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## Military Technicians: The Issue of Mandatory Retirement for Non-Dual-Status Technicians

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## **ABSTRACT**

This report describes the mandatory retirement provisions for certain “non-dual-status” military technicians contained in the National Defense Authorization Act for Fiscal Year 2000 (P.L. 106-65), discusses the stated rationale behind the policy, and quantifies the impact it will likely have on individual technicians. The report also discusses objections to the mandatory retirement provisions and analyzes proposals to repeal or modify this policy. Appendices to this report contain detailed histories of the military technician program, the “dual status” requirement, and congressional efforts to curtail the number of non-dual-status technicians within the technician workforce. This report will be updated as needed.

# Military Technicians: The Issue of Mandatory Retirement for Non-Dual-Status Technicians

## Summary

Military technicians are federal civilian employees who provide support primarily to wartime deployable reserve units. Unlike regular civilian employees, military technicians are generally required to maintain membership in the Selected Reserve as a condition of their employment. These technicians are referred to as “dual-status” technicians, reflecting their status as both federal civilian employees and military reservists. The intent of this requirement is to guarantee that when a reserve unit is mobilized, the military technicians who support that unit will be mobilized as well. Some military technicians, however, are not members of the Selected Reserve. These technicians – referred to as “non-dual-status” technicians – cannot be ordered to deploy with their unit when it is mobilized.

The number of non-dual-status technicians, especially within the Army Reserve, has troubled Congress for many years. Concerned that the large proportion of non-deployable technicians within the technician workforce was undermining the readiness of reserve units, Congress passed legislation in 1983 – and in every subsequent year up through 1995 – aimed at reducing or eliminating the number non-dual-status technicians. These past efforts, however, did not produce the results Congress had hoped for. The mandatory retirement provisions of the National Defense Authorization Act for FY2000 are the latest attempt by Congress to ensure that the technician workforce is virtually all “dual status.”

The mandatory retirement provisions do *not* affect technicians in the National Guard; they only apply to technicians in the Army Reserve and the Air Force Reserve who do not hold dual status now or who lose dual status at some time in the future. (There are no military technicians in the Naval Reserve, Marine Corps Reserve, or Coast Guard Reserve). Under current legislation, Army and Air Force Reserve technicians who do not hold dual status and who are eligible for an “unreduced annuity” will be required to retire; if they do not hold dual status but are not yet eligible for an “unreduced annuity,” they *may* be allowed to continue working until they become eligible for one, at which time they will be required to retire. (An annuity, or pension, is a key component of the retirement benefits of federal civilian employees. An “unreduced annuity” is an annuity that is not subject to reduction by reason or age or years of service. It is important to point out that the annuity referred to here is the one which technicians earn as federal civilian employees, *not* the military retired pay which they may be entitled as a result of their simultaneous service in the Selected Reserve).

Critics of the mandatory retirement provisions claim that this policy is unfair because some technicians will suffer financially by having to retire earlier than planned. These critics also argue that it will undermine military readiness by forcing experienced technicians out of their jobs. They believe that the policy should be repealed, or at least modified in order to minimize the negative financial impact on technicians. However, supporters of the provisions argue that the policy is fair to technicians as it allows them to continue working until they are eligible for a normal pension. They also argue that it enhances the military readiness of reserve units by ensuring that technicians can deploy with the units they support.

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# Military Technicians: The Issue of Mandatory Retirement for Non-Dual-Status Technicians

## Introduction

The National Defense Authorization Act for Fiscal Year 2000<sup>1</sup> contains policy changes affecting many U.S. military technicians, most notably a provision which mandates the retirement of certain retirement-eligible technicians. Under this legislation, Army and Air Force Reserve technicians who do not hold dual status and who are eligible for an “unreduced annuity” will be required to retire; if they do not hold dual status but are not yet eligible for an “unreduced annuity,” they *may* be allowed, at the discretion of their respective service, to continue working until they become eligible for one, at which time they will be required to retire. Although Congress has settled the question for now, advocates for some military technicians argue that the policy should be repealed or modified.

This report will describe the duties of military technicians and the history of military technician programs in the National Guard, Army Reserve, and Air Force Reserve. It will outline the importance of the “dual status” requirement in these three distinct technician programs, explain the interest of Congress in this requirement, and recount the legislative attempts to strengthen its application. Finally, this report will discuss the stated rationale for the recently enacted mandatory retirement provision, linking it to Congress’s past efforts to strengthen the dual status requirement, and assess the impact of this provision on military technicians.

## What is a Military Technician?

The reserve component<sup>2</sup> (RC) of the United States armed forces employs a small core group of full time employees to administer RC units, train RC personnel, and maintain RC equipment. These employees are known as Full-Time Support (FTS) personnel. There are four distinct types of FTS personnel: civilian employees, active duty military personnel, Active Guard and Reserve (AGR) personnel, and military technicians.<sup>3</sup> Military technicians are federal civilian employees, hired under statutes

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<sup>1</sup> P. L. 106-65; October 5, 1999.

<sup>2</sup> The reserve component of the United States military includes the Army Reserve, Navy Reserve, Air Force Reserve, Marine Corps Reserve, Coast Guard Reserve, Army National Guard, and the Air National Guard.

<sup>3</sup> Military technicians have also been referred to as “reserve technicians,” “civilian technicians,” “dual status technicians,” “technicians” and “caretakers and clerks” in the past.

(continued...)

contained in titles 5 and 32, U.S. Code, who provide support primarily to wartime deployable units of the Selected Reserve.<sup>4</sup> Unlike regular civilian employees, however, military technicians are generally required to maintain membership in the Selected Reserve as a condition of their employment. They may also be required to fulfill their reserve obligation (i.e., drilling one weekend a month and attending two weeks of annual training) in the same unit they work for in their civilian capacity.<sup>5</sup> The principal intent of this policy is to guarantee that when a reserve unit is mobilized, the technicians who support it will be mobilized as well. This ensures that the expertise and skills of the technician workforce remain available to the unit when it needs them most.

Military technicians who hold membership in the Selected Reserve are referred to as “dual status technicians” because of their status as both civilian employees and reservists. However, for a variety of reasons which will be discussed later, not all military technicians belong to the Selected Reserve. These technicians are referred to as “non-dual-status technicians.”<sup>6</sup> Precisely because they are not members of the Selected Reserve, non-dual-status technicians *cannot* be ordered to deploy with their unit when it is mobilized.<sup>7</sup> Thus, the supported unit is largely deprived of the technician’s expertise and skills during its deployment.

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<sup>3</sup> (...continued)

The term used in the most recent federal legislation has been “military technicians” and is the terminology generally used throughout this paper. The term “technicians,” however, is sometimes used as an abbreviation. It should be considered synonymous with the term “military technicians” unless stated otherwise.

<sup>4</sup> The Selected Reserve, a sub-element of the Ready Reserve, contains those units and individuals most essential to wartime missions. Members of the Selected Reserve generally perform, at a minimum, one weekend of training each month, and two weeks of training each year, for which they receive pay and benefits.

<sup>5</sup> A “unit membership requirement” for certain military technicians was enacted November 18, 1997, as part of P. L. 105-85 and is codified in Title 10, U.S. Code, section 10216 (d). Similar unit membership requirements have existed for many years within the administrative agreements which govern the military technician programs in the Army Reserve and the Air Force Reserve. In the case of the Army Reserve, the annual Department of Defense Appropriations Acts from FY1984 through FY1996 also contained language barring funds to certain technicians who did not hold reserve membership in the same unit which they worked for in their civilian capacity. See footnote 63 for a full listing of these provisions.

<sup>6</sup> They are also sometimes referred to as “status quo” technicians.

<sup>7</sup> Non-dual-status technicians may *volunteer* to deploy with their units, as some did during the Gulf War, but they are under no obligation to do so.

## Origin and Evolution of the Military Technician Program

As a federal program, the military technician program is over 80 years old and its history is fairly complex. The following section provides a brief overview of the program's origin and evolution. A more detailed account is contained in Appendix A of this report.

Military technicians are descended from the personnel described in Section 90 of the National Defense Act of 1916.<sup>8</sup> This act authorized the use of federal funds “for the compensation of competent help” to take care of the “material, animals, and equipment” in National Guard units. Subsequent legislation renamed the “competent help” as “caretakers and clerks.” Until 1968, these “caretakers and clerks” were state employees, governed by state laws, but paid with federal funds. In 1968, however, Congress passed the National Guard Technicians Act,<sup>9</sup> which converted all “caretakers and clerks” from state employees to federal employees and renamed them “technicians.”

