

STATEMENT BY RETIRED GENERAL & FLAG OFFICERS & LGBT LEADERS & EXPERTS

Army, Air Force, Navy/Marines Are Out of Compliance with Defense Department Regulations
Concerning Transgender Personnel

Army, Air Force and Navy/Marine Corps regulations are out of compliance with Defense Department (DOD) rules, which no longer designate transgender identity as a “congenital or developmental defect” mandating administrative separation from the armed forces. On August 5, 2014, DOD published a new regulation authorizing each individual Service to determine which defects warrant administrative separation, but only if those defects can be shown to compromise fitness for duty or assignment to duty. Under this new policy, DOD no longer requires the Services to separate transgender personnel, and it instead imposes new and explicit limits on the use of administrative separation. The Services may designate defects as administratively disqualifying only if they interfere with performance of or assignment to duty.

Categorical retention prohibitions on transgender personnel in Army, Air Force and Navy/Marine Corps regulations are non-compliant with new DOD policy for two reasons. First, transgender identity is not a congenital or developmental defect, as affirmed by the latest edition of the *Diagnostic and Statistical Manual*. Second, transgender identity does not compromise fitness for duty or assignment, as affirmed by a recent study by a former US Surgeon General and retired General and Flag Officers. To comply with the August 5 DOD regulation, the Services must revise their retention regulations to remove transgender identity as a defect warranting administrative separation. Current Service-level bans on retaining transgender personnel are invalid because they fail to distinguish between conditions that impair fitness for duty or assignment and those that do not.

Service-level compliance with DOD regulations should constitute the first of a three-step process culminating in inclusive policy for transgender personnel: (1) The Services must comply with DOD regulations by removing transgender identity as a defect warranting administrative separation; (2) DOD should eliminate all other regulatory prohibitions against transgender service, including prohibitions in enlistment regulations; (3) DOD should implement inclusive policy addressing administrative and medical aspects of transgender service. Ultimate authority for ordering the elimination of discriminatory military policy rests with the President of the United States, and if the Services decline to comply with DOD rules, or if DOD declines to eliminate discriminatory policy, the Commander-in-Chief should take executive action to effect the change. With the elimination of the combat exclusion rule and the repeal of “don't ask, don't tell,” the administration has affirmed that when the United States military represents all Americans, it is best prepared to fulfill its mission.

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