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## **The Uniformed Services Former Spouses' Protection Act: Impact on Retention of Mid-Career Military Officers**

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**THE UNIFORMED SERVICES FORMER SPOUSES' PROTECTION ACT:**  
**IMPACT ON RETENTION OF MID-CAREER MILITARY OFFICERS**

**GOLDEN GATE UNIVERSITY**

**EMPA Capstone**

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## EXECUTIVE SUMMARY

Since 1982, the Uniformed Services Former Spouses' Protection Act (USFSPA) has allowed state courts to treat military retirement pay as property for division in matters of divorce. Portions of the law are viewed by many service members and veteran's groups as being unfairly weighted in favor of former military spouses, possibly so much so that many mid-career officers choose to leave military service prior to retirement eligibility. Thus, the central research assumption is: If Title 10, U.S. Code, Section 1408, USFSPA is amended in favor of retirees, there will be a significant increase in the retention rate of mid-career officers. The literature review examines a variety of editorial pieces presenting the emotionally charged views of proponents of both sides of the issue, as well as objective reports by both the Department of Defense and the Congressional Research Service. The literature review was validated and updated with key informant interviews with representatives of the National Organization of Women (NOW) and the American Bar Association (ABA) in support of the USFSPA and the Association of the US Army (AUSA) and Military Officers' Association of America (MOAA) opposed to the USFSPA. Additional interviews were conducted with representatives from two Congressional offices to gather insight into the political aspect of this issue.

A survey of 5,819 Foreign Area Officers (FAOs) with 1,197 respondents provided a representative sample of mid-career officers to determine the impact of the USFSPA on retention rates. The survey results invalidated the research assumption, however indicated that there is a linkage between length of time in the service and increasing divorce rates among military families. Additionally, the survey indicated that there is a great deal of support among military members to amend three specific aspects of the USFSPA that deal with the manner in which former spouse pay is calculated and qualifications to terminate former spouse payments.

## ACRONYMS

ABA	American Bar Association
ARA	American Retirees Association
AUSA	Association of the United States Army
CRS	Congressional Research Service
DAV	Disabled American Veterans
DFAS	Defense Finance and Accounting Service
EXPOSE	Ex-Partners of Servicemen for Equality
IRS	Internal Revenue Service
MOAA	Military Officers' Association of America
NAUS	National Association for the Uniformed Services
NCOA	Noncommissioned Officers Association
NMFA	National Military Family Association
NMWA	National Military Wives Association
SBP	Survivor Benefit Plan
TREA	The Retired Enlisted Association
VA	Veteran's Administration
VFW	Veterans of Foreign Wars
UCMJ	Uniform Code of Military Justice
WISE	Women in Search of Equity

## CHAPTER 1 - INTRODUCTION

Prior to 1982, federal law precluded state courts from dividing military retirement pay in court-ordered divorce settlements. Military retirement pay was defined as reduced compensation for reduced services (income), while civilian pension was defined as deferred compensation for past services (property). Although a civilian pension could be divided as marital property in court-ordered divorces, military retirement pay could not. This often left former spouses in financial distress. Military spouses argued that because of frequent moves, they often were unable to develop a career of their own or their own retirement benefits. Several organizations urged Congress to recognize the military spouses' unpaid contributions to marriage.

In response, Congress enacted the Uniformed Services Former Spouses' Protection Act (USFSPA) in 1982. This law allows state courts to treat military retirement pay as property for possible division in matters of divorce. The USFSPA has been amended six times since its enactment and continues to raise controversy among members of the military, civilian organizations, and Congress.

## PROBLEM STATEMENT

Between 1982 and 1992, there was a 52% (QDR, 1992) reduction in the retention rate of mid-career military officers, defined as majors (pay grade O-4) and lieutenant colonels/commanders (pay grade O-5) with 10 to 15 years of service. With the increased stress of two wars and increased deployment length and frequency, divorce among military families is at an all-time high (CRS, 2006, p. 2). Even with the current depressed economy, the retention-to-retirement rate of mid-career officers has dropped to 39%, the lowest level since the end of World War II (QDR, 2012). The resulting cost to the nation is one not only of money, as

increasing numbers of officers have to be initially recruited and trained in order to have enough mid- and senior-level officers after attrition to fill the number of positions at the higher ranks, but one of readiness as the knowledge and experience of those officers cannot be easily replaced.

There are, of course, multiple contributing factors to the declining retention rate, ranging from the strength of the economy, the civilian job market, military force reductions, operational tempo and the frequency/length of deployments. However, in addition to those factors, the USFSPA, as currently worded, could be a major contributing factor to the declining retention rate of mid-career officers, affecting combat readiness of the U.S. military.

### BACKGROUND

One of the most attractive incentives of a military career is the exceptional retirement system that provides for a monthly retirement income, tax-free exchange and commissary privileges, medical care, veteran educational benefits, and the Survivor Benefit Plan (SBP). The military retirement system is based on the need to maintain an effective, combat ready force, by rewarding those who have served their country. The military retirement system is defined as noncontributory in the sense that military personnel make no direct contribution from their monthly pay toward the cost of their retirement. Congress makes annual appropriations as part of the defense budget to meet current benefit payments for the military retirement system. Because the military retirement system is not “vested”, a service member who is separated from active duty prior to reaching retirement eligibility forfeits credit for years served unless the member enters the Federal Civil Service or remains in the reserve forces. Basic pay is the only element of military compensation upon which retirement pay is computed. Service members receive

50% of their basic pay after completing 20 years of military service, adding 2.5% for each year of service after 20, up a maximum of 75% of basic pay at 30 years (CRS, RL34751).

On 26 June 1981, the United States Supreme Court held, in *McCarty v. McCarty*, that federal law precludes a state court from dividing military retirement pay pursuant to state community laws (453 U.S. 210 101 S. Ct. 2728, 1981). The Supreme Court ruled that retirement pay continues to be the personal entitlement of the retiree. The Supreme Court viewed military pensions different from civilian pensions due to the fact that retired military were subject to active duty recall, continued to fall under the Uniformed Code of Military Justice (UCMJ), and were restricted from some post-service employment and foreign travel. Although the Supreme Court ruled that federal law prevailed in this case, it also invited Congress to review this policy to ensure fairness to the military former spouse (DoD Report to Congress, 1998)

Between 1981 and 1982, members of Congress introduced four bills to authorize state courts to treat military retirement pay as property (US 97<sup>th</sup> Congress, 1982). On 8 September 1982, the USFSPA became public law under the Department of Defense Authorization Act of 1983 (DoDAA, PL 97-252, 1982). The act attracted little attention at the time it was passed, probably because it was a rider to recurring legislation. The USFPA had an effective date of 1 February 1983, but was retroactive to 25 June 1981, and therefore reversed the *McCarty* decision. Although the USFSPA has been amended six times since its enactment (DoDAA, PL 98-94, 1983, et al.), it basically states the following:

1. State courts may treat disposable military retirement pay as marital or community property for purposes of a divorce settlement.



2. Pension division jurisdiction is limited to a state where the service member is domiciled, has consented to jurisdiction, or resides not due to assignment.
3. State courts cannot force a military member to retire, but may order the member to start paying alimony or child support before retirement.
4. State courts can order direct payment through the Defense Finance and Accounting Service (DFAS) if the marriage lasted more than ten years during military service and does not exceed 50% of disposable pay or 65% with the addition of child support or alimony.
5. State courts are permitted to order SBP coverage.
6. A former spouse who remarries before age 55 loses SBP coverage.
7. A former spouse who remarries will continue to receive payment of retirement pay.
8. The treatment of military pensions as marital property is limited to payments due on or after 21 June 1981.
9. Payments of retirement pay will be provided to the abused former spouse of military personnel whose entitlement to retirement pay has been terminated or denied.

The American Retirees Association (ARA) is comprised of active, reserve, and retired members of the Uniformed Services across the United States. It was founded in 1984 for the exclusive purpose of addressing what it considered to be inequities in the USFSPA (<http://www.americanretirees.org/aramsn.htm>). The ARA believes that the USFSPA has created a number of problems that need to be resolved, including:

1. Military retirement pay is treated by the Internal Revenue Service (IRS) as income for tax purposes, but as property in divorce proceedings.

