

It Takes a Family: How Military Spousal Laws and Policies Impact National Security

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INTRODUCTION

Military spouses play a crucial role in military readiness. The military cannot preserve U.S. security and peace without adequate personnel, and so must cultivate and retain talent among its ranks. Military spouses and the professional and educational opportunities available to them while their spouses are active service members, strongly influence service members' decisions to stay or leave the armed forces.¹ In this paper I analyze how the opportunities and resources available to military spouses affect military readiness and preparedness. The lack of educational and professional opportunities currently available to military spouses negatively impacts military readiness by prompting members to leave the service to seek benefits and resources elsewhere for themselves and their spouses.² The military and other government institutions must address the factors that are restricting military spouses' ability to work in the jobs they seek.³ For military spouses to reach their full potential in obtaining education and work opportunities, it is necessary to enact certain legal and policy changes.⁴

To understand what changes will adequately address the needs of the military spouses, it is necessary to understand what characteristics these changes must entail. In Part I, I explore the

¹ In a study conducted on the factors affecting retention of naval aviators, there were clear indications that an aviator's career intention was significantly dependent on the spouse's occupational status. See Gerald D. Gibb et al., *Factors Affecting Career Retention Among Naval Aviators*, 2 J. BUS. PSYCHOL. 321, 322 (1988). See also, Lisa Wood, *Family Factors and the Reenlistment Intentions of Army Enlisted Personnel*, 21 INTERFACES 92, 104 (1991) (discussing a study examining the reenlistment intentions in the army which found that "the probability of the spouse being unemployed is a statistically significant and negative factor in member reenlistment intentions").

² Because this paper addresses spouses of current service members, I use the term "military spouse" in lieu of dependent, though the definition of a dependent expands beyond spouses. 50 U.S.C. § 3911(4) (defining "dependent" with respect to a service member to include a spouse, a child of the service member, or an individual for whom the servicemember provided more than one-half of the individual's support for a certain amount of time).

³ The employment opportunities available for military spouses directly impact their satisfaction with military, and the likelihood that the service member spouse reenlists. One study found that "the reenlistment intentions of husbands whose spouses are very satisfied with military life (7 on a scale of 1 to 7) are highest (8.52) [out of 10], and those of husbands whose spouses are dissatisfied (2 on a scale of 1 to 7) with military life are lowest (6.95) when compared to all other levels of spouse satisfaction with military life." Wood, *supra* note 1, at 100. The probability of a military spouse being unemployed is "a statistically significant and negative determinant of spouse satisfaction," and that "unemployed wives are less satisfied with the military as a way of life." *Id.* at 102-03. The study also suggested that military spouses' attitudes are responsive to changes in employment status, and a program "aimed at increasing employment opportunities for army wives would be expected to increase army wives' overall satisfaction with the military." *Id.* at 107.

⁴ The role of the military spouse became significant in terms of military readiness after the creation of the All-Volunteer Force in 1973. Lifestyle and opportunities afforded to military members and their families were important factors, and the Commission sought to "improve the non-monetary conditions of military life and thereby help increase the attractiveness of military careers." BERNARD ROSTKER, *I WANT YOU! THE EVOLUTION OF THE ALL-VOLUNTEER FORCE* 82 (2006).

challenges that exist for military spouses, why they exist, and why they are important. I describe the changing demographics of the military and how this must lead to a change in the government's understanding of how military families function. I also explore why increasing opportunities for military spouses will require change among a variety of different institutions, not just the military itself.

In Part II, I examine the congressional and executive actions that address opportunities available to military spouses. Past years' versions of the National Defense Authorization Act (NDAA) have addressed the educational and professional struggles of military spouses, but none as much as the 2019 NDAA.⁵ The FY2019 NDAA has several provisions directly addressing the employment landscape for military spouses.⁶ I also assess the FY2020 NDAA and discuss the most recent executive actions regarding education and professional opportunities for military spouses.

In Part III, I provide my analysis of the actions taken to help military spouses, as well as provide recommendations for next steps. I analyze the effectiveness of the 2019 NDAA and earlier iterations of the Act. I also address provisions of the 2020 NDAA that will impact military spouses going forward. Ultimately, I determine that the NDAA will have a positive impact on military spouses and is a step in the right direction of achieving better career and educational opportunities for military spouses.⁷ I predict, however, that the NDAA will face implementation challenges and fall short in its efforts to provide comprehensive change for military spouses. I discuss potential consequences from the provisions of the 2020 NDAA. I also scrutinize the most salient issues not addressed by the 2019 NDAA. While the NDAA works towards increasing the number of jobs available for military spouses, it does not address the financial and lifestyle barriers to education, as well as the critical issue of underemployment.

Finally, I provide recommended actions for both the Department of Defense (DoD) and Congress to take. In doing so, I analyze past implementation efforts taken by the DoD. I suggest using the strategy of compliance, communication, and coordination in implementing new measures for military spouses. I then provide further policy and legislative steps the DoD and Congress should take to ensure that military spouses have adequate access to education and training and are able to get the jobs they want and for which they are qualified.

I. UNDERSTANDING THE MILITARY SPOUSE EDUCATION AND CAREER PROBLEM

⁵ John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, 132 Stat. 1636 [hereinafter NDAA 2019].

⁶ See, e.g., *id* at §§ 551, 573, 575, 579.

⁷ One of the most significant effects of the 2019 NDAA was reforming the “up or out” system created by the Defense Officer Personnel Management Act (DOPMA). DOPMA created a rigid and impersonal system by implementing inflexible operating parameters such as: mandatory competitive categories, “meaning officers exist in career silos”; “[p]romotion zones ... based entirely on seniority”; tight constraints on the “[p]ercentages of officers promoted at each grade; “[i]nvoluntary retirement of officers ‘failed of selection’ twice in a zone”; and establishing tenure. TIM KANE, BLEEDING TALENT: HOW THE US MILITARY MISMANAGES GREAT LEADERS AND WHY IT'S TIME FOR A REVOLUTION 123-24 (2012). Reform of DOPMA is a significant step for enhancing retention among service members, and this reform, in conjunction with provisions directly addressing the educational and professional barriers faced by military spouses, has the potential to greatly improve the lives of military families.

To adequately fix the problem of insufficient educational and professional opportunities for military spouses, it is first necessary to understand why the problem exists and what kinds of solutions will address the root of the issue. The lack of opportunities available to military spouses is more important now than ever before because the notion of a military spouse has changed. Military spouses today are more diverse, as the traditional family of a service member husband and a stay-at-home wife becomes increasingly less common. Because of this reality, career flexibility is a particularly important consideration for military spouses, and different government and private institutions will need to coordinate to ensure appropriate educational and professional opportunities. Furthermore, the DoD must also focus on increasing access to education and tackling underemployment for military spouses. While military spouses are sometimes able to get jobs, they are often not at the level for which the spouses are qualified.

A. The Legal and Policy Changes Must Be Inclusive, Flexible, and Widespread: Inclusivity Stems From an Increasingly Diverse Military

The policies regarding military spouses must be changed because our notions of spousal dependence have changed significantly since the Defense Officer Personnel Management Act (DOPMA)⁸ was passed in 1980.⁹ Military families today are more diverse than ever before. With the changing understanding of who is a military spouse and the increasing education level of military spouses, the laws and policies concerning military spouses must similarly evolve and become more inclusive to accommodate this newfound diversity.

Over time, the notion of who is a military spouse has changed. It is essential that the laws governing spouses today recognize, or are at least accommodate, the changes in military spouse demographics. An increase in male spouses of service members and same-sex marriages are two significant factors in this changing demographic. First, male spouses and dependents are becoming more commonplace. The idea that all military families have the husband at work and the wife at home is no longer realistic or sustainable. When the All-Volunteer Force was created in 1973, women were 2% of enlisted members and 8% of the officer corps.¹⁰ As of 2018, they make up 16% and 18%, respectively,¹¹ marking a significant increase since 1973.¹²

⁸ Defense Officer Personnel Management Act, Pub. L. 96-513, 94 Stat. 2835 (1980).

⁹ See generally, BERNARD ROSTKER ET AL., THE DEFENSE OFFICER PERSONNEL MANAGEMENT ACT OF 1980: A RETROSPECTIVE ASSESSMENT (RAND Corp. 1993).

¹⁰ George M. Reynolds & Amanda Shendruk, *Demographics of the US Military*, COUNCIL ON FOREIGN REL. (Apr. 24, 2018), <https://perma.cc/GSQ4-6BXJ>.

¹¹ According to 2009 spousal statistics “[o]f the roughly 286,000 spouses in the active-duty Army, about 8% are male.” In the Marine Corps, about 6% of the 90,000 spouses are male. “Of the approximately 195,000 married Navy members, more than half of the 21,000 married Navy women are wed to civilians.” And while the Air Force did not have specific statistics regarding marriage, there were “about 161,000 married men and about 32,000 married women.” Geoff Ziezulewicz, *With Their Wives – Not Them – Reporting for Duty, Military Husbands Work to Find Their Place*, STARS AND STRIPES (Mar. 14, 2009), <https://perma.cc/D8GL-YRUY>.

¹² Reynolds & Shendruk, *supra* note 10.

Second, with the repeal of Don't Ask, Don't Tell in 2010¹³, the traditional heterosexual military family and the laws that rely on this model, can no longer apply to all military families. The recognition of these changes is evidenced by the benefits that are now available to same-sex military spouses. After the Supreme Court upheld that states must recognize all lawful out-of-state marriages between two people in *Obergefell v. Hodges*¹⁴ in 2015, the Department of Veterans Affairs also declared that it “recognize[s] all same-sex marriages without regard to a Veteran’s state of residence,” and encouraged “All Veterans in same-sex marriages who believe they are entitled to benefits [to]...promptly apply for benefits.”¹⁵ This recognition also applies to current service members, with healthcare coverage, housing allowance, and survivor benefits available to all legally married military spouses.¹⁶ Same-sex marriage recognition in the military indicates a trend toward more diverse service members and families.¹⁷

Furthermore, inclusivity in laws and policies regarding military spouses is important because of the varying levels of education among the spouses. Military spouses, like their service member counterparts, are becoming increasingly well-educated and their professional opportunities should reflect that trend. A 2017 survey found that “88% of military spouses have some post-high school education, 34% have a college degree, and 15% have a postgraduate degree.”¹⁸ The percentage of spouses with college and postgraduate degrees is likely to be higher for the military spouses of officers.¹⁹ The average age of a military spouse is 33 years old.²⁰ With the average age of the working American adult being 41 years old, having under- or unemployment of military spouses is a particularly significant loss for the American economy.²¹ Military spouses play an important role in the overall preparedness of the military. Accounting for the increased variety of education and skill level when crafting laws and policies regarding employment of military spouses can aid in removing unnecessary obstacles and can ensure the retention of their service member spouses.

