A

'This Week' Transcript: Defense Secretary Chuck Hagel, Sen. Marco Rubio

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ABC News
ABC News Contributor and Democratic Strategist Donna Brazile, ABC News Contributor and The Weekly Standard Editor Bill Kristol, Rep Adam Kinzinger (R) Illinois and SiriusXM's "The Michael Smerconish Program" Host Michael Smerconish on 'This Week'

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Below is the rush transcript of "This Week" on May 11, 2014. It may contain errors.

UNIDENTIFIED MALE (voice-over): Now on ABC THIS WEEK, desperate search. The clock is ticking in the frantic hunt for hundreds of kidnapped schoolgirls. Did the Nigerian government ignore the warnings? This morning, brand new details, including the latest from the Secretary of Defense.

Rocky week, the Benghazi firestorm reignites and Monica Lewinsky reappears. Will it take a toll on Hillary's plans for 2016?

Plus Senator Marco Rubio, can the one-time Tea Party star still win over the GOP? We're on the trail in New Hampshire.

UNIDENTIFIED MALE (voice-over): Do you think you're ready to be president?

SEN. MARCO RUBIO (R), FLA. (voice-over): I do.

UNIDENTIFIED MALE (voice-over): From ABC News, THIS WEEK WITH GEORGE STEPHANOPOULOS begins now.

(MUSIC PLAYING)

MARTHA RADDATZ, ABC NEWS CORRESPONDENT: Good morning. I'm Martha Raddatz.

Happy Mother's Day. So much to cover this morning, including Michael Sam's emotional and history-making moment at the NFL draft.

But first dramatic developments in Nigeria, where we've learned U.S. surveillance aircraft are on the way if needed to help in the urgent search for hundreds of kidnapped schoolgirls. And there are new questions about whether warnings before the kidnapping were ignore.

ABC's Hamish Macdonald has the very latest.

(BEGIN VIDEOTAPE)

HAMISH MACDONALD, ABC NEWS CORRESPONDENT (voice-over): This morning Nigeria's government is facing damning allegations that security forces knew four hours before the attack that Boko Haram was coming.

UNIDENTIFIED MALE: This for us is shocking and it's embarrassing and it's kind of shows that there's an abhorrent lack of political will.

MACDONALD (voice-over): The claims are made in an Amnesty International investigation. But the defense ministry says here the report is unfortunate and untrue.

We do know Nigeria's government took time before it sent in international help. There are now two dozen U.S. personnel on the ground including the military in a support role only. But the surveillance and reconnaissance assets heading to Nigeria now could help immensely in the search and may include aircraft, capable not only of visual surveillance, but those which could pick up so fine conversations in real time.

CIA Director John Brennan has indicate to Jorge Ramos (ph) on our sister network, Fusion, there is scope to do more.

JOHN BRENNAN, CIA DIRECTOR: We have officers on the ground in many parts of the world. And so we're able to bring to bear the capabilities that we need, the people that we need.

MACDONALD (voice-over): Support for the girls is spreading globally from the pope on Twitter to the first lady.

MICHELLE OBAMA, FIRST LADY: In these girls, Barack and I see our own daughters.

MACDONALD: The question now is whether all of this international support will actually make it easier or harder for the families to get their girls back safely.

MACDONALD (voice-over): There is a perceived risk here that pressure from outside could force Nigeria's president to take a more hardline approach. And that could endanger the girls. For THIS WEEK, Hamish Macdonald, in Abuja, Nigeria.

(END VIDEOTAPE)

RADDATZ: Our thanks to Hamish.

Now to new developments on the crisis in Ukraine. Voters in Eastern Ukraine deciding right now if they want to split off and become an independent state, a move that could push the country even closer to civil war.

Alex Marquardt and Terry Moran are tracking it for us. We start with Alex.

Good morning

ALEX MARQUARDT, ABC NEWS CORRESPONDENT: Good morning, Martha. People have been streaming all day into polling stations like this one to cast their votes in this hastily arranged referendum. This is the ballot; it asks a rather ambiguous question about more independence for this region. Ever voter we've spoken with, every ballot we've seen says yes, this vote will pass overwhelmingly.

But there are no official monitors. They don't even have the latest voter registration rolls, and no real way to make sure voters don't vote more than once. And it's hard to say in concrete terms what this vote will mean beyond deepening divisions in this country.

Anger is on the rise here, particularly following several violent and deadly incidents in which pro-Russian protesters were killed. Today's referendum is happening despite calls from Russian

President Vladimir Putin to delay it. But for more from the Russian side, we go to my colleague, Terry Moran, in Moscow.

TERRY MORAN, ABC NEWS CHIEF FOREIGN CORRESPONDENT: Thanks, Alex.

We've seen a dramatic shift in tone from President Putin about those separatists in Eastern Ukraine. He's keeping them at arm's length and now calling for dialogue among all Ukrainians. Of course, he also said he was pulling back the 40,000 Russian troops on the Ukrainian border, but U.S. and NATO officials say they still haven't seen that.

Right now Putin is riding sky high politically. There was that dramatic defiant victory lap in Crimea on Friday. Last night he even hit the ice in an exhibition hockey game and he scored six goals. From the start of this crisis, Putin has kept everyone guessing, including the Russian people, applying pressure, backing off as needed; but one thing is for certain, Putin is determined to maintain maximum Russian influence in Ukraine and block it from joining the West. And he will use today's referendum as he sees fit to achieve that goal -- Martha.

RADDATZ: Thanks, Terry.

Now to a football first: an NFL team drafting an openly gay player. Michael Sam had to wait until the seventh round last night but check out this emotional reaction when he finally got that history-making phone call from the coach of the St. Louis Rams.

(APPLAUSE)

RADDATZ (voice-over): A lot of tears and a kiss for his boyfriend, "USA Today's" Christine Brennan joins me now.

Christine, history-making indeed.

What does this mean for the NFL's culture, for the fans?

CHRISTINE BRENNAN, "USA TODAY": Well, you just mentioned the culture. The NFL is by far the most popular league in the country, Martha. And if he had not been drafted, can you imagine the questions, what's wrong, why, NFL, why in 2014 --

(CROSSTALK)

RADDATZ: And there was a while there we thought he wouldn't be --

BRENNAN: Oh, it went forever, only seven players after him.

But there were questions about his skill based on the combine and the way he worked out. But it was just, I think, the right moment; the NFL needed this. I think the country needed this.

RADDATZ: A lot of social media came in last night and one from the Dolphins' second year defensive back Don Jones, who tweeted out, "OMG" right after the video of the kiss aired and when someone asked if he was referring to the embrace, he responded, "Horrible." They've since taken that tweet down.

BRENNAN: The Dolphins, of course, were the ones with the bullying story that continues.

The NFL has been, in many ways, that last bastion of male supremacy. And yet there were gay players, of course, who were not out, even the '60s and '70s. So this is going to drag the NFL into the 21st century. I think it's about time.

RADDATZ: And going forward, if he doesn't do well -- I mean, all eyes will certainly be on Michael Sam.

BRENNAN: Oh, now the question becomes does he make the team. Jason Collins, of course, is playing the playoffs in the NBA, the first openly gay man in the NBA and now, of course, the question will be can Michael Sam make the Rams.

And I think that will be an issue. And I think he'll be able to do it because he's a very, very good player. The coplayer of the year, the defensive player of the year in the Southeastern Conference.

RADDATZ: And a new generation of fans coming up --

(CROSSTALK)

BRENNAN: Well, exactly, 40 percent of the fans are female in the NFL and all these young --

RADDATZ: Young, young, young.

BRENNAN: -- right, the 80-year-old fan isn't going to be around 20 years from now. But the 20-year old will. And they have a very different view of this.

RADDATZ: Thanks so much, Christine.

Now to the scandal at the nation's V.A. hospitals. Outrage growing this weekend over the way men and women who serve our country are treated when they return home.

Now both families and Congress are demanding answers from the Obama administration official in charge. ABC's Jim Avila has the latest.

(BEGIN VIDEOTAPE)

JIM AVILA, ABC NEWS CORRESPONDENT (voice-over): It started here, the Phoenix V.A., where 40 veterans died while waiting for a doctor's appointment. An inside whistleblower doctor telling Congress delays of up to 21 months were hidden from Washington bosses so his immediate superiors could earn bonuses.

UNIDENTIFIED MALE: Patients were dying because of it. And that's the point where we said, you know, we can't take this anymore.

AVILA (voice-over): Patients like Phoenix vet and Purple Heart winner Ralph Nicastro (ph), who died after waiting months for a specialist visit to diagnose the lump found on his neck after a routine checkup.

He kept this journal, documenting the calls he made for 15 months, trying to schedule a V.A. visit that never came.

UNIDENTIFIED FEMALE: They're all making calls again to the Phoenix V.A.

Why the hell can't our federal government at the V.A. do this for our fighting soldiers that have given their arms, their sight, their legs and their life for this country?

AVILA (voice-over): The V.A. says it's investigating these serious charges and is conducting a nationwide audit. And there's pressure for the V.A. secretary, Eric Shinseki, to resign.

UNIDENTIFIED MALE: There is universal outrage. Our members are so disappointed and are really betrayed. You know, they've been at war for over a decade. Our members did their part. The V.A.'s not doing theirs.

AVILA (voice-over): This week Shinseki is scheduled to testify before Congress. For THIS WEEK, Jim Avila, ABC News, Washington.

(END VIDEOTAPE)

RADDATZ: Our thanks to Jim. That V.A. scandal, one of the topics we took straight to Defense Secretary Chuck Hagel in our exclusive interview yesterday.

MARTHA RADDATZ, ABC (voice-over): It's a scandal that's shaken military families across the country, so should it cost Veteran Affairs Secretary Eric Shinseki his job? Already the American Legion has called on the retired four-star general and Vietnam vet to step aside.

RADDATZ: Should General Shinseki be accountable?

CHUCK HAGEL, U.S. SECRETARY OF DEFENSE: Well, there's no one who understands accountability more than General Shinseki.

RADDATZ: Does he have your support now?

HAGEL: I do support General Shinseki. But there's no margin here. If this, in fact, or any variation of this occurred, all the way along the chain, accountability is going to have to be upheld here because we can never let this kind of outrage, if all of this is true, stand in this country.

RADDATZ: The average wait is five months.

Is that taking care of our veterans?

HAGEL: No, it's not good enough obviously. It has to be better.

RADDATZ: Shouldn't we have predicted that there would be a backlog?

We were in the middle of two wars. We had tens of thousands -- millions deployed during this period?

And no one predicted that, including General Shinseki.

HAGEL: I don't think it just started with General Shinseki's term at the V.A. This -- this is something that should have been looked at years and years ago.

So, yes, we -- we missed it.

RADDATZ (voice-over): Meanwhile, Hagel has that other crisis to deal with, the urgent search to find those kidnapped schoolgirls in Nigeria. The U.S. already has support the midterms on the ground.

(on camera): Give us a reality check.

How hard is it going to be to find these girls?

HAGEL: It's going to be very difficult. It's -- it's a vast country. So this is not going to -- going to be an easy task. But we're going to bring to bear every asset we can possibly use to help the Nigerian government.

RADDATZ: I know one of the things people keep saying is why wouldn't U.S. Special operators go in and try to find the girls, if -- if they are located?

HAGEL: Yes, well, I think you look at everything. But there's no intention, at this point, to be putting any American boots on the ground there.

RADDATZ (voice-over): Hagel is also keeping a close eye on new developments in Ukraine, where satellite images this week showed Vladimir Putin's troops aren't going anywhere -- still massed along the Ukraine border.

(on camera): What are they doing?

Why aren't they leaving?

HAGEL: Well, they're not leaving, as far as we can tell. You have to ask President Putin as to why he says they're leaving and when, in fact, they're not leaving.

RADDATZ: Should Russia be considered an enemy?

HAGEL: Well, you know, it's easy to categorize an enemy. We're not at war with Russia.

So do you find -- do you define an enemy as being at war or not at war?

Obviously, we...

RADDATZ: Adversary?

HAGEL: -- an adversary in Ukraine, sure. But -- but I -- I think that's a little simplistic to get into -- to either enemy, friend, partner, so on.

Russia continues to isolate itself for a short-term gain, they -- the Russians may feel that somehow they're winning.

But the world is not about just short-term.

RADDATZ (voice-over): One of the long-term issues Hagel has been focusing on, cybersecurity and the growing threat from cyber attacks, especially now that the Pentagon relies more on advanced technology, like drones.

Do you feel confident that our drones, guided weapons, warships, will not be hacked?

HAGEL: I'm not confident of anything in this business. You can't be. But the fact is, Martha, it is -- it is a -- as dangerous a threat that -- that we are dealing with, the world deals with, especially the United States, as any one threat. It's quiet. It's insidious. It's deadly.

RADDATZ: And people aren't paying enough attention to this?

HAGEL: I do fear that's true. We are I'll tell you that -- that we are.

RADDATZ (voice-over): And one year into Hagel's tenure, he's facing a new issue. While the end of "Don't Ask, Don't Tell" means gays and lesbians can now serve openly, transgender service members can still be dismissed without question.

(on camera): Is that something that should be looked at again?

HAGEL: The issue of transgender is a bit more complicated, because it has a -- a medical component to it. These issues require medical attention. Austere locations where we -- we put our men and women in -- in many cases, don't always provide that kind of opportunity. I do think it -- it continually should be reviewed. I'm open to that, by the way. I'm open to those assessments, because, again, I go back to the bottom line. Every qualified American who wants to serve our country should have an opportunity if they fit the qualifications and can do it.

This is an area that we -- we've -- we've not defined enough.

(END VIDEO TAPE)

MARTHA RADDATZ, ABC NEWS ANCHOR: Now, our closer look at Florida senator, Marco Rubio. This week, the GOP star making what could be his biggest move yet toward a run for the White House, including a key stop in New Hampshire.

And Jon Karl was there with him.

JONATHAN KARL, ABC NEWS CORRESPONDENT: What's going on, Senator?

SEN. MARCO RUBIO (R), FLORIDA: Good to have you.

KARL: What's happening?

Welcome to New Hampshire.

(voice-over): We caught up with Marco Rubio in Manchester, New Hampshire, his first foray to the first in the nation primary state since the last presidential election.

It's likely to be the first of many. Rubio is doing everything he needs to do to prepare for a presidential run, campaigning for Republicans across the country, hiring national staff, raising lots of money and even writing a book on his vision for America.

(on camera): It seems obvious you're moving closer to running for president?

RUBIO: I've openly said in the past that it's something I will consider at the end of this year, that I'll look at a number of factors, personal factors, but also, uh, whether I could best promote this message and -- and actually put in place these ideas that I want to see put in place, whether I could best do that from the presidency as opposed to the Senate.

KARL: He told us if he decides to run for president, there is no backup plan. The day he announces he is running, he would announce he is not seeking reelection to the Senate.

RUBIO: If I decide to run for president, I will not have some sort of exit strategy to run -- to run for the Senate. And that...

KARL: That will be a decision not to run for reelection?

RUBIO: I believe that if you want to be president of the United States, you run for president.

KARL: It's all or nothing?

RUBIO: You don't run for president with some eject button in the cockpit that -- that -- that allows you to go on an exit ramp if it doesn't work out.

KARL: Do you think you're ready to be president?

RUBIO: I do. I mean a -- but I -- but I think that's true for multiple other people that would want to run. I mean I'll be 43 this month, but -- but the other thing that perhaps people don't realize, I've served now in public office for the better part of 14 years.

And most importantly, I think a president has to have a clear vision of where the country needs to go and clear ideas about how to get it there.

And -- and I think we're very blessed in our party to have a number of people that fit that criteria.

KARL: But you think you're ready?

You think you're qualified?

You think you have the experience to be president, if you make that decision?

RUBIO: I do, but I think we have other people, as well. I think...

KARL: You're...

RUBIO: -- in essence, I think our party is blessed to have a number of people in that position.

And the question is what -- who's vision is the one that our party wants to follow?

UNIDENTIFIED MALE: Senator Marco Rubio.

KARL (voice-over): Just over a year ago, Rubio was considered an early frontrunner, young, Hispanic and a Tea Partier who could appeal to moderates. "Time" magazine called him "The Republican Saviour."

But his star had faded some. In one New Hampshire poll he lead last year, he's now tenth, behind even Donald Trump.

(on camera): What's happened to Marco Rubio?

RUBIO: It's probably the "Time" cover jinx, just like the "Sports Illustrated."..

KARL: "Sports Illustrated."

RUBIO: -- jinx. Yes. You know, I don't know. Polls are everywhere all the time. I don't really pay a lot of attention to them ever.

If you decide to run for president, there's going to be a campaign and in that campaign, you're going to interact with voters and you're going to explain to them where you stand and -- and those numbers can change one way or the other.

UNIDENTIFIED MALE: The miracle of America is still alive.

KARL (voice-over): Rubio took a beating for conservatives over immigration, working with Democrats like Chuck Schumer to pass a bill last year in the Senate that beefed up border security but also provided a path to citizenship for many of the 12 million illegal immigrants now in the US.

The conservative "National Review" called that "Rubio's Folly."

You V.A. A big speech at the Republican spring meeting. You didn't even talk about immigration reform. It didn't come up in your -- in your speech.

Have you given up on this?

RUBIO: No. I also didn't talk about Libya. And I didn't talk about Ukraine. I didn't talk about other elements that are important. I mean, there are a lot of issues going on in the country. And immigration right now is not at the forefront.

I remain convinced we need to do something serious about our immigration problem in this country.

KARL: And the party?

RUBIO: And -- well, both parties, I think, have a responsibility. We're not going to grant blanket amnesty to 12 million people. We're also not going to round up and deport 12 million people. So that issue has to be dealt with in a reasonable but responsible way.

KARL (voice-over): Lately Rubio spends more time talking about the attack on the U.S. consulate in Benghazi, Libya. There have already been 13 congressional hearings on the attack, but this week House Republicans launched a new special committee to investigate further.

(on camera): You've had several investigations in the Congress. The administration has its investigations. Do we really need another committee investigating Benghazi?

RUBIO: Yes. No one has been accountable. I mean, who has been accountable for what happened in Benghazi? This administration has a tendency on foreign policy issues in particular, not to worry nearly as much about what to do, and to worry more about what to say.

And they decided not just to mislead the American public, but to mislead the families of these victims as to exactly what had happened.

KARL: But you have the Republican Party raising money off this investigation. Is that appropriate?

RUBIO: I would prefer that we would focus not on the fundraising elements or the political elements of it.

(CROSSTALK)

RUBIO: ... and here's why, because I think it takes away from the reality of how serious a situation this is.

KARL: How big a problem is this going to be for Hillary Clinton? How much of this can be used against her?

RUBIO: Well, I'm sure she's going to go around bragging about her time in the State Department. She's also going to have to be held accountable for its failures, whether it's the failed reset with Russia, or the failure in Benghazi that actually cost lives...

KARL: So what grade do you give her as secretary of state?

RUBIO: I don't think she has a passing grade. In fact, if you look at...

KARL: You think she's an F?

RUBIO: Yes. Because if you look at the diplomacy that was pursued in her time in the State Department, it has failed everywhere in the world. So here's what I would say, if she is going to run on her record as secretary of state, she is also going to have to answer for its massive failures.

KARL (voice-over): This week the White House released a dramatic new report on the dangers of climate change.

BARACK OBAMA, PRESIDENT OF THE UNITED STATES: Climate change is already affecting Americans all across the country.

KARL (on camera): Miami, Tampa, are two of the cities that are most threatened by climate change. So putting aside your disagreement with what to do about it, do you agree with the science on this? I mean, how big a threat is climate change?

RUBIO: Yes, I don't agree with the notion that some are putting out there, including scientists, that somehow there are actions we can take today that would actually have an impact on what's happening in our climate.

Our climate is always changing. And what they have chosen to do is take a handful of decades of research and say that this is now evidence of a longer-term trend that's directly and almost solely attributable to manmade activity, I do not agree with that.

KARL: You don't buy it. You don't buy it.

RUBIO: I don't know of any era in world history where the climate has been stable. Climate is always evolving, and natural disasters have always existed.

KARL: But let me get this straight, you do not think that human activity, its production of CO_2, has caused warming to our planet.

RUBIO: I do not believe that human activity is causing these dramatic changes to our climate the way these scientists are portraying it. That's what I do not -- and I do not believe that the laws that they propose we pass will do anything about it. Except it will destroy our economy.

KARL (voice-over): It's talk like that that Rubio hopes will appeal to the conservatives he would need to win the Republican nomination.

For THIS WEEK, Jonathan Karl, ABC News, Manchester, New Hampshire.

(END VIDEOTAPE)

RADDATZ: Our thanks to Jon.

Coming up in less than two minutes, Monica Lewinsky takes center stage again. Will it affect Hillary's 2016 plans?

But first, the powerhouse "Roundtable's" big "Winners of the Week." (COMMERCIAL BREAK)

ANNOUNCER: And now, Martha's pick. NBA all-star Kevin Durant is Martha's big "Winner of the Week."

RADDATZ: Hillary Clinton speaking to GMA's Robin Roberts on Wednesday, but as she preps for a possible 2016 run, two issues she would like to avoid shot right back into the spotlight this week.

The "Roundtable" ready to take that on after ABC's Jeff Zeleny.

(BEGIN VIDEOTAPE)

JEFF ZELENY, ABC SENIOR WASHINGTON CORRESPONDENT (voice-over): Hillary Clinton is looking ahead.

HILLARY CLINTON (D), FORMER SECRETARY OF STATE: Oh, my goodness.

(LAUGHTER)

ZELENY: She won't yet say whether now is her time, even when our Robin Roberts asked about cracking the glass ceiling.

CLINTON: I think we should crack it also. I am 100 percent in favor of that. But I have nothing further to say about…

(LAUGHTER)

ZELENY: But as she gets closer to a decision, it's the past that just won't go away. Monica Lewinsky back in the spotlight: In a Vanity Fair essay she says she stayed quiet during Hillary Clinton's 2008 presidential bid, but has no plans to be so reclusive now.

"I wish them no ill will," she says, but also adds: "Should I put my life on hold for another eight to 10 years?" She is 40 now. But images of her as a young intern are seared in our memory, like when she spoke to Barbara Walters in one of the most watched interviews of all time.

BARBARA WALTERS, THEN-ABC CORRESPONDENT: Did you ever think about what Hillary Clinton might be feeling or what (INAUDIBLE)? Did you ever think about Hillary Clinton?

MONICA LEWINSKY, FORMER WHITE HOUSE INTERN: I did. I think I thought about her a lot. But I never thought she would find out. I was never going to talk about this publicly.

ZELENY: The timing of Lewinsky's return has spawned new conspiracy theories.

UNIDENTIFIED FEMALE: Would Vanity Fair publish anything about Monica Lewinsky that Hillary Clinton didn't want in Vanity Fair?

ZELENY: Another controversy Secretary Clinton hoped was behind her is Benghazi.

CLINTON: What difference at this point does it make?

ZELENY: House Republicans have launched a special committee to investigate the attack on the U.S. consulate in Libya where four Americans died.

REP. JOHN BOEHNER (R-OH), SPEAKER: Our focus is on getting the answers to those families who lost their loved ones, period.

ZELENY: Congressman James Clyburn and other Democrats say it's driven by politics.

REP. JAMES CLYBURN (D-SC), ASSISTANT DEMOCRATIC LEADER: I hope she would not be frightened by that foolishness. I don't think anything will frighten her out of this race. Nothing.

ZELENY: Until she decides her future, this much is clear, the Clinton past will be there to fill the void.

For THIS WEEK, Jeff Zeleny, ABC News, Washington.

(END VIDEOTAPE)

RADDATZ: Thanks to Jeff.

The "Roundtable" now: Bill Kristol, editor of The Weekly Standard; Democratic strategist Donna Brazile; Illinois Republican Congressman Adam Kinzinger; and talk radio host Michael Smerconish, author of the new novel "Talk."

And, Bill Kristol, I want to start with you. Your magazine said, quote: "We're guessing that Lewinsky's reemergence now, months before Hillary is likely to declare her candidacy, is probably being stage-managed by some division or other of the vast pro-Hillary conspiracy, whether Lewinsky knows she's a pawn or not."

(LAUGHTER)

RADDATZ: Do you stand with that statement?

BILL KRISTOL, EDITOR, THE WEEKLY STANDARD: I stand with that guess.

RADDATZ: You stand with that guess?

KRISTOL: It's a little ironic. We're being -- having a little light-heartedness about Monica Lewinsky and Hillary Clinton.

RADDATZ: OK. How would that work that -- this conspiracy? Do you sit down with the Vanity Fair editors?

KRISTOL: Yes, well, you could. I think -- I believe Hillary Clinton knows the editors and the publishers of Vanity Fair. But that's not the issue. And I don't think Monica Lewinsky ultimately will be an issue one way or the other.

Benghazi is a serious issue. Boko Haram is a serious issue. And Monica Lewinsky isn't.

RADDATZ: And, Donna?

DONNA BRAZILE, DEMOCRATIC STRATEGIST: I don't think it's this -- I don't think Monica Lewinsky coming out, telling the American people her story, perhaps still seeking redemption, which we should give her, you know, the relief of having this story out there once again.

Look, if it didn't damage a sitting president 18 years ago, I don't believe it will hurt a presidential contender or candidate 18 years later. Monica Lewinsky deserves every opportunity to go out there, tell her the American people her story, if that's what she wants to do.

But I don't think it will have anything to do with Secretary Clinton's ability to run a good presidential campaign and win a campaign if she decides to do it.

RADDATZ: Michael Smerconish.

MICHAEL SMERCONISH, RADIO HOST AND AUTHOR: I think the net is a zero or maybe a slight plus for Secretary Clinton --

(CROSSTALK)

RADDATZ: I was going to ask that, is there any plus in this --

SMERCONISH: It, I think, portrays her as a sympathetic figure. I mean, it reminded me of all that she had to endure. I can't imagine, Martha, that there's someone in this country who says, well, I was going to cast a ballot for Secretary Clinton in 2016, but now I'm not going to do so because her husband cheated on her.

