender dysphoria, the protection of personally identifiable information (PII), protected health information, and personal privacy considerations, consistent with current DoD guidance and in accordance with Paragraphs 5.4. and 5.5. of this issuance.

f. Implement processes for the assessment and oversight of compliance with DoD, Military Department, and Military Service regulations, policies, and guidance applicable to military service by transgender persons and persons with gender dysphoria, in accordance with Paragraph 5.6. of this issuance.

g. May grant waivers in accordance with Paragraph 5.1. of this issuance, in whole or in part, in individual cases. Waiver authority permitting an applicant for accession to the Military Services or a Service member, who is not exempt pursuant to Section 4 of this issuance, to serve in their preferred gender may be delegated, in writing, no lower than the Military Service Personnel Chiefs or the Assistant Commandant for Human Resources in the case of the USCG. All other waiver authority remains with the Military Service-designated waiver authority.

SECTION 3: PROCEDURES FOR SERVICE MEMBERS AND PROSPECTIVE APPLICANTS FOR MILITARY SERVICE

Transgender Service members and applicants for Military Service to whom the criteria of Paragraph 3.a. of this issuance apply, like all other Service members and applicants for Military Service, must adhere to the standards associated with their biological sex. Transgender Service members may consult with a military medical provider, receive a diagnosis of gender dysphoria, and receive mental health counseling, but may not obtain a gender marker change or serve in their preferred gender. A Service member may be retained without a waiver provided that a military medical provider determined that gender transition is not medically necessary to protect the health of the individual. Continued service is contingent on the Service member not seeking gender transition, the Service member being willing and able to serve in his or her biological sex, and the Service member being able to meet applicable deployability requirements.

a. Applicability.

The policies and procedures identified in this section are applicable to those Service members who on or after April 12, 2019:

(1) Entered into a contract for enlistment into the Military Services using DD Form 4, "Enlistment/Reenlistment Document Armed Forces of the United States," available on the DoD Forms Management Program website at <https://www.esd.whs.mil/Directives/forms/>, or an equivalent, or were selected for entrance into an officer commissioning program through a selection board or similar process; or

(2) As a Service member, received a diagnosis of gender dysphoria from, or had such diagnosis confirmed by, a military medical provider.

b. Appointment, Enlistment, or Induction into the Military Services.

Individuals to whom the criteria of Paragraph 3.a.(1) of this issuance apply will be accessed or commissioned based on the following medical standards, provided they are medically qualified in all other respects in accordance with Volume 1 of DoD Instruction (DoDI) 6130.03.

(1) A history or diagnosis of gender dysphoria is disqualifying unless all of the following apply:

(a) As certified by a licensed mental health provider, the applicant demonstrates 36 consecutive months of stability in their biological sex immediately preceding submission of the application without clinically significant distress or impairment in social, occupational, or other important areas of functioning; and

(b) The applicant demonstrates that they have not transitioned to their preferred gender and a licensed medical provider has determined that gender transition is not medically necessary to protect the health of the individual; and

(c) The applicant is willing and able to adhere to all applicable standards, including the standards associated with the applicant's biological sex.

(2) A history of cross-sex hormone therapy or a history of sex reassignment or genital reconstruction surgery is disqualifying.

c. Medical Care.

(1) In accordance with DoDIs 6025.19 and 1215.13, Service members have a responsibility to maintain their health and fitness, meet individual medical readiness requirements, and report medical and health (including mental health) issues that may affect their readiness to deploy or fitness to continue serving in an active status.

(2) For Service members who have been diagnosed with gender dysphoria and meet the applicability criteria in Paragraph 3.a. of this issuance, the Military Departments and the USCG:

(a) Will provide medically necessary care consistent with Section 1074 of Title 10, United States Code and the March 12, 2019 Assistant Secretary of Defense for Health Affairs Memorandum for as long as the individual remains a Service member as set forth in a medical treatment plan developed with the military medical provider and provided to the commander.

(b) Will take appropriate action to facilitate the continuity of health care consistent with DoDI 6490.10 if the Service member is to be separated from military service.

(c) In any case in which the military medical provider determines the retention circumstances described in Paragraph 3.e of this issuance are applicable, the provider will, consistent with DoDI 6490.08, follow a presumption not to notify a member's commander of the diagnosis of gender dysphoria unless one of the specific notification standards in that DoDI is met.

d. In-Service Transition.

Individuals to whom the criteria of Paragraph 3.a. of this issuance apply, must adhere, like all other Service members, to the standards associated with their biological sex. These Service members may consult with a military mental health provider, receive a diagnosis of gender dysphoria, and receive mental health counseling, but may not, unless a waiver is granted, obtain a gender marker change in the Defense Enrollment Eligibility Reporting System (DEERS) or serve in their preferred gender.

e. Retention.

Service members may be retained without a waiver if they receive a diagnosis of gender dysphoria on or after April 12, 2019, provided that:

(1) A military medical provider has determined that gender transition is not medically necessary to protect the health of the individual; and

(2) The Service member is willing and able to adhere to all applicable standards, including the standards associated with his or her biological sex.

f. Separation.

Service members to whom the criteria of Paragraph 3.a. of this issuance apply:

(1) May not be separated, discharged, or denied reenlistment or continuation of service solely based on gender identity.

(2) May not be separated solely based on a diagnosis of gender dysphoria without first being medically evaluated for possible referral to the Disability Evaluation System (DES) pursuant to DoDI 1332.18 or the USCG Physical Disability Evaluation System (PDES), pursuant to Commandant Instruction (COMDTINST) M1850.2 (series).

(3) May be subject to processing for administrative separation in accordance with DoDIs 1332.14 and 1332.30, as appropriate, if referral to the DES or USCG PDES is not appropriate in accordance with DoDI 1332.18 or COMDTINST M1850.2 (series), respectively. In such cases the following guidance applies:

(a) The Secretary of the Military Department concerned or the Commandant, USCG, may authorize separation based on conditions and circumstances not constituting a physical disability that interfere with assignment to or performance of duty in accordance with DoDIs 1332.14 and 1332.30 or COMDTINST M1000.4 (series), as applicable.

