



**Statement of Andy L. Blevins
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Submitted for the Record of an Oversight Hearing
Honoring Our Promise: Reviewing the Effectiveness of Services for Dependents and Survivors

by the Subcommittee on Disability Assistance and Memorial Affairs,
Committee on Veterans' Affairs, 117th United States House of Representatives

Sunday, February 6, 2022

Chairwoman Luria, Ranking Member Nehls, and Members of the Subcommittee,

My name is Andy Blevins, and I am proud to serve as the Policy Director for the Minority Veterans of America (MVA).¹ Our organization works to create belonging and to advance equity and justice for the minority veteran community—namely those that identify as women, LGBTQ+, persons of color, and (non)religious minorities.

This position affords me the privilege and honor of representing millions of minority-identifying veterans² and directly serving thousands of veteran-members across 49 states, three territories, and four countries. Thank you for the invitation to contribute to this important discussion, to help supplement the testimony that several of my colleagues will be providing, and to support that work that you are doing to address the crucial issues that will be raised.

A. Minority-Identifying Survivors & Dependents

We live in a society that prioritizes the needs of the many, at the expense of the few. Too often, frameworks are built for the majority and seemingly bastardized (if amended at all) to meet the specific concerns of our most marginalized and underserved communities. Unfortunately, the U.S. Department of Veterans Affairs (Department)³ is no different. While we applaud much of the progress that has been realized under Secretary McDonough's leadership, this Committee's guidance, and which has been further fostered and instituted throughout the Biden-Harris

¹ You can learn more about our organization at www.MinorityVets.org.

² Blevins, K.R., & Blevins, A.L. (2020). Advocating for minority veterans in the United States: Principles for equity and public policy. *Journal of Military, Veteran and Family Health*. 7(Supp.1). doi: 10.3138/jmvfh-2021-0024.

³ For purposes of this Statement, Departmental references are specifically denoting the Veterans Benefit Administration (VBA) and the National Cemetery Administration (NCA).

Administration, there remains a great deal of work that can only be addressed through the acknowledgment of past and existing inequities and injustices.

a. Codified Definition of Marriage (38 CFR § 3.50)

Title 38 of the Code of Federal Regulations dictates how the Department is to serve the veteran community through the provision of benefits, services, and programs. All programs which allow for such provisions to be bestowed upon a veteran's spouse or survivor must meet the definition as dictated in section 3.50:

- (a) **Spouse.** "Spouse means a person of the opposite sex whose marriage to the veteran meets the requirements of § 3.1(j).⁴
- (b) **Surviving Spouse.** Except as provided in § 3.52,⁵ "surviving spouse" means a person of the opposite sex whose marriage to the veteran meets the requirements of § 3.1(j) and who was the spouse of the veteran at the time of the veteran's death and:
 - a. Who lived with the veteran continuously from the date of marriage to the date of the veteran's death except where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the spouse; and
 - b. Except as provided in § 3.55, has not remarried or has not since the death of the veteran and after September 19, 1962, lived with another person of the opposite sex and held himself or herself out openly to the public to be the spouse of such other person.

We acknowledge that the Department has worked outside the confines of this definition in recent history, though would still urge for codification of this new, working definition. We would recommend striking any reference to "opposite sex" and transitioning gendered terminology to be more inclusive of nonbinary and intersex-identifying individuals:⁶

- (a) **Spouse.** "Spouse means a person ~~of the opposite sex~~ whose marriage to the veteran meets the requirements of § 3.1(j).
- (b) **Surviving Spouse.** Except as provided in § 3.52, "surviving spouse" means a person ~~of the opposite sex~~ whose marriage to the veteran meets the requirements of § 3.1(j) and who was the spouse of the veteran at the time of the veteran's death and:

⁴ 38 CFR § 3.1(j), states "[m]arriage means a marriage valid under the law of the place where the parties resided at the time of marriage, or the law of the place where the parties resided when the right to benefits accrued.

⁵ 38 CFR § 3.52 identifies several instances in which an invalid marriage will be deemed valid for Departmental purposes. We would particularly like to draw attention to subsection (c), which states: "[t]he claimant cohabitated with the veteran continuously from the date of marriage to the date of his or her death . . ."

