



VETS HELPING VETS SINCE 1974

Senate Veterans Affairs Committee Hearing – July 29, 2015

Testimony by Michael Blecker, Executive Director of Swords to Plowshares

INTRODUCTION

Good afternoon Chairman Isakson and all of the Committee members. Thank you for holding this hearing and for the concern it demonstrates regarding homelessness among our nation's veterans.

My name is Michael Blecker and I am Executive Director of Swords to Plowshares, a veterans service organization based in San Francisco. I have been with Swords to Plowshares since 1976 and I am a veteran myself having served as a combat infantryman in Vietnam. Swords to Plowshares is in its 40th year of service providing wrap-around care to veterans in the San Francisco Bay Area. In our dual role as a community-based service provider and advocacy organization, we are acknowledged by many, including yourselves, as a national model of care. I am here before this commission today to discuss the successes and challenges we have experienced carrying out the mission of VA's homeless programs throughout the years and today. I am here to recommend improvements to VA's homeless programs that will better equip communities like San Francisco and experienced providers like Swords to Plowshares with the tools they need to prevent and significantly reduce veteran homelessness.

Swords to Plowshares has been at the forefront of providing residential services and an array of ancillary support services to homeless and extremely low-income veterans for 40 years. Our organization has extensive experience with supportive housing programs for veterans – including chronically homeless veterans and those with severe mental illness. We engage in homelessness prevention, permanent housing placement and other programs that support at-risk and homeless veterans and their families. Our model of care is based on the philosophy that the obstacles veterans face—including homelessness, unemployment and disability—are interrelated and require an integrated network of support within the community and continuum of care.

- Since our inception in 1974, Swords to Plowshares has helped veterans, including homeless veterans, overcome barriers to employment and help them translate their skills learned in the military to civilian careers. Additionally, we have been an operator of the Department of Labor's Homeless Veterans Reintegration Program since the 1990s.
- In 1976, Swords to Plowshares became the first organization in 32 years to become certified to represent veterans with disabilities with VA disability claims and military discharge upgrades. We have successfully helped thousands of veterans – primarily homeless and low-income veterans—access the VA benefits and medical care they have rightfully earned, but also turn their lives around. It is a result of our model in which our benefits advocacy services are nested within a continuum of care to stabilize at-risk and homeless veterans, address their basic needs and keep them involved while we help them through the legal process.

- Since 1986, we have operated a Drop-in Center that provides critical care to help homeless and low-income veterans improve their health, wellness and long-term stability. The Drop-in Center is the main point of entry to our continuum of care for many of the homeless veterans we serve.
- Swords to Plowshares has continuously provided needed services in a housing setting since 1987. Our transitional and permanent residential programs, combined with a continuum of care, have provided thousands of homeless veterans with the stability and support they need to rebuild their lives. We continually expand supportive housing to meet the needs of veteran families, aging veterans and those with disabilities. We currently operate four Permanent Supportive Housing programs and three Transitional/Stabilization Housing Programs for 476 veterans at any given time.

Transitional & Stabilization Housing: Swords to Plowshares began its first transitional housing program in San Francisco in 1987. Initially serving homeless veterans exiting the VA Medical Center and funded by an HCMI contract, Swords to Plowshares has been operating an array of successful transitional housing modalities for homeless veterans since that time. Currently we provide transitional housing to 130 veterans at a time with nearly 80% achieving successful outcomes (i.e. moving obtaining permanent housing). This outcome is 15 percent greater than the national average.

- Since 2004, we have operated a 6-month stabilization program for veterans with serious mental illness being discharged from inpatient psychiatric settings, providing residential support for 22 veterans at a time
- Since 2008, we have operated a Special Needs – Chronically Mentally Ill program at our Treasure Island facility for 20 Chronically Mentally Ill veterans at a time.
- In 2014, we opened a 19-bed Safe Haven program in San Francisco, serving ‘treatment resistant’ homeless veterans.