I think it's also a sign of her resilience, because I read that portrayal, and it reminded me, my God, like her or dislike her, Hillary's been through a heck of a lot and she's still standing.

RADDATZ: Congressman, it's -- you're the youngest person here, OK?

(LAUGHTER)

RADDATZ: Maybe by far. So you're younger than Monica Lewinsky.

Isn't that terrifying to think that?

So your generation, does this just pass; people don't care?

REP. ADAM KINZINGER (R), ILL.: Yes, well, I don't think the Lewinsky thing is going to -- I mean, it's more of an intriguing story now and -- she's -- I feel bad, a little bit, for her. I mean, she was young when this happened and obviously everybody knows her name and not for something she necessarily wants to be known for.

But the bigger issue on the -- on the Hillary question, I don't think this is going to really affect Hillary. I mean, I -- the thing that's really going to be bad is that I can't throw a dartboard (sic) at a world map now and hit within 100 miles of a place where there's either a war or an ally that no longer trusts us.

And so I think that's going to be a much bigger issue if Hillary decides --

RADDATZ: So you're saying her history as secretary of state and of course Benghazi came up again this weekend, and we'll have the committee investigating that.

KINZINGER: Yes, I think those are going to be bigger issues than Monica Lewinsky.

SMERCONISH: Depends what develops. I mean, I think up until this point, nothing from Benghazi has received traction, apart from the GOP base. It's really the abortion of the 2014 cycle in terms of being used --

(CROSSTALK)

RADDATZ: -- an issue --

SMERCONISH: -- get out the vote. But to get out what vote? To get out the vote of the GOP base.

The hearing I'd like to hear, the hearing I'd like to hear is the hearing that says what became of those individuals responsible for the deaths of four Americans and why haven't we brought them to justice, not a hearing about emails and Ben Rhodes and what did he know and when did he know it.

DONNA BRAZILE, VICE CHAIRWOMAN, DEMOCRATIC NATIONAL COMMITTEE: I agree with Michael. I agree. I mean, there were 29 recommendations from the accountable - accountability relief (sic) board -- review board.

Those are the -- we should be talking about what have we done since Benghazi? What have we done to make Americans safer in our embassies in these dangerous places across the globe?

There were 88 -- there were 13 embassy attacks --

(CROSSTALK)

RADDATZ: -- I want to -- I want to stay with Hillary on this for a moment. And she was secretary of state.

BRAZILE: Absolutely. And she took -- and she took responsibility.

RADDATZ: But it -- but as you said, no one has really been held accountable in a larger way.

Is this an issue going forward?

UNIDENTIFIED MALE: Yes, absolutely. I mean (INAUDIBLE) Hillary Clinton at the beginning of this panel, Donna carefully said Secretary Clinton. I think that's absolutely right. Let's have a debate on secretary of state of the United States, Hillary Clinton. What happened in Libya? We intervened; I supported that intervention of (INAUDIBLE) in the early 2011.

What happened in Libya over the next year such that Benghazi got to the situation it was at?

Why did Hillary Clinton say the video caused the terrorist attack when she knew -- she must have known -- that it didn't?

(CROSSTALK)

RADDATZ: -- over and over and over that there have been investigations.

(CROSSTALK)

UNIDENTIFIED MALE: -- the White House -- they've done investigations. And only last week did we get the White House email where Ben Rhodes says let's blame it on the video.

(CROSSTALK)

BRAZILE: -- nothing in that email that should have prompted the Republicans to call for another investigation.

The reason why you're doing it, congressman, is because the Republicans have no other issue to discuss. Health care is not an issue anymore. And because the chair of the Armed Services Committee basically said that there's no more there there --

(CROSSTALK)

BRAZILE: -- give the Republicans something to do --

(CROSSTALK)

UNIDENTIFIED MALE: As a military pilot, when I went through survival training, I was told that your country will never leave you behind. And it will move heaven and Earth to come get you. So if you find yourself behind enemy lines, don't worry; there's going to be an F-16 and some guys coming to get you at some point.

That didn’t happen.

And the YouTube video to me is beyond just, you know, the politics of it and I get it and that's an issue. It's the fact that there wasn't attempt by the administration to cheapen the death of four Americans --

UNIDENTIFIED FEMALE: No way.

UNIDENTIFIED MALE: -- and not give them their due right of having died in the war on terror --

UNIDENTIFIED FEMALE: That is not true.

UNIDENTIFIED MALE: -- initially they said it was because of the YouTube video.

UNIDENTIFIED FEMALE: That is not true.

UNIDENTIFIED MALE: And not because of a war on terror.

BRAZILE: No, that is not true. The president said that the day after this was an act of terrorism. And the administration has not only expressed regret for the lives of those American loss, but if you look at all of the reports that have come out about Benghazi, there's nothing in those reports that say the administration tried to --

RADDATZ: I think --

BRAZILE: -- the Defense Department from doing his job. They wanted to get to those people. They wanted to help the secretary.

(CROSSTALK)

UNIDENTIFIED MALE: -- hours between the first and second attack --

BRAZILE: And there was --

(CROSSTALK)

RADDATZ: -- shows there's a lot more to be discussed and a lot more to look at in this.

Before we go to break, here's THIS WEEK's Mother's Day inspired "Powerhouse Puzzler" from our own Cokie Roberts, author of the book, "Founding Mothers."

(BEGIN VIDEO CLIP)

COKIE ROBERTS, ABC NEWS CORRESPONDENT: Who is the first woman to give birth at the White House?

(END VIDEO CLIP)

RADDATZ: That's a tough one. Back in two minutes to see if the roundtable and you can guess the answer.

(COMMERCIAL BREAK)

(MUSIC PLAYING)

RADDATZ: Who was the first woman to give birth in the White House? Let's start over here, Bill Kristol.

BILL KRISTOL, "THE WEEKLY STANDARD": It was the daughter of some 19th century president.

RADDATZ: OK.

KRISTOL: But I don't know which one.

BRAZILE: Jackie Kennedy, I have no idea.

RADDATZ: Now you seem depressed about --

BRAZILE: I am.

RADDATZ: -- not getting the answer --

UNIDENTIFIED MALE: I wagered nothing. I --

(LAUGHTER)

RADDATZ: That was very smart.

Congressman?

KINZINGER: (INAUDIBLE) Lincoln, but I also said having birth -- or happy Mother's Day to my mom.

RADDATZ: Oh, nice (INAUDIBLE) --

(CROSSTALK)

RADDATZ: OK. Let's go to Cokie with the answer.

(BEGIN VIDEO CLIP)

ROBERTS: The answer is Martha Jefferson Randolph, daughter of Thomas Jefferson, of course our third president. January 17th, 1806, she gave birth to James Madison Randolph. And the woman who attended her said she couldn't find any food; she couldn't find any help. She called it Bachelor Hall.

(END VIDEO CLIP)

RADDATZ: OK. Nobody got it.

A big thanks to Cokie. We're right back with the big critique of the White House that has everyone talking.

(MUSIC PLAYING)

(COMMERCIAL BREAK)

RADDATZ: Now, more of my exclusive interview with Defense Secretary Chuck Hagel and his reaction to all the heat President Obama has been taking over his foreign policy choices, even this from the usually friendly "New York Times" editorial page. "The perception of weakness, dithering, inaction, there are many names for it, has indisputably had a negative -- a negative effect on Mr. Obama's global standing."

I asked Secretary Hagel about that.

HAGEL: I don't subscribe to "The New York Times'" analysis because it isn't an easy matter of just what -- what your perception is in the world. And I don't think you can run foreign policy or lead a nation or be president of the United States based on what other people think of you.

RADDATZ: When I travel overseas, people say different things about America. They say it's not as forceful.

HAGEL: Well...

RADDATZ: Have you seen that?

HAGEL: I have seen some of it, yes. Yes. And I think that's the kind of reality that's out there. We are still the dominant power. I mean no one is in our universe, whether you apply a metric or measurement of economic power, military power.

But that doesn't mean we can solve every problem alone. No nation can do that.

I do think there is a sense out there, that you have correctly identified, by some, that somehow America's power is eroding or we're -- we're not going to use our power or we're too timid about our power. I -- I don't believe that. I -- I think we have been wise on how we use our power.

(END VIDEO TAPE)

RADDATZ: Back now with the roundtable.

(BEGIN VIDEO CLIP)

UNIDENTIFIED FEMALE: So Barbara, you're stepping down after over 50 years as a TV journalist.

I mean do you have any tips on how to achieve that kind of success?

BARBARA WALTERS, ABC NEWS CORRESPONDENT: I do. Here's number one tip -- develop a signature voice that no one will forget.

UNIDENTIFIED FEMALE: Wait, is that not your real voice?

WALTERS: No.

This is my real voice.

Hello, I'm Barbara Wa-Wa.

(LAUGHTER)

(END VIDEO CLIP)

RADDATZ: Our friend, Barbara Walters, having some fun on "SNL" last night.

Now, more of my exclusive interview with Defense Secretary Chuck Hagel and his reaction to all the heat President Obama has been taking over his foreign policy choices, even this from the usually friendly "New York Times" editorial page. "The perception of weakness, dithering, inaction, there are many names for it, has indisputably had a negative -- a negative effect on Mr. Obama's global standing."

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(END VIDEO TAPE)

RADDATZ: Back now with the roundtable.

So Secretary Hagel actually says he has heard people say that America looks a little weaker, although he doesn't agree with them. Bill Kristol?

KRISTOL: That's pretty stunning for the secretary of Defense of the United States to say, yes, that's right, Martha, there is a perception out there that we're too timid about using our power and that our power is eroding. And that's pretty appalling. That has real consequences in the real world. And I'm afraid it's eroding -- our power -- we are seen to be withdrawing because we are withdrawing.

President Obama, this week, said -- said, you know, it's really time the international community finally does something about Boko Haram, these terrible -- the Islamic terrorist group in Nigeria.

His own State Department, with Secretary Clinton in charge, had refused to put them on the terror list for two years.

So is -- is -- it is because, unfortunately, of the Obama administration that the perception is out there that we are not serious about exercising power.

RADDATZ: Don -- Donna Brazile, we all know that -- that President Obama came out of the war in Iraq. He didn't want another war. He didn't want to go into these places.

Did he learn the wrong lessons?

BRAZILE: No, I don't think so. I think this president is very smart, very strategic about foreign policy and how to conduct it. This is a different country after 9/11. The American people are war-weary. They want us to use our power effectively, strategic. And not every time the wind blows, but when we know exactly how to get it done and get it done right.

So I -- I don't buy this notion that the United States is -- is a weakened country...

RADDATZ: How about that red line in Syria?

BRAZILE: Well, that red line in Syria, I think was a -- was a dumb comment to make at a time when we should have showed more bold action, given the -- the crisis -- humanitarian crisis and the death toll.

But, you know, going to Bill's point about Boko Haram, you know, the State Department received a lot of information, even from the former ambassador, John Campbell, who wrote a book, "Nigeria Dancing" and the -- and something dancing.

Nigeria is a -- the second large -- now the -- the biggest country in Africa in terms of its economy. There were real reasons why they waited or hesitated to put this organization as an -- as a terrorist group.

But the truth is, is that the United States can marshal the resources and the power to -- to do -- get things done in the world.

(CROSSTALK)

RADDATZ: Congressman Kinzinger, I -- I want to move to the V.A....

UNIDENTIFIED MALE: Yes.

RADDATZ: -- which is such an important topic. And -- and you heard that piece Republican in the -- in the broadcast.

Veterans are outraged.

UNIDENTIFIED MALE: Yes.

RADDATZ: I have talked to so many veterans and families who are outraged by this. It's different. There's been a backlog, but this is different. People are dying...

UNIDENTIFIED MALE: Yes.

RADDATZ: -- because they're waiting.

Should -- should Shinseki resign?

KINZINGER: Well, I'm not going to go as far yet to say he should resign. As a veteran myself, I mean this is especially offensive. I think let's see what he does right now.

Does he get on this and make changes?

This is part of the problem...

RADDATZ: Well -- well, one of the things he's saying is we've made vast improvements...

KINZINGER: You've got to make more...

RADDATZ: -- 40 percent, 50 percent...

KINZINGER: -- improvements.

RADDATZ: -- but how do we know they have if -- if in these other Veterans Administration...

(CROSSTALK)

KINZINGER: -- see that they're faking numbers.

RADDATZ: -- they're trying to cover it up?

KINZINGER: They're faking, you know -- you know, drawing fake waiting lists and trying to -- and this is the problem with bureaucracy and huge government is sometimes all this stuff just falls by the wayside and the people that really deserve this, those that put their life on the line for our country, are the ones that get on the short end of this.

So this is something that in Congress, we've got to be right on top of. And I hope the president can be right on top of it, as well.

RADDATZ: Michael, does -- does this have legs, as we say in the business?

Will -- will this really finally make changes?

SMERCONISH: It does, absolutely. And I think that they've taken a page, the V.A., out of the GM playbook for crisis management. And that's not a good thing. They should be telling it early. They should be telling it all. They should be telling it themselves.

I guess I should credit Lanny Davis with Crisis Management 101 for that. They have...

RADDATZ: There's been no press conference.

SMERCONISH: Just -- just nothing forthcoming. And I'm concerned that this is really the tip of the iceberg. There are other lurking issues. One that has my focus is that one of six Iraq and Afghanistan veterans have substance abuse issues. I think largely it's because of the over prescription of pain meds, which, in many cases, leads to a heroin addiction and a life of crime.

So I think much is yet to come.

RADDATZ: And we're going to have a whole lot more veterans coming home by the end of the year.

(CROSSTALK)

RADDATZ: Thanks, all of you.

Coming up, is Edward Snowden a spy?

One year after the NSA leaker dropped those bombshells about secret surveillance, the former chief of the NSA is speaking out.

Back in 60 seconds.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

BARACK OBAMA, PRESIDENT OF THE UNITED STATES: I'm not going to be scrambling jets to get a 29-year-old hacker.

(END VIDEO CLIP)

RADDATZ: That was President Obama during Edward Snowden's global odyssey after he revealed those surveillance secrets. And a year later, Snowden still sparks a raging debate.

Here's ABC's Pierre Thomas.

(BEGIN VIDEOTAPE)

PIERRE THOMAS, ABC NEWS CORRESPONDENT (voice-over): Edward Snowden is a traitor and could be a spy recruited by Russia to target the US.

UNIDENTIFIED MALE: Congressman Ruppersberger...

THOMAS: That's the suspicion of the man who was running the NSA when the breach happened last year.

KEITH ALEXANDER, FORMER NSA CHIEF: Why would you take tens of thousands, hundreds of thousands or a million plus documents?

THOMAS: And Snowden acknowledged the extraordinary scale of what he could have taken.

EDWARD SNOWDEN: I had access to, you know, the -- the full rosters of everyone working at the NSA, the entire intelligence community, and undercover assets all around the world.

UNIDENTIFIED MALE: Is he a spy?

ALEXANDER: I don't know the answer to that. I am concerned that where he is now, he is at least influenced by Russia.

The real question -- and we don't know an answer to -- is how far back did that go?

DIANE SAWYER, ABC NEWS: We have learned that the Obama administration quietly accessed the phone records of millions and millions of Americans.

THOMAS: Roughly a year ago, Snowden, who had been working at the NSA as a contractor, stole some of the nation's most sensitive secrets and gave them to the media.

The first stunning revelation, Verizon was providing the National Security Agency with phone records of millions of customers.

Now, according to Alexander, nations have our surveillance playbook and terrorists have changed how they operate.

ALEXANDER: We're losing capabilities to track terrorists. This is a huge impact.

THOMAS: But Snowden, now an exile in Russia, last summer defended his actions.

SNOWDEN: I don't want to live in a world where everything that I say, everything I do, everyone I talk to, every expression of -- of -- of creativity or -- or love or friendship is recorded.

THOMAS: For his supporters, Snowden's revelations changed the world as we know it, they say for the better.

UNIDENTIFIED MALE: We have the courts engaging the legality and the wisdom of these programs. We have the Congress conducting oversight, you know, that they would never have happened but for the actions of Edward Snowden.

THOMAS: And we pressed Alexander on why Congress, which was supposed to be overseeing his agency, did not know everybody the NSA was doing.

(on camera): Was that a case of the NSA withholding information from them or Congress not doing their job?

It can't be both.

ALEXANDER: Here's my straightforward answer. We deal through the intel committees. We put all those documents on the table and said here's what we're going to do with this. But I can tell you this, that we provide those materials.

Now, truth in lending -- some of this is technical.

THOMAS (voice-over): The debate is over the details.

Was the NSA revealing too few or Snowden too many?

For THIS WEEK, Pierre Thomas, ABC News, Washington.

(END VIDEO TAPE)

RADDATZ: Thanks, Pierre.

Let's bring in ABC News contributor Richard Clarke, former senior White House counterterrorism adviser and author of the new book, "Sting of the Drone."

Thanks for being with us, Dick.

And I -- I want to ask you, you heard what General Alexander said.

Do you think that Edward Snowden damaged national security?

RICHARD CLARKE, FORMER SENIOR WHITE HOUSE COUNTERTERRORISM ADVISER: I know he did. President Obama appointed me to the five person review group to look into what happened. And we had complete access to NSA.

I know that he hurt our counterterrorism effort and various other efforts and...

RADDATZ: I mean give us an example how that -- how he did -- how he did that or -- or the effect, rather.

CLARKE: Well, he may or many have intended it. We don't know. But he revealed ways that NSA collects information. And the terrorists, and others, criminals and others around the world, have stopped using those methods of communication since he revealed them.

And so we no longer have the heads-up that an attack is coming on our embassy in fill in the blank because of what he did.

Sure, he revealed a program, the telephony program, the 215 program, that was a stupid program that he might not have known about otherwise. And I'm glad that we know about it.

RADDATZ: So if -- if there's a silver lining, that's it.

CLARKE: But it's a pretty small silver lining. I'm glad we know about the program. We're killing the program because it was unnecessary and overly intrusive and it didn't have enough oversight by the courts.

And so the president is killing the program. That's what we recommended.

RADDATZ: I -- I want to turn to your book, which sounds pretty phenomenal. It's called "The Sting of the Drone." And one reviewer had high praise, writing, "What Tom Clancy did for submarines, Richard A. Clarke does for drones."

What's the picture you're trying to paint here with the drones?

CLARKE: Well, the...

RADDATZ: And I'm sure you didn't reveal any secrets.

CLARKE: I couldn't because the...

(LAUGHTER)

CLARKE: -- they all reviewed it and took out the secrets. But they left a lot in that's very informative.

The goal here, Martha, was to write a thriller that you would enjoy laying on the beach and at the same time, bring people behind the curtain so they could actually see how our drone program works now and how, potentially, it's going to work in the future.

RADDATZ: And you go to where the drones are flying. You go overseas. You do all of them.

CLARKE: And I asked the question, what happens if the people who we are attacking with the drones start attacking us with drones?

Because it's easy to have drones in the United States. In fact, they're beginning to be everywhere. And pretty soon, everybody will have one. They're commercially available. They're flying for all sorts of purposes. Sheriffs have them. Farmers have them.

But what if terrorists...

RADDATZ: Some are running into planes...

CLARKE: Some are running in...

RADDATZ: -- or getting awfully close.

And what if terrorists had them?

Well, it sounds like a great book.

Dick Clarke, I will look forward to someday maybe being on the beach with it.

Next, one of the world's most famous landmarks like you've never seen it before.

(COMMERCIAL BREAK)

RADDATZ: Now, our Sunday Spotlight shining on one of the most famous landmarks in the world. Check out this incredible time lapse video capturing the Washington Monument during 13 months of repairs. And starting tomorrow, it's finally back open.

ABC's John Donvan shows us what we have been missing.

(BEGIN VIDEOTAPE)

JOHN DONVAN, ABC NEWS CORRESPONDENT (voice-over): Ever notice how nobody ever call is a tower?

But it towers and has for 130 years. Washington's midpoint and its highest point, 555 feet, which actually has just come out of its bandages, because it looked like this for much of the past three years.

Remember this?

UNIDENTIFIED FEMALE: The earthquake centered in Virginia has been felt all up and down the Eastern Corridor.

DONVAN: It was magnitude 5.8 and it wounded the Washington Monument -- 150 cracks found. It had to be closed. Its usual 700,000 visitors a year told sorry.

Now, flashback. The monument has faced difficulty before, most famously, getting stuck at the halfway point in construction for 20 years, when the money, entirely private donations, ran out. It finally got finished 130 years ago, with slightly different colored stones where the work started again, when Congress chipped in some money.

And despite its demise many times in movie imagination, "Mars Attacks," "Independence Day," "Olympus Has Fallen," it has stood rock solid, or, actually, not so rock solid.

Take a ride upstairs. Yes, there's an elevator in there. And meet on the ascent john Jarvis of the National Park Service and find out that...

JOHN JARVIS, THE NATIONAL PARK SERVICE: You know the -- it is a dry stacked stone structure. I mean the -- there's no real mortar between the stones, right?

DONVAN: That's right, the stones just rest on top of each other. No glue holding them together, which might have been a good thing when the quake hit, because it...

JARVIS: Actually allowed it to absorb the energy of the earthquake.

DONVAN: Still, 150 cracks at this height, historic structure, that turned out to be a $15 million repair bill, half of which came from philanthropist David Rubenstein.

DAVID RUBENSTEIN, PHILANTHROPIST: I just think I got very lucky in my life and I want to give back.

DONVAN: And thanks to that impulse, the public gets to go back inside starting tomorrow.

JARVIS: When we announced that it was going to open in a week, we got -- we opened up for tickets and we did 16,000 tickets in the first 15 minutes.

DONVAN (on camera): Wow! The monument sold out.

(on camera): All for a pile of stones not even stuck together, but they do stack up beautifully and they do tower.

For THIS WEEK, John Donvan, ABC News, Washington.

(END VIDEO TAPE)

RADDATZ: I can't wait to get back in there.

Thanks, john.

And now, we honor our fellow Americans who serve and sacrifice.

RADDATZ: This week, the Pentagon announced the death of one soldier supporting operations in Afghanistan.

That's all for us today.

Thanks for sharing part of your Sunday with us.

Check out "World News with David Muir" tonight.

And to all the moms out there, Happy, Happy Mother's Day.

B

Department of Defense
INSTRUCTION

NUMBER 1332.18
August 5, 2014

USD(P&R)

SUBJECT: Disability Evaluation System (DES)

References: See Enclosure 1

1. PURPOSE. This instruction:

a. Reissues DoD Directive (DoDD) 1332.18 (Reference (a)) as a DoD instruction (DoDI) in accordance with the authority in DoDD 5124.02 (Reference (b)).

b. Establishes policy, assigns responsibilities, and provides procedures for referral, evaluation, return to duty, separation, or retirement of Service members for disability in accordance with Title 10, United States Code (U.S.C.) (Reference (c)); and related determinations pursuant to sections 3501, 6303, 8332, and 8411 of Title 5, U.S.C. (Reference (d)); section 104 of Title 26, U.S.C. (Reference (e)); and section 2082 of Title 50, U.S.C. (Reference (f)).

c. Incorporates and cancels DoDI 1332.38 (Reference (g)) and the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) Memorandums (References (h) through (o)).

2. APPLICABILITY. This instruction applies to the OSD, the Military Departments, 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.

3. POLICY. It is DoD policy that:

a. The DES will be the mechanism for determining return to duty, separation, or retirement of Service members because of disability in accordance with Reference (c).

b. Service members will proceed through one of three DES processes: the Legacy Disability Evaluation System (LDES), the Integrated Disability Evaluation System (IDES), or the Expedited Disability Evaluation System (EDES). DoD's objective in all DES processes is to collaborate with the Department of Veterans Affairs (VA) to ensure continuity of care, timely

processing, and seamless transition of the Service member from DoD to VA in cases of disability separation or retirement.

c. The standards for all determinations related to disability evaluation will be consistently and equitably applied, in accordance with Reference (c), to all Service members, and be uniform within the components of the Military Departments.

d. Reserve Component (RC) Service members who are not on a call to active duty of more than 30 days and who are pending separation for non-duty related medical conditions may enter the DES for a determination of fitness and whether the condition is duty related.

e. In determining a Service member's disability rating, the Military Department will consider all medical conditions, whether individually or collectively, that render the Service member unfit to perform the duties of the member's office, grade, rank, or rating.

f. Service members who are pending permanent or temporary disability retirement and who are eligible for a length of service retirement at the time of their disability evaluation may elect to be retired for disability or for length of service. However, when retirement for length of service is elected, the member's retirement date must occur within the time frame that a disability retirement is expected to occur.

g. A Service member may not be discharged or released from active duty because of a disability until he or she has made a claim for compensation, pension, or hospitalization with the VA or has signed a statement that his or her right to make such a claim has been explained, or has refused to sign such a statement. The Secretaries of the Military Departments may not deny a Service member who refuses to sign such a claim any privileges within DES policy as noted in this instruction.

h. RC Service members on active duty orders specifying a period of more than 30 days will, with their consent, be kept on active duty for disability evaluation processing until final disposition by the Secretary of the Military Department concerned.

i. The Secretaries of the Military Departments may authorize separation on the basis of congenital or developmental defects not being compensable under the Veterans Affairs Schedule for Rating Disabilities (VASRD) if defects, circumstances or conditions interfere with assignment to or performance of duty. These Service members will not be referred to the DES.

4. RESPONSIBILITIES. See Enclosure 2.

5. PROCEDURES. See Enclosure 3 of this instruction. Additional procedural guidance for the LDES is included in DoD Manual (DoDM) 1332.18, Volume 1 (Reference (p)). Additional procedural guidance for the IDES is included in DoDM 1332.18, Volume 2 (Reference (q)). Procedural guidance for EDES will be published in a separate DoD issuance.

6. INFORMATION COLLECTION REQUIREMENTS

a. The DES Annual Report, referred to in paragraphs 1d(6)(a), 1d(6)(b), and 1e(4) of Enclosure 2 of this instruction, has been assigned report control symbol DD-HA(A,Q)2547 in accordance with the procedures in Volume 1 of DoD Manual 8910.01 (Reference (r)).