The Air Force Reserve and the Army Reserve established technician programs similar to the National Guard's in 1957 and 1960, respectively.<sup>10</sup> However, unlike the National Guard program, which was established by federal law, the Reserve programs were established administratively, under the broader statutory umbrella of the federal civil service. As such, the Reserve technician programs differed substantially from the National Guard program. Furthermore, because the Reserve technician programs operated under the authority of federal civil service laws, the Air Force Reserve and the Army Reserve needed the approval of the Civil Service Commission (now the Office of Personnel Management) before they could establish their technician programs. To win this approval, the Air Force Reserve and the Army Reserve each had to negotiate an agreement with the Civil Service Commission concerning employment conditions for the technicians. These agreements were negotiated separately and, as a result, the Air Force Reserve technician program differed substantially from the Army Reserve technician program.

One of the key differences among these three military technician programs – National Guard, Air Force Reserve, and Army Reserve – lies in the degree to which they required their technicians to maintain “dual status.” A strict “dual status” provision would require military technicians to maintain membership in the Selected Reserve as a condition of their employment, usually in the same unit they work for in their civilian capacity. A less strict provision might make exceptions in certain cases, or merely encourage “dual status” while not requiring it.

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<sup>8</sup> Statutes at Large, June 3, 1916, chapter 134, section 90.

<sup>9</sup> P. L. 90-486; 82 Stat. 755; August 13, 1968.

<sup>10</sup> The Naval Reserve, Marine Corps Reserve, or the Coast Guard Reserve have never had a military technician program.

Of the three military technician programs, the Army Reserve had the weakest dual status requirement.<sup>11</sup> The effect of this weaker “dual status” requirement was to create a technician program in the Army Reserve with a relatively high number of non-dual-status technicians. This eventually attracted the attention of Congress, which was concerned that the Army Reserve’s readiness was being degraded by the presence of so many technicians who could not be required to deploy with their units in the case of mobilization.

## **Congress and the Dual Status Requirement: Past Legislative Provisions**

From 1983 to 1995, Congress repeatedly included provisions in defense appropriations bills aimed at reducing the numbers of non-dual-status technicians within the Army Reserve’s military technician program. Yet, in spite of these efforts, the composition of the Army Reserve’s technician workforce did not change appreciably. (For a detailed history of these legislative efforts and their impact see Appendix B). As a result, beginning in 1995, Congress began to take a broader and more aggressive approach towards managing the military technician workforce.

In 1995, Congress included a provision in the National Defense Authorization Act for Fiscal Year 1996 which established a strict dual-status requirement for all newly hired technicians, whether in the Army Reserve, the Air Force Reserve, or the National Guard.<sup>12</sup> Two years later, the National Defense Authorization Act for Fiscal Year 1998 contained several provisions related to military technicians and the “dual status” requirement. Specifically, it placed a limit on the number of non-dual-status technicians that could be employed in each of the technician programs and required the Secretary of Defense to submit a report to Congress outlining “a plan for ensuring that, on and after September 30, 2007, all military technician positions are held only by military technicians (dual status).”<sup>13</sup> The clear implication of this latter provision was that Congress was interested in phasing out the employment of all non-dual-status technicians and wanted advice from the Department of Defense on how to accomplish this objective.

The Department of Defense submitted a report to Congress in 1999 which contained a plan to ensure that only dual-status technicians held military technician positions by the end of FY2007; however, the report raised a number of concerns about the fairness and feasibility of doing so. With respect to fairness, the report predicted that meeting the 2007 deadline would require DoD to involuntarily separate 2,655 non-dual-status technicians, many of whom would not be eligible for civil

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<sup>11</sup> For a comparison of dual-status requirements of the three programs, see Appendix A.

<sup>12</sup> P. L. 104-106, section 513(c); 110 Stat. 306; February 10, 1996.

<sup>13</sup> P. L. 105-85, section 523; 111 Stat. 1737; November 18, 1997. The caps on the number of non-dual-status technicians which could be employed by the other Reserve organizations were as follows: 1,500 non-dual-status technicians in the Army Reserve; 2,400 in the Army National Guard; 450 in the Air National Guard; and zero in the Air Force Reserve by the end of fiscal year 1998.

service retirement when separated.<sup>14</sup> Forced reductions of this sort, the DoD report argued, were unfair to the individual technicians:

...non-dual status military technicians were hired and are managed according to various Reserve component policies. Non-dual status military technicians had a reasonable expectation that their positions carried career potential. The Department feels a moral obligation to recognize previous commitments and reasonable individual career expectations and to avoid forced reductions to the extent practicable.<sup>15</sup>

Another significant point raised in the DoD report dealt with the limited need for non-dual-status technicians in the National Guard. National Guard units usually operate under the authority of the Governor of the state or territory in which they are located. Each state or territory maintains a headquarters to oversee its units and military technicians are frequently employed in these headquarters. If these technicians hold dual-status, then they could potentially be mobilized by the federal government in times of national emergency and deployed with the unit they maintain membership in. This, DoD contended, could cripple the ability of the state headquarters to carry out its own important mission. “The National Guard,” the report concluded, “cannot operate without a workforce that includes some employees who do not have to mobilize with the units they support.” From this perspective, the National Guard has a bona fide need for at least some non-dual-status technicians.<sup>16</sup>

## **Congress and the Dual Status Requirement: Legislative Provisions in the National Defense Authorization Act for FY2000, Including the Mandatory Retirement Provisions**

As a result of the concerns raised by the Department of Defense, Congress substantially modified the idea of simply filling all military technician positions with dual-status technicians by 2007. The National Defense Authorization Act for FY2000 contains a new initiative which attempts to reconcile the desire of Congress to have an all dual-status technician workforce with the issues of fairness and necessity raised by the Department of Defense. With regards to the issue of necessity

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<sup>14</sup> Department of Defense, Office of the Assistant Secretary of Defense for Reserve Affairs, “A Plan for Full Utilization of Military Technicians (Dual Status),” August 2, 1999, pages 7 and 8. Numbers are derived from the estimated Reductions in Force (RIFs) required by September 30, 2007, without benefit of additional retirement incentives.

<sup>15</sup> Department of Defense, Office of the Assistant Secretary of Defense for Reserve Affairs, “A Plan for Full Utilization of Military Technicians (Dual Status),” August 2, 1999, page 3.

<sup>16</sup> A similar argument has been made by some military technicians with respect to the Army Reserve. A small proportion of Army Reserve military technicians are assigned to non-deploying headquarters units where they perform functions similar to those performed by a National Guard state headquarters. (At present, 558 military technicians, or 9% of the Army Reserve’s technician workforce, fit this description). Thus, they argue, if the National Guard has a bona fide need for some non-dual-status technicians in its headquarters units, so too does the Army Reserve.

raised by the National Guard, the congressional response was fairly straightforward: the act authorized the National Guard to employ up to 1,950 non-dual-status technicians on and after October 1, 2001.<sup>17</sup>

Reconciling Congress's desire to have a dual-status technician workforce with the desire to treat non-dual-status technicians fairly, however, was a more complicated issue and the relevant legislation was therefore more complex. The issue is addressed in Section 522 of the National Defense Authorization Act for FY2000, first by categorizing military technicians – in the Army and Air Force Reserves only<sup>18</sup> – in two separate ways. First, it categorized technicians based on the date they were hired: “on or before” or “after” February 10, 1996, the date of enactment of the National Defense Authorization Act for FY1996. This distinguishes between those technicians who were hired when there was an ambiguous dual-status requirement, and those who were hired after a firm dual-status requirement had been codified into law. Second, it categorized them based on whether or not they held dual-status on October 5, 1999, the date on which the National Defense Authorization Act for FY2000 was enacted into law. This provision was principally administrative: it facilitated distinguishing those technicians who would be affected immediately and those who might be affected in the future. These two dividing lines produce four distinct categories of Army and Air Force Reserve military technicians: (1) those who were hired on or before February 10, 1996, and who held dual-status on October 5, 1999; (2) those who were hired on or before February 10, 1996 and who did not hold dual-status on October 5, 1999; (3) those who were hired after February 10, 1996, and who held dual-status on October 5, 1999; and (4) those who were hired after February 10, 1996, and who did not hold dual-status on October 5, 1999. The legislative provisions contained in Section 522 and a description of how they impact each of these four groups are discussed below. (These provisions and their impact are summarized in Table1).

