



# The Repeal of Don't Ask, Don't Tell—1 Year Later

Crosby Burns and Alex Rothman | September 20, 2012

One year ago today the ban on openly gay military service—also known as Don't Ask, Don't Tell, or DADT—came to an end as the law's repeal finally went into effect. From that point on, gay men and women have been able to serve their country openly, honestly, and, for the first time, without punishment.<sup>1</sup>

The transition to open service has proceeded smoothly over the past 12 months despite doomsday predictions by supporters of the gay ban. In the years leading up to repeal, proponents of Don't Ask, Don't Tell repeatedly claimed that open service would undermine the unit cohesion and readiness of the U.S. military. But no reputable study ever showed that allowing service by openly gay personnel compromises military effectiveness.<sup>2</sup>

Moreover, they continued to make these claims even after the Pentagon released a comprehensive pre-repeal survey of service members revealing that the vast majority of troops were already serving with someone they knew to be gay or lesbian, and that doing so in no way threatened unit cohesion or military readiness. They also made these assertions despite the fact that some of our closest foreign allies repealed their gay bans without any impact to unit cohesion or military readiness.

One year later it is clear that gay and lesbian troops were never a threat to military readiness, and this week the first academic study of the issue found that U.S. national security has been enhanced by the reality of open service, not diminished by it.

One year later our armed forces are stronger thanks to the honorable service of openly gay men and women. Our military no longer turns away Americans willing to serve their country because of their sexual orientation. Our military no longer forces out otherwise qualified troops—including those with “mission critical” skills such as engineers or Arabic linguists—simply because they are gay. And our military no longer squanders millions of taxpayer dollars to enforce a flawed policy that asked troops to lie about who they are.

In short our country is better off today than it was one year ago when the ban on openly gay service continued to exist. Even in a post-DADT world, however, outdated laws and

policies still prevent gay service members and their families from accessing the benefits afforded to their straight counterparts.

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## Open service has enhanced our national security

Last week the Palm Center—an academic research institute at the University of California, Santa Barbara—released the first comprehensive study of the effects of the DADT repeal on military readiness. To measure the impact of open service on military readiness, the authors of the study polled and interviewed active-duty service members, observed military units, and met with representatives from major organizations on both sides of the DADT debate over the past six months. Their findings were clear: “DADT repeal has enhanced the military’s ability to pursue its mission.”<sup>3</sup>

The Palm Center concludes that DADT repeal has had “no negative effect” on any component of military readiness, including “cohesion, recruitment, retention, assaults, harassment or morale.”<sup>4</sup> Repeal has not sparked mass resignations in the ranks or a widespread decrease in morale; troops are just as likely to re-enlist as they were pre-repeal.<sup>5</sup> Nor has open service caused a jump in antigay violence. In fact some gay service members appear to feel better able to resolve disputes relating to their sexual orientation under the new policy.<sup>6</sup> Perhaps most importantly, the study finds that DADT repeal “has not had any discernible impact, either positive or negative, on recruitment or retention.”<sup>7</sup>

The U.S. military’s smooth transition to open service is far from surprising. Even before repeal, decades of studies, as well as the experiences of some of our closest allies, provided overwhelming evidence that dropping the gay ban would not undermine U.S. national security.

The United Kingdom, Canada, and Israel—three close U.S. allies with similarly structured militaries—have long allowed gay and lesbian troops to serve openly.<sup>8</sup> As a result, U.S. service members have been serving admirably openly gay foreign troops in coalition efforts in Iraq and Afghanistan for years.

Moreover, in 2010, with the Obama administration pushing for repeal, the Pentagon launched a yearlong study on the consequences of ending Don’t Ask, Don’t Tell. The results, released in November 2010, set the stage for repeal. Sixty-nine percent of troops polled said they were already working in a unit with someone they believed to be gay or lesbian. An astounding 92 percent of those individuals believed their unit’s “ability to work together” was either “very good,” “good,” or “neither good nor poor”—this includes 89 percent of those in Army combat arms units and 84 percent of those in Marine combat arms units.<sup>9</sup>

Over the past two years, the military admirably worked to implement the repeal of Don't Ask, Don't Tell. And allowing gay and lesbian men and women to proudly serve their country has proved to be not only a moral victory but also a victory in the United States' long-term security interests. The country will no longer lose countless qualified men and women each year due to this discriminatory policy.

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## Even with open service, gay service members do not have equal access to military benefits

While gay service members can now serve their country openly and honestly, they are still not afforded the same benefits that their straight counterparts receive.