Finally, as new policies are being implemented that take into account differing paths of service members, policies regarding military spouses must also reflect this. The military’s new Blended Retirement System (BRS) went into effect January 1, 2018. Current service members who have served for less than twelve years have the option to opt into the new BRS. The previous system

¹³ Don't Ask Don't Tell Repeal Act of 2010, Pub. L. No. 111-321, 124 Stat. 3515 (2011).

¹⁴ *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015).

¹⁵ *Lesbian, Gay & Bi-Sexual (LGBT) Service Members and Veterans*, DEP'T OF VETERAN AFF., <https://perma.cc/9T94-DHMC>.

¹⁶ Emmarie Huetteman, *Gay Spouses of Members of Military Get Benefits*, N.Y. TIMES (Aug. 14, 2013), <https://perma.cc/3F6K-W7C9>.

¹⁷ A 2016 RAND Corporation study suggests that there are approximately 1,320-6,630 transgender individuals serving on active duty, or in the [Guard or] Reserve forces. AGNES GEREKEN SCHAEFER ET AL., *ASSESSING THE IMPLICATIONS OF ALLOWING TRANSGENDER PERSONNEL TO SERVE OPENLY* 16 (2016).

¹⁸ U.S. CHAMBER OF COMMERCE FOUND., *MILITARY SPOUSES IN THE WORKPLACE: UNDERSTANDING THE IMPACTS OF SPOUSE UNEMPLOYMENT ON MILITARY RECRUITMENT, RETENTION, AND READINESS* 5 (2017), <https://perma.cc/8NSM-5R36>.

¹⁹ Laura E. Ott et al., *Impact of Military Lifestyle on Military Spouses' Educational and Career Goals*, 28 J. RES. EDUC. 30, 30-61 (2018).

²⁰ COUNCIL OF ECON. ADVISERS, EXEC. OFFICE OF THE PRESIDENT, *MILITARY SPOUSES IN THE LABOR MARKET* 1-2 (2018), <https://perma.cc/2PXY-85F8>.

²¹ *Id.*

(before BRS) created an annuity provision for those who retire after twenty years of service. The new BRS allows for service members to participate in the Thrift Savings Plan (TSP), a retirement savings plan for federal employees that has been open to military personnel since 2000.²² With the BRS, “[i]n exchange for a 20% reduction in their military retirement annuity, which they still get if they serve 20 years or more, members covered by BRS receive TSP contributions from their employing service in addition to other benefits.”²³ Before, service members who were in the military for less than 20 years essentially did not receive anything towards a defined benefit retirement. Now that this has changed, it may create an incentive for service members to stay for less than 20 years. This increases the importance of creating laws and policies aiding military spouses, to create a more positive experience for the military family.

1. *Flexibility is a Necessity for Military Spouses*

Military spouses face major barriers with frequent moves and disruptions due to permanent change of station (PCS) moves. A National Military Family Association study found that 25% of military spouses reported frequent moves or service member deployments as being the reason for delaying their education.²⁴ Laws and policies governing military spouses must be able to accommodate the frequent changes in the spouses’ lives and must be able to provide flexible solutions to address the barriers they face.

Flexibility includes finding better jobs for underemployed military spouses. A 2017 Blue Star Families survey found that 55% of military spouses feel they are underemployed, and 28% are unemployed and actively seeking employment.²⁵ Military spouses have indicated they felt more job opportunities and job satisfaction would be available if the jobs for which they were qualified had flexible accommodations such as telecommuting, flexible or part-time schedules, or flexible arrangements to be long-term employees.²⁶ Furthermore, studies reviewing generational differences in work values show that employees born after 1982 (GenMe, GenY, and Millennials) value schedule and work flexibility more than their older counterparts.²⁷ The laws and policies to create opportunities for military spouses will not be successful unless they account for the unpredictability that military spouses regularly have to experience.

2. *Solutions Need to Incentivize Change among Different Institutions*

²² THRIFT SAV. PLAN, QUESTIONS AND ANSWERS ABOUT OPTING INTO THE BLENDED RETIREMENT SYSTEM (BRS) 1 (2017), <https://perma.cc/B6RD-GKXR>.

²³ *Id.*

²⁴ Ott, et al., *supra* note 19, at 37.

²⁵ BLUE STAR FAMILIES, 2017 MILITARY FAMILY LIFESTYLE SURVEY 2 (2017), <https://perma.cc/VQX6-VR7K>.

²⁶ Jessica Howington, *Military Spouses and a Desire for Flexible Work*, FLEXJOBS (Sept. 12, 2017), <https://perma.cc/2S2N-X4V3>.

²⁷ Jean M. Twenge, *A Review of the Empirical Evidence on Generational Differences in Work Attitudes*, 25 J. BUS. PSYCHOL. 201, 201 (2010).

The jobs crisis of military spouses is a complex issue, and any solution will need the integration and cooperation of multiple institutions. With the multitude of stakeholders involved, any solutions to solving the military spouse jobs crisis must be widespread in order to navigate between these different institutions. The DoD is the main institution responsible for the wellbeing of military spouses, and it is a crucial partner in ensuring the spouses have adequate educational and professional opportunities. However, other institutions, both private and public, will need to be a part of the solution, and any policy or legal changes must include these stakeholders and incentivize them to action.

Like the DoD, Congress has an important role to play. With the power of the purse, Congress can control many of the programs that will remove barriers for the military spouses. Furthermore, it is the responsibility of members of Congress to introduce legislation creating programs and policies that build the necessary infrastructure to support military spouses.²⁸

Non-federal government parties, private sector industries, and educational institutions also play important roles and must be incentivized to work with the DoD and military spouses.²⁹ Ultimately, many military spouses will rely on them for education and employment. Any legal and policy changes must take these groups into account. Furthermore, groups such as licensing institutions (for example, the American Bar Association for attorneys) play an important role in ensuring that military spouses get access to opportunities. Because many military spouses are hampered by the inability to remain licensed in their jobs as they move across state lines or international borders, policies and laws easing state licensing restrictions must be addressed. With the multitude of stakeholders involved, any solutions to the military spouse jobs crisis must be able to work with these different institutions.

B. Tackling Education Barriers and Underemployment

To fully create educational and professional opportunities for military spouses, laws and policies that address education barriers and underemployment must be enacted. While the measures outlined in the NDAs work to address employment for military spouses in federal jobs and jobs on or near military bases, the problems military spouses face are much broader. In a 2017 survey questioning 1,273 spouses of active duty military service members and recent veterans, it was discovered that unemployment and underemployment pose significant challenges. “Many are in part time or seasonal positions when they would prefer full time or permanent work.”³⁰ Furthermore, “military spouses with degrees face the greatest challenges in nearly every

²⁸ Article 1, Section 8 of the U.S. Constitution gives Congress the power to “raise and support Armies,” as well as “[t]o provide for organizing, arming, and disciplining, the Militia.” U.S. CONST. art. I, § 8.

²⁹ While the Trump Administration has sought public-private partnerships to address issues such as infrastructure, Secretary DeVos and the Department of Education have not yet taken steps for a public-private partnership to address education issues for military spouses. *See Military Families and Veterans*, U.S. DEP’T OF EDUC., <https://perma.cc/P528-DA3X> (discussing the education priorities for military families and veterans); *see also* Luke Tortora & Grace Lee, *Future Prospects for Public-Private Partnerships*, WHARTON PUB. POL’Y INITIATIVE (Feb. 28, 2018), <https://perma.cc/RVC6-L867>.

³⁰ U.S. CHAMBER OF COMMERCE FOUND., *supra* note 18, at 4.

measurable employment category. They face the highest rates of unemployment and the most difficulty finding meaningful work.”³¹

1. Military Spouses Want More Educational Opportunities

Access to education, and the difficulties military spouses face with this, are a crucial step in enhancing opportunities for military spouses. In 2008, the Defense Manpower Data Center released a Survey of Active Duty Spouses that addressed the education issues faced by military spouses. Tables 1-3 outline the results of this survey.

*Table 1*³²

| Education Level Attained | No College | Some College | 4 Year Degree | Graduate or Professional |
|----------------------------------|-------------------|---------------------|----------------------|---------------------------------|
| Percentage of Respondents | 22% | 10% | 26% | 56% |

The majority of the spouses had some college or graduate degree, aligning with the statistics indicating that the military is becoming increasingly well-educated. When asked about their educational goals, the majority of the respondents hoped to continue with their education (*Table 2*). Additionally, the military spouses were asked if they were currently enrolled in school (*Table 3*).

*Table 2*³³

| Educational Goals | No College | Some College | 4 Year Degree | Graduate or Professional Degree |
|--|-------------------|---------------------|----------------------|--|
| Master’s, doctoral, or professional school degree | 7% | 9% | 80% | 65% |
| Certification/licensure | 19% | 10% | 11% | 21% |
| Bachelor’s degree | 26% | 54% | 4% | 0% |
| Associate’s/technical degree | 27% | 22% | 0% | 0% |

*Table 3*³⁴

³¹ *Id.*

³² DEF. MANPOWER DATA CTR., REPORT NO. 2008-041, 2008 SURVEY OF ACTIVE DUTY SPOUSES 406 (2009), <https://perma.cc/FDJ9-RH5Y>.

³³ *Id.* at 410.

³⁴ *Id.* at 412.

| Enrolled in school | No College | Some College | 4 Year Degree | Graduate or Professional Degree |
|---------------------------------|-------------------|---------------------|----------------------|--|
| Currently yes | 7% | 30% | 18% | 15% |
| No, but would like to be | 63% | 53% | 45% | 23% |

It is clear from the responses that many of the military spouses would like to continue with their education, even if it involves continuing beyond a bachelor's degree. There is clear desire to increase education and training to become competitive candidates for desirable jobs. Thus, the military should focus on increasing educational opportunities for military spouses, along with increased employment options. As discussed below, underemployment is also a significant obstacle for military spouses.