Permanent Supportive Housing: As an early adopter of the Housing First strategies, Swords to Plowshares opened the first site-based Permanent Supportive Housing program for veterans in the nation in 2000. Currently we operate 346 Permanent Supportive Housing units at four sites. Through these years of experience as a community-based organization, Swords to Plowshares fully understands the challenges that veterans with significant barriers face in obtaining and maintaining housing.

- Since 2012, we have operated 12 units of Permanent Supportive Housing for veteran families on Treasure Island.
- In 2012, we collaborated with City partners to open 75 units of Permanent Supportive Housing for homeless veterans with disabilities at Veterans Commons, a historical site located at 150 Otis Street in San Francisco.
- In 2014, the San Francisco Mayor’s Office of Housing contracted with us to operate a new Permanent Supportive Housing site for 130 chronically homeless veterans.

PROGRESS ACHIEVING THE VA'S 5-YEAR PLAN:

We know that helping homeless veterans is not a one-size fits all approach. For more than two decades the only program to meet the needs of homeless veterans was Grant & Per Diem. But we know that residential treatment is not the right fit for every veteran. In 2009, when the VA pledged to end veteran homelessness by 2015 we wondered if it would ever be possible.

Signature programs that were greatly expanded or newly created for this effort, the HUD-VASH and Support Services for Veteran Families (SSVF) programs, have helped to make significant strides and need to continue. HUD-VASH addresses the long-standing need to house and support chronically homeless veterans while SSVF is preemptively addressing homelessness instances - that we know from the experiences of Vietnam veterans - can snowball into long-term struggles including chronic homelessness.

We have made great progress towards ending veteran homelessness since the beginning of the five-year plan to end veteran homelessness. Some cities, particularly those with sufficient affordable housing stock, are reaching what has been termed as a 'functional zero' or 'operational zero' in homeless veterans. Yet many more communities are not there yet, and many will likely be unable to meet this goal by the end of this year. Based on our experience, warm weather climates like San Francisco will never truly get to zero. This is not for a lack of effort. In San Francisco, unprecedented cooperation between the nonprofit sector, the City & County, and federal partners has been ongoing since 2011. We are seeing significant progress, even with the highest housing costs and lowest housing stock in the nation. Following best practices, we have created a Homeless Veteran Registry, which prioritizes those with the greatest vulnerability and those at risk of dying on our streets, for the permanent supportive housing resources that the City has allocated or created. It is notable that the in-flow of homeless veterans into San Francisco, indicated by new names being added to the list, results in two new names of homeless veterans being added for every three to four veterans that we are able to get housed. We assume that this is the case in other areas with warmer climates, scant housing availability, and high ongoing homeless census. To further illustrate this, San Francisco's January 2015 *Point in Time* count indicated a net reduction in homeless veterans to 118 individuals from the January 2013 count. Our agency alone has permanently housed many times that number over the 24-month period. However, this process is two steps forward, one step back.

Each VA homeless program plays an important part of our nation's strategy to prevent and end homelessness, but there are challenges that remain.

GRANT & PER DIEM

Successes: For more than 20 years, GPD has helped many homeless veterans gain the stability they need to overcome addiction, homelessness and gain self-sufficiency. The program allows providers like Swords to Plowshares to help veterans from further de-compensating and it gives us the time needed to help them stabilize and to identify permanent housing options for their future. Before SSVF and HUD VASH the challenge was how to address permanent housing for those veterans approaching the maximum length of stay in the program. Thankfully, those programs have not only significantly reduced the average length of stay and provided an avenue

for program participants to exit to permanent housing versus continue to be marginally housed or worse.

Additionally, the Special Needs program not only provides a life line for many severely compromised veterans and those who are the hardest-to-house, but has also provides a lifeline for nonprofits. The Special Needs grant provides significantly more funding to cover staffing needs which is currently inadequate under GPD. The Special Needs program has provided VA staff on-site to help provide support for those veterans with the highest level of need.