Military personnel have access to important benefits that offer employment security and financial support to them and their families. These benefits include housing allowances, travel and relocation assistance, and military health insurance.<sup>10</sup> But even under open service, gay service members and their families do not have equal access to military benefits.<sup>11</sup>

The primary reason for this inequitable access is the Defense of Marriage Act, or DOMA, a federal law that defines marriage solely as the union between one man and one woman. Under this exclusive definition, same-sex couples—even those who are legally married—cannot access a range of federal benefits normally afforded to married couples, including government programs and tax breaks.

For gay members of the armed forces, the government cannot offer benefits such as health care to same-sex partners (and potentially to their children) because those benefits operate under the Defense of Marriage Act's restrictive definition of "spouse." Luckily, other benefits are not linked to the act and can be extended to same-sex partners and legally recognized children. The Pentagon Working Group (PWG)—a commission tasked with developing comprehensive recommendations for implementing DADT repeal—divided benefits into three broad categories for gay service members:<sup>12</sup>

- **Benefits that cannot be extended to same-sex partners.** These benefits are governed by federal statute and specifically include "spouse" within their definition of dependent. Because of the Defense of Marriage Act, gay service members and their families do not have equal access to these benefits. These include the Basic Allowance for Housing, health insurance benefits through TRICARE, and countless benefits for military veterans and their families.
- **Benefits that are not prohibited by statute, but are currently not extended to same-sex partners under Pentagon regulations.** Department of Defense regulations tie certain benefits to the government's restrictive definition of "spouse" under the Defense

of Marriage Act. The Department can revise current military rules and regulations to redefine who is eligible for these benefits in order to ensure equitable access for gay service members and their families. Benefits that belong to this group include legal services, military family housing, and on-base commissary and shopping privileges.

- **Benefits available to anyone of a service member’s choosing.** These “member-designated” benefits give service members the discretion to designate whomever they want as a beneficiary. Benefits in this category include Servicemembers’ Group Life Insurance, hospital visitation rights, and the Thrift Savings Plan. Even under Don’t Ask, Don’t Tell, gay service members could designate their partner as a beneficiary for these benefits. They still could not list them as “partner” or “husband,” however, since that would expose service members’ sexual orientation to Command and result in discharge under Don’t Ask, Don’t Tell.

Absent the repeal of the Defense of Marriage Act, gay service members and their partners will continue to lack equal access to benefits belonging to this first category, namely crucial health

insurance benefits offered under TRICARE. But gay service members will continue to be able to designate any beneficiary of their choosing, including same-sex partners, for benefits in the third category. And should—or rather, when—the Pentagon issue the appropriate regulatory reforms, gay service members will have equitable access to those benefits in the second category.

**FIGURE 1**  
**Benefits for gay service members and their families**

Benefits prohibited by the Defense of Marriage Act	Benefits the Pentagon can and should make available	Benefits already available (“member-designated” benefits)
Health and dental insurance for spouses, partners, and stepchildren (TRICARE)	Military family housing	Servicemembers’ Group Life Insurance, or SGLI
Basic allowance for housing at “with dependent rate”	Legal services	Veterans’ Group Life Insurance, or VGLI
Morale, Welfare, and Recreation, or MWR, programs	Joint duty assignments	Hospital visitation rights
Family separation allowance	On-base commissary and shopping privileges	Thrift Savings Plan, or TSP
Employment and education for spouses	Family programs, including access to deployment, relocation, and crisis assistance programs	Family Care Plan
Family advocacy and spouse abuse services		Retirement annuity under the Survivor Benefit Plan, or SBP
Travel and transportation allowances		Health and dental insurance for legally dependent children

### The Pentagon is working to remedy benefit inequalities

The Pentagon has long recognized the practical, fiscal, legal, and political complexity of extending benefits to gay service members and their families under the Defense of Marriage Act. In fact, the Pentagon Working Group provided Congress with a detailed analysis of benefits, noting that “no other policy recommendation came close to consuming as much time and effort.”<sup>13</sup>

Building off the Pentagon Working Group’s recommendation to examine the issue of benefits following legislative repeal, the Pentagon began reviewing which benefits it can legally extend to service members’ same-sex partners and spouses under existing law following the congressional repeal of Don’t Ask, Don’t Tell in 2010. This review also builds off President Barack Obama’s memorandum to federal agencies to extend all workplace benefits possible under current law to employees with same-sex partners.<sup>14</sup>

The Pentagon’s review is ongoing. When asked about the status of this nearly two-year review this July, Pentagon spokeswoman Eileen Lainez indicated, “The department is carefully and deliberately reviewing the benefits from a policy, fiscal, legal, and feasibility perspective.”<sup>15</sup>

With open service now a reality for one full year, the Pentagon should quickly complete its review and extend all benefits possible under current law (benefits in the second category mentioned above) to gay service members and their families as soon as possible. Until then, gay service members will continue to serve their country, often putting themselves in harm’s way, while being denied the same benefits and privileges that are afforded to straight troops and their families.