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<sup>17</sup> P. L. 106-65, section 523; October 5, 1999. This figure represents about four% of the total number of technicians currently authorized for the National Guard.

<sup>18</sup> The National Guard was not included in this part of the Act because, as mentioned, Congress recognized that the Guard had a legitimate need to employ a small number of non-dual-status technicians. Applying the mandatory retirement/prompt separation provisions contained in this part of the Act to non-dual-status technicians in the National Guard would run counter to Congress's intent of allowing the Guard to employ this type of technician as a permanent part of its technician workforce.

## **Section 522: Its Impact on Various Groups of Military Technicians in the Army Reserve and the Air Force Reserve**

### **Army and Air Force Reserve Technicians Hired on or Before February 10, 1996, Who Held Dual-status on October 5, 1999**

Provided they maintain their dual-status, these technicians will not be affected by the changes contained in the National Defense Authorization Act for FY2000; however, should they lose their dual-status<sup>19</sup> at some point after October 5, 1999, they will be substantially affected. Those who lose their dual-status and are eligible for an “unreduced annuity”<sup>20</sup> will be required to retire within 30 days of losing dual-status. (It is important to point out that the annuity, or pension, referred to here is the annuity earned by technicians *as members of the civil service*. It does not refer to the military retired pay which some technicians become eligible for as long-time members of the Selected Reserve).<sup>21</sup> Those who lose their dual-status but are *not* eligible for an unreduced annuity will have several options. They will have the opportunity to “(i) reapply for, and if qualified, be appointed to, a position as a military technician (dual-status); or (ii) apply for a civil service position that is not a technician position.”<sup>22</sup> Alternatively, these technicians can continue their employment with the Army or Air

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<sup>19</sup> A technician could lose his or her dual status (i.e. membership in the Selected Reserve) in several ways, including the following: failure to meet military physical standards, failure to be selected for promotion to the next higher military rank within the prescribed period of time, or through disciplinary actions which lead to the technicians discharge from the reserves or ineligibility for re-enlistment. In the first two cases, the technician would generally be considered to have lost dual-status involuntarily, while in the latter case the technician would be considered to have lost dual-status voluntarily.

<sup>20</sup> “For purposes of this section, a technician shall be considered to be eligible for an unreduced annuity if the technician is eligible for an annuity under section 8336, 8412, or 8414 of title 5 that is not subject to a reduction by reason of the age or years of service of the technician.” P. L. 106-65, section 522(a); October 5, 1999. Title 10, U.S. Code, Section 10218(c). Section 8336 of title 5 deals with immediate retirement under the Civil Service Retirement System; Section 8412 of title 5 deals with immediate retirement under the Federal Employees’ Retirement System; Section 8414 of title 5 deals with early retirement under the Federal Employees’ Retirement System. The practical implications of this definition of unreduced annuity on individual technicians are discussed later in the report.

<sup>21</sup> As members of the civil service, technicians can earn an entitlement to an annuity either under the Civil Service Retirement System (CSRS) or under the Federal Employee Retirement System (FERS). Generally, a federal employee must have 30 years of qualifying *civil service* and be 55 years of age in order to be entitled to an unreduced annuity, although this is not always the case. (See footnote 30 for more information on this topic). Technicians may also be eligible for military retired pay. To qualify for military retired pay, they normally must have 20 years of qualifying *military service*, the last eight of which must in the reserves, and be at least 60 years of age. Since the end of the Cold War, however, these requirements have been temporarily lowered to facilitate reserve force reductions.

<sup>22</sup> P. L. 106-65, section 522(a); October 5, 1999. Title 10, U.S. Code, Section 10218 (a)(3)(A).

Force Reserves as non-dual-status technicians; however, they will have several conditions attached to their employment. First, they will *not* be permitted to apply for voluntary personnel actions<sup>23</sup> after October 5, 2000. Second, they will be required to retire within 30 days of becoming eligible for an unreduced annuity.

### **Army and Air Force Reserve Technicians Hired on or Before February 10, 1996, Who Did Not Hold Dual-status on October 5, 1999**

If they are eligible for an unreduced annuity, these technicians will be required to retire no later than April 5, 2000. If they are *not* eligible for an unreduced annuity, they will have the opportunity to “(i) reapply for, and if qualified, be appointed to, a position as a military technician (dual-status); or (ii) apply for a civil service position that is not a technician position.”<sup>24</sup> Alternatively, these technicians can continue their employment with the Army or Air Force Reserves as non-dual-status technicians; however, they will have several conditions attached to their employment. First, they will *not* be permitted to apply for voluntary personnel actions after October 5, 2000. Second, they will be required to retire within 30 days of becoming eligible for an unreduced annuity.

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<sup>23</sup> “In this section, the term ‘voluntary personnel action,’ with respect to a non-dual status technician, means any of the following: (1) The hiring, entry, appointment, reassignment, promotion, or transfer of the technician into a position for which the Secretary concerned has established a requirement that the person occupying the position be a military technician (dual status). (2) Promotion to a higher grade if the technician is in a position for which the Secretary concerned has established a requirement that the person occupying the position be a military technician (dual status).” P. L. 106-65, section 522 (a); October 5, 1999. Title 10, U.S. Code, Section 10218(d).

<sup>24</sup> P. L. 106-65, section 522(a); October 5, 1999. Title 10, U.S. Code, Section 10218 (b)(2)(A).

**Table 1. Effect of P.L. 106-65, Section 522, on Military Technicians in the Army Reserve and Air Force Reserve**

Hired on or before February 10, 1996?	Yes	Yes	Yes	No	No	No
Held Dual Status on October 5, 1999?	No	Yes, and maintains it in the future	Yes, but loses it in the future	No	Yes, and maintains it in the future	Yes, but loses it in the future
Affected by P.L. 106-65, section 522?	Yes	No	Yes	Yes	No	Yes
Effect on Technician	<p>If eligible for an unreduced annuity, the technician will be retired no later than April 5, 2000.</p> <p>If not eligible for unreduced annuity, technician has three options:</p> <p>(1) regain reserve membership and reapply for position;</p> <p>(2) apply for a non-technician position in the civil service;</p> <p>(3) continue in their job as a non-dual-status technician. However, the technician will then be:</p> <p>(a) ineligible for voluntary personnel actions after October 5, 2000, and;</p> <p>(b) will be retired within 30 days of becoming eligible for an unreduced annuity.</p>	None	<p>If eligible for an unreduced annuity when dual status is lost, the technician will be retired within 30 days.</p> <p>If not eligible for unreduced annuity when dual status is lost, technician has three options:</p> <p>(1) regain reserve membership and reapply for position;</p> <p>(2) apply for a non-technician position in the civil service.</p> <p>(3) continue in their job as a non-dual-status technician. However, the technician will then be:</p> <p>(a) ineligible for voluntary personnel actions after October 5, 2000, and;</p> <p>(b) will be retired within 30 days of becoming eligible for an unreduced annuity.</p>	<p>If eligible for an unreduced annuity, the technician will be retired no later than April 5, 2000.</p> <p>If not eligible for unreduced annuity, technician has three options:</p> <p>(1) regain reserve membership and reapply for position;</p> <p>(2) apply for a non-technician position in the civil service.</p> <p>(3) continue in their job as a non-dual-status technician. However, the technician will then be:</p> <p>(a) ineligible for voluntary personnel actions after October 5, 2000, and;</p> <p>(b) will be separated from employment within one year of losing dual-status.</p>	None	<p>If eligible for an unreduced annuity when dual status is lost, the technician will be retired within 30 days.</p> <p>If not eligible for unreduced annuity when dual status is lost, technician has three options:</p> <p>(1) regain reserve membership and reapply for position;</p> <p>(2) apply for a non-technician position in the civil service.</p> <p>(3) continue in their job as a non-dual-status technician. However, the technician will then be:</p> <p>(a) ineligible for voluntary personnel actions after October 5, 2000, and;</p> <p>(b) will be separated from employment within one year of losing dual-status.</p>

## **Army and Air Force Reserve Technicians Hired after February 10, 1996, Who Held Dual-status on October 5, 1999**

Provided they maintain their dual-status, these technicians will not be affected by the changes contained in the National Defense Authorization Act for FY2000; however, should they lose their dual-status at some point after October 5, 1999, they will be substantially affected. If they lose their dual-status and are eligible for an unreduced annuity, they will be required to retire from their positions within 30 days of losing dual-status. Those who lose their dual-status but are *not* eligible for an unreduced annuity will have several options. They will have the opportunity to “(i) reapply for, and if qualified, be appointed to, a position as a military technician (dual-status); or (ii) apply for a civil service position that is not a technician position.”<sup>25</sup> Alternatively, these technicians can continue their employment with the Army or Air Force Reserves as non-dual-status technicians; however, they will *not* be permitted to apply for any voluntary personnel actions after October 5, 2000, and they will be separated from their employment not later than one year after the date on which dual status was lost.

