

Calendar No. 38

118TH CONGRESS }
1st Session }

SENATE

{ REPORT
118-14

MILITARY SPOUSE EMPLOYMENT ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 349

TO AMEND TITLE 5, UNITED STATES CODE, TO
AUTHORIZE THE APPOINTMENT OF SPOUSES OF
MEMBERS OF THE ARMED FORCES WHO ARE ON ACTIVE
DUTY, DISABLED, OR DECEASED TO POSITIONS IN
WHICH THE SPOUSES WILL WORK REMOTELY



APRIL 27, 2023.—Ordered to be printed

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Mr. PETERS, from the Committee on Homeland Security and Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 349]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 349) to amend title 5, United States Code, to authorize the appointment of spouses of members of the Armed Forces who are on active duty, disabled, or deceased to positions in which the spouses will work remotely, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

S. 349, the *Military Spouse Employment Act*, would clarify that agencies can hire military spouses into fully remote positions. This will support the ability of military spouses to maintain their position in a federal career regardless of military relocations or transfers. The bill amends an existing section of title 5, United States Code that provides federal agency heads with the authority to appoint military spouses to federal employment noncompetitively. The amending language adds a definition of “remote work” and specifies that the appointment authority applies to positions in

which the spouse will engage in remote work. The bill also directs the Government Accountability Office (GAO) to conduct a study on agency use of remote work.¹

II. BACKGROUND AND NEED FOR THE LEGISLATION

Half of active duty servicemembers are married, including two-thirds of active duty officers.² Military spouses serve as the backbone of military families, fulfilling myriad household needs around the service demands of active duty members. They also play an important role in the decision of the servicemember to remain in or leave the military.³ Studies indicate that the wellbeing of military spouses impacts how committed the married servicemember is to military service.⁴ A significant factor affecting military spouse wellbeing and the overall wellbeing of a military family is the spouse having the option to find and sustain meaningful employment.⁵

Military spouses, however, are more likely to be unemployed compared to their civilian counterparts.⁶ According to a 2022 survey, military spousal unemployment rates are four to six times higher than the national average.⁷ Similarly, 31% of the unemployed military spouse respondents have described experiencing unemployment for 27 weeks or longer, which is a rate of long-term unemployment that is three times higher than that of the civilian population.⁸

Over the past half a century, the proportion of dual-earner households in the United States has risen significantly, more than doubling between 1960 and 2000 from 25% to 60% and remaining above 50% of U.S. households for the past two decades.⁹ Middle-class households increasingly rely on two incomes for food, transportation, education, child care, and other expenditures.¹⁰ These same trends impact military households as well.¹¹ Around 68% of unemployed military spouse respondents to the 2021 Military Family Lifestyle Survey conducted by Blue Star Families described

¹On August 3, 2022, the Committee approved S. 4337, the Military Spouse Employment Act, with an amendment in the nature of a substitute. That bill, as reported, is substantially similar to S. 349, except that S. 349 includes the addition of a section requiring a GAO study on remote work. Accordingly, this committee report is, in many respects, similar to the committee report for S. 4337. See S. Rept. 117–178.

²Department of Defense, *2021 Demographics: Profile of the Military Community* (2022) (download.militaryonesource.mil/12038/MOS/Reports/2021-demographics-report.pdf).

³Blue Star Families, *2021 Military Family Lifestyle Survey: Comprehensive Report* (2022) (bluestarfam.org/wp-content/uploads/2022/03/BSF_MFLS_Results2021_ComprehensiveReport_3_22.pdf).

⁴U.S. Chamber of Commerce Foundation, *Military Spouses in the Workplace* (2020) (www.hiringourheroes.org/resources/military-spouses-in-the-workplace-2020/).

⁵*Id.* at 6.

⁶RAND Corporation, *Enhancing Family Stability During a Permanent Change of Station: A Review of Disruptions and Policies* (2018) (www.rand.org/pubs/research_reports/RR2304.html).