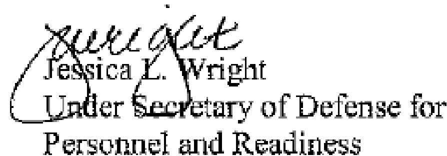
b. The DES quarterly data submission, referred to in paragraphs 1d(6)(b) and 1d(4) of Enclosure 2 of this instruction, has been assigned report control symbol DD-HA(A,Q)2547 in accordance with the procedures in Reference (r).

7. RELEASABILITY. **Cleared for public release**. This instruction is available on the Internet from the DoD Issuances Website at http://www/dtic/mil/whs/directives.

8. EFFECTIVE DATE. This instruction:

a. Is effective August 5, 2014.

b. Will expire effective August 5, 2024 if it hasn't been reissued or cancelled before this date in accordance with DoDI 5025.01 (Reference (s)).



Jessica L. Wright
Under Secretary of Defense for
Personnel and Readiness

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2. Responsibilities
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ENCLOSURE 1

REFERENCES

(a) DoD Directive 1332.18, "Separation or Retirement for Physical Disability," November 4, 1996 (hereby cancelled)
(b) DoD Directive 5124.02, "Under Secretary of Defense for Personnel and Readiness (USD(P&R))," June 23, 2008
(c) Title 10, United States Code
(d) Title 5, United States Code
(e) Section 104 of Title 26, United States Code
(f) Section 2082 of Title 50, United States Code
(g) DoD Instruction 1332.38, "Physical Disability Evaluation," November 14, 1996, as amended (hereby cancelled)
(h) Under Secretary of Defense for Personnel and Readiness Memorandum, "Policy Guidance for the Disability Evaluation System and Establishment of Recurring Directive-Type Memoranda," May 3, 2007 (hereby cancelled)
(i) Under Secretary of Defense for Personnel and Readiness Memorandum, "Directive-Type Memoranda (DTM) on Standards for Determining Unfitness Due to Medical Impairment (Deployability)," December 19, 2007 (hereby cancelled)
(j) Under Secretary of Defense for Personnel and Readiness Memorandum, "Directive-Type Memorandum (DTM) on Implementing Disability-Related Provisions of the National Defense Authorization Act of 2008 (Pub. L. 110-181)," March 13, 2008 (hereby cancelled)
(k) Under Secretary of Defense for Personnel and Readiness Memorandum, "Policy Memorandum on Implementing Disability-Related Provisions of the National Defense Authorization Act of 2008 (Pub. L. 110-181)," October 14, 2008 (hereby cancelled)
(l) Under Secretary of Defense for Personnel and Readiness Memorandum, "Policy and Procedural Memorandum for the DES Pilot Program," November 21, 2007 (hereby cancelled)
(m) Under Secretary of Defense for Personnel and Readiness Memorandum "Policy and Procedural Update for the Disability Evaluation System (DES) Pilot Program," December 11, 2008 (hereby cancelled)
(n) Under Secretary of Defense for Personnel and Readiness Memorandum "Cross Service Support and Service Organization Role at Disability Evaluation System (DES) Pilot Locations," March 29, 2010 (hereby cancelled)
(o) Under Secretary of Defense for Personnel and Readiness Memorandum, "Directive-Type Memorandum – Integrated Disability Evaluation System," December 19, 2011 (hereby cancelled)
(p) DoD Manual 1332.18, Volume 1, "Disability Evaluation System (DES) Manual: General Information and Legacy Disability Evaluation System (LDES) Time Standards," August 5, 2014
(q) DoD Manual 1332.18, Volume 2, "Disability Evaluation System (DES) Manual: Integrated Disability Evaluation System," August 5, 2014
(r) DoD Manual 8910.01, Volume 1, "DoD Information Collections Manual: Procedures for DoD Internal Information Collections," June 30, 2014

(s) DoD Instruction 5025.01, "DoD Issuances Program," June 6, 2014
(t) Title 38, Code of Federal Regulations, Part 4 (part 4 is also known as "the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD)")
(u) Under Secretary of Defense for Personnel and Readiness Memorandum, "Expedited DES Process for Members with Catastrophic Conditions and Combat-Related Causes," January 6, 2009
(v) Memorandum of Agreement Between the Department of Defense and Department of Veterans Affairs, January 16, 2009
(w) Memorandum of Agreement Between the Department of Defense and Department of Veterans Affairs, June 16, 2010
(x) DoD 5400.11-R, "Department of Defense Privacy Program," May 14, 2007
(y) Section 1612 of Public Law 110-181, "National Defense Authorization Act for Fiscal Year 2008," January 28, 2008
(z) Joint Federal Travel Regulations, Volume 1, "Uniformed Service Members," current edition
(aa) Joint Federal Travel Regulations, Volume 2, "Department of Defense Civilian Personnel," current edition
(ab) DoD Directive 1332.27, "Survivor Annuity Programs for the Uniformed Services," June 26, 2003
(ac) DoD Directive 1332.35, "Transition Assistance for Military Personnel," December 9, 1993
(ad) DoD Instruction 1332.14, "Enlisted Administrative Separations," January 27, 2014
(ae) Section 115 of Title 32, United States Code
(af) Title 37, United States Code
(ag) Title 38, United States Code
(ah) DoD Instruction 1332.30, "Separation of Regular and Reserve Commissioned Officers," November 25, 2013
(ai) Joint Publication 1-02, "Department of Defense Dictionary of Military and Associated Terms," current edition

ENCLOSURE 2

RESPONSIBILITIES

1. ASSISTANT SECRETARY OF DEFENSE FOR HEALTH AFFAIRS (ASD(HA)). Under the authority, direction, and control of the USD(P&R), the ASD(HA):

a. Establishes the Disability Advisory Council (DAC) to advise and recommend improvement of the DES and designates its chair.

b. Monitors the performance of the DES and recommends improvements in DES policy.

c. Reviews DES policies, including those proposed by the Military Departments.

d. Through the Deputy Assistant Secretary of Defense for Warrior Care Policy (DASD)(WCP)):

(1) In coordination with the Assistant Secretary of Defense for Reserve Affairs (ASD(RA)) and the Secretaries of the Military Departments, oversees, assesses, and reports on the performance of the DES and recommends to the ASD(HA) changes in policy, procedure, or resources to improve DES performance.

(2) Monitors changes to military personnel and compensation statutes and DoD policy, and other pertinent authorities, to assess their impact on disability evaluation, RC medical disqualification, and related benefits.

(3) Reviews Military Departments' policies and procedures for disability evaluation that affect the uniformity of standards for separation or retirement for unfitness because of disability, or separation of RC members for medical disqualification.

(4) Develops quality assurance procedures to ensure that policies are applied fairly and consistently and reports to ASD(HA) the results of Military Department DES quality control programs.

(5) Develops and executes a strategic communications plan for the DES in coordination with:

(a) Assistant Secretary of Defense for Public Affairs

(b) Secretaries of the Military Departments

(c) Under Secretary for Benefits, Veterans Benefits Administration, VA

(d) Under Secretary for Health, Veterans Health Administration, VA

(6) Establishes reporting requirements necessary to monitor and assess the performance of the DES and compliance of the Military Departments with this instruction.

(a) Not later than July 1 of each year, publishes the information the Military Departments must include in the DES Annual Report.

(b) Analyzes quarterly data submitted by the Military Departments and provides the DES Annual Report to the ASD(HA).

(c) Analyzes monthly DES data to assess trends that might inform policy adjustments.

e. Through the Deputy Assistant Secretary of Defense for Health Services Policy and Oversight:

(1) Reviews Military Departments' policies and procedures for disability evaluation that affect the uniformity of standards for separation or retirement for unfitness because of disability or separation of RC members for medical disqualification.

(2) Monitors changes to the laws, and regulations of the VA to assess their impact on the DoD's application of the VASRD (Reference (t)) to Service members determined unfit because of disability, and recommends timely guidance to the ASD(HA).

(3) Recommends guidance and performance monitoring necessary to implement this instruction, including recommending performance metrics and areas of emphasis.

(4) DASD(WCP) advises on the accurateness and completeness of the DES Annual Report and DES quarterly data submitted by the Military Departments to propose improvements to the DES based upon the submitted performance data.

(5) In conjuction with the Secretaries of the Military Departments and the Director, Defense Health Agency develops program planning, allocation, and use of healthcare resources for activities within the DoD related to the DES.

(6) In coordination with the Military Departments information technology (IT) offices, ensures IT support and access to programs used at the military treatment facilities (MTFs) and other related systems for medical record input and retrieval are available to each Military Department physical evaluation board (PEB).

(7) Provides grade O-6 or civilian equivalent representation with a sufficient understanding of the DES to the DAC.

2. ASD(RA). Under the authority, direction, and control of the USD(P&R), the ASD(RA):

a. In coordination with the ASD(HA) and the Secretaries of the Military Departments, ensures that policies for the DES are applied for RC personnel consistent with those established for Active Component (AC) personnel and reflect the needs of RC members as required by Reference (c).

b. Provides O-6 level or civilian-equivalent representation with sufficient understanding of the DES to the DAC.

c. Reviews annual DES performance and recommends improvements to ASD(HA) to ensure process efficiency and equity for members of the RC.

3. GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE (GC DoD). In consultation with the General Counsels and the Judge Advocates General of the Military Departments, the GC DoD provides policy guidance on legal matters relating to DES policy, issuances, proposed exceptions to policy, legislative proposals, and provide legal representation for the DAC as set forth in Enclosure 7 of Reference (p).

4. SECRETARIES OF THE MILITARY DEPARTMENTS. The Secretaries of the Military Departments:

a. Comply with chapter 61 of Reference (c), this instruction, and any implementing guidance.

b. Implement the DES in accordance with this instruction.

c. Manage the temporary disability retired list (TDRL) in accordance with Appendix 4 of Enclosure 3 of this instruction.

d. Staff and provide resources to meet DES performance goals, without reducing Service members' access to due process consistent with Reference (p).

e. Establish procedures to develop and implement standardized training programs, guidelines, and curricula for Military Department personnel who administer DES processes, including physical evaluation board liaison officers (PEBLOs), non-medical case managers, and personnel assigned to the medical evaluation board (MEB), the PEB, and appellate review authorities.

f. Establish and execute agreements to support the disability processing of members who receive medical care from another Military Department.

g. Establish procedures to ensure Service members who are hospitalized or receiving treatment at a VA or a non-governmental facility are referred, processed, and counseled in a manner similar to their peers.

h. In consultation with their respective Judge Advocates General, establish policy, training and procedures for the provision of legal counsel to Service members in the DES.

i. Establish a quality assurance process to:

(1) Ensure policies and procedures established by this instruction are fairly and consistently implemented.

(2) Establish procedures to ensure the accuracy and consistency of MEB and PEB determinations and decisions.

(3) Establish procedures to monitor and sustain proper performance of the duties of MEBs, PEBs, and PEBLOs.

j. Prepare and forward data submissions for the DES Annual Report to the DASD(WCP).

k. Through their respective Inspectors General, review compliance with the requirements contained in Enclosure 3 of this instruction every 3 fiscal years for the preceding 3-fiscal-year period. Forward a copy of their final Inspectors General compliance reports to the USD(P&R).

l. Investigate all matters of potential fraud pertaining to the DES and resolve as appropriate.

m. Provide grade O-6 or civilian-equivalent representation with a sufficient understanding of the DES to the DAC.

n. Comply with USD(P&R) Memorandum (Reference (u)).

o. Comply with the Memorandums of Agreement between the DoD and the VA pertaining to the IDES (References (v) and (w)).

p. Comply with the procedures outlined in DoD 5400.11-R (Reference (x)).

q. Establish procedures to ensure that, with the consent of the Service member, the address and contact information of the Service member are transmitted to the department or agency for other appropriate veterans affairs of the State in which the Service member intends to reside after retirement or separation.

r. Establish procedures to provide, with consent of the Service member, notification of the hospitalization of a Service member under their jurisdiction evacuated from a theater of combat and admitted to an MTF within the United States to the Senators representing the State, and the Member, Delegate or Resident Commissioner of the House of Representatives representing the district, that includes the Service member's home or record or a different location as provided by the Service member.

s. Before demobilizing or separating an RC member who incurred an injury or illness while on active duty, provide to the Service member information on:

(1) The availability of care and administrative processing through military-affiliated or community support services.

(2) The location of the support services, whether military-affiliated or community, located nearest to the permanent place of residence of the Service member.

ENCLOSURE 3

OPERATIONAL STANDARDS FOR THE DES

1. OVERVIEW OF THE DES

a. Under the supervision of the Secretary of the Military Department concerned, the DES consists of:

(1) Medical evaluation to include the MEB, impartial medical reviews, and rebuttal.

(2) Disability evaluation to include the PEB and appellate review, counseling, case management, and final disposition.

b. The Secretaries of the Military Departments:

(1) Will use the LDES process for non-duty-related disability cases and for Service members who entered the DES prior to the IDES being implemented at a given MTF.

(2) Subject to the written approval of the USD(P&R), may also use the LDES process for Service members who are in initial entry training status, including trainees, recruits, cadets, and midshipmen. Secretaries of the Military Departments who enroll initial entry trainees, recruits, cadets, and midshipmen in the LDES must offer to enroll these Service members in the VA Benefits Delivery at Discharge or Quick Start programs.

(3) Will use the EDES process for consenting Service members designated with a catastrophic illness or injury incurred in the line of duty.

(4) May designate a Service member's condition as catastrophic if he or she has a permanent and severely disabling injury or illness that compromises the ability to carry out the activities of daily living. Guidance for procedures unique to the EDES is available in Reference (u).

c. Except for initial entry trainees, Military Academy cadets, and midshipmen entered into the LDES and catastrophically ill or injured Service members entered in the EDES, will use the IDES process for all newly initiated cases referred under the duty-related process (see Glossary). Guidance for procedures unique to the IDES is available in Reference (q).

d. IDES disability examinations will include a general medical examination and any other applicable medical examinations performed to VA compensation and pension standards. Collectively, the examinations will be sufficient to assess the Service member's referred and claimed condition(s), assist VA in ratings determinations and assist Military Departments to determine if the medical conditions, individually or collectively, prevent the Service member from performing the duties of his office, grade, rank, or rating.

2. MEB

a. Purpose. An MEB documents the medical status and duty limitations of Service members who meet referral eligibility criteria in Appendix 1 to this enclosure.

b. Composition. The MEB will be comprised of two or more physicians (civilian employee or military). One of these physicians must have detailed knowledge of the standards pertaining to medical fitness, the disposition of patients, and disability separation processing. Any MEB listing a behavioral health diagnosis must contain a thorough behavioral health evaluation and include the signature of at least one psychiatrist or psychologist with a doctorate in psychology.

c. Resourcing. The Secretary of the Military Department concerned will develop standards on the maximum number of MEB cases that are pending before a MEB at any one time.

d. Referral to PEB. The MEB documents whether the Service member has a medical condition that will prevent them from reasonably performing the duties of their office, grade, rank, or rating. If the Service member cannot perform the duties of his office, grade, rank, or rating the MEB refers the case to the PEB.

e. Service Member Medical Evaluations

(1) Medical Evaluations. An MEB will evaluate the medical status and duty limitations of:

(a) Service members referred into the DES who incurred or aggravated an illness or injury while under order to active duty specifying a period of more than 30 days.

(b) RC members referred for a duty-related determination.

(2) MEB Exemptions. An MEB is not required:

(a) For Service members temporarily retired for disabilities who are due for a periodic physical medical examination.

(b) When an RC member is referred for impairments unrelated to military status and performance of duty (see Glossary for the definition of non-duty-related impairments).

(3) MEB Prerequisites. A Service member will not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury.

(4) Impartial Medical Reviews. Consistent with section 1612 of Public Law 110-181 (Reference (y)), the Secretary of the Military Department concerned will, upon request of the Service member, assign an impartial physician or other appropriate health care professional who is independent of the MEB to:

(a) Serve as an independent source of review of the MEB findings and recommendations.

(b) Advise and counsel the Service member regarding the findings and recommendations of the MEB.

(c) Advise the Service member on whether the MEB findings adequately reflect the complete spectrum of the Service member's injuries and illnesses.

(5) MEB Rebuttal. Service members referred into the DES will upon request be permitted to at least one rebuttal of the MEB findings.

f. Content

(1) Medical information used in the DES must be sufficiently recent to substantiate the existence or severity of potentially unfitting conditions. The Secretaries of the Military Departments will not perform additional medical exams or diagnostic tests if more current information would not substantially affect identification of the existence or severity of potentially unfitting conditions.

(2) MEBs will confirm the medical diagnosis for and document the full clinical information, including history, treatment status, and potential for recovery of the Service member's medical conditions that, individually or collectively, may prevent the Service member from performing the duties of his office, grade, rank, or rating and state whether each condition is cause for referral to a PEB.

g. Competency. When the Service member's ability to handle his or her financial affairs is unclear, the MEB or TDRL packet will include the results of a competency board.

h. Medical Documentation for RC Members with Non-duty Related Conditions. The medical documentation for RC members with non-duty related conditions referred for disability evaluation must provide clear and adequate written description of the medical condition(s) that, individually or collectively, may prevent the RC member from performing the duties of his office, grade, rank, or rating.

i. Non-medical Documentation. The MTF will forward the cases of Service members with a duty-related determination to the PEB with the MEB documentation and:

(1) The line of duty (LOD) determination, when required by section 6 of Appendix 3 of this enclosure.

(2) Except in cases in which the illness or injury is so severe that return to duty is not likely, a statement from the Service member's immediate commanding officer describing the impact of the member's medical condition on the ability to perform his or her normal military duties.

(3) An official document identifying the next of kin, court-appointed guardian, or trustee when a Service member is determined incompetent to manage his or her financial affairs.

3. DISABILITY EVALUATION

a. Purpose. PEBs determine the fitness of Service members with medical conditions to perform their military duties and, for members determined unfit because of duty-related impairments, their eligibility for benefits pursuant to chapter 61 of Reference (c). Service members may appeal the decision of the PEB. The PEB process includes the informal physical evaluation board (IPEB), formal physical evaluation board (FPEB) and appellate review of PEB results.

b. IPEB. The IPEB reviews the case file to make initial findings and recommendations without the Service member present. The Service member may accept the finding, rebut the finding, or request a FPEB. The Secretary of the Military Department concerned will allow the Service member a minimum of 10 calendar days from receipt of the informal findings to rebut the findings of the IPEB or request an FPEB. In addition to this timeline, Military Departments must publish timelines for presentation and consideration of cases.

c. FPEB. In accordance with section 1214 of Reference (c), Service members who are found unfit are entitled to a formal hearing, an FPEB, to contest their IPEB findings. The PEBLO will document the Service member's declination of an FPEB. If the Secretary of the Military Department concerned changes those findings or determinations following a Service member's concurrence, the Service member will be entitled to a formal hearing to contest the changes.

d. Composition

(1) The IPEB will be comprised of at least two military personnel at field grade or civilian equivalent or higher. In cases of a split opinion, a third voting member will be assigned to provide the majority vote.

(2) The FPEB must be comprised of at least three members and may be comprised of military and civilian personnel representatives. A majority of the FPEB members could not have participated in the adjudication process of the same case at the Informal Physical Evaluation Board.

(a) The FPEB will consist of at least a president, who should be a military 0-6, or civilian equivalent; a medical officer; and a line officer (or non-commissioned officer at the E-9 level for enlisted cases) familiar with duty assignments.

(b) The physician cannot be the Service member's physician, cannot have served on the Service member's MEB, and cannot have participated in a TDRL re-examination of the Service member.

(c) In the case of RC members, Secretaries of the Military Departments will ensure RC representation on the PEBs is consistent with section 12643 of Reference (c) and related policies. Secretaries of the Military Departments may adjust member composition of the FPEB to enhance the adjudication process consistent with applicable laws and regulations.

(d) Contract personnel may not serve as PEB adjudicators or PEB appellate review members.

e. Eligibility. Service members determined unfit and TDRL members determined fit may demand, and are entitled to, an FPEB. At its discretion, the Military Department may grant a formal hearing to Service members who are determined fit but are not on the TDRL.

f. Resourcing. The Secretary of the Military Department concerned will direct the allocation of additional personnel to the PEB process if deemed appropriate for proper and expeditious adjudication of case load.

g. Issues. At the FPEB, the Service member will be entitled to address issues pertaining to his or her fitness, the percentage of disability, degree or stability of disability, administrative determinations, or a determination that his or her injury or disease was non-duty related.

h. Hearing Rights. Service members will have, at a minimum, the following rights before the FPEB:

(1) To have their case considered by board members, a majority of whom were not voting members of their IPEB.

(2) To appear personally, through a designated representative, by videoconference, or by any other means determined practical by the Secretary of the Military Department concerned. Unless the Secretary of the Military Department directs the FPEB to fund the personal travel and other expenses, RC members with non-duty related determinations are responsible for their personal travel and other expenses.

(3) To be represented by Government appointed counsel provided by the Military Department. Service members may choose their own civilian counsel at no expense to the Government. The PEB president should notify the Secretary of the Military Department concerned if the lack of Government appointed counsel affects timely PEB caseload adjudication.

(4) To make a sworn or an unsworn statement. A Service member will not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury.

(5) To remain silent. When the Service member exercises this right, the member may not selectively respond, but must remain silent throughout the hearing.

(6) To introduce witnesses, depositions, documents, sworn or unsworn statements, declarations, or other evidence in the Service member's behalf and to question all witnesses who

testify at the hearing. The FPEB president determines whether witnesses are essential. If the FPEB president determines witnesses essential, travel expenses and per diem may be reimbursed or paid in accordance with the Joint Federal Travel Regulation, Volumes 1 and 2 (References (z) and (aa)). Witnesses not deemed essential by the FPEB president may attend formal hearings at no expense to the Government.

(7) To access all records and information received by the PEB before, during, and after the formal hearing.

i. Record of Proceedings. Upon a Service member's written request, the Military Department will provide the Service member a record of the PEB proceedings. The PEB record of proceedings must convey the PEB findings and conclusions in an orderly and itemized fashion, with specific attention to each issue presented by the Service member regarding his or her case, and the basis for applying total or extra-schedular ratings or unemployability determinations, as applicable.

j. Duty-related Determinations. The record of proceedings for active duty Service members and RC members referred for duty-related determinations will document, at a minimum:

(1) The determination of fit or unfit.

(2) The code and percentage rating assigned an unfitting and compensable disability based on the VASRD. The standards for determining compensable disabilities are specified in Appendix 3 of this enclosure.

(3) The reason an unfitting condition is not compensable.

(a) The specific accepted medical principle, as stated in Appendix 3 of this enclosure, for overcoming the presumption of service aggravation for all cases with a finding of preexisting condition without service aggravation.

(b) The accepted medical principle justifying findings that an RC member performing inactive duty training (IDT), active duty training, or on active duty of 30 days or less, has a preexisting disability that was not permanently aggravated by service.

(c) The rationale justifying findings that a disability that was incurred in the LOD prior to September 24, 1996, and that was not permanently service aggravated since September 23, 1996, was not the proximate result of military service.

(4) For Service members being placed on the TDRL or permanently retired, the nature of the disability and the stability and permanency of the disability.

(5) Administrative determinations made consistent with Appendix 5 of this enclosure.

(6) The record of all proceedings for PEB evaluation including the evidence used to overcome a presumption listed in this instruction and changes made as a result of review by

subsequent reviewing authority will include a written explanation in support of each finding and recommendation. If applicable, the basis for applying or not applying total or extra-schedular ratings or unemployability determinations.

k. Non-duty Related Determinations. For RC members referred for non-duty related determinations, the record of proceedings will document only:

(1) The fitness determination.

(2) For RC members determined fit, a determination of whether the member is deployable, if Service regulations require such a determination.

l. Appellate Review. The Military Department will review the findings and recommendations of the FPEB when requested by the Service member or designated representative or as required by the regulations of the Military Department concerned. The Military Department will also provide to the Service member a written response to an FPEB appeal that specifically addresses each issue presented in the appeal.

m. Quality Assurance. Each Military Department will establish and publish quality review procedures particular to the PEB and conduct quality assurance reviews in accordance with the laws, directives, and regulations governing disability evaluation.

4. COUNSELING

a. Purpose. Service members undergoing evaluation by the DES must be advised of the significance and consequences of the determinations being made and their associated rights, benefits, and entitlements. Each Military Department will publish and provide standard information booklets that contain specific information on the MEB and PEB processes. These publications must include the rights and responsibilities of the Service member while navigating through the DES. The information will be made available at the servicing MTFs and PEBs.

b. Topics

(1) PEBLOs will inform Service members of the:

(a) Sequence and nature of the steps in the disability process.

(b) Statutory rights and requirements but will not provide legal advice.

(c) Effect of findings and recommendations.

(d) Process to submit rebuttals.

(e) Probable retired grade.

(f) Estimated timeframe for completing the DES at their installation.

(2) PEBLOs will inform Service members or refer them to the appropriate subject matter experts on:

(a) Potential veterans' benefits.

(b) Post-retirement insurance programs and the Survivor Benefit Plan in accordance with DoDD 1332.27 (Reference (ab)), if appropriate.

(c) Applicable transition benefits, in accordance with DoDD 1332.35 (Reference (ac)).

(d) Applicable standards detailed in the VASRD, which would have to be recognized to increase the percentage of disability, prior to acting on a Service member's request for a formal PEB.

(e) Services provided by military, veteran, or national service organizations.

(f) Electronic resources for ill and injured Service members such as National Resource Directory, eBenefits, etc.

(g) Availability and processes for obtaining legal counsel to assist in rebutting or appealing MEB and PEB findings.

(h) The appropriate Defense Finance and Accounting Service finance representative for payment calculations for severance pay or retirement pay.

c. Incompetent Service Members. When a Service member has been determined incompetent by a competency board, his or her designated representative (e.g., court appointed guardian, trustee, or primary next of kin) will be counseled and afforded the opportunity to assert the rights granted to the Service member, unless prohibited by law.

d. Pre-separation Counseling. Service members on orders to active duty for more than 30 days will not be separated or retired because of disability before completing pre-separation counseling pursuant to Reference (ac).