1. Service members are ineligible for referral to the DES or USCG PDES when they have a condition not constituting a physical disability as described in DoDI 1332.18 or COMDTINST M1850.2 (series).

2. Service members may be referred to the DES or USCG PDES if they have a diagnosis of gender dysphoria and of co-morbidities that are appropriate for disability evaluation processing in accordance with DoDI 1332.18 or COMDTINST M1850.2 (series), before processing for administrative separation.

(b) Service members with a diagnosis of gender dysphoria may be subject to the initiation of administrative separation processing in accordance with DoDIs 1332.14 and 1332.30 or COMDTINST M1000.4 (series), if they are unable or unwilling to adhere to all applicable standards, including the standards associated with their biological sex.

(c) Nothing in this guidance precludes appropriate administrative or disciplinary action for Service members who refuse orders from lawful authority to comply with applicable standards or otherwise do not meet standards for performance and conduct.

SECTION 4: PROCEDURES FOR SERVICE MEMBERS AND PROSPECTIVE APPLICANTS IN THE EXEMPT POPULATION

4.1. CONSIDERATIONS.

Service members and applicants for military service to whom the criteria in Paragraph 4.1.a. of this issuance apply, are exempt from Section 3 of this issuance. A Service member's exempt status cannot be revoked and the member cannot be separated, discharged, or denied reenlistment or continuation of service solely on the basis of his or her gender identity. However, a Service member whose ability to serve is adversely affected by a medical condition or medical treatment related to his or her gender identity or gender transition should be treated, for purposes of separation and retention, in a manner consistent with a Service member whose ability to serve is similarly affected by medical conditions or treatments unrelated to gender identity or gender transition.

a. Applicability.

The policies and procedures identified in this section are applicable to those Service members who before April 12, 2019:

(1) Entered into a contract for enlistment into the Military Services using DD Form 4 or an equivalent, or were selected for entrance into an officer commissioning program through a selection board or similar process; and

(2) Either:

(a) Were medically qualified for military service or selected for entrance into an officer commissioning program in their preferred gender in accordance with Paragraph 4.1.b. of this issuance; or

(b) As a Service member, received a diagnosis of gender dysphoria from, or had such diagnosis confirmed by, a military medical provider.

b. Appointment, Enlistment, or Induction into the Military Services.

Individuals to whom the criteria of Paragraph 4.1.a. of this issuance apply, will be accessed or commissioned based on the following medical standards, provided they are medically qualified in all other respects in accordance with Volume 1 of DoDI 6130.03:

(1) A history of gender dysphoria is disqualifying, unless, as certified by a licensed mental health provider, the applicant has been stable without clinically significant distress or impairment in social, occupational, or other important areas of functioning for 18 months.

(2) A history of medical treatment associated with gender transition is disqualifying, unless, as certified by a licensed medical provider:

(a) The applicant has completed all medical treatment associated with the applicant's gender transition; and

(b) The applicant has been stable in the preferred gender for 18 months; and

(c) If the applicant is presently receiving cross-sex hormone therapy post-gender transition, the individual has been stable on such hormones for 18 months.

(3) A history of sex reassignment or genital reconstruction surgery is disqualifying, unless, as certified by a licensed medical provider:

(a) A period of 18 months has elapsed since the date of the most recent of any such surgery; and

(b) No functional limitations or complications persist and any additional surgery is not required.

c. Medical Care.

The Military Departments and Military Services will address requests for medical care and treatment in accordance with this issuance and the July 29, 2016 Assistant Secretary of Defense for Health Affairs Memorandum. Exempt Service members may continue to receive all medical treatment authorized in the July 29, 2016 Assistant Secretary of Defense for Health Affairs Memorandum to protect the health of the individual, obtain a gender marker change in DEERS in accordance with this issuance, and serve in their preferred gender.

(1) In accordance with DoDIs 6025.19 and 1215.13, all Service members have a responsibility to maintain their health and fitness, meet individual medical readiness requirements, and report to their chains of command any medical (including mental health) and health issue that may affect their readiness to deploy or fitness to continue serving. Each Service member in the Active Component or in the Selected Reserve will, as a condition of continued participation in military service, report significant health information to their chain of command. Service members who have or have had a medical condition that may limit their performance of official duties, must consult with a military medical provider concerning their diagnosis and proposed treatment, and must notify their commanders.

(2) As in the case of other health issues, when an exempt Service member receives a diagnosis of gender dysphoria from a military medical provider and obtains a medical treatment plan for gender transition, the member's notification to the commander must identify all medically necessary care and treatment that is part of the Service member's medical treatment plan.

(a) If applicable, the member's notification to the commander must identify a projected schedule for such treatment and an estimated date for a change in the member's gender marker in DEERS.

(b) If additional care and treatment are planned after a gender marker change that was not part of an original treatment plan, the Service member must provide notification to the commander identifying the additional care, treatment, and projected schedule for such treatment.

(c) Recommendations of a military health care provider will address the severity of the Service member's medical condition and the urgency of any proposed medical treatment.

d. Living in Preferred Gender.

Real life experience (RLE) is the phase in the gender transition process during which the individual commences living socially in the gender role consistent with their preferred gender. Consistent application of military standards will normally require that RLE occur in an off-duty status and away from the Service member's place of duty, before the change of a gender marker in DEERS.

(1) If a Service member's medical treatment plan identifies the requirement for full-time continuous RLE, an exception to policy (ETP), in accordance with Paragraph 4.3.d. of this issuance, is required for the duration of the full-time continuous RLE.

(2) To maximize individual and unit military readiness, the decision for the implementation, timing and approval of RLE must be in accordance with mission requirements. The Commander plays a key role in providing recommendations on, or approving the timing of, RLE, as well as the approval of requested ETPs associated with RLE.

e. In-Service Transition.