2. Spousal Underemployment: A Continuing Problem

In addition to military spouses struggling to find employment, many military spouses are also struggling to find the type of employment for which they are qualified. In addition to the 24% unemployment rate of active duty military spouses,³⁵ underemployment is also a significant problem. In a 2017 U.S. Chamber of Commerce Survey, 50% of military and recent veteran spouse respondents that were working part time indicated a desire to work full time.³⁶ Military spouses face significant barriers in their search for employment,³⁷ including interview bias, having to explain resume gaps, and exclusion from helpful veteran hiring programs.³⁸ Additionally, military spouses are disproportionately affected by occupational licensing requirements, making it difficult for them to find jobs even when they are trained for those positions. Occupational licensing is a necessary component of many jobs, especially ones that are options for military spouses. In his February 2019 testimony before the Senate Armed Services Committee, Vice Admiral Burke spoke of using authorities provided in the previous NDAA (FY2018 NDAA) to improve conditions

³⁵ DoD, 2017 DEMOGRAPHICS: PROFILE OF THE MILITARY COMMUNITY 138 (2017), <https://perma.cc/T45Q-9QGL>.

³⁶ COUNCIL OF ECON. ADVISERS, *supra* note 20, at 4.

³⁷ It has been recognized and acknowledged that the lack of educational and professional opportunities for military spouses negatively impacts service member retention rates. There is also a general lack of knowledge regarding why service members leave the military. A study conducted of former junior officers who left the military between 2001 and 2010 revealed that this was the first opportunity for 75% of the respondents to provide feedback to the military after leaving the service. Sayce Falk & Sasha Rogers, *Junior Military Officer Retention: Challenges & Opportunities 1* (Mar. 2011) (unpublished policy analysis exercise, Harvard University Kennedy School of Government), <https://perma.cc/2WY6-HFN2>. It was not until November 2015 that Defense Secretary Carter ordered the creation of a formal program of exit interviews “to determine why military members and civilians decide to Depart DoD.” Jared Serbu, *Carter Starts Overhaul of Defense Personnel System with Low-Hanging Fruit*, FED. NEWS NETWORK (Nov. 19, 2015, 4:39 AM), <https://perma.cc/9V3X-5Q68>.

³⁸ Dana Manciangli, *The Military Spouse Employment Plight*, FORBES (Jan. 9, 2019, 9:00 AM), <https://perma.cc/3ZWY-F6P7>.

for military spouses to “offset certification costs” to reduce employment barriers.³⁹ Vice Admiral Burke also stated:

the real challenge is that many professional spouses have certifications that don’t translate from state to state. And that’s an area where you could help us with the reciprocity or something that temporarily translates over so they could start working and then regain their certification.⁴⁰

“The Bureau of Labor Statistics estimates that 22 percent of all workers required a government license to do their job in 2016, while 35 percent of military spouses in the labor force worked in occupations requiring a license or certification.”⁴¹ Military families move frequently, often seven times more often than a civilian family,⁴² and military spouses risk losing their licenses as they move across state lines. The provisions affecting military spouses in the 2019 NDAA do not address the problems of education barriers and underemployment.

In 2018 Congress passed the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year 2019.⁴³ This NDAA addresses many of the problems military spouses face in their efforts to gain employment. In the next section, I examine the provisions in the 2019 NDAA relating to military spouses and analyze the potential and likely effectiveness of these laws. I then examine the provisions addressing military spouses in the 2020 NDAA. Overall, I find that while these changes are a positive step, there is still much more that should be done.

II. CONGRESSIONAL AND EXECUTIVE ACTION ADDRESSING MILITARY SPOUSES

The federal government has the ability to remove or create barriers for military spouses. In this section, I examine congressional and executive action addressing military spouse issues. Congressional actions, in the form of yearly National Defense Authorization Acts, have increasingly come to acknowledge the struggles of military spouses. Actions taken by Presidents Obama and Trump have also occasionally addressed military spouses directly.

A. Congressional Action: National Defense Authorization Acts

Each year, Congress passes a NDAA, legislation that outlines Congress’ priorities for defense spending and “provides authorization of appropriations” and also “establishes defense policies and

³⁹ *Military Personnel Policies and Military Family Readiness Before the Subcomm. on Personnel of the S. Comm. on Armed Services*, 116th Cong. 37 (2019) [hereinafter *Hearing on Military Personnel Policies and Family Readiness*] (statement of Robert Burke, Vice Admiral, Chief of Naval Personnel).

⁴⁰ *Id.*

⁴¹ COUNCIL OF ECON. ADVISERS, *supra* note 20, at 4.

⁴² *Id.*

⁴³ NDAA 2019, 132 Stat. at 1636. President Trump signed this Act into law on August 12, 2018.

restrictions, and addresses organizational administrative matters related to the DoD.”⁴⁴ The 2019 NDAA was the first legislation to significantly address issues relating to military spouse’s difficulty in finding educational and professional opportunities⁴⁵. In this section, I examine NDAA’s from the past fifteen years with a particular focus on the 2019 and 2020 NDAA’s.

1. 2005 – 2018 NDAA’s

National Defense Authorization Acts from 2005 to 2018 have made several mentions of military spouses, yet no NDAA was as significant for military spouses as the 2019 NDAA. There was no reference to opportunities for military spouses in 2005, 2007, 2008, 2013, 2014, 2016, and 2017.

The 2009 NDAA includes § 582 (Education and training opportunities for military spouses), which allows the Secretary of Defense to establish programs to assist military spouses with education and training programs.⁴⁶ The 2010 NDAA has § 564 which creates the pilot program to secure internships for military spouses with federal agencies.⁴⁷ It provides cost reimbursements and other funding sources for eligible military spouses. The 2011 NDAA includes § 585 (Report on military spouse education programs), which directs the Secretary of Defense to review all DoD educational programs designed to support military spouses.⁴⁸

The 2012 NDAA references military spouses in §§ 559 and 578. Section 559 (Report on certain education assistance programs) directs the Secretary of Defense to report to the congressional defense committees on methods to increase the efficiency of DoD’s tuition assistance program for service members as well as education and training opportunities for military spouses.⁴⁹ Section 578 directs the Comptroller General to review all current DoD military spouse employment programs and report the results to the defense and appropriations committees.⁵⁰ While these provisions indicate a desire to address the problems faced by working military spouses, they are insufficient to create substantive change to improve working conditions. Similar to the 2019 and 2020 NDAA, the emphasis on reports creates implementation issues and lack of satisfactory action.

2. 2019 NDAA

The 2019 NDAA is a \$716 billion defense spending bill and includes provisions that recognize the struggles of military spouses and provides some solutions and processes to remove these

⁴⁴ Passed annually, the enactment of the NDAA “has come to be expected, as FY2019 was the 58th consecutive fiscal year for which an annual defense authorization was enacted.” CONG. RESEARCH SERV., IF10515, DEFENSE PRIMER: THE NDAA PROCESS 1 (2020), <https://perma.cc/L5HP-ZEG8>.

⁴⁵ NDAA 2019, 32 Stat. at 1636.

⁴⁶ Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Pub. L. No. 110-417, § 582, 122 Stat. 4361.

⁴⁷ National Defense Authorization Act for Fiscal Year 2010, Pub. L. No. 111-84, § 564, 123 Stat. 2190.

⁴⁸ Ike Skelton National Defense Authorization Act for Fiscal Year 2011, Pub. L. No. 111-383, § 585, 124 Stat. 4137.

⁴⁹ National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81, § 559, 125 Stat. 1298.

⁵⁰ *Id.* § 578, 125 Stat. at 1429-30.

barriers. These sections include (1) § 551, the permanent Career Intermission Program; (2) § 579, small business activities of military spouses; (3) § 573, noncompetitive appointments of military spouses by federal agencies; and (4) § 575, the effects PCS moves on military spouse employment.

a. § 551: Permanent Career Intermission Program

This section of the NDAA makes the Career Intermission Program (CIP) permanent, adding career flexibility to enhance member retention in 10 U.S.C. § 710. The 2019 NDAA takes the Career Intermission Pilot Program out of its pilot phase, and creates a permanent program that allows service members to take up to three years off of active duty and return without repercussions.⁵¹ This program focuses on “career flexibility to enhance retention of members.”⁵² While not specifically directed at military spouses, allowing service members to take time off from the military provides that family time to stay in one location, where a military spouse might have time and opportunity to complete their education or remain in the same job for an extended period of time.

b. § 579: Assessment and Report on Small Business Activities of Military Spouses on Military Installations in the United States

Over the past several years Congress has been concerned with improving the Defense Commissary Agency system.⁵³ To this end, the 2019 NDAA budget request includes “funding for [the Defense Commissary Agency] to operate 237 commissaries on military installations worldwide and employ a workforce of over 14,000 civilian full-time equivalent (FTE) employees.”⁵⁴ In his bill, the Military Spouse Employment Act of 2018,⁵⁵ Senator Kaine proposes that,

[t]he Secretary of Defense shall submit to Congress a report setting forth an assessment of the feasibility and advisability of encouraging entrepreneurship

⁵¹ Originally called the Career Intermission Pilot Program, the CIP is widely available to service members, yet has experienced low participation. The number of service members signing up for the program are less than ten percent of what Congress allows. Scott Maucione, *Why Are So Few Troops Signing Up for One of DoD’s Most Flexible Personnel Pilot Programs?*, FED. NEWS NETWORK (Apr. 3, 2018, 6:41 PM), <https://perma.cc/U3QC-Z33K>. Originally, the pilot program of CIP was not particularly popular among service members, possibly due to a belief among service members that taking time off like this would cause a post-intermission promotion impact. *Id.* Making the program permanent may increase confidence in the program and one’s ability to be promoted after taking advantage of the program. The military will need to continue to promote the program and encourage members to participate.

⁵² NDAA 2019 § 551, 132 Stat. at 1765-69.

⁵³ BRYCE H.P. MENDEZ ET AL., CONG. RESEARCH SERV., R45343, FY2019 NATIONAL DEFENSE AUTHORIZATION ACT: SELECTED MILITARY PERSONNEL ISSUES 8 (2018).