2. The computation of retirement pay is not based on the rank/pay grade of the member at the time of divorce, but at the rank or pay grade when the service member retires.

3. The former spouse is not subject to any of the restraints that the retired military member has, such as adherence to the UCMJ, involuntary recall, and possible restraints on employment and foreign travel.

4. The service member is required to serve a minimum number of years (20) in order to be eligible to receive retirement pay, but there is no minimum length of marriage required for a spouse to qualify for USFSPA payments.

5. The former spouse receives USFSPA payments for life, even if remarried.

The National Military Family Association (NMFA) was established in 1969. The NMFA represents the interests and concerns of military family members. The NMFA educates military families about their rights and benefits and informs politicians about the special challenges of military life. The NMFA strongly believes that military retirement pay should continue to be treated as property by state courts and court ordered payments should not be affected by the remarriage of the former spouse. The NMFA feels that the military spouse gives up a great deal of control over their own lives when they marry service members. They assert that the only financial asset most military spouses have is the retirement benefits earned during a marriage (<http://www.militaryfamily.org/your-benefits/marriage-divorce/divorce/what-you-need-to-know.html> ).

In addition to six successful attempts to amend the USFSPA, fifteen unsuccessful bills were introduced by Congress between 1984 and 2003. Starting in 1984, both Senator Jepsen and Representative Aspin proposed that the Defense Finance and Accounting Service (DFAS) honor court orders for child support or alimony without regard to whether or not the court order specified that the payments be made from the pension (98<sup>th</sup> Congress, 1984). Most recently, On 6 March, 2003 Representative Cass Ballenger (R-NC) and ten others introduced H.R. 1111, The Uniformed Services Divorce Equity Act of 2003. H.R.1111 had 23 co-sponsors. H.R. 1111 would have: quantified the share of retired pay payable to former spouses; limited the duration of payments; eliminated the "wind-fall benefit" by making payments based on pay grade/length of service at the time of divorce; provided a two-year statute of limitations to apply for payment; protection of disability pay (109<sup>th</sup> Congress, 2003).

Although none of the fifteen proposed bills were passed, organizations continue to seek reform of the USFSPA. However, for every veteran's organization seeking reform, there is an equally vocal family support organization blocking that reform. The result is political stalemate.

## CHAPTER 2 - LITERATURE REVIEW

The majority of existing literature regarding this issue is either very strongly in favor of amendment, or in many cases complete repeal, or very strongly against any form of amendment. There are very few publications that look at the issue objectively from both sides, and even fewer that look at the impact of the USFSPA on retention and recruiting. Those that do include internal reviews conducted by either the Department of Defense (DoD) or the Congressional Research Service (CRS). The majority of the publications were opinion pieces or human interest stories, with very little quantitative data. Those against any amendment of the USFSPA cite the sacrifices military spouses make in the way of the hardship they face when the military member deploys; no long-term career opportunity due to following the military spouse from one duty location to the next, often moving every two years; and the associated absence of opportunity to build their own retirement fund. Those publications that support amendment point to the paradox created by the fact that the IRS treats military retired pay as income while state courts treat it as divisible property. They name a number of inequities that include: payments to former spouses being calculated based on the rank/pay grade of the military member at the time of retirement rather than the time of divorce, resulting in a “windfall”; payments to former spouses being for life, regardless of the length of marriage; payments continuing after the former spouse remarries; no limitations or restrictions placed on former spouses while retirees have to abide by the Uniformed Code of Military Justice.

This review will cover a variety of editorial publications, beginning with those that are against amendment of the USFSPA, citing emotional and anecdotal reasons for their position. The review will continue with the opposing side, those wishing to amend or repeal the USFSPA,

and their justification for amendment. The review will conclude with an examination of those, more factual, DoD and CRS reports and their recommendations.

Upon passage, the USFSPA immediately drew the attention of journalists, particularly those with ties to either side of the issue. The first recorded publication regarding the USFSPA came on 25 September 1981 when Judy Mann of the *Washington Post* wrote that Representative Hance introduced an “enlightened” bill to divide military retirement pay. Mann states that this bill is a major step in providing a dependable source of income to former spouses whose sacrifices at home enabled the military partnership to work. Mann quotes the Ex-Partners of Servicemen for Equality (EXPOSE) Association claims that: “We have women who are being evicted, women who are being forced to sell their homes, women who are on food stamps, women on welfare. They are in financial distress and they don’t know which way to turn” (Mann, 1981, p. C6). Mann also quotes the National Military Wives Association (NMWA) as stating, “While the military lifestyle offers unique advantages, it also requires special sacrifices and contributions not necessary to civilian life. We firmly believe that a young wife weighing her future as a partner in service to her country will question why so much is demanded of her when she has been denied a stake in that partnership should her marriage dissolve” (Mann, 1981, p. C7).

One year later, 8 September 1982, Mann also wrote that the most significant piece of legislation benefiting women to come out of the 97th Congress was approved. By allowing military retirement benefits to be divided by state courts in divorce settlements, Congress had corrected a situation that left thousands of former military spouses in jeopardy. The enactment of the USFSPA is another step towards economic recognition of the contributions homemakers make to marriages. Mann argued that because of frequent moves a wife generally could not

establish an independent career that would qualify her for a pension. She also argued that marriage is an economic partnership in which the wives shoulder the family responsibilities and make social contributions that are beneficial to their husbands' careers. Mann states that "this act protects the future of America's homemakers" (Mann, 1982, C5).

Taking a more legalistic approach, on 13 April 1999 Marshal Willick, ABA, wrote in "ABA Response to the National Defense Authorization Act for 1998" that the "ten-year rule" should be abolished. Currently, the military pay center will not make direct payment in cases where the military service and marriage overlapped for less than ten years. Some lawyers incorrectly believe the ten-year rule prohibits division of retirement benefits when the military service and marriage overlapped for less than ten years. Willick recommends that any award legitimately made under state law should be enforceable through the pay center, whether the marriage lasted for five or twenty years.

Willick also believes the jurisdiction rule in the USFSPA should be eliminated. The provisions were enacted out of concern that forum-shopping spouses might go to a state that suites their interests. Willick states that "this law is not necessary because no state permits division of property without sufficient minimum contacts to satisfy constitutional concerns." The practical result has been that in some cases retirement benefits are not ever brought before any court that has jurisdiction over both the parties and their property.

Willick does believe that survivor benefits should be divisible among multiple beneficiaries. The current "one-only" form of the statute has led to both the wrongful deprivation of survivorship interests, and the accidental overcompensation of former spouse survivors who had less than 50 percent of the military retirement pay during the member's life, but are named beneficiaries of the full sum of the SBP. Another reform to the SBP should be the

automatic translation of “spouse” to “former spouse.” Most members and spouses have no idea that the designation of the spouse as beneficiary does not simply continue post-divorce, since the premiums are still being paid and the former spouse is still shown as the beneficiary.

Willick believes another reform to the SBP should eliminate the termination of SBP upon remarriage before age fifty-five. The provision presumes, unfairly, that it is a husband’s role to provide for a wife and that a wife somehow does not “deserve” to continue receiving her own property, if she chooses to marry someone else at a later date. “It is simply not anyone else’s business whether a former member or former spouse chooses to remarry; the division of property rights upon divorce should be permanent” Willick, 1999, <http://apps.americanbar.org/family/military/nda98.html>).

Willick addresses the waiver of regular retirement pay for a disability award. The problem is that when a retiree receives a post-divorce disability award, the “disposable” pay already divided between the member and former spouse is reduced, giving it back to the retiree, no matter what the divorce court ordered. Willick recommends that disability awards should be in addition to longevity pay, not a waiver of longevity retirement pay. He also states that if this cannot be done, then a provision prohibiting the conversion of any portion of the disposable retirement pay that has been awarded to a former spouse should be made.

In conclusion, the ABA position does not support any amendment to the USFSPA. They believe that the proposals would preempt the marriage and divorce laws of the states, without any evidence of a necessity of doing so in order to serve a federal interest.