5. CASE MANAGEMENT

a. Service members undergoing evaluation by the DES must be advised on the status of their case, issues that must be resolved for their case to progress, and expected time frame for completing DES at their installation.

b. PEBLOs will contact Service members undergoing disability evaluation at least monthly and provide any necessary DES assistance.

6. FINAL DISPOSITION. After adjudicating all appeals, the personnel authorities specified in Appendix 6 to this enclosure will:

a. Issue orders and instructions to implement the determination of the respective Service's final reviewing authority.

b. Consider Service member requests to continue on active duty or in the RC in a permanent limited duty status if the member is determined unfit.

7. ADMINISTRATIVE DECISIONS

a. The Secretary of the Military Department concerned may:

(1) Direct the PEB to reevaluate any Service member determined to be unsuitable for continued military service.

(2) Retire or separate for disability any Service member determined upon re-evaluation to be unfit to perform the duties of the member's office, grade, rank, or rating.

b. The Secretary of the Military Department concerned may not:

(1) Authorize the involuntary administrative separation of a member based on a determination that the member is unsuitable for deployment or worldwide assignment after a PEB has found the member fit for the same medical condition; or

(2) Deny the member's request to reenlist based on a determination that the member is unsuitable for deployment or worldwide assignment after a PEB has found the member fit for the same medical condition.

c. Consistent with DoDI 1332.14 (Reference (ad)), any Service member found fit for duty by the PEB but determined unsuitable for continued service by the Secretary of the Military Department concerned for the same medical condition considered by the PEB may appeal to the Secretary of Defense, who is the final authority.

8. TRAINING AND EDUCATION

a. Assignment of Personnel to the DES. The Secretaries of the Military Departments will certify annually that the following personnel assigned to or impacting the DES were formally trained prior to being assigned to performing DES duties.

(1) Medical officers.

(2) PEBLOs.

(3) Patient administration officers.

(4) PEB adjudicators.

(5) PEB appellate review members.

(6) Judge advocates.

(7) Military Department civilian attorneys.

b. Training. Training programs for all personnel assigned to the DES must be formal and documented. At a minimum, training curricula will consist of:

(1) An overview of the statutory and policy requirements of the DES, the electronic and paper recordkeeping policies of the Military Department, customer service philosophies, and VA processes, services and benefits.

(2) Familiarization with medical administration processes.

(3) Knowledge of online and other resources pertaining to the DES and DoD and VA services, the chain of supervision and command, and the Military Department Inspectors General hotlines for resolution of issues.

c. Mentoring. Individuals assigned for duty as PEBLOs must receive at least 1 week of on-the-job training with an experienced PEBLO.

Appendixes

1. DES Referral
2. Standards for Determining Unfitness Due to Disability or Medical Disqualification
3. Standards for Determining Compensable Disabilities
4. TDRL Management
5. Administrative Determinations
6. Final Disposition

APPENDIX 1 TO ENCLOSURE 3

DES REFERRAL

1. GENERAL. The Secretary of the Military Department concerned will refer Service members who meet the criteria for disability evaluation regardless of eligibility for disability compensation.

2. CRITERIA FOR REFERRAL

a. When the course of further recovery is relatively predictable or within 1 year of diagnosis, whichever is sooner, medical authorities will refer eligible Service members into the DES who:

(1) Have one or more medical conditions that may, individually or collectively, prevent the Service member from reasonably performing the duties of their office, grade, rank, or rating including those duties remaining on a Reserve obligation for more than 1 year after diagnosis;

(2) Have a medical condition that represents an obvious medical risk to the health of the member or to the health or safety of other members; or

(3) Have a medical condition that imposes unreasonable requirements on the military to maintain or protect the Service member.

b. In all cases, competent medical authorities will refer into the DES eligible Service members who meet the criteria in paragraph 2a within 1 year of diagnosis.

3. ELIGIBILITY FOR REFERRAL

a. Duty-related Determinations. Except as provided in section 4 of this appendix, the following categories of Service members who meet the criteria in section 2 of this appendix are eligible for referral to the DES for duty-related determinations:

(1) Service members on active duty or in the RC who are on orders to active duty specifying a period of more than 30 days.

(2) RC members who are not on orders to active duty specifying a period of more than 30 days but who incurred or aggravated a medical condition while the member was ordered to active duty for more than 30 days.

(3) Cadets at the United States Military Academy, the United States Air Force Academy, or Midshipmen of the United States Naval Academy.

(4) Service members previously determined unfit, serving in a permanent limited duty status, and for whom the period of continuation has expired.

(5) Other Service members who are on orders to active duty specifying a period of 30 days or less if they have a medical condition that was incurred or aggravated in the LOD while the Service member was:

(a) Performing active duty or IDT.

(b) Traveling directly to or from the place at which such duty is performed.

(c) Remaining overnight immediately before the commencement of IDT or while remaining overnight between successive periods of IDT at or in the vicinity of the site of the IDT.

(d) Serving on funeral honors duty pursuant to section 12503 of Reference (c) or section 115 of Title 32, U.S.C. (Reference (ae)) while the Service member was traveling to or from the place at which the member was to serve; or while the member remained overnight at or in the vicinity of that place immediately before serving.

(6) Service members with duty-related determinations, as described in paragraph 3a of this appendix, will be referred into the DES for a determination of fitness. If found unfit, a determination will be made as to the Service member's entitlement to separation or retirement for disability with benefits pursuant to chapter 61 of Reference (c) and administrative determinations in accordance with Appendix 5 to this enclosure.

(7) A member of a RC who is ordered to active duty for a period of more than 30 days and is released from active duty within 30 days of commencing such period of active duty for failure to meet physical standards for retention due to a pre-existing condition not aggravated during the period of active duty or medical or dental standards for deployment due to a pre-existing condition not aggravated during the period of active duty will be considered to have been serving under an order to active duty for a period of 30 days or less.

b. Non-duty Related Determinations. Members of the RC with non-duty related determinations, who are otherwise eligible as described in section 2 of this appendix, will be referred solely for a fitness for duty determination when one of the following exist:

(1) The RC member does not qualify under paragraph 3a of this appendix.

(2) The RC member requests referral for a fitness determination upon being notified that they do not meet medical retention standards.

(3) Service regulations direct the RC member be referred to the DES for a determination of fitness before being separated by the Reserve for not meeting medical retention standards.

4. INELIGIBILITY FOR REFERRAL

a. Service members are ineligible for referral to the disability evaluation process when:

(1) The Service member has a condition, circumstance, or defect of a developmental nature, not constituting a physical disability, as described in paragraph 3i above the signature of this instruction, that interferes with assignment to or performance of duty and that was not service aggravated.

(2) The Service member is pending an approved, unsuspended punitive discharge or dismissal, except as provided by Service regulations.

(3) The Service member is pending separation under provisions that authorize a characterization of service of under other than honorable conditions, except as provided by Service regulations. This restriction is based on the provisions upon which the member is being separated and not on the actual characterization the member receives.

(4) The Service member is not physically present or accounted for.

(5) Disability results from intentional misconduct or willful neglect or was incurred during a period of unauthorized absence or excess leave.

b. However, the Secretaries of the Military Departments should normally evaluate for disability those Service members who would be ineligible for referral to the DES due to paragraphs 4a(2) and 4a(3) of this appendix when the medical impairment or disability evaluation is warranted as a matter of equity or good conscience.

5. SERVICE MEMBERS WITH MEDICAL WAIVERS

a. Provided no permanent aggravation has occurred, Service members who enter the military with a medical waiver may be separated without disability evaluation when the responsible medical authority designated by Service regulations determines within 6 months of the member's entry into active service that the waivered condition represents a risk to the member or prejudices the best interests of the Government.

b. Once 6 months have elapsed the Secretary of the Military Department concerned will refer the Service member for disability evaluation when the Service member meets the criteria in section 2 of this appendix and is eligible for referral in accordance with section 3 of this appendix.

c. Members who entered the Service with a medical waiver for a pre-existing condition and who are subsequently determined unfit for the condition will not be entitled to disability separation or retired pay unless military service permanently aggravated the condition. Members granted medical waivers will be advised of this provision at the time of waiver application and when it is granted.

6. WAIVER OF PEB EVALUATION. Except as prohibited by section 7 of this appendix, Service members may waive referral to the PEB with the approval of the Secretary of the Military Department concerned.

a. The Service member must be counseled on the DES process, the right to a PEB, and the potential benefits of remaining in an active duty or active reserve status to complete evaluation by the DES.

b. The Service member must request a waiver in writing and such request or an affidavit must attest that the member has received the counseling described and declines referral to the PEB.

7. PROHIBITION FROM WAIVING DISABILITY EVALUATION. A Service member approved for voluntary early separation from active duty who incurs a Reserve obligation and who has conditions that are cause for referral into the DES cannot waive disability evaluation.

8. REFERRAL IMPLICATIONS. Neither referral into the DES nor a finding of unfitness constitutes entitlement to disability benefits.

APPENDIX 2 TO ENCLOSURE 3

STANDARDS FOR DETERMINING UNFITNESS DUE TO DISABILITY OR MEDICAL DISQUALIFICATION

1. UNIFORMITY OF STANDARDS. The standards listed in this instruction for determining unfitness due to disability will be followed unless the USD(P&R) approves exceptions on the basis of the unique needs of the respective Military Department.

2. GENERAL CRITERIA FOR MAKING UNFITNESS DETERMINATIONS

a. A Service member will be considered unfit when the evidence establishes that the member, due to disability, is unable to reasonably perform duties of his or her office, grade, rank, or rating, including those during a remaining period of Reserve obligation.

b. A Service member may also be considered unfit when the evidence establishes that:

(1) The Service member's disability represents a decided medical risk to the health of the member or to the welfare or safety of other members; or

(2) The Service member's disability imposes unreasonable requirements on the military to maintain or protect the Service member.

3. RELEVANT EVIDENCE. The Secretaries of the Military Departments will consider all relevant evidence in assessing Service member fitness, including the circumstances of referral. To reach a finding of unfit, the PEB must be satisfied that the evidence supports that finding.

a. Referral Following Illness or Injury. When referral for disability evaluation immediately follows acute, grave illness or injury, the medical evaluation may stand alone, particularly if medical evidence establishes that continued service would be harmful to the member's health or is not in the best interest of the respective Service.

b. Referral for Chronic Impairment. When a Service member is referred for disability evaluation under circumstances other than as described in paragraph 3a of this appendix, an evaluation of the Service member's performance of duty by supervisors may more accurately reflect the capacity to perform. Supervisors may include letters, efficiency reports, credential reports, status of physician medical privileges, or personal testimony of the Service member's performance of duty to provide evidence of the Service member's ability to perform his or her duties.

c. Cause-and-effect Relationship. Regardless of the presence of illness or injury, inadequate performance of duty, by itself, will not be considered evidence of unfitness due to disability, unless a cause-and-effect relationship is established between the two factors.

4. REASONABLE PERFORMANCE OF DUTIES

a. Considerations. Determining whether a Service member can reasonably perform his or her duties includes consideration of:

(1) Common Military Tasks. Whether the Service member can perform the common military tasks required for the Service member's office, grade, rank, or rating including those during a remaining period of Reserve obligation. Examples include routinely firing a weapon, performing field duty, or wearing load-bearing equipment or protective gear.

(2) Physical Fitness Test. Whether the Service member is medically prohibited from taking the respective Service's required physical fitness test. When an individual has been found fit by a PEB for a condition that prevents the member from taking the Service physical fitness test, the inability to take the physical fitness test will not form the basis for an adverse personnel action against the member.

(3) Deployability. Whether the Service member is deployable individually or as part of a unit, with or without prior notification, to any vessel or location specified by the Military Department. When deployability is used by a Service as a consideration in determining fitness, the standard must be applied uniformly to both the AC and RC of that Service.

(4) Special Qualifications. For Service members whose medical condition disqualifies them for specialized duties, whether the specialized duties constitute the member's current duty assignment; the member has an alternate branch or specialty; or reclassification or reassignment is feasible.

b. General, Flag, and Medical Officers. An officer in pay grade O-7 or higher, or a medical officer in any grade, being processed for retirement by reason of age or length of service, will not be determined unfit unless the determination of the Secretary of the Military Department concerned with respect to unfitness is approved by the USD(P&R) on the recommendation of the ASD(HA).

c. Service Members on Permanent Limited Duty. A Service member previously determined unfit and continued in a permanent limited duty status or otherwise continued on active duty will normally be found unfit at the expiration of his or her period of continuation. However, the Service member may be determined fit when the condition has healed or improved such that the Service member would be capable of performing his or her duties in other than a limited-duty status.

d. Combined Effect. A Service member may be determined unfit as a result of the combined effect of two or more impairments even though each of them, standing alone, would not cause the Service member to be referred into the DES or be found unfit because of disability.

5. PRESUMPTION OF FITNESS

a. Application. The DES compensates disabilities when they cause or contribute to career termination. Service members who are pending retirement at the time they are referred for disability evaluation are presumed fit for military service.

(1) Service members may overcome this presumption by presenting a preponderance of evidence that he or she is unfit for military service. The presumption of fitness may be overcome when:

(a) An illness or injury occurs within the presumptive period that would prevent the Service member from performing further duty if they were not retiring.

(b) A serious deterioration of a previously diagnosed condition, including a chronic one, occurs within the presumptive period, and the deterioration would preclude further duty if the Service member were not retiring.

(c) The condition for which the Service member is referred is a chronic condition and a preponderance of evidence establishes that the Service member was not performing duties befitting either his or her experience in the office, grade, rank, or rating before entering the presumptive period because of the condition.

(2) Service members are not presumed fit for military service in these instances of a pending retirement:

(a) The disability is one for which a Service member was previously determined unfit and continued in a permanent limited duty status. The presumption of fitness will be applied to other medical impairments unless the medical evidence establishes they were impacted by the original unfitting disabilities.

(b) Selected Reserve members who are eligible to qualify for non-regular retirement pursuant to the provisions of section 12731b of Reference (c).

(c) RC members referred for non-duty-related determinations.

b. Presumptive Period. The Secretaries of the Military Departments will presume Service members are pending retirement when the preparation of the Service member's MEB narrative summary occurs after any of these circumstances:

(1) A Service member's request for voluntary retirement has been approved. Revocation of voluntary retirement orders for purposes of referral into the DES does not negate application of the presumption.

(2) An officer has been approved for selective early retirement or is within 12 months of mandatory retirement due to age or length of service.

(3) An enlisted member is within 12 months of his or her retention control point or expiration of active obligated service, but will be eligible for retirement at his or her retention control point or expiration of active obligated service.

(4) An RC member is within 12 months of mandatory retirement or removal date and qualifies for a 20-year letter at the time of referral for disability evaluation.

(5) A retiree is recalled, to include those who transferred to the Retired Reserve, with eligibility to draw retired pay upon reaching the age prescribed by statute unless the recalled retiree incurred or aggravated the medical condition while on their current active duty orders and overcomes the presumption of fitness.

6. EVIDENTIARY STANDARDS FOR DETERMINING UNFITNESS BECAUSE OF DISABILITY

a. Objective Evidence

(1) The Secretary of the Military Department concerned must cite objective evidence in the record, as distinguished from personal opinion, speculation, or conjecture, to determine a Service member is unfit because of disability.

(2) Doubt that cannot be resolved with evidence will be resolved in favor of the Service member's fitness through the presumption that the Service member desires to be found fit for duty.

b. Preponderance of Evidence. With the exception of presumption of fitness cases, the Secretary of the Military Department concerned will determine fitness or unfitness for military service on the basis of the preponderance of the objective evidence in the record.

APPENDIX 3 TO ENCLOSURE 3

STANDARDS FOR DETERMINING COMPENSABLE DISABILITIES

1. OVERVIEW OF DISABILITY COMPENSATION CRITERIA. Service members who are determined unfit to perform the duties of the member's office, grade, rank, or rating because of disability in accordance with Appendix 2 of this enclosure may be eligible for disability benefits when:

a. The disability is not the result of the member's intentional misconduct or willful neglect and was not incurred during unauthorized absence or excess leave.

b. The Service member incurred or aggravated the disability while he or she was:

(1) A member of a regular component of the Military Services entitled to basic pay;

(2) A member of the Military Services entitled to basic pay, called or ordered to active duty (other than for training pursuant to section 10148 of Reference (c)) for a period of more than 30 days;

(3) A member of the Military Services on active duty for a period greater than 30 days but not entitled to basic pay pursuant to section 502(b) of Title 37, U.S.C. (Reference (af)) due to authorized absence to participate in an educational program or for an emergency purpose, as determined by the Secretary of the Military Department concerned;

(4) A cadet at the United States Military Academy or the United States Air Force Academy or a midshipman of the United States Naval Academy after October 28, 2004; or

(5) A member of the Military Services called or ordered to active duty for a period of 30 days or less, performing IDT or traveling directly to or from the place of IDT, to funeral honors duty, or for training pursuant to section 10148 of Reference (c).

2. DISABILITY RETIREMENT CRITERIA FOR REGULAR COMPONENT MEMBERS AND MEMBERS ON ACTIVE DUTY FOR MORE THAN 30 DAYS. Service members described in paragraphs 1a and 1b(1) through 1b(4) of this appendix will be retired with disability benefits when:

a. The disability is permanent and stable.

b. The member has:

(1) At least 20 years of service computed in accordance with section 1208 of Reference (c); or

(2) A disability of at least 30 percent, pursuant to Reference (t), and that disability:

(a) Was not noted at the time of the member's entrance on active duty unless the Secretary of the Military Department concerned demonstrates with clear and unmistakable evidence that the disability existed before the member's entrance on active duty and was not aggravated by active military service;

(b) Is the proximate result of performing active duty;

(c) Was incurred in the LOD in time of war or national emergency; or

(d) Was incurred in the LOD after September 14, 1978.

3. DISABILITY RETIREMENT CRITERIA FOR MEMBERS ON ACTIVE DUTY FOR 30 DAYS OR LESS, ON IDT, FUNERAL HONORS DUTY, OR TRAINING PURSUANT TO SECTION 10148 OF REFERENCE (C). Service members described in paragraphs 1a and 1b(5) of this appendix will be retired with disability benefits when:

a. The disability is permanent and stable.

b. The Service member has:

(1) At least 20 years of service computed in accordance with section 1208 of Reference (c); or

(2) A disability of at least 30 percent, pursuant to Reference (t), and that disability meets at least one of the following criteria:

(a) The disability was incurred or aggravated before September 24, 1996, as the proximate result of:

1. Performing active duty or IDT;

2. Traveling directly to or from the place of active duty or IDT; or

3. An injury, illness, or disease incurred or aggravated immediately before the commencement of IDT or while remaining overnight, between successive periods of IDT, at or in the vicinity of the site of the IDT, if the site of the IDT is outside reasonable commuting distance of the Service member's residence.

(b) The disability is a result of injury, illness, or disease that was incurred or aggravated in the LOD after September 23, 1996:

1. While performing active duty or IDT;

2. While traveling directly to or from the place of active duty or IDT;

3. While remaining overnight immediately before the commencement of IDT; or

4. While remaining overnight between successive periods of IDT at or in the vicinity of the site of the IDT.

(c) The disability is a result of an injury, illness, or disease incurred or aggravated in the LOD:

1. While serving on funeral honors duty pursuant to section 12503 of Reference (c) or section 115 of Reference (ae);

2. While the Service member was traveling to or from the place at which the member was to serve; or

3. While the Service member remained overnight at or in the vicinity of that place immediately before serving, if it is outside reasonable commuting distance from the member's residence.

4. DISABILITY SEPARATION CRITERIA FOR REGULAR COMPONENT MEMBERS AND MEMBERS ON ACTIVE DUTY FOR MORE THAN 30 DAYS. Service members described in paragraphs 1a and 1b(1) through 1b(4) of this appendix will be separated with disability benefits when:

a. The Service member has less than 20 years of service.

b. The disability meets one of the following criteria:

(1) Is or may be permanent and less than 30 percent, pursuant to Reference (t), and:

(a) Is the proximate result of performing active duty;

(b) Was incurred in the LOD in time of war or national emergency; or

(c) Was incurred in the LOD after September 14, 1978.

(2) Is less than 30 percent, pursuant to Reference (t), at the time of the determination and was not noted at the time of the Service member's entrance on active duty (unless clear and unmistakable evidence demonstrates the disability existed before the Service member's entrance on active duty and was not aggravated by active military service).

(3) Is at least 30 percent, pursuant to Reference (t), and at the time of the determination, the disability was neither:

(a) The proximate result of performing active duty;

(b) Incurred in the LOD in time of war or national emergency; nor

(c) Incurred in the LOD after September 14, 1978, and the Service member had less than 8 years of service computed pursuant to section 1208 of Reference (c) on the date when he or she:

1. Would otherwise be retired pursuant to section 1201 of Reference (c); or

2. Was placed on the TDRL pursuant to section 1202 of Reference (c).

5. DISABILITY SEPARATION CRITERIA FOR MEMBERS ON ACTIVE DUTY FOR 30 DAYS OR LESS, ON IDT, FUNERAL HONORS DUTY, OR TRAINING PURSUANT TO SECTION 10148 OF REFERENCE (C)

a. Service members described in paragraphs 1a and 1b(5) of this appendix will be separated with disability benefits when:

(1) The Service member has less than 20 years of service.

(2) The disability meets one of the following criteria:

(a) Is or may be permanent.

(b) Is the result of an injury, illness, or disease incurred or aggravated in line of duty while:

1. Performing active duty or IDT;

2. Traveling directly to or from the place of active duty;

3. Remaining overnight immediately before the commencement of IDT, between successive periods of IDT, at or in the vicinity of the site of the IDT if the site is outside reasonable commuting distance of the Service member’s residence; or

4. Serving on funeral honors duty pursuant to section 12503 of Reference (c) or section 115 of Reference (ae) while the Service member was traveling to or from the place at which he or she was to serve; or while the Service member remained overnight at or in the vicinity of that place immediately before serving.

(c) Is less than 30 percent under the VASRD at the time of the determination and, in the case of a disability incurred before October 5, 1999, was the proximate result of performing active duty or IDT or of traveling directly to or from the place at which such duty is performed.

b. If the Service member is eligible for transfer to the inactive status list pursuant to section 1209 of Reference (c) and chooses to, he or she may be transferred to that list instead of being separated.

6. LOD REQUIREMENTS. In the DES, LOD determinations assist the PEB and appellate review authority in meeting the statutory requirements under chapter 61 of Reference (c) for separation or retirement for disability.

a. Relationship of LOD Findings to DES Determinations

(1) LOD determinations will be made in accordance with the regulations of the respective Military Department. When an LOD determination is required, the DES will consider the finding made for those issues mutually applicable to LOD and DES determinations. These issues include whether a condition is pre-existing and whether it is aggravated by military service and any issues of misconduct or negligence.

(2) When the PEB has reasonable cause to believe an LOD finding appears to be contrary to the evidence, disability evaluation will be suspended for a review of the LOD determination in accordance with Service regulations. The PEB will forward the case to the final LOD reviewing authority designated by the Secretary of the Military Department concerned with a memorandum documenting the reasons for questioning the LOD finding.

b. Referral Requirement. When an LOD determination is required, it will be done before sending a Service member's case to the PEB.

c. Presumptive Determinations. The determination is presumed to be in the LOD without an investigation in the case of:

(1) Disease, except as described in paragraphs 6e(1) to 6e(6) of this appendix.

(2) Injuries clearly incurred as a result of enemy action or attack by terrorists.

(3) Injuries while a passenger in a common commercial or military carrier.

d. Required Determinations. At a minimum, LOD determinations will be required in these circumstances.

(1) Injury, disease, or medical condition that may be due to the Service member's intentional misconduct or willful negligence, such as a motor vehicle accident.

(2) Injury involving the abuse of alcohol or other drugs.

(3) Self-inflicted injury.

(4) Injury or disease possibly incurred during a period of unauthorized absence.

(5) Injury or disease apparently incurred during a course of conduct for which charges have been preferred.

(6) Injury, illness, or disease of RC members on orders specifying a period of active duty of 30 days or less while:

(a) Performing active duty or IDT;

(b) Traveling directly to or from the place of active duty;

(c) Remaining overnight immediately before the commencement of IDT, between successive periods of IDT, at or in the vicinity of the site of the IDT if the site is outside reasonable commuting distance of the Service member's residence; or

(d) Serving on funeral honors duty pursuant to section 12503 of Reference (c) or section 115 of Reference (ae) while the Service member was traveling to or from the place at which he or she was to serve; or while the Service member remained overnight at or in the vicinity of that place immediately before serving.

7. EVIDENTIARY STANDARDS FOR DETERMINING COMPENSABILITY OF UNFITTING CONDITIONS

a. Misconduct and Negligence. LOD determinations concerning intentional misconduct and willful negligence will be judged by the evidentiary standards established by the Secretary of the Military Department concerned.

b. Presumption of Sound Condition for Members on Continuous Orders to Active Duty Specifying a Period of More Than 30 Days

(1) The Secretaries of the Military Departments will presume Service members, including RC members and recalled retirees, on continuous orders to active duty specifying a period of more than 30 days entered their current period of military service in sound condition when the disability was not noted at the time of the Service member's entrance to the current period of active duty.

(2) The Secretaries of the Military Departments may overcome this presumption if clear and unmistakable evidence demonstrates that the disability existed before the Service member's entrance on their current period of active duty and was not aggravated by their current period of military service. Absent such clear and unmistakable evidence, the Secretary of the Military Department concerned will conclude that the disability was incurred or aggravated during their current period of military service.

(3) The Secretary of the Military Department concerned must base a finding that the Service member's condition was not incurred in or aggravated by their current period of military

service on objective evidence in the record, as distinguished from personal opinion, speculation, or conjecture. When the evidence is unclear concerning whether the condition existed prior to their current period of military service or if the evidence is equivocal, the presumption of sound condition at entry to the current period of military service has not been rebutted and the Secretary of the Military Department concerned will find the Service member's condition was incurred in or aggravated by military service.

(4) Any hereditary or genetic disease will be evaluated to determine whether clear and unmistakable evidence demonstrates the disability existed before the Service member's entrance on active duty and was not aggravated by their current period of military service. However, even if the disability is determined to have been incurred prior to entry on their current period of active duty, any aggravation of that disease, incurred during the Service member's current period of active duty, beyond that determined to be due to natural progression will be determined to be service-aggravated.