⁵⁴ *Id.*

⁵⁵ In early 2018 Senator Kaine introduced two bills, the *Military Spouse Employment Act* and the *Jobs and Childcare for Military Families Act*. While neither bill was passed into law, the majority of the provisions from those two bills were included in the 2019 NDAA. Tim Kaine, *Kaine Military Spouse Provisions in FY19 NDAA*, SCRIBD (2018), <https://perma.cc/Y7FH-HT9R>.

among military spouses by permitting military spouses to engage in small business activities on military installations and in partnership with commissaries, exchange stores, and other morale, welfare, and recreation facilities of the Armed Forces.⁵⁶

While not passed into law, this section of the Senator Kaine’s proposed bill was included in § 579 of the 2019 NDAA. Creating a report like this would include taking into account the usage by military spouses of “resources in the conduct of small business activities on military installations,” as well as identifying feasible mechanisms that provide military spouses with the opportunity to engage in business activities on military installations.⁵⁷ The goal of this law is to “encourage[] the ... DoD... to submit a plan on how to best facilitate military spouse entrepreneurship on military installations.”⁵⁸

c. § 573 Temporary Expansion of Authority for Noncompetitive Appointments of Military Spouses by Federal Agencies

Section 573 of the NDAA modifies federal hiring authority so that federal agencies can expedite the hiring of a military spouse job candidate by assigning military spouses who have relocated to the group of those who can be noncompetitively appointed to such positions.⁵⁹ Adopted from § 2 of the Military Spouse Employment Act of 2018, this provision provides that the head of a federal agency “may appoint noncompetitively – (1) a spouse of a member of the Armed Forces on active duty.”⁶⁰ Senator Tim Kaine explains that his reasoning in introducing this law is that for military spouses, the “most desirable jobs near military installations are often federal positions.”⁶¹

This section amends § 3330d of 5 U.S.C. to mandate that the Director of the Office of Personnel Management shall monitor the number of these noncompetitive appointments and require the heads of each agency to submit an annual report to the Director that includes information such as the number of individuals appointed, the types of positions filled, and the effectiveness of the authority for such appointments.⁶²

Additionally, within 18 months of the Act being signed into law, the Director of the Office of Personnel Management shall also submit a report to House and Senate committees on “the use and effectiveness of this authority.”⁶³ This provision expires after five years.⁶⁴

⁵⁶ Military Spouse Employment Act of 2018, S. 2379, 115th Cong. § 9 (2018).

⁵⁷ MENDEZ ET AL., *supra* note 53, at 9.

⁵⁸ Kaine, *supra* note 55, at 1.

⁵⁹ *Id.*

⁶⁰ NDAA 2019 § 573(b)(1), 132 Stat. at 1779.

⁶¹ Kaine, *supra* note 55, at 1.

⁶² NDAA 2019 § 573(b)(1), 132 Stat. at 1779.

⁶³ *Id.* § 573(d)(1)(C), 132 Stat. at 1779.

⁶⁴ *Id.* § 573(e), 132 Stat. at 1779-80.

d. §575 Assessment and Report on the Effects of Permanent Changes of Station on Employment Among Military Spouses

Section 575 of the 2019 NDAA, adopted from § 10 of the Military Spouse Employment Act, acknowledges the challenges that frequent moves present for military spouses. The law mandates that the Secretary of Defense “conduct an assessment of the effects of frequent, permanent changes of station on the stability of employment among spouse members of the Armed Forces.”⁶⁵ The Secretary’s report has to meet certain elements, such as: providing an assessment as to “how frequent, permanent changes of station may contribute to unemployment or underemployment among spouses of members of the Armed Forces,”⁶⁶ and “how unemployment and underemployment among military spouses may affect force readiness.”⁶⁷ Additionally, the Secretary of Defense must provide recommendations “regarding legislative or administration actions that may be carried out to achieve force readiness and stabilization through the minimization of the impacts of frequent, permanent changes in station on the stability of employment among military spouses.”⁶⁸ The NDAA also mandates that the Secretary of Defense’s report about these effects must be submitted to the Senate and House Armed Services Committees by February 2019.⁶⁹

3. *The 2020 NDAA*

On December 20, 2019 the 2020 NDAA, a \$738 billion defense spending bill,⁷⁰ was signed into law.⁷¹ Similar to the 2019 NDAA, it includes some provisions that address military spouses, including (1) § 575, improvement of occupational license portability for relocated spouses of members of the uniformed services; (2) § 576, continued eligibility for education and training opportunities for spouses of promoted members; (3) § 577, modification to authority to reimburse for State licensure and certification costs of a spouse of a member arising from relocation; and §§ 580F and 580G, first and second expansion of the My Career Advancement Account Program for Military Spouses). In this section, I discuss the provisions of the 2020 NDAA that address the educational and employment struggles of military spouses.

a. §§ 575, 576, 577, 580F, and 580G

⁶⁵ *Id.* § 575(a), 132 Stat. at 1780.

⁶⁶ *Id.* § 575(b)(1), 132 Stat. at 1780.

⁶⁷ *Id.* § 575(b)(2), 132 Stat. at 1780.

⁶⁸ *Id.* § 575(b)(3), 132 Stat. at 1780.

⁶⁹ *Id.* § 575(c), 132 Stat. at 1780.

⁷⁰ David Brown, *Trump to sign defense spending bill, NDAA*, POLITICO (Dec. 20, 2019, 10:00 AM), <https://perma.cc/DM6S-8P2S>.

⁷¹ Remarks by President Trump at Signing Ceremony for S.1790, National Defense Authorization Act for fiscal Year 2020 (Dec. 20, 2019), <https://perma.cc/TY2J-JN8N>.

Section 575 (Improvement of occupational license portability for relocated spouses of members of the uniformed services) addresses occupational licensing and residency issues military spouses face.⁷² It improves occupational license portability for military spouses through interstate compacts.⁷³ The section states that the Secretary of Defense may enter into “an agreement with the Council of State Governments to assist with funding of the development of interstate compacts on licensed occupations in order to alleviate the burden associated with relicensing in such an occupation by spouse of a members of the armed forces in connection with a permanent change of duty station of members to another State.”⁷⁴ The bill mandates that by February 28 of each year the Secretary of Defense shall submit a report to House and Senate Armed Services Committees on these interstate compacts.

Section 576 (Continued eligibility for education and training opportunities for spouses of promoted members) ensures that a military spouse who has been provided financial assistance from the DoD, is already eligible for an education or training program, and has begun that education or training will not lose her or his eligibility if the service member spouse is promoted to a higher grade.⁷⁵

Section 577 (Modification to authority to reimburse for State licensure and certification costs of a spouse of a member arising from relocation) amends § 476(p) of 37 U.S.C., which addresses travel and transportation allowances for dependents of service members.⁷⁶ § 577 increases the reimbursement amount from \$500 to \$1000, and calls for, “an analysis of whether the maximum reimbursement amount ... is sufficient to cover the average costs of relicensing.”⁷⁷

Section 580F (First expansion of the My Career Advancement Account Program for Military Spouses) modifies the program by expanding eligibility for military spouses who seek “the pursuit of a license, certification, or Associate’s degree in any field or occupation.”⁷⁸ Section 580G (Second expansion of the My Career Advancement Account Program for Military Spouses) adds the spouses of members of the Coast Guards into those eligible for the program.⁷⁹

B. Executive Action on Military Spouses

Most presidential administrations describe their admiration for the military and its service members. However, there has not been much action concerning supporting military spouses through efforts to improve educational and professional opportunities. The most significant executive order regarding military spouses was Executive Order (EO) 13473, titled “To Authorize Certain Noncompetitive Appointments in the Civil Service for Spouses of Certain Members of the

⁷² National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116-92, § 575, 133 Stat. 1198.

⁷³ *Id.* § 575, 133 Stat. at 1405.

⁷⁴ *Id.* § 575, 133 Stat. at 1405.

⁷⁵ *Id.* § 576, 133 Stat. at 1406.

⁷⁶ *Id.* § 577, 133 Stat. at 1406.

⁷⁷ *Id.* § 577, 133 Stat. at 1406.

⁷⁸ *Id.* § 580F, 133 Stat. at 1410

⁷⁹ *Id.* § 580G, 133 Stat. at 1410.

Armed Forces.”⁸⁰ Implemented in 2008 by President Bush, the EO established a policy to appropriately expedite the recruitment of military spouses for appointment to competitive positions in the Federal civil service, in an effort to recruit and retain service members.⁸¹ Both the Obama and Trump administrations have implemented executive action regarding educational and professional opportunities for military spouses. In this section, I explore the executive actions taken by both administrations.

1. Actions by the Obama Administration

President Obama signed 295 Executive Orders during his administration. Several of them addressed service member and military family issues, but the most important EO for military spouses was signed in 2012. EO 13607, “Establishing Principles of Excellence for Educational Institutions Serving Service Members, Spouses, and other Family Members,” works “[t]o ensure...service members...[and] spouses...have the information they need to make informed decisions concerning their well-earned Federal military and veterans educational benefits.”⁸²

The EO directs the Departments of Defense, Veterans Affairs, and Education to establish Principles of Excellence to apply to education institutions that receive funding from federal military and veterans educational benefits programs.⁸³ Additionally, the EO directs the educational institutions in charge of these programs to inform eligible students of the availability of the benefits, as well as to end fraudulent and unduly aggressive recruiting techniques on and off military installations.⁸⁴

2. Actions by the Trump Administration

Since assuming office in 2017, President Trump has signed 122 executive orders.⁸⁵ President Trump’s most significant executive order regarding military spouses is EO 13842, “Establishing an Exception to Competitive Examining Rules for Appointment to Certain Positions in the United States Marshals Service, Department of Justice. Signed in July 2018, the EO requires federal agencies to apply the noncompetitive hiring authority to military spouses.⁸⁶

In the next section, I provide an analysis regarding the effectiveness and likelihood of success of these laws. If properly executed, these laws will indeed help the employment opportunities of military spouses. However, setbacks in implementing these laws may prove to be an additional barrier to progress in this arena. In order to effectively create the positive changes called for in the NDAA, the military will need to create an accountability framework that ensures all levels and

⁸⁰ Exec. Order No. 13,473, 73 Fed. Reg. 56,703 (Sept. 25, 2008).

⁸¹ *Id.*

⁸² Exec. Order No. 13,607, 77 Fed. Reg. 25,861 (Apr. 27, 2012).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Presidential Documents*, OFFICE OF THE FED. REGISTER, <https://perma.cc/K5Z8-WBGB>.

⁸⁶ Exec. Order No. 13,842, 83 Fed. Reg. 32,753 (July 10, 2018).

branches of the military, especially leadership positions, cooperate with the necessary changes that will result from these laws and recommendations.

III. ANALYSIS OF CURRENT GOVERNMENT INITIATIVES AND RECOMMENDATIONS FOR NEXT STEPS

The recognition by the federal government of the existence and importance of the lack of opportunities for military spouses raises the question of how to address and fix these issues. While the previously discussed NDAA's and executive orders attempt to do so, more effective and efficient action should be taken. The NDAA's are a step in the right direction, but face implementation concerns. Congress and the DoD should focus on tackling underemployment and making education more accessible to military spouses.