⁷Blue Star Families, *2022 Military Family Lifestyle Survey: Comprehensive Report* (2023) (bluestarfam.org/wp-content/uploads/2023/03/BSF_MFLS_Spring23_Full_Report_Digital.pdf).

⁸U.S. Chamber of Commerce Foundation, *supra* note 4, at 29.

⁹Jonathan Fisher and Nathaniel Johnson, *The Two-Income Trap: Are Two-Earner Households More Financially Vulnerable?*, Center for Economic Studies (June 2019) (www2.census.gov/ces/wp/2019/CES-WP-19-19.pdf); *Comparing characteristics and selected expenditures of dual- and single-income households with children*, U.S. Bureau of Labor Statistics (Sep. 2020) (www.bls.gov/opub/mlr/2020/article/comparing-characteristics-and-selected-expenditures-of-dual-and-single-income-households-with-children.htm).

¹⁰U.S. Bureau of Labor Statistics, *Comparing characteristics and selected expenditures of dual- and single-income households with children* (Sep. 2020) (www.bls.gov/opub/mlr/2020/article/comparing-characteristics-and-selected-expenditures-of-dual-and-single-income-households-with-children.htm).

¹¹U.S. Chamber of Commerce Foundation, *supra* note 4, at 20.

their financial situation as causing them “some stress” or a “great deal of stress,” compared to 44% of employed spouses.¹² In a Military Family Advisory Network Survey, military and veteran family respondents stated that financial hardship due to spousal unemployment was a key driver in negatively affecting the health of military marriages.¹³ A dual income for military families can ease financial stress by allowing them to build a safety net and plan for longer-term financial goals.¹⁴ Spouse employment is also correlated with spouses gaining a sense of purpose and other positive impacts to their overall wellbeing.¹⁵

According to annual Military Family Lifestyle Surveys, military spouse employment has ranked as the top issue for active duty spouses for the fourth year in a row.¹⁶ The issue of spouse employment has surpassed the ranking of other pressing issues, such as servicemember time away from family, children’s education, relocation, and military pay.¹⁷ Spouse employment is also a top-five issue for active duty servicemembers and veteran spouses.¹⁸

Even when military spouses find employment, they often experience underemployment or hold the job for a shorter tenure due to military-related reasons. In 2022, 62% of employed active duty spouses surveyed by Blue Star Families reported they were underemployed.¹⁹ Types of underemployment include working in positions that do not match the individual’s educational background, skills, or training, or positions with fewer hours than desired or that do not provide a livable wage.²⁰ In addition, the 2021 Military Family Lifestyle Survey found that one-third of employed active duty spouse respondents indicated they would need to look for a job within the next 12 months due to a military relocation or permanent change-of-station (PCS).²¹

Military-related barriers to spouse employment include the unpredictable schedule of the servicemember, access to affordable child care, and the frequency of relocations due to PCS moves.²² According to Department of Defense data, over 80% of active duty spouses experience a PCS move during their partner’s military career, and one-third have gone through a PCS move over the past 12 months.²³ Research indicates that PCS moves can cause spousal unemployment, underemployment, loss of earnings, and delays in

¹²Blue Star Families, *supra* note 3, at 15.

¹³Military Family Advisory Network, *Military Family Support Programming Survey: 2021 Results* (July 14, 2022) (www.mfan.org/wp-content/uploads/2022/07/MFAN-Programming-Survey-Results.pdf).

¹⁴U.S. Chamber of Commerce Foundation, *supra* note 4, at 25.

¹⁵*Id.* at 8.

¹⁶Blue Star Families, *2022 Military Family Lifestyle Survey: Comprehensive Report* (2023) (bluestarfam.org/wp-content/uploads/2023/03/BSF_MFLS_Spring23_Full_Report_Digital.pdf); Blue Star Families, *2021 Military Family Lifestyle Survey: Comprehensive Report* (2022) (bluestarfam.org/wp-content/uploads/2022/03/BSF_MFLS_Results2021_ComprehensiveReport_3_22.pdf); Blue Star Families, *2020 Military Family Lifestyle Survey: Comprehensive Report* (bluestarfam.org/wp-content/uploads/2021/10/BSF_MFLS_CompReport_FULL.pdf); Blue Star Families, *2019 Military Family Lifestyle Survey: Comprehensive Report* (bluestarfam.org/wp-content/uploads/2020/03/BSF-2019-Survey-Comprehensive-Report-Digital-rev200305.pdf).

