



Ending “Don’t Ask, Don’t Tell”

Practical Steps to Repeal the Ban on Openly Gay Men
and Women in the U.S. Military

Lawrence J. Korb, Sean E. Duggan, Laura Conley June 2009

Center for American Progress



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Introduction and summary

Conversations I've held with service members make clear that, while the military remains a traditional culture, that tradition no longer requires banning open service by gays. There will undoubtedly be some teething pains, but I have no doubt our leadership can handle it.¹

– Gen. John Shalikashvili, former Chairman of the Joint Chiefs of Staff

You don't have to be straight in the military; you just have to be able to shoot straight.

– Sen. Barry Goldwater

Then-Senator Barack Obama pledged during the 2008 presidential campaign that he would work with military leaders and Congress to repeal the law that bans openly gay men and lesbians from serving in the military. Yet the law commonly known as “Don't Ask, Don't Tell,” or DADT, remains in effect despite his campaign promise and subsequent pledges to fulfill it.

As a consequence, more than 265 service members have been discharged on the basis of this discriminatory, outmoded, and counterproductive policy since Obama took office.² Furthermore, the policy has deterred untold others who want to defend their country from serving. Gary Gates, a senior research fellow at the UCLA School of Law, found that if the proportion of gay men in the military was allowed to rise to equal that in the general population, “the military could raise their numbers by an estimated 41,000 men.”³

DADT has resulted in the discharge of more than 13,000 patriotic and highly qualified men and women since its enactment more than 16 years ago. At least 1,000 of these 13,000 have held “critical occupations,” such as interpreters and engineers.⁴ Moreover, approximately 4,000 service members leave the service voluntarily per year because of this policy.⁵

For example, by the end of fiscal year 2003, a few months after the fall of Baghdad, the military had forced out more than 320 service members with vital language skills such as Arabic and Farsi.⁶ These are the very critical specialties in which the military con-

tinues to face personnel shortfalls. Meanwhile, the Army and Marine Corps have been forced to significantly lower their moral and aptitude standards in order to overcome recruitment shortfalls. Perhaps most troubling is the fact that the military has at the same time granted so-called “moral waivers” to thousands of new recruits, including people with felony convictions.

Despite these serious losses, there are no signs of momentum within the Obama administration to fulfill its campaign promise to repeal DADT. Earlier this year, Defense Secretary Robert Gates stated that “The president and I feel like we’ve got a lot on our plates right now and let’s push that one down the road a little bit.”⁷ Admiral Michael Mullen, Chairman of the Joint Chiefs of Staff, recently noted that “The president has made his strategic intent very clear ... that it’s his intent at some point in time to ask Congress to change the law.”⁸ Admiral Mullen and Secretary Gates display a clear lack of urgency on a major campaign promise; as President Clinton’s experience in 1993 demonstrates, any delay can allow those who oppose repealing DADT to seize the momentum.

But unlike 16 years ago, “Don’t Ask, Don’t Tell” is no longer supported by the majority of the American people, nor is it even supported by a majority of service men and women. Numerous public opinion polls within American civilian society over the past decade have noted a substantial increase in the acceptance of openly gay men and women serving in the military. Polls of men and women in the armed forces have shown a similar increase. For example, a 2006 Zogby International poll of returning Iraq and Afghanistan veterans found that 73 percent were personally comfortable around gays and lesbians.⁹

There is also no credible evidence supporting the underlying arguments for retaining the law—namely that it would undermine unit cohesion and military effectiveness. Even architects of “Don’t Ask, Don’t Tell” have acknowledged that the policy was “‘based on nothing’ but ‘our own prejudices and our own fears.’”¹⁰ As Dr. Nathaniel Frank, perhaps the foremost authority on the military’s current policy on gay troops and author of the seminal study on the issue, *Unfriendly Fire: How the Gay Ban Undermines the Military and Weakens America*, has noted, “The ban on openly gay service was not based on sound research because no research has ever shown that openly gay service hurts the military.”¹¹ Indeed, the experiences of our allies, as documented as long ago as 1993 in a Government Accountability Office study, show that allowing gays in the military “is not an issue and has not created problems in the functioning of military units”¹²

Perhaps most important, this outmoded policy sends the wrong signal to the young people—straight or gay—that the military is trying to recruit. It tells them that the military is an intolerant place that does not value what they value, namely, diversity, fairness, and equality. What’s more, military recruiters face generalized hostility and opposition everywhere from high schools to colleges and law schools over the issue of discrimination against gays.

“The ban on openly gay service was not based on sound research because no research has ever shown that openly gay service hurts the military.”

– Dr. Nathaniel Frank

Air Force Lt. Col. Victor Fehrenbach and Army Lt. Daniel Choi

“Don’t Ask, Don’t Tell” continues to exact costly losses on the military despite wide recognition of these realities. The recent cases of Air Force Lt. Col. Victor Fehrenbach and Army Lt. Daniel Choi demonstrate the financial and readiness costs of DADT. Fehrenbach was formally notified last September that he would be discharged from the Air Force not because he had announced his sexual orientation, but because someone had notified his commanding officer that he had a male partner. Over the course of his Air Force career, Fehrenbach, a highly decorated F-15 fighter pilot and an 18-year veteran of the Air Force, had flown 88 combat missions, including operations in Iraq and Afghanistan. During his career he had logged more than 2,000 flying hours, nearly 1,500 fighter hours, and 400 combat hours.

Fehrenbach was two years short of being able to retire with a full Air Force pension and “despite a record of documented heroism and an unblemished career; despite the fact that, [as] he estimates, the U.S. military

spent roughly \$25 million training him, Lieutenant Colonel Fehrenbach is being discharged.”¹³

Then there’s Lt. Daniel Choi, a graduate of the U.S. Military Academy at West Point and a veteran of the war in Iraq. Choi was a National Guard infantry officer whose training as an Arab linguist was vital to the Army’s capability to perform effectively in Iraq. Yet he is also being discharged because of DADT, despite the fact that he served effectively for more than a decade under DADT with no impact on his unit’s cohesion or effectiveness.

Lt. Col. Fehrenbach and Lt. Choi’s distinguished military service illustrate what every credible study that has ever analyzed the role of sexual orientation in the U.S. or any other military has concluded: sexual orientation is not germane to effective military service.

It is evident that this policy does not make sense practically, it does not make sense financially, and by acting in a discriminatory fashion, it certainly does not make sense morally.