Taking a more aggressive and somewhat accusatory stand on the issue, on 24 January 2000 Doris Mosley, Justice and Equality for the Military Wife, wrote that “most ‘disability’ pay is not combat related. Most of it is for the ravages to the body that come with aging.” She does

not believe the American public supports a law that allows a man to not fulfill his obligation of alimony or child support “if he gets some military doctor to say he is disabled.” Mosley wrote that disability pay is “nothing more than a tax break” (Mosley, 2000, p. 61).

Somewhat impartial and recognizing the merit of both sides of the argument, on 31 August 1998 Nick Adde wrote in “Benefits for Former Spouses May Change,” *Army Times*, that the USFSPA is a subject of trench warfare between retirees and former spouses. He states that “the only thing the two sides agree upon is that the law is unfair” (Adde, 1998, p. 29). Adde tells a story of a retired female sailor and her ex-husband, a former sailor who was kicked out for drug abuse. The female sailor lives below the poverty level in her mother’s home while trying to support two children. The father, who remarried, is entitled to 30 percent of his wife’s retirement pay.

On the other side, Adde outlines the sacrifices military spouses regularly make, with no compensation, during a military career, according to the NMFA. He tells a story about a former wife of a retired Navy captain whose marriage ended with her husband’s affair with a colleague. The spouse received none of his retirement pay because the judge said evidence of the affair was not sufficient enough to prove adultery. The former wife now works in the commissary stacking groceries for minimum wage while her former husband is enjoying their entire jointly earned pension.

Adde also quotes the EX-POSE position against exempting disability pay from divorce settlements. The EX-POSE states that “the disability clause in the USFSPA deprives them of what they have been awarded in a court order” (Adde, 1998, p. 30).

Switching now to those publications that are against the USFSPA in its current form, seeking either amendment or complete repeal, in 1994, Frank Ault and Marsha Thole wrote



*Divorce and the Military.* They state that “the USFSPA in theory itself does not provide for an automatic entitlement to a former spouse, but in practice the act is mandated” (Ault & Thole, 1994, p.6). Ault and Thole believe that the USFSPA unfairly discriminates against military members who do not enjoy protection under the law equal to civilians.

Ault and Thole believe there is an anomaly created by the definition of military retirement pay. Military retirement pay is defined in federal statutes as income in tax courts and bankruptcy courts, but as property in divorce courts. This anomaly only applies to the military. Ault and Thole state that there is a disparity between the military and federal employees. The payments to a former spouse of a federal employee terminate upon remarriage, unlike all other federal government retirement and survivor benefit systems. Under the USFSPA, a former spouse can acquire more than one award of retirement pay by divorcing after a remarriage and remarrying again. They also believe that the act ignores fault in rendering awards and that the civilian spouse is always treated as the innocent party.

According to Ault and Thole, a continuing controversy is that the USFSPA does not specify the computation and subsequent award of retirement pay is to be based on the rank and or pay grade of the member at the time of divorce. Courts have interpreted the law to read that the amount to be awarded to the former spouse is to be based on the military member’s rank and years of service at the time of retirement. They believe that the ex-spouse is unfairly benefiting from the increased retirement pay as a result of longevity or promotions. Ault and Thole state that “some state courts are dividing the military member’s disability compensation in violation of the Supreme Court and USFSPA itself” (Ault & Thole, 1994, p.16). Disability pay is exempt under federal law from being divided.

Ault and Thole further add that there are duties, obligations, and restrictions, which apply to the military retiree but not to the spouse. Retirees are subject to active duty recall, the UCMJ, and some post-retirement employment. The former spouse is not subject to any of these obligations or restrictions. Also, a former spouse may be entitled to the military member's retirement pay after a marriage of any length, yet the military member has to serve at least twenty years to qualify for retirement pay.

Ault and Thole believe that because there is no statute of limitations on the time during which a former spouse may seek a share of a member's retirement pay then the divorced military member lives in uncertainty for a lifetime on whether or not the former spouse may file. They state that "not only is this unfair to retired members, but it is inconsistent with common legal practice" (Ault & Thole, 1994, p.19).

Finally, Ault and Thole believe the USFSPA to be antiquated. When the law was enacted in 1982, the typical civilian spouse of a military member was nonworking. Given the constantly growing presence of women in the workplace, the "plight of the military spouse" is no longer valid (Ault & Thole, 1994, p.21).

In February 1998 "Family Law Notes," the *Army Lawyer*, wrote that "some states refuse to divide any retirement pension unless the retirement is vested, reasoning that there is no property interest to divide until the pension vests" (Army Law, 1998, p. 11) This lends further evidence to the case that military retirement pay should not be subject to community property laws.

On 5 August 1998 Patrick Kusiak, legal consultant for The Retired Officers Association (TROA), describes a conflict of two federal laws that address the garnishment of federal payments to enforce court-ordered child support and spousal support. These two laws are the

USFSPA and the Child Support Enforcement Act (CSEA). The USFSPA provides no authority to satisfy child or spousal support obligations from disability retirement pay, but the CSEA includes disability pay. Kusiak states that “disability retirement pay should be subject to garnishment for child support, but not for alimony” (Kusiak, 1998, p. 33). Kusiak states that “some state courts issue orders requiring payments of permanent alimony in an amount equal to the amount of retirement pay that would be payable if the retiree had not received disability compensation. Payments are required even if the recipient former spouse remarries. Because the payments are identified as alimony, they are not considered to violate federal law” (Kusiak, 1998, p. 34). Kusiak believes that the USFSPA and the CSEA should be amended to invalidate any obligation to make court-ordered payment of alimony without regard to economic need or the remarriage of the former spouse.

Kusiak also states a problem with the current SBP under the USFSPA. Current federal law permits a former spouse who receives as little as 10 percent of disposable retirement pay to receive 100 percent of the SBP benefit. In addition, current law does not permit a retired member who has been divorced and remarried to provide any SBP benefit to the retiree’s current spouse if SBP is in effect for the retiree’s former spouse. Under federal laws that provide survivor benefits for other federal employees, a retiree may provide multiple survivor annuities. His solution to this is to amend federal law related to SBP to permit multiple survivor annuities.

Kusiak addresses the issue of military member’s rank and years of service at the time of divorce. The increases in retirement pay as a result of service or promotions after divorce are generally considered the separate property of the member. His solution is to amend the USFSPA to establish a procedure to permit a state court to equitably divide retirement pay on the basis of

rank and years of service at the time of divorce rather than rank and years of service at the time of retirement.

On 5 August 1998 Patricia Bruce, National Director of Women In Search of Equity (WISE) for Military in Divorce, states that one of her concerns is the manner in which states are dividing military disability in divorces. She states that “an application for disability is scrutinized very carefully, and the military veteran or retiree must undergo strict physical examinations to determine eligibility” (Bruce, 1998, p. 27). If awarded disability benefits, a retiree is not permitted to receive concurrent payment of both regular retirement pay and disability retirement pay. The retiree must waive regular retirement pay in order to receive tax-exempt disability pay. Under Federal law, these funds are authorized for a military retiree who was injured or suffers illness as a result of their active service. Bruce reiterates Kusiak’s statement that although the USFSPA cannot satisfy child or spousal support obligations from disability retirement pay, the CSEA can.

On 18 July 2001 Mark Olanoff, Legislative Director for The Retired Enlisted Association (TREA), states in testimony to the Senate Armed Services Committee, examples of retirees who have been abused by the system. One “horror” story is of an Army master sergeant, who divorced his wife after eighteen years of marriage. The ex-wife married a man nine months older than their own son. This man was convicted of breaking into the retiree’s house and was in prison when the ex-wife married him. Now, a percentage of the retired master sergeant’s retirement goes to support his ex-wife and her new husband (Olanoff, 2001, [http://archive.org/stream/departmentofdefe062002unit/departmentofdefe062002unit\\_djvu.txt](http://archive.org/stream/departmentofdefe062002unit/departmentofdefe062002unit_djvu.txt) ).