Challenges: In our experience we have seen a higher level of acuity and veteran program participants with more severe physical and psychological conditions. There are more Vietnam-era veterans suffering from age-related illness and compounded health conditions from years of homelessness and poverty. Additionally, current-era veterans are often struggling with multiple disabilities such as traumatic brain injury, PTSD and other service-connected physical and psychological injuries. For these reasons, we need adequate services staff on-site to ensure transitional housing program participants are provided with an appropriate level of care.

Yet, despite the acuity of GPD and Special Needs program participants increasing, VA staff coverage on-site has been increasingly unreliable and inadequate. It is critical to have access VA staff on-site who can access VA medical records and coordinate care for the severely compromised veteran residents we serve.

If not for the Special Needs contract, GPD would not provide adequate funding to cover the costs of service delivery. We would not be able to serve our veteran clients and have 24-hour staff coverage which is currently funded under the Special Needs contract. Additionally, Swords to Plowshares acquired free property to operate our Transitional Housing Program, which is a major factor that allows us to operate the program.

Recommendations: The VA should continue funding the GPD and Special Needs programs and negotiate GPD rates based on actual operating costs for providers to ensure programs have adequate services staff and funding to pay for rental or other property and operational costs, particularly in communities with high rental costs. Additionally, VA needs to ensure that adequate VA staff are on-site and ensure they fill vacant positions.

Many veterans exiting GPD programs into permanent housing are doing so with assistance from the HUD VASH and/or SSVF program. Many of these veterans need on-going case management services following their exit from GPD. Rule changes within the SSVF program to allow for a ‘warm hand-off’ and for ongoing case management to continue as long as they are needed for the individual veteran would significantly help in preventing recidivism. However, for those veterans exiting GPD programs without the support of VA Homeless Programs, flexibility to continue case management after the veteran has exited would significantly help in keeping high-need veterans housed. The length of case management after veterans exit GPD programs should be determined on a case-by-case basis.

HUD VASH

Successes: Over recent years, the VASH program has housed tens of thousands of homeless veterans and the program should continue its expansion until we have sufficient slots for all chronically homeless veterans still residing on our streets.

Challenges: While HUD VASH has been successful in housing thousands of veterans, many of those remaining are the harder to house, chronically homeless with entrenched mental health, substance abuse, and physical health challenges. This is the crux of the job left before us.

In San Francisco and elsewhere where there is a limited stock of affordable housing and heated rental markets, the only way that we can house many of those veterans with the highest needs is to do so in larger, congregate settings, which we need to create. Swords to Plowshares has been operating this type of congregate permanent supportive housing program for over 15 years, prior to VASH availability.

VA Medical Centers across the country are having difficulty on-boarding and retaining sufficient numbers of social workers to provide services to veterans with VASH vouchers. In addition to general VA staff retention, in these settings that rely on HUD VASH subsidies and staffing, we have seen that VASH staff have a very difficult time in providing the needed coverage. These facilities require for the safe operation of that housing, which include the need to schedule shifts into the evening and on weekends. Many emergency situations happen after normal business hours, so staffing patterns need to reflect this reality. With the VA unable to provide this broad clinical coverage, it leaves the operators like Swords to Plowshares struggling to meet the need, and often without any funding to do so. In addition to clinical staff being available during non-business hours, the VA practice of ‘graduating’ VASH clients from case management, thereby reducing staffing levels, is very problematic in these settings. Given the acuity of veterans living in these communities, as a whole, ongoing on-site clinical staffing is needed throughout the life of the project. We have heard identical stories from permanent supportive housing providers in Los Angeles, Houston, and New York City.

Recommendations: We recommend that VA mandate case management to be contracted out with the community-based system of care. Community-based providers delivering the case management portion would save in costs, improve flexibility with scheduling and other service delivery components, be better integrated with community-based housing operators wrap-around services, and leverage the expertise of community providers.

Future allocations of HUD VASH is critical. We recommend increasing HUD VASH subsidies in order to sustain our progress housing veterans.