Now is the time for President Obama to fulfill his pledge and begin the process of repealing this outmoded, unfair, unnecessary, and costly law. This is not just a fight about the rights of patriotic American men and women; it is about military readiness as well.

Yet, it is puzzling that there is not a stronger momentum within the administration to begin the process of repealing DADT, given the unacceptable moral and national security implications of DADT, as well as President Obama’s stated campaign pledge. This inaction is due, in part, to the commonly held belief that there exists no road map for repealing and then implementing the new policy once DADT is overturned. However, this is not the case.

A clear and comprehensive road map for repealing DADT and implementing an alternative, non-discriminatory policy already exists.¹⁴ This report provides a realistic outline for repealing DADT and opening our armed forces to the many qualified men and women who have been excluded under that law. These steps include:

1. Signing an Executive Order banning further military separations based on DADT and sending a legislative proposal on DADT repeal to Congress¹⁵
2. Forming a presidential panel on *how* to implement the repeal

3. Repealing DADT in Congress and changing the Uniform Code of Military Justice, or UCMS
4. Changing other necessary military guidelines to conform to the new policy
5. Following-up to ensure that the armed forces implement the policy changes

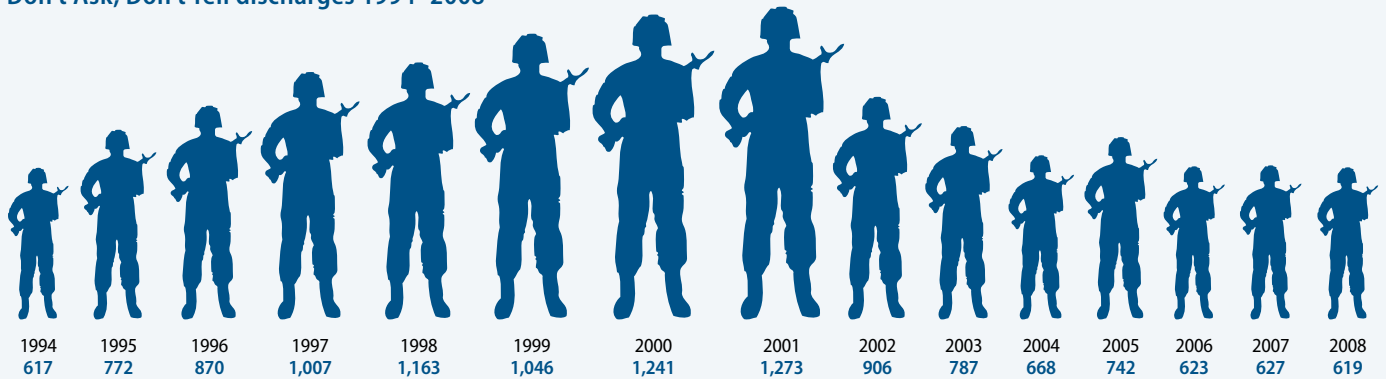
This report draws upon lessons from previous attempts at ending discrimination and effecting change within the military in order to place these steps into proper context.

It also highlights years of research and evidence to illustrate the unnecessary and inexcusable cost that this policy has levied on the American taxpayer and our service members. This research challenges the notion that repealing the ban on openly gay men and women in the military will have a significant effect on either force quality or effectiveness.

DADT by the numbers

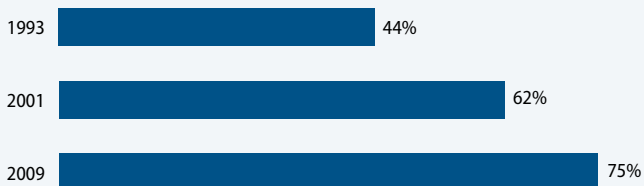
- More than 13,000 gay and lesbian service men and women have been discharged from military service since 1993.
- More than 32,500 gay and lesbian service men and women have been discharged from military service since 1980.
- A recent survey of 545 service members who served in Afghanistan and Iraq found that 73 percent are comfortable in the presence of gay men and lesbians. Of the approximately 20 percent who said that they were uncomfortable, only 5 percent are “very uncomfortable,” while 15 percent are “somewhat uncomfortable.”¹⁹

Don't Ask, Don't Tell discharges 1994–2008¹⁶



- This policy may have cost the U.S. government up to \$1.3 billion since 1980.
- “No reputable or peer-reviewed study has ever shown that allowing service by openly gay personnel will compromise military effectiveness.”¹⁷
- The GAO found in 2005 that discharging and replacing each service member cost the federal government approximately \$10,000.
- Researchers at the University of California, Santa Barbara found that the GAO’s methodology did not include several important factors and that the actual number was closer to \$37,000 per service member.
- Twenty-four countries allow gay men and lesbians to serve openly in the military. None of these have reported “any detriment to cohesion, readiness, recruiting, morale, retention or any other measure of effectiveness or quality,” according to the Palm Center, and “in the more than three decades since an overseas force first allowed gay men and lesbians to serve openly, no study has ever documented any detriment to cohesion, readiness, recruiting, morale, retention or any other measure of effectiveness or quality in foreign armed services.”²⁰
- Even the British, whose military structure and deployment patterns are most similar to ours—and who fiercely resisted allowing gays to serve in the military—were forced to do so by the European Court of Human Rights, and have now seamlessly integrated them.

Percentage of Americans answering that gay people should be allowed to serve in the military¹⁸



- During the First Persian Gulf War, enforcement of the ban on gays in the U.S. military was “suspended without problems.” Moreover, “there were no reports of angry departures.”²¹
- The CIA, State Department, FBI, and Secret Service all allow gay men and women to serve openly without any hamper on effectiveness or quality.
- In fact, it was Defense Secretary Robert Gates who, as Director of the CIA, loosened restrictions on the service of gays and lesbians in the spy agency, ending “the practice of asking job applicants in lie-detector tests about their sexual orientation” and halting investigations into employees’ sexuality “as part of the process [of] renewing security clearances.”²²

Lessons from the past

When President Obama decides to fulfill his campaign promise to repeal the military's "Don't Ask, Don't Tell" policy, he will have a number of issues to address. But he can learn from President Clinton's failed attempt to end the ban on gays in the military, as well as the other instances in which discrimination in the military was finally prohibited and other changes were instituted.

President Obama will have to decide, for example, what the timing of the repeal should be—whether he should do it in 2009, or wait. He will have to determine what the vehicle will be—should the repeal take the form of a stand-alone bill, or should it be attached to the annual defense authorization bill? He will have to either take the lead or allow Congress to go first. And he will have to consider whether it is necessary for a group, a panel, or a commission to study the issue and decide how to implement the new policy.

