

United States Senate

WASHINGTON, DC 20510

July 18, 2016

The Honorable John McCain
Chairman
Senate Committee on Armed Services
228 Russell Senate Office Building
Washington, DC 20510

The Honorable Jack Reed
Ranking Member
Senate Committee on Armed Services
228 Russell Senate Office Building
Washington, DC 20510

Dear Chairman McCain and Ranking Member Reed:

As you begin conference discussions on the National Defense Authorization Act (NDAA) for Fiscal Year 2017, we write to request that you maintain the provisions in Section 536A of the Senate bill, S. 2943, in the final conference report. Section 536A has strong, bipartisan support and is a necessary step forward to ensure that certain veterans suffering from mental traumas such as post-traumatic stress disorder (PTSD) or traumatic brain injury (TBI) have access to earned benefits.

As you know, the Military Department Boards for Correction of Military/Naval Records (BCM/NR) have received a significant number of petitions in recent years to upgrade less than honorable discharges based on claims of previously unrecognized PTSD. Less than honorable discharges, colloquially known as “bad paper” discharges, are often given to separating servicemembers for instances of minor misconduct, including being late to formation and missing scheduled appointments. These behaviors have been shown to be associated with PTSD, TBI, and other trauma-related conditions, with one estimate suggesting that discharges for misconduct are 11 times more likely after a PTSD diagnosis.

Recognizing that many former servicemembers suffer from undiagnosed stress-related conditions, former Defense Secretary Chuck Hagel issued policy guidance in 2014 that instructed the BCM/NRs to give “liberal consideration” when reviewing upgrade petitions when evidence indicates that PTSD might have contributed to the misconduct that led to a less than honorable discharge. A recent investigation by *National Journal* found that roughly 318,000, or 13% of all Post-9/11 veterans, have separated with a less than honorable discharge, even as the Department of Veterans Affairs estimates that up to 20% of these veterans have PTSD in a given year. Section 536A of S. 2943 codifies and builds upon existing policy by applying the liberal consideration standard to the Discharge Review Boards (DRB). This section also goes further by extending the principles of the Hagel memo to include PTSD or TBI that is related to military sexual trauma. The need for this liberal consideration standard remains all too clear as the number of returning Post-9/11 veterans continues to increase.

We are pleased that House Committee on Armed Services included language in their report on the House bill, H.R. 4909, that “encourages the Department to extend the ‘liberal consideration’ standard...to all discharge upgrade cases considered by Discharge Review Boards,” in addition to the BCM/NRs. However, despite the inclusion of such language in the committee report, we believe it remains crucial to codify this standard for both Boards into law. Section 536A of the Senate bill will help ensure proper due process for servicemembers whose condition should have been diagnosed and properly considered prior to their discharge from the military.

Thank you for your consideration of this request, and we look forward to working with you to ensure that those veterans who have been erroneously discharged have every opportunity to present the facts of their case and reinstate the benefits they have earned.

Sincerely,



Gary C. Peters
United States Senator



Thom Tillis
United States Senator



Kirsten Gillibrand
United States Senator



Steve Daines
United States Senator



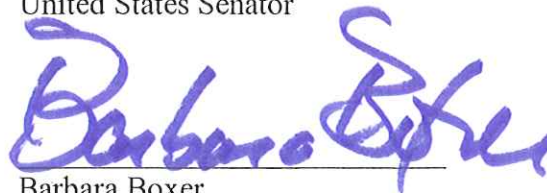
Tammy Baldwin
United States Senator



Mark Kirk
United States Senator



Debbie Stabenow
United States Senator



Barbara Boxer
United States Senator