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## 'Don't ask, don't tell' procedures change

By Ed O'Keefe  
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"Don't ask, don't tell" is back on the books, but just five senior military officials will be able to discharge service members for violating it, the Pentagon said Thursday. The change in policy makes it tougher to remove gay troops by prolonging the review process and adding additional layers of scrutiny before making a final decision, senior military officials said.

Effective immediately, Air Force Secretary Michael B. Donley, Army Secretary John M. McHugh and Navy Secretary Ray Mabus will have to consult with the Pentagon's top lawyer, Jeh Johnson, and the undersecretary of defense for personnel, Clifford Stanley, before removing anyone for violating the ban on gays serving openly in the military, according to a memo Stanley wrote Thursday.

"This latest twist highlights the legally uncertain period in which we now find ourselves," Stanley said in his memo.

A senior military official familiar with the matter said, "This is no way puts in place a moratorium, nor does it change the legal standard by which we'll judge these cases."

But the official conceded that the review process will take longer because a greater number of officials will have to review a case before the service secretaries make a final decision.

"We're not raising the bar or lowering the bar, the bar has always been high, but we're going to put the separation authority in fewer, more senior hands who will be most up to date on this changing legal landscape," said the official, who was not authorized to speak on the record.

The policy is in effect until further notice, meaning it could end if the federal courts issue another injunction or if Congress repeals the law. Additional guidance regarding military recruitment policy is forthcoming, the Pentagon said.

Aubrey Sarvis, executive director of the Servicemembers Legal Defense Network, called the decision "a major, constructive development for gay and lesbian service members." SLDN represents service members in cases involving the "don't ask, don't tell" law.

The change means officers and enlisted personnel will both undergo a more serious review by the most senior military officials.

"Essentially the Pentagon appears to be saying to the court and to service members: 'We will treat enlisted service members the same way we now treat all officers,' " Sarvis said.

Previously, more junior military officials made determinations about discharging enlisted service members while the service secretaries made decisions about discharging officers.

On Wednesday, a three-judge panel of the U.S. Court of Appeals for the 9th Circuit temporarily reinstated the law until it could consider the Obama administration's appeal of a permanent injunction.

The Justice Department wants the appeals court to reverse U.S. District Judge Virginia A. Phillips's ruling in September that the law and policy is unconstitutional.

She issued the injunction last week that required the military to stop enforcing the ban.

Elaine Donnelly, executive director of the Center for Military Readiness and one of the most vocal opponents of repealing the policy, blasted the new orders.

"There's no reason for the Department of Defense to create such turbulence," she said.

"There is no good reason to do that. . . . There's only one possibility behind this: presidential politics. The election is two weeks away, and the president is trying to curry favor with his [gay and lesbian voting] base."

In his memo, Stanley also cautioned service members that altering their behavior or revealing their sexual identity "may have adverse consequences" as the policy makes its way through the courts. The Pentagon said it continues to enforce a policy of not asking service members or military applicants about their sexual orientation and of treating all uniformed personnel with respect.

President Obama is opposed to "don't ask, don't tell" but says he wants Congress to repeal the law. Lawmakers might do so during a lame-duck session after the midterm elections.