Gender transition for a member of the exempt population begins when an exempt Service member receives a diagnosis from a military medical provider indicating that gender transition is medically necessary and then subsequently completes the medical care identified or approved by a military medical provider in a documented treatment plan as necessary to achieve stability in the preferred gender, and concludes when the Service member's gender marker in DEERS is changed and the member is recognized in his or her preferred gender. Care and treatment may still be received after the gender marker is changed in DEERS as described in Paragraph 4.1.c.(4) of this issuance, but at that point, the exempt Service member will be responsible for meeting all applicable military standards in the preferred gender. With regard to facilities subject to regulation by the military, such a Service member whose gender marker has been changed in DEERS, will use those berthing, bathroom, and shower facilities associated with his or her preferred gender.

f. Retention and Separation.

Service members who are exempt:

(1) May not be separated, discharged, or denied reenlistment or continuation of service solely on the basis of gender identity.

(2) May be retained without a waiver pursuant to this policy. A Service member whose ability to serve is adversely affected by a medical condition or medical treatment related to his or

her gender identity or gender transition should be treated, for purposes of separation and retention, in a manner consistent with a Service member whose ability to serve is similarly affected by medical conditions or treatments unrelated to gender identity or gender transition.

4.2. GENDER TRANSITION APPROVAL PROCESS.

a. An exempt Service member who receives a diagnosis from a military medical provider for which gender transition is medically necessary, or has such a diagnosis confirmed by a military medical provider, may, in consultation with the military medical provider and at the appropriate time, request that the commander approve:

- (1) The timing of medical treatment associated with gender transition.
- (2) An exception to policy (ETP associated with gender transition, consistent with Paragraph 4.3.d.(1) of this issuance; and
- (3) A change to the Service member's gender marker in DEERS.

b. The commander, informed by the recommendations of the military medical provider, the SCCC, and others as appropriate, will respond to the request within a framework that ensures readiness by minimizing impacts to the mission (including deployment, operational, training, exercise schedules, and critical skills availability), as well as to the morale, welfare, good order, and discipline of the command.

c. Consistent with applicable law, regulation, and policy, the commander will:

- (1) Comply with the applicable provisions of this issuance, and with Military Department and Military Service regulations, policies, and guidance, and as necessary, consult with the SCCC.
- (2) Promptly respond to any request for medical care, as identified by the military medical provider, and ensure that such care is provided consistent with applicable regulations.
- (3) Respond to any request for medical treatment or an ETP associated with gender transition as soon as practicable, but no later than 90 calendar days after receiving the request, provided the request is determined to be complete in accordance with the provisions of this issuance and any applicable Military Department and Military Service regulations, policies, and guidance. The response will be in writing; include notice of any actions taken by the commander in accordance with applicable regulations, policies, and guidance and the provisions of this issuance; and, will be provided to both the Service member and his or her military medical provider. A request that, upon review by the commander, is determined to be incomplete, will be returned to the Service member, with written notice of the deficiencies identified, as soon as practicable, but no later than 30 calendar days after receipt.
- (4) At any time before the change of the Service member's gender marker in DEERS, the commander may modify a previously approved approach to, or an ETP associated with, the Service member's gender transition. A determination that modification is necessary and

appropriate will be made in accordance with Paragraph 4.3.c. of this issuance. Notice of such modification will be provided to the Service member under procedures established by the Secretary of the Military Department concerned, and may include options set forth in Paragraph 4.3.d. of this issuance.

(5) The commander will approve, in writing, the change of an exempt Service member's gender marker in DEERS upon receipt of the recommendation of the military medical provider that the member's gender marker be changed and the requisite documentation from the Service member. Upon submission of the commander's written approval to the appropriate personnel servicing activity, the change in the Service member's gender marker will be entered in the database and transmitted to and updated in DEERS, under the authority, direction, and control of the Defense Manpower Data Center.

d. As authorized by Military Department and Military Service regulations, policies, and guidance implementing this issuance, a Service member may request review by a senior officer in the chain of command of a subordinate commander's decision with regard to any request under this issuance and any subsequent modifications to that decision.

4.3. ROLES AND RESPONSIBILITIES.

For Service members who have been diagnosed with gender dysphoria and are exempt, the Military Departments and Military Services will handle requests for medical care and treatment in accordance with this issuance and the July 29, 2016 Assistant Secretary of Defense for Health Affairs Memorandum. The individual exempt Service member, the military medical provider, the commander, and each of the Military Departments have crucial roles and responsibilities in the process of exempt Service member gender transition.

a. Exempt Service Member.

The exempt Service member will:

(1) Notify the commander of a diagnosis indicating that gender transition is medically necessary, and identify all medically necessary treatment that is part of the member's medical treatment plan and a projected schedule for such treatment, including an estimated date for a change in the member's gender marker in DEERS, as set forth in Paragraph 4.1.c of this issuance.

(2) Notify the commander of any change to the medical treatment plan, the projected schedule for such treatment, or the estimated date on which the member's gender marker would be changed in DEERS.

(3) Notify the commander of any new care determined to be medically necessary after a gender marker change in DEERS that was not previously approved in the medical treatment plan, in accordance with Section 4.1.c.(2)(b) of this issuance, as such care or treatment may affect readiness to deploy or fitness to continue serving.

b. Military Medical Provider.

The military medical provider will:

(1) Recommend medically necessary care and treatment, and, in consultation with the Service member, develop a medical treatment plan associated with the Service member's gender transition, as set forth in Paragraph 4.1.c. of this issuance, for submission to the commander.

(2) In accordance with established military medical practices, advise the commander on the medical diagnosis applicable to the exempt Service member, including the provider's assessment of the medically necessary care and treatment, the urgency of the proposed care and treatment, the likely impact of the care and treatment on the individual's readiness and deployability, and the scope of the human and functional support network needed to support the individual.

