The Quest for Reasonable Civ-Mil Parity

BY ADAM R. PEARLMAN

When President Biden signed Executive Order (E.O.) 14100 on June 9, 2023, it could have been a landmark initiative by the chief executive and head of state to benefit the families of all U.S. public servants who sacrifice so much while serving our country overseas. But it wasn't.

Instead, the well-intentioned initiative "to advance economic opportunity for military spouses" once again formally recognized the sacrifices of military families to the exclusion of all others.

It must be said up front and unambiguously: Noting and advocating for the needs of nonmilitary families—including those in the foreign affairs, intelligence, and law enforcement communities—who experience similar hardships to those of military families, is not to detract from the consideration military service members and their families receive from the White House and Congress. Members of the military and their families earn the benefits and thanks they receive, and there is still more work to be done to support them.

It is simply past time to inculcate the same gratitude for nonmilitary sacrifices in policy, law, and high-level rhetoric as well.

From Rhetoric to Policy

Since President Biden took office, this White House has repeatedly taken special notice of military spouses and families, including in no fewer than 24 presidential proclamations in addition to several other important policy measures such as the National Strategy on Gender Equity and Equality, and the Military Parental Leave Program.

The June executive order, "Advancing Economic Security for Military and Veteran Spouses, Military Caregivers, and Survivors," gives tangible form to several elements of the administration's oft-stated support for military families in a document that carries the force and effect of law within the executive branch.

The E.O. recognizes "that military spouses are an underserved community" and prescribes a wide range of initiatives to benefit military spouses and families, including:

- Directing the development of a governmentwide Strategic Plan on Hiring and Retention for Military and Veteran Spouses, Caregivers, and Survivors;
- Increasing federal job postings utilizing the Military Spouse Non-competitive Appointing Authority;
- Expanding training on the employment of military and veteran spouses, caregivers, and survivors across federal agencies;
- Setting governmentwide standards to improve the domestic employee teleworking overseas (DETO) program;
- Directing the Office of Personnel Management to issue guidance to agencies outlining telework and remote work flexibility for military spouses and caregivers;
- Encouraging federal agencies to collaborate to place a military spouse or caregiver in another position following changes to support continuity of care or relocation due to a permanent change of station (PCS) that makes it untenable for them to continue in their existing position;
- Reinforcing the importance of considering remote work options for military spouses when reevaluating or entering agreements with host nations;
- Developing tailored resources for military and veteran spouse entrepreneurs, including additional Small Business Administration consideration to support them "in starting and sustaining their businesses";
- Bolstering military families' access to child care;
- Encouraging federal agencies to grant administrative leave for military spouses in conjunction with PCS moves;
- Amending legal assistance instructions across the military departments to allow families to receive advice related to employment under status of forces agreements or other host nation agreements; and
- Improving the collection of data on military and veteran spouses, caregivers, and survivors in the federal workforce.

And . . . What About Everyone Else?

The near-monthly recognition of the bona fide hardships endured by military

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families, and now formalizing that via executive order, stands in sharp contrast to the White House's one-line nod to "those who uproot their lives every few years when a [public servant] family member's job calls on them to find a new home" in the 2023 Proclamation on Public Service Recognition Week.

To be sure, not everything has been at a standstill. The Foreign Service Families Act of 2021 (FSFA) was a major achievement in closing certain gaps between military and overseas nonmilitary service considerations. The FSFA applies provisions of the Servicemembers Civil Relief Act concerning residential leases and cell phone contracts to members of the U.S. Foreign Service, compels in-state tuition for Foreign Service children, and directs the Secretary of State to do more to promote family member employment.

As AFSA Advocacy Director Kim Greenplate wrote in the March 2022 *FSJ*: "The [FSFA] achieves more for Foreign Service parity with the U.S. military than any effort in recent memory."

Even so, the department's data show that of the more than 12,000 nonmilitary adult family members based overseas, 55 percent (more than 7,000) are not employed. It is reasonable also to assume that many more are underemployed.

In raw numbers, the number of U.S. government civilians and their family members based abroad is relatively small compared to our uniformed colleagues and counterparts. But military families also tend to live on large, secure, fairly well-resourced installations with on-site American health care, education facilities, banking, commissaries, and retail exchanges.

The families of Foreign Service members and others often spend as much or more time overseas but are posted in less supportive places with higher hardship scores because of their isolation, persistent security threats, lack of modern health care, and/or insufficient schooling options.

The Foreign Service Families Act of 2021 itself demonstrates just how easy it is to include language benefiting "member[s] of a qualifying Federal service" versus simply "the Armed Forces."

All of that comes on top of the regular moves every two to three years, like the military, and spouses having few meaningful opportunities to maintain or advance their careers either inside the mission or on the local economy.

What Needs to Be Done

There are certainly differences between military and nonmilitary service, and with them come some unique problem sets, needs, and solutions. The family situations of enlisted members of the military, for example, tend to differ greatly from those of the officer ranks and of officers in nonmilitary agencies.