A. The Effectiveness of the NDAA's

Overall, the changes called for in the NDAA's, specifically the 2019 NDAA, will improve the opportunities available to military spouses. The 2019 NDAA takes the first significant step in acknowledging the barriers that military spouses face in obtaining educational and professional opportunities.⁸⁷ The NDAA must be implemented effectively to make a positive and necessary impact on the lives of military spouses. Therefore, it is necessary to understand the obstacles and shortcomings the relevant agencies and institutions will face as the changes called for in the NDAA take effect. There will be many challenges, mostly in implementation by the military branches, effectiveness of the reports, and lack of incentives provided to the industries and institutions that employ military spouses. Later in this section, I outline the necessary next steps to fully ensure that military spouses are able to obtain the education and employment opportunities they deserve.

1. Risks of Ineffective Reports

Many of the changes outlined in the NDAA come in the form of reports by different secretaries and agencies. Of the provisions directly affecting military spouses, only § 551 Permanent Career Intermission Program does not require a report to be delivered to Congress.⁸⁸ The other sections

⁸⁷ The 2019 NDAA also includes § 574 Improvement of My Career Advancement Account Program for Military Spouses; this provision calls for action to increase awareness of the My Career Advancement Account. MyCAA is a DoD program that provides up to \$4,000 in tuition assistance for eligible spouses pursuing education in portable career fields. ESTHER M. FRIEDMAN ET AL., ADVANCING THE CAREERS OF MILITARY SPOUSES: AN ASSESSMENT OF EDUCATION AND EMPLOYMENT GOALS AND BARRIERS FACING MILITARY SPOUSES ELIGIBLE FOR MYCAA 2 (2015). Adopted from the Military Spouse Employment Act, it mandates that the Secretary of Defense "take appropriate actions to ensure that military spouses who are eligible for participation in the My Career Advancement Account program...are, to the extent practicable, made aware of the program." NDAA 2019 § 574(a), 132 Stat. at 1780. Additionally, it provides that the Comptroller General must submit a report to the House and Senate Armed Services Committees providing recommendations on how to increase awareness and participation in MyCAA. The report must be submitted within 180 days after the NDAA became law. *Id.* § 574(b), 132 Stat. at 1780.

⁸⁸ Because the Career Intermission Program applies to service members and not military spouses directly, I do not provide recommendations for any implementation strategy or best practices for this program.

(§§ 579, 573, 574, 575) require a report to Congress on the effectiveness of the provisions or recommendations for improvement (see *Table 4*).

Table 4

| Provision | Report Timeline |
|---|--|
| § 579 Assessment and Report on Small Business Activities of Military Spouses on Military Installations in the United States | Report must be submitted no later than March 1, 2019 |
| § 573 Temporary Expansion of Authority for Noncompetitive Appointments of Military Spouses by Federal Agencies | Report shall be submitted no later than 18 months after the date of the enactment of the 2019 NDAA |
| § 574 Improvement of My Career Advancement Account Program for Military Spouses | Report shall be submitted no later than 180 days after the date of the enactment of the 2019 NDAA |
| § 575 Assessment and Report on the Effects of Permanent Changes of Station on Employment among Military Spouses | Report shall be submitted no later than February 1, 2019 |

However, there are quite legitimate concerns about the thoroughness of such reports and the seriousness with which these issues are taken. Though the provisions of the 2019 NDAA are law and mandate that the appropriate agencies conduct this research and oversight, there are recent examples that illustrate how the DoD can fall short in providing effective, thorough reporting.

In the 2018 NDAA, Congress mandated that the DoD issue a report on climate change and how it creates vulnerabilities to the military over the next twenty years.⁸⁹ The report, released in January 2019, has been viewed as woefully inadequate because the requisite “analysis is sorely lacking.”⁹⁰ The DoD failed to comply with some of the main requirements mandated in the 2018 NDAA.⁹¹ While the DoD may have nominally fulfilled its legal duty to make a report on climate

⁸⁹ National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, § 335(c), 131 Stat. 1283 [hereinafter NDAA 2018].

⁹⁰ Mark Nevitt, *Pentagon’s Climate Change Report Lacks Analysis the Law Requires*, JUST SECURITY (Jan. 23, 2019), <https://perma.cc/QV6T-R47C>.

⁹¹ In this report, the Pentagon was required to address four issues: (1) listing the ten most vulnerable installations within each military service; (2) over-viewing the necessary costs and mitigations to ensure the continued operational viability and resilience of these installations; (3) discussing the effects on the military related to climate change; and (4) over-viewing the mitigating steps that may be necessary to ensure mission resiliency and the cost of such actions. NDAA 2018 § 335, 131 Stat. at 1357-59. However, the “Report on Effects of a Changing Climate to the Department of Defense” only lists “79 so-called ‘mission assurance priority installations’ that presumably are most vulnerable to climate-related events.” Nevitt, *supra* note 90. Furthermore, the “report does not discuss the costs required to ensure installations and mission resiliency,” even though that is a clear legal requirement stated in the 2018 NDAA. *See* NDAA 2018 § 335, 131 Stat. at 1357-59; OFFICE OF PUBLICATION AND SEC. REVIEW, *DoD, REPORT ON EFFECTS OF A CHANGING CLIMATE TO THE DEPARTMENT OF DEFENSE 4* (2019), <https://perma.cc/3H9N-6HSG>; Nevitt, *supra* note 90.

change, the substance of the report, according to Senator Jack Reed (D-RI), “carries about as much value as a phone book.”⁹² This incident raises legitimate concern for military spouses that the reports called for by the 2019 NDAA could be effectively dismissed like they were in the Pentagon’s “Report on Effects of a Changing Climate to the Department of Defense.”⁹³

2. *Analyzing the 2020 NDAA’s Potential Impact*

Similar to the 2019 NDAA, the 2020 NDAA also runs the risk of being ineffective. Section 575 provides authority to the Secretary of Defense, but does not require action by the Secretary, or any government agency. While this authority to improve occupational license portability for military spouses may be a major achievement for military spouses, it would have to be addressed on a state-by-state basis, complicating the issue. Provisions such as §§ 576 (continued eligibility for education and training opportunities for spouses of promoted members) and 577 (modification to authority to reimburse for state licensure and certification costs of a spouse of a member arising from relocation) are steps in the right direction, but do not provide significant enough change to make a substantial impact on military spouses as a whole.

B. Implementation Issues and Potential Solutions

It will take oversight and cultural change to ensure not only that the reports appropriately address the issues they are meant to solve, but also that they establish the next steps of change within the military system to create educational and professional opportunities for military spouses. Because the provisions may lead to an increased presence of small businesses run by military spouses on bases and military spouses in federal government positions, more military spouses in schools with MyCAA tuition grants, and the possibility of fewer permanent changes of stations for military families, it is likely that service members as a whole will be affected by these changes. Therefore, it is necessary to determine the best practices for implementing these changes.

The military is often seen as an institution that is hesitant and slow to change.⁹⁴ And resistance to these changes concerning military spouses is quite possible, as evidenced by its reluctance to implement other changes called for in the 2019 NDAA.⁹⁵ The 2019 NDAA added flexibility to the

⁹² Brady Dennis, Chris Mooney & Missy Ryan, *Pentagon Report Says Bases Face Climate Risks, but Critics Say It’s Short on Details*, WASH. POST (Jan. 18, 2019, 5:47 PM), <https://perma.cc/3DFT-LTRS>.

⁹³ DoD, REPORT ON EFFECTS OF A CHANGING CLIMATE TO THE DEPARTMENT OF DEFENSE (2019) <https://perma.cc/WG28-T7ED>.

⁹⁴ RAND NAT’L DEF. RESEARCH INST., SEXUAL ORIENTATION AND U.S. MILITARY PERSONNEL POLICY: AN UPDATE OF RAND’S 1993 STUDY 373 (2010). *But see* Exec. Order No. 9,981, Establishing the President’s Committee on Equality of Treatment and Opportunity in the Armed Services” (July 26, 1948) (abolishing discrimination in the military on the basis of “race, color, religion or national origin,” years before the Civil Rights Act of 1964 and ahead of the curve on society). *See also* MITCH WALDROP, DARPA AND THE INTERNET REVOLUTION 78 (Faircount Media Group ed., 2008) (discussing DARPA’s role in the creation of ARPANET, leading the way to the modern internet).

⁹⁵ The military has, however, the potential to be a curve-setter in changing societal attitudes through portraying issues through a national security framework. *See* Sarah E. Light, *Valuing National Security: Climate Change, the*

“up or out” officer promotion system, updating DOPMA which was long viewed as restrictive and in need of change. However, this new authority to the military is permissive, not prescriptive, and there are signs of resistance among different military branches.⁹⁶

Three of the provisions in the 2019 NDAA provide for significant changes to the law governing officer management through a more expansive constructive service credit, temporary promotion authority, and alternative promotion authority. Section 502 expands the constructive service credit applied for officers who have certain types of education and grants them higher entry-level ranks and credits for years served. This expansion allows for constructive credit outside of education for private-sector work experience for appointments into critically needed fields. Section 503 provides temporary promotion authority⁹⁷ for officers to all services for ranks O-3 to O-6 as needed. The reasoning behind this provision is to allow for “temporary promotions to fit more jobs, to standardize use across services and to allow single-rank bumps through O-6 for specified positions.”⁹⁸ Section 504 provides alternative promotion authority, where promotion boards can create larger pools of officers for job consideration by suspending the below-the-zone, above-the-zone, and in-zone distinctions, as well as suspending the year-group restraints.

Already there are signs of varying degrees of hesitation within the different military branches in applying these newfound powers. “The Navy is said to be most appreciative of the new management tools,” while “the other services are less enthusiastic.”⁹⁹ In February 2019 testimony to the Senate Armed Services Committee, Master Chief Petty Officer of the Navy Russel L. Smith stated, “we know that a family’s quality of life and available services to sustain them are inextricably linked with the service member’s retention.”¹⁰⁰ Similarly, Air Force Deputy Chief of Staff for Manpower, Personnel and Services Brian T. Kelly said that the Air Force is also concerned about improving retention, “[g]iven the increasing recruiting challenges,”¹⁰¹ and that “the Air Force is focused on improving quality of life.”¹⁰² However, not all branches of the military are similarly concentrated on prioritizing increasing retention rates. Sergeant Major of the Army Daniel A. Dailey, spoke of the “historic retention rates...of the eligible population of the Army last year,”¹⁰³ indicating the Army may not be as dedicated to using these new tools address retention. This inconsistency in application may create execution problems to ensure the changes are properly followed through. Next, I address best practices to ensure proper implementation.

Military, and Society, 61 UCLA L. REV. 1772, 1772 (2014) (discussing how the military can frame the problem of climate change by “[c]onnecting climate change to national security risks and reduced fossil fuel use to strengthening the military” which will affect the “attitudes, beliefs, and behavior” of individuals who are less likely to “believe in the existence of scientific consensus about climate change.”).

