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BLUEPRINTS FOR SOUND PUBLIC POLICY

Blueprint for Immediate Restoration of Inclusive Transgender Military Policy

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The following organizations concur with this memorandum and look forward to the swift return of inclusive military policy for transgender Americans.

- Center for American Progress
- GLBTQ Legal Advocates and Defenders (GLAD)
- Human Rights Campaign
- Lambda Legal
- Modern Military Association of America
- National Center for Lesbian Rights
- National Center for Transgender Equality
- Service Members, Partners, Allies for Respect and Tolerance for All (SPART\*A)
- Transgender American Veterans Association

This is a revised version of our original blueprint. On September 4, 2020, the Defense Department reorganized regulations that govern transgender military policy, so we updated our blueprint to direct readers to current regulations. The *Appendix* (page 7) has been completely revised.

A return to inclusive policy for transgender service members could take place without delay, once so ordered by the Commander in Chief, because there will be no need to redevelop guidance, restudy options, redraft regulatory language, or retrain anybody. Everything needed already exists in current military guidance and remains a part of current military practice.

On April 12, 2019, President Trump’s [ban on transgender military service](#) went into effect. Joe Biden, the presumptive Democratic presidential nominee, [has pledged](#) to reverse that ban “on day one” and return to prior inclusive policy if elected:

“On day one of my presidency, I will direct the Department of Defense to allow transgender service members to serve openly and free from discrimination. I know that this is not just the right thing to do, but it’s in our national interest.”

Based on accounts from the chiefs of all military services, [inclusive policy was a success](#) when Trump halted it. But now that the ban has been in place for a year, how quickly could the military reasonably return to the inclusive policy in effect between 2016 and 2019? Whether that return comes through the order of a new Commander-in-Chief or a change in viewpoint from the present one, is it feasible to accomplish without delay?

The answer is a clear yes. A return to inclusive policy could take place without delay, and certainly within 30 days, because current military regulations have preserved the full catalog of inclusive policy measures developed under the Obama administration. That inclusive policy still applies to the [estimated 1,600 transgender Americans in military service who have grandfathered protection](#) from the Trump ban.

The Department of Defense left all the necessary breadcrumbs to mark the way back to inclusive service. DoD’s plan to implement Trump’s ban was always inconsistent because it served contradictory goals. On the one hand, [DoD announced](#) from the start that “the department will carry out the president’s policy direction,” which was to return to the prior era of disqualifying transgender Americans from military service. On the other hand, DoD also wanted the flexibility to retain the transgender personnel who were already in service or contracted to join.

As a result, DoD crafted a two-track policy that would establish a general ban but also retain inclusive policy for transgender personnel who were already serving openly. In a military policy context, to be serving openly means something different than it might in a civilian context. It means that a service member is *open to the military personnel system* because they have a diagnosis of gender dysphoria from a military medical provider, although their gender identity may or may not be known to colleagues.

Under [Directive-type Memorandum \(DTM\)-19-004](#),\* *Military Service by Transgender Persons and Persons with Gender Dysphoria* [now incorporated in DoDI 1300.28, September 4, 2020, available here], these service members (the “exempt”) had to come forward and obtain a gender dysphoria diagnosis before April 12, 2019 to secure grandfathered protection. Exempt personnel can continue to serve under prior, inclusive policy, but anyone who did not receive a diagnosis by the deadline (the “nonexempt”) became subject to the Trump ban. The regulatory divide between exempt and nonexempt personnel is stark. A gender dysphoria diagnosis before April 12 is a ticket to inclusive service for an entire career, but a diagnosis on or after that date is the opposite—a basis for discharge from service. (A brief explanation of how the new policy operates as a ban is available here. Former chiefs of military medicine issued a [56-page report](#) finding the ban’s rationale “wholly unpersuasive.”)

In order to administer this two-track plan, the military needed to preserve every aspect of inclusive policy that governed before April 12, 2019 because that is the guidance commanders require to manage grandfathered personnel.

### DoD Preserved Inclusive Retention Policy

When inclusive policy began on June 30, 2016, [Department of Defense Instruction \(DoDI\) 1300.28](#), *In-Service Transition for Transgender Service Members*, was published as the primary guidance for managing gender transition in military service. It is an active, current regulation today, and DTM-19-004 specifically designates DoDI 1300.28 [now incorporated in DoDI 1300.28, September 4, 2020, available here] as the controlling guidance for serving personnel who are exempt from the ban:

“Service members who are exempt may continue to receive all medically necessary treatment, as defined in DoDI 1300.28, to protect the health of the individual, obtain a gender marker change in the Defense Enrollment Eligibility Reporting System (DEERS) in accordance with DoDI 1300.28; and serve in their preferred gender.”