(3) In consultation with the Service member, formally advise the commander when the exempt Service member's gender transition is complete, and recommend to the commander a time at which the member's gender marker may be changed in DEERS.

(4) Provide the exempt Service member with medically necessary care and treatment after the member's gender marker has been changed in DEERS.

c. Commander.

The Commander will:

(1) Review an exempt Service member's request to transition gender. Ensure, as appropriate, a transition process that:

(a) Complies with DoD, Military Department, and Military Service regulations, policies, and guidance.

(b) Considers the individual facts and circumstances presented by the exempt Service member.

(c) Ensures military readiness by minimizing impacts to the mission (including deployment, operational, training, and exercise schedules, and critical skills availability), as well as to the morale and welfare, and good order and discipline of the unit.

(d) Is consistent with the medical treatment plan.

(e) Incorporates consideration of other factors, as appropriate.

(2) Coordinate with the military medical provider regarding any medical care or treatment provided to the exempt Service member, and any medical issues that arise in the course of a Service member's gender transition.

(3) Consult with the SCCC, as necessary, with regard to service by exempt Service members and gender transition in the military, the execution of DoD, Military Department, and Military Service policies and procedures, and assessment of the means and timing of any proposed medical care or treatment.

d. The Military Departments and the USCG.

The Military Departments and USCG will:

(1) Establish policies and procedures outlining the actions a commander may take to minimize the impact to the mission and ensure continued unit readiness in the event that a transitioning individual is unable to meet standards or requires an ETP during a period of gender transition. Such policies and procedures may address the means and timing of transition, procedures for responding to a request for an ETP prior to the change of an exempt Service member's gender marker in DEERS, appropriate duty statuses, and tools for addressing any inability to serve throughout the gender transition process. Any such actions available to the commander will consider and balance the needs of the individual and the needs of the command in a manner comparable to the actions available to the commander in addressing comparable Service member circumstances unrelated to gender transition. Such actions may include:

(a) Adjustments to the date on which the exempt Service member's gender transition, or any component of the transition process, will commence.

(b) Advising the exempt Service member of the availability of options for extended leave status or participation in other voluntary absence programs during the transition process.

(c) Arrangements for the transfer of the exempt Service member to another organization, command, location, or duty status (e.g., Individual Ready Reserve), as appropriate, during the transition process.

(d) ETPs associated with changes in the exempt Service member's physical appearance and body composition during gender transition, such as accommodations in the application of standards for uniforms and grooming, body composition assessment, physical readiness testing, and military personnel drug abuse testing program participation.

(e) Establishment of, or adjustment to, local policies on the use of berthing, bathroom, and shower facilities subject to regulation by the military, during the transition process.

(f) Referral for a determination of fitness in the DES in accordance with DoDI 1332.18 or the USCG PDES, pursuant to COMDTINST M1850.2 (series).

(g) Other actions, including the initiation of administrative or other proceedings, comparable to actions that could be initiated with regard to others whose ability to serve is similarly affected for reasons unrelated to gender transition.

(2) Establish policies and procedures, consistent with this issuance, whereby an exempt Service member's gender marker will be changed in DEERS based on: a determination by the

military medical provider that the exempt Service member's gender transition is complete; receipt of written approval from the commander, issued in consultation with the Service member; and production by the Service member of documentation indicating gender change. Such documentation is limited to:

(a) A certified true copy of a State birth certificate reflecting the Service member's preferred gender;

(b) A certified true copy of a court order reflecting the Service member's preferred gender; or

(c) A United States passport reflecting the member's preferred gender.

(3) When the exempt Service member's gender marker in DEERS is changed:

(a) Apply uniform standards, grooming standards, body composition assessment standards, physical readiness testing standards, military personnel drug abuse testing program standards, and other standards applied with consideration of the member's gender, applicable to the Service member's gender as reflected in DEERS.

(b) As to facilities that are subject to regulation by the military, direct the use of berthing, bathroom, and shower facilities according to the Service member's gender marker as reflected in DEERS.

4.4. CONSIDERATIONS ASSOCIATED WITH RESERVE COMPONENT PERSONNEL.

Excepting only the considerations set forth in Paragraphs 4.4.a.-e. of this issuance, Reserve Component personnel are subject to all policies and procedures applicable to Active Component Service members as set forth in this issuance and in Military Department and Military Service regulations, policies, and guidance implementing this issuance.

a. Gender Transition Approach.

As in the case of other health issues, an exempt RC Service member (except Active Guard and Reserve personnel as defined in DoDI 1205.18) who receives a diagnosis of gender dysphoria, or has such a diagnosis confirmed by a military medical provider, will submit to, and coordinate with, their chain of command evidence of a medical evaluation that includes a medical treatment plan. Selected Reserve full-time support personnel will follow the gender transition approval process set forth in Paragraph 4.2. of this issuance.

b. Medical Treatment Plans.

A medical treatment plan established by a civilian medical provider will be subject to review and approval by a military medical provider pursuant to Military Department and Military Service regulations, policies, and guidance.

c. Selected Reserve Drilling Member Participation.

To the greatest extent possible, commanders and exempt Service members will address periods of non-availability for any period of military duty, paid or unpaid, during the member's gender transition with a view to mitigating unsatisfactory participation. In accordance with DoDI 1215.13, such mitigation strategies may include:

- (1) Rescheduled training.
- (2) Authorized absences.
- (3) Alternate training.

d. Delayed Training Program.

Delayed Training Program personnel must be advised by recruiters and commanders of limitations resulting from being non-duty qualified. As appropriate, Service members in the Delayed Training Program may be subject to the provisions of Paragraph 4.6. of this issuance.

e. Split Option Training.

When authorized by the Military Department concerned, exempt Service members who elect to complete basic and specialty training over two non-consecutive periods may be subject to the provisions of Paragraph 4.6. of this issuance.