⁹⁶ Tom Philpott, *U.S. Military Granted New Officer-Promotion Authority. How Will It Use It?*, THE NEWS TRIB. (Nov. 17, 2018, 10:00 AM), <https://perma.cc/GK6X-G3PK> (discussing the varying levels of enthusiasm for these new management tools among the different branches).

⁹⁷ The Navy had already been using this temporary promotion authority prior to the 2019 NDAA. *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Hearing on Military Personnel Policies and Family Readiness, *supra* note 39, at 66 (statement of Russel L. Smith, Master Chief Petty Officer of the Navy).

¹⁰¹ *Id.* at 21 (statement of Brian T. Kelly, Air Force Deputy Chief of Staff for Manpower, Personnel and Services).

¹⁰² *Id.* at 21 (statement of Brian T. Kelly, Air Force Deputy Chief of Staff for Manpower, Personnel and Services).

¹⁰³ *Id.* at 58 (statement of Daniel A. Dailey, Sergeant Major of the Army).

C. Compliance, Communication, Coordination: Learning from Past Implementation Efforts

In order to effectively implement these changes, the DoD must employ best practices to ensure that all levels of the military have cohesion and agreement on the goals they are trying to accomplish.¹⁰⁴ This will require full and continuous efforts in order to show that the changes occurring are in the institution's best interest, encourage acceptance of those changes and generate enthusiasm for the changes at all levels.¹⁰⁵

A 1993 report by the RAND Group examined the best way to implement a policy for gay members to serve openly in the military. It determined there would need to be a structure based on compliance, communication, and coordination.¹⁰⁶ I recommend that focusing on the same three factors will be necessary to effectively implement the changes for military spouses outlined in the 2019 NDAA. Similar to implementing a policy allowing gay service members to serve openly, creating new educational and professional opportunities for military spouses will require buy-in at all levels of the military, most importantly at the leadership level. Having a system of compliance, communication, and coordination, creates “a system of accountability, monitoring, and enforcement to ensure continued progress.”¹⁰⁷ Compliance ensures that members are unable to circumvent the new policies; communication allows for the “orchestration and/or synchronization of actions, images, and words to achieve a desired effect;”¹⁰⁸ and coordination is “the synchronization of efforts by all of the military services and agencies of DoD to ensure a unity of effort.”¹⁰⁹

Compliance requires implementing structures and systems that accommodate for the new policy and legal changes. This would be the next step after the reports on the changes for military spouses are submitted to Congress. Oversight is an effective way to ensure compliance, and the most effective way to do this is for Congress to create laws outlining the various requirements the DoD must comply with to ensure that policies that have been determined to aid military spouses are carried out. Additionally, it is important that these “compliance-related directives are better seen not as creating new requirements” that service members are forced to accept,¹¹⁰ but rather that they are leadership-driven processes designed to achieve the common goal of enhanced opportunities for military spouses. The laws dictating the benchmarks for the DoD should provide metrics that focus on the process of the efforts for military spouses – metrics that locate organizational barriers that serve as impediments for military spouses, as well as metrics that create

¹⁰⁴ See RAND NAT'L DEF. RESEARCH INST, *supra* note 94, at 380.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ NELSON LIM ET AL., IMPLEMENTATION OF THE DoD DIVERSITY AND INCLUSION STRATEGIC PLAN: A FRAMEWORK FOR CHANGE THROUGH ACCOUNTABILITY 10 (2013).

¹⁰⁸ *Id.* at 10-13.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 18.

a system of accountability,¹¹¹ to ensure that military and political leaders maintain responsibility to complete the process.

Strategic communication is necessary for the implementation of policies and laws for military spouses because proper communication informs internal and external audiences of the goals of the changes, and displays an “authentic, consistent, visible commitment” to the objective.¹¹² Additionally, communication works to enhance understanding across the workforce,¹¹³ which is an essential component for an institution as large as the military. Having military leaders communicate commitment to implementing the new policies will emphasize the importance of such policies to all service members, as well as demonstrate to external audiences the importance of the objectives to the overall functioning and preparedness of the military.

Because the military is a large and complex institution, coordination among the different leaders and agencies involved will be a key in driving progress. Coordination efforts work to ensure that different groups work together to achieve the objective, as “management literature has cited a number of difficulties in leading an interagency effort, including the lack of a common framework between partners, unclear authority and uncertain power relationships, incompatible ways of communicating, and different organizational core values.”¹¹⁴ In 2005, the Defense Diversity Working Group was created “to synchronize ‘the efforts of the Services to establish common diversity goals and procedures.’”¹¹⁵

I suggest that the DoD, in coordination with the Department of Labor, create a group similar to the Defense Diversity Working Group. The mission of such a group would be to ensure that the rights of military spouses to educational and professional opportunities are protected.¹¹⁶ Additionally, the DoD should create permanent positions within the military with the mission to centralize efforts to aid military spouses with education and career advancement. These positions would provide accountability and a focus towards the objectives for military spouses and serve to create a chain of command which works to ensure that the tasks outlined in the reports sent to Congress are completed.

In summary, the steps outlined in the 2019 NDAA and the 2020 NDAA are likely to bring overall positive changes for military spouses but fall short in other respects. First, they provide a recognition and acknowledgement of the challenges military spouses face in obtaining educational and professional opportunities, which is a significant accomplishment in itself. Second, if implemented correctly, the reports can create significant opportunities for military spouses to find employment, or employ themselves, near military bases or in federal government positions. Third, Congress has chosen to focus on areas where it can effectively create change, by looking at jobs for spouses on military bases and strengthening already existing programs. However, these

¹¹¹ *Id.* at 23-25.

¹¹² *Id.* at 32 (quoting another source).

¹¹³ *Id.* at 32-33.

¹¹⁴ *Id.* at 44.

¹¹⁵ *Id.* at 44-45 (quoting another source).

¹¹⁶ It is the policy of the Department of Labor to reduce employment barriers for military spouses. *See, e.g., Military Spouse Interstate License Recognition Options*, U.S. DEP’T OF LABOR, <https://perma.cc/4WX2-YX6B>.

changes are likely to encounter implementation obstacles, as evidenced by the way the DoD has treated past mandated reports, and hesitancy to comply comprehensively with the 2019 NDAA. Furthermore, the changes outlined in the NDAA are not likely to affect educational barriers or underemployment issues that military spouses face. In the next section I examine further steps the military and Congress can take to remedy this.

D. Policy and Legislative Recommendations

Because the opportunities under the NDAA are insufficient, the DoD should push Congress to implement additional legislation to aid military spouses. This legislation should work towards increasing access to education and removing the barriers that prohibit military spouses from getting the jobs for which they are qualified. Congress should incentivize public and private institutions to achieve this through financial incentives such as tax credits and by expanding on already-existing programs.

1. Making Education Affordable and Accessible

One of the major barriers to accessing educational opportunities for military spouses is the lack of financial resources to pay for school and frequent moves. The inability to pay for education and the constant relocation of military spouses each make it difficult to stay in one location long enough to attend school. I recommend the government address this by expanding the scope of its existing programs, like the My Career Advancement Account (MyCAA), collaborating with online universities, and creating financial incentives for educational institutions to work with military spouses.

a. MyCAA

To increase financial access to education for military spouses, I recommend that the military build off of its existing educational programs. My Career Advancement Account (MyCAA) is a DoD program that provides up to \$4,000 in tuition assistance for eligible spouses pursuing education in portable career fields.¹¹⁷ Section 574 of the 2019 NDAA made improvements to MyCAA for military spouses by calling for an increased awareness of the MyCAA. It mandates that the Secretary of Defense “take appropriate actions to ensure that military spouses who are eligible for participation in the My Career Advancement Account program...are to the extent practicable, made aware of the program.”¹¹⁸ Additionally it provides that the Comptroller General must submit a report to the House and Senate Armed Services Committees providing recommendations on how to increase awareness and participation in MyCAA.¹¹⁹ The MyCAA has

¹¹⁷ FRIEDMAN ET AL., *supra* note 87, at 2.

¹¹⁸ NDAA 2019 § 574(a), 132 Stat. at 1780.

¹¹⁹ *Id.* § 574(b), 132 Stat. at 1780.

shown early success, associating positive changes in employment and earnings.¹²⁰ Several years into the program MyCAA users are more likely than nonusers to be employed and MyCAA usage is positively associated with service member continuation.¹²¹

Despite the recent improvements to MyCAA, there are issues with the program that remain unresolved. For example, MyCAA funds currently cannot be used towards bachelors and graduate degrees. To ensure that the military can provide meaningful assistance to military spouses who are pursuing an education, this program must be expanded in its scope. First, it must be expanded so that military spouses can use the tuition assistance towards bachelors and graduate degrees. A large percentage of military spouses who want access to education and would use financial assistance to that end would use it for higher education. By restricting the limits of MyCAA, the DoD is hampering its ability to provide real help to these military spouses.

Second, MyCAA should be expanded so that military spouses can increase the amount of money they receive in assistance. While an average two-year college degree can cost about \$3,440 per year for students, attending a four year college is significantly more expensive.¹²² A public four-year college has an average annual tuition cost of around \$9,000 for an in-state student.¹²³ For an out-of-state student, that cost rises to about \$24,000.¹²⁴ For many of these institutions, \$4,000 in tuition assistance is not enough, and the amount of assistance provided should be increased. To offset the cost of increasing the amount available under the MyCAA, a system where the military spouses can pay into overtime should be established; something similar to the education benefits from the Montgomery GI Bill Active Duty Program (MGIB-AD).¹²⁵ The Montgomery GI Bill Active Duty Program is an existing program that provides benefits to active duty service members. Service members who enroll and pay into the program (generally \$100 for 12 months) are then entitled to receive a monthly education benefit once they have completed a minimum service obligation.¹²⁶ The bill allows the service member to transfer their education credits to an eligible dependent (including spouses and children).¹²⁷ Unlike the GI Bill education benefits, the system under the MyCAA should not be transferable to other family members nor should it be for free education. However, MyCAA will still decrease the amount of tuition military spouses will have to pay in a way that can make it affordable.

b. Working with Online Universities

¹²⁰ Laura L. Miller et al., *An Early Evaluation of the My Career Advancement Account Scholarship for Military Spouses: Key Findings*, RAND CORP. (2018), <https://perma.cc/UCD3-SZTF>.