An accompanying publication for commanders, [Transgender Service in the U.S. Military: An Implementation Handbook](#), also remains in effect and is unchanged from 2016. [The Implementation Handbook was revised on September 4, 2020, available here, but policy for exempt personnel remains unchanged from 2016.] DoD designed the [2016] Implementation Handbook to “assist our transgender Service members in their gender transition, help commanders with their duties and responsibilities, and help all Service members understand Department policy allowing the open service of transgender Service members.” The Implementation Handbook is no less necessary under the Trump ban because openly transgender personnel continue to serve, and to transition gender if necessary, as exceptions to the ban.

What changed for retention policy under the Trump ban is that, absent grandfathered protection, a medically advised need to transition gender is now a basis for discharge from military service. This is the case even if the service member could transition gender while meeting all general standards for readiness and availability for deployment, such as [DoDI 1332.45](#), *Retention*

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\* [DTMs are numbered](#) by year and order of issuance. For example, DTM-19-004 was the fourth DTM issued in calendar year 2019.

*Determinations for Non-Deployable Service Members* (informally referred to as “[Deploy or Get Out](#)”). Fitness for duty is irrelevant. To achieve that result, DTM-19-004 directed new paragraphs be added to two other regulations that govern bases for discharge from military service, [DoDI 1332.14](#), *Enlisted Administrative Separations*, and [DoDI 1332.30](#), *Commissioned Officer Administrative Separations*. The new paragraphs authorize discharge if a service member is “unable or unwilling” to serve in birth gender or “seeks transition to another gender.”

#### DoD Preserved Inclusive Accession (Enlistment) Policy

DTM-19-004 also protects applicants for service who “were medically qualified for Military Service or selected into an officer commissioning program in their preferred gender under DTM-16-005” prior to April 12, 2019. Former defense secretary Ashton Carter released [DTM-16-005](#), *Military Service of Transgender Service Members*, on June 30, 2016 as the controlling guidance for ending the ban on transgender military service. DTM-16-005 is the inclusive-policy counterpart to the exclusionary DTM-19-004 issued by the Trump administration three years later. **[Both tracks of transgender policy—inclusive and exclusionary—are now incorporated in [DoDI 1300.28](#), September 4, 2020, [available here](#)].**

As with retention policy, DTM-19-004 **[see new [DoDI 1300.28](#)]** expressly preserves and incorporates the same standards established during the Obama administration for qualification of transgender candidates for military service, provided they are designated exempt from the ban. Under the Carter-era DTM-16-005 **[see new [DoDI 1300.28](#)]**, accession standards are similar to those that apply to comparable medical histories in candidates who are not transgender. In addition to meeting all general standards of qualification for military service, applicants who have transitioned gender as civilians are required to demonstrate 18 months of physical and mental stability following gender transition. In addition, any applicant with a history of gender dysphoria who has a medical need to transition gender is ineligible to enlist until completion of all treatment associated with gender transition, plus the 18-month waiting period.

What changed for accession policy under the Trump ban is that gender transition itself, and any treatment associated with gender transition, is now permanently disqualifying for military service. Gender transition at any time prior to military service—as a civilian—became a categorical bar. But for candidates for enlistment or officer commissioning who were in the approved pipeline before April 12, 2019, DoD continues to apply Carter-era, inclusive accession policy. As with retention, the military continues to administer side-by-side standards and procedures of both inclusion and exclusion, keeping both of them current. As an illustration, a Military Entrance Processing Command [fact sheet](#), issued just before the Trump ban took effect, directs applicants to sort themselves according to exempt or nonexempt status and proceed accordingly.

#### DoD Preserved a Quick Path to Reverse the Ban

This two-track operation of managing the exempt and the nonexempt, and of practicing inclusion alongside exclusion, makes possible an immediate and seamless transition when the ban is ultimately reversed. There will be no need to redevelop guidance, restudy options, redraft regulatory language, or retrain anybody. Everything needed already exists in current military

guidance and remains a part of current military practice. The path to restoring inclusive policy is based on erasing separate tracks of grandfathered and non-grandfathered transgender personnel and returning to a single military standard that everyone, transgender or otherwise, is expected to meet. Consistent with decades of military research findings, the optimal framework will be to apply one standard to all, nothing more, nothing less.

DoD is aware of the unstable balancing act it created by preserving prior inclusive policy for some personnel while simultaneously imposing a broad ban. [A February 2018 report](#) signed by former Secretary of Defense James Mattis (but not by uniformed leaders) confirmed this vulnerability when it threatened to remove grandfathered protection from serving personnel (at page 6, “this exemption is and should be deemed severable”) if a court were to decide that the two-track policy undermined legal claims by the Department of Justice that transgender personnel harm military readiness. (Multiple lawsuits challenging the constitutionality of the ban remain in early pre-trial stages and will not be resolved before the November 2020 presidential election.)

This balancing act, however, is what counterintuitively preserves an easy return to inclusive policy without delay. It keeps all aspects of inclusive policy in active, working order for many transgender service members. Even under a ban, no aspect of inclusive policy became obsolete or went out of practice. Commanders and colleagues continue to serve with openly transgender personnel, and the process of gender transition for those with a medical need has continued without interruption. For the exempt, inclusive policy simply carries on.