Six lessons for a successful repeal

President Obama should heed the lessons drawn from previous attempts to end discrimination in the U.S. military in order to effectively and efficiently carry out his campaign promise. These lessons fall into six categories:

1. The military is slow to change

The U.S. military, like most militaries around the world, has a strong aversion to change. Whether this change involves technology, doctrine, strategy, roles and missions, or especially social policy—such as ending segregation, the draft, or restrictions on women in combat—the reaction of the military leadership is usually resistant to change and often hostile, even when there is no empirical evidence to support its position.

For example, Gen. Omar Bradley, the Army Chief of Staff in 1948 when President Truman issued his executive order ending segregation in the armed services, flatly told Truman that he would not integrate because he thought that desegregation would ruin the Army. Gen. William Westmorland, the Army Chief of Staff in 1969, told the Gates Commission, which President Nixon set up to advise him on how to end the draft, that the volunteers would be mercenaries. Former Marine Commandant Gen. Robert Barrow said in the early

1990s that putting women in combat units would destroy the Marine Corps. And Gen. Norman Schwarzkopf, the commander of U.S. forces in the first Gulf War, told the Senate in 1993 that if the ban on homosexuals in the military was dropped, American troops would be just like Iraqi troops, forced to execute orders they didn't believe in.

2. Military bureaucracy can slow implementation of new policies

It is the military bureaucracy that must implement the new policy, and it can easily slow down the execution of any policy it opposes. President Truman signed Executive Order 9981 that established equality of treatment and opportunity in the armed services on July 26, 1948. But desegregation in the Pentagon was officially ended only in October 1954—over 20 months into the Eisenhower administration and more than six years after Truman's executive order, when the Pentagon announced that all "Negro units" had been abolished. Full de facto integration of the Navy did not come until the creation of the All-Volunteer Force in 1973, a quarter-century after Truman's order.

3. Congress can feed the military's aversion to change

Members of Congress, especially members of the Armed Services Committees, often aid and abet the uniformed military's opposition to social change. For example, shortly after Truman issued Executive Order 9981 in 1948, Sen. Richard Russell (D-GA), ranking minority member of the Senate Armed Services Committee, argued on the Senate floor that "the mandatory intermingling of the races throughout the services [would] be a terrific blow to the efficiency and fighting power of the armed services, because it [would be] sure to increase the number of men who [would] be disabled through communicable diseases and the crime rate among servicemen [would] soar."²³ The senator from Georgia vowed that he and his colleagues from the South would use every resource at their command to stop this intrusion of the federal government into their way of life.

Senate Majority Leader Robert Taft (R-OH) called Truman's executive order a cheap political ploy and when Truman appeared before the Congress the day after he issued the executive order, some members did not even rise from their seats as he entered. Strom Thurmond, then Democratic governor of South Carolina, Dixiecrat presidential candidate in 1948, and future chairman of the Senate Armed Services Committee, called racial integration of the armed services "un-American."

4. Public opinion matters

The opinion of the American people and the troops matters. Gen. Bradley said, when he told Truman that he would not integrate the Army, that he would change the policy when the nation as a whole changed. When Truman issued his executive order, only 13 percent

of Americans supported “having negro and white troops throughout the U.S. armed services live and work together,”²⁴ separate but equal was the policy of the government, and *Brown vs. The Board of Education* was still six years away. Even the Pentagon did not desegregate until after the Brown decision.

When President Clinton tried to end the ban on gays serving openly in the military in 1993, the majority of the American people and the overwhelming majority of the men and women in uniform opposed dropping the ban. He was thus forced to adopt the DADT compromise. Yet the overwhelming majority of Americans as well as members of the armed forces today support dropping the ban on gays serving openly in the military.

5. The military eventually comes to realize that these changes improve military readiness

Despite its initial opposition to changes, the military eventually realizes that ending discrimination improves military readiness. Once it has this realization, it will resist those who attempt to roll back the changes. During the Korean War, for example, the Army and Marines assigned black soldiers to white combat units because of a shortage of white men in frontline combat units, even though the service leaders had not yet abolished the separate “Negro units.” And the Navy—despite opposition from several admirals—opened all its occupation specialties to blacks in the 1970s in order to meet its recruiting goals.

The military also initially resisted the end of the draft, but by the time the war in Iraq was making it difficult for the Army to attract sufficient numbers of highly qualified recruits in 2004, it pushed back against calls to reinstate conscription. Moreover, when Congressional Republicans tried to restrict the roles women soldiers could play in forward support units in Iraq and Afghanistan in 2005, the Army strenuously objected, and the provision was dropped.

6. Congress can take the lead on anti-discrimination issues

Although Congress has often supported the military in maintaining discriminatory policies, there have been occasions where it has taken the lead on antidiscrimination issues. For example the House of Representatives passed a bill in 1991 to drop a provision that prevented women from flying combat aircraft. This came after the performance of military women in the first Persian Gulf War dispelled many military leaders’ assertions that women cannot cope with the stress of long overseas deployments and that support functions are less dangerous than combat.

All four service chiefs and the Senate Armed Services Committee opposed the bill and the Pentagon civilians were ambivalent, but the full Senate overrode the Armed Services Committee and its chairman Sen. Sam Nunn (D-GA), and the bill became law in 1991. Congress also passed a bill in 1993 to allow women to serve on combat ships.

The overwhelming majority of Americans as well as members of the armed forces today support dropping the ban on gays serving openly in the military.

A model to repeal DADT: Nixon's repeal of the draft

President Obama would be well advised to look at how President Nixon ended conscription during the height of Vietnam for appropriate lessons in repealing DADT. Nixon promised to end the draft when he was running for president for the second time in 1968. This step was supported by most of the American people, but the leadership of the armed forces and many members of Congress vigorously opposed it.

Most Americans wanted to end the draft because the war in Vietnam was becoming increasingly unpopular and the draft was being unfairly administered. After the Tet Offensive in early 1968, most Americans viewed the war as unwinnable. More and more Americans did not want their sons to be forced to go into this quagmire, or as Vietnam hero Sen. John Kerry (D-MA) put it, to be the last man to die for a failed policy.

Moreover, the elite were avoiding the draft in increasing numbers—including two of our future presidents and two vice presidents—while those from the lower end of the socioeconomic spectrum were bearing the burden of this bloody conflict. More than 36,000 Americans, mostly from parts of society with less opportunity, had died in Vietnam by the time Nixon was inaugurated for the first time, and close to 100,000 had been wounded.