SUPPORTIVE SERVICES FOR VETERAN FAMILIES

Successes: The Supportive Services for Veteran Families program is doing tremendous work helping to shut the front door of veteran homelessness through Rapid Re-Housing for those recently homeless and Eviction Prevention for those most at risk of becoming homeless.

Swords to Plowshares has developed the necessary infrastructure that quickly and efficiently houses veterans. Organizationally, we have learned from the challenges we faced in the early days of the program and have established roles, responsibilities and processes that have been tested and now operate efficiently and effectively. Our community partnerships are robust and productive.

Challenges: While the SSVF Program has been very successful in housing veterans, guidelines have changed multiple times since the inception of the program including mid-year changes which dramatically impact community providers. Additionally, SSVF limitations regarding pre-paying rent, providing limited case management and slim allocations for delivery continue to pose challenges.

In heated rental markets like San Francisco, rent is too expensive for most veterans to afford. In fact, 45% of homeless veteran households in San Francisco needed to move out of the county in order to secure permanent housing that was somewhat affordable. Many of those veterans who were able to remain in San Francisco, moved into one of Swords to Plowshares' Permanent Supportive Housing sites, had a housing subsidy or moved into Single Room Occupancy units within their budget.

The stock of affordable housing is dismally low in the San Francisco Bay Area. Therefore, it is incumbent upon us to forge lasting and meaningful relationships with property owners and managers. A considerable amount of staff time is allocated to finding suitable and affordable rental units. However, case managers and social workers are not skilled in real estate and negotiating with landlords. However, we are typically asking landlords to accept Below Market Rates for a population that is difficult to house and present certain predictable risks. In markets such as ours, we need the ability to reduce the financial risk to property owners. We need continue the current eviction prevention allowances and enhance rental assistance guidelines at move-in to incentivize landlords to take on this risk. We also need to provide some level of financial support when evictions cannot be prevented.

Recommendations: Funding for the SSVF program must continue beyond 2015 in adequate proportion if we are to maintain the progress that this nation has made in reducing veteran homelessness. Otherwise, we will certainly see the numbers change trajectory and increases in veteran homelessness will surely re-occur. With the force reduction currently underway, and the tens of thousands of veterans separating from the military every year under normal circumstances, the SSVF program can be the preventative lynch pin needed to assure their successful transitions to civilian life.

- **Program flexibility to improve outreach and engagement with landlords:** Many landlords are hesitant to rent to veteran clients, particularly when many veterans utilizing SSVF have poor credit, extremely low-income, histories of homelessness, drug and alcohol abuse, mental illness, incarceration and often evictions. They are not ideal tenants in many cases and it is incumbent upon service providers to cultivate relationships with landlords and provide incentives for them to rent to veterans. For example, paying for up to three months rent in advance would help to attract more landlords. SSVF staff need adequate training on

engaging with landlords or outside expertise from a realtor. Community partners operating SSVF need more flexibility to incentivize landlords to rent to veterans and need funding to hire or contract with realtors who can broker relationships and negotiate lease agreements.