The following *Appendix: Regulatory Blueprint* summarizes the four simple regulatory changes that must be made to restore inclusive policy. The Trump ban published in DTM-19-004 gave the services 30 days of notice before new policy took effect and gave transgender personnel 30 days to decide whether to trust a promise of grandfathered protection. There is no reason a reversal of the same regulatory steps would require any more than 30 days.

## Appendix: Regulatory Blueprint

DTM-19-004, *Military Service by Transgender Persons and Persons with Gender Dysphoria*, directed a handful of regulatory revisions in 2019 to enable the transgender service ban. The ban has since been incorporated in a new DoDI 1300.28 dated September 4, 2020, also titled *Military Service by Transgender Persons and Persons with Gender Dysphoria*. A step-by-step reversal of these revisions is all that is needed to return to inclusive policy.

### How to Reverse the Ban

1. DoDI 1300.28, *Military Service by Transgender Persons and Persons with Gender Dysphoria*

**Action:** Cancel [the version issued on September 4, 2020](#) and revert to [the original DoDI 1300.28 issued on June 30, 2016](#), entitled *In-Service Transition for Transgender Service Members*. Incorporate the content of [DTM-16-005](#), the original implementation of inclusive policy.

2. [DoDI 1332.14](#), *Enlisted Administrative Separations*

3. [DoDI 1332.30](#), *Commissioned Officer Administrative Separations*

**Action:** Delete revisions made April 12, 2019.

4. *Transgender Service in the U.S. Military: An Implementation Handbook*

**Action:** Cancel [the version issued on September 4, 2020](#) and revert to [the original Implementation Handbook issued on September 30, 2016](#).

### The Following Guidance for Inclusive Policy Is Current and Remains in Effect

1. [ASD/Health Affairs July 29, 2016 Memo](#), *Guidance for Treatment of Gender Dysphoria for Active and Reserve Component Service Members*

2. [DoD Directive 1020.02E](#), *Diversity Management and Equal Opportunity in the DoD*

Note: Service-level regulations will revert to versions in effect prior to April 12, 2019.

## **RADM Alan M. Steinman, MD, USPHS/USCG (Ret.)**

Rear Admiral Alan M. Steinman was commissioned in the United States Public Health Service as a lieutenant in July 1972, commencing a military career of over 25 years in the United States Coast Guard and the Public Health Service. He was selected for promotion to flag officer in August 1993 for the position of Director of Health and Safety at USCG Headquarters (equivalent to both the Surgeon General and Chief of Safety Programs for the other branches of the armed forces). He retired from the Coast Guard and the Public Health Service in September 1997.



RADM Steinman’s educational degrees include a Bachelor of Science in 1966 from the Massachusetts Institute of Technology; a Doctor of Medicine in 1971 from the Stanford University School of Medicine; and a Master of Public Health in 1986 from the University of Washington. His first post-graduate year was at the Mayo Graduate School of Medicine in Rochester, MN, in 1971. RADM Steinman graduated from the U.S. Navy School of Aerospace Medicine, where he earned the designation of U.S. Navy Flight Surgeon in 1973. He is Board Certified in Occupational Medicine and is a Fellow of the American College of Preventive Medicine.

During his tenure as Director of Health and Safety, RADM Steinman managed a comprehensive health care program for over 160,000 beneficiaries with a budget of over \$250 million. He also served as the Director of the Coast Guard’s Safety and Environmental Health programs, overseeing the safety of all USCG personnel. His decorations include the Distinguished Service Medal, the Legion of Merit, the Meritorious Service Medal, two USCG Commendation Medals, the USCG Achievement Medal, the USPHS Commendation Medal, two USPHS Unit Commendation Medals, the USPHS Surgeon General’s Medallion, and the USPHS Surgeon General’s Exemplary Service Medal. RADM Steinman currently serves as a consultant in cold-weather medicine and holds the position of Professional Affiliate with the Health, Leisure and Human Performance Research Institute at the University of Manitoba.

RADM Steinman is co-author of two major reports on transgender military service including the “Report of the Transgender Military Service Commission” (March 2014) and “DoD’s Rationale for Reinstating the Transgender Ban Is Contradicted by Evidence” (April 2018).

RADM Steinman is the most senior military officer to self-identify as gay after his retirement. He served on the Military Advisory Council for Servicemembers Legal Defense Network, and as an advisor for Servicemembers United, Service Women’s Action Network, and the Palm Center. He is also a founding member of the Puget Sound Chapter of American Veterans for Equal Rights. He was selected to brief President-elect Obama’s transition team on the issue of “don’t ask, don’t tell.” He also met with the senior members of the Pentagon’s working group on gays in the military, and he was invited by the White House to attend the presidential signing ceremony repealing the “don’t ask, don’t tell” statute. He lives with his adopted son and his husband in Olympia, WA.