Olanoff supports a former spouse entitlement to up to 50 percent of retirement pay, in addition to whatever child support and other amounts the courts deem necessary. However,

Olanoff believes that payments to the former spouse should cease upon remarriage, VA disability compensation should be adequately protected, and divorce decrees should be final. “Civilian divorce settlements do not allow a former spouse to reopen the divorce claim or to change the amount received because of a promotion in the workplace. Military retirees deserve equity.”

In his testimony, Olanoff concedes that the perceived inequities of the USFSPA *may* be a contributing factor to retention rates, but has no quantitative data to support that possibility. He theorizes that, if it is a factor, it would be more applicable to the enlisted ranks where retirement pay amounts are significantly less than for officers.

On 16 May 2007 D. Michael Duggan, American Legion, states in his testimony to the Senate Appropriations Committee that “military retirement pay should be treated as income, rather than property, and state divorce courts should apportion retirement pay as alimony and child support in accordance with state domestic laws and regulations” (Duggan, 2007, p. 119). Duggan also believes that the period of time following separation or divorce should be limited to two years within which an ex-spouse can assert claim for a portion of military retirement pay for alimony or child support. Finally, he states that the CSEA should not allow garnishment of disability pay.

Duggan states that “members of the armed services are obliged to accept a highly disciplined and controlled life” (Duggan, 2007, p. 120). Service members are subject to UCMJ and are also subject to service-connected injuries and ailments, which may be so severe and debilitating to last a lifetime, may lead to military disability retirement, or may impact on employment earnings in a second career. Former spouses are not subject to recall, the UCMJ, or service-connected injuries or to any restrictions on post-service employment.

Duggan insists that the USFSPA is “undoubtedly a *major contributing factor* in the catastrophic loss of senior officers and enlisted, not to mention an impediment to recruiting” (Duggan, 2007, p. 119). However, Duggan provides no data to support his claim.

Finally, Duggan states that “with civilian pensions, the courts look at the total circumstances of the marriage and deliver their judgments. But this is not the case with military personnel” (Duggan, 2007, p. 120).

On 5 August 1998 Michael Ouellette, Director of Legislative Affairs for the NCOA, states in testimony to the House of Representatives, Committee on Veterans’ Affairs that there is no doubt that the major complaint made by NCOA members and others looking for assistance and relief in conjunction with a divorce action is the mere existence of the USFSPA. Their frustrations occur during or after entering into divorce proceedings because they are not aware of the USFSPA or do not fully understand the impact on their future income until it is too late. “The law seems to be a well-kept secret that keeps military members ‘dancing in the dark’ during the course of their military careers. Consequently, they never fully realize that the military retirement pay benefit is not entirely their own and is being earned, many times equally, by their marital partner” (Ouelette, 1998, [http://commdocs.house.gov/committees/vets/hvr080598.000/hvr080598\\_0f.htm](http://commdocs.house.gov/committees/vets/hvr080598.000/hvr080598_0f.htm) ).

Ouellette also believes that the financial impact of the USFSPA is greater on the enlisted member simply because of the differing levels of actual retirement pay. The division of a percentage of an enlisted member’s retirement pay along with additional alimony and child support requirements virtually leaves that retiree financially destitute in many cases.

Ouellette describes the inconsistencies regarding retirement pay as property. “If military retirement pay is considered property, then why does it terminate upon the death of the former

spouse and not passed on to surviving heirs? If retirement pay is property, then why is an ex-military spouse required to participate in SBP in order to continue the property award upon death? Why are earned retirement pay property awards to ex-spouses based on the service members' status or rank at the time of retirement instead of the time of divorce?" (Ouellette, 1998, [http://commdocs.house.gov/committees/vets/hvr080598.000/hvr080598\\_of.htm](http://commdocs.house.gov/committees/vets/hvr080598.000/hvr080598_of.htm) ).

Ouellette believes that military retirement pay is only considered property when there is no cost to the government. If a "property" classification requires costs to the government, then it (retirement pay) is considered something other than property.

Ouellette recommends that the USFSPA awards be terminated upon remarriage just as SBP annuities are terminated upon remarriage prior to age fifty-five. He also recommends an establishment of a ten-year marriage requirement to even be eligible under the USFSPA. Finally, Ouellette recommends that all awards under the act be based on the grade and income of the military member at the time of divorce and not at the time of retirement.

On 5 August 1998 Benjamin Butler, NAUS, stated also in testimony to the House of Representatives, Committee on Veterans' Affairs that his organization's goal is to ensure that the USFSPA is fair to both parties involved in a divorce. Butler states that "divorced military veterans are the only U.S. citizens who have their retirement pay classified by the federal government as property in matters of divorce and income for taxation by the Internal Revenue Service (IRS). This shows equal justice under law does not exist for military members" (Butler, 1998, [http://commdocs.house.gov/committees/vets/hvr080598.000/hvr080598\\_of.htm](http://commdocs.house.gov/committees/vets/hvr080598.000/hvr080598_of.htm) ).

Butler states that courts are circumventing the USFSPA's protection of disability protection by ignoring federal law, awarding it as alimony without regard for source, and garnishing it under the Social Security Act, Title 42, which is in conflict with Title 10.

Finally, the 1999 Department of Defense report to the Committee on Armed Services of the US Senate and the Committee on Armed Services of the US House of Representatives presents the results of a review of former spouse protection laws applicable to members and former members of the uniformed services and their former spouses. The review was undertaken in response to the requirement in Section 643 of the National Defense Authorization Act for Fiscal Year 1998 (NDAA 1998) that the Secretary of Defense report to Congress primarily on the Uniformed Services Former Spouses' Protection Act. Report results are based on analysis of legal, procedural, and experiential data and materials related to the USFSPA carried out by the DoD. In addition, independent subject matter experts provided DoD with further assistance in data collection, analysis, summarization, and report preparation.

To assess the state of the USFSPA, they (the DoD) gathered data from a variety of stakeholders on USFSPA issues. Stakeholders included current and former service members and the organizations that represent them, current and former spouses and the organizations that represent them, the uniformed services, governmental agencies, the American Bar Association (ABA), and State Bar Associations (State Bars). They analyzed stakeholder data with a view towards identifying which provisions of the USFSPA and related laws were operating properly and do not need amendment, and which provisions were not operating properly and needed amendment.

In the course of their review, they identified a wide range of USFSPA-related issues. However, they found that the stakeholders most frequently cited the following three issues of significance to this research:

- Treatment of Veterans Affairs (VA) disability compensation
- Termination of payments upon remarriage of former spouse



- Calculation of benefits based on time of divorce rather than time of retirement

At the time of publication of this report to both Armed Services Committees, the DoD made recommendations to amend two of the three issues (regarding treatment of VA disability compensation and pay calculation), however concluded that “military retirement is similar enough to other types of retirement programs that it does not merit being treated differently than virtually all other retirement benefits” (DoD, 1999, p. 3). However, none of the recommendations were ever put into practice and the law remains as is. Since 1999, the DoD has taken no further action, either in support of or against the provisions of the USFSPA despite the testimony and lobbying efforts of various veterans’ and retirees’ organizations.

Independent of input from the Department of Defense, the Congressional Research Service has looked at the USFSPA on four different occasions (2005, 2006 x2, 2014). The report of 2005 examined the USFSPA in detail as compared to other federal retirement systems and identified several inconsistencies that Congress never addressed (CRS, 2005, p. 15). In 2006, the law was looked at specifically as it may have been one of several factors impacting an Army officer shortage. The CRS Report determined that, although some service members identified the USFSPA as “a subject of concern, the impact is not so significant as to be worthy of Congressional action at this time” (CRS, 2006, p. 5). The 2007 report looked at the USFSPA as one of several military personnel policy issues that were coming under fire from multiple veteran’s organizations as well as organizations that represent current military members and tried to reconcile the needs of the military in terms of personnel recruiting and retention with the needs of families and former spouses (CRS, 2007, p. 3). Although the report recommended several amendments to the USFSPA, no action was taken by Congress. Finally, when re-examining the military retirement system in 2014 as part of sequestration, Congress looked at the

USFSPA as a permanent fixture within the system, going so far as to “project retirement pay amounts with former spouse allocations built in to the calculations” (CRS, 2014, pp. 12-13).