(5) There is no presumption of sound condition for RC members serving on orders of 30 days or less.

c. Presumption of Incurrence or Aggravation in the LOD for Members on Continuous Orders to Active Duty Specifying a Period of More Than 30 Days

(1) The Secretaries of the Military Departments will presume that diseases or injuries incurred by Service members on continuous orders to active duty specifying a period of more than 30 days were incurred or aggravated in the LOD unless the disease or injury was noted at time of entry into service. The Secretaries of the Military Departments may overcome the presumption that a disease or injury was incurred or aggravated in the LOD only when clear and unmistakable evidence indicates the disease or injury existed prior to their current period of military service and was not aggravated by their current period of military service.

(2) There is no presumption of incurrence or aggravation in the LOD for RC members serving on orders of 30 days or less.

(3) Pursuant to the provisions of sections 1206(a) and 1207(a) of Reference (c), a preexisting condition is deemed to have been incurred while entitled to basic pay and will be considered for purposes of determining whether the disability was incurred in the LOD when:

(a) The Service member was ordered to active duty for more than 30 days (other than for training pursuant to section 10148(a) of Reference (c)) when the disease or injury was determined to be unfitting as subsequently determined by the PEB.

(b) The Service member was not a member of the RC released within 30 days of his or her orders to active duty in accordance with section 1206a of Reference (c) due to the identification of a preexisting condition not aggravated by the current call to duty.

(c) The Service member will have a career total of at least 8 years of active service at the time of separation.

(d) The disability was not the result of intentional misconduct or willful neglect or was incurred during a period of unauthorized absence.

d. RC Members Serving on Orders of 30 Days or Less. The Secretary of the Military Department concerned will determine if injuries and diseases to RC members serving on orders of 30 days or less were incurred or aggravated in the LOD as described in section 4 of this appendix. For RC members being examined in accordance with section 3 of this appendix, aggravation must constitute the worsening of a preexisting medical condition as a direct result of military duty and over and above the natural progression of the condition.

e. Prior Service Impairment. Any medical condition incurred or aggravated during one period of active service or authorized training in any of the Military Services that recurs, is aggravated, or otherwise causes the member to be unfit, should be considered incurred in the LOD, provided the origin of such impairment or its current state is not due to the Service member's misconduct or willful negligence, or progressed to unfitness as the result of intervening events when the Service member was not in a duty status.

f. Medical Waivers

(1) Service members who entered the Military Service with a medical waiver for a preexisting condition and are subsequently determined unfit for the condition will not be entitled to disability separation or retired pay unless:

(a) Military service permanently aggravated the condition or hastened the condition's rate of natural progression; or

(b) The member will have 8 years of active service at the time of separation.

(2) Service members granted medical waivers will be advised of the waiver application process when applying for a waiver and when it is granted.

g. Treatment of Pre-existing Conditions. Generally recognized risks associated with treating preexisting conditions will not be considered service aggravation. Unexpected adverse events, over and above known hazards, directly attributable to treatment, anesthetic, or operation performed or administered for a medical condition existing before entry on active duty, may be considered service aggravation.

h. Elective Surgery or Treatment. A Service member choosing to have elective surgery or treatment done at his or her own expense will not be eligible for compensation in accordance with the provisions of this instruction for any adverse residual effect resulting from the elected treatment, unless it can be shown that such election was reasonable or resulted from a significant impairment of judgment that is the product of a ratable medical condition.

i. Rating Disabilities. When a disability is established as compensable, it will be rated in accordance with Reference (t). When after careful consideration of all procurable and assembled

data, a reasonable doubt arises regarding the degree of disability, such doubt will be resolved in favor of the Service member.

APPENDIX 4 TO ENCLOSURE 3

TDRL MANAGEMENT

1. INITIAL PLACEMENT ON THE TDRL

a. A Service member will be placed on the TDRL when the member meets the requirements for permanent disability retirement except that the disability is not determined to be stable but may be permanent. A disability will be determined stable when the preponderance of medical evidence indicates the severity of the condition will probably not change enough within the next 5 years to increase or decrease the disability rating percentage.

b. Service members with unstable conditions rated at a minimum of 80 percent that are not expected to improve to less than an 80 percent rating will be permanently retired.

2. TDRL RE-EVALUATION. The TDRL will be managed to meet the requirements for periodic disability examination, suspension of retired pay, and prompt removal from the TDRL pursuant to chapter 61 of Reference (c), including the reexamination of temporary retirees at least once every 18 months to determine whether there has been a change in the disability for which the member was temporarily retired.

a. Initiating the TDRL Re-evaluation Process. No later than 16 months after temporarily retiring a Service member for disability or after his or her previous re-evaluation, the Military Department will obtain and review available DoD medical treatment documentation and VA or veteran-provided medical treatment, or disability examination that occurred within 16 months of being placed on the TDRL, and rating documentation. If the documents reviewed are deemed sufficient and consistent with the requirements of chapter 61, of Reference (c), the Military Department may rely on that documentation to determine whether there has been a change in disability for which the Service member was temporarily retired. The PEB will review the available evidence to determine if the documentation is sufficient to:

(1) Fully describe each disability that the Secretary of the Military Department concerned determined was unfitting and may be permanent but was unstable at the time the Service member was placed on the TDRL, the current status of such disabilities, the progress of the disability and a suggested time frame (not to exceed 18 months) for the next examination.

(2) Fully describe, including treatment and etiology, any new disability that was caused by or directly related to the treatment of a disability for which the Service member was previously placed on the TDRL.

b. Conduct of Disability Re-examinations. If the Military Department determines the available medical records and examination reports, including those available from VA, do not meet the requirements in paragraphs 2a(1) and 2a(2) of this appendix, the Military Department will comply with their responsibilities in chapter 61 of Reference (c) regarding the TDRL, to

include performing TDRL examinations that meet the requirements of paragraph 2a(1) and 2a(2) of this appendix.

c. PEB Re-adjudication. The Military Department will request that VA provide their most current rating and medical evidence upon which the most current rating was based for the condition for which the veteran was placed on the TDRL. The PEB may use the future examination requirements set by the disability rating activity site (D-RAS) as an indicator of stability when making the recommendations of stability determinations and case disposition to the Secretary of the Military Department. If the PEB decides to continue a Service member on temporary retirement for disability for which the D-RAS has not scheduled a future examination, the Military Department will execute required TDRL examinations and ratings in accordance with chapter 61 of Reference (c).

d. PEB Disposition

(1) If the PEB finds the veteran fit for duty for the condition(s) for which he or she was placed on the TDRL; that the condition(s) is now stable; and the veteran wishes to return to active duty, the Military Department will administer any additional examinations required to evaluate whether the veteran is otherwise fit for duty in accordance with the Military Department's regulations and the guidance in this instruction. The Military Department will administer other dispositions in accordance with the guidance in this instruction.

(2) If upon re-evaluation while on the TDRL, the Service member is still found unfit for the unstable condition for which he or she was placed on the TDRL, evaluation of other conditions is not required. If the Service member is no longer found unfit for the unstable condition for which he or she was placed on the TDRL, an assessment will be made as to whether any other condition exists that would prevent a return to duty. If other conditions exist that render the Service member unfit, a determination will be made that the condition is unfitting but not compensable in the DES.

e. Cases on VA Appeal. When a Service member who was temporarily retired for disability has appealed a VA decision and the appeal resides with the Board of Veterans Appeals or Court of Appeals for Veterans' Claims, the Military Department will obtain from the VA a copy of the most current rating and medical evidence available.

(1) The Military Department will obtain and review the available DoD and the VA medical treatment and disability examination documentation available for the condition for which the Service member was placed on the TDRL.

(2) The Military Department will review the available medical evidence to determine if the documentation is sufficient to conduct the TDRL re-evaluation process without a disability examination of the Service member.

(3) If the PEB determines that the Service member requires an additional disability examination, the PEB will coordinate the actions needed to meet the statutory, 18-month

examination requirement in chapter 61 of Reference (c). Upon receipt of all necessary medical evidence, the PEB will adjudicate the case.

f. Administrative Finality. During TDRL re-evaluation, as described in paragraph 2a of this appendix, previous determinations concerning application of any presumption established by this instruction, LOD, misconduct, and whether a medical impairment was permanent, service-incurred, or preexisting and aggravated will be considered administratively final for conditions for which the Service member was placed on the TDRL unless there is:

(1) Evidence of fraud.

(2) A change of diagnosis that warrants the application of accepted medical principles for a preexisting condition.

(3) A correction of error in favor of the Service member.

g. Required Determinations. The Secretary of the Military Department concerned will determine whether the conditions for which the Service member was placed on the TDRL are unfitting and compensable. When, upon re-evaluation, a temporarily retired veteran is determined fit for the conditions for which he or she was placed on the TDRL and has no other DoD compensable disabilities, the veteran will be separated from the TDRL without entitlement to DoD disability benefits.

h. Service Member Medical Records. The Service member will provide to the examining physician, for submission to the PEB, copies of all his or her medical records (e.g., civilian, VA, and military) documenting treatment since the last TDRL re-evaluation.

i. Compensability of New Diagnoses. Conditions newly diagnosed during temporary retirement will be compensable when:

(1) The condition is unfitting and;

(2) The condition was caused by or directly related to the treatment of a condition for which the Service member was previously placed on the TDRL.

(3) To correct an error in favor of the Service member, the Secretary of the Military Department concerned determines the condition was unfitting and compensable at the time the member was placed on the TDRL.

j. Current Physical Examination. Service members on the TDRL are not entitled to permanent retirement or separation with disability severance pay without a current periodic physical examination acceptable to the Secretary of the Military Department concerned as required by chapter 61 of Reference (c).

k. Refusal or Failure to Report. In accordance with chapter 61 of Reference (c), when a Service member on the TDRL refuses or fails to report for a required periodic physical

examination or provide his or her medical records in accordance with paragraph 2h of this appendix, disability retired pay will be suspended.

(1) If the Service member later reports for the physical examination, retired pay will be resumed effective on the date the examination was actually performed.

(2) If the Service member subsequently shows just cause for failure to report, disability retired pay may be paid retroactively for a period not to exceed 1 year prior to the actual performance of the physical examination.

(3) If the Service member does not undergo a periodic physical examination after disability retired pay has been suspended, he or she will be administratively removed from the TDRL on the fifth anniversary of the original placement on the list.

l. Priority. TDRL examinations, including hospitalization in connection with the conduct of the examination, will be furnished with the same priority given to active duty members.

m. Reports From Non-MTFs. MTFs designated to conduct TDRL periodic physical examinations may use disability examination reports from any medical facility or physician. The designated MTF remains responsible for the adequacy of the examination and the completeness of the report. The report must include the competency information specified in paragraph 2e of this appendix.

n. Incarcerated Members. A report of disability examination will be requested from the appropriate authorities in the case of a Service member imprisoned by civil authorities. In the event no report, or an inadequate report, is received, documented efforts will be made to obtain an acceptable report. If an examination is not received, disposition of the case will be in accordance with paragraph 2k of this appendix. The Service member will be advised of the disposition and that remedy rests with the respective Military Department Board for Correction of Military Records.

APPENDIX 5 TO ENCLOSURE 3

ADMINISTRATIVE DETERMINATIONS

1. ADMINISTRATIVE DETERMINATIONS FOR PURPOSES OF EMPLOYMENT UNDER FEDERAL CIVIL SERVICE

a. The PEB renders a final decision on whether an injury or disease that makes the Service member unfit or that contributes to unfitness was incurred in combat with an enemy of the United States, was the result of armed conflict, or was caused by an instrumentality of war during war.

b. These determinations pertain to whether a military retiree later employed in federal civil service is entitled to credit of military service toward a federal civil service retirement in accordance with sections 8332 and 8411 of Reference (d); in accordance with section 2082 of Reference (f); retention preference in accordance with section 3501 of Reference (d); credit of military service for civil service annual leave accrual in accordance with section 6303 of Reference (d); and exclusion of federal income taxation in accordance with section 104 of Reference (e).

(1) Incurred in Combat with an Enemy of the United States. The disease or injury was incurred in the LOD in combat with an enemy of the United States.

(2) Armed Conflict. The disease or injury was incurred in the LOD as a direct result of armed conflict (see Glossary) in accordance with sections 3501 and 6303 of Reference (d). The fact that a Service member may have incurred a disability during a period of war, in an area of armed conflict, or while participating in combat operations is not sufficient to support this finding. There must be a definite causal relationship between the armed conflict and the resulting unfitting disability.

(3) Instrumentality of War During a Period of War. The injury or disease was caused by an instrumentality of war, incurred in the LOD during a period of war as defined in sections 101 and 302 of Title 38, U.S.C. (Reference (ag)), and makes the Service member unfit in accordance with sections 3501 and 6303 of Reference (d). Applicable periods are:

(a) World War II. The period beginning December 7, 1941, and ending December 31, 1946; and any period of continuous service performed after December 31, 1946, and before July 26, 1947, if such period began before January 1, 1947.

(b) Korean Conflict. The period beginning June 27, 1950, and ending January 31, 1955.

(c) Vietnam Era. The period beginning August 5, 1964, and ending May 7, 1975.

(d) Persian Gulf. The period beginning August 2, 1990, through date to be prescribed by Presidential proclamation or law.

2. DETERMINATIONS FOR FEDERAL TAX BENEFITS. Disability evaluation includes a determination and supporting documentation on whether the Service member's disability compensation is excluded from federal gross income in accordance with Reference (e). For compensation to be excluded, the Service member must meet the criteria in either paragraph 2a or 2b of this appendix.

a. Status. On September 24, 1975, the individual was a military Service member, including the RC, or was under binding written agreement to become a Service member.

(1) A Service member who was a member of an armed force of another country on that date is entitled to the exclusion.

(2) A Service member who was a contracted cadet of the Reserve Officers Training Corps on that date is entitled to the exclusion.

(3) A Service member who separates from the Military Service after that date and incurs a disability during a subsequent enlistment is entitled to the exclusion.

b. Combat Related. This standard covers injuries and diseases attributable to the special dangers associated with armed conflict or the preparation or training for armed conflict. A disability is considered combat-related if it makes the Service member unfit or contributes to unfitness and the preponderance of evidence shows it was incurred under any of the following circumstances.

(1) As a Direct Result of Armed Conflict. The criteria are the same as those in paragraph 1b of this appendix.

(2) While Engaged in Hazardous Service. Such service includes, but is not limited to, aerial flight duty, parachute duty, demolition duty, experimental stress duty, and diving duty.

(3) Under Conditions Simulating War. In general, this covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, and leadership reaction courses; grenade and live fire weapons practice; bayonet training; hand-to-hand combat training; rappelling; and negotiation of combat confidence and obstacle courses. It does not include physical training activities, such as calisthenics and jogging or formation running and supervised sports.

(4) Caused by an Instrumentality of War. Occurrence during a period of war is not a requirement to qualify. If the disability was incurred during any period of service as a result of wounds caused by a military weapon, accidents involving a military combat vehicle, injury or sickness caused by fumes, gases, or explosion of military ordnance, vehicles, or material, the criteria are met. However, there must be a direct causal relationship between the instrumentality

of war and the disability. For example, an injury resulting from a Service member falling on the deck of a ship while participating in a sports activity would not normally be considered an injury caused by an instrumentality of war (the ship) since the sports activity and not the ship caused the fall. The exception occurs if the operation of the ship caused the fall.

3. <u>RECOUPMENT OF BENEFITS</u>. In accordance with sections 303a and 373 of Reference (af), when a Service member is retired, separated or dies as a result of a combat-related disability and has received a bonus, incentive pay, or similar benefit, the Secretary of the Military Department concerned:

a. Will not require repayment by the Service member or his or her family of the unearned portion of any bonus, incentive pay, or similar benefit previously paid to the Service member.

b. Will require the payment to the Service member or his or her family of the remainder of any bonus, incentive pay, or similar benefit that was not yet paid to the member, but to which he or she was entitled immediately before the death, retirement, or separation.

c. Will not apply paragraphs 3a and 3b of this appendix if the death or disability was the result of the Service member's misconduct.

4. <u>DETERMINATION FOR RC MEMBERS WHO ARE TECHNICIANS AND DETERMINED UNFIT BY THE DES</u>. In accordance with section 10216(g) of Reference (c), the record of proceedings for RC members who are technicians and determined unfit by the DES must include whether the member was determined unfit due to a combat-related event.

APPENDIX 6 TO ENCLOSURE 3

FINAL DISPOSITION

1. FINAL DECISION AUTHORITY

a. Secretary of Defense. The Secretary of Defense, after considering the recommendation of the USD(P&R), approves or disapproves the appeal of any Service member found fit for duty by the PEB but determined unsuitable for continued service by the Secretary of the Military Department concerned for the same medical condition considered by the PEB.

b. USD(P&R). The USD(P&R), after considering the recommendation of the ASD(HA), approves or disapproves the disability retirement of any general or flag officer or medical officer being processed for, scheduled for, or receiving non-disability retirement for age or length of service.

c. Secretaries of the Military Departments. Except as stated in paragraphs 1a and b of this appendix, the Secretary of the Military Department concerned has the authority to make all determinations in accordance with this instruction regarding unfitness, disability percentage, and entitlement to disability severance and retired pay.

2. GENERAL RULES REGARDING DISPOSITION

a. Retirement

(1) Except for Service members approved for permanent limited duty consistent with section 3 of this appendix, any Service member on active duty or in the RC who is found to be unfit will be retired, if eligible, or separated. This general rule does not prevent disciplinary or other administrative separations from the Military Services.

(2) Selected Reserve members with at least 15 but no more than 20 years of qualifying service pursuant to section 12732 of Reference (c) who are to be separated, may elect either separation for disability or early qualification for retired pay at age 60 pursuant to sections 12731 and 12731(b) of Reference (c). However, the separation or retirement for disability cannot be due to the member's intentional misconduct, willful failure to comply with standards and qualifications for retention, or willful neglect, and cannot have been incurred during a period of unauthorized absence or excess leave.

b. Removal From the TDRL. Service members determined fit as a result of TDRL re-evaluation will be processed as:

(1) Appointment and/or Enlistment. Upon the Service member's request, and provided he or she is otherwise eligible, the Secretary of the Military Department concerned will appoint

or enlist the Service member in the applicable grade and component as outlined in section 1211 of Reference (c).

(2) Recall to Active Duty

(a) Regular Officers and Enlisted Members. Subject to their consent, regular officers and enlisted members will be recalled to duty, if they are otherwise eligible and were not separated in accordance with law or regulation at the time they were placed on the TDRL. They will be deemed medically qualified for those conditions on which a finding of fit was determined. Any new condition arising between DES evaluation and recall must meet the respective Military Service's medical standards for retention.

(b) RC. Subject to their consent, RC officers, warrant officers, and enlisted members will be reappointed or reenlisted as a Reserve for service in their respective RC in accordance with section 1211 of Reference (c). RC members determined fit by TDRL re-evaluation will not be involuntarily assigned to the Individual Ready Reserve.

(3) Separation. In accordance with section 1210(f) of Reference (c), Service members required to be separated or retired for non-disability reasons at the time they were referred for disability evaluation and placed on the TDRL, if determined fit, will be separated or retired, as applicable.

(4) Termination of TDRL Status. TDRL status and retired pay will terminate upon discharge, recall, reappointment, or reenlistment, as outlined in section 1211 of Reference (c).

(5) Right to Apply for VA Benefits. A Service member may not be discharged or released from active duty due to a disability until he or she has been counseled on their right to make a claim for compensation, pension, or hospitalization with the VA.

3. CONTINUANCE OF UNFIT SERVICE MEMBERS ON ACTIVE DUTY OR IN THE RESERVES. Upon the request of the Service member or upon the exercise of discretion based on the needs of the Military Departments, the Secretary of the Military Department concerned may allow unfit Service members to continue in a permanent limited-duty status, either active or reserve duty in the same or different rating or occupational specialty. Such continuation may be justified by the Service member's service obligation or special skill and experience. The Secretaries of the Military Department concerned may also consider transfer to another Military Service.

4. TRANSITION BENEFITS. AC and RC members on active duty are entitled to the transition benefits established by Reference (ac) when being separated or retired for disability unless waived by the DoD or prohibited by federal law.

5. DISPOSITIONS FOR UNFIT SERVICE MEMBERS

a. Permanent Disability Retirement. If the Service member is unfit, retirement for a permanent and stable compensable disability is directed pursuant to section 1201 or 1204 of Reference (c) either:

(1) When the total disability rating is at least 30 percent in accordance with the VASRD and the Service member has less than 20 years of service computed pursuant to section 1208 of Reference (c); or

(2) When the Service member has at least 20 years of service computed pursuant to section 1208 of Reference (c) and the disability is rated at less than 30 percent.

b. Placement on the TDRL. Retirement is directed pursuant to section 1202 or 1205 of Reference (c) when the requirements for permanent disability retirement are met, except the disability is not stable and may be permanent.

c. Separation With Disability Severance Pay

(1) Criteria. Separation is directed pursuant to section 1203 or 1206 of Reference (c) when the member is unfit for a compensable disability determined in accordance with the standards of this instruction, and the following requirements are met. Stability is not a factor for this disposition.

(a) The Service member has less than 20 years of service computed pursuant to section 1208 of Reference (c).

(b) The disability is rated at less than 30 percent.

(2) Service Credit

(a) Pursuant to section 1212 of Reference (c), a part of a year of active service that is 6 months or more is counted as a whole year, and a part of a year that is less than 6 months is disregarded.

(b) The Secretary of the Military Department concerned will credit members separated from the Military Services for a disability with a minimum of 3 years of service.

(c) The Secretary of the Military Department concerned will credit members separated from the Military Services for a disability incurred in the LOD in a designated combat zone tax exclusion area or incurred during the performance of duty in combat-related operations consistent with the criteria in paragraph 2b of Appendix 5 to this enclosure with a minimum of 6 years of service.

(d) For the purposes of calculating active service for disability severance pay, the Secretary of the Military Department concerned will consider disabilities to be incurred in

combat-related operations when they are consistent with the criteria in paragraph 2b of Appendix 5 to this enclosure.

(3) Transfer to Retired Reserve

(a) Pursuant to section 1209 of Reference (c), RC members who have completed at least 20 qualifying years of Reserve service and who would otherwise be qualified for retirement may forfeit disability severance pay and request transfer to an inactive status list for the purpose of receiving non-disability retired pay at age 60. The Secretary of the Military Department concerned may offer the member the option to transfer to the Retired Reserve.

(b) When disability severance pay is accepted, the Service member forfeits all rights to receive retired pay pursuant to chapter 1223 of Reference (c) at age 60. There are no provisions pursuant to Reference (c) to repay disability severance pay to then receive retired pay.

(4) Selected Reserve Early Qualification for Retired Pay. Pursuant to section 12731 of Reference (c), RC members with at least 15 and less than 20 years of qualifying service who would otherwise be qualified for nonregular retirement may waive disability disposition and request early qualification for retired pay in accordance with 12731(b) of Reference (c).

d. Separation Without Entitlement to Benefits. Discharge is directed in accordance with section 1207 of Reference (c) when the Service member is unfit for a disability incurred as a result of intentional misconduct or willful neglect or during a period of unauthorized absence.

e. Discharge Pursuant to Other Than Chapter 61 of Reference (c). An unfit Service member is directed for discharge in accordance with other provisions of Reference (c) and Reference (ad) and DoDI 1332.30 (Reference (ah)) when he or she is not entitled to disability compensation due to the circumstances when either:

(1) The Service member is not entitled to disability compensation, but may be entitled to benefits under section 1174 of Reference (c).

(2) The medical impairment of an RC member is non-duty related and it disqualifies the member for retention in the RC.

f. Revert with Disability Benefits. Revert with disability benefits is used to return a retiree recalled to active duty who was:

(1) Previously retired for disability.

(2) Determined unfit during the period of recall. For Service members previously retired for age or years of service, the compensable percentage of disability must be 30 percent or more to receive disability benefits.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

AC	Active Component
ASD(HA)	Assistant Secretary of Defense for Health Affairs
ASD(RA)	Assistant Secretary of Defense for Reserve Affairs
DAC	Disability Advisory Council
DASD(WCP)	Deputy Assistant Secretary of Defense for Warrior Care Policy
DES	disability evaluation system
DoDD	DoD Directive
DoDI	DoD Instruction
D-RAS	disability rating activity site
EDES	Expedited Disability Evaluation System
FPEB	formal physical evaluation board
GC DoD	General Counsel of the Department of Defense
IDES	Integrated Disability Evaluation System
IDT	inactive duty training
IPEB	informal physical evaluation board
IT	information technology
LDES	Legacy Disability Evaluation System
LOD	line of duty
MEB	medical evaluation board
MTF	military treatment facility
PEB	physical evaluation board
PEBLO	physical evaluation board liaison officer
RC	Reserve Component

TDRL	temporary disability retired list
U.S.C.	United States Code
USD(P&R)	Under Secretary of Defense for Personnel and Readiness
VA	Department of Veterans Affairs
VASRD	Department of Veterans Affairs Schedule for Rating Disabilities

PART II. DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purpose of this instruction.

accepted medical principles. Fundamental deductions, consistent with medical facts, that are so reasonable and logical as to create a virtual certainty that they are correct.

active duty. Defined in Joint Publication 1-02 (Reference (ai)).

acute. Characterized by sharpness or severity.

armed conflict. A war, expedition, occupation of an area or territory, battle, skirmish, raid, invasion, rebellion, insurrection, guerilla action, riot, or any other action in which Service members are engaged with a hostile or belligerent nation, faction, force, or terrorist. Armed conflict may also include such situations as incidents involving a member while interned as a prisoner of war or while detained against his or her will in the custody of a hostile or belligerent force or while escaping or attempting to escape from such confinement, prisoner-of-war, or detained status.

catastrophic injury or illness. A permanent, severely disabling injury, disorder, or disease incurred or aggravated in the LOD that compromises the ability to carry out the activities of daily living to such a degree that a Service member requires personal or mechanical assistance to leave home or bed or requires constant supervision to avoid physical harm to self or others.

clear and unmistakable evidence. Undebatable information that the condition existed prior to military service or if increased in service was not aggravated by military service. In other words, reasonable minds could only conclude that the condition existed prior to military service from a review of all of the evidence in the record.

compensable disability. A medical condition that is determined to be unfitting due to disability and that meets the statutory criteria of chapter 61 of Reference (c) for entitlement to disability retired or severance pay.

competency board. A board consisting of at least three medical officers or physicians (including one psychiatrist) convened to determine whether a member is competent (capable of making a rational decision regarding his or her personal and financial affairs).