## **Army and Air Force Reserve Technicians Hired after February 10, 1996, Who Did Not Hold Dual-status on October 5, 1999**

If they are eligible for an unreduced annuity, these technicians will be required to retire no later than April 5, 2000. If they are *not* eligible for an unreduced annuity, they will have the opportunity to “(i) reapply for, and if qualified, be appointed to, a position as a military technician (dual-status); or (ii) apply for a civil service position that is not a technician position.”<sup>26</sup> Alternatively, these technicians can continue their employment with the Army or Air Force Reserves as non-dual-status technicians; however, they will *not* be permitted to apply for any voluntary personnel actions after October 5, 2000, and they will be separated from their employment not later than one year after the date on which dual status was lost.

## **Impact of the Mandatory Retirement Provisions on Individual Technicians**

The mandatory retirement provisions mentioned above will cause an estimated 308 technicians, almost all of whom are employed by the Army Reserve, to be retired no later than April 5, 2000.<sup>27</sup> These are technicians who were hired on or before

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<sup>25</sup> P. L. 106-65, section 522(a); October 5, 1999. Title 10, U.S. Code, Section 10218 (a)(3)(A)

<sup>26</sup> P. L. 106-65, section 522(a); October 5, 1999. Title 10, U.S. Code, Section 10218 (b)(2)(A).

<sup>27</sup> Source: Colonel Richard Krimmer, Department of Defense, Office of the Assistant Secretary of Defense for Reserve Affairs. According to Colonel Krimmer, these figures are the best available at the present time, but they may fluctuate in the future. The interpretation (continued...)

February 10, 1996, did not hold dual-status on October 5, 1999, and *were eligible* for an unreduced civil service annuity on the latter date. By the end of fiscal year 2005, it is estimated that an additional 779 technicians will be similarly forced to retire, with a further 358 retired by the end of fiscal year 2016. These are technicians who were hired on or before February 10, 1996, did not hold dual-status on October 5, 1999, but *were ineligible* for an unreduced annuity on the latter date. Pursuant to the law they will be retired within six months of becoming eligible for an unreduced annuity. This projection, however, does not account for technicians who were hired on or before February 10, 1996, and held dual status on October 5, 1999, but who lose their dual status at some future date. According to the law, these technicians will also be required to retire when they become eligible for an unreduced annuity.

As mentioned above, those Army and Air Force Reserve technicians hired after February 10, 1996, will not be allowed to stay in their positions until retirement if they lose their dual-status. However, the legislation does allow them to stay in their positions for up to one year after losing dual-status. Thus, under this legislation, there likely will be a small number of non-dual-status technicians who are permitted to continue working during this one year transition period on an ongoing basis. Consequently, the legislation permanently authorizes up to 175 non-dual-status technicians in both the Army and Air Force Reserves after October 1, 2007, in order to accommodate these technicians.

## **Arguments in Opposition to the Mandatory Retirement Provisions**

The mandatory retirement provision has been criticized by some, especially by those non-dual-status technicians who will soon be forced into retirement. Their principal criticism is that the legislation is unfair to them, as it forces them to retire and receive a pension check when they would prefer to continue working and receive a full paycheck. The difference between a civil service retirement payment and a regular paycheck is substantial, although it will vary from individual to individual, depending on each individual's total years of service. For example, assume a non-dual-status technician plans to retire at age 60 after 35 years of service. At that time, the technician would be eligible for an annuity equal to 66.25% of his or her "high-3" average pay.<sup>28</sup> If, on the other hand, that same technician is required to retire at age 55 after 30 years of service, the difference between pay and pension will be greater. This technician will immediately be eligible to receive a civil service pension check, but it will equal 56.25% of his or her "high-3" average pay. Thus, assuming the

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<sup>27</sup> (...continued)

of precisely who is eligible for an "unreduced annuity" will be a key factor in determining precisely how many technicians will be affected. (See footnote 30 for more information on this issue). Tom Hawley, Professional Staff Member, House Armed Services Committee, cites a figure of 387 technicians who will be retired by April 5, 2000.

<sup>28</sup> The accrual rates for each year of service under CSRS are 1.5% for the first five years, 1.75% for the second five years, and 2.0% for all subsequent years. This factor is then applied to the average of the employees highest three years of pay to determine the annuity.

individual does not find alternate employment, between the age of 55 and 60, the technician's gross income will be reduced by 43.75% (full paycheck minus pension check), and after age 60 the technician's gross income will be 15% lower than anticipated (an annuity of 56.25% of pay is worth 15% less than an annuity of 66.25%).<sup>29</sup> Thus, assuming that they had a desire to continue working, the technicians who are retired under this provision could experience a significant reduction in income from the federal government. These retired technicians are free to seek employment in the private sector, and the combination of their private sector earnings with their civil service pension could result in their earning a higher income than before. However, as these technicians will all be at least 55 years of age at the time they retire, opponents of the mandatory retirement provisions argue that they may have a difficult time securing employment in the private sector.<sup>30</sup>

To remedy this situation, some propose repealing the mandatory retirement provisions altogether, allowing non-dual-status technicians to continue working indefinitely as long as they can fulfill the civilian functions of their job. Others propose modifying the mandatory retirement provision so that it will not apply until

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<sup>29</sup> Note, however, that the difference in net income will not be as great as the difference in gross income. A technician who is covered by CSRS has 7% of gross pay deducted from each paycheck in order to fund his or her pension. That deduction is not taken out of pension payments.

<sup>30</sup> Most of the technicians who will be immediately affected by the mandatory retirement provisions were hired prior to January 1, 1984 and most of them are covered by the Civil Service Retirement System (CSRS). Thus, the example cited here is based on the parameters of CSRS. The age used here, 55 years, reflects the normal minimum retirement age of federal employees under CSRS and the normal years of service, 30, needed to receive an unreduced annuity (Title 5, U.S. Code, section 8336 (a)). However, if involuntarily separated, federal employees covered by CSRS become eligible for an unreduced annuity at age 55 with 20 years of service or age 62 with five years of service (Title 5, U.S. Code, section 8336 (d); Title 5, U.S. Code, section 8336 (f); Title 5, U.S. Code, section 8339 (h)). Thus, under this retirement authority some technicians could be forced to retire at age 55 with 20 years of service, with an annuity worth 36.25% of their "high-3" pay. There has been some disagreement over whether Congress intended this involuntary separation retirement authority to apply to non-dual-status technicians. However, Ted Newland from the Retirement Policy Division of the Office of Personnel Management recently stated that he "met with staff of the House Armed Service and Government Reform committees, and provided technical assistance in drafting the bill. Not only are the above criteria [the retirement age/years of service combinations] consistent with the plain wording of the statute, they are consistent with the intentions expressed in those discussions." While most of the technicians who will be immediately affected by the mandatory retirement provisions are covered by CSRS, a small number are covered by the Federal Employees Retirement System (FERS) rules for retirement, due to retirement system conversions or as a result of federal civil service credit for past military service. Under FERS, employees are eligible for an unreduced annuity at age 50 with 20 years of service, at age 62 with five years of service, or at any age with 25 years of service. (Title 5, U.S. Code, section 8414 (b)). The accrual rates under FERS are 1% per year of service. The resultant factor is then applied to the employees "high-3" pay to determine the value of the annuity.

the technician reaches age 60, the age at which many of these technicians will be eligible to receive their military retirement check for their years of reserve duty.<sup>31</sup>

Opponents of the mandatory retirement provisions reject the notion that non-dual-status technicians undermine the readiness of reserve units. They argue that such a relationship has never been conclusively demonstrated.<sup>32</sup> On the contrary, they argue that military technicians, whether dual-status or not, contribute substantially to the readiness of reserve units. From this perspective, requiring some of the most experienced technicians to retire will hurt the readiness of reserve units rather than enhancing it.