¹²¹ *Id.*

¹²² *College Costs: FAQs*, COLLEGEBOARD (2019), <https://perma.cc/5ZA5-QAMK>.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ This would be similar to the Yellow Ribbon Program, a provision of the post 9/11 GI Bill. Military spouses of active duty service members are not eligible for this program. DEP'T OF VETERANS AFFAIRS, POST 9/11 GI BILL YELLOW RIBBON, <https://perma.cc/AV3N-JCF5>.

¹²⁶ *Education and Training: Montgomery GI Bill*, U.S. DEP'T OF VETERANS AFFAIRS, <https://perma.cc/TFX5-4LFL>.

¹²⁷ U.S. DEPARTMENT OF VETERANS AFFAIRS: EDUCATION AND TRAINING, <https://perma.cc/F4QS-SUEZ>.

Another way to increase educational opportunities for military spouses is for the DoD to work with online universities and institutions, encouraging the creation of programs that increase access for military spouses. Because of the demanding lifestyle of military spouses, being physically present at the same location for several years may not be feasible. The DoD should then work with institutions to design online access to their classes, providing military spouses the opportunity to partake in high-quality education while still being able to support the location-based inconsistencies of a military family life.

One example of how online education can work for military spouses is the online program for the Syracuse University College of Law. In 2018, the law school announced the launch of the nation's first live online J.D. program.¹²⁸ The program is a “fully interactive online juris doctor program” that “combine[s] real-time and self-paced online classes, on-campus residential classes, and experiential learning opportunities.”¹²⁹ Thirty-two students were chosen from 241 applicants,¹³⁰ which indicates a significant amount of interest in such a relatively nascent program. These students are a departure from the typical law students, with most being older (with an average age of 35) and a large percentage being first-generation college students.¹³¹ Additionally, nearly half of the students are in the military or are military spouses,¹³² showing that there is a desire among military spouses to have these kinds of educational opportunities.¹³³

In the NDAA for Fiscal Year 2021 Congress should mandate that the DoD look into the feasibility of creating partnerships with accredited educational institutions to create programs that military spouses can participate in online. This investigation could also look into the feasibility of expanding online programs to bachelor's degrees as well as postgraduate education. By expanding the scope of financial assistance available to military spouses for higher education, the DoD will ensure that these spouses are trained for the jobs they desire, improving their overall satisfaction with life as a military family.

c. Creating Financial Incentives to Work with Military Spouses

To motivate the creation of flexible options available to military spouses, the government should provide financial incentives to universities and educational institutions. The government can accomplish such a task by awarding federal grants for flexible or online programming. Like

¹²⁸ *College of Law Announces the Launch of the Nation's First Live Online J.D. Program*, SYRACUSE UNIV. COLL. OF LAW (Feb. 14, 2018), <https://perma.cc/5WBB-9U4K>.

¹²⁹ *Id.*

¹³⁰ Karen Sloan, *Syracuse's New Online JD Portends Popularity of Hybrid Programs*, N.Y.L.J. (Jan. 9, 2019), <https://perma.cc/YU23-LT6Z>.

¹³¹ *Id.*

¹³² *Id.*

¹³³ The DoD would need to involve the Department of Education in this instance to safeguard against the potential threat of diploma mills, [which include] “schools that are more interested in taking your money than providing you with a quality education.” DIPLOMA MILLS AND ACCREDITATION – DIPLOMA MILLS, U.S. DEP'T OF EDUC., <https://perma.cc/H43U-QJAV>. The Department of Education notes that the availability of online degrees has also brought an increase in diploma mills, however, not all online institutions are diploma mills. *Id.*

the Post 9/11 Veterans Educational Assistance Act,¹³⁴ financial assistance grants would not have to be claimed as income by the military spouses and families who receive such grants. Creating financial incentives for these institutions to create such programs will provide military spouses with access to high quality education without having to be in separate locations from their service member spouses or families.

2. Reducing Underemployment

a. Military Spouse Employee Tax Credits

Increasing the educational opportunities for military spouses will lead to more spouses who are more highly trained and qualified for specific jobs. Additionally, efforts to reduce underemployment among military spouses, so they can be hired for jobs they want and are qualified for, is an important step in ensuring that they are satisfied with their careers and with their time with the military as a whole. The government should focus on providing tax and other financial incentives to employers who hire military spouses and create suitable flexible working conditions suited for the needs of military spouses.

Making tax credits, modeled off of the Work Opportunity Tax Credit (WOTC),¹³⁵ available to companies who hire eligible military spouses for full-time positions will incentivize employers to hire military spouses. The WOTC is a “federal tax credit available to employers for hiring individuals from certain target groups who have consistently faced significant barriers to employment.”¹³⁶ Such a program could offset some of the obstacles spouses encounter in finding employment due to their frequent moves. A major issue military spouses face is that employers are reluctant to spend resources on training because the military spouses will likely relocate. If an employer receives a tax break for hiring and training a military spouse, they will be more likely to do so because it will be financially advantageous and mitigate some of the risks associated with frequent relocation. While military spouses often do not have total control of his or her location, the military can aim to further minimize the disruptions caused by constant moves to new bases by providing more favorable tax benefits for employers that provide jobs where military spouses can work remotely or are likely to exist near most military bases.¹³⁷

A further protection for military spouses can also come in the form of protections against bias in interviews and job applications. Similar to the “Ban the Box” campaign to remove the question,

¹³⁴ Post 9-11 Veterans Assistance Act, Pub. L. 110-252, 115 Stat. 272 (2008).

¹³⁵ WORK OPPORTUNITY TAX CREDIT, U.S. DEP'T OF LABOR, <https://perma.cc/WC5B-HLCZ>.

¹³⁶ *Id.* Current target groups include qualified veterans, qualified ex-felons, recipients of SNAP benefits (food stamps), and long-term family assistance recipients. U.S. DEP'T OF LABOR, WORK OPPORTUNITY TAX CREDIT FACT SHEET (Feb. 2020), <https://perma.cc/74R2-7U8S>.

¹³⁷ Senator Tim Kaine put forth legislation calling for similar/such changes in the Jobs and Childcare for Military Families Act of 2018. These changes were not adopted in the FY2019 NDAA. Jobs and Childcare for Military Families Act of 2018, S. 2457, 115th Cong. § 2(a) (2018).

“have you been convicted by a court?,”¹³⁸ from job applications, restrictions prohibiting employers from asking about one’s military spouse status or PCS moves can prevent military spouses from losing job opportunities simply because they belong to a military family.

b. Expanding on existing programs

The government can enhance opportunities for military spouses by granting them preferential status when they apply for federal jobs. Currently, federal agencies can “use the military spouse non-competitive hiring process to fill positions on either a temporary or permanent basis,”¹³⁹ under Executive Order 13473.¹⁴⁰ However, this is done under Executive Order, meaning it can easily be overturned quickly by another executive order. Additionally, this authority is used at the discretion of each federal agency, which could lead to implementation problems. To strengthen the executive order, Congress should create legislation codifying this authority. Then, Congress should make this authority mandatory, rather than discretionary, for federal agencies.¹⁴¹

E. Occupational Licensing Restrictions and Military Spouse Attorneys

Once military spouses have received the education they are seeking, many will still have to face barriers to performing jobs that require occupational licenses because most occupational licenses are issued through state governments. One group of military spouses who face frequent employment disruption and other major professional and career barriers are military spouse attorneys.¹⁴² Because bar certifications are controlled by each state, military spouses have to gain separate certification for each new state.¹⁴³ In 2012 the American Bar Association issued a resolution urging states to create rules allowing military spouse attorneys admission without examination.¹⁴⁴ “[O]nly twelve states have changed their rules for the admission of” military

¹³⁸ Grainne Dunne, *Banning “the Box” Will Benefit Both the Justice System and the Economy*, BRENNAN CTR. FOR JUST. (Nov. 12, 2015), <https://perma.cc/7JDG-QK8E>.

¹³⁹ USAJOBS: MILITARY SPOUSES, <https://perma.cc/MGN3-59UC>.

¹⁴⁰ Exec. Order No. 13,473, 73 Fed. Reg. 190 (Sept. 30, 2008). *See also* OFFICE OF PERS. MGMT.: JOB SEEKERS, SPOUSES OF ACTIVE DUTY MILITARY MEMBERS, <https://perma.cc/4JWJ-XECV>.

¹⁴¹ Concerns that this would lead to under- or unqualified military spouses filling these federal jobs is unfounded, as the military spouse will still have to go through the regular application process and meet all the necessary qualification standards and requirements.

¹⁴² Jacquelyn Loyd, *Barred From Service: Support Our Troops by Supporting Their Attorney Spouses with Uniform License Portability*, 46 MCGEORGE L. REV. 573, 575 (2014).

¹⁴³ With multiple PCS moves, military spouse attorneys struggle to become licensed to practice in each new state, and “[f]or attorneys, marriage to an active duty service member often means moving frequently and taking multiple bar exams.” *Id.* This leads to frequent disruptions in the spouse’s employment and makes it difficult to have a career. *Id.* In order to practice law in a new state, an attorney must be admitted into that state’s bar, and the process to gain admission to a new bar with every move to a new state comes at a cost. For the spouses that choose to move with their service member spouse, they “often give up good jobs for part-time work, or cannot find work at all.” *Id.* at 576. Moreover, if the attorney spouse does find a job in the new location, he or she will have to spend money to pay for bar-prep courses, bar exams, and multiple states bar member fees. *Id.* at 576-77.

¹⁴⁴ *Id.* at 578.

spouse attorneys, and just four of those states, Texas, North Carolina, Virginia, and Colorado, are in the top-ten active duty military states.”¹⁴⁵

The eased regulations for the military spouses in the legal profession can be categorized into three groups: (1) reciprocity and previous practice requirements; (2) provisional licensing; and (3) admission in another jurisdiction. States with reciprocity and previous practice requirements allow spouses to practice in that state without taking the bar exam if the military spouse attorney has practiced in a previous state for a number of years, generally 4 or 5 out of the last 7 years.¹⁴⁶ Attorney spouses have trouble meeting the minimum yearly practice requirement for reciprocity in many jurisdictions because their service member spouses are rarely stationed anywhere longer than two years.¹⁴⁷ North Carolina, Texas, Massachusetts, and New York have reciprocity and previous practice requirements, the details of which are laid out in Appendix A.¹⁴⁸

Provisional licensing states allow attorneys to practice law, while under the supervision of a state-bar-certified-attorney.¹⁴⁹ The states with provisional licensing regulations are Idaho, Virginia, and New Jersey, as shown in Appendix A.¹⁵⁰

The broadest category allows a military spouse attorney to be admitted in the state as long as he or she has been admitted to the bar in another state. Arizona, Colorado, Oklahoma, Illinois, and South Dakota have this level of regulation, as shown in Appendix A.¹⁵¹

While these laws have been created and implemented to ease the requirements military spouse attorneys face in securing bar-certification, the states with reciprocity and provisional licensing certification do not genuinely attain that objective. Under reciprocity, a military spouse attorney will need to show that she practiced in her previous jurisdiction for a pre-determined number of years. This is often impossible because the frequent moves of a military spouse do not provide the consistency in a jurisdiction that state bars require of duly licensed attorneys.