DAC. A DoD-only group that evaluates DES functions, identifies best practices, addresses inconsistencies in policy, discusses inconsistencies in law, addresses problems and issues in the administration of the DES, and provides a forum to develop and plan improvements.

DES. The DoD mechanism for determining return to duty, separation, or retirement of Service members because of disability in accordance with chapter 61 of Reference (c).

disability. Any impairment due to disease or injury, regardless of degree, that reduces or prevents an individual's actual or presumed ability to engage in gainful employment or normal activity. The term "disability" or "physical disability" includes mental disease, but not such inherent defects as developmental or behavioral disorders. A medical impairment, mental disease, or physical defect standing alone does not constitute a disability. To constitute a disability, the medical impairment, mental disease, or physical defect must be severe enough to interfere with the Service member's ability to adequately perform his or her duties.

EDES. A voluntary expedited process to authorize benefits, compensation, and specialty care to Service members who sustain catastrophic injuries or illnesses.

elective surgery. Surgery that is not essential, especially surgery to correct a condition that is not life-threatening; surgery that is not required for survival.

final reviewing authority. The final approving authority for the findings and recommendations of the PEB.

grave. Very serious: dangerous to life-used of an illness or its prospects.

IDES. The joint DoD -VA process by which DoD determines whether ill or injured Service members are fit for continued military service and DoD and VA determine appropriate benefits for Service members who are separated or retired for disability.

instrumentality of war. A vehicle, vessel, or device designed primarily for military service and intended for use in such service at the time of the occurrence or injury.

LDES. A DES process by which DoD determines whether eligible wounded, ill, or injured Service members are fit for continued military service and determines appropriate benefits for Service members who are separated or retired for disability. Service members processed through the LDES may also apply for veterans' disability benefits through the VA pre-discharge Benefits Delivery at Discharge or Quick Start programs, or upon attaining veteran status.

LOD determination. An inquiry to determine whether an injury or illness was incurred when the Service member was in a military duty status. If the Service member was not in a military duty

status, whether it was aggravated by military duty; or whether it was incurred or aggravated due to the Service member's intentional misconduct or willful negligence.

MEB convening authority. A senior medical officer, appointed by the MTF commander, who has detailed knowledge of standards of medical fitness and disposition of patients and disability separation processing and who is familiar with the VASRD.

MEB process. For Service members entering the DES, the MEB conducts the medical evaluation on conditions that potentially affect the Service member's fitness for duty. The MEB documents the Service member's medical condition(s) and history with an MEB narrative summary as part of an MEB packet.

medical impairment. Any disease or residual of an injury that results in a lessening or weakening of the capacity of the body or its parts to perform normally, according to accepted medical principles.

non-duty-related medical conditions. Impairments that were neither incurred nor aggravated while the member was performing duty.

office, grade, rank, or rating

office. A position of duty, trust, and authority to which an individual is appointed.

grade. A step or degree in a graduated scale of office or military rank that is established and designated as a grade by law or regulation.

rank. The order of precedence among members of the Military Services.

rating. The name (such as "Boatswain's Mate") prescribed for Service members of a Military Service in an occupational field.

PEBLO. The non-medical case manager who provides information, assistance, and case status updates to the affected Service member throughout the DES process.

permanent limited duty. The continuation on active duty or in the Ready Reserve in a limited-duty capacity of a Service member determined unfit because of disability evaluation or medical disqualification.

presumption. An inference of the truth of a proposition or fact reached through a process of reasoning and based on the existence of other facts. Matters that are presumed need no proof to support them, but may be rebutted by evidence to the contrary.

proximate result. A permanent disability the result of, arising from, or connected with active duty, annual training, active duty for training, or IDT, to include travel to and from such duty or remaining overnight between successive periods of IDT. Proximate result is a statutory criterion for entitlement to disability compensation under chapter 61 of Reference (c) applicable to RC

members who incur or aggravate a disability while performing an ordered period of military duty of 30 days or less.

retention standards. Guidelines that establish medical conditions or physical defects that could render a Service member unfit for further military service and may be cause for referral of the Service member into the DES.

service aggravation. The permanent worsening of a pre-Service medical condition over and above the natural progression of the condition.

service treatment record. A chronological record documenting the medical care, dental care and treatment received primarily outside of a hospital (outpatient), but may contain a synopsis of any inpatient hospital care and behavioral health treatment.

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BLUEPRINTS FOR SOUND PUBLIC POLICY

Military Services Have Failed to Comply with New Defense Department Rules on Transgender Personnel

By Diane H. Mazur

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Introduction[*]

On August 5, 2014, the Department of Defense (DOD) issued a new regulation that weakens the prohibition against transgender personnel in military service and requires reassessment of the policy, even though the ban remains in effect.[1] DOD Instruction (DODI) 1332.18, *Disability Evaluation System (DES)*, eliminates a component of the regulatory architecture of the transgender ban, as DOD no longer requires the services (Army, Air Force, Navy/Marines) to separate or discharge transgender personnel. As a result of DOD's regulatory revision, service-level regulations are now out of compliance with DOD rules and must be revised.

Regulatory framework

The prohibition against military service by transgender people is articulated in two distinct sets of military medical rules: enlistment standards and retention standards. Enlistment (or accession) standards govern who is allowed to join the military, and a single DOD regulation establishes medical enlistment standards for all the services. It contains two prohibitions that specifically prevent transgender individuals from joining the armed forces. Any potential enlistees with a "history of major abnormalities or defects of the genitalia including but not limited to change of sex" and/or a "history of psychosexual conditions, including but not limited to transsexualism, exhibitionism, transvestism, voyeurism, and other paraphilias" are ineligible for service.[2] Notwithstanding the military's medically obsolete terminology, which is decades out of date, these DOD enlistment prohibitions include both a physical component ("change of sex") and a psychological component ("transsexualism" or "transvestism"). That is why transgender individuals cannot join the military if recruiters learn of their gender identity.

Retention standards, on the other hand, govern who is allowed to remain in the armed forces, and medical retention regulations enable commanders and doctors to manage personnel who are injured or who are diagnosed with a wide range of physical and psychological conditions during their military careers. Before August 5, 2014, the now-cancelled DODI 1332.38, *Physical Disability Evaluation*, established baseline medical standards for retention in military service on a department-wide level.[3] Enclosure 4 of DODI 1332.38 contained a list of medical conditions that required referral to a medical board for evaluation of fitness for continued service. Enclosure 5 of the same regulation, however, contained a separate list of "conditions, circumstances and defects of a developmental nature designated by the Secretary of Defense" that "should be referred for appropriate administrative action" or, in other words, administrative separation outside the medical system.[4] Among those "conditions, circumstances and defects" were "sexual gender and identity disorders, including sexual dysfunctions and paraphilias."[5]

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[*] Diane H. Mazur is Palm Center Legal Co-Director; Professor of Law Emeritus, University of Florida College of Law; former U.S. Air Force officer (aircraft and munitions maintenance); and author of *A More Perfect Military: How the Constitution Can Make Our Military Stronger* (Oxford University Press 2010); and Arbitrary and Capricious: Six Inconsistencies Distinguishing Military Medical Policies for Transgender and Non-Transgender Personnel (Palm Center, 2014), http://bit.ly/1ss7j3V.

Unlike the regulation governing entry into the military, the now-cancelled DOD retention regulation divided potentially disqualifying conditions into two tracks. Individuals with conditions deemed "physical disabilities" (both physical and psychological, under Enclosure 4) were tracked into a medical system of treatment and evaluation, leading to a determination of fitness for duty or entitlement to benefits for medical separation or retirement. However, service members with conditions defined as "not constituting a physical disability" (Enclosure 5) were subject to mandatory administrative separation from military service "for the convenience of the government,"[6] without medical treatment and without an opportunity to demonstrate medical fitness for duty. DOD's designation of transgender identity as an "Enclosure 5" condition meant that transgender personnel would be diverted out of a system based on medical expertise and into a system that required commanders to discharge them, and it made transgender personnel ineligible for either medical or fitness evaluation.

Identical or similar prohibitions against retention of transgender service members appear in additional medical regulations issued by each of the individual services.[7] DOD retention policy gave the services authority to "modify these guidelines to fit their particular needs," but only if the modification was "consistent" with DOD guidance.[8] In the case of transgender personnel, the services have essentially copied the language of DOD's categorical exclusion for use in their own regulations. The services similarly divert transgender service members outside the medical evaluation process and track them for administrative separation without an opportunity to demonstrate fitness or obtain medical care. As a result of these retention disqualifications, both DOD and service-specific, any transgender personnel serving in the armed forces, either because they failed to disclose their transgender identity to recruiters or they did not know that they were transgender at the time of enlistment, would be subject to administrative separation.

New DOD guidance

On August 5, however, the Pentagon eliminated its default lists of medically disqualifying and administratively disqualifying conditions with the release of DODI 1332.18, *Disability Evaluation System (DES)*, and it now takes no position on which specific conditions should be disqualifying for continued military service. As a result, DOD no longer requires the services to designate transgender identity as grounds for separation. Instead of designating specific conditions that should lead to either medical referral or administrative separation, DOD now largely defers to the judgment of individual services. The new regulation retains the two-track system of medically and administratively disqualifying conditions but allows the services to decide which conditions should fall in either category.

This grant of authority to the individual services, however, comes with explicit limitations on when personnel should be subject to either medical referral or administrative separation. Military personnel may be referred for medical evaluation and possible medical separation only if they have conditions (those deemed "physical disabilities," like the former Enclosure 4) that prevent reasonable performance of duty for

more than a year, present obvious medical risks to the service member or others, or impose unreasonable requirements on the military.[9] These general guidelines on medical referrals are similar to the ones they replaced, and they are sensible in that they ensure service members will not be referred for possible medical separation unless their medical condition cannot be treated effectively and prevents reasonable performance of duty for a significant period of time. Moreover, there is no reason that the services would want to dismiss an individual who is still capable of performing duty without significant burden on the military medical system, and the guidelines on medical referral are consistent with that understanding.

With respect to administrative separations based on conditions deemed “not physical disabilities,” however, the August 5 regulation adds new and important limits to the use of this authority. Although the services now have discretion to choose which “congenital or developmental defects,” if any, should be administratively disqualifying and ineligible for medical fitness evaluation (like the former Enclosure 5), they can do so only if those conditions are in fact “defects” and actually “interfere with assignment to or performance of duty.”[10] Under the old DOD regulation, certain conditions were simply “designated” by the Secretary of Defense as disqualifying and the services followed suit, without any explicit finding that the conditions impaired performance or limited assignment. Now that the regulation has been revised, services have the obligation to determine whether their own regulations, legacies of that obsolete framework, do in fact comply with the updated DODI 1332.18, *Disability Evaluation System (DES)*.

Service-level regulations are inconsistent with new DOD rules

Service-specific rules must be consistent with DOD-wide rules, and service-specific retention prohibitions are inconsistent with the new DOD-wide retention regulation. The previous DOD-wide retention prohibition was categorical and said that commanders “should” separate personnel with “sexual gender and identity disorders, including sexual dysfunctions and paraphilias.”[11] By contrast, the new DOD-wide retention regulation makes no mention of gender identity and requires that the now-unspecified category of disqualifying “congenital or developmental defects” be used only in situations affecting assignment to or performance of duty. This suggests that the categorical retention prohibitions contained in current service-specific regulations are too sweeping in that they fail to distinguish between conditions that impair fitness for assignment or duty from those that do not. In particular, there are two reasons why prohibitions against transgender personnel in military service must be removed from service-level retention regulations.

First, transgender identity is not a “defect” within the guidance of DODI 1332.18. The current edition of the *Diagnostic and Statistical Manual of Mental Disorders (DSM-5)* concludes that transgender identity is not itself a mental disorder or “defect,” and any distress that may result from gender incongruity (gender dysphoria) can be treated safely and effectively.[12] Military regulations, however, mistakenly associate transgender identity with mental disorders and sexual paraphilias, and they are decades out of date with modern medical understanding. The old DOD guidance directed the services to

administratively separate personnel with "sexual gender and identity disorders, including sexual dysfunctions and paraphilias." However, transgender identity is not considered a paraphilia under the *DSM*, and it has no connection to paraphilic disorders that cause harm to others, such as exhibitionism or voyeurism.[13] The current edition of the *DSM* uses the term "gender dysphoria" in an effort to remove any suggestion that transgender identity itself is a mental disorder.[14] The military, however, continues to confuse and conflate transgender identity with dysfunctional and harmful sexual disorders. Its enlistment rules associate being transgender with being a voyeur or an exhibitionist, designating all as "psychosexual" reasons for exclusion from the military. Both the Pentagon and the services normally require reliance on the current edition of the *DSM* when evaluating military fitness,[15] but gender identity appears to be an exception to that general principle.

Second, transgender identity does not interfere with assignment to or performance of duty, the new standard imposed by DODI 1332.18. According to a recent Medical Commission that included a former US Surgeon General and retired General and Flag Officers, the vast majority of the estimated 15,500 transgender personnel currently serving are fit for duty and for deployment, there is no medically valid reason for firing transgender service members, and meeting the health care needs of transgender service members is no more difficult than meeting the needs of non-transgender personnel.[16] Eighteen foreign nations, including the United Kingdom, Australia, Canada, and Israel, allow transgender personnel to serve, and peer-reviewed research has confirmed that inclusive policy has not compromised operational effectiveness.[17]

There is a risk, however, that the military services may interpret their obligation to review and revise under DODI 1332.18, *Disability Evaluation System (DES)*, in a superficial rather than substantive way. A "review" may focus only on updating the decades-old terminology still in use instead of meeting the regulatory standard DOD requires the services to apply. The result could be new service-specific regulations that use modern terms like gender dysphoria and disassociate transgender identity from paraphilias like exhibitionism and voyeurism, but still categorically disqualify transgender personnel from continued service without determining fitness for duty. This approach would fail to recognize the substance of modern medical understanding and also fail to comply with specific DOD direction that limits abuses of administrative separation authority.

A recent precedent for a solely semantic change in which terminology is updated while restrictive policy is left in place is the March 8, 2014 revision of Army Regulation 135-178, *Army National Guard and Army Reserve Enlisted Administrative Separations*. The regulation is apparently the first US military regulation to use the correct *DSM-5* terminology, gender dysphoria, but it nonetheless designates dysphoria as grounds for administrative separation, calling it one of the "disorders manifesting disturbances of perception, thinking, emotional control or behavior sufficiently severe that the Soldier's ability to perform military duties effectively is significantly impaired."[18] To comply with new DOD rules, the services must go beyond semantic revision and affirm that conditions that are neither "defective" nor compromising of fitness cannot be grounds for administrative separation. The Appendix contains a checklist of required revisions.

APPENDIX

SERVICE REGULATIONS ON TRANSGENDER IDENTITY
THAT MUST BE REVIEWED AND REVISED UNDER DODI 1332.18

Given the findings of medical and military experts that transgender identity and related medical treatments do not typically interfere with assignment to or performance of duty, each of the military services should review and revise its regulations as follows in order to comply with new Department of Defense guidance in DODI 1332.18:

Army Regulations

AR 40-501, *Standards of Medical Fitness*:
Delete "transsexual" and "gender identity" from the title of paragraph 3-35; delete "transvestism," "transsexual," and "gender identity disorder to include major abnormalities or defects of the genitalia such as change of sex or a current attempt to change sex" from the list of conditions that "render an individual administratively unfit" for service in paragraph 3-35.

AR 635-200, *Active Duty Enlisted Administrative Separations*:
Delete "transsexualism/gender transformation" from the list of administratively disqualifying conditions in paragraph 5-17.

Air Force Regulations

AF *Medical Standards Directory*:
Delete all references to the now-cancelled DODI 1332.38 as a source for administratively "unsuiting" or "unsuitable" conditions; delete "change of sex" as a disqualifying condition in section J57.

AFI 36-3208, *Administrative Separation of Airmen*:
Delete "Transsexualism or Gender Identity Disorder" from the list of "mental disorders" justifying administrative separation in paragraph 5.11.9.5.

AFI 36-3206, *Administrative Discharge Procedures for Commissioned Officers*:
Delete "gender identity disorder" and "transsexualism" from the list of "mental disorders" justifying administrative separation in paragraph 2.3.7.5.

AFI 48-123, *Medical Examinations and Standards*:
Delete all references to the now-cancelled DODI 1332.38 as a source for administratively "unsuiting" or "unsuited" conditions.

Navy/Marine Corps Regulations

NAVMED P-117, *U.S. Navy Manual of the Medical Department*:
Delete "sexual gender and identity disorders paraphilias" from the list of disqualifying "conditions and defects of a developmental nature" in Chapter 18, paragraph 18-5(3).

SECNAVINST 1850.4E, *Department of the Navy Disability Evaluation Manual*:
Delete "sexual gender and identity disorders and paraphilias" from the list of disqualifying "developmental defects" in Attachment (b) to Enclosure 8, paragraph 3.

MILPERSMAN 1910-120, *Separation by Reason of Convenience of the Government—Physical or Mental Conditions*:
Delete "sexual gender and identity disorders paraphilias" from the list of administratively disqualifying conditions in paragraph 2.

MARCORSEPMAN, *Marine Corps Separation and Retirement Manual*:
Delete "sexual gender and identity disorders and paraphilias" from the list of "conditions and defects of a developmental nature" in paragraph 6203(2)(b).

ENDNOTES

[1] Department of Defense Instruction (DODI) 1332.18, *Disability Evaluation System (DES)*, August 5, 2014.
[2] DODI 6130.03, *Medical Standards for Appointment, Enlistment, or Induction in the Military Services*, April 28, 2010, Incorporating Change 1, September 13, 2011, Enclosure 4, ¶¶ 14f, 15r, 29r.
[3] DODI 1332.38, *Physical Disability Evaluation*, November 14, 1996, Incorporating Change 2, April 10, 2013 (cancelled August 5, 2014).
[4] DODI 1332.38, *Physical Disability Evaluation*, Enclosure 5, ¶ 1.2 (cancelled August 5, 2014).
[5] DODI 1332.38, *Physical Disability Evaluation*, Enclosure 5, ¶ 1.3.9.6 (cancelled August 5, 2014).
[6] DODI 1332.14, *Enlisted Administrative Separations*, January 27, 2014, Enclosure 3, ¶ 3(a)(8)(a)(1).
[7] Army Regulation (AR) 40-501, *Standards of Medical Fitness*, December 14, 2007, Revised August 4, 2011, ¶ 3-35; Secretary of the Navy (SECNAV) Instruction 1850.4E, *Department of the Navy Disability Evaluation Manual*, April 30, 2002, Enclosure 8, Attachment (b), ¶ 3(i)(7); Navy Medicine (NAVMED) P-117, *U.S. Navy Manual of the Medical Department*, January 10, 2005, Chapter 18, ¶ 18-5(3); Air Force (AF) *Medical Standards Directory*, February 6, 2014, Page 66, Note 1 (incorporating by reference the disqualifying conditions listed in DODI 1332.38 Enclosure 5). The only exceptions are inconsistencies within Navy regulations. In special guidelines that apply only to nuclear field duty and submarine duty, Navy regulations state that transgender status is disqualifying only if it "interfere[s] with safety and reliability or foster[s] a perception of impairment." These sections appear to permit transgender personnel to serve openly provided their gender identity does not interfere with duty performance. NAVMED P-117, Chapter 15, ¶¶ 15-103(4)(d)(4) (Nuclear Field Duty), 15-106(4)(k)(4) (Submarine Duty) (most recently updated April 4, 2014). These sections, however, are inconsistent with general Navy guidance that categorically disqualifies transgender individuals without consideration of duty performance, as do the policies of the other services.
[8] DODI 1332.38, *Physical Disability Evaluation*, Enclosure 4, ¶ E4.1.2 (cancelled August 5, 2014).
[9] DODI 1332.18, *Disability Evaluation System (DES)*, Appendix 1 to Enclosure 3, ¶ 2.
[10] DODI 1332.18, *Disability Evaluation System (DES)*, ¶ 3(i); Appendix 1 to Enclosure 3, ¶ 4(a)(1).
[11] DODI 1332.38, *Physical Disability Evaluation*, Enclosure 5 (cancelled August 5, 2014).
[12] American Psychiatric Association, Gender Dysphoria Fact Sheet (2013), http://www.dsm5.org/documents/gender%20dysphoria%20fact%20sheet.pdf.
[13] Paraphilia is sexual arousal to an atypical object. American Psychiatric Association, Paraphilic Disorders Fact Sheet (2013), http://www.dsm5.org/Documents/Paraphilic%20Disorders%20Fact%20Sheet.pdf.
[14] American Psychiatric Association, Gender Dysphoria Fact Sheet (2013).
[15] DODI 1332.14, *Enlisted Administrative Separations*, Enclosure 1, ¶ (l) and Enclosure 3, ¶ 3(a)(8)(c)(1); AR 40-501, *Standards of Medical Fitness*, note preceding ¶ 3-31; NAVMED P-117, *U.S. Navy Manual of the Medical Department*, Chapter 18, ¶ 18-12(3)(v)(7)(d); Air Force Instruction (AFI) 48-123, *Medical Examinations and Standards*, Attachment 1, page 71 (Glossary of References and Supporting Information).
[16] Joycelyn Elders, Alan M. Steinman, George R. Brown, Eli Coleman, and Thomas A. Kolditz (2014). Medical Aspects of Transgender Military Service, *Armed Forces and Society*. Advance online publication. doi: 10.1177/0095327XI4545625.
[17] See, for example, Alan Okros and Denise Scott (2014), Gender Identity in the Canadian Forces: A Review of Possible Impacts on Operational Effectiveness, *Armed Forces & Society,* 1-14, doi:10.1177/0095327X14535371.
[18] Army Regulation 135-178, *Army National Guard and Army Reserve Enlisted Administrative Separations*, March 8, 2014, ¶ 6-7(a).

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Department of Defense Press Briefing by Secretary Carter on Transgender Service Policies in the Pentagon Briefing Room

Press Operations

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SECRETARY OF DEFENSE ASH CARTER: Good afternoon, everyone. Thanks for being here.

I am here today to announce some changes in the Defense Department's policies regarding transgender service members. And before I announce what changes we're making, I want to explain why.

There are three main reasons, having to do with their future force, our current force and matters of principle. The first and fundamental reason is that the Defense Department and the military need to avail ourselves of all talent possible in order to remain what we are now, the finest fighting force the world has ever known.

Our mission is to defend this country and we don't want barriers unrelated to a person's qualification to serve preventing us from recruiting or retaining the soldier, sailor, airman or Marine who can best accomplish the mission.

We have to have access to 100 percent of America's population for our all-volunteer force to be able to recruit from among them the most highly

qualified and to retain them.

Now, while there isn't definitive data on the number of transgender service members, RAND looked at the existing studies out there, and their best estimate was that about 2,500 people out of approximately 1.3 million active-duty service members, and about 1,500 out of 825,000 reserve service members are transgender, with the upper end of their range of estimates of around 7,000 in the active component and 4,000 in the reserves.

Although relatively few in number, we're talking about talented and trained Americans who are serving their country with honor and distinction. We invest hundreds of thousands of dollars to train and develop each individual, and we want to take the opportunity to retain people whose talent we've invested in and who have proven themselves.

And this brings me to the second reason, which is that the reality is that we have transgender service members serving in uniform today. And I have a responsibility to them and to their commanders to provide them both with clearer and more consistent guidance than is provided by current policies.

We owe commanders better guidance on how to handle questions such as deployment, medical treatment and other matters. And this is particularly true for small unit leaders, like our senior enlisted and junior officers. Also, right now, most of our transgender service members must go outside the military medical system in order to obtain medical care is judged by doctors to be necessary, and they have to pay for it out of their own pockets. This is inconsistent with our promise to all our troops that we will take care of them and pay for necessary medical treat.

I, and the Defense Department's other senior leaders who have been studying this issue the past year, have met with some of these transgender

service members. They've deployed all over the world, serving on aircraft, submarines, forward operating bases and right here in the Pentagon. And while I learned that in most cases, their peers and local commanders have recognized the value of retaining such high-quality people, I also learned the lack of clear guidelines for how to handle this issue puts the commanders and the service members in a difficult and unfair position.

One service member I met with described how some people had urged him to leave the military, because of the challenges he was facing with our policies, and he said he just wouldn't quit. He was too committed to the mission, and this is where he wanted to be. These are the kind of people we want serving in our military.

The third and final reason for the change, also important, is a matter of principle. Americans who want to serve and can meet our standards should be afforded the opportunity to compete to do so. After all, our all-volunteer force is built upon having the most qualified Americans, and the profession of arms is based on honor and trust.

Army Chief-of-Staff General Milley recently reminded us of this when he said, and I quote him, "The United States Army is open to all Americans who meet the standard, regardless of who they are. Embedded within our Constitution is that very principle, that all Americans are free and equal. And we, as an Army, are sworn to protect and defend that very principle. And we are sworn to even die for that principle. So, if we in uniform are willing to die for that principle, then we in uniform should be willing to live by that principle." That's General Milley.

In view of these three reasons to change our policy, last July I directed the commencement of a study to identify the practical issues related to transgender Americans serving openly, and to develop an implementation plan that addresses those issues consistent with military readiness, because our mission -- which is defending the country -- has to come first.

I directed the working group to start with the presumption that transgender persons can serve openly without adverse effect -- impact, excuse me, on military effectiveness and readiness, unless and except where objective, practical impediments are identified.

I think it's fair to say this has been an educational process for a lot of people here in the department, including me. We had to look carefully and deliberately at medical, legal and policy considerations that have been evolving very rapidly in recent years. And we had to take into account the unique nature of military readiness and make sure we got it right.