## **Arguments in Support of the Mandatory Retirement Provisions**

Supporters of the mandatory retirement provisions reject the notion that mandatory retirement will undermine readiness; in fact, their principal argument is that it will enhance the readiness of the reserve units, especially those within the Army Reserve (which has the highest proportion of non-dual status technicians). Non-dual-status technicians, they argue, may do excellent work in their civilian capacity, but they cannot fulfill all the duties of their jobs unless they can be mobilized and deployed with their units. This inability to deploy creates a situation where some of the key, full-time personnel of a unit (the non-dual-status technicians) will remain at their home-station while the less experienced, part-time personnel (traditional reservists) deploy to the theater of operations. This, they argue, deprives the unit of key personnel precisely when they are needed most and thereby degrades the efficiency and effectiveness of the unit. The way to remedy it is to replace non-dual-status technicians with dual-status technicians, who will be able to deploy with their units in the event of a mobilization.

While conceding that non-dual-status technicians might not like the mandatory retirement provisions, supporters of the provisions argue that the provisions are fair. Recognizing that there was no clear dual status policy prior to February 10, 1996, the provisions allow the Department of Defense to continue employing technicians who were hired before that date until they are eligible for an unreduced civil service pension, regardless of whether or not they hold dual-status. Allowing these technicians to continue working until eligible for an unreduced pension, it is argued, is a fair way to reconcile the legitimate needs of the military with the legitimate career expectations of the technicians; and in any case, it is a solution that is far preferable

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<sup>31</sup> As pointed out in footnote 21, technicians can qualify for two distinct types of retirement pay: a civil service pension and military retired pay. Note, however, that technicians do not automatically qualify for military retired pay. To be eligible, a technician must have completed at least twenty qualifying years of military service, either on active duty or as a member of the Selected Reserve. Precisely because non-dual-status technicians lost their membership in the Selected Reserve at some point in their career, there is good reason to believe that some of them are not eligible for military retired pay.

<sup>32</sup> John Esposito, President, Local 1900, American Federation of Government Employees.

to the reductions-in-force that would have occurred under the original plan to eliminate all non-dual-status technicians by 2007.

## Other Considerations

The debate over the mandatory retirement provisions has generally been framed within the context of whether or not they strike an appropriate balance between military readiness and fairness to technicians. Supporters of the provisions say that they do strike the proper balance. Opponents say that they do not. However, another perspective deserves mention; namely, some may question whether the mandatory retirement provisions are unduly generous to technicians and, as a result, undermine the readiness of reserve units. If one accepts the argument that employment of non-dual-status technicians in the technician workforce works to the detriment of the readiness of reserve units, then there are aspects of the mandatory retirement provisions which may be troubling from a military readiness perspective.

Specifically, the existing provisions allow for the continued employment of any military technicians in the Army and Air Force Reserve who have lost their dual-status, or who lose it in the future, provided they were hired on or before February 10, 1996. At present, 72% of all Army Reserve technicians and 99% of all Air Force Reserve technicians were hired on or before February 10, 1996.<sup>33</sup> Thus, a large number of technicians are potentially eligible to continue employment in their positions as non-dual-status technicians. While there are substantial drawbacks associated with this position status – such as ineligibility for promotion or transfer – they may be tolerable, especially for technicians who are happy in the position they currently occupy, who have already reached the top of their promotion ladder, or who are less employable in the private sector. In light of this, it is conceivable that a significant number of technicians will choose to drop their reserve membership, or will fail to maintain the standards necessary to maintain reserve membership, with the understanding that they will be “protected” from separation until they are eligible for retirement. Such a phenomenon could be particularly acute in the Air Force Reserve, which has historically imposed a fairly strict dual-status requirement on its technicians and which might see that policy undercut by a provision which appears to guarantee a full career to all technicians hired before February 10, 1996, whether they hold dual-status or not.<sup>34</sup>

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<sup>33</sup> Source: Colonel Richard Krimmer, Department of Defense, Office of the Assistant Secretary of Defense for Reserve Affairs.

<sup>34</sup> A rise in the proportion of non-dual-status technicians within the Air Force Reserve would be particularly troubling from the perspective of readiness given that the Air Force Reserve routinely uses its technicians to fill critical positions like air commander, base commander, pilot, and navigator. According to Colonel Richard Krimmer (Department of Defense, Office of the Assistant Secretary of Defense for Reserve Affairs), the Air Force is unlikely to use the authority granted by Congress to keep non-dual-status technicians in their positions until eligible for retirement. Rather, it will almost certainly continue to enforce its dual-status requirement and separate those technicians who lose their reserve membership. This could trigger complaints of unfairness, however.

When considering this possibility, it is important to note that the legislation does not *require* the Department of Defense to allow non-dual-status technicians to continue in their technician positions until they qualify for retirement; the legislation only *permits* this to happen, by allowing DoD to employ these technicians until 30 days after they become retirement-eligible. However, given that the legislation was written in response to concerns raised by DoD about fairness to the career expectations of technicians, it seems likely that the Department will use this continuation authority liberally. To do otherwise would allow certain non-dual-status technicians to continue on until retirement, while forcing others out without that benefit. This would inevitably reopen the whole issue of “fairness” that DoD was so concerned about in its 1999 report to Congress.<sup>35</sup>

## The Ongoing Debate

Although Congress established a clear policy in 1999 when it enacted the mandatory retirement provisions for non-dual-status technicians in the Army and Air Force Reserve, some technicians and their advocates are currently lobbying to have that policy repealed or modified. A repeal of the mandatory retirement provisions would return the situation to the *status quo ante*: Non-dual-status technicians hired before February 10, 1996 (when the dual-status requirement was fixed in law) would be allowed to continue their careers in the same manner as dual status technicians, retiring only when they chose to do so. Under such a policy, non-dual-status technicians would be phased out of the technician workforce much more slowly than they will be under the current mandatory retirement provisions.

Another proposal currently being advanced by some is to modify the mandatory retirement provisions so that non-dual-status technicians will not be forced to retire before the age of 60. If enacted, such a change would allow the affected technicians to continue working for up to five years longer, extending the period in which they earn a full paycheck and increasing the size of their retirement annuity. Additionally, at age 60, many technicians become eligible for the military retired pay they have earned as members of the Selected Reserve. Thus, under this proposal, the difference in income between regular pay and retirement pay would be decreased for most affected technicians. However, if such a policy change were enacted, non-dual-status technicians would be phased out of the technician workforce more slowly than they will be under the current mandatory retirement provisions (but more quickly than they would be if the mandatory retirement provisions were repealed).

This latter proposal appears to be gaining support in Congress. On March 2, 2000, the chairman and ranking member of the Military Personnel subcommittee of the House Armed Service Committee sent a letter to the Secretary of Defense stating that “we have become aware of the need to revise certain portions of section 10218 [of Title 10 U.S.C.] to permit the mandatory separation to take place at age 60, instead of age 55. We are working to make this change part of the National Defense Authorization Act for Fiscal Year 2001.” The letter also indicated that the authors

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<sup>35</sup> Department of Defense, Office of the Assistant Secretary of Defense for Reserve Affairs, “A Plan for Full Utilization of Military Technicians (Dual Status),” August 2, 1999.

supported a proposal advanced by the Army to temporarily rehire those technicians who will be separated on April 5, 2000, pending congressional consideration of the revised retirement age in the National Defense Authorization Act for FY2001.

## **Appendix A**

### **Origin and Evolution of the Military Technician Program and the Dual Status Requirement**

Military technicians are descended from the personnel described in Section 90 of the National Defense Act of 1916.<sup>36</sup> This act, which dramatically reshaped the relationship between the state militias and the federal Army, authorized the use of federal funds “for the compensation of competent help” to take care of the “material, animals, and equipment” in those organized militia units known as the National Guard.<sup>37</sup> In subsequent legislation, the phrase “competent help” was replaced with “caretakers and clerks.”

From the program’s inception in 1916, the personnel employed under this legislative authority remained state employees, although they were paid with federal funds. However, this changed in 1968 when Congress passed the National Guard Technicians Act.<sup>38</sup> This act converted all of the National Guard’s “caretakers and clerks” from state employees paid with federal funds to federal employees subject to a certain measure of state control and administration. It also renamed them “technicians.”

For many years, the military technician program existed only within the National Guard. However, in the late 1950s, both the Air Force Reserve and the Army Reserve decided to establish their own military technician programs.<sup>39</sup> Unlike the National Guard program, which was established by independent statutory provisions, the Reserve programs were established administratively, under the broader statutory umbrella of the federal civil service. The Air Force Reserve formally established its technician program in 1957 by successfully negotiating an agreement with the Civil Service Commission (later the Office of Personnel Management). The Army Reserve also wanted to establish a technician program in the late 1950s, but the Civil Service Commission decided to postpone approval for such a program until it had a chance to assess the Air Force Reserve’s program. The Air Force Reserve’s technician program was a novel modification of traditional civil service rules and the Civil Service Commission was reluctant to expand the program until its impact on federal employees (the technicians) could be assessed.