Provisional licensing is similar in that it can allow a military spouse attorney to practice, but in most cases is unlikely to be useful. Provisional licensing still restricts military spouse attorneys because they will have to seek out local attorneys willing to be their supervisors. This limits what a military spouse attorney is able to do autonomously and increases the legal fees for a client who must now pay for two attorneys instead of one, making the military spouse attorney an economically unattractive option for clients.

Licensing military spouse attorneys who are admitted in another jurisdiction is the least restrictive of the three categories. Because the military spouse attorney will likely have to move frequently, allowing spouses who are fit to practice in other jurisdictions to practice in a new state removes the major obstacles for the attorney spouses in finding work after relocation.

¹⁴⁵ *Id.* at 577.

¹⁴⁶ *Id.* at 579-82.

¹⁴⁷ *Id.* at 579.

¹⁴⁸ *Id.* at 579-82.

¹⁴⁹ *Id.* at 582-84.

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 586-88.

The ten states with the highest number of active duty and reserve military as of 2017 are (in descending order): California, Texas, Virginia, North Carolina, Florida, Georgia, Washington, South Carolina, New York, and Colorado.¹⁵² Of these ten, only five have eased legal practice requirements for military spouses. North Carolina, Texas, and New York have reciprocity and previous practice requirements and Virginia has provisional licensing, so none of these states are likely to remove real barriers to practice for military spouse attorneys. Only Colorado, the state with the tenth largest military presence, allows military spouse attorneys to practice as long as they are admitted in another jurisdiction. Because so few states ease the requirements for practicing in a new jurisdiction, military spouse attorneys face major financial and time-consuming obstacles to practice while living with their service member spouse.

Because bar certifications are controlled at the state level, military spouses have to gain separate certification for each new state. This burdensome process can negatively affect military retention because it can decrease spousal satisfaction with the military, making it less likely that the service member will reenlist. To address this, I suggest states ease admission requirements by allowing the passing of the bar exam in one state to satisfy bar requirements in another state and establishing national standards for the character and fitness portions of the bar exam.

Changing bar exam regulations to be similar to the requirements of states like South Dakota, Illinois, Oklahoma, and Colorado will remove barriers to entry and will not require significant changes for the vast majority of states. All jurisdictions, except for Louisiana and Puerto Rico, use the Multistate Bar Exam, so taking the bar exam again simply because a spouse attorney moved to a new state does not necessarily make the attorney better acquainted with that state's laws.¹⁵³ I also recommend the standards for the character and fitness portion of the bar be nationalized. Because these standards do not vary widely among states, it is an unnecessary obstacle for lawyers to be restricted from a state's bar because of the time it takes to pass this portion of the bar exam.

A likely concern states may have about allowing attorneys from another state to practice is the fear that these lawyers will be incompetent and will do a disservice to their clients. To address this, states may require that the military spouse attorneys disclose to clients that she is admitted under the military spouse exception.¹⁵⁴ The client must then give informed consent to being represented by the military spouse attorney.¹⁵⁵ If a state has concerns about the character and fitness of an attorney, it may allow for a recertification of her fitness after a certain number of years or may require a certain number of continuing legal education (CLE) hours every year while in the state. Military spouse attorneys will be able to plan ahead of time for this, and such regulations should not serve as a restrictive barrier. Increasing the amount of work and educational resources and opportunities available to military spouses will not require major changes to military programs or personnel laws but will have a major effect on the lives and livelihood of military families.

The American Bar Association can work with organizations like the Military Spouse JD Network, which advocates for licensing accommodations for military spouses and has gained the

¹⁵²GOVERNING: MILITARY ACTIVE-DUTY PERSONNEL, CIVILIANS BY STATE, <https://perma.cc/BXR4-8MHD>.

¹⁵³ See Loyd, *supra* note 142, at 592.

¹⁵⁴ *Id.* at 601.

¹⁵⁵ *Id.*

support of Michelle Obama and Jill Biden,¹⁵⁶ to press state bar associations to create uniformity for its admittance policies for military spouse attorneys. Interestingly the states easing restrictions for military spouse attorneys cut across political lines. This may provide an opportunity for bipartisan collaboration among legislators.

While military spouse attorneys make up a small percentage of the military spouse population, the struggles they face are ones that exist for many military spouses. In 2018, the DoD and Department of Homeland Security released a report on barriers to portability of occupational licenses between states finding that military spouses often lose 6-9 months of income during a military move.¹⁵⁷ The report recommended that “[r]emoving these [licensing] barriers, creating reciprocity in licensing requirements, and facilitating placement opportunities can help a military family’s financial stability, speed the assimilation of the family..., and create a desirable new employee pool for a state.”¹⁵⁸ The DoD and Congress should work with state licensing boards, starting with boards governing the professions most commonly occupied by military spouses, to work towards nationalizing standards or creating reciprocity for military spouses.

CONCLUSION

The military spouse influences military retention, and thereby military readiness and national security. Because the attitudes of military spouses regarding the military are closely linked with the educational and work opportunities afforded to them, it is in the military’s best interest to ensure that these spouses have sufficient tools and resources to succeed. The changing demographics of the military require institutional changes to address the needs of military spouses. These changes will need to be implemented beyond just the Department of Defense, among different government and private institutions. Furthermore, the government must implement a comprehensive and coordinated strategy to bring about these changes, necessitating buy-in at all levels of the military and federal government. The 2019 and 2020 NDAs represent a significant step in bringing about these changes and have the potential to improve opportunities for military spouses even further. Nevertheless, major issues of educational barriers and underemployment still hinder potential progress for military spouses. Creating incentives for educational institutions and federal and private employers will remove such barriers. Additionally, easing state licensing restrictions allows military spouses to obtain jobs for which they are already qualified, allowing them to contribute to their families, communities, and society at large. These laws and policies that clear some of the educational and professional hurdles for military spouses provide a chance to get those who have already sacrificed for their country back to work.

¹⁵⁶ Hollee Schwartz Temple, *Mission Accomplished: Military Spouse Network Gets ABA, White House Attention*, A.B.A. J. (May 1, 2012, 6:40 AM), <https://perma.cc/BE4Y-CRQ5>.

¹⁵⁷ DEP’T OF HOMELAND SEC. & DoD, REPORT ON BARRIERS TO PORTABILITY OF OCCUPATIONAL LICENSES BETWEEN STATES I (2018).

¹⁵⁸ *Id.*

APPENDIX A: OCCUPATIONAL LICENSING REGULATIONS FOR MILITARY SPOUSE ATTORNEYS

Reciprocity and Previous Practice Requirements

| State | Practice Requirement in Previous State | Military Spouse Exceptions |
|-------------------------------|--|---|
| North Carolina ¹⁵⁹ | 4 out of the last 6 years | Rule .0503 allows the military spouse attorney to have practiced in any state for the last 4 out of 8 years |
| Texas ¹⁶⁰ | 5 out of the last 7 years | Military spouse attorney may apply for a waiver of that requirement, and the Texas Board of Law Examiners maintains absolute discretion over the waivers; only advisory parameters are issued for military spouses |
| Massachusetts ¹⁶¹ | No requirement | Like Texas, Massachusetts allows military spouses to waive reciprocity rules. However, the state has only published a notice online regarding this, and the vagueness of this leaves many questions unanswered for military spouse attorneys. |
| New York ¹⁶² | 5 out of the last 7 years | Like Massachusetts, New York has only adopted a policy, as opposed to amending its rules. The state provides an online notice informing military spouse attorneys they may qualify for a waiver of the reciprocity rules. |

Provisional Licensing

| State | Provisional Licensing for Military Spouse Attorneys |
|-------------------------|---|
| Idaho ¹⁶³ | Military spouse attorneys must either meet a 3-year reciprocity requirement, or they may obtain a provisional license, which lasts a year and the spouse attorney must practice under the supervision of a “local attorney.” |
| Virginia ¹⁶⁴ | Like Idaho, Virginia requires a supervising attorney. Additionally, Virginia requires the supervising attorney to accompany the spouse attorney “to all court proceedings unless the judge specifically excuses the supervising counsel.” |

¹⁵⁹ Loyd, *supra* note 142, at 579-80.

¹⁶⁰ *Id.* at 580-81.

¹⁶¹ *Id.* at 581-82.

¹⁶² *Id.* at 582.

¹⁶³ *Id.* at 583.

¹⁶⁴ *Id.* at 583-84.

| | |
|---------------------------|---|
| New Jersey ¹⁶⁵ | New Jersey has adopted a “quasi-supervision requirement.” The spouse attorney must show proof of practice of 5 out the last 8 years in a previous jurisdiction or must be “employed in New Jersey by a New Jersey licensed attorney or by a state or federal agency.” |
|---------------------------|---|

Admission in Another Jurisdiction

| State | Rule |
|-----------------------------|---|
| Arizona ¹⁶⁶ | Arizona’s reciprocity requirement is eliminated for military spouse attorneys. The attorney’s license in Arizona can be renewed every year and is valid as long the service member spouse is serving in the state and the attorney spouse is admitted in another state, has graduated from an ABA accredited law school, and completes 15 CLE credits within the first six months of residing in the state and for each license renewal every year. |
| Colorado ¹⁶⁷ | A military spouse attorney will be admitted in Colorado as long as he or she holds a J.D. or LL.B from an ABA accredited law school and is an active member of the bar in good standing in another state and has met all requirements for character and fitness in Colorado. Attorney spouses must also complete a professionalism course within 6 months of certification. |
| Oklahoma ¹⁶⁸ | Military spouses may practice in Oklahoma as long as they have a J.D. from an accredited law school, have passed the MPRE, pay for moral character determinations in the state, and prove they are in Oklahoma due to the service member spouse’s orders. |
| Illinois ¹⁶⁹ | Military spouse attorneys must have graduated from an ABA accredited law school and be admitted to the bar in another state. |
| South Dakota ¹⁷⁰ | South Dakota requires only that the military spouse attorney be admitted to practice law in another jurisdiction. |

¹⁶⁵ *Id.* at 584-85.

¹⁶⁶ *Id.* at 586.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 587.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

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