4.5. CONSIDERATIONS ASSOCIATED WITH PRIOR SERVICE RE-ACCESSIONS.

The following policies and procedures apply to prior-Service applicants for re-accession into the Regular and Reserve Components:

a. Service members determined exempt pursuant to Section 4 and then subsequently separated from military service, regardless of period of separation, will be considered exempt and re-accessed pursuant to the medical standards in Paragraph 4.1.b. of this issuance, provided they are otherwise medically qualified in accordance with DoDI 6130.03.

b. The Military Departments and USCG may not waive or revoke a prior-Service applicant's exempt status.

4.6. CONSIDERATIONS ASSOCIATED WITH THE FIRST TERM OF SERVICE.

The following policies and procedures apply to exempt Service members during the first term of service and will be applied to exempt Service members with a diagnosis indicating that gender transition is medically necessary in the same manner, and to the same extent, as to Service members with other medical conditions that have a comparable impact on the member's ability to serve:

a. An enlisted Service member is subject to separation in an entry-level status during the period of initial training in accordance with DoDI 1332.14, based on a medical condition that impairs the Service member's ability to complete such training.

b. An individual participant is subject to separation from the Reserve Officers' Training Corps in accordance with DoDI 1215.08, or from a Military Service Academy in accordance with DoDI 1322.22, based on a medical condition that impairs the individual's ability to complete such training or to access into the Military Services, under the same terms and conditions applicable to participants in comparable circumstances not related to transgender persons or gender transition. As with all cadets or midshipmen who experience a medical condition while in the Reserve Officers' Training Corps Program or at a Military Service Academy, each situation is unique and will be evaluated based on its individual circumstances; however, the individual will be required to meet medical accession standards in accordance with Volume 1 of DoDI 6130.03 as a prerequisite to appointment in the Military Services.

SECTION 5: ADDITIONAL POLICY GUIDANCE

5.1 WAIVERS.

a. The Military Departments and the USCG may grant waivers, in whole or in part, to the requirements in Section 3 of this issuance in individual cases.

b. There are two types of accession waivers:

(1) Medical Waivers.

Any applicant who does not meet the medical criteria listed in Section 3 of this issuance and Volume 1 of DoDI 6130.03 may be considered for a medical waiver(s). Consistent with other medical accession standards, medical waiver requests will be routed to appropriate Military Service medical waiver review authorities.

(2) Exemption Waivers.

Any applicant who desires to serve in his or her preferred gender and is not otherwise exempt under Section 4 of this issuance may be considered for a waiver designating the applicant as a member of the exempt population. Exemption waiver requests will be routed through appropriate Service-designated waiver channels to the Secretaries of the Military Departments or the Commandant, USCG, unless delegated, in writing, to a level no lower than the Military Personnel Service Chiefs or the USCG Assistant Commandant for Human Resources.

(a) If an exemption waiver is granted, the applicant will be considered from that point forward to be exempt in accordance with Section 4 of this issuance and will be accessed under the standards of Section 4 of Volume 1 of DoDI 6130.03.

(b) If an exemption waiver is granted and the applicant successfully accesses, the Service member will be subject to the standards associated with his or her preferred gender, as reflected in DEERS (e.g., medical fitness for duty; physical fitness and body fat standards; berthing, bathroom, and shower facilities; and uniform and grooming standards).

c. A Service member who desires to serve in his or her preferred gender and is not otherwise exempt under Section 4 of this issuance may be considered for a waiver designating him or her as a member of the exempt population. Exemption waiver requests will be routed through appropriate Service-designated waiver channels to the Secretaries of the Military Departments or the Commandant, USCG unless delegated, in writing, to a level no lower than the Military Personnel Service Chiefs or the USCG Assistant Commandant for Human Resources.

d. The provisions concerning qualification as exempt under Paragraph 4.1.a. of this issuance, may not be waived; a person who is exempt under Paragraph 4.1.a. of this issuance, or receives an exemption waiver, may not have his or her exempt status revoked.

5.2 DEERS.

The Military Departments and Military Services recognize a Service member's status as male or female by the member's gender marker in DEERS.

a. The Military Services apply all standards that involve consideration of the Service member's status as male or female on the basis of the member's gender marker in DEERS such as:

- (1) Uniforms and grooming.
- (2) Body composition assessment.
- (3) Physical readiness testing.
- (4) Military personnel drug abuse testing program participation.

b. As to facilities subject to regulation by the Military Departments and the USCG, the Service member will use the berthing, bathroom, and shower facilities associated with the member's gender marker in DEERS.

5.3 EQUAL OPPORTUNITY.

The DoD and the USCG provide equal opportunity to all Service members in an environment free from harassment and discrimination on the basis of race, color, national origin, religion, sex, gender identity, or sexual orientation.

5.4 PROTECTION OF PII AND PROTECTED HEALTH INFORMATION.

a. The Military Departments and the USCG will:

(1) In cases where there is a need to collect, use, maintain, or disseminate PII in accordance with this issuance or Military Department and Military Service regulations, policies, or guidance, protect against unwarranted invasions of personal privacy and the unauthorized disclosure of such PII in accordance with DoDI 5400.11.

(2) Maintain such PII so as to protect the individual's rights, consistent with federal law and policy.

b. Disclosure of protected health information will be consistent with DoD Manual 6025.18.

5.5 PERSONAL PRIVACY.

A commander may employ reasonable accommodations to respect the privacy interests of all Service members.

5.6 ASSESSMENT AND OVERSIGHT OF COMPLIANCE.

a. The Secretaries of the Military Departments and the Commandant, USCG, will implement processes for the assessment and oversight of compliance with DoD, Military Department, and Military Service policies and procedures applicable to service by transgender persons and persons with gender dysphoria.

b. Beginning in fiscal year 2021 and no less frequently than biennially thereafter, the Secretaries of the Military Departments and the Commandant, USCG, will direct an inspector general special inspection of compliance with this issuance and implementing Military Department or USCG regulations, policies, and guidance. Such reports will be endorsed by the Secretary concerned and provided to USD(P&R) within 3 months of completion. The directing official will review the report of inspection for purposes of assessing and overseeing compliance; identifying compliance deficiencies, if any; timely initiating corrective action, as appropriate; and deriving best practices and lessons learned.