¹⁷Blue Star Families, *supra* note 7, at 11.

¹⁸*Id.*

¹⁹*Id.* at 79.

²⁰U.S. Chamber of Commerce Foundation, *supra* note 4, at 17.

²¹Blue Star Families, *supra* note 3, at 7.

²²*Id.* at 66.

²³Department of Defense, *2019 Survey of Active Duty Spouses: Infographic on Spouse Education and Employment* (May 1, 2020) (www.opa.mil/research-analysis/spouse-family/military-spouse-survey-reports-briefings/2019-survey-of-active-duty-spouses-infographics/2019-survey-of-active-duty-spouses-infographic-on-spouse-education-and-employment/).

employment, particularly when the spouse needs to obtain a new credential at the new location.²⁴ For around 35% of affected spouses, it takes seven or more months to find new employment after a PCS move.²⁵

Remote work opportunities can help military spouses avoid some of the negative impacts that military-related barriers to employment, such as PCS, have on their ability to find and stay at a job aligned with their qualifications, by giving them greater flexibility to work from any location. Among active duty spouse respondents to the Military Family Lifestyle Survey who identified spousal employment as a top issue, 44% noted that “remote work opportunities” would best address their concerns.²⁶ Since the start of the COVID-19 pandemic, rates of remote working have significantly increased, even as offices started to reopen.²⁷ There has also been a notable increase in remote working driven by the employee relocating to a different geographic area.²⁸

The federal government has also seen a significant increase in the number of eligible employees remote working compared to before the pandemic.²⁹ The Office of Personnel Management (OPM) has been developing policy guidance, resources, technical support, and training to leverage the lessons learned during the pandemic, particularly related to hybrid work environments.³⁰ In 2021, for the first time in ten years, OPM updated its guidance for agencies on implementing effective telework and remote work flexibility.³¹

Senator Lankford inquired about the potential benefits of federal remote work opportunities for military spouses seeking employment during a March 2022 hearing conducted by the Senate Committee on Homeland Security and Governmental Affairs’ Subcommittee on Government Operations and Border Management, entitled “Chief Human Capital Officers at 20: What is Needed to Empower CHCOs to Ensure HR Practices Support Agencies” Mission Success.”³² Subcommittee Ranking Member Lankford asked the panel about the higher percentages of federal employees who are teleworking or remote working and about the access of military spouses and individuals in rural areas.³³ Mr. Steve Lenkart, Executive Director of the National Federation of Federal Employees, replied that “remote work opens up a world of possibilities” and is “absolutely the gold standard for a lot of our military spouses that keep moving around with their spouses.”³⁴

Congress and Presidents have previously enacted policies to help increase the number of employment opportunities available to military spouses. In 2008, President George W. Bush issued an Execu-

²⁴ RAND Corporation, *supra* note 6, at ix.

²⁵ Department of Defense, *supra* note 23.

²⁶ Blue Star Families, *supra* note 3, at 67.

²⁷ Pew Research Center, *COVID-19 Pandemic Continues to Reshape Work in America* (Feb. 16, 2022) (www.pewresearch.org/social-trends/2022/02/16/covid-19-pandemic-continues-to-reshape-work-in-america/).

²⁸ *Id.*

²⁹ Office of Personnel Management, *Future of Work* (www.opm.gov/policy-data-oversight/future-of-work/) (accessed Aug. 12, 2022).

³⁰ *Id.*

³¹ Office of Personnel Management, *2021 Guide to Telework and Remote Work in the Federal Government* (Nov. 2021) (chcoc.gov/sites/default/files/Telework-Guide-2021_0.pdf).