⁶ There are 1,528 instances within the Code of Federal Regulations which use the reflexive pronoun "themselves" (or its derivative) in place of gendered pronouns. Twenty-eight of those instances occur within Title 38 itself.

- a. Who lived with the veteran continuously from the date of marriage to the date of the veteran's death except where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the spouse; and
- b. Except as provided in § 3.55, has not remarried or has not since the death of the veteran and after September 19, 1962, lived with another person ~~of the opposite sex~~ and held ~~himself or herself~~ (themselves) out openly to the public to be the spouse of such other person.

b. Recognition of Otherwise Illegitimate Marriage or Dependency Status

Under current regulations, survivors and dependents that do not immediately qualify under the definitions set forth in 38 CFR §§ 3.1(j), 3.50, 3.52, or 3.55, even where they only lack a federal recognition of their marriage, are statutorily barred from receiving due benefits and services.

Section 3 of the so-called "Defense of Marriage Act"⁷ denied the federal recognition of same-sex marriages. In 2013, the Supreme Court held that such a constraint was a violation of the Fifth Amendment's Due Process Clause.⁸ The federal government has only recognized same-sex marriages for the last nine years. It goes without saying that same-sex couples have been in loving and committed relationships, even recognized under some states, for much longer.

Beyond our LGBTQ+ families, the United States has also seen a significant decline in marriage patterns among racial and ethnic minority-identifying veterans for a myriad of social and economic reasons,⁹ wherein couples remain in committed and loving relationships, enjoying the benefits of a traditionally-defined marriage, without the legal recognition beyond common law marriages.¹⁰ Similar patterns have been found in Native American and Aboriginal nations, where individuals are entering into ceremonial and spiritual marriages absent the direct federal or state recognition that the Department necessitates for benefits access.¹¹ With minority-identifying populations serving at higher percentages per capita, and with indigenous populations serving at

⁷ See Pub.L. 104-199.

U.S. ⁸ *United States v. Windsor*, 570 U.S. 744, 133 S.Ct. 2675, 186 L.Ed.2d 808 (2013).

⁹ Raley, R.L., Sweeney, M.M., & Wondra, D. (2015). The growing racial and ethnic divide in U.S. marriage patterns. *Future Child*. 25(2): 89-109. Doi: 10.1353/foc.2015.0014.

¹⁰ The Department will recognize a common law marriage where a state recognized the union, and the couple meets the requirements as set forth by the state itself. Only 16 states and territories recognize a common law marriage: Alabama (before 2017), Colorado, District of Columbia, Georgia (before 1997), Idaho (before 1996), Iowa, Kansas, Montana, New Hampshire, Ohio (before 1991), Oklahoma, Pennsylvania (before 2005), Rhode Island, South Carolina (before 2019), Texas, and Utah.

¹¹ Lopez, A.S. (2000). Evolving indigenous law: Navajo marriage—cultural traditions and modern challenges. *Arizona Journal of International and Comparative Law*. 17(2); 283-307.

rates nearly five times¹² the national average, our communities are disproportionately impacted. These denials perpetuate a cycle of discrimination and harm which the Department and this Committee have vowed to directly address.

We would recommend that existing regulations be amended to base determinations of committed relationships off the same guidance which would otherwise be used in determining whether a valid common law marriage would exist, namely where couples enjoy the benefits of cohabitation for a specified period and hold themselves out to be a committed couple within the community. If this is not possible, we would strongly urge the Department to develop some form of a continuous exception to policy process which would allow veteran families to apply for benefits and services they would be able to access but for the lack of federal recognition of their union.¹³

B. Outreach Efforts

As has been noted many times by Members of this Committee, the Department's outreach efforts must be re-examined if the programs that are being developed and re-developed are to have any impact on our communities. To that end, we have three recommendations.

(a) Additional and Simplified Guidance.