Yet in 1968 the professional military and many of the hawks in Congress (especially members of the Armed Services Committees) remained adamantly opposed to ending conscription. They did not believe that they could get a sufficient number of qualified volunteers to join, since never in its history had the United States relied on volunteers to fight a large war or staff a military of significant size (3.4 million in 1968). For the most part, only the Army had to rely on the draft to meet its quota of new soldiers. But the other services benefitted equally because many men volunteered for the Navy, the Marines, and the Air Force to avoid being drafted into the Army.

Moreover, most of the brass did not share the view that the war in Vietnam was lost. They were convinced that the United States would prevail if it stayed the course—especially if Nixon removed the restrictions Johnson had placed on them—for example, which targets they could bomb. Without a draft, they believed that they would have a difficult time getting enough people to volunteer to fight this increasingly unpopular war.

The military leaders were also concerned about the cost of attracting volunteers. Because of the hidden tax of conscription, draftees were paid only a pittance. Competing in the marketplace for people would mean paying market wages as well as bonuses to get people to join. The new recruits wouldn't just make more than their drafted predecessors; they would also earn almost as much as the careerists.

Salaries would therefore have to be raised across the board in order to keep the pay scales equitable. Paying more for personnel would limit the amount that the military could

spend on buying new weapons or fixing old ones. Indeed, the average compensation level rose by 88 percent between 1968 and 1974. This was particularly troubling in 1969 because Richard Nixon, who was an Eisenhower Republican when it came to military spending, planned to significantly decrease defense spending. In fact, defense outlays dropped 37 percent between 1968 and 1974, and the defense share of the overall budget declined from 42 percent to 28 percent.

Nixon chose Melvin Laird as his Secretary of Defense—a person who enthusiastically supported the all-volunteer force. These two men took these realities into consideration when devising a plan to end conscription. Less than a week after taking office, Nixon ordered the Pentagon to put together a detailed plan to end the draft. He and Laird then set up a commission chaired by former Secretary of Defense Thomas Gates to develop a plan on *how* to create the AVF, not *whether* to do it.

Laird also “weighted the Commission with members” who shared his point of view²⁵, such as the free-market economist Milton Freedman. That is, he insured that the commission supported the AVF concept. In addition, Laird took a hard-line approach to military leaders who might oppose his plans for the AVF: he told Gen. Westmoreland to get on board or get out. Laird announced by October 1970 that he would end the draft. This is the model that Obama should follow in repealing DADT.

Cautionary lessons: Clinton’s attempted repeal

President Clinton expended significant political capital to repeal the ban on gays in the military, especially considering the considerable opposition to the repeal within the military and American civilian society in 1993. Yet Clinton forfeited the initiative to his detractors in five stages.

The first step took place merely nine days after Clinton took office. Clinton announced a compromise on January 29, 1993. The president told a news conference that by July 15, 1993, the Secretary of Defense would, after consulting with the Joint Chiefs of Staff, present him with a draft Executive Order on lifting the ban. In the interim, the services would no longer ask applicants about their sexual orientation, and they would place avowed or discovered gays in the standby reserve—a military half-way house—with no pay or benefits. Clinton took this position because Senate Minority Leader Sen. Bob Dole (R-KS), with the support of the JCS, was threatening to enact the current ban into law by placing it as a rider on the Family Leave Bill.

The second stage occurred when Clinton allowed his own Justice Department to appeal the Meinhold decision. On January 28, 1993, the day before Clinton publicly announced his compromise, U.S. District Judge Terry Hatter not only ruled that Navy Petty Officer Keith Meinhold, an admitted homosexual, had been wrongfully discharged,

but also that the military's ban on homosexuals was illegal because it lacked even a rational basis—the lowest standard needed to justify government policy.

Rather than declaring victory and going home, Clinton permitted his Department of Justice not only to appeal Hatter's ruling, but in this case and several others, to argue that discrimination based upon sexual orientation is constitutional, necessary to maintain good order and morale in the military, based upon professional military judgment, and that the judiciary should defer to the military in this area. In other words, Clinton's Justice Department argued that the policy that was in existence before Clinton came into office was correct and should be validated by the courts. Clinton was forced to take this position because he, Nunn, and the Chiefs had agreed not to undermine the current policy during the six-month study period.

The third step came on July 19, 1993 when Clinton announced an “honorable compromise” on the issue in a speech at the National Defense University. The new policy, called “Don't ask, don't tell, don't pursue” by its supporters, stipulated that the military would no longer undertake “witch hunts” to root out homosexuals without some credible evidence. But individuals would still be discharged for homosexual conduct, which Clinton described as homosexual actions or statements. Clinton's detractors argued that the policy was in effect “don't ask, don't tell, don't pursue—and don't read the fine print.”²⁶

The fourth stage in Clinton's backtracking on the issue came in October 1993, when he signed the FY 1994 Defense Authorization bill. The legislation ignored the crux of Clinton's “honorable compromise,” that sexual orientation is not a bar to service. It branded homosexuality an unacceptable risk to military order and stipulated that a future defense secretary could ask recruits and service members about their sexual orientation.

The final stage came on December 2, 1993, when Clinton allowed Secretary of Defense Les Aspin to issue the rules to codify the “honorable compromise.” The rules placed the burden of proving that homosexual status did not mean homosexual conduct upon the accused, and permitted commanders considerable leeway in deciding how rigorously to enforce the ban on homosexual misconduct.

Why repeal “Don’t Ask, Don’t Tell”?

Evidence shows that sexual orientation is not germane to military service

According to Dr. Nathaniel Frank of the Palm Center, “There is actually a vast body of data on homosexuality in the military... existing data show clearly that open gays can and do serve in the military without undermining cohesion, and that the gay ban itself causes more problems in the military than the presence of open gays in a unit.”²⁷

Yet, according to Frank, “such evidence has played only a sporadic role... because the evidence has been consistently and tragically ignored every time the [U.S] government has confronted the issue of homosexuality and the military.”²⁸ As a record of government and independent studies dating back to the 1950s demonstrates, the Pentagon has a history of suppressing studies that undercut the rationale for discriminating against gays.