³² Senate Subcommittee on Government Operations and Border Management, *Hearing on Chief Human Capital Officers at 20: What is Needed to Empower CHCOs to Ensure HR Practices Support Agencies’ Mission Success*, 117th Cong. (Mar. 2, 2022) (S. Hrg. 117–252).

³³ *Id.*

³⁴ *Id.*

tive Order to provide federal agencies with the authority to appoint spouses who relocate due to a PCS into positions in the civil service without needing to fulfill a number of competitive hiring requirements usually required for such positions.³⁵ *The National Defense Authorization Act for Fiscal Year 2013* codified the authorization initiated by the Bush Executive Order by establishing a new section 3330d of title 5, United States Code, regarding the non-competitive appointment of military spouses.³⁶ *The National Defense Authorization Act for Fiscal Year 2017* and the *National Defense Authorization Act for Fiscal Year 2019* further amended section 3330d, including to temporarily expand the noncompetitive hiring authority to all military spouses.³⁷

The *Military Spouse Employment Act* would further amend section 3330d to clarify the applicability of remote work to federal agencies' noncompetitive hiring authority for military spouses. The bill adds a definition of "remote work" and adds this term to the subsection describing the hiring authority. The bill aims to increase the number of remote work opportunities in the federal government for military spouses, which would enable spouses to continue their careers in the civil service even as they experience PCS relocations.

III. LEGISLATIVE HISTORY

Senator James Lankford (R-OK) introduced S. 349, the *Military Spouse Employment Act*, on February 9, 2023, with original cosponsors Senator Kyrsten Sinema (I-AZ), Senator Deb Fischer (R-NE), and Senator Angus King (I-ME). The bill was referred to the Committee on Homeland Security and Governmental Affairs. Senator Rick Scott (R-FL) and Senator Maggie Hassan (D-NH) joined as additional cosponsors on March 28, 2023.

The Committee considered S. 349 at a business meeting on March 29, 2023. At the business meeting, Ranking Member Paul offered an amendment to the bill as well as a modification to that amendment due to negotiations with the Chairman. The Paul amendment as modified directs the GAO to conduct a study regarding the use of remote work by agencies. The modification to the Paul amendment struck language in the amendment that would have inserted a section in the bill to specify that no additional funds are authorized to be appropriated for the purpose of carrying out this legislation. The modification also made additions to the subject matter within the GAO study directive, including the use of remote work in agency recruitment and retention efforts, the geographic locations of employees who work remotely, and the impact of remote work on agency spending on federal office space. The Committee adopted the modification to the Paul amendment by voice vote, with Senators Peters, Hassan, Rosen, Padilla, Ossoff, Blumenthal, Paul, Lankford, Romney, Scott, and Hawley present. The Committee adopted the Paul amendment as modified by voice vote with Senators Peters, Hassan, Rosen, Padilla, Ossoff, Blumenthal, Paul, Lankford, Romney, Scott, and Hawley present.

³⁵ Exec. Order No. 13473, 73 Fed. Reg. 56703 (Sep. 25, 2008).

³⁶ National Defense Authorization Act for Fiscal Year 2013, Pub. L. 112-239, Sec. 566(a) (2013).

³⁷ National Defense Authorization Act for Fiscal Year 2017, Pub. L. 114-328, Sec. 1131 (2016); John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232, Sec. 573 (2018).

The bill, as amended by the Paul amendment as modified, was ordered reported favorably by roll call vote of 11 yeas to 0 nays, with Senators Peters, Hassan, Rosen, Padilla, Ossoff, Blumenthal, Paul, Lankford, Romney, Scott, and Hawley voting in the affirmative, and with Senators Carper, Sinema, Johnson, and Marshall voting yea by proxy, for the record only.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section establishes the short title of the bill as the “Military Spouse Employment Act.”