I'm proud of the thoughtful and deliberate manner in which the department's leadership has pursued this review. I've been guided throughout by one central question. Is someone the best-qualified service member to accomplish our mission?

Let me now describe the process we used to study this over the last year. The leadership of the armed services, the Joint Chiefs of Staff, the service secretaries, myself, together with personnel, training, readiness and medical specialists from across the Department of Defense, studied all the data available to us. We also had the RAND Corporation analyze relevant data and studies to help us with our review. And we got input from transgender service members, from outside expert groups, and from medical professionals outside of the department.

We looked carefully at what lessons could be learned from the outside, including from allied militaries that already allow transgender service members to serve openly. And from the private sector also, because even though we're not a business and are different than a company in important ways, their experience and their practices are still relevant.

It's worth noting, for example, that at least 18 countries already allow transgender personnel to serve openly in their militaries. These include close allies such as the United Kingdom, Israel, and Australia. And we were able to study how they dealt with this issue.

We also saw that among doctors, employers and insurance companies today, providing medical care for transgender individuals is becoming common and normalized in both public and private sectors alike. Today, over a third of Fortune 500 companies, including companies like Boeing, CVS, and Ford, offer employee health insurance plans with transgender-inclusive coverage. That's up from zero such companies in 2002.

Similarly, nondiscrimination policies at two-thirds of Fortune 500 companies now cover gender identity, up from just three percent in 2002.

And for the public sector, all civilian federal employees have access today to a health insurance plan that provides comprehensive coverage for transgender-related care and medical treatment.

All this represents a sea-change from even just a decade ago.

Based on its analysis of allied militaries and the expected rate at which American transgender service members would require medical treatment that would impact their fitness for duty or deployability, RAND's analysis concluded that there would be, quote, "minimal readiness impacts from allowing transgender service members to serve openly," end quote.

And in terms of cost, RAND concluded that health care costs would represent, again in their words, "an exceedingly small proportion of DOD's overall health care expenditures."

Now, as a result of this year-long study, I'm announcing today that we're ending the ban on transgender Americans in the United States military.

Effective immediately, transgender Americans may serve openly and they can no longer be discharged or otherwise separated from the military just for being transgender.

Additionally, I have directed that the gender identity of an otherwise qualified individual will not bar them from military service or from any accession program.

In taking the steps, we are eliminating policies that can result in transgender members being treated differently from their peers based solely upon their gender identity, rather than upon their ability to serve and we are confirming that going forward we will apply the same general principles, standards and procedures to transgender service members as we do to all service members.

What I heard from the transgender service members I met with overwhelmingly was that they don't want special treatment. They want to be held to the same standards and be treated like everybody else.

As I directed, the study identified practical issues that arise with respect to transgender service, and it developed an implementation plan to address those issues.

Let me briefly describe that implementation plan. I want to emphasize that in this case, as in the department's decisions on Don't Ask, Don't Tell

and women in service, simply declaring a change in policy is not effective implementation.

That is why we have worked hard on the implementation plan and must continue to do so. These policies will be implemented in stages over the next 12 months, starting most immediately with guidance for current service members and their commanders, followed by training for the entire force and then beginning to access new military service members who are transgender.

Implementation will begin today. Starting today, otherwise qualified service members can no longer be involuntarily separated, discharged or denied reenlistment or continuation of service just for being transgender.

Then, no later than 90 days from today, the department will complete and issue both a commander's guidebook for leading currently serving - for leaders of currently serving transgender members and medical guidance to doctors for providing transition-related care, if required, to currently serving transgender service members.

Our military treatment facilities will begin providing transgender service members with all medically necessary care based on that medical guidance. Also starting on that date, service members will be able to initiate the process to officially change their gender in our personnel management systems.

Next, over the nine months that follow, based on detailed guidance and training materials that will be prepared, the services will conduct training of the force and commanders to medical personnel, to the operating force and recruiters.

When the training is complete, no later than one year from today, the military services will begin accessing transgender individuals who meet all standards, holding them to the same physical and mental fitness standards as everyone else who wants to join the military.

Our initial accession policy will require an individual to have completed any medical treatment that their doctor has determined as necessary in connection with their gender transition and to have been stable in their identified gender for 18 months, as certified by their doctor before they can enter the military.

I have directed that this succession standard be reviewed no later than twenty-four months from today to ensure it reflects what we learn over the next two years as this is implemented as well as the most up-to-date medical knowledge.

I've discussed the implementation plan with our senior military leaders, including Chairman Dunford. The chief sent specific recommendations about the timeline, and I made adjustments to the implementation plan timeline to incorporate those recommendations. The chairman has indicated the services support the final implementation timeline that I've laid out today.

Overall, the policies we are issuing today will allow us to assess -- excuse me, access talent of transgender service members to strengthen accomplishment of our mission, clarify guidance for commanders and military medical providers, and reflect better the department's and our nation's principles.

I want to close by emphasizing that deliberate and thoughtful implementation will be key. I, and the senior leaders of the department will

therefore be ensuring all issues identified in this study are addressed in implementation.

I'm confident they can and will be addressed in implementation. That's why we are taking the step-by-step approach I've described. And I'm 100 percent confident in the ability of our military leaders and all men and women in uniform to implement these changes in a manner that both protects the readiness of the force and also upholds values cherished by the military -- honor, trust and judging every individual on their merits.

I'm also confident that we have reason to be proud today of what this will mean for our military, because it is the right thing to do, and it's another step in ensuring that we continue to recruit and retain the most qualified people.

And good people are the key to the best military in the world. Our military and the nation it defends will be stronger.

Thank you. And now, I'll take some questions. And -- Phil, you want to start?

Q: Sure. Mr. Secretary, could you talk a bit about -- I know you spoke about the costs for health care. Are there other costs associated with this implementation plan? And could you elaborate a bit on the timing issue, the adjustments in timing you spoke to?

SEC. CARTER: Sure. With respect to cost -- by the way, I will mention that Peter Levine will be here later and will be prepared to answer questions in detail.

But the reason that RAND concluded the costs would be minimal is that the medical treatment that service members who are currently transgender requires fairly straightforward, well-understood -- they were able to make those estimates. And that was, as they said, minimal.

And with respect to accessing new members as I indicated, they will have already completed and been stable in their transition for a period of not less then 18 months before they can access service, so there will be no medical costs associated with that.

And with respect to the timetable for implementation, the -- there's -- as I indicated in the stages, there's the -- the preparation of the medical guidance, that is up to the doctors who need to do that, so that doctors at military treatment facilities all have a standard protocol.

I'm giving them 90 days to that. That is what they asked for. The commanders' guidance, the -- as I indicated, the chairman and the chiefs asked for 90 days in that regard -- to prepare that commanders guidance and the training guidance.

And I agreed to that. I think that's reasonable. That's the amount of time it will take them to complete the job. Obviously, they've begun some of that.

And then, the rest of the time is time to train the force, which is comparable to the time we took to train the force say, in Don't Ask, Don't Tell. We do have some experience in this kind of thing, and we're following that template to successful implementation -- change of this kind.

Q: (inaudible) -- on Russia?

SEC. CARTER: Sure.

Q: –On a separate subject -- there's a report today that spoke to a proposal to strengthen coordination -- military coordination with Russia in targeting al-Nusra in Syria. And I'm just wondering is there -- you've been a skeptic in the past about cooperating with Russia militarily in Syria, given that their motives are different than those of the United States. Has something changed? Would you support this proposal?

SEC. CARTER: Well, we do have a professional relationship with the Russian military to make sure that there are no incidents and no safety issues as we both operate in neighboring areas of Syria. But I -- I've said before, the Russians got off on the wrong foot in Syria. They said they were coming in to fight ISIL. And that they would assist the political transition in Syria towards a post-Assad government that could run the country and put that terribly broken country back together and give the people the future they deserve.

They haven't done either of those things. So I think while I'm still hopeful that they will do both of those things, and I think that's what Secretary Kerry's talks, which are very frequent with the Russians, are all about. But meanwhile, we have a channel which is focused on safety issues, and we maintain that. And that's a very professional working channel between us.

Q: Can I follow up on that and ask you something else? It's a follow-on to Phil's question. You're well known to be skeptical of the Russians and some of the things that they have -- their military has done. So, really straight up, are you willing -- are you in favor now of an expanded effort for military cooperation with the Russians inside Syria?

Because most people in this town think you are not.

SEC. CARTER: If the Russians would do the right thing in Syria, and that's an important condition, as in all cases with Russia, we're willing to work with them. That's what we've been urging them to do since they came in. That's the objective that Secretary Kerry's talks are aimed at. And if we can get them to that point, that's a good thing.

Q: But may I follow up on two small items? Are you willing to include an effort for the U.S. to begin airstrikes against al-Nusra? And may I also ask you about Raqqah? As the world has watched what's happened in Istanbul, how urgent now are you, beyond the usual discussion of accelerants, to see the Syrian Arab coalition and the other fighters get to Raqqah? Because --

SEC. CARTER: Oh, very, very eager to get them to Raqqah. This is the same group that we've been working successfully with, that is they have been successful, and we've been enabling and supporting them, in -- to envelop and take, which they will, from ISIL the city of Manbij, which like Raqqah, isn't as well known, but Manbij is a city from which external plotting has been conducted by ISIL into Europe and into the United States as well.

And was part of the transit hub from the Turkish border down to ISIL in Syria. So that was an important objective. Those same forces, and that same approach, or really the same approach and some larger forces, actually, are the ones that we plan -- and I just was discussing this with General Votel and General MacFarland the other day, along with General Dunford.

Those are the forces that we are going to position to, again, envelop and collapse ISIL's control of Raqqa.

And the reason I want to do that, Barbara, as soon as possible is that Raqqa is the self-proclaimed capital of the self-proclaimed caliphate of ISIL. And it's important to destroy the ISIL in Iraq and Syria, because that's absolutely necessary.

It's not sufficient to avoid all kinds of radicalization and so forth, but it's necessary in order to eliminate the idea that there can be a state based upon that ideology. That's why we are so intent in our military campaign against ISIL on Iraq and Syria. So we would like to get Raqqah as soon as -- as soon as we possibly can, like everything else.

Chris?

Q: Mr. Secretary, a couple of questions about what this change will mean for the transgender service members. First, can you verify that the health -- the military health care coverage will cover all aspects of transition-related care, including gender reassignment surgery?

And second, will the Pentagon add gender identity or transgender status to the military equal opportunity policy in the event that a transgender service member feels like they're experiencing discrimination?

SEC. CARTER: The answer to the first one is the medical standards don't change. The transgender individual, like all other servicemembers, will get all medical care their doctors deem necessary.

They will have to do that with their -- subject to, if it's non-urgent medical care, subject to their commanders. Because, you know, if they need to be deployed, they need to be deployed. And it's normal that if you -- if you

have, say, a procedure which is not urgent, that you have to defer that if you are being deployed.

So we don't have any -- we're not going to have any different medical policy for transgender service members than others. Our doctors will treat them -- give them medically necessary treatment according to the protocols that are determined by the medical profession.

Q: (inaudible) -- MEO policy? Will you add transgender status for the MEO?

SEC. CARTER: You know, I don't know the specific answer to that. I certainly assume the answer is yes, and Peter is telling me yes, that certainly stands to reason that we would. That makes sense.

Let's see. Cory. Cory is not here. How about Paul?

Q: I wanted to follow-up on that question. So there's been some debate on whether the military would only cover hormone therapy versus covering full reassignment surgery. So will reassignment surgery be covered?

SEC. CARTER: This is for currently serving members. Again, that's going to be a matter that the doctors will determine in accordance with what is medically necessary. That's a decision that they make with their physician.

And the timing of it -- of any treatment, of any kind, like any other non-urgent medical care, will be something that their commanders will have a

voice in for the very simple reason that we -- we as, in this matter as in all matters, readiness and deployability are critical. Tom?

Q: Mr. Secretary, if I could follow-up very quickly. You said a current service member --

SEC. CARTER: Only because --

Q: So incoming service members who are transition would not be eligible for that transitional surgery?

SEC. CARTER: It depends, Nick. If someone who is transgender and comes out will need to and be required to have undergone transition and be stable in that state for 18 months before they can enter the military.

Q: But the U.S. military will not provide that surgery. Is that what you're saying?

SEC. CARTER: They won't be in the U.S. military at that time because they won't have accessed until they have undergone transition. Tom --

Q: Just wondering, if I could -- how many transgender troops have been dismissed under the old policy? And also, I'm wondering why Chairman Dunford isn't here to discuss this policy since it affects the uniformed military --

SEC. CARTER: I'll take the second part first. This is my decision. However, I have, we have arrived at it together, the senior leadership of the department. They support this timetable, this implementation plan, as I indicated, I actually made some adjustments in it specifically to take into account some of the desire by some of the chiefs to have a little more time on the front end, particularly for the commanders in training guidance, and so I agreed to that because I thought that was reasonable. And I have a general principle around here which is very important which is that it's important that the people who have to implement decisions be part of the decision making, and the armed services are the ones that are going to have to implement that, so it's very important that they've been part of this study, but now, they're a critical part of implementation, because they and I all agree, as I said before, that simply declaring the military open to transgender individuals does not constitute effective implementation. We have work to do and we'll do it and we'll do it together.

Q: Mr. Secretary, in light of the events this morning at Andrews Air Force Base, are you getting a little fed up about all these false alarms for an active shooter? And why the communications problems this morning?

SEC. CARTER: Well, I wouldn't say fed up, because I think we have to take these things seriously when they occur, and I'm sure if a mistake was made here, if somebody inadvertently did, they weren't doing that on purpose, and it also shows a high degree of readiness and rapidity of responses. So it does appear, based on the information that I have at this moment, that this was mistaken, and that this was a drill that was going on that was mistaken for a real event, and a response was made, and that is something -- because it has happened before, that I think we need to pay attention to -- how to minimize the chances of false alarms like that. At the same time, I think it's important to have a reasonable level of awareness of the possibility of this kind of event and what to do, and I thought the response was strong and solid. So that's the good news. The bad news is, it appears to have been a mistake, and we'd like to reduce the number of mistakes made in this way, no question about it. David --

Q: Mr. Secretary, I'm still confused by your answer to Mik's question. Someone who is already in the military, if he is -- he or she is deemed medically -- if sex change surgery is deemed medically necessary, the military will pay for it?

SEC. CARTER: That's correct.

Q: What happens now -- and then you explained the 18 month stable before you commit, but what happens to a service man or woman who joins --

SEC. CARTER: They'll receive --

(CROSSTALK)

Q: They join as a man or woman and then decide at some point after they've joined the service that they need --

SEC. CARTER: Any medical treatment in that instance, that is determined to be medically necessary by their doctors, will be provided like any other medical care. However, and I emphasize this, they're subject to the normal readiness requirements that are imposed upon any military serviceman.

Q: So, this is not a one-time -- one-time offer? It -- this is going to --

SEC. CARTER: No, I think our -- our offer in this is an all medical -- because there is no change in medical policy. Medically-necessary policy to serving service -- medically-necessary care to -- as determined by doctors, which is appropriate, will be provided to service members in -- as is part of our promise about medical care in general.

Can I -- one -- one more?

Q: Reaction to the response from Capitol that's, of course, already come in. This is the way things work and this electronic age as -- Chairman Mac Thornberry of the House Armed Services Committee has already reacted to your announcement, even as you're still making it.

And I -- if I could just read a tiny bit of his statement, and just get your response. He says, quote, "This is the latest example of the Pentagon and the president prioritizing politics over policy. Our military readiness, and hence, our national security, is dependent on our troops being medically ready and deployable. The administration seems unwilling or unable to assure the Congress and the American people that transgender individuals will meet these individual readiness requirements."

Can you --

SEC. CARTER: Well, the chair -- the chairman is right -- that is Chairman Thornberry -- is right to emphasize readiness. That is a key part of our -- was a key part of our study, and will be a key part of implementation.

And the chairman and other members of the committee and I -- committees and -- I've actually heard a variety of opinions on this, some

urging us to move even faster than we have moved, and some wanting -- and this is very legitimate -- to understand what the effects on readiness and so forth are.

But we have some principles here. We have a necessity here. And we're going to act upon that. We're going to do it in a deliberate, and thoughtful and step-by-step manner. But it's important that we do it.

(CROSSTALK)

Q: One question. Is that in Afghanistan -- (inaudible)?

SEC. CARTER: Thank you very much.

-END-

E

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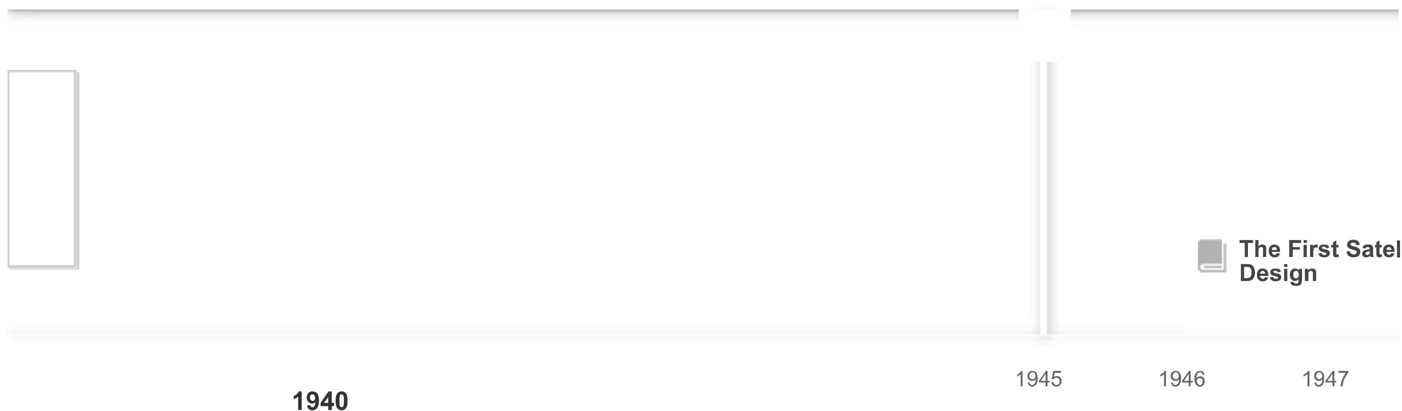

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F

HEALTH AFFAIRS

THE ASSISTANT SECRETARY OF DEFENSE

1200 DEFENSE PENTAGON
WASHINGTON, DC 20301-1200

JUL 2 9 2016

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (MANPOWER AND RESERVE AFFAIRS)
ASSISTANT SECRETARY OF THE NAVY (MANPOWER AND RESERVE AFFAIRS)
ASSISTANT SECRETARY OF THE AIR FORCE (MANPOWER AND RESERVE AFFAIRS)
DIRECTOR, DEFENSE HEALTH AGENCY
DIRECTOR, HEALTH, SAFETY AND WORK LIFE, U.S. COAST GUARD

SUBJECT: Guidance for Treatment of Gender Dysphoria for Active and Reserve Component Service Members

In accordance with Department of Defense Instruction (DoDI) 1300.28, "In-Service Transition for Transgender Service Members," June 30, 2016, and Directive-Type Memorandum (DTM)16-005, "Military Service of Transgender Service Members," June 30, 2016, this memorandum provides guidance for the medical care of transgender Service members. This memorandum supplements requirements in those issuances; it does not supersede any such requirements.

General Provisions:

The Military Health System (MHS) will either provide or arrange consultation for medically necessary care for members on active duty for a period of more than 30 days (referred to as Active Duty Service members (ADSMs) throughout the remainder of this document). Such care is based upon the individual's unique health care needs and, following initial evaluation, may include counseling and behavioral health services, medical support, and assistance with establishing a treatment plan for the Service member's submission to the unit commander, followed by any medically necessary treatment.

Until the DoD is able to promulgate specific clinical practice guidelines for the care of transgender personnel, the MHS will adhere to the attached 2009 version of the Endocrine Society's Standards of Care, "Endocrine Treatment of Transsexual Persons: An Endocrine Society Clinical Practice Guideline," as the primary guideline to provide consistent, evidence based care to transitioning patients. Explanation of any clinically indicated deviation from the guideline should be documented in the patient's health record. Clinical Practice Guidelines from other professional societies may also help inform clinical decision making (e.g., the 2015 American Psychological Association Guidelines for Psychological Practice with Transgender and Gender Nonconforming People and the World Professional Association for Transgender Health Standards of Care). Key components of medical care for the purpose of treating gender dysphoria include initial assessment and, based upon that assessment of the individual's needs,

the establishment of a treatment plan which may include real life experience (RLE) that is provided in a manner consistent with the requirements of DoDI 1300.28 and DTM 16-005 regarding RLE, cross-sex hormone therapy, and surgical transition. Treatment plans must be individualized and approved by a military medical provider. The following guidance addresses various stages of treatment:

1. For Active Duty Service members (ADSMs) seeking initial treatment for gender dysphoria, a diagnosis of gender dysphoria must be established by a privileged behavioral health provider (or similarly qualified civilian provider if unavailable in a military facility), with appropriate referral to other types of providers as indicated or required. The assessment should be comprehensive in nature, including exclusion of other causes for dysphoria, and lead to formulation of an initial treatment plan.

2. For ADSMs who have already received a diagnosis of gender dysphoria and established a treatment plan approved by a military medical provider, and who desire to proceed to or continue cross-sex hormone therapy, an endocrinologist or other physician with appropriate professional expertise should exclude medical conditions making hormone therapy unsafe, may initiate or continue hormone therapy if indicated as medically necessary, and monitor response to hormones in accordance with the Endocrine Society's Standards of Care guidelines, to include periodic screening for hormone associated adverse outcomes.

3. ADSMs with an established treatment plan desiring surgical treatment following a period of RLE and who are compliant with all facets of an approved treatment plan should be referred to an appropriately qualified surgeon for evaluation. The surgeon should fully discuss all surgical options and potential complications in order to provide informed consent before surgery is proposed. Consistent with current DoD policies, purely cosmetic or other non-medically necessary surgery is not authorized.

4. Any Service member for whom the Defense Enrollment Eligibility Reporting System has recorded a gender change, or who is in the process of obtaining such a change, must have an ongoing plan to address needed medical care, including follow up of hormone treatment and any appropriate health screening.

5. Unless and until adequate surgical capabilities have been established in DoD Military Treatment Facilities (MTFs), medically necessary surgical treatment will be evaluated using the existing MHS waiver process for private sector care for Active Duty members under the Supplemental Health Care Program (SHCP). This standardized process requires referral through the Service chain of command and review and approval by the Director, Defense Health Agency (DHA).

6. The expectation is for the MHS to provide an interdisciplinary team approach to transition care in accordance with evidence based guidelines and practices, reinforcing at all times the transgender Service member's right to receive all medical care with dignity and respect. Provision of care may involve multiple facilities and require appropriate care coordination between providers. In no circumstance will a provider be required to

deliver care that he or she feels unprepared to provide either by lack of clinical skill or due to ethical, moral or religious beliefs. However, referral to an appropriate provider or level of care is required under such circumstances.

7. As with all other medical conditions, in the first 180 days of service in the military, all personnel must continue to meet the medical standards associated with accession (DoDI 6130.03, "Medical Standards for Appointment, Enlistment, or Induction in the Military Services"). Ongoing fitness for duty and deployment screening after 180 days shall be assessed in accordance with current Service practices and policies applied to other medical conditions.

Central Coordination:

1. Service Central Coordination Cells (SCCC) established under DoDI 1300.28 shall provide multi-disciplinary (e.g., medical, legal, military personnel management) expert advice and assistance to commanders with regard to service by transgender Service members and gender transition in the military to assist commanders in the execution of DoD, Military Department, and Service policies and procedures.

2. The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) has established a Central Coordination Cell with Office of the Secretary of Defense, DHA, and Service representatives to oversee consistent and uniform implementation of DoDI 1300.28, provide consultation to SCCCs, and receive and analyze data reported by the Services. The Central Coordination Cell is not a substitute for SCCCs, but provides information and advice on policy matters, and assistance with identification and coordination of needed treatment resources, when necessary. DHA has provided a senior representative to facilitate coordination of care and services delivered by the managed care support contractors and the DHA Waiver Authority process.

3. To assist Commanders and Service members until each Service establishes its own SCCC, the DoD Central Coordination Cell has established the following website: https://prext.osd.mil/DoDCCC. This is a Common Access Card-enabled website for secure questions by all Service members. Policy documents and Frequently Asked Questions reside on this website and questions will be answered by policy, legal and medical experts.

Service and DHA Requirements and Responsibilities:

1. Each Service and DHA shall develop and submit an assessment of current Service medical capacity and expertise in providing medical and surgical support for treating gender dysphoria to the USD(P&R) no later than August 31, 2016. This assessment should include a listing of MTFs at which interdisciplinary care and treatment are available or under development for this purpose, and use the attached data reporting template.

2. Each Service and DHA shall develop an education and training plan for both privileged and non-privileged medical personnel no later than November 1, 2016. This plan should detail how the Service will ensure familiarity with applicable Department policies and requirements, evidence-based practice guidelines and standards of care, and any Service-specific policies. To the extent practicable, training plans and requirements, and additional procedural guidance for care and services will be consistent across the MHS, and will be published as DHA procedural guidance.

3. Each Service and DHA shall be prepared to begin supporting transition medical care to transgender ADSMs no later than October 1, 2016. At a minimum, Services will be expected to provide, by referral if necessary, initial assessment, psychological and pharmaceutical support. As directed by the Secretary of Defense, in the period prior to October 1, 2016, the Military Departments and Services will address requests for gender transition from serving transgender Service members on a case-by-case basis, following the spirit and intent of DTM 16-005 and DoDI 1300.28. Until the capability of MHS MTFs to provide surgical transition services has been documented, any proposed genital surgical transition procedures within MTFs shall be prospectively reviewed by the appropriate Surgeon General or, in the case of the National Capital Region facilities, the Director, DHA. Approvals will be reported to the Assistant Secretary of Defense for Health Affairs (ASD(HA)) monthly.