### CHAPTER 3 - RESEARCH METHODOLOGY

**Research Assumption:** If Title 10, U. S. Code, Section 1408, USFSPA is amended in favor of military retirees, there would be a significant (>5%) increase in the retention rate of mid-career officers?

**Subordinate Questions:** Are there specific areas of concern for amendment? Is there any political support for an amendment? Is there a specific segment of the mid-career officer population that is more likely influenced by the effects of the USFSPA?

**Hypothesis:** The USFSPA is a major contributing factor in the declining retention rate of mid-career officers.

**Independent Variable:** amend the USFSPA

**Dependent Variable:** significant increase in mid-career officer retention rate

**Operational Definitions:**

1. Amendments to Title 10, U. S. Code, Section 1408, USFSPA: these amendments would include limiting the duration of payments to equal the length of marriage; eliminating former spouse payments upon remarriage of former spouse; eliminating the "wind-fall benefit" by making payments based on pay grade/length of service at the time of divorce rather than at time of retirement.

2. Significant increase: The Defense Manpower Data Center considers an increase of >5% to be significant. Anything less than 5% can be attributed to standard annual deviation attributable to other factors.

3. Mid-career officers: mid-career is defined as the pay grades of O-4 (Major/Lieutenant Commander) and O-5 (Lieutenant Colonel/Commander), normally between 10 and 15 years of service.

4. retention rate: the rate at which officers remain in military service beyond 10 years of service until reaching retirement eligibility at 20 years of active federal service. This rate is calculated by looking at the total officer population by commissioning-year-group (when they became an officer).

**Sampling Strategy:** Two anonymous surveys were sent to the total subscribed population (subscriber base) of FAOweb, a executive education and collaboration web portal which is hosted by the Naval Postgraduate School. The subscriber base is approximately 7,411 officers, of which approximately 5,819 (79%) are considered “mid-career.” This information was verified by cross-referencing with the Defense Manpower Data Center and found to be within .02% accuracy.

The surveys were created using the Naval Postgraduate School’s “Survey Monkey” online tool and distributed via bulk email server to the addresses of FAOweb subscribers. The survey period ran for 7 days, from 9:00 a.m. PST 9 July 2014 to 9:00 p.m. PST 15 July 2014. One survey was targeted at officers with knowledge of/experience with the Uniformed Services Former Spouses’ Protection Act (USFSPA) and the other survey was targeted at those with no knowledge of the USFSPA. Questions were validated via multiple random one-on-one interviews with officers in the library at the Naval Postgraduate School in order to confirm comprehensiveness and clear understanding. The questionnaires consisted of questions regarding rank, years of service, marital status, number of times divorced, knowledge of

USFSPA, and intent to remain until retirement. In addition, the questionnaires asked weighted opinion questions about specific aspects of consideration for amendment. That information was then compared to similar data surveys from the Defense Manpower Data Center (DMDC) and the Dependent Enrollment Eligibility Reporting System (DEERS) to determine the reliability of the data.

Key informant interviews were conducted with manpower analysts from The Office of The Undersecretary of Defense for Personnel and Readiness (USD-P&R) and the Defense Manpower Data Center to confirm retention rates and trends, and to identify other factors that may be influencing the retention rate. Additional interviews were conducted with subject matter experts representing both sides (retirees and former spouses) of the issues surrounding the USFSPA. Those interviews consisted of questions regarding rationale for support, legal framework, perceptions of impact of USFSPA on retention rates, and level of support for amendment. Finally, key informant interviews were conducted with senior representatives of local Congressmen to determine the feasibility of support for an amendment and to form a baseline from which to make recommendations.

## CHAPTER 4 – FINDINGS, ANALYSIS & CONCLUSIONS

Of the 5,819 surveys that were requested, there were 1,197 respondents representing all four branches of the military (Army, Navy, Air Force, Marines). During the survey window, multiple respondents communicated that they had additional information that they wanted to share regarding the USFSPA, however that information was outside of the scope of the surveys and was not included. Additionally, there were 211 respondents that emailed directly after the survey window closed, however that information was also excluded from the results.

Of the total respondents (n=1,197), 88% were male and 12% female. There was no significant difference between male and female respondents in either their level of support for amending the USFSPA or the impact of the USFSPA on their intent to remain in the military until eligible for retirement at 20 (+) years of service.

53% of the respondents answered that they have been divorced at least one time since becoming an officer. 19% of respondents answered that they have been divorced more than once since becoming an officer. Those percentages correspond with divorce statistics as reported by the DoD's Dependent Eligibility Enrollment Reporting System (DEERS). Correspondingly, 55% of respondents had knowledge of/experience with the USFSPA, leaving 45% unaware of the implications of the law.

Data indicated that as the length of time in service increased (10-11 years, 12-13 years 14-15 years), there was a corresponding increase in both the overall divorce rate and the percentage of officers that have divorced more than once (figure 1). Additionally, for officers never divorced or divorced only one time, the influence of the USFSP increased between 10 years time in service and 13 years time in service, but decreased beyond 13 years.

	% Not divorced	% Divorced 1 time	% Divorced 2 or more times
Officers with 10-11 years TIS	52	33	15
Officers with 12-13 years TIS	46	38	16
Officers with 14-15 years TIS	39	43	18

Figure 1. Divorce rates by years in service

That increase in influence continued until approximately 15 years time in service for the group of officers that have been divorced more than one time, indicating that there are different break-points depending on the number of times an officer has been divorced. The exact break-points were calculated at 12.7 years time in service for those that have been divorced one time and 14.9 years time in service for officers that have divorced more than one time.

The data also indicated that there is a clear linkage between increased divorce rates and intent to stay in the military until eligible for retirement at 20 years in service, regardless of impact or influence of the USFSPA. 60% of those officers that have not divorced intend to stay until retirement eligibility compared to 40% of those divorced one time and only 13% of those divorced more than once. **Yet, of the officers that indicated that they did not intend to stay until eligible for retirement, only 9% indicated that the USFSPA was a significant factor in making that decision.** The majority instead cited multiple deployments and stress on families as the primary factors they considered when deciding to leave the service prior to retirement eligibility. When combining the total representative percentages of officers that do not intend to stay until eligible for retirement (37% of those never divorced; 60% of those divorced one time; 87% of those divorced more than one time), and assuming that the 9% of officers who indicated that the USFSPA was ‘a significant factor’ in their decision to not stay would change their intent

if the USFSPA were amended, it is not likely that there would be a significant (>5%) increase in the overall retention rate of mid-career officers.

Regardless of intent to stay in the military until retirement eligibility or the impact/influence of the USFSPA on that decision, respondents overwhelmingly supported amending three specific areas of the USFSPA. Those aspects are:

A. amend so that payments to former spouses are calculated based on the rank/pay-grade of the military member at the time of the divorce rather than at the time of retirement (37% strongly support, 34% somewhat support, 71% overall support);

B. amend to terminate retirement payments to former spouses upon their re-marriage (54% strongly support, 25% somewhat support, 79% overall support);

C. amend to limit the duration of former spouse retirement payments to equal the duration of the marriage rather than for the life of the former spouse (43% strongly support, 33% somewhat support, 76% overall support).

The desire to amend those three aspects of the USFSPA was echoed by representatives of the Association of the US Army (AUSA) and the Military Officers Association of America (MOAA) when interviewed as key informants in Washington, D.C. Holly Hodges, Director of Family Programs for AUSA was insistent that the USFSPA is biased against military retirees and is in direct violation of the U.S. Supreme Court decision of 1981. She added that there are several more “problems with the law that Congress needs to fix”. She first states that the law should be repealed in its entirety, as it treats retirement pay as property “when clearly it is not”. In the absence of repeal, she states that “congress should at least establish a minimum required length of marriage in order for former spouses to qualify for pay. Since military members get no



benefits if they stay less than 20 (years), then the former spouses should have to be married for 20 (years)". She further states that "it only makes sense that soldiers, when faced with the threat of having to divide their hard earned retirement benefits with someone that they no longer have a relationship with, choose to get out early. Why keep working to get only half of what you have earned?"