In 1960, the Civil Service Commission rendered a fairly negative assessment of the Air Force Reserve’s technician program. In the eyes of the Commission, the program was plagued by problems that resulted from its unique mix of civilian and

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<sup>36</sup> Statutes at Large, June 13, 1916, chapter 134, section 90.

<sup>37</sup> According to the National Defense Act of 1916 the militia of the United States was composed of all able-bodied male citizens between the ages of 18 and 45. The militia was then subdivided into three groups: the Unorganized Militia, the Naval Militia, and the National Guard. Statutes at Large, June 13, 1916, chapter 134, sections 57.

<sup>38</sup> P. L. 90-486; 82 Stat. 755; August 13, 1968.

<sup>39</sup> There has never been a military technician program within the Naval Reserve, Marine Corps Reserve, or the Coast Guard Reserve.

military functions. In a letter to the Assistant Secretary of Defense, the chairman of the Civil Service Commission stated:

A perfectly trouble-free operation for the undertaking of the magnitude and novelty of the Air Reserve Technician [ART] program had not been anticipated. However, the difficulties that have been encountered have been sufficiently serious to cause misgivings about the wisdom of entering upon another similar program...There have been complaints about inappropriate imposition of military discipline on civilians in such matters as standing at attention, saluting, and wearing uniforms. Nonreservists have complained that their jobs have been abolished only to reappear with an ART incumbent. We have had allegations that civilians who joined the Air Reserve to qualify for a technician job were later refused the job but not released from the Reserves. The failure to indoctrinate appointing officials with the true nature of the program and their responsibilities to it is indicated when an officer informed one of our regional directors that he would disregard Civil Service rules and the Air Force agreement whenever it suited his purposes to do so.<sup>40</sup>

Despite these problems, the Civil Service Commission agreed to approve an Army Reserve technician program in 1960; however, the Commission insisted that the program be designed in such a way as to minimize or eliminate the type of problems associated with the Air Force Reserve program. The Memorandum of Understanding (MOU) reached between the Civil Service Commission and the Department of the Army was drafted with this goal in mind.<sup>41</sup> As such, the agreement which governed the Army Reserve's technician program at its inception differed substantially from that of the Air Force Reserve. Furthermore, in certain respects, the provisions of both Reserve technician programs differed from those of the National Guard. One of the key areas of difference among the three military technician programs – National Guard, Air Force Reserve, and Army Reserve – was in the stringency of the dual status requirement for the military technicians employed. The different “dual status” provisions in the National Guard, Air Force Reserve, and Army Reserve are outlined below.

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<sup>40</sup> Letter from Roger W. Jones, Chairman of the Civil Service Commission, to Charles C. Finucane, Assistant Secretary of Defense, February 23, 1960.

<sup>41</sup> Memorandum of Understanding dated July 5, 1960.

## **“Dual Status” Provisions in the National Guard’s Technician Program**

The National Guard’s “dual status” provisions can be traced back to the National Defense Act of 1916. While providing the National Guard with federal funds to hire “competent help,” the act also required that the “the men to be compensated, not to exceed five for each battery or troop, shall be duly enlisted therein.”<sup>42</sup> However, exceptions to this general policy were made soon thereafter. In 1924, for example, Congress amended the National Defense Act of 1916 to authorize the use of civilian employees “whenever it shall be found impracticable to secure the necessary competent enlisted caretakers....”<sup>43</sup> Similarly broad exceptions were contained in later versions of the statute. Despite these broad exceptions, the National Guard managed the technician program in such a way that its technician workforce was almost exclusively dual status. In 1968, Congress estimated that 95% of National Guard technicians held dual status.<sup>44</sup> In that same year, Congress passed the National Guard Technicians Act<sup>45</sup> which converted National Guard technicians from state to federal employees. The act also stipulated that every technician working for the National Guard would simultaneously “be a member of the National Guard,” except as specifically prescribed by the Secretary of the Army or Air Force.<sup>46</sup> (In 1997, the language allowing the service Secretaries to make exceptions to the dual status requirement was deleted).<sup>47</sup> As a result of this fairly strict dual status requirement, the National Guard’s technician workforce has remained overwhelmingly dual status. Since 1968, dual status technicians have constituted about 90 to 95% of the total

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<sup>42</sup> Statutes at Large, June 3, 1916, chapter 134, section 90. “Batteries,” “Troops,” and “Companies” are Army units generally commanded by a captain or first lieutenant and having anywhere from 60 to 180 soldiers, depending on the type of unit.

<sup>43</sup> Statutes at Large, June 6, 1924, P. L. 207, Chapter 275, section 5.

<sup>44</sup> “About 95% of the technicians are required to hold concurrent National Guard membership as a condition for their civilian employment.” House Report No. 1823, Conference Report to Accompany S. 3865, the National Guard Technicians Act of 1968. U.S. Code Congressional and Administrative News, Legislative History for P. L. 90-486, 3319.

<sup>45</sup> P. L. 90-486; 82 Stat. 755; August 13, 1968.

<sup>46</sup> P. L. 90-486; 82 Stat. 755, Section 709 (b); August 13, 1968. Congress did, however, anticipate that the National Guard would have need for a small number of technicians who did not hold dual status in the 1968 National Guard Technicians Act. The report language accompanying the bill noted that, under the new law, “about 95% of the technicians would hold noncompetitive positions and would be required to be members of the Guard as a part of their civilian employment. About 5%, or 2,000, would be in a competitive federal status and would constitute principally female employees, clerk-typists, and security guards.” House Report No. 1823, Conference Report to Accompany S. 3865, the National Guard Technicians Act of 1968. U.S. Code Congressional and Administrative News, Legislative History for P. L. 90-486, 3324.

<sup>47</sup> P. L. 105-85, section 522 (c); 111 Stat. 1735; November 18, 1997.

technician workforce in the National Guard.<sup>48</sup> The Department of Defense recently reported that 95% of National Guard technicians held dual status at the end of fiscal year 1998. This figure represents the average of the figures for Army National Guard technicians (91% of whom hold dual status) and Air National Guard technicians (99% of whom hold dual-status).<sup>49</sup>

## **“Dual Status” Provisions in the Air Force Reserve’s Technician Program**

The Memorandum of Agreement (MOA) reached by the Air Force Reserve and the Civil Service Commission in 1957 contained a fairly strict “dual status” requirement. It stipulated that “For all ART [Air Reserve Technician] positions there will be an established requirement that persons appointed to these positions must be eligible for and willing to accept active membership in the reserve unit in which they would be employed.”<sup>50</sup> It further stated that “Employees who develop physical disabilities or conditions which do not permit continued reserve membership may not continue indefinitely in the ART category.”<sup>51</sup> Subsequent versions of this agreement have included a similarly strong dual status requirement.<sup>52</sup> Depending on the importance of the position they occupied, technicians who lost their dual status were either subject to separation from their technician position, or allowed to continue in their technician position only until they could be placed in a non-technician position of similar or higher grade.

As a result of this fairly strict “dual status” requirement, the Air Force Reserve’s technician workforce has been almost entirely dual status. The Air Force Reserve has allowed some technicians to continue working in their civilian capacity if they lost their dual status through no fault of their own, yet the number of technicians treated in this way is quite small. In fiscal year 1998, only one percent of the technicians in the Air Force Reserve could be described as “non-dual-status.”<sup>53</sup>

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<sup>48</sup> Department of Defense, Office of the Assistant Secretary of Defense for Reserve Affairs, “A Plan for Full Utilization of Military Technicians (Dual Status),” August 2, 1999, page 2.

<sup>49</sup> Department of Defense, Office of the Assistant Secretary of Defense for Reserve Affairs, “A Plan for Full Utilization of Military Technicians (Dual Status),” August 2, 1999, page 2.

<sup>50</sup> John W. Macy, Jr., Executive Director, United States Civil Service Commission, Commission Letter No. 57-45, “The Air Reserve Technician Plan for Air Reserve Flying Centers Within The Continental Air Command,” June 28, 1957, 4.

<sup>51</sup> John W. Macy, Jr., Commission Letter No. 57-45, June 28, 1957, 5.

<sup>52</sup> “Recruitment of Air Reserve Technicians Through Competitive Agreement (ART Agreement),” United States Office of Personnel Management, basic document approved 24 January 1979; republished with authorized changes 1 December 1987.