GLOSSARY

G.1. ACRONYMS.

ACRONYM	MEANING
COMDTINST	Commandant instruction
DEERS	Defense Enrollment Eligibility Reporting System
DES	Disability Evaluation System
DoDI	DoD instruction
ETP	exception to policy
PDES	Physical Disability Evaluation System
PII	personally identifiable information
RLE	real life experience
SCCC	Service Central Coordination Cell
USCG	United States Coast Guard
USD(P&R)	Under Secretary of Defense for Personnel and Readiness

G.2. DEFINITIONS.

These terms and their definitions are for the purpose of this issuance.

TERM	DEFINITION
biological sex	A person's biological status as male or female based on chromosomes, gonads, hormones, and genitals.
cross-sex hormone therapy	the use of feminizing hormones in an individual with a biological sex of male or the use of masculinizing hormones in an individual with a biological sex of female.
gender dysphoria	A marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months' duration, as manifested by conditions specified in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders: Fifth Edition (DSM-5), page 452, which is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.

TERM	DEFINITION
gender identity	An individual's internal or personal sense of gender, which may or may not match the individual's biological sex.
gender marker	Data element in DEERS that identifies a Service member's status as male or female.
gender transition	<p>A form of treatment for the medical condition of gender dysphoria that may involve:</p> <ul style="list-style-type: none">• Social transition, also known as RLE, to allow the patient to live and work in their preferred gender without any cross-sex hormone treatment or surgery and may also include a legal change of gender, including changing gender on a passport, birth certificate, or through a court order;• Medical transition to align secondary sex characteristics with the patient's preferred gender using any combination of cross sex hormone therapy or surgical and cosmetic procedures; or• Surgical transition, also known as sex reassignment surgery, to make the physical body, both primary and secondary sex characteristics, resemble as closely as possible the patient's preferred gender.
gender transition is complete	A Service Member has completed the medical care identified or approved by a military medical provider in a documented treatment plan as necessary to achieve stability in the preferred gender.
human and functional support network	Support network for a Service member that may be informal (e.g., friends, family, co-workers, social media.) or formal (e.g., medical professionals, counselors, clergy).
medically necessary	Those health-care services or supplies necessary to prevent, diagnose, or treat an illness, injury, condition, disease, or its symptoms, and that meet accepted standards of medical care.
preferred gender	The gender with which an individual identifies.
RLE	The phase in the gender transition process during which the individual begins living socially in the gender role consistent with their preferred gender. RLE may or may not be preceded by the beginning of cross-sex hormone therapy, depending on the medical treatment associated with the individual Service member's gender transition. The RLE phase is also a necessary precursor to certain medical procedures, including gender transition surgery. RLE generally encompasses dressing in the preferred gender, as well as using preferred gender berthing, bathroom, and shower facilities.

TERM	DEFINITION
SCCC	Service-level cell of experts created to provide multi-disciplinary (e.g., medical, legal, military personnel management) advice and assistance to commanders with regard to service by Service members with gender dysphoria.
stable or stability	The absence of clinically significant distress or impairment in social, occupational, or other important areas of functioning associated with a marked incongruence between an individual's experienced or expressed gender and the individual's biological sex.
transgender	Individuals who identify with a gender that differs from their biological sex.

REFERENCES

- American Psychiatric Association, "Diagnostic and Statistical Manual of Mental Disorders: Fifth Edition (DSM-5)," 2013
- Assistant Secretary of Defense for Health Affairs Memorandum, "Guidance for Treatment of Gender Dysphoria for Active and Reserve Component Service Members," July 29, 2016
- Assistant Secretary of Defense for Health Affairs Memorandum, "Guidance for Treatment of Gender Dysphoria for Active and Reserve Component Service Members," March 12, 2019
- Commandant Instruction M1000.4 (series), "Military Separations," August 21, 2018
- Commandant Instruction M1850.2 (series), "Physical Disability Evaluation System," May 19, 2006
- DoD Directive 5124.02, "Under Secretary of Defense for Personnel and Readiness (USD(P&R))," June 23, 2008
- DoD Instruction 1205.18, "Full-Time Support (FTS) to the Reserve Components," May 12, 2014, as amended
- DoD Instruction 1215.08, "Senior Reserve Officers' Training Corps (ROTC) Programs," January 19, 2017, as amended
- DoD Instruction 1215.13, "Reserve Component (RC) Member Participation Policy," May 5, 2015
- DoD Instruction 1322.22, "Service Academies," September 24, 2015
- DoD Instruction 1332.14, "Enlisted Administrative Separations," January 27, 2014, as amended
- DoD Instruction 1332.18, "Disability Evaluation System (DES)," August 5, 2014, as amended
- DoD Instruction 1332.30, "Commissioned Officer Administrative Separations," May 11, 2018, as amended
- DoD Instruction 5400.11, "DoD Privacy and Civil Liberties Programs," January 29, 2019
- DoD Instruction 6025.19, "Individual Medical Readiness (IMR)," June 9, 2014
- DoD Instruction 6130.03, "Medical Standards For Military Service," September 4, 2020
- DoD Instruction 6490.08, "Command Notification Requirements to Dispel Stigma in Providing Mental Health Care to Service Members," March 26, 2012
- DoD Instruction 6490.10, "Continuity of Behavioral Health Care for Transferring and Transitioning Service Members," March 26, 2012, as amended
- DoD Manual 6025.18, "DoD Health Information Privacy Regulation," March 13, 2019
- United States Code, Title 10, Section 1074



PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE

4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

SEP - 3 2021

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS

SUBJECT: Correction of Military/Naval Records and Issuance of Executive Order

- References: (a) Executive Order 14004, "Enabling All Qualified Americans to Serve Their Country in Uniform," January 25, 2021 (copy attached)
- (b) Acting Under Secretary of Defense for Personnel and Readiness Memorandum, "Implementation of Section 3(b)(ii)-(iv) of Executive Order 14004, 'Enabling All Qualified Americans To Serve Their Country in Uniform,'" February 19, 2021 (copy attached)

Pursuant to references (a) and (b), certain Service members impacted by the DoD's former policies related to gender identity may request a correction to their military records. Specifically, Service members who were, "involuntarily separated ... on the basis of gender identity or under circumstances relating to gender identity" may seek relief. This memorandum provides supplemental guidance and expands current policies related to Military Department Review Boards' evaluation of applications for corrective action on involuntary separations, discharges, or denial of reenlistment or continued service based on a Service member's gender identity or under circumstances relating to gender identity.

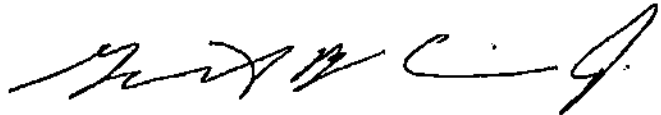
Effective immediately, the Boards for Correction of Military Records/Naval Records (BCM/NR) or Discharge Review Boards (DRB) will carefully consider every request and all matters submitted by the applicant for relief related to involuntary separations, discharges, or denial of reenlistment or continued service where the basis for the member's discharge was gender identity or under circumstances relating to gender identity. In assessing whether such applications are timely, the BCM/NR shall note that recent changes in Department policy concerning gender identity will be considered as evidence of an injustice warranting excusal of typical filing deadlines. Additionally, the DRBs shall liberally grant de novo review for any applicant who did not previously raise gender identity as an issue for board consideration.

Further, requests to change the narrative reason for a discharge to "Secretarial Authority" when the basis for the member's discharge was gender identity or the member was separated under circumstances relating to gender identity, should generally be granted, absent significant aggravating factors (such as misconduct).

Similarly, effective immediately, if an applicant requests a change to a reenlistment code that would permit re-entry into the military service, the request should generally be granted when the basis for the separation was the member's gender identity or for circumstances relating to the gender identity, absent significant aggravating factors.

In determining whether to grant relief, the DRBs and BCM/NRs will consider any evidence submitted from sources other than a veteran's service record and should be cognizant of changes in policy, whereby a Service member under the same circumstances today would reasonably be expected to receive a more favorable outcome than the applicant received. Both, or either, of these factors may be considered as grounds for relief.

As with all Review Board determinations, applications will be reviewed on a case-by-case basis. While not every member should be granted relief, fairness dictates relief should be granted when warranted. We trust our Boards to apply this guidance and give appropriate consideration to every application for relief.

A handwritten signature in black ink, appearing to read "Gilbert R. Cisneros, Jr.", written in a cursive style.

Gilbert R. Cisneros, Jr.

Attachments:
As stated

Reference (a)

Presidential Documents

Executive Order 14004 of January 25, 2021

Enabling All Qualified Americans To Serve Their Country in Uniform

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. All Americans who are qualified to serve in the Armed Forces of the United States ("Armed Forces") should be able to serve. The All-Volunteer Force thrives when it is composed of diverse Americans who can meet the rigorous standards for military service, and an inclusive military strengthens our national security.

It is my conviction as Commander in Chief of the Armed Forces that gender identity should not be a bar to military service. Moreover, there is substantial evidence that allowing transgender individuals to serve in the military does not have any meaningful negative impact on the Armed Forces. To that end, in 2016, a meticulous, comprehensive study requested by the Department of Defense found that enabling transgender individuals to serve openly in the United States military would have only a minimal impact on military readiness and healthcare costs. The study also concluded that open transgender service has had no significant impact on operational effectiveness or unit cohesion in foreign militaries.

On the basis of this information, the Secretary of Defense concluded in 2016 that permitting transgender individuals to serve openly in the military was consistent with military readiness and with strength through diversity, such that transgender service members who could meet the required standards and procedures should be permitted to serve openly. The Secretary of Defense also concluded that it was appropriate to create a process that would enable service members to take steps to transition gender while serving.

The previous administration chose to alter that policy to bar transgender persons, in almost all circumstances, from joining the Armed Forces and from being able to take steps to transition gender while serving. Rather than relying on the comprehensive study by a nonpartisan federally funded research center, the previous administration relied on a review that resulted in a policy that set unnecessary barriers to military service. It is my judgment that the Secretary of Defense's 2016 conclusions remain valid, as further demonstrated by the fact that, in 2018, the then-serving Chief of Staff of the Army, Chief of Naval Operations, Commandant of the Marine Corps, and Chief of Staff of the Air Force all testified publicly to the Congress that they were not aware of any issues of unit cohesion, disciplinary problems, or issues of morale resulting from open transgender service. A group of former United States Surgeons General, who collectively served under Democratic and Republican Presidents, echoed this point, stating in 2018 that "transgender troops are as medically fit as their non-transgender peers and that there is no medically valid reason—including a diagnosis of gender dysphoria—to exclude them from military service or to limit their access to medically necessary care."

Therefore, it shall be the policy of the United States to ensure that all transgender individuals who wish to serve in the United States military and can meet the appropriate standards shall be able to do so openly and free from discrimination.

Sec. 2. Revocation. The Presidential Memorandum of March 23, 2018 (Military Service by Transgender Individuals), is hereby revoked, and the Presidential Memorandum of August 25, 2017 (Military Service by Transgender Individuals), remains revoked.