James Russell, Director of Veteran's and Survivor Services for the Military Officers' Association of America (MOAA) went on to add that "there should be disqualifiers placed on former spouses, just as there are for retirees". If a retiree violates any of the sections of the Uniform Code of Military Justice (UCMJ), his/her retirement pay can be revoked. There are no such restrictions or disqualifiers for former spouses. To demonstrate his point, he stated that "a former spouse can commit murder and be sitting on death row, yet still be entitled to former spouse payments". In response to the question about USFSPA influencing retention rates, he answered "if I had been forced to share my retirement pay with an ex-wife, I would have thought twice about staying in that long". Clearly, both individuals, Hodges and Russell, believe that the USFSPA plays a role in declining retention rates.

A counterpoint to these arguments came from Elizabeth Parker, Senior Legal Advisor for the National Organization of Women (NOW) in Washington, D.C. who stated that "in most cases, the military pension is the only asset of any real value in a military family divorce. It would be criminal to deny these former spouses their fair share of that entitlement". She went on to say that "those that want to amend or repeal the law are selfish and greedy and don't want to acknowledge that they probably wouldn't have made it as far as they did in the military if they hadn't had the support of their former spouse". A further criticism of those individuals wanting amendment is her statement, "If someone would really consider getting out before retirement,

only to keep his former spouse from getting her share of the retirement pay, then that just proves my point that they are selfish and greedy!”

Michael Prescott, Senior Counsel Representative for the American Bar Association (ABA) in Washington, D.C. took a more factual approach, stating that “the question has been asked and answered: Congress passed this law more than 30 years ago and the Supreme Court has had nothing to say about it since then”. He added that “military retired pay is not so different than any other federal retirement pay system that it should be divided differently”. Prescott feels that the idea that soldiers, particularly officers, would sacrifice half of their retirement pay just to spite a former spouse is “a ridiculous concept with absolutely no merit whatsoever”.

It is clear that both sides of the issue have their justification and rationale for their position. Both sides have carried their message, either pro or con, to their elected officials in Washington. Both Debbie Merrill, Legislative Director for Congressman Sam Farr (D-CA) and Jeff Merkowitz, Director of Operations for Senator Barbara Boxer (D-CA), had similar responses to the question of political support for the USFSPA. They both agreed that there may be some inequity in both the content of the law as well as the application of the law. They agreed that there may be some merit to the concept of the USFSPA having a negative impact on recruiting and retention. However, they also both agreed that there is a “stalemate” because the sides are so evenly divided. According to Merkowitz, “for every service member or retiree that wants this law changed or repealed, there is a former spouse that does not. This ensures the continuation of the status quo”.

**CONCLUSIONS:** The data clearly indicates that amending the USFSPA would not have the expected or desired impact on mid-career officer retention rates. However, based on

respondent survey data and key informant interviews, there is significant support (at least among respondents) for amendment of three specific areas of the USFSPA. Because of the evenly balanced constituencies (military members/retirees v. former spouses), there is no political support for such amendments. In order for there to be any movement on these amendments, the Department of Defense would have to reemphasize its position as reported in 1998 to the U.S. House of Representatives and the U.S. Senate.

## CHAPTER 5 – RECOMMENDATIONS (A) & FUTURE RESEARCH (B)

A. Therefore, it is recommended to the various veterans' organizations (DAV, VFW, American Legion, American Retirees' Association, etc.) that they shift their efforts away from lobbying Congress and direct their energy to influencing the Department of Defense to take a stand in their favor. With DoD support, there would be a shift in the "balance of power" between the two sides of the issue.

The Department of Defense should re-examine the USFSPA as it affects the quality of life and morale of service members. Amendment of the USFSPA would be of no cost either to the DoD or Congress as the issue is not about additional funding, but about redistribution of funds that are already committed.

B. It is further recommended that the DoD look closer at the apparent linkage between the increasing divorce rate and the decreasing retention rate. Survey data indicated that there is a significant correlation between the two issues. Resolution of this issue would have an immediate impact on the defense budget in terms of recruiting and training and, ultimately, military readiness.

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## ANNEX A – GANTT CHART

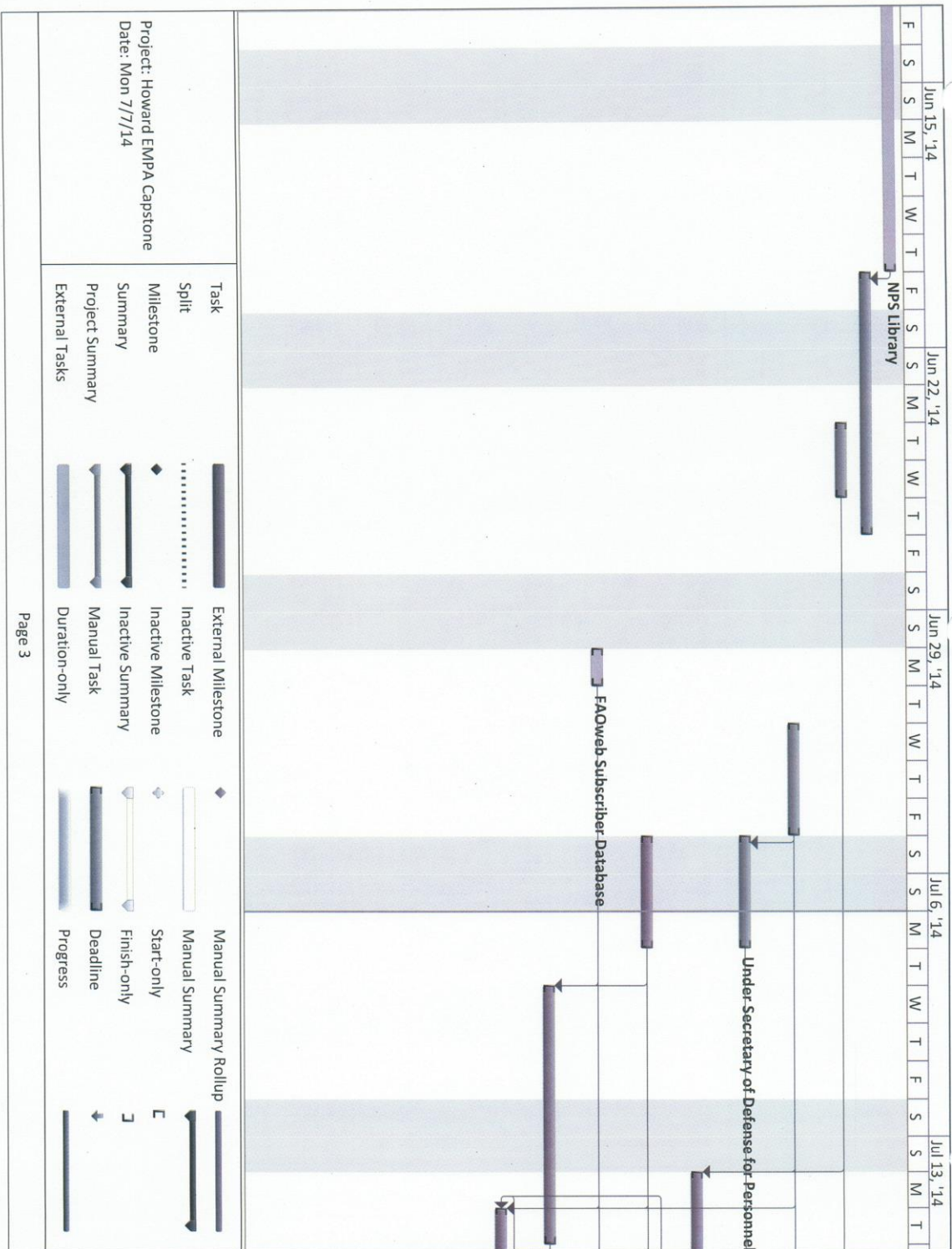
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1		Collect more lit for review	10 days	Sun 6/8/14	Thu 6/19/14		NPS Library							
2		Summarize lit review	5 days	Fri 6/20/14	Thu 6/26/14	1								
3		Begin Research Methods chapter	2 days	Tue 6/24/14	Wed 6/25/14									
4		Develop Key Informant interview questions	3 days	Wed 7/2/14	Fri 7/4/14									
5		Develop list of Key Informants	2 days	Sat 7/5/14	Mon 7/7/14	4	Under Secretary of Defense for							
6		Conduct Informant interviews	5 days	Mon 7/14/14	Fri 7/18/14	4,3								
7		Develop focus group questions	2 days	Sat 7/5/14	Mon 7/7/14									
8		Identify focus group	1 day	Mon 6/30/14	Mon 6/30/14		FAOWeb Subscriber							
9		Conduct focus group survey	5 days	Wed 7/9/14	Tue 7/15/14	7,8								
10		Analyze raw data from informant interviews and focus group survey	4 days	Tue 7/15/14	Fri 7/18/14	4,5,6,7,8,9								
11		Complete Research Methods chapter	2 days	Thu 7/17/14	Fri 7/18/14	3,4,5,6,7,8,9,10								
12		Write research/findings chapter	8 days	Sat 7/19/14	Tue 7/29/14									
13		Write conclusions	3 days	Tue 7/29/14	Thu 7/31/14									
14		Write Table of Contents and Executive Summary/Abstract	2 days	Thu 7/31/14	Fri 8/1/14									
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ID	Task Mode	Task Name	Duration	Start	Finish	Predecessors	Resource Names	Jun 8, '14						
								S	S	M	T	W	T	F
15		Submit rough draft to writing lab for review	3 days	Fri 8/1/14	Tue 8/5/14									
16		Prepare and rehearse for presentation	9 days	Tue 8/5/14	Fri 8/15/14									