The direct financial cost of “Don’t Ask, Don’t Tell”

The direct financial cost of “Don’t Ask, Don’t Tell” on the American taxpayer is substantial. A 2005 Government Accountability Office report found that recruiting replacements for enlisted service members fired because of their sexual orientation from 1993 up until the end of fiscal year 2003 totaled at least \$95 million in 2004 dollars. Nearly 10,000 service members were forced to separate from the military during this time, which amounts to nearly \$10,000 per discharged service member.³⁵

The financial cost of Don’t Ask Don’t Tell

	2004 dollars		2009 dollars
	Total cost of nearly 10,000 service members discharged	Total cost of 13,000 service members discharged	Total cost of 13,000 service members discharged
Government Accountability Office estimates	\$95 million	\$124 million	\$140 million
Amount per discharged service member	Approximately \$10,000		Approximately \$11,000
University of California, Santa Barbara estimates	\$363.8 million	\$473 million	\$535 million
Amount per discharged service member	Approximately \$37,000		Approximately \$41,000

More than 13,000 service members have now been discharged since 1993, which means that the total cost of DADT in 2004 dollars, according to the GAO estimates, would be more than \$124 million. This would amount to more than \$140 million in current dollars.

Yet analysis of GAO's methodology shows that the \$95 million figure may be a substantial underestimate. A study by a group of defense experts, including former secretary of defense William Perry,* released shortly after the 2005 GAO report found that GAO's analysis left out several important factors, such as the high cost of training officers—commissioned soldiers, sailors, Marines, airmen and women, and members of the Coast Guard with several years of service experience—who were discharged due to their sexual orientation. Factoring in these costs makes the cost to the American taxpayer in 2004 dollars jump to at least \$363.8 million, or approximately \$37,000 per discharged service member. This total is \$269 million, or over 380 percent more than originally reported by GAO.³⁶

When this more realistic accounting formulation is applied to the current total of 13,000 discharged service members, the cost amounts to more than \$473 million in 2004 dollars on \$535 million in current dollars.

The GAO moreover found in 1992 that “on the basis of its policy of excluding homosexuals from the military, DOD annually expelled an average of about 1,500 men and women between 1980 and 1990 under the separation category of ‘homosexuality.’³⁷ At the rate of 1,500 per year, the number of discharges from 1980 through 1992 would be 19,500. These discharges would amount to an additional \$800 million in current dollars.

Accordingly, “Don’t Ask, Don’t Tell” may have cost the U.S. taxpayer up to \$1.3 billion since 1980.

Growing acceptance within the military and American civilian society

Putting aside the financial costs of “Don’t Ask, Don’t Tell,” the policy is no longer supported within the military, nor is it supported by the majority of Americans. When President Clinton tried to repeal DADT in 1993, only 44 percent of the American people supported changing the policy, and 76 percent of servicemen and 55 percent of service women disapproved of lifting the gay ban.³⁸

*Full disclosure: Lawrence Korb was a member of this group.

This military has for years suppressed studies showing there is no reason to discriminate against gays

1957

The Crittenden report, written for the secretary of the Navy, finds that gays are not a security risk and that “no factual data exists to support the contention that homosexuals are a greater risk than heterosexuals.” The Navy refuses to release the report.

1988–1989

A series of studies commissioned by the Department of Defense through its own Personnel Security Research and Education Center find no evidence showing that gays are unsuitable for military service and “suggested that the policy was unnecessary and even damaging.”

One of the first reports issued by PERSEREC contradicts the often-cited argument that unit cohesion would be adversely affected if the ban on gays was repealed. The report finds that the assertion is based on fear rather than facts. PERSEREC also finds that “having same-gender or opposite-gender orientation is unrelated to job performance.” The military tries to destroy the reports, and the military says the reports are merely “drafts” when they are finally leaked.²⁹

1991

Another Pentagon document is made public under a federal court order in 1991. The memo concludes that “current research has not identified that homosexual personnel are any greater security risk than their heterosexual counterparts,” and that absent any evidence, the “Army has no basis on which to justify such continued discrimination.”³⁰

1992

The GAO finds that the military “has not conducted specific research to develop empirical evidence supporting the overall validity of the premises and rationale underlying its current policy on homosexuality.” And that the judgment is “inherently subjective in nature, and scientific or sociological analyses are unlike to ever be dispositive.”³¹

The GAO goes on to cite the PERSEREC and the Crittenden reports and states that “Major psychiatric and psychological organizations in the United States disagree with DOD’S policy and believe it to be factually unsupported, unfair, and counterproductive. In addition, two DOD/service-commissioned study efforts have refuted DOD’s position on the potential security risk associated with homosexual orientation as well as disclosed information that raised questions about the basic policy.”³²

1993

President Clinton initiates a study by the RAND Corporation. The 500-page study concludes that sexual orientation is not germane in determining who should serve and challenges the rationale for gay exclusion. Pentagon officials try to keep the study from becoming public and refuse to talk about it on the record.³³

2008

Laura Miller of the RAND Corporation and Bonnie Moradi of the University of Florida examines data from a 2006 Zogby poll sampling service members who had deployed to Iraq or Afghanistan, and find “no associations between knowing a lesbian or gay unit member and ratings of perceived unit cohesion or readiness.”³⁴

But service members' opinions have come full circle in the last decade and a half. A December 2006 Zogby International Poll found that 73 percent of military personnel say they are comfortable interacting with gay people. More importantly, when asked the question, "Do you agree or disagree with allowing gays and lesbians to serve openly in the military," roughly 58 percent of respondents either agreed or were neutral.³⁹

The American public is also now in favor of repealing DADT. A recent *USA Today*/Gallup poll found that nearly 70 percent of Americans are in favor of openly gay men and women being able to serve in the military.⁴⁰ A recent ABC/Washington Post opinion poll found an even more dramatic increase in civilian acceptance of gays serving in the military since the early Clinton and George W. Bush years; 75 percent of Americans in the poll said "gay people who are open about their sexual orientation should be allowed to serve in the U.S. military," up from 62 percent in early 2001, and 44 percent in 1993.⁴¹

Allowing openly gay men and women to serve improves military readiness

While the military was discharging highly qualified and well trained service men and women, and thousands of others were leaving voluntarily, it was forced to lower its educational, aptitude, and moral standards to meet its recruiting goals. It was moreover forced to spend hundreds of millions of dollars retaining people in order to keep force levels high, rather than buying vital equipment for the wars we are currently fighting.