- **Increase funding for Rep Payee services.** SSVF provides funding for staff to provide money management services to clients for up to 12 months. In addition to extending the 12-month period for those veterans who need the ongoing service in order to remain housed, many providers like Swords to Plowshares also provide Representative Payee services to SSVF clients, despite a lack of dedicated funds to provide these services which these veterans are mandated to utilize. In fact, we currently have more veterans enrolled in Representative Payee services than those enrolled in temporary money management under SSVF.
- **Increase allocation of Eviction Prevention funds and/or allow for more flexibility.** We have experienced an increase in the number of requests for Eviction Prevention support. Certainly and rightly, the focus up to this point has been on Rapid Re-housing more so than Eviction Prevention. However, the longer-term goal is to ensure that episodes of homelessness among veterans are infrequent and short-lived. That means that Eviction Prevention will play a larger role in sustaining the gains we have made and preventing recidivism. Moving forward, VA needs to allocate a larger percentage of Eviction Prevention dollars/enrollments to address homeless prevention among those who were assisted with Rapid Re-Housing services.
- **Flexibility for length of case management period:** SSVF currently requires that operators discharge veterans after 90 days. Support and case management for 90 days is not sufficient for many veterans – particularly those who have minimal income, long histories of homelessness, drug and alcohol abuse and mental illness. Limiting the length of time community-based operators can provide case management increases the risk for recidivism. The length of case management should be extended to up to 12 months or as needed for veterans with high acuity.
- **Flexibility for use of service dollars:** Many homeless veterans need on-site supportive services in order to remain in permanent housing, but there are limited Permanent Supportive Housing sites and units. The California Association of Veteran Service Agencies championed Prop 41, the California Veterans Housing and Homeless Prevention Bond Act, to authorize \$600 million in bonds to fund supportive housing for homeless veterans. Prop 41 funds will go a long way in the physical development of housing units, however, community-based service providers like Swords to Plowshares need to identify funding to cover the cost of on-site services staff, as well as identify housing subsidies for veteran residents. If the VA changed regulations under the SSVF program to extend the case management period for those veterans who are at higher risk for recidivism – those veterans who need to live a supportive housing community – it would go a long way in covering the operational cost to have services staff on-site.

In addition to these recommendations, an effective response to the problem of veteran homelessness will require that we make all VA homeless programs available to the veterans who need it most. On both counts, the VA has made great progress but has not yet done all it can do.

REACHING THE MOST VULNERABLE VETERANS

The VA has placed some of the most vulnerable veterans beyond its reach. It has done this by creating eligibility rules that exclude a large number of former servicemembers, including some who are most at risk of homelessness. We will not solve the problem of veteran homelessness until all veterans benefit from the care and support that they deserve and require.

How servicemembers are excluded from VA services: Not all servicemembers are eligible for VA care and services. Some are excluded by rules Congress enacted in 1977 that prohibit the VA from assisting servicemembers discharged for certain kinds of conduct.ⁱ This includes veterans discharged by General Court-Martial, essentially a felony-level conviction, and some veterans discharged because of prolonged periods of unauthorized absence.

Others are excluded because of additional rules that the VA created itself.ⁱⁱ The VA's rules presumptively exclude all veterans with a punitive discharge – those that were discharged by a court-martial – as well as all veterans who receive non-punitive administrative discharges for misconduct.ⁱⁱⁱ If these veterans correctly apply for an eligibility review, the VA will evaluate their service according to a series of criteria that the VA itself created.^{iv} If the VA decides that the veteran failed on one of its eligibility tests, then the VA may withhold housing services, in addition to health care, compensation for disabilities that arose during service, and low-income pension. In fact, the VA will not even address that person as a “veteran.”

All of these veterans signed up or were drafted and served at a time in our history when most people don't do so, and the VA should withhold care and services only in the most severe cases of truly dishonorable service. The Congressional rules honor this by disqualifying eligibility in limited, specific circumstances. Unlike the rules made by Congress, however, the VA's rules are vague and end up excluding large numbers of veterans.^v

The VA's standards fail to consider several common-sense issues:

- **Mental health.** We know that PTSD, TBI, and other mental health conditions can lead to behavior problems that look like misconduct to military commanders: for example, lack of impulse control, suicidality, or self-medication through drugs or alcohol.^{vi} But if this behavior results in misconduct discharge, the VA will only grant eligibility if the person was fully “insane”^{vii} or if they were so impaired that they did not comprehend their own actions.^{viii} In practice, this does not typically address PTSD and TBI, the most common mental health injuries from service.
- **The length and quality of prior service.** The VA's rules consider the quality of service only if the discipline issue leading to discharge was a single “minor” event.^{ix} In that case, the VA has a very high standard for how good the prior service must be: the VA has said that even a combat deployment is not inherently “meritorious” because that was the basic duty expected of the servicemember.^x Its rules do not consider the duration of prior service.
- **Mitigating factors.** The rules do not consider whether there are family, financial, or other personal circumstances that might explain the behavior that led to discharge.^{xi}