As military spouse Melissa Sullivan wrote in *The Washington Post* in July, some data show that family food insecurity is a significant problem in the enlisted ranks. And with deployments to some countries, such as to NATO ally Italy, military spouses are prohibited from working off-base at all without losing their status.

But, as noted earlier, the unemployment rate of nonmilitary spouses is staggering, and the terms of many bilateral work agreements (BWAs), at posts where they apply, also leave much to be desired in terms of both content and clarity.

Indeed, lack of any sort of interpretive guidance from the State Department leaves U.S. employers who might otherwise be flexible with teleworking FS spouses with uncertainty concerning possible corporate tax or tort liability.

Finding that exposure unacceptable, some companies have put their FS-spouse employee(s) in the untenable position of having to either stay behind (and, presumably, collect a separate maintenance allowance from the State Department), or resign. Just as the E.O. calls for legal assistance judge advocates to provide military spouses advice related to employment, the State Department can do more to bring clarity to BWAs.

Considering all of the above, and in full acknowledgment that there are legislative underpinnings to certain benefits exclusive to military families, we should be able to expect the president, the White House, and the U.S. government to be more inclusive of nonmilitary public servants' spouses and families when devising economic opportunity and professional advancement programs in consideration for the inherent and imposed hardships of frequent overseas moves in their extraordinary service to the United States.

From *that* perspective, E.O. 14100 took a big step in the wrong direction, and unnecessarily so. Indeed, the text of the FSFA itself demonstrates just how easy it is to include language benefiting "member[s] of a qualifying Federal service" versus simply "the Armed Forces."

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Some measures that should be undertaken by the State Department immediately include:

• Advocate for a follow-on executive order that incorporates nonmilitary families into the provisions of E.O. 14100;

• Advocate for consistent rules and parity between the Military Spouse Noncompetitive Appointing Authority and those applicable to spouses of appropriate nonmilitary employees and officers serving overseas;

• Provide interpretive guidance for bilateral work agreements and/or other relevant instruments at each post where a family member is working outside the mission so spouses and their employers have clarity on their tax and/or other liability exposure, particularly concerning remote work for U.S. companies;

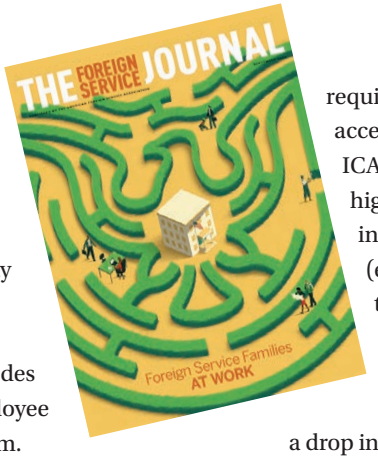
• Negotiate local income tax immunity or exemption for teleworking U.S. government spouses, and relevant tax and tort protections for their U.S.-based employers into BWAs;

• Develop a governmentwide policy allowing federal employees and third-party contractors to work remotely on U.S. government business on employing- or contracting-agency approved equipment from U.S. embassy-approved housing, perhaps by including such provisions in the current legislative proposal that would provide military spouses with more U.S. government telework options;

• Conduct a thorough review of economic and professional opportunity programs, preferences, and benefits available to military spouses and family members to determine whether there is a legal or otherwise sound policy rationale for excluding civilian employee spouses and family members from each of the identified programs, preferences, and benefits; and

• Ensure the interests of nonmilitary families are represented during the process of further updating the DETO program, as further discussed in last month's issue of the *FSJ*.

The DETO Landscape: An Optimistic Caution



As Amelia Shaw noted in "Making Overseas Telework Better" (September 2023 *FSJ*), Executive Order 14100 ("Advancing Economic Security for Military and Veteran Spouses, Military Caregivers, and Survivors"), signed by the president in June, includes a small section on the domestic employee teleworking overseas (DETO) program.

Specifically, the executive order directs the Secretaries of State and Defense to enter into a memorandum of understanding to pave the way for more military spouses to secure DETOs. It also provides that executive branch agencies develop common standards for DETOs, improve the DETO application system, and establish timeframes for application processing and approvals.

This is just the latest development in the DETO program in recent years. The Foreign Service Families Act of 2021 provided some clarity about who might qualify for a DETO and directed the Secretary of State to strengthen the program for Foreign Service family members.

And the 2023 National Defense Authorization Act (NDAA) provided that Civil Service employees who are approved for DETOs retain their locality pay (or at least receive overseas comparability pay, or OCP) while accompanying their FS spouses overseas.

These are generally commendable initiatives to improve the program for dual-service families. Gaps remain, however, and Foreign Service families should be mindful that some of the updates may make it more difficult to secure a coveted DETO position.

For instance, the NDAA's pay parity provision makes it that much harder on agencies from a fiscal perspective to support DETOs, especially for jobs that require classified access and where ICASS costs are high. Approving one DETO (even if just to show support for the program) might be a drop in the bucket, but the numbers compound quickly, and proposed budget cuts will only make the issue of financing DETOs even more treacherous.

As for the executive order, its DETO-related provisions are vague and open-ended about how—or whether—to consider Foreign Service and other nonmilitary spouses in the standards and guidelines to be developed.