Sec. 3. Agency Roles and Responsibilities. In furtherance of the policy described in section 1 of this order, I hereby direct the following:

(a) The Secretary of Defense, and Secretary of Homeland Security with respect to the Coast Guard, shall, after consultation with the Joint Chiefs of Staff about how best to implement this policy and consistent with applicable law, take all necessary steps to ensure that all directives, orders, regulations, and policies of their respective departments are consistent with this order. These steps shall include establishing a process by which transgender service members may transition gender while serving, along with any further steps that the Secretary of Defense and Secretary of Homeland Security deem appropriate to advance the policy described in section 1 of this order.

(b) The Secretary of Defense shall:

(i) immediately prohibit involuntary separations, discharges, and denials of reenlistment or continuation of service on the basis of gender identity or under circumstances relating to their gender identity;

(ii) identify and examine the records of service members who have been involuntarily separated, discharged, or denied reenlistment or continuation of service on the basis of gender identity or under circumstances relating to their gender identity;

(iii) issue guidance to the Secretaries of each military department regarding the correction of the military records of individuals described in subsection (b)(ii) of this section as necessary to remove an injustice, pursuant to section 1552(a) of title 10, United States Code, to the extent permitted by law; and

(iv) direct the Secretaries of each military department to provide supplemental guidance, subject to the approval of the Secretary, to the boards for the correction of military records, instructing such boards on how to review applications for the correction of records of individuals described in subsection (b)(ii) of this section. Where appropriate, the department concerned shall offer such individuals an opportunity to rejoin the military should they wish to do so and meet the current entry standards.

(c) The Secretary of Homeland Security with respect to the Coast Guard shall:

(i) immediately prohibit involuntary separations, discharges, and denials of reenlistment or continuation of service, on the basis of gender identity or under circumstances relating to their gender identity;

(ii) identify and examine the records of service members who have been involuntarily separated, discharged, or denied reenlistment or continuation of service, on the basis of gender identity or under circumstances relating to their gender identity;

(iii) issue guidance regarding the correction of the military records of individuals described in subsection (c)(ii) of this section as necessary to remove an injustice, pursuant to section 1552(a) of title 10, United States Code, to the extent permitted by law; and

(iv) provide supplemental guidance to the Board for Correction of Military Records of the Coast Guard, instructing the Board on how to review applications for the correction of records of individuals described in subsection (c)(ii) of this section. Where appropriate, the Secretary of Homeland Security shall offer such individuals an opportunity to rejoin the Coast Guard should they wish to do so and meet the current entry standards.

(d) The Secretary of Defense and the Secretary of Homeland Security shall report to me within 60 days of the date of this order on their progress in implementing the directives in this order and the policy described in section 1 of this order.

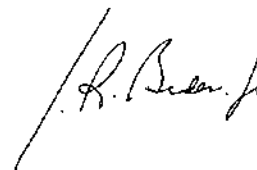
Sec. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 25, 2021.

Reference (b)



PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE

4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

FEB 19 2021

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS

SUBJECT: Implementation of Section 3(b)(ii)-(iv) of Executive Order 14004, "Enabling All Qualified Americans To Serve Their Country in Uniform"

The Department is committed to ensuring all qualified Americans are permitted the opportunity to serve in the Armed Forces of the United States regardless of gender identity. This memorandum implements section 3(b)(ii)-(iv) of Executive Order (EO) 14004, "Enabling All Qualified Americans To Serve Their Country in Uniform," 86 FR 741, January 28, 2021 (attachment 1); the Statement by the Secretary of Defense, dated January 25, 2021, in support of the President's order (attachment 2); and Secretary of Defense Memorandum, "Military Service by Transgender Persons and Persons with Gender Dysphoria," January 29, 2021 (attachment 3).

Section 3(b)(ii) of the EO requires that the Secretary of Defense identify and examine the records of Service members who, as a result of Presidential Memorandum, "Military Service by Transgender Individuals," March 23, 2018 (attachment 4), or Presidential Memorandum, "Military Service by Transgender Individuals," August 25, 2017 (attachment 5), as implemented through DoD Instruction 1300.28, "Military Service by Transgender Persons and Persons With Gender Dysphoria," September 4, 2020 (attachment 6), were "involuntarily separated, discharged, or denied reenlistment or continuation of service on the basis of gender identity or under circumstances relating to their gender identity." Section 3(b)(iii) directs the Secretary to issue guidance to the Secretaries of the Military Departments regarding the correction of military records for Service members who meet the criteria of subsection 3(b)(ii). Subsection 3(b)(iv) requires the Secretaries of the Military Departments to issue supplemental guidance, subject to the approval of the Secretary of Defense, concerning Service members who meet the criteria of subsection 3(b)(ii) for correction of their military records and to offer such individuals an opportunity to rejoin the military should they meet current entry standards and wish to do so.

In accordance with section 3(b)'s directive that the Secretary of Defense prescribe guidance executing these mandates and in accordance with the dictates of subsection 3(b)(ii), I direct the Secretaries of the Military Departments to identify and examine the records of any Service member who was involuntarily separated, discharged, or denied reenlistment or continuation of service in accordance with the former policies referenced above under circumstances relating to gender identity. Once such records are identified, pursuant to subsection 3(b)(iii) of the EO, the Military Departments shall take steps "as necessary to remove an injustice pursuant to section 1552(a) of title 10, United States Code, to the extent permitted by law."

I further direct the Secretaries of the Military Departments to provide supplemental guidance, as appropriate, to their respective Boards of Correction of Military Records/Boards for Correction of Naval Records for review of Service members' records who meet the description

established in subsection 3(b)(ii) of the EO so that, where appropriate, individuals that meet current accession standards, and are otherwise eligible, are offered an opportunity to rejoin the military.

Any supplementary guidance to be issued by the Secretaries of the Military Departments must be submitted to my office for approval prior to publication and in all cases no later than 30 days from the date of this memorandum.

Virginia S. Penrod

Virginia S. Penrod
Acting

cc:
General Counsel of the Department of Defense

Attachments:
As stated