We routinely see veterans who have served in combat, sometimes on multiple tours, who have severe mental health problems from service, and who are turned away from care by the VA because of its discretionary exclusion rules. The VA has denied eligibility to 78% of the servicemembers who it treats as presumptively ineligible and who applied for benefits. We believe that this is too high. Every one of them served, and every one of them went to the VA for help. Turning them away should be done rarely and deliberately.

Who is affected: These rules exclude a large number of veterans. Since 2001, over 135,000 servicemembers were discharged in a way that made them presumptively ineligible for VA benefits upon discharge, according to the VA's eligibility rules.^{xii} For those that discharged recently, approximately 50% had deployed to a contingency operation, but were ineligible for VA services upon discharge.^{xiii}

The large majority of them – about 85% – were discharged for conduct that was less severe than the Congressional eligibility rules.^{xiv} This means that they may or may not be eligible, depending on how the VA applies its own criteria. However, the VA has conducted its eligibility review for only 10% of these servicemembers.^{xv} The remaining 90% will be turned away if they ask the VA for help today, simply because the VA has not yet completed its eligibility review.

These are some of the most vulnerable of all veterans. The same mental health trauma that may have led to discipline issues in service will stay with them after service. And because they are turned away from VA care, those conditions are untreated. This is not speculation: Marines who deployed to combat and who received a PTSD diagnosis were seven times more likely to get a misconduct discharge than Marines who did not have a PTSD diagnosis^{xvi}; and the suicide rate for veterans excluded by the VA is twice as high as the suicide rate for other veterans.^{xvii} If we needed a red flag, this is it.

We know where this leads, because we saw the same thing happen to veterans of prior eras. Vietnam-era veterans who were excluded from VA care have spent their entire lives dealing with mental health trauma without VA medical treatment. If they have been too disabled to work, they got by without income support from the VA. This is unfair and unwise.

The impact on veteran homelessness: These exclusion rules hit homeless veterans the hardest. In our housing programs, about 15% of homeless veterans are excluded from VA services. Informally, other housing providers and VA personnel report similar numbers. This tells us two things.

First, it means that veterans excluded from VA services are at elevated risk of homelessness. Only nine percent of servicemembers are presumptively ineligible for VA services,^{xviii} yet 15% of homeless veterans are ineligible. This means that veterans excluded from the VA are about 50% more likely to be homeless. We know some of the reasons why this happens: their disabilities are not adequately treated, and they can't receive VA income support if they are too disabled to work. We shouldn't be surprised that when we turn away veterans in need that they end up on the street.

Second, it means that we will not solve the homeless veteran problem until we include these veterans. That 15% will be the last and the hardest group to assist. Many are chronically homeless, as they have lived for decades on their own without health care or income support from the VA. Helping them off the street will require all the resources that the VA can mobilize. We can't afford to be holding back.

What the VA is doing well, and what can be done better: The VA has long recognized the importance of this part of the homeless veteran problem. Since the 1990s it has extended its GPD emergency and transitional housing program to all veterans with administrative discharges, even if they are not otherwise eligible for VA benefits. Beginning last year it expanded eligibility to include veterans with anything but a fully Dishonorable discharge, even if they are not eligible for other VA benefits. It applies the same policy to its SSVF Rapid Re-housing program. This is the right thing to do.

However, last month the VA OIG raised questions as to the legality of this policy and the VA has committed to obtaining a legal review.^{xix} We are very concerned that the VA will limit eligibility based on that review. This would make it very difficult to meet the Government's goal of ending veteran homelessness.

Moreover, the VA had never extended this eligibility to its HUD-VASH program. A permanent solution to veteran homelessness will require permanent housing options. Homeless veterans will need to have access to long-term housing, including income support if they are too disabled to work.