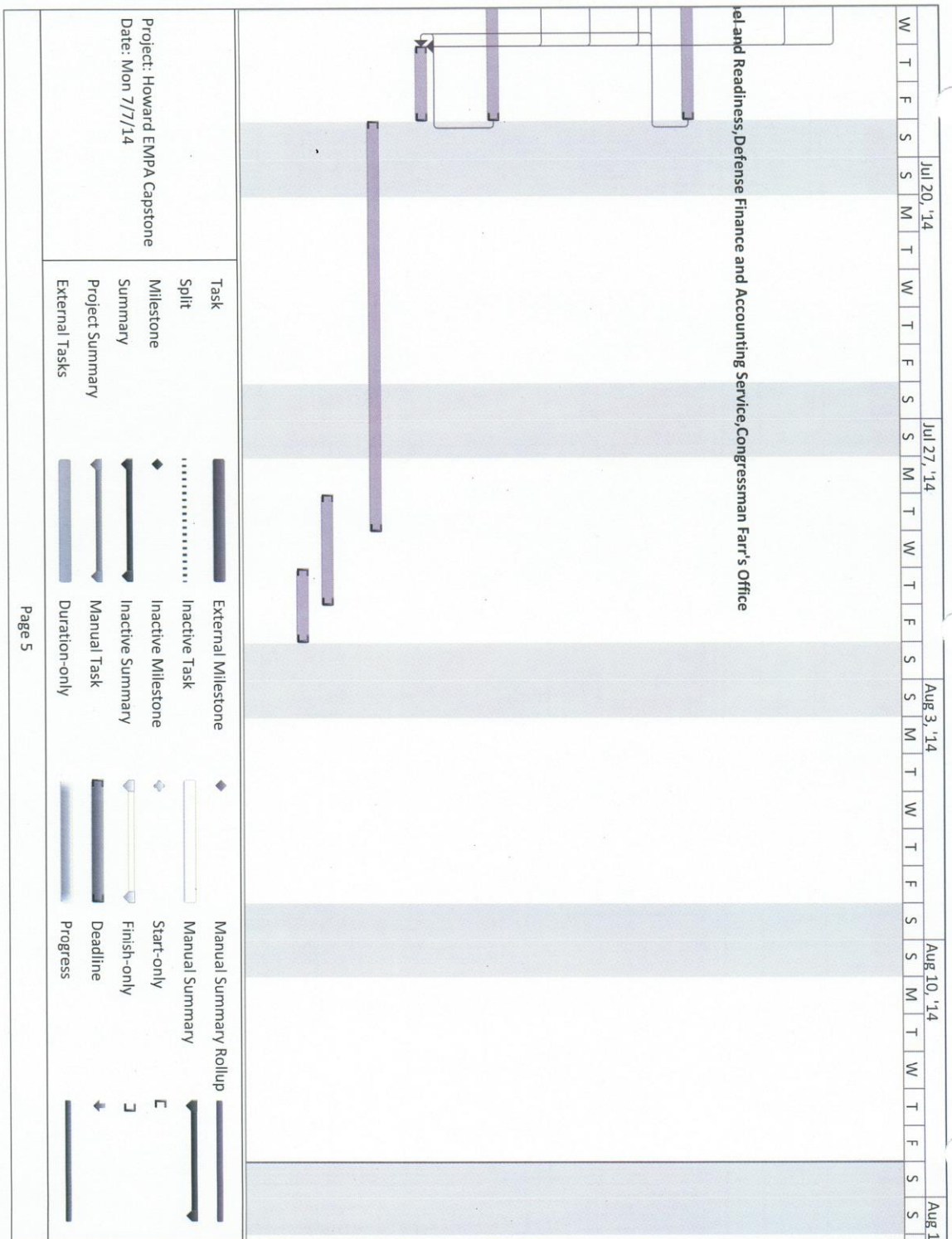
  

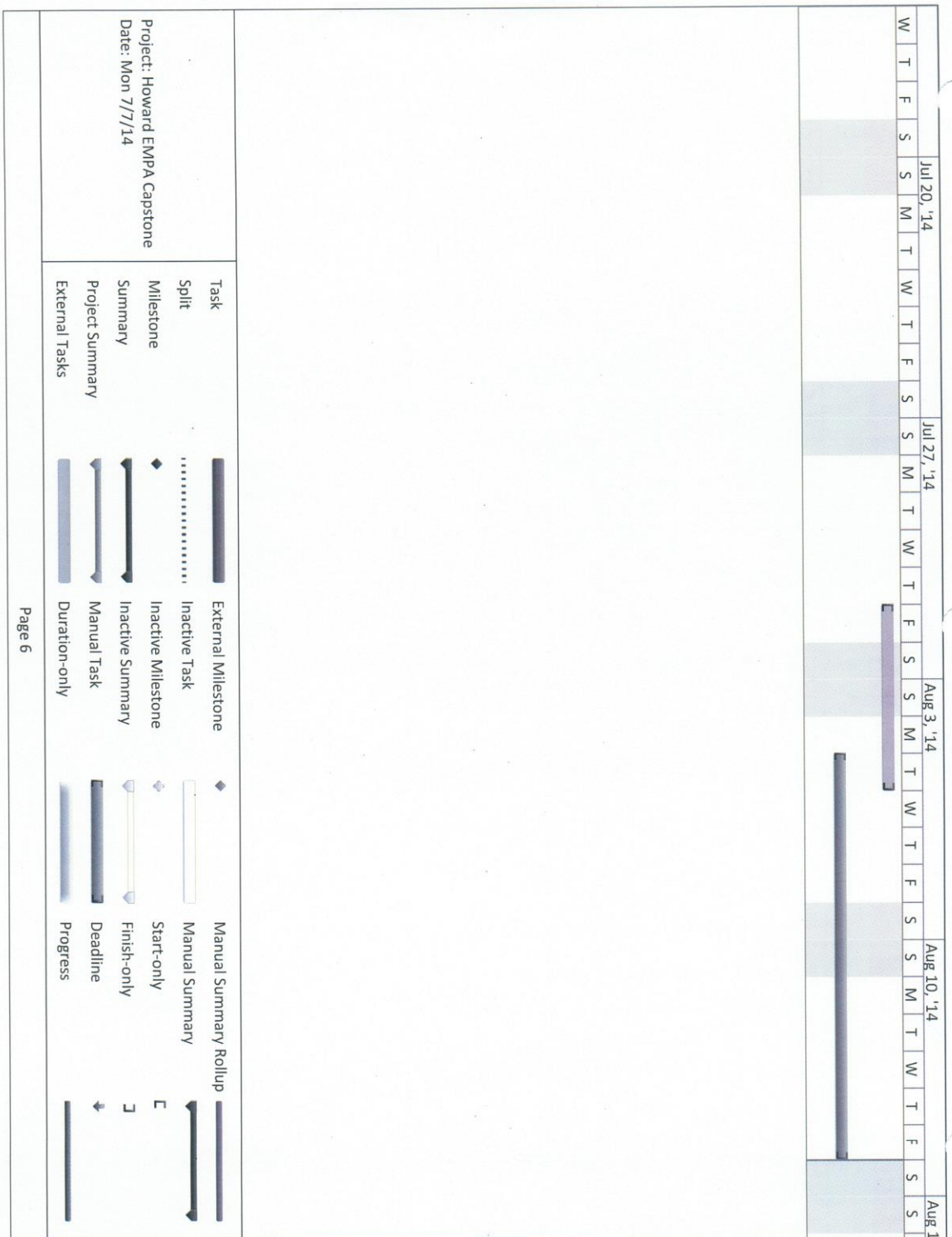
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	Split		Inactive Task		Manual Summary	
	Milestone		Inactive Milestone		Start-only	
	Summary		Inactive Summary		Finish-only	
	Project Summary		Manual Task		Deadline	
	External Tasks		Duration-only		Progress	