Section 2. Appointment of military spouses

This section amends section 3330d of title 5, United States Code, to add definitions of “remote work” and “telework” for the purposes of this section. The bill also adds language to the subsection describing the authority of the heads of federal agencies to appoint military spouses to positions noncompetitively. The language specifies that the authority includes appointments to positions in which military spouses engage in remote work.

Section 3. GAO study and report

Subsection (a) provides definitions for the terms “agency,” “employee,” “remote work,” and “telework” in the context of the section.

Subsection (b) requires the GAO, within 18 months after enactment of this bill, to conduct a study and publish a report regarding the use of remote work by agency. The report shall include a discussion of what is known regarding: (1) the number of agency employees who are engaging in remote work; (2) the role of remote work in agency recruitment and retention efforts; (3) the geographic location of employees who engage in remote work; (4) the effect remote work has on how often employees report to officially established agency locations; and (5) how the use of remote work has affected federal office space utilization and spending.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office’s statement that the bill contains no intergovernmental or private sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 349, Military Spouse Employment Act			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on March 29, 2023			
By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	*	*	*
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	*	*	*
Spending Subject to Appropriation (Outlays)	*	1	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply? Yes	
		Mandate Effects	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between -\$500,000 and \$500,000.			

S. 349 would authorize federal agencies to hire, without going through competitive processes, the spouses of members of the U.S. Armed Forces on active duty and spouses of disabled or deceased members of the armed forces when those spouses apply for remote work positions. That change would not affect the total number of people the federal government employs, nor would it affect their compensation. However, agencies might modify administrative processes when implementing the bill. CBO estimates that the costs to make those changes would be insignificant.

Most agencies would fund those costs from discretionary appropriations. However, enacting the bill also could affect direct spending by some agencies that are allowed to use fees, receipts from the sale of goods, and other collections to cover operating costs. CBO estimates that any net changes in direct spending by those agencies would be negligible because most of them can adjust amounts collected to reflect changes in operating costs.

The bill also would require the Government Accountability Office to report on the use of remote work by federal agencies. CBO estimates that satisfying that requirement would cost \$1 million over the 2023–2028 period. Such spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Dawn Sauter Regan. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * *

**TITLE 5—GOVERNMENT ORGANIZATION AND
EMPLOYEES**

* * * * *

PART III—EMPLOYEES

* * * * *

SUBPART B—EMPLOYMENT AND RETENTION

* * * * *

**CHAPTER 33—EXAMINATION, SELECTION, AND
PLACEMENT**

* * * * *

**SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND
APPOINTMENT**

* * * * *

SEC. 3330d. APPOINTMENT OF MILITARY SPOUSES.

(a) DEFINITIONS.—In this section:

(1) * * *

(2) * * *

(3) *The term “remote work” refers to a particular type of telework under which an employee is not expected to report to an officially established agency location on a regular and recurring basis.*

[(3)](4) The term “spouse of a disabled or deceased member of the Armed Forces” means an individual—

(A) who is married to a member of the Armed Forces who—

(i) is retired, released, or discharged from the Armed Forces; and

(ii) on the date on which the member retires, is released, or is discharged, has a disability rating of 100 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs; or

(B) who—

(i) was married to a member of the Armed Forces on the date on which the member dies while on active duty in the Armed Forces; and

(ii) has not remarried.

(5) *The term “telework” has the meaning given the term in section 6501.*

(b) APPOINTMENT AUTHORITY.—The head of an agency may appoint noncompetitively—

(1) a spouse of a member of the Armed Forces on active duty;

[or]

(2) a spouse of a disabled or deceased member of the Armed Forces **[(1)]**; or

(3) *a spouse of a member of the Armed Forces on active duty, or a spouse of a disabled or deceased member of the Armed Forces, to a position in which the spouse will engage in remote work.*

(c) SPECIAL RULES REGARDING SPOUSE OF A DISABLED OR DECEASED MEMBER OF THE ARMED FORCES.—

(1) IN GENERAL.—An appointment of an eligible spouse as described in subparagraph (A) or (B) of subsection **[(a)(3)](a)(4)** is not restricted to a geographical area.

* * * * *