It does not specify a lead or even a coordinating agency for a major effort that supposedly will span the entire executive branch; it only provides that "common standards for DETO policies" shall be developed. (That responsibility could fall on any of the following: the Office of Personnel Management in light of its responsibility for governmentwide personnel policy; the State Department because of its role in determining and protecting the status of family members overseas under the agreements it negotiates with host countries; or the Defense Department, since the executive order focuses on a matter it ties to military personnel and readiness.)

Beyond that, it appears that each agency is to establish its own application system and approval timeframes, taking into account unspecified "factors unique to military families." It also does not specify criteria for approving a DETO application: Is it implied that DETO approval is becoming an entitlement, rather than an investment in workforce retention? If so, for whom, and under what circumstances?

We don't know, but it is not hard to imagine a scenario in which nominally robust DETO policies end up lacking sufficient funding to carry out, potentially even disincentivizing agencies from hiring military or Foreign Service spouses in the first place.

The core problem with this vague directive—which carries the weight and authority of law in the executive branch—is that measuring agency compliance is nearly impossible. But there is also a practical matter that is reasonably concerning to Foreign Service families—namely, that the context of the ordered improvements to the DETO program is an exclusive concern with military families.

Certainly, military spouses merit just as much consideration and opportunity to participate in the DETO program as Foreign Service and other nonmilitary spouses, and there are certain factors unique to military families, especially enlisted families, that ought to be accounted for in this next round of DETO policy amendments and improvements.

The concern, however, lies in who gets a seat at the table in developing these executive-branch-wide policies, and whether new policies will be adopted with only military families in mind, or will families of nonmilitary public servants be considered and included.

Unfortunately, neither the text nor context of the order itself offers any incentive for the inclusion of Foreign Service and other nonmilitary families, and that presents a serious risk that those policies might inadvertently disadvantage them.

The State Department and other foreign affairs agencies should pay close attention as this process unfolds, and advocate strongly for consideration and

inclusion of their families in whatever policies and regulations come out of this executive order.

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The Reappointment Process

Sonnet Frisbie's "Boomerang Diplomats? Another Look at Reappointment" (Speaking Out in the July-August 2023 *FSJ*) raises very important issues that need to be addressed.

I am a Foreign Service officer (currently on leave without pay) whose spouse is going through the reappointment process. The lack of communication about basic procedures has been consistent and demoralizing.

My career development officer has not been able to identify a point of contact for the process (other than the collective email, to which messages go unanswered); and a query to DG Direct has produced no results.

I am unable to take any steps toward my next assignment with this complete lack of information.

I strongly support continued advocacy from AFSA on this matter.

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Dissent in Dublin

In a letter in the July-August 2023 *FSJ* ("Good Friday Agreement at 25"), Larry Butler tosses a barb at the "righteously wrong" Dublin dissenters who opposed issuing a visa for Gerry Adams in 1994. For Ambassador Butler, granting the visa was an important contribution to the Good Friday agreement, which brought peace to Northern Ireland.

As the author of the July 1996 *FSJ* article, "Dissent in Dublin," which "celebrated" the dissenters and stirred Butler's dig, let me recall once again my admiration for the FSOs who remained constant with U.S. policy toward Sinn Féin and dared take a lonely stand against a powerful ambassador and her most influential Irish American family.

The fact that, in retrospect, granting the visa may (or may not) have been an important factor in the ultimate Belfast settlement ought not to diminish the courage of the Dublin embassy dissenters.

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Keeping Our Pensions

Thank you for Tom Yazdgerdi's AFSA News column in the June 2023 *FSJ*, "Your Pension Should Be Your Pension, Period."

I am facing mandatory retirement in a couple of years, so this is a very timely topic for me. I have been contemplating the kind of job I could do to make the money needed to make up for the Social Security gap, since State's mandatory retirement age is 65, but Social Security's full retirement age (FRA) is 67.

Years ago I suggested to a State management official that State should change its mandatory retirement age to automatically match Social Security's FRA. He cautioned that opening up the Foreign Service Act, which this would require, when you had a generally hostile Congress could lead to many negative consequences.

Working as a rehired annuitant (REA, formerly called WAE, while actually employed) is an attractive option, but the limit on hours because of a possible impact on the pension is inhibiting. So I thought: What about working for another federal agency that doesn't have that mandatory retirement age? I have very relevant skills and abilities, and I know a ton of acronyms!

I learned that if I take a direct-hire job at a federal agency, my *entire* pension is put on hold—that is, I don't get it at all during the time of that employment. *What*? That is nonsensical and a disincentive for retired State Department federal employees to bring their years of experience to other agencies.

As Mr. Yazdgerdi pointed out, the Defense Department (DoD) does not have those limits on their pensions, which explains why so many of my State colleagues were retired military with great skills and experience ... and received their DoD pension on top of their State salary.

It's not just unfair. It's bad for business by freezing out a pool of skilled workers.

I appreciate and strongly support AFSA's efforts to remove the hour and salary caps in working after retirement. Otherwise, I will have to look for something that's outside government but more rewarding than being a Walmart greeter.

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