In addition to extending what benefits it can under current law to service members with same-sex partners or spouses, officials at the Pentagon should then join President Obama and the majority of Americans in asking Congress to repeal the Defense of Marriage Act.<sup>16</sup> Only once the act is off the books will gay service members have full and equal access to the benefits afforded to straight service members and their families (including those benefits in the first category mentioned above).

Even if Congress fails to act, federal courts may act to repeal the Defense of Marriage Act by ruling that it is unconstitutional. In fact, one of the most recent cases filed challenging the act involves gay service members challenging provisions of the act that prevent those service members from accessing benefits provided by the Pentagon and the Department of Veterans Affairs.<sup>17</sup>

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## Conclusion

The era of Don’t Ask, Don’t Tell was costly. It diminished the moral standing of the United States and it weakened our security. Between 1993 and 2011 the Pentagon discharged 14,346 qualified service members on the basis of only their sexual orientation. This figure does not include the estimated 4,000 men and women who refused to re-enlist each year due to the discriminatory policy and the thousands more who refused even to join.<sup>18</sup>

Over the past two years, the military has worked admirably to implement the repeal of this policy. And as the Palm Center study shows, our men and women in uniform have continued to serve their country with responsibility, honesty, and dignity.

Still, unequal access to benefits continues to deny gay troops and their families access to many of the services designed to help them weather the stresses of repeated deployments and military life. The State Department has led the way in providing equal benefits to same-sex couples and their families. Now it's the Pentagon's turn. As we mark the one-year anniversary of the repeal of Don't Ask, Don't Tell, our military leaders should work to ensure that U.S. service members, regardless of their sexual orientation, receive the support they deserve.

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## Endnotes

- 1 In this column the term "gay" is used as an umbrella term to refer to people that are gay, lesbian, or bisexual.
- 2 Crosby Burns, "What DADT Cost Us" (Washington: Center for American Progress, 2012).
- 3 Aaron Belkin and others, "One Year Out: An Assessment of DADT Repeal's Impact on Military Readiness" (Santa Barbara: The Palm Center, 2012), available at [http://www.palmcenter.org/files/One%20Year%20Out\\_0.pdf](http://www.palmcenter.org/files/One%20Year%20Out_0.pdf).
- 4 Ibid.
- 5 Ibid.
- 6 Ibid.
- 7 Ibid.
- 8 Department of Defense, "Report of the Comprehensive Review of the Issues Associated with a Repeal of "Don't Ask, Don't Tell," November 30, 2010, available at [http://www.defense.gov/home/features/2010/0610\\_dadt/DADTReport\\_FINAL\\_20101130\(secure-hires\).pdf](http://www.defense.gov/home/features/2010/0610_dadt/DADTReport_FINAL_20101130(secure-hires).pdf).
- 9 Ibid.
- 10 "Military Benefits," available at <http://www.militarybenefits.com> (last accessed September 2012).
- 11 Laura Conley and Lawrence J. Korb, "Beyond Don't Ask, Don't Tell" (Washington: Center for American Progress, 2012).
- 12 Department of Defense, "Report of the Comprehensive Review."
- 13 Ibid.
- 14 The White House, "Memorandum for the Heads of Executive Departments and Agencies," June 17, 2009, available at [http://www.whitehouse.gov/the\\_press\\_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-on-Federal-Benefits-and-Non-Discrimination-6-17-09/](http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-on-Federal-Benefits-and-Non-Discrimination-6-17-09/).
- 15 Pauline Jelinek, "Pentagon to mark gay pride month," Salon, June 15, 2012, available at [http://www.salon.com/2012/06/15/pentagon\\_to\\_mark\\_gay\\_pride\\_month/](http://www.salon.com/2012/06/15/pentagon_to_mark_gay_pride_month/).
- 16 "DOMA Poll 2011," available at <http://www.hrc.org/resources/entry/doma-poll-2011> (last accessed September 2012).
- 17 Ed O'Keefe, "Gay troops to file suit challenging Defense of Marriage Act," The Washington Post, October 27, 2011.
- 18 Burns, "What DADT Cost Us."