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

PERSONNEL AND READINESS

JAN 28 2011

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS

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

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

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

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

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

Clifford L. Stanley

Attachments:
As stated

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

DADT Repeal Policy Guidance

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

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

Separations

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

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

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

Accessions and Recruiting Policy

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

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

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

Re-Accessions

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

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

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

Standards of Conduct

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

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

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

Additional Guidance

Moral and Religious Concerns/Freedom of Speech

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

Equal Opportunity

All Service members, regardless of sexual orientation, are entitled to an environment free from personal, social, or institutional barriers that prevent Service members from rising to the highest level of responsibility possible. Harassment or abuse based on sexual orientation is unacceptable and will be dealt with through command or inspector general channels.

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

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

Collection and Retention of Sexual Orientation Data

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

Personal Privacy

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

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

Benefits

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

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

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

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

Medical Policy

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

Duty Assignment

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

Release from Service Commitments

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

Claims for Compensation and Retroactive Full Separation Pay

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