There are two ways to address this. One is for the VA to change its discretionary eligibility rules. Of the people excluded from VA services, only about 15% are excluded based on Congressional standards. The remaining 85% are excluded based on the VA's own rules. It can change these, and we believe that it should do so.^{xx}

The second way to address this gap is for Congress to mandate a change to the VA's rules. Senator Murray has introduced Senate Bill 1731 this term, a bill that would waive the VA's discretionary exclusion rules for the purposes of GPD program eligibility. We strongly support this bill. But we will not end veteran homelessness through the GPD program alone. We will need the preventative resources of the SSVF program, the long-term resources of the HUD-VASH program, and the comprehensive health care and disability assistance that only the VA can provide. This requires that the VA's exclusion rules be brought more closely in line with the Congressional rules. If the VA is unwilling to change its rules on its own, then Congress should rewrite those rules itself.

CLOSING:

Homelessness became an inescapable byproduct of the Vietnam War and our failure as a nation and a community to provide strong support. While Vietnam veterans remain a significant portion of the homeless veteran population, we have a lingering and constant reminder of how we failed them. The hard lessons of Vietnam, and perhaps the legacy of Vietnam veterans, are the homeless fallout and our ability as a nation to make meaningful strides to end homelessness, for those veterans as well as our newer generations whose trauma has manifested at a much quicker

pace. Yet it remains that Iraq and Afghanistan veterans, some home for several years, find their troubles mounting and slip into the shadows that the veil of homelessness so easily provides.

At the end of the day, we must end up with a system of housing-related services and supports that will allow each locality to promptly and effectively address those veterans that are at risk or who become homeless, thereby ending the phenomena of chronic homelessness. This system includes adequate Permanent Supportive Housing resources for the most vulnerable, senior housing supports for the large number of very low income Vietnam-era veterans aging into the need for senior services, Transitional and Stabilization housing supports such as the Grant & Per Diem and Health Care for Homeless Veterans programs, and maintaining safety net SSVF programs to close that front door to homeless, which is where the most cost-efficient intervention can be made.

We were invited to testify based on our expertise and experience in providing these services. I urge you to listen to those of us who have been on the front lines of providing services. We are providing the services needed based on our experience operating within our veteran community.

ⁱ 38 U.S.C. 5303(a); 38 CFR 3.12(c).

ⁱⁱ Most VA benefits are provided only to “veterans” and their spouses or dependents. Congress defined “veteran” to include only those servicemembers who were discharged “under conditions other than dishonorable.” 38 U.S.C. 101(2). Congress did not define what conditions would count as “dishonorable.” Therefore the VA has been free to make its own standards, 38 C.F.R. 3.12(a, c).

ⁱⁱⁱ There are two kinds of punitive discharges, which can only be issued by courts martial: Dishonorable and Bad Conduct. There are three kinds of Administrative discharges, which are not issued by courts martial: Honorable, General Under Honorable Conditions, and Other Than Honorable (formerly called Undesirable). The VA has decided that it will treat Honorable and General discharges as presumptively eligible for “veteran” status. However servicemembers with any of the other characterizations, including the Other Than Honorable characterization that does not require any court martial, are ineligible unless the VA includes them based on its individual review. 38 C.F.R. 3.12(a).

^{iv} 38 C.F.R. 3.12(b, c).

^v For servicemembers discharged in FY2011, about 1,400 are excluded based on Congressional standards, based on DOD discharge data and court martial records. However, the VA’s presumptive exclusion criteria exclude 8,686 people discharged that fiscal year. Although about 4.5% of those people have since been found eligible based on a VA review, the VA’s rules still exclude significantly more people than required by statute.