It has been brought to our attention, by many in our community, that the existing guidance to aid survivors and dependents in accessing benefits is overly cumbersome and inconsistently contained within print and online formats. We would recommend that the information be boiled down into a simple flow chart, where possible, and clearly highlight what benefits are available, when they are available, how they can be accessed, and any other relevant, additional information.

In addition to aiding survivors and dependents in accessing their own benefits, such guidance will also be instrumental in ensuring that a deceased veteran's care team understands who to contact and with what documents they need to properly inform the Department of a veteran's death to avoid the accrual of any debt on the family's part, where benefits have not been appropriately stopped or re-directed.

A member of our own policy team, with no personal knowledge of accessing or managing Departmental benefits, as would be the case for many surviving loved ones and care teams, spent thirty minutes performing basic searches through the Department's website and through the

¹² See Press Release: Udall applauds house passage of Bills improving services for Native American veterans. Released Dec 16, 2020. Available at: www.indian.senate.gov/news/press-release/udall-applauds-house-passage-bills-improving-services-native-american-veterans.

¹³ Culturally-competent and compassionate training should be instituted at all entry points to Departmental services to ensure qualifying families are not actually or apparently denied from accession.

Google search engine before he was able to find relevant information about notifying Department officials of a veteran's death. Importantly, the information was found through a third-party website and lacked several of the answers to pre-determined questions.

Especially in the age of COVID, where communication of resources and requirements have moved largely online, it seems unconscionable for such information to not be readily available to grieving loved ones. Not only does this cause unnecessary hardship on these community members, but it also significantly decreases the faith and trust that these individuals have in the knowledge that the Department is adequately prepared to assist and support them when they need it most.

(b) Targeted Partnerships with Minority-Serving Organizations.

The Minority Veterans of America has consistently assisted our members in accessing state and federal benefits for our veteran-members and their families, either directly or through close community partnerships. It has been disheartening to see our efforts diminished by continued organization-Department partnerships with entities that are silent on the need to equitably provide outreach to subjugated populations. As innate Departmental endorsements lead to continued and sustained resource aggregation of these larger organizations, our competitive reach and impact can be sustained solely through the gratuitous redirection of staff and volunteer resources.

Minority-focused, veteran-serving organizations exist not gratuitously, but out of necessity. The larger organizations that many of our members pledged to following their discharge from active service were ill-prepared to provide needed support or to advocate for their interests. Our own organization was created nearly five years ago after our co-founders experienced malicious racist and sex-based discrimination even where they served in leadership capacities. Unfortunately, the impact of this fallout was not contained to these organizations—rather, these veterans lost faith in the entire veteran support community, and the collective consequence has resulted in a systemic repudiation of even supportive Departmental and conventional veteran community programs.

Many veterans that have become disenfranchised with the major veteran service organizations and the Department are reaching out to and joining organizations like ours because we are able to provide the information, support, community, and advocacy that they so desperately need. Groups like the Minority Veterans of America have successfully built an enduring relationship with these former servicemembers and their loved ones and have been able to help our members gain access to life-saving or life-changing services and information. If the intended changes and novel ideas discussed and developed through these Hearings are to have any impact on our most

marginalized and underserved veteran populations, the Department must begin utilizing the reach that organizations like our own can provide through targeted partnerships.¹⁴

Such partnerships would do more than allow for our organization to relay relevant information to our members in a more streamlined fashion. It will also indicate to our members that reinvigorated Departmental leadership has recognized and now understands the harm caused by their actual and/or apparent rejection from veteran-centric spaces and programs. It would signal to our communities and external stakeholders that the Department is finally prioritizing them and that they can allow themselves enough vulnerability to heal from the harm they have experienced and to accept the due and necessary assistance that their selfless service demands.

(c) Mandate of Continuous and Culturally-Informed Trainings.

In vein with the reasoning for suggestion (b) above, ill-informed and prejudiced veteran service organizations and officers have served to both establish and preserve the notion of estrangement felt by many of our members. After working with established yet obstructive Departmental personnel or VSOs, often recommended to them by community organizations or the Department itself, we have found that minority-identifying veterans are less likely to approach a second employee or VSO for further assistance, directly causing their benefits to be “left on the table.”