The Army and Marine Corps in particular have significantly lowered their recruitment standards. The Department of Defense reported in 2007 that, over the prior four years, it had dramatically increased its distribution of "moral waivers," which allow recruits charged or convicted of crimes (including serious felonies) to enter the military. The Army reported distributing 4,918 such waivers in 2003, 4,529 waivers in 2004, 5,506 waivers in 2005, and 8,129 waivers in 2006.⁴² The Marine Corps reported distributing 19,195 waivers in 2003, 18,669 waivers in 2004, 20,426 waivers in 2005, and 20,750 waivers in 2006.⁴³

These moral waivers include alarming numbers of applicants charged with felonies. The system for coding waivers was entirely overhauled for all four departments of the armed forces in 2008,⁴⁴ and the Department of Defense has since disavowed the statistics collected and released in 2007.

But the Army, since reforming its coding system, has still more than doubled the number of felony waivers from 249 in 2006 to 511 in 2007, while the Marine Corps reported an almost 70 percent increase in felony waivers during that time period, from 208 to 350.⁴⁵ It is also important to note that the Department of Defense does not release the number of waivers distributed to applicants; only the waivers distributed to applicants who later enlisted are counted in the final tally.⁴⁶

The Army has likewise been lowering its standards for recruits' educational backgrounds to increase recruitment numbers, a dangerous proposition at a time of war. "Tier 1" Army recruits—those who have received a high school diploma—have dropped to 71 percent of enlisted soldiers in 2007 from 94 percent in 2003, falling far short of its goal of maintaining 90 percent Tier 1 rates.⁴⁷ Fortunately, prior-education rates of Air Force, Navy, and Marine recruits have remained consistently flat.

Allowing openly gay men and women to serve is consistent with American values

Perhaps most important, the federal government should repeal the policy because it is discriminatory and intolerant, and thus inconsistent with American values. Anachronistic practices eventually give way to social progress as American society comes to appreciate how antithetical those practices are to its values. This was the case with the ban on African Americans and women serving in the military.

It is also important to note that by allowing openly gay men and women to serve in the military, the services—as noted earlier—will be following, rather than leading, the society from which they draw troops and support. This was not the case when Truman ordered the military to desegregate in the late 1940s or when President Clinton first attempted to drop the ban on gays in the early 1990s.

We expect military members to defend not only our country, but the Constitution and the individual liberties guaranteed under the Constitution, and we should not send those service members an official "mixed message" that some of the liberties they are prepared to die for are ones they shouldn't accept within their own ranks.

Reasons opponents give for not repealing DADT

“It would damage unit cohesion”

Opponents of repealing the ban on allowing openly gay men and lesbians to serve in the military most frequently cite the specious claim that it would damage unit cohesion. The problem with this argument, according to Nathaniel Frank, is that there is not good evidence to support this claim, and considerable evidence against it.

In fact, a review of nearly 200 publications in the past 50 years conducted by Robert J. MacCoun, a contributor to the 1993 RAND study on gay service, found in 1996 that “it is task cohesion, not social cohesion or group pride, that drives group performance.”⁴⁸

“Task cohesion” refers to group solidarity that results from the collective efforts of individuals dedicated to achieving a common goal; “social cohesion” refers to bonds of friendship and affinity among group members. In emphasizing task over group cohesion, the studies to which MacCoun referred strongly suggested that as long as all of the personnel in combat are committed to their mission, they will perform it equally effectively regardless of whether they can relate to one another personally.

Even those units that pair openly homosexual soldiers with soldiers who are uncomfortable with serving alongside homosexuals should therefore find themselves no less capable of performing their given missions. “This conclusion,” MacCoun says, “is consistent with the results of hundreds of studies in the industrial-organizational psychological literature.”⁴⁹

Skeptics claim that task cohesion would not suffice to produce satisfactory results, and it must be combined with group cohesion. But similar studies cited by MacCoun that analyze both military and nonmilitary group efforts prove that these assertions are unfounded as well.⁵⁰ Regarding cohesion in the military, two facts deserve particular attention.

First, military training and battlefield experience in themselves reinforce task cohesion. As Judith Stiehm pointed out in a 1992 article, “trust and confidence develop not from homogeneity, but shared experience... the military assumes the job of training [recruits] to behave as a team.” Brian Mullen and Carolyn Copper of Syracuse University conducted “the most complete meta-analysis to date” on the relationship between cohesion and performance, and similarly found that, after controlling for task cohesion, “social cohesion had no connection to performance.”⁵¹

“Militaries similar to the United States’ do not allow openly gay men and lesbians to serve”

When President Clinton tried to repeal the ban on openly gay service members in 1993, his detractors claimed that no military equivalent to that of the United States—namely the British armed forces—had implemented such a change. Given the fact that the British military is perhaps the closest in design and operation to the U.S. military, this argument carried considerable weight with those wishing to maintain the ban in the 1990s. The British, like the United States, deploy their forces frequently, and their troops serve in close quarters on submarines and ships—situations where Clinton’s opponents believed open homosexuality would be particularly disruptive to order and unit cohesion.

Yet the British position has changed since 1993. Britain began studying the policy intensely in the mid-1990s and, although the Ministry of Defense’s Homosexual Policy Assessment Team determined that Britain should continue to ban gay service members, the British reversed their policy after the European Court of Human Rights ruled that the ban violated the right to privacy promised in the European Convention on Human Rights.⁵² The Court’s decision, which was legally binding, forced the British government in January 2000 to allow gay troops to serve openly.⁵³ Not surprisingly, the British have not experienced any cohesion problems over the past decade.

“Existing service members will have moral objections”

Some U.S. service members have indicated that they would leave or might leave if openly gay men and women were permitted to serve. Recent public opinion polls reflecting the favorable opinion of service men and women to serving with openly gay men and lesbians aside, this is a serious argument that must be confronted head-on.

The British experience subsequent to the ban’s repeal suggests that the United States has little reason to be concerned. Pre-repeal surveys in Britain indicated that there would be a backlash from current troops—the Palm Center reports that “in both Canada and Britain, two-thirds of male troops said that they would not work with gay men if gay bans were lifted”—yet only about a handful of service members resigned.⁵⁴ Moreover, the Ministry of Defense’s internal study six months after the policy change concluded that, contrary to expectations, “there has been a marked lack of reaction” to allowing gay troops to serve.⁵⁵

Lifting the ban on gays serving in the British military ultimately proved more difficult in theory than in practice. According to Nathaniel Frank, once the change had been made, the British found that “sexuality was now regarded as a private matter” among service members.⁵⁶

The British military—perhaps the closest in design and operation to the U.S.—have not experienced any cohesion problems over the past decade.