4. The Director, DHA, will ensure that the Managed Care Support Contractors identify appropriate referral resources with providers experienced in care and treatment of transgender persons to ensure availability of care to complement MTF capabilities. An inventory of such resources shall be provided to the ASD(HA) not later than August 31, 2016.

5. The Director, DHA, will evaluate proposed referrals to the TRICARE network for surgical treatment in accordance with the Supplemental Health Care Program (SHCP). MHS care for ADSMs from non-DoD providers is governed by section 1074(c)(2) of title 10, U.S. Code, and section 199.16 of title 32, Code of Federal Regulations. Under these provisions, the SHCP normally follows TRICARE rules, which disallow surgical treatment of gender dysphoria, but the prohibition is subject to waiver for medically necessary care for ADSMs. The Director, DHA, is authorized to grant waivers on a case-by-case basis. Waiver requests will follow existing processes. Each waiver request, with appropriate clinical documentation, should be submitted through the Surgeon General concerned, to the Director, DHA.

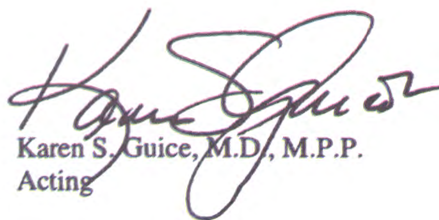
6. To the extent a SHCP waiver would be needed to authorize non-surgical care for an ADSM, this memorandum approves such a waiver on a blanket basis if such care is recommended by a military health care provider in accordance with established SHCP procedures and this memorandum.

7. With respect to Reserve Component Service members not on active duty for a period of more than 30 days who initiate or are involved in a gender transition process, the Services shall establish procedures to ensure that a medical diagnosis and treatment plan (or significant revisions to a treatment plan) or a recommendation for a change in a member's gender marker made by a civilian medical provider is reviewed and approved by an appropriate military medical provider and communicated in a timely and efficient manner with the Reserve Component command involved.

ASD(HA) Responsibilities:

1. The ASD(HA) shall establish collaboration with the Veterans Health Administration and academic medical centers to support Service training plans and specialty consultations, including via telemedicine, where necessary and appropriate.

2. The ASD(HA) shall monitor compliance with this memorandum, which may include assessing Service and DHA performance on all provisions contained within this memorandum.



Karen S. Guice, M.D., M.P.P.
Acting

Attachments:
As stated

cc:
Under Secretary of Defense for Personnel and Readiness
Assistant Secretary of Defense (Manpower and Reserve Affairs)
Surgeon General of the Army
Surgeon General of the Navy
Surgeon General of the Air Force
Joint Staff Surgeon
Medical Office of the Marine Corps

G

DoD INSTRUCTION 1300.28

IN-SERVICE TRANSITION FOR TRANSGENDER SERVICE MEMBERS

Originating Component:	Office of the Under Secretary of Defense for Personnel and Readiness
Effective:	October 1, 2016
Releasability:	Cleared for public release. Available on the DoD Issuances Website at http://www.dtic.mil/whs/directives.
Cancels:	Secretary of Defense Memorandum, "Transgender Service Members," July 28, 2015
Approved by:	Ashton Carter, Secretary of Defense

Purpose: This issuance:

- Establishes a construct by which transgender Service members may transition gender while serving.
- Enumerates prerequisites and prescribes procedures for changing a Service member's gender marker in the Defense Enrollment Eligibility Reporting System (DEERS).
- Specifies medical treatment provisions for Active Component (AC) and Reserve Component (RC) transgender Service members.
- Implements the policies and procedures in Directive-type Memorandum 16-005.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY. This issuance applies to OSD, the Military Departments (including the Coast Guard at all times, including when it is a Service in the Department of Homeland Security, by agreement with that Department, and in all regards, except as to the requirement to submit issuances implementing this issuance to the Office of the Under Secretary of Defense for Personnel and Readiness 30 days in advance of publication in accordance with Paragraphs 2.1c and 2.2e), 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.

1.2. POLICY.

a. DoD and the Military Departments will institute policies to provide Service members a process by which, while serving, they may transition gender. These policies are premised on the conclusion that open service by transgender persons who are subject to the same standards and procedures as other members with regard to their medical fitness for duty, physical fitness, uniform and grooming standards, deployability, and retention, is consistent with military service and readiness.

b. The Military Departments and Services recognize a Service member's gender by the member's gender marker in the DEERS. Coincident with that gender marker, the Services apply, and the member is responsible to meet, all standards for uniforms and grooming; body composition assessment (BCA); physical readiness testing (PRT); Military Personnel Drug Abuse Testing Program (MPDATP) participation; and other military standards applied with consideration of the member's gender. As to facilities subject to regulation by the military, the Service member will use those berthing, bathroom, and shower facilities associated with the member's gender marker in DEERS.

c. Service members with a diagnosis from a military medical provider indicating that gender transition is medically necessary, will be provided medical care and treatment for the diagnosed medical condition. Recommendations of a military medical provider will address the severity of the Service member's medical condition and the urgency of any proposed medical treatment. Medical advice to commanders will be provided in a manner consistent with processes used for other medical conditions that may limit the Service member's performance of official duties.

d. Any medical care and treatment provided to an individual Service member in the process of gender transition will be provided in the same manner as other medical care and treatment. Nothing in this issuance will be construed to authorize a commander to deny medically necessary treatment to a Service member.

e. Any determination that a transgender Service member is non-deployable at any time will be consistent with established Military Department and Service standards, as applied to other Service members whose deployability is similarly affected in comparable circumstances unrelated to gender transition.

f. Commanders will assess expected impacts on mission and readiness after consideration of the advice of military medical providers and will address such impacts in accordance with this issuance. In applying the tools described in this issuance, a commander will not accommodate biases against transgender individuals. If a Service member is unable to meet standards or requires an exception to policy (ETP) during a period of gender transition, all applicable tools, including the tools described in this issuance, will be available to commanders to minimize impacts to the mission and unit readiness.

g. When the military medical provider determines that a Service member's gender transition is complete, and at a time approved by the commander in consultation with the transgender Service member, the member's gender marker will be changed in DEERS and the Service member will be recognized in the preferred gender.

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 promulgate new issuances, as appropriate, in accordance with the provisions of this issuance.

b. Expeditiously develops and promulgates education and training materials to provide relevant, useful information for transgender Service members, commanders, military medical providers, and the force.

c. Ensures that the text of proposed revisions to existing Military Department and Service regulations, policies, and guidance, and of any proposed new Military Department and Service issuance, is consistent with this issuance.

d. Issues guidance to the Military Departments, establishing the prerequisites and procedures for changing a Service member's gender marker in DEERS.

2.2. SECRETARIES OF THE MILITARY DEPARTMENTS AND COMMANDANT, UNITED STATES COAST GUARD (USCG). The Secretaries of the Military Departments and the Commandant, USCG:

a. Adhere to all provisions of this issuance.

b. Administer their respective programs, and update existing Military Department regulations, policies, and guidance, or promulgate new issuances, as appropriate, in accordance with the provisions of this issuance.

c. Establish 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 service by transgender Service members and gender transition in the military and to assist commanders in the execution of DoD, Military Department, and Service policies and procedures.

d. Educate their AC and RC forces to ensure appropriate understanding of the policies and procedures pertaining to gender transition in the military.

e. Submit to the USD(P&R) the text of any proposed revision to existing Military Department and Service regulations, policies, and guidance, and of any proposed new issuance, not later than 30 days in advance of the proposed publication date.

f. Ensure the protection of personally identifiable information (PII) and personal privacy considerations in the implementation of this issuance and Military Department and Service regulations, policies, and guidance.

g. Implement processes for the assessment and oversight of compliance with DoD, Military Department, and Service policies and procedures applicable to service by transgender persons, in accordance with Paragraph 3.8 of this issuance.

SECTION 3: GENDER TRANSITION

3.1. SPECIAL MILITARY CONSIDERATIONS. Gender transition while serving in the military presents unique challenges associated with addressing the needs of the Service member in a manner consistent with military mission and readiness. Where possible, gender transition should be conducted such that a Service member would meet all applicable standards and be available for duty in the birth gender prior to a change in the member's gender marker in DEERS and would meet all applicable standards and be available for duty in the preferred gender after the change in gender marker. Recognizing, however, that every transition is unique, the policies and procedures set forth herein provide flexibility to the Military Departments, Services, and commanders, in addressing transitions that may or may not follow this construct. These policies and procedures are applicable, in whole or in relevant part, to those Service members who intend to begin transition, are beginning transition, who already may have started transition, and who have completed gender transition and are stable in their preferred gender.

a. Medical.

(1) In accordance with DoD Instructions (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 in an active status.

(2) Each Service member in the AC 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.

(3) As in the case of other health issues, when a Service member receives a diagnosis from a military medical provider indicating that gender transition is medically necessary, 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 and a projected schedule for such treatment, including an estimated date for a change in the member's gender marker in DEERS.

b. Gender Transition in the Military. Gender transition begins when a Service member receives a diagnosis from a military medical provider indicating that gender transition is medically necessary, and concludes when the Service member's gender marker in DEERS is changed and the member is recognized in the preferred gender. At that point, the Service member will be responsible for meeting all applicable military standards in the preferred gender, and as to facilities subject to regulation by the military, will use those berthing, bathroom, and shower facilities associated with the preferred gender.

c. Continuity of Medical Care. A military medical provider may determine certain medical care and treatment to be medically necessary, even after a Service member's gender marker is

changed in DEERS (e.g., cross-sex hormone therapy). A gender marker change does not preclude such care and 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. Although in civilian life this phase is generally categorized by living and working full-time in the 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, prior to the change of a gender marker in DEERS.

e. DEERS. The Military Departments and Services recognize a Service member's gender by the member's gender marker in DEERS. Coincident with that gender marker, the Services apply, and the member is responsible to meet, all standards for uniforms and grooming; BCA; PRT; MPDATP participation; and other military standards applied with consideration of the member's gender. As to facilities subject to regulation by the military, the Service member will use those berthing, bathroom, and shower facilities associated with the member's gender marker in DEERS.

f. Military Readiness. Unique to military service, the commander is responsible and accountable for the overall readiness of his or her command. The commander is also responsible for the collective morale and welfare and good order and discipline of the unit, the command climate, and for ensuring that all members of the command are treated with dignity and respect. When a commander receives any request from a Service member that entails a period of non-availability for duty (e.g., necessary medical treatment, ordinary leave, emergency leave, temporary duty, other approved absence), the commander must consider the individual need associated with the request and the needs of the command, in making a decision on that request.

3.2. ROLES AND RESPONSIBILITIES. The individual Service member, the military medical provider, the commander, and each of the Military Departments have crucial roles and responsibilities in the process of gender transition in the military.

a. Service Member's Role.

(1) Secure a medical diagnosis from a military medical provider.

(2) 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 3.1.a.

(3) 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.

b. Military Medical Provider's Role.

(1) Establish the member's medical diagnosis, 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 3.1.a, for submission to the commander.

(2) In accordance with established military medical practices, advise the commander on the medical diagnosis applicable to the 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 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 Service member with medically necessary care and treatment after the member's gender marker has been changed in DEERS.

c. Commander's Role.

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

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

(b) Considers the individual facts and circumstances presented by the 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 Service member, and any medical issues that arise in the course of a Service member's gender transition.

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

d. Role of the Military Department and the USCG.

(1) Establish policies and procedures in accordance with this issuance, outlining the actions a commander may take to minimize impacts 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 a 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 Service member's gender transition, or any component of the transition process, will commence.

(b) Advising the 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 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 member's physical appearance and body composition during gender transition, such as accommodations in the application of standards for uniforms and grooming, BCA, PRT, and MPDATP 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 disability evaluation system in accordance with DoDI 1332.18.

(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 a Service member's gender marker will be changed in DEERS based on a determination by the military medical provider that the 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 Service member's gender marker in DEERS is changed:

(a) Apply uniform standards, grooming standards, BCA standards, PRT standards, MPDATP 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.

3.3. GENDER TRANSITION APPROVAL PROCESS.

a. A Service member on active duty, who receives a diagnosis from a military medical provider for which gender transition is medically necessary 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 ETP associated with gender transition, consistent with Paragraph 3.2.d, and/or

(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 and welfare and good order and discipline of the command.

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

(1) Comply with the provisions of this issuance, and with Military Department and Service regulations, policies, and guidance, and 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 not later than, 90 days after receiving a request determined to be complete in accordance with the provisions of this issuance and Military Department and 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 their 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 not later than 30 days after receipt.

(4) At any time prior to 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, gender transition. A determination that modification is necessary and appropriate will be made in accordance with the procedures, and upon review and consideration of the factors set forth in Paragraph 3.2.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 as set forth in Paragraph 3.2.d.

(5) The commander will approve, in writing, the change of a Service member's gender marker in DEERS, subsequent to receipt of the recommendation of the military medical provider that the member's gender marker be changed and receipt of 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 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.

3.4. ADDITIONAL RC CONSIDERATIONS.

a. General. Excepting only those special considerations set forth below, RC personnel are subject to all policies and procedures applicable to AC Service members as set forth in this issuance and in Military Department and Service regulations, policies, and guidance implementing this issuance.

b. Gender transition approach. All RC Service members (except Selected Reserve full-time support personnel) identifying as transgender individuals, 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 3.3.

c. 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.

d. Selected Reserve Drilling Member Participation. To the greatest extent possible, commanders and 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.

e. 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 3.5 of this issuance.

f. Split Option Training. When authorized by the Military Department concerned, Service members who elect to complete basic and specialty training over two non-consecutive periods may be subject to the provisions of Paragraph 3.5 of this issuance.

3.5. INITIAL ENTRY TRAINING AND CONSIDERATIONS ASSOCIATED WITH THE FIRST TERM OF SERVICE.

a. A blanket prohibition on gender transition during a Service member's first term of service is not permissible. However, the Department recognizes that the All-Volunteer Force readiness model is largely based on those newly accessed into the military being ready and available for multiple training and deployment cycles during their first term of service. This readiness model may be taken into consideration by a commander in evaluating a request for medical care or treatment or an ETP associated with gender transition during a Service member's first term of service. Any other facts and circumstances related to an individual Service member that impact that model will be considered by the commander as set forth in this issuance and implementing Military Department and Service regulations, policies, and guidance.

b. The following policies and procedures apply to Service members during the first term of service and will be applied to 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:

(1) A Service member is subject to separation in an entry-level status during the period of initial training (defined as 180 days per DoDI 1332.14) based on a medical condition that impairs the Service member's ability to complete such training.

(2) An individual participant is subject to separation from the Reserve Officers' Training Corps in accordance with DoDI 1215.08, or from a 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 Armed Forces, 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 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 as a prerequisite to graduation and appointment in the Armed Forces.

(3) A Service member is subject to administrative separation for a fraudulent or erroneous enlistment or induction when warranted and in accordance with DoDI 1332.14, based on any deliberate material misrepresentation, omission, or concealment of a fact, including a medical condition, that if known at the time of enlistment, induction, or entry into a period of military service, might have resulted in rejection.

(4) If a Service member requests non-urgent medical treatment or an ETP associated with gender transition during the first term of service, including during periods of initial entry training in excess of 180 days, the commander may give the factors set forth in Paragraph 3.5.a significant weight in considering and balancing the individual need associated with the request and the needs of the command, in determining when such treatment, or whether such ETP may commence in accordance with Paragraph 3.2.d.

3.6. PROTECTION OF PII AND PROTECTED HEALTH INFORMATION.

a. In accordance with DoDD 5400.11, in cases in which there is a need to collect, use, maintain, or disseminate PII in furtherance of this issuance or Military Department and Service regulations, policies, or guidance, the Military Departments and the USCG will protect against unwarranted invasions of personal privacy and the unauthorized disclosure of such PII. The Military Departments and the USCG will maintain such PII so as to protect individual's rights, consistent with federal law, regulation, and policy.

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

3.7. PERSONAL PRIVACY CONSIDERATIONS. A commander may employ reasonable accommodations to respect the privacy interests of Service members.

3.8. 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 Service policies and procedures applicable to service by transgender persons.

b. Beginning in 2018 and no less frequently than triennially thereafter, 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. 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.

AC	Active Component
BCA	body composition assessment
DEERS	Defense Enrollment Eligibility Reporting System
DoDI	DoD instruction
ETP	exception to policy
MPDATP	military personnel drug abuse testing program
PII	personally identifiable information
PRT	physical readiness testing
RLE	real life experience
RC	Reserve Component
SCCC	Service Central Coordination Cell
USCG	United States Coast Guard
USD(P&R)	Under Secretary of Defense for Personnel and Readiness

G.2. DEFINITIONS. Unless otherwise noted, these terms and their definitions are for the purpose of this issuance.

cross-sex hormone therapy. The use of feminizing hormones in an individual assigned male at birth based on traditional biological indicators or the use of masculinizing hormones in an individual assigned female at birth. A common medical treatment associated with gender transition.

gender marker. Data element in DEERS that identifies a Service member's gender. A Service member is expected to adhere to all military standards associated with the member's gender marker in DEERS and use military berthing, bathroom, and shower facilities in accordance with the DEERS gender marker.

gender transition is complete. A Service member has completed the medical care identified or approved by a military medical provider in a documented medical treatment plan as necessary to achieve stability in the preferred gender.

gender transition process. Gender transition in the military begins when a Service member receives a diagnosis from a military medical provider indicating that the member's gender transition is medically necessary, and concludes when the Service member's gender marker in DEERS is changed and the member is recognized 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 medicine.

non-urgent medical care. The care required to diagnose and treat problems that are not life or limb threatening or that do not require immediate attention.

preferred gender. The gender in which a transgender Service member will be recognized when that member's gender transition is complete and the member's gender marker in DEERS is changed.

RLE. The phase in the gender transition process during which the individual commences living socially in the gender role consistent with their preferred gender. RLE may or may not be preceded by the commencement 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 new gender, as well as using preferred gender berthing, bathroom, and shower facilities.

SCCC. Service-level cell of experts created to provide multi-disciplinary (e.g., medical, legal) advice and assistance to commanders with regard to service by transgender Service members and gender transition in the military.

stable in the preferred gender. Medical care identified or approved by a military medical provider in a documented medical treatment plan is complete, no functional limitations or complications persist, and the individual is not experiencing clinically significant distress or impairment in social, occupational, or other important areas of functioning. Continuing medical care, including but not limited to cross-sex hormone therapy, may be required to maintain a state of stability.

transgender Service member. A Service member who has received a medical diagnosis indicating that gender transition is medically necessary, including any Service member who intends to begin transition, is undergoing transition, or has completed transition and is stable in the preferred gender.

transition. Period of time when individuals change from the gender role associated with their sex assigned at birth to a different gender role. For many people, this involves learning how to live socially in another gender role; for others this means finding a gender role and expression that are most comfortable for them. Transition may or may not include feminization or masculinization of the body through cross-sex hormone therapy or other medical procedures. The nature and duration of transition are variable and individualized.

urgent medical care. The care needed to diagnose and treat serious or acute medical conditions that pose no immediate threat to life and health, but require medical attention within 24 hours.

REFERENCES

Directive-type Memorandum 16-005, "Military Service of Transgender Service Members," July 1, 2016

DoD 6025.18-R, "DoD Health Information Privacy Regulation," January 24, 2003

DoD Directive 5400.11, "DoD Privacy Program," October 29, 2014

DoD Instruction 1215.08, "Senior Reserve Officers' Training Corps (ROTC) Programs," June 26, 2006

DoD Instruction 1215.13, "Ready Reserve 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

DoD Instruction 6025.19, "Individual Medical Readiness (IMR)," June 9. 2014

H

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLUMBIA
3
JANE DOE 1, JANE DOE 2,) Civil Action
4 JANE DOE 3, JANE DOE 4,) No. 17-cv-1597 (CKK)
JANE DOE 5, JOHN DOE 1,)
5 REGAN V. KIBBY, and)
DYLAN KOHERE,)
6)
Plaintiffs,)
7)
v.)
8)
DONALD J. TRUMP, in his)
9 official capacity as)
President of the)
10 United States; et al.,)
)
11 Defendants.)
------------------------------)
12 Complete caption on Page 2.
13
14 - - -
15 Thursday, February 1, 2018
16 - - -
17
18 Deposition of MARTIE SOPER, taken at the offices
19 of Foley Hoag LLP, 1717 K Street NW, Washington, D.C.,
20 beginning at 9:13 a.m., before Nancy J. Martin, a
21 Registered Merit Reporter, Certified Shorthand
22 Reporter.
23
24
25

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLUMBIA
3 Civil Case No. 17-cv-1597 (CKK)
4
JANE DOE 1, JANE DOE 2, JANE DOE 3,)
5 JANE DOE 4, JANE DOE 5, JOHN DOE 1,)
REGAN V. KIBBY, and DYLAN KOHERE,)
6)
Plaintiffs,)
7)
v.)
8 DONALD J. TRUMP, in his official)
capacity as President of the)
9 United States; JAMES N. MATTIS, in his)
official capacity as Secretary of)
10 Defense; JOSEPH F. DUNFORD, JR., in his)
official capacity as Chairman of the)
11 Joint Chiefs of Staff; the)
UNITED STATES DEPARTMENT OF THE ARMY;)
12 RYAN D. MCCARTHY, in his official)
capacity as Secretary of the Army;)
13 the UNITED STATES DEPARTMENT OF THE)
NAVY; RICHARD V. SPENCER, in his)
14 official capacity as Secretary of the)
Navy; the UNITED STATES DEPARTMENT OF)
15 THE AIR FORCE; HEATHER A. WILSON, in)
her official capacity as Secretary of)
16 the Air Force; the UNITED STATES)
COAST GUARD; ELAINE C. DUKE, in her)
17 official capacity as Secretary of)
Homeland Security; the DEFENSE HEALTH)
18 AGENCY; RAQUEL C. BONO, in her official)
capacity as Director of the Defense)
19 Health Agency; and the)
UNITED STATES OF AMERICA,)
20)
Defendants.)
21 --)
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25

1 A P P E A R A N C E S :
2
FOLEY HOAG LLP
3 BY: CLAIRE LAPORTE, ATTORNEY AT LAW
LAUREN GODLES MILGROOM, ATTORNEY AT LAW
4 TRACY ROOSEVELT, ATTORNEY AT LAW
1717 K Street NW
5 Washington, D.C. 20006
(202) 223-1200
6 claporte@foleyhoag.com
lmilgroom@foleyhoag.com
7 troosevelt@foleyhoag.com
Representing Plaintiffs
8
9
NATIONAL CENTER FOR LESBIAN RIGHTS
10 BY: ALEXANDER L. CHEN, ESQ.
SHANNON MINTER, ESQ.
11 870 Market Street
Suite 370
12 San Francisco, California 94102
(415) 365-1335
13 achen@nclrights.org
sminter@nclrights.org
14 Representing Plaintiffs
15
16 LATHAM & WATKINS LLP
BY: HARRISON WHITE, ESQ.
17 355 South Grand Avenue
Los Angeles, California 90071
18 (213) 485-1234
harrison.white@lw.com
19 Representing Plaintiffs
20
21 WILMER CUTLER PICKERING HALE AND DORR LLP
BY: KEVIN M. LAMB, ESQ.
22 1875 Pennsylvania Avenue N.W.
Washington, D.C. 20006
23 (202) 663-6249
kevin.lamb@wilmerhale.com
24 Representing the Plaintiffs
25

1 A P P E A R A N C E S :
2
3 COVINGTON & BURLING LLP
BY: PETER KOMOROWSKI III, ESQ.
4 One City Center
850 Tenth Street N.W.
5 Washington, D.C. 20001
(202) 662-5780
6 pkomorowski@cov.com
Representing the Plaintiffs
7
8
U.S. DEPARTMENT OF JUSTICE
9 CIVIL DIVISION
BY: RYAN BRADLEY PARKER, ESQ.
10 ANDREW E. CARMICHAEL, ESQ.
MATTHEW SKURNIK, ESQ.
11 20 Massachusetts Avenue N.W.
Washington, D.C. 20001
12 (202) 514-4336
ryan.parker@usdoj.gov
13 andrew.e.carmichael@usdoj.gov
matthew.skurnik@usdoj.gov
14
15
16 ALSO PRESENT:
17
18 COLONEL LAURA BARCHICK, USAF JAG
19 LT. COLONEL FELIX SUTANTO, USAF JAG
20 LT. COLONEL CHARLES GARTLAND, USAF JAG
21
22
23
24
25

1 Q. What was your involvement?
2 A. To track the progress of the training and to
3 provide some QA, quality assurance, to the oversight
4 to ensure that the content met the criteria outlined
5 in DoD policy.
6 Q. Who was responsible for putting together the
7 slide deck?
8 A. That was our A1 personnel, our personnel
9 division.
10 Q. And do you know who in the personnel division
11 did this?
12 A. There was Lieutenant Colonel Deborah Packler
13 and many of her staff that were involved in the
14 development of this.
15 Q. The cover says, "(ALL AIRMEN)" on it. Was
16 the objective that every single airman be trained in
17 transgender awareness?
18 A. Yes, ma'am.
19 Q. Did that actually happen?
20 A. Yes, ma'am.
21 Q. So all the airmen received training?
22 A. Yes, ma'am.
23 Q. And was this slide deck, does that reflect
24 the content of the training that the airmen received?
25 A. It should.

1 C E R T I F I C A T E
2 I do hereby certify that the aforesaid testimony
3 was taken before me, pursuant to notice, at the time
4 and place indicated; that said deponent was by me duly
5 sworn to tell the truth, the whole truth, and nothing
6 but the truth; that the testimony of said deponent was
7 correctly recorded in machine shorthand by me and
8 thereafter transcribed under my supervision with
9 computer-aided transcription; that the deposition is a
10 true and correct record of the testimony given by the
11 witness; and that I am neither of counsel nor kin to
12 any party in said action, nor interested in the
13 outcome thereof.
14
15

Nancy J. Martin, RMR, CSR

16
17 Dated: February 5, 2018
18
19
20
21 (The foregoing certification of this transcript does
22 not apply to any reproduction of the same by any
23 means, unless under the direct control and/or
24 supervision of the certifying shorthand reporter.)
25