^{vi} Milliken CS, Auchterlonie JL, Hoge CW. Longitudinal Assessment of Mental Health Problems Among Active and Reserve Component Soldiers Returning From the Iraq War. *JAMA*. 2007;298(18):2141-2148. doi:10.1001/jama.298.18.2141; Highfill-McRoy RM, Larson GE, Booth-Kewley S, Garland CF. Psychiatric diagnoses and punishment for misconduct: the effects of PTSD in combat-deployed Marines. *BMC Psychiatry*. 2010 Oct 25;10:88. doi: 10.1186/1471-244X-10-88. PubMed PMID: 20974004; PubMed Central PMCID: PMC3020681.

^{vii} 38 C.F.R. 3.12(b).

^{viii} One of the VA’s bases for exclusion is when misconduct was “willful and persistent.” 38 C.F.R. 3.12(d)(4). And misconduct was “willful” unless the person lacked the mental capacity to make an intentional act. 38 C.F.R. 3.1(n)(1).

^{ix} One of the bases for inclusion is when misconduct was “willful and persistent”, however the VA will overlook that misconduct if the misconduct was “a minor offense” and service was “otherwise honest, faithful and meritorious.” 38 C.F.R. 3.12(d)(4).

^x See e.g., Title Redacted by Agency, 03-09 368, Bd. Vet. App. (June 19, 2009).

^{xi} The Court of Appeals for Veterans Claims has held that the VA is prohibited from taking these factors into account, because there is no provision in the regulation permitting it. *Winter v. Principi*, 4 Vet. App. 29 (1993). Individual adjudicators do sometimes take these factors into account anyway, on their own initiative.

^{xii} Servicemembers with Other Than Honorable, Bad Conduct, and Dishonorable discharges are presumptively ineligible for VA benefits. 38 C.F.R. 3.12(a). Discharge data from Department of Defense FOIA release.

^{xiii} Deployment and discharge data from Department of Defense FOIA release.

^{xiv} Based on FY2011 data. There were 8,686 misconduct discharges in FY2011. In that period, there were 726 discharges by General Court-Martial. This corresponds to the statutory bar at 38 CFR 3.12(c)(1) (discharge by General Court-Martial). There were 548 discharges for Interservice Separation Code 1075, “AWOL or Desertion”. This corresponds to the statutory bars at 38 CFR 3.12(c)(4) (discharge for desertion) and 38 CFR 3.12(c)(6) (discharge for AWOL more than 180 days). It is overinclusive because the statutory bar includes an exception for “compelling circumstances,” as discussed infra. The remaining statutory prohibitions are relatively uncommon. Because the second figure is overinclusive, and because the remaining categories of prohibition are rare, it is safe to conclude that the total number of people encompassed by the statutory bars in FY2011 is approximately 1,274, or 15% of all misconduct discharges. This data was obtained from the Annual Report of the Code Committee on Military Justice FY 2011 and from a DOD FOIA response.

^{xv} Data provided by VBA analyst.

^{xvi} Highfill-McRoy RM, Larson GE, Booth-Kewley S, Garland CF. Psychiatric diagnoses and punishment for misconduct: the effects of PTSD in combat-deployed Marines. *BMC Psychiatry*. 2010 Oct 25;10:88. doi: 10.1186/1471-244X-10-88. PubMed PMID: 20974004; PubMed Central PMCID: PMC3020681.

^{xvii} Kang et. Al., Suicide risk among 1.3 million veterans who were on active duty during the Iraq and Afghanistan wars, *Annals of Epidemiology* (Feb, 2015).

^{xviii} Discharge data from Department of Defense FOIA release.

^{xix} Department of Veterans Affairs Office of Inspector General, “Veterans Health Administration, Audit of the Homeless Providers Grant and Per Diem Program Management Oversight” (June 29, 2015) available at <http://www.va.gov/oig/pubs/VAOIG-14-01991-387.pdf>.

^{xx} Because Congress has provided the VA with no guidance on how to define a discharge “under conditions other than dishonorable”, the VA has wide authority under the Administrative Procedure Act to define this term in its regulations. This includes wide authority to repeal or modify the definition it has already adopted.