## ANNEX B – SURVEY #1

### **Survey #1 Questions**

1. As a mid-career officer, are you familiar with the Uniformed Services Former Spouses' Protection Act (USFSPA), Title 10, U.S. Code, Section 1408?

YES\_\_\_ NO\_\_\_

*(If yes, then proceed to questions 1-10. If no, then go to survey #2 on next page.)*

2. What is your length of time in service:

10 - 11 years\_\_\_ 12 - 13 years\_\_\_ 14 - 15 years\_\_\_

3. How many times have you been divorced?

0\_\_\_ 1\_\_\_ 2\_\_\_ more than 2\_\_\_

4. Do you intend to remain in the military until you are eligible for retirement (20 years or more)?

YES\_\_\_ (skip question #5) NO\_\_\_

5. If no, do you consider any of the following issues to be contributing factors to your intent to leave the military prior to being eligible for retirement?

A. Operational Tempo YES\_\_\_ NO\_\_\_

B. Multiple Deployments YES\_\_\_ NO\_\_\_

C. Stress on Families YES\_\_\_ NO\_\_\_

D. Civilian Pay Gap YES\_\_\_ NO\_\_\_

E. Impact of USFSPA YES\_\_\_ NO\_\_\_

For questions 6 through 9, please rate your opinion on the following scale:

A. I strongly agree with amending this clause in the law.

B. I somewhat agree with amending this clause in the law.

C. I have no opinion about amending this clause in the law.

D. I somewhat disagree with amending this clause in the law.

E. I strongly disagree with amending this clause in the law.

6. Military retirement pay is considered by divorce courts as divisible property in divorce proceedings, but by the Internal Revenue Service as current income for tax purposes.

A.\_\_\_\_ B.\_\_\_\_ C.\_\_\_\_ D.\_\_\_\_ E.\_\_\_\_

7. Calculation of former spouse payment is based on rank/pay grade and time-in-service of the military member as of the date of retirement rather than date of divorce.

A.\_\_\_\_ B.\_\_\_\_ C.\_\_\_\_ D.\_\_\_\_ E.\_\_\_\_

8. Former spouse payments continue for the life of the former spouse.

A.\_\_\_\_ B.\_\_\_\_ C.\_\_\_\_ D.\_\_\_\_ E.\_\_\_\_

9. Former spouse payments do not terminate if former spouse re-marries.

A.\_\_\_\_ B.\_\_\_\_ C.\_\_\_\_ D.\_\_\_\_ E.\_\_\_\_

10. If these clauses in questions 6 through 9 were repealed or amended, would you be more likely to remain in the military until you are eligible for retirement?

YES\_\_\_\_ NO\_\_\_\_

ANNEX C – SURVEY #2

**Survey #2 Questions**

1. As a mid-career officer, are you familiar with the Uniformed Services Former Spouse's Protection Act (USFSPA), Title 10, U.S. Code, Section 1408?

YES\_\_\_ NO\_\_\_

2. What is your length of time in service:

10 - 11 years\_\_\_ 12 - 13 years\_\_\_ 14 - 15 years\_\_\_

3. How many times have you been divorced?

0\_\_\_ 1\_\_\_ 2\_\_\_ more than 2\_\_\_

4. Do you intend to remain in the military until you are eligible for retirement?

YES\_\_\_(skip question #5) NO\_\_\_

5. If no, do you consider any of the following issues to be contributing factors to your intent to leave the military prior to being eligible for retirement?

A. Operational Tempo YES\_\_\_ NO\_\_\_

B. Multiple Deployments YES\_\_\_ NO\_\_\_

C. Stress on Families YES\_\_\_ NO\_\_\_

D. Civilian Pay Gap YES\_\_\_ NO\_\_\_

E. Impact of USFSPA YES\_\_\_ NO\_\_\_

For questions 6 through 9, please rate your opinion on the following scale:

A. I strongly support amending this clause in the law.

B. I somewhat support amending this clause in the law.

C. I have no opinion about amending this clause in the law.

D. I somewhat do not support amending this clause in the law.

E. I strongly do not support amending this clause in the law.

6. According to the USFSPA, there is no minimum length of marriage in order for a former military spouse to qualify for a percentage of retiree pay upon divorce.

A.\_\_\_\_ B.\_\_\_\_ C.\_\_\_\_ D.\_\_\_\_ E.\_\_\_\_

7. According to the USFSPA, calculation of former spouse payment is based on rank/pay grade and time-in-service of the military member as of the date of retirement rather than date of divorce.

A.\_\_\_\_ B.\_\_\_\_ C.\_\_\_\_ D.\_\_\_\_ E.\_\_\_\_

8. According to the USFSPA, former spouse payments continue for the life of the former spouse.

A.\_\_\_\_ B.\_\_\_\_ C.\_\_\_\_ D.\_\_\_\_ E.\_\_\_\_

9. According to the USFSPA, former spouse payments do not terminate if former spouse remarries.

A.\_\_\_\_ B.\_\_\_\_ C.\_\_\_\_ D.\_\_\_\_ E.\_\_\_\_

10. If these clauses in questions 6 through 9 were repealed or amended, would you be more likely to remain in the military until you are eligible for retirement?

YES\_\_\_\_ NO\_\_\_\_



## ANNEX D – KEY INFORMANT INTERVIEW QUESTIONS

### **Key Informant Interview Questions**

1. In your capacity as \_\_\_\_\_, are you familiar with the Uniformed Services Former Spouse's Protection Act (USFSAP), Title 10, U.S. Code, Section 1408?

YES\_\_\_

NO\_\_\_

2. Based on your knowledge of that law, do you believe that the USFSPA is a contributing factor to the decline in the retention rate of mid-career officers from 1981 to present?

\_\_\_\_\_A. I strongly agree that this law affects mid-career officer retention rates.

\_\_\_\_\_B. I somewhat agree that this law affects mid-career officer retention rates.

\_\_\_\_\_C. I have no opinion whether this law affects mid-career officer retention rates.

\_\_\_\_\_D. I somewhat disagree that this law affects mid-career officer retention rates.

\_\_\_\_\_E. I strongly disagree that this law affects mid-career officer retention rates.

3. Do you believe that amendment of the USFSPA would reverse the trend in declining retention rate of mid-career officers?

\_\_\_\_\_A. I strongly agree that amending this law would reverse the trend in mid-career officer retention rates.

\_\_\_\_\_B. I somewhat agree that amending this law would reverse the trend in mid-career officer retention rates.

\_\_\_\_\_C. I have no opinion whether amending this law would reverse the trend in mid-career officer retention rates.

\_\_\_\_\_D. I somewhat disagree that amending this law would reverse the trend in mid-career officer retention rates.

\_\_\_\_\_E. I strongly disagree that amending this law would reverse the trend in mid-career officer retention rates.

4. Why do you/your organization support/oppose the USFSPA?

5. What are the key aspects of the USFSPA that you/your organization supports/opposes?