As an organization, we have long advocated for the mandate of continuous and culturally-informed trainings. Minority veterans have a long history of experiencing both discrimination and stigmatization in veteran-centric spaces. It is crucial that ignorance and misinformation about minority veteran populations be addressed through education initiatives not just within the Department’s employees and contractors, but within accredited VSOs as well. Such initiatives should be developed and provided to all Department points of entry to ensure that no veteran is erroneously or discriminatorily prevented from accessing Departmental services or benefits.

C. Other Considerations

We have identified other considerations which we would like to bring to your attention:

(a) Department Directed Resources

It is our understanding that the Department’s Office of Survivors Assistance¹⁵ presently employs only two staff members. A quick search through open job opportunities within the federal

¹⁴ See Blevins & Blevins, Principle 4.

government that directly mention “survivor assistance” revealed only nine positions,¹⁶ none of which were located within the Department. Through our cursory research we have likewise found no evidence that points to the Department actively preparing to increase the number of positions in this office in the foreseeable future.

Veterans that served during the Korean and Vietnam Wars are quickly aging and approaching the end of their lives. Additionally, as has been thoroughly discussed by this Committee, younger generations of veterans are dying earlier due to health complications that resulted from their toxic exposures. If we follow the most recently calculated U.S. death rate projections, and with the understanding that a mere quarter of the qualifying survivors and dependents contact the Department for assistance, these two staff members are being tasked with assisting the survivors and families of more than 41,500 deceased veterans every year.¹⁷ This breaks down to approximately 20 veterans every hour, assuming no sick or vacation days.

It would be unreasonable for anyone to expect these two staff members to provide the quality and comprehensive service that each family deserves even under the most exceptional and extraordinary circumstances. As the death rates of our veterans continues to climb, it is imperative that the Department divert much needed resources and capital towards this office and that it ensures appropriate scaling be built into future budgets and strategic plans to better serve its constituency.

(b) Public Acknowledgments

We would encourage that future pieces of legislation that are intended to address the disparate impact many of our marginalized communities have felt include content that would relay the recognition of and remorse for those inappropriate denials and obstructions. Such acknowledgments and statements from Congress, and the Department, are essential in restoring

¹⁵ See www.va.gov/survivors. See also, generally P.L. 110-389, Title II, Sec. 222, Oct. 2008. Available at: www.govinfo.gov/content/pkg/PLAW-110publ389/pdf/PLAW-110publ389.pdf.

¹⁶ See generally www.USAJobs.gov.

¹⁷ According to the United Nations most recent population projections, the United States is seeing a death rate of 0.9075% of its population annually (not accounting for deaths due to the coronavirus pandemic). See United Nations. (2019). *World Population Prospects*. Population Division. Available at www.population.un.org/wpp/. According to the Department, approximately 18.3-million veterans served during the Korean, Vietnam, Gulf, and Post-9/11 wars. See National Center for Veterans Analysis and Statistics. (2021). *Veteran Population*. U.S. Department of Veterans Affairs. Available at www.va.gov/vetdata/Veteran_Population.asp. Notably, this statistic does not account for the heightened risk of death by suicide among the veteran population.

the faith and confidence that many of our veterans, their dependents, and their survivors have lost in expecting equitable and just treatment and access to due services and benefits.¹⁸

(c) Comprehensive Data Collection

Members of our community show up not with singular identities, but with intersecting and overlapping characteristics, the weight of which impacts and compounds many of the factors that we are proactively seeking to address through this oversight hearing. While studies of veterans and their dependents increasingly include minority veterans, there remains a lack of issue- and identity-specific comprehensive studies.

This lack of research-based data has translated into barriers to access, gaps in services, and an attitude of provisional credit toward the advocacy work being done by and for minority veterans. To understand the needs of minority veterans more accurately and to advocate on their behalf more effectively (and on the behalf of their loved ones), we need a wealth of data that can only come from comprehensive studies and dataset inclusion. These studies must be structured to explicitly identify barriers that may exist between marginalized communities, within specific marginalized populations, and at the intersection of various facets of identity (e.g., race/ethnicity, class, gender identity, sexual orientation, religion, ability, rural vs. urban, etc.).