“Now is not the time”

Still others argue that now is not the time to end this form of discrimination in the military with more than 200,000 troops deployed to Iraq and Afghanistan and the Pentagon undertaking serious budget and operational overhauls.

Yet this line of reasoning also falls flat. Perhaps now more than ever—with the United States engaged in two wars and attempting to change the direction of the defense budget—it is critical that the U.S. military stop discharging service members with valuable overseas experience, or those who the military has spent hundreds of thousands, if not millions of dollars, to train. The fact that DADT has resulted in the discharge of more than 1,000 service members with skills deemed “critical occupations” demonstrates further the irrationality of waiting to overturn DADT.

Steps for executing a smooth transition

Repealing the military’s “Don’t Ask, Don’t Tell” policy will clearly not undermine the quality nor the effectiveness of the force; in fact, it will actually improve it. But many experts who follow the issue have noted that how the transition is executed politically can affect how smoothly the change is implemented as well as its durability. In order to ensure DADT’s smooth repeal, the Obama administration should consider the following five steps.

1. Issue an Executive Order banning further dismissals on the basis of DADT and send a legislative proposal on DADT repeal to Congress.

Careful examination of the laws outlining the president’s powers as commander in chief show that the executive branch has the authority to suspend homosexual conduct discharges without legislative action. Yet because Congress originally passed the ban on openly gay men and lesbians serving in the military, such a suspension will eventually have to be followed up with legislative action reversing the policy.

Congress, in the Authority of the President to Suspend Certain Laws Relating to Promotion, Retirement, and Separation—10 U.S.C. § 12305—grants the president authority to suspend the separation of military members during any period of national emergency in which members of a reserve component are serving involuntarily on active duty.

This provision is commonly referred to as “stop loss” authority. This policy has affected an estimated 120,000 service members since 2001, and more than 13,000 service members are still unable to leave the military because Secretary Gates has stated that the Department of Defense intends to keep the policy for another two years.⁵⁷

President Obama should issue an order prohibiting the Secretary of Defense—and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating under the Navy—from establishing, implementing, or applying any personnel or administrative policies, or taking a personnel or administrative action, in whole or part on the basis of sexual orientation. The order should further prohibit sexual orientation discrimination within the armed forces and among people seeking entry into the Armed Forces. This would include banning further dismissals on the basis of DADT.

Other foreign militaries that have reversed the ban on gays in the military have acted only when ordered to do so. The same is true with respect to the U.S. military when it was ordered to integrate African Americans into the force and allow women to assume combat roles.

A presidential moratorium on further dismissals on the basis of DADT would be the initial first step that would give lawmakers the political cover needed to secure the passage of a bill overturning the current law. Such a bill already exists—the Military Readiness Enhancement Act—and is discussed in more detail below.

Issuing the Executive Order will prevent further individuals from being discharged on the basis of DADT, but it is only a temporary solution. The Obama administration should provide clear leadership in the form of a comprehensive legislative proposal outlining its vision of the repeal.

Congressional leaders have already begun to call on the White House for such leadership. Senate Majority Leader Harry Reid (D-NV) noted in mid June that the Senate would “welcome a legislative proposal from the White House on repeal so as to provide clear guidance on what the President would like to see and when. With presidential leadership and direction, I believe we can find the time to get repeal done *in this Congress*.”⁵⁸

2. Form a presidential panel on how to implement integration

When President Obama announces his Executive Order to suspend further DADT separations, he should also announce the formation of a presidential panel to study *how*—not *whether*—to implement a repeal of the ban on gays in the military.

As the previous section detailed, there is enough evidence to confirm that reversing the ban on gays in the military will not undermine unit effectiveness nor unit cohesion. Now is the time for leadership. As demonstrated by the outcome of the Military Working Group, the commission set up by President Clinton to study the ban, in 1993, the Palm Center notes that “studying the issue further would cause waste, delay, and a possible backlash.”⁵⁹

The Gates Commission

The Obama administration would be well advised to model the DADT advisory panel on the Gates Commission, which President Nixon established in 1969. The group of 15 commissioners took less than a year to make its findings and was asked to draw up a plan for *how* to transition the military to an all-volunteer structure, not *whether* to make the change. The group noted that they “began their work with different views, based on their own diverse experiences,” yet all came to agree on the final report.⁶⁰

The DADT panel should not rehash the debates of the Clinton era, but Obama should ensure that the commissioners have a vigorous debate on how to structure the process of ending this discriminatory policy. The Gates Commission was a group diverse in gender, race, age, and political views. Obama should value the same range of perspectives in establishing his panel, and open it to members with diverse sexual orientations.

The president should also instruct the DADT panel to produce a report that not only offers a blueprint for change, but directly and authoritatively explains the need to do so. Although the Gates Commission's duty was to find a way to make the switch to an all-volunteer force, that group's report was particularly convincing because it respectfully took on the arguments against the all-volunteer force. Strong opponents for repealing DADT remain despite growing support. It is important for Obama to show that he understands the arguments against the policy, even though he has decided that it needs to be abolished.

The administration must provide clear leadership

Gen. Minter Alexander, head of the Military Working Group, has stated that the main obstacle to overturning the gay ban was the lack of leadership from the White House. The general noted that the administration "had given the military vague direction and little in the way of preparation or research."⁶¹

In the end, "the resistance of the MWG to ending anti-gay discrimination was a product of the beliefs and feelings of those who comprised the group. 'Passion leads and rationale follows,' said [General] Alexander. 'We didn't have any empirical data.' So the conclusions the MWG drew were 'subjective, based on the interviews with people'" such as senior representatives from each of the service branches who rolled out doomsday scenarios if the ban were to be reversed. According to members of the MWG, the panel "had already made a decision about what they were going to do" and did not consider the vast array of evidence before them before making their decision.⁶²

3. Move forward with Congressional repeal of DADT and change the Uniform Code of Military Justice

As noted earlier, legislative action is required to repeal DADT permanently. In fact, such a bill, the Military Readiness Enhancement Act, already exists. It was first introduced in the 109th Congress and has since been reintroduced by the 110th and 111th Congress. The bill had 147 cosponsors as of June 17, 2009. The law as currently written prohibits the secretary of defense from discriminating against any member of the Armed Forces or any person seeking to become a member on the basis of sexual orientation and authorizes "the re-accession into the Armed Forces of otherwise qualified individuals previously

separated for “homosexuality, bisexuality, or homosexual conduct.”⁶³ The new law should ultimately establish a uniform code of conduct across the military for all service members, gay and straight, without regard to sexual orientation.