<sup>53</sup> In fiscal year 1998, there were 113 technicians in the Air Force Reserve who did not hold dual status, out of a total technician population of 9,263. The Air Force Reserve prefers to refer to these technicians as “status quo” rather than as “non-dual-status” in order to highlight the fact that all of its technicians were required to hold dual-status when hired; none was hired

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## **“Dual Status” Provisions in the Army Reserve’s Technician Program**

In contrast to the fairly strict “dual status” requirement contained in the agreement governing the Air Force Reserve’s program, the 1960 Memorandum of Understanding (MOU) governing the Army Reserve’s program had a more flexible provision. For example, while the Air Force Reserve program required technicians to be members of the Air Force Reserve when hired, this was not an absolute requirement in the Army Reserve program. According to the Army’s MOU, certain circumstances – such as a tight labor market – might make the use of dual status technicians impractical. In such cases, “any available qualified civilians, including women, will be employed through usual civil service procedures.”<sup>54</sup> Thus, “under this program, individuals who were eligible for membership in the Army Reserve were the primary recruitment source for military technicians. Individuals not eligible for Reserve membership constituted a secondary recruitment source when Reservists were not available.”<sup>55</sup> Another difference between the Army and Air Force Reserve programs was the way in which the programs treated technicians who lost their military membership. Under the Air Force rules, technicians who lost their military status, for any reason, were normally separated from the program. Under the Army rules, technicians who lost their military status voluntarily could be separated from the program, although this was not mandated. More importantly, technicians who lost their military status involuntarily – for example, by sustaining an injury that precluded meeting the physical standards of the military – could *not* be separated from the program.<sup>56</sup>

In 1970, the Army Reserve re-negotiated its MOU with the Civil Service Commission and incorporated a somewhat stricter dual-status requirement.<sup>57</sup> The new agreement stated that “membership in an active Army Reserve Unit (or eligibility and willingness to join the Reserve) shall be a requirement to secure a permanent appointment to a position as a technician....” There were still some exceptions to this policy, but it was certainly a stronger “dual status” provision than had previously been the case. This provision, however, only applied to the technician at the time of initial appointment; it did not constitute an ongoing requirement to maintain military membership. Indeed, the MOU specifically states that “No technician who attains dual status and later loses his active reserve status for reasons outside his control will

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<sup>53</sup> (...continued)

as a “non-dual-status” technician. Yet, the fact remains that these “status quo” technicians do not now hold dual status. Thus, they can accurately be referred to as “non-dual-status” technicians, as the term is used in this report.

<sup>54</sup> Memorandum of Understanding, dated July 5, 1960, paragraph 1.

<sup>55</sup> Military Technician Compensation Report: A Report Prepared for the House Appropriations Committee, Office of the Secretary of Defense (Reserve Affairs), May, 1991, 4.

<sup>56</sup> Memorandum of Understanding, dated July 5, 1960, paragraph 2. “The lack or involuntary loss of military status will not be a basis for removing present or future civilian employees.”

<sup>57</sup> The effective date of the new Memorandum of Understanding was September 1, 1970.

be involuntarily reassigned or removed.”<sup>58</sup> The MOU also contained an explicit “grandfather” clause to protect those technicians who had been hired under the terms of the previous MOU and who did not hold dual-status.<sup>59</sup> Thus, while the 1970 MOU strengthened the “dual-status” provisions in the Army Reserve’s technician program with respect to initial hiring for technician positions, it still left ample room for the continued employment of non-dual status technicians.

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<sup>58</sup> Army Regulation 140-315, Employment and Utilization of U.S. Army Reserve Military Technicians, 5 July 1985, Appendix A, Memorandum of Understanding, paragraph 7.

<sup>59</sup> “No technician employed prior to 1 September 1970 who is not in a dual civilian military status on that date will be involuntarily reassigned or removed from his position for failure to comply with the dual status requirement.” Army Regulation 140-315, Employment and Utilization of U.S. Army Reserve Military Technicians, 5 July 1985, Appendix A, Memorandum of Understanding, paragraph 7.

## Appendix B

### Congress and the Dual Status Requirement: Past Legislative Provisions

Over the past 16 years, Congress has repeatedly passed legislation concerning the dual status requirement for military technicians. Often, this legislation has been directed exclusively towards technicians in the Army Reserve, reflecting a special congressional concern with the manner in which the Army Reserve was managing its technician workforce. In recent years, however, Congress's approach to the issue has been more general in scope, although the Army Reserve's technician program has remained the principal concern.

When Congress passed the National Guard Technicians Act in 1968,<sup>60</sup> it contained a fairly strict dual status requirement for National Guard military technicians. However, this act did not apply to the Army Reserve or the Air Force Reserve. These two reserve branches had set their own dual status policies for many years and Congress took no action to change that in 1968. This changed, however, in 1983. Concerned about the growing proportion of non-dual-status technicians in the Army Reserve, Congress included a provision in the Department of Defense Appropriation Act for Fiscal Year 1984 which addressed the dual status requirement for Army Reserve technicians. The report which accompanied the bill in the House criticized the proportion of non-dual-status technicians – referred to as “status quo” technicians – within the Army Reserve in the following terms:

The Department of the Army estimates that approximately 50% of the United States Army Reserve [technicians] are either status quo technicians or military technicians assigned to units other than the one in which they are employed as a civilian. The Committee believes this situation is detrimental to mobilization readiness and unit cohesiveness.<sup>61</sup>

To correct this, the final version of the defense appropriation bill included language which prohibited the expenditure of funds to pay for any Army Reserve technician “initially hired after the date of enactment of the act...unless such individual is also a military member of the Army Reserve troop program unit that he or she is employed to support.”<sup>62</sup> Virtually identical language was included in every subsequent DoD

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<sup>60</sup> P. L. 90-486, 82 Stat. 755; August 13, 1968.

<sup>61</sup> House Report Number 98-427. Report to Accompany H.R. 4185, Department of Defense Appropriation Bill, 1984, 37. The ratio of technicians who were “status quo” versus those who were misassigned was not indicated in the House Report, but the General Accounting Office ascertained four years earlier that 26% of the dual-status technicians in the Army Reserve were assigned to military positions in units other than the one in which they are employed and an additional 20% of technicians were “status quo,” or non-dual-status, technicians. H. L. Krieger, Director, General Accounting Office, Letter to Harold Brown, February 26, 1979.

<sup>62</sup> P. L. 98-212, section 783; December 8, 1983. Note, however, that there was an exception to the unit membership requirement for those technicians “employed by the Army Reserve in  
(continued...)”

Appropriations Act up to, and including, the DoD Appropriations Act for Fiscal Year 1995.<sup>63</sup>

On its face, this recurring provision would seem to preclude paying the salary of any technician whose initial date of hiring occurred after December 8, 1983 – the enactment date of the DoD Appropriations Act for FY1984 – and who did not hold or who failed to maintain “dual status.” Indeed, the Army Reserve interpreted the appropriations language in just this way for many years. Nonetheless, due to lack of coordination within the Army Reserve’s military technician program, this requirement was not always implemented; in some cases the employment contracts of technicians hired after December 8, 1983, did not include a clause specifying the technicians obligation to hold dual-status.<sup>64</sup> More problematically, in 1995 the Army Reserve substantially modified its interpretation of the appropriations language. This revised interpretation was spelled out in a 1995 memorandum:

We have reexamined the status of the involuntary removal policies as they affect dual status MT [military technician] personnel. We have concluded, based on the current legal interpretations, the rules of post Fiscal Year 1983 (FY1983) dual status alignments only apply to the initial FY of MT employment. Subsequent to the initial year of employment, the MT dual status requirement revert to the conditions in force for MT[s] hired between FY1970 and FY1983. Therefore, we conclude MTs, not in their initial FY of employment, may be involuntarily separated from their Selected Reserve troop program unit without concurrent loss of MT civilian employment.<sup>65</sup>

As a result of this interpretation, the impact of the appropriations language on the Army Reserve’s technician workforce was minimized. Newly hired technicians were now only required to hold dual-status until the end of the fiscal year in which they were hired; at the end of that fiscal year they fell under the provisions of the 1970 MOU, which allowed technicians who lost their military membership involuntarily to

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<sup>62</sup> (...continued)

areas other than Army Reserve troop program units.” These technicians only needed to be “members of the Selected Reserve.”