(d) “Bad Paper” Discharge Veterans

I would be remiss if I did not advocate on behalf of our community members that have received less than honorable discharge characterizations and entry level separations, many of whom do not attempt to access benefits, services, or end of life care and support programs for themselves or their families largely because they feel or are told that they are not eligible for such services and guidance.

Actions and behaviors considered to be misconduct or criminal in nature are often categorized without consideration of the impact that mental health issues and military sexual trauma (MST) have on service members. The prevalence of post-traumatic stress (PTS) and traumatic brain injuries (TBIs) among service members has been noted in relation to “bad paper discharges.”¹⁹ Despite efforts to increase screening for mental health conditions in the military, many service members with PTS symptoms do not seek mental health care due to widespread

¹⁸ For an example of such an inclusion, please reference, Section 3 of the Justice for Women Veterans Act (H.R. 2385), as authored by Representative Julia Brownley (CA-26). Available at www.congress.gov/bill/117th-congress/house-bill/2385.

¹⁹ The term “bad paper discharge” commonly refers to military discharge characterizations that are not fully Honorable. This includes characterizations listed as Other Than Honorable (OTH), Bad Conduct (BCD), and Dishonorable.

stigmatization and fear of losing their careers. This stigmatization extends into their transition to the civilian sector. To cope with symptoms of PTS, including the traumatic effects of MST, many service members self-medicate by using illicit substances and alcohol as a substitute for professional mental health care. The existence of other justiciable and cultural categories for understanding behaviors and actions make their expressions illegible in the framework of mental health and MST. These include insubordination, failure to appear, absent without leave, and, at times, malingering.

More than 500,000 veterans across all military branches have received an administrative “Other Than Honorable” (OTH) discharge.²⁰ Despite their service, veterans are being turned away from the VA, unable to even *apply for*, let alone access, their benefits. Even when help is offered, as in the VA’s 2017 mental health pilot program from bad paper veterans, only limited access to care is granted, and the stigma associated with their status as a veteran with a bad paper discharge prevents many from fully engaging in the limited care or access to services that they receive. This deprivation is more insidious in the lives of minority veterans given the pervasive bias and structural discrimination they experience regularly based on their identity and status in society. Even when minority veterans have been discharged under other than dishonorable conditions, they have been ostracized from the veteran community, turned away from the VA, been prevented from using their hard-earned benefits, and made to feel as if their service was underappreciated and undervalued by the very people with whom and for whom they served. Bad paper discharges compound the already unjust and inequitable social and structural conditions which categorically disadvantage minority veterans.

Taken together, these various barriers explain the higher rates of homelessness, substance abuse, incarceration, and death by suicide among minority veterans. The discrimination that exists in the process of deciding whether a minority veteran receives a bad paper discharge is inextricable from larger societal attitudes and structures which foster and perpetuate racism, sexism, homophobia and transphobia, and religious discrimination. The structural barriers that come with a bad paper discharge are not mere quality of life abatements for our nation’s minority veterans. They are, unfortunately and regularly, a matter of life and death. We would strongly recommend that the Departments of Defense and Veterans Affairs, and their corresponding Administrations, take special care in working with bad paper and entry-level separated veterans as they transition

²⁰ Alai, P. 2017. “Access to Mental Health Services for Other Than Honorable Discharged Servicemembers.” Undersecretary for Health Memorandum. Washington, DC: Department of Veterans Affairs. www.va.gov/vhapublications/ViewPublication.asp?pub_ID=5350.

back into civilian life. We must end the stigma and circumvent the barriers if we are truly going to serve all that have worn the cloth of this uniform, and support their dependents and survivors, as is our community's charge.

* * *

One again, I thank you for the opportunity to submit the statement for the record. My team and I look forward to continuing to work with you and your offices, and to support your efforts in better serving our minority veteran populations, their families, and their care teams. If we can be of further assistance, please feel free to contact me directly through the information provided below.

Very Respectfully,

/s/

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