The UCMJ will also have to be updated. DADT separations are typically carried out through administrative separation hearings, rather than criminal trials governed by the Uniform Code of Military Justice. But the UCMJ does criminalize sodomy, and Article 125 of the code mandates a court martial for any person found guilty of the crime.⁶⁴ The Palm Center suggests replacing this article with “a ban in the Manual for Courts-Martial on all sexual acts that are prejudicial to good order and discipline.”⁶⁵ The UCMJ is a law passed by Congress, and as such, this change can be made by standard legislative procedures, ideally at the same time that DADT is repealed.

4. Change other necessary military guidelines to conform to the new policy

The Obama administration should also review a number of other documents for compliance after DADT is repealed, and make sure not to review others while the executive order is in place. The Palm Center notes that personnel management documents from each of the services, training and recruiting materials, and “regulations regarding discharge documents, benefits, separation pay and similar information” should all be reviewed.⁶⁶ The Obama administration can wait for these documents to be revised in the regular review process, but a better option may be to ask for this process to take place immediately after repeal. The office of the Deputy Under Secretary of Defense for Equal Opportunity would be best suited to determine which documents are in need of review.

A single standard of conduct should apply to all military personnel—straight or gay. This standard should provide the basis for all military publications, directives, instructions, memoranda, and manuals. Nothing shall prevent the military from continuing to regulate its members’ conduct, as long as any such regulation is written and enforced in a sexual orientation-neutral manner.

But ending DADT decisively will mean eliminating from all military documents that govern the day-to-day actions of our service members language allowing service personnel to practice discrimination based on sexual orientation. Follow-up will be necessary to ensure that these doctrinal changes are enforced by individual commanders, but removing the justification for these acts from DOD policy manuals, directives, and training materials is a necessary first step.

The Obama administration’s executive order temporarily halting dismissals based on DADT must include a provision that stops the armed forces from implementing any sections of current policy documents that allow for discrimination or separation based on sexual orientation. The order should also freeze any new or ongoing regular review of

policy documents that may bear on the DADT policy. DOD directives and policy manuals are normally reviewed on regular schedules, and the Obama administration should be careful not to be caught in a situation where updated documents codifying DADT are approved in the normal course of business, while the administration is simultaneously seeking to end the policy.⁶⁷

Two changes must be made in revising these documents to meet the updated standard. First, DOD must remove all precedents for dismissing or discriminating against service members based on their sexual orientation. For example, it could update DOD Instruction 1332.14—Enlisted Administrative Separations—by simply removing the references to homosexual conduct as a reason for separation, and eliminating the section outlining the procedure for fact-finding inquiries into homosexual conduct.⁶⁸

Second, DOD should replace DADT-based language with the same standard it applies to civilian DOD employees where appropriate. Under DOD directive 1020.02, issued February 5, 2009, DOD recognizes civilian equal opportunity as “the right of all covered persons to work and advance on the basis of merit, ability, and potential, free from social, personal, or institutional barriers of prejudice or discrimination,” which are based unlawfully on, among other factors, sexual orientation.⁶⁹ This language will decisively prohibit the separation and discrimination permitted under DADT.

A sample of manuals and directives that will need to be altered

The Palm Center also cites the following manuals and directives as examples of instructions that would have to be changed to conform to the new policy:

- DoDI 1332.14, *Enlisted Administrative Separations* (28 August 2008)
- AR 635-200, *Personnel Separations: Active Duty Enlisted Separations* (6 June 2005)
- AFI 36-3208, *Administrative Separation of Airman* (9 July 2004)
- MILPERSMAN 1910.148, CH-23, *Separation by Reason of Homosexual Conduct, Military Personnel Manual* (16 June 2008)
- MARCORSEPMAN (MCO P1900.16 E) § 6207, *Marine Corps Separation and Retirement Manual* (6 June 2007)
- *Coast Guard Personnel Manual, CH 12.E, Homosexual Conduct, COMDTINST M1000.6A*
- Army Regulation 600-20, *Personnel-General Army Command Polity*, Ch. 4-19; AR 635-200, Ch. 15. (18 April 2008)

5. Follow-up to ensure implementation

Once DADT has been repealed, the administration must remain vigilant to ensure that the policy change is implemented at all levels. The military bureaucracy has the ability to delay the enactment of any policy it opposes. Moreover, once the policy is officially in place, it will be up to individual commanders to consistently and immediately condemn any harassment or discrimination against openly homosexual service members.

DOD's February 2009 directive on diversity management and equal opportunity programs declared that the military equal opportunity, or MEO, program must include "periodic, mandatory education and training in human relations and MEO at installation and operational unit commands, during pre-commissioning programs and initial entry training, and throughout professional military education systems."⁷⁰ An initial set of trainings should take place for all service members after the policy change is implemented, and discrimination based on sexual orientation should be a topic in all future programs.

The DOD should also follow the British example in tracking the policy's progress by using metrics such as reported incidents of harassment. Six months after the British armed forces made the transition to allow gay and lesbians to serve openly, the Ministry of Defense conducted a follow-up report to study the change. The findings were overwhelmingly positive. Recruitment was not affected, the policy gained "widespread acceptance," and no incidents of harassment of openly homosexual service members were observed.⁷¹ The United States should follow suit and compile its findings into a six-month report on the policy change.

Should the six-month report indicate that widespread acceptance of the policy has not occurred, the military should initiate another round of EO trainings and issue a follow-up report six months later. DOD could also consider mandatory trainings known as a force-wide stand-downs if large-scale problems persist. The recent spike in suicides among soldiers prompted the Army to adopt a service-wide stand-down in early 2009. Commanders had one month to schedule all of their troops for a training workshop to address the issue.⁷²

DOD could adopt this model if the services experience significant problems after the repeal of DADT. DOD's Defense Equal Opportunity Management Institute, which currently provides courses on EO topics for defense and civilian management, should design a curriculum for these sessions.

DOD should also follow the British example in tracking the policy's progress.

Conclusion

Repealing “Don’t Ask, Don’t Tell” is not simply a “gay rights” issue. It’s a matter of military readiness. The United States is doggedly adhering to a policy that is purging its armed forces of much-needed talent and manpower and sending the wrong signal to many potential recruits on grounds that are discriminatory and baseless. This makes the policy both unjustifiable and highly dangerous.

The United States is involved in two wars abroad and an economic crisis at home; now is the time for President Obama to fulfill his campaign pledge and begin the process of repealing this unnecessary and counterproductive law.

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