<sup>63</sup> P. L. 98-212, section 783; P. L. 98-473, section 8076; P. L. 99-190, section 8059; P. L. 99-591, section 9054; P. L. 100-202, section 8055; P. L. 100-463, section 8045; P. L. 101-165, section 9027; P. L. 101-511, section 8018; P. L. 102-172, section 8018; P. L. 102-396, section 9019; P. L. 103-139, section 8016; and P. L. 103-335, section 8015.

<sup>64</sup> Source: Colonel Richard Krimmer, Department of Defense, Office of the Assistant Secretary of Defense for Reserve Affairs.

<sup>65</sup> “Memorandum for Commanders, Major U.S. Army Reserve Commands,” from Colonel Thomas McCoy, Deputy Chief of Staff for Personnel, Headquarters, United States Army Reserve Command, 27 July 1995. The “current legal interpretations” referred to in the text apparently refers to a legal opinion issued by the Department of the Army’s Judge Advocate General in February, 1995. A summary of this opinion was provided to the Congressional Research Service by the Office of the Judge Advocate General; however, that office declined to provide a copy of the opinion itself, citing attorney-client privilege. Thus, an analysis of its contents cannot be provided here.

retain their civilian jobs. Moreover, all the technicians hired since December 8, 1983, now fell under this new policy as well. They too could lose their dual status and retain their civilian job, provided that their loss of dual-status was not a voluntary act.<sup>66</sup>

Congress moved quickly to close this loophole. The funding ban provision in the DoD Appropriations Act for Fiscal Year 1996 was nearly identical to those passed in previous years, but an extra clause was added to the provision which extended the ban indefinitely.<sup>67</sup> By doing so, the legal justification for interpreting the appropriations language as a “one year only” dual-status requirement was eliminated. Nonetheless, this correction was not retroactive; it only applied to technicians hired in fiscal year 1996 or later. Thus, those Army Reserve technicians who were hired between FY1984 and FY1995 were no longer bound by a strict dual-status requirement. Rather, they were only bound by the less stringent dual-status requirement found in the 1970 MOU.

Several months later, Congress reinforced the appropriations language with a similar provision in the National Defense Authorization Act for Fiscal Year 1996:

The Secretary of Defense shall require the Secretary of the Army and the Secretary of the Air Force to establish as a condition of employment for each individual who is hired after the date of the enactment of this section [February 10, 1996] as a military technician that the individual maintain membership in the Selected Reserve (so as to be a so-called ‘dual-status’ technician)...No Department of Defense funds may be spent for compensation for any military technician hired after the date of enactment of this section who is not a member of the Selected Reserve....<sup>68</sup>

Although this language closely resembled that found in the earlier DoD Appropriations Act, it was broader in scope for it applied not only to the Army Reserve, but to the National Guard and Air Force Reserve as well.

In spite of these legislative provisions, the number of non-dual-status technicians in the Army Reserve continued to grow. In June of 1996, there were 785 non-dual-status technicians in the Army Reserve; fifteen months later that number had doubled

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<sup>66</sup> See footnote 19 for the distinction between voluntary and involuntary loss of dual-status.

<sup>67</sup> P. L. 104-61, section 8016. The new provision read “None of the funds appropriated for the Department of Defense *during the current fiscal year and hereafter* shall be obligated for the pay of any individual who is initially employed after the date of enactment of this Act as a technician...unless such individual is a member of the Army Reserve troop program unit that he or she is employed to support. Those technicians employed by the Army Reserve in areas other than Army Reserve troop program units need only be members of the Selected Reserve.” (Italicized text indicates the major change from previous language).

<sup>68</sup> P. L. 104-106, section 513(c); 110 Stat. 306. The law made a small exception to this general rule for technicians whose “loss of membership in the Selected Reserve...was not due to the failure to meet military standards.” These non-dual-status technicians could continue to receive compensation “for up to six months.”

to 1,582.<sup>69</sup> In large part this phenomenon was attributable to a demographic imbalance within the Army Reserve's technician workforce. Many of the technicians had been hired in the 1960s and 1970s and, as they grew older, more and more were unable to maintain their military status due to physical or other reasons.<sup>70</sup> Realizing that its previous legislative actions were not having their intended effect, Congress returned to the issue in 1997.<sup>71</sup>

The National Defense Authorization Act for Fiscal Year 1998 contained several provisions related to military technicians and the "dual status" requirement. Specifically, it placed a limit on the number of non-dual-status technicians that could be employed in each of the technician programs – capping the number in the Army Reserve at 1,500 by the end of the fiscal year – and required the Secretary of Defense to submit a report to Congress outlining "a plan for ensuring that, on and after September 30, 2007, all military technician positions are held only by military technicians (dual status)."<sup>72</sup> The clear implication of this latter provision was that Congress was seriously considering the abolition of all non-dual-status technicians and wanted advice from the Department of Defense on how to accomplish this objective.

The Department of Defense did submit a report to Congress in 1999 which contained a plan to ensure that only dual-status technicians held military technician positions by the end of FY2007; however, the report also raised a number of concerns

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<sup>69</sup> Source: Colonel Richard Krimmer, Department of Defense, Office of the Assistant Secretary of Defense for Reserve Affairs

<sup>70</sup> The way in which the military promotion system operates is especially relevant here. The military promotion system has an "up or out" structure. Failure to be promoted to the next higher level within a specified time period can result in separation from the military. Moreover, as one advances through the ranks, chances for promotion decrease as there are fewer authorized positions for the higher ranks. Thus, after twenty or more years of service, a military technician might very well be passed over for military promotion – and later separated from the Selected Reserve – despite a generally strong performance record.

<sup>71</sup> The House National Security Committee explained its rationale for the military technician provisions contained in the National Defense Authorization Act for Fiscal Year 1998 in the following terms: "...the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106) ...established hiring restrictions that were designed, in part, to reduce the numbers of military technicians who never were members of the selected reserve, or for one reason or another after being hired subsequently became disqualified from selected reserve membership...[T]he committee is disturbed to learn that contrary to the reductions in non-dual status technicians contemplated by the National Defense Authorization Act for Fiscal Year 1996....the number of non-dual status technicians in the Army Reserve has grown from almost 800 in fiscal year 1996 to nearly 1,300 in fiscal year 1997." House Report 105-132, Report to Accompany H. R. 1119, the National Defense Authorization Act for Fiscal Year 1998, 359. The figure cited in the report of "1,300 in fiscal year 1997" is significantly lower than the figure cited above of 1,582. The discrepancy can be attributed to fact that the former number comes from a House report issued on June 16, 1997, and reflects the figures available at that time, while the latter number reflects the situation on September 30, 1997.

<sup>72</sup> P. L. 105-85, section 523; 111 Stat. 1737; November 18, 1997. The law also placed caps on the number of non-dual-status technicians which could be employed by the other Reserve organizations: No more than 450 non-dual-status technicians in the Air National Guard, 2,400 in the Army National Guard, and zero in the Air Force Reserve by the end of fiscal year 1998.

about the fairness and feasibility of doing so. With respect to fairness, the report predicted that meeting the 2007 deadline would require DoD to involuntarily separate 2,655 non-dual-status technicians, many of whom would not be eligible for civil service retirement when separated.<sup>73</sup> Forced reductions of this sort, the DoD report argued, were unfair to the individual technicians:

...non-dual status military technicians were hired and are managed according to various Reserve component policies. Non-dual status military technicians had a reasonable expectation that their positions carried career potential. The Department feels a moral obligation to recognize previous commitments and reasonable individual career expectations and to avoid forced reductions to the extent practicable.

Another significant point raised in the DoD report dealt with the limited need for non-dual-status technicians in the National Guard. National Guard units usually operate under the authority of the Governor of the state or territory they are located in. Each state or territory maintains a headquarters to oversee its units and military technicians frequently are employed in these headquarters. If these technicians are dual-status, then they could be mobilized by the federal government in times of national emergency and deployed with the unit they maintain membership in. This, DoD contended, could cripple the ability of the state headquarters to carry out its own important mission. “The National Guard,” the report concluded, “cannot operate without a workforce that includes some employees who do not have to mobilize with the units they support.” From this perspective, the National Guard has an ongoing need for at least some non-dual-status technicians.

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<sup>73</sup> Department of Defense, Office of the Assistant Secretary of Defense for Reserve Affairs, “A Plan for Full Utilization of Military Technicians (Dual Status),” August 2, 1999, pages 7 and 8. Numbers are derived from the estimated Reductions in Force (RIFs) required by September 30, 2007, without benefit of additional retirement incentives.