

CONVERSION OF CERTAIN MILITARY TECHNICIAN (DUAL STATUS) POSITIONS TO CIVILIAN POSITIONS

Pub. L. 114-92, div. A, title X, §1053(a), Nov. 25, 2015, 129 Stat. 981, as amended by Pub. L. 114-328, div. A, title X, §1084(a), Dec. 23, 2016, 130 Stat. 2421, provided that:

“(1) IN GENERAL.—By not later than October 1, 2017, the Secretary of Defense shall convert not fewer than 20 percent of all military technician positions to positions filled by individuals who are employed under section 3101 of title 5, United States Code, or section 1601 of title 10, United States Code, and are not military technicians. The positions to be converted are described in paragraph (2).

“(2) COVERED POSITIONS.—The positions described in this paragraph are military technician (dual status) positions as follows:

“(A) Military technician (dual status) positions identified as general administration, clerical, finance, and office service occupations by the Army Reserve, the Air Force Reserve, the National Guard Bureau, State adjutants general, and the Secretary of Defense in the course of reviewing all military technician positions for purposes of implementing this section.

“(B) Such other military technician (dual status) positions as the Secretary shall specify for purposes of this subsection.

“(3) TREATMENT OF INCUMBENTS.—In the case of a position converted under paragraph (1) for which there is an incumbent employee, the Secretary shall fill that position, as converted, with the incumbent employee without regard to any requirement concerning competition or competitive hiring procedures.”

[Pub. L. 114-328, div. A, title X, §1084(a)(2), Dec. 23, 2016, 130 Stat. 2421, which directed amendment of par. (2) of section 1053(a) of Pub. L. 114-92, set out above, by striking “in the report” and all that follows and inserting “by the Army Reserve, the Air Force Reserve, the National Guard Bureau, State adjutants general, and the Secretary of Defense in the course of reviewing all military technician positions for purposes of implementing this section.”, was executed to subpar. (A) of par. (2) to reflect the probable intent of Congress.]

§ 10217. Non-dual status technicians

(a) DEFINITION.—For the purposes of this section and any other provision of law, a non-dual status technician is a civilian employee of the Department of Defense serving in a military technician position who—

(1) was hired as a technician before November 18, 1997, under any of the authorities specified in subsection (b) and as of that date is not a member of the Selected Reserve or after such date has ceased to be a member of the Selected Reserve;

(2) is employed under section 709 of title 32 in a position designated under subsection (c) of that section and when hired was not required to maintain membership in the Selected Reserve; or

(3) is hired as a temporary employee pursuant to the exception for temporary employment provided by subsection (d) and subject to the terms and conditions of such subsection.

(b) EMPLOYMENT AUTHORITIES.—The authorities referred to in subsection (a) are the following:

(1) Section 10216 of this title.

(2) Section 709 of title 32.

(3) The requirements referred to in section 8401 of title 5.

(4) Section 8016 of the Department of Defense Appropriations Act, 1996 (Public Law 104-61; 109 Stat. 654), and any comparable provision of

law enacted on an annual basis in the Department of Defense Appropriations Acts for fiscal years 1984 through 1995.

(5) Any memorandum of agreement between the Department of Defense and the Office of Personnel Management providing for the hiring of military technicians.

(c) PERMANENT LIMITATIONS ON NUMBER.—(1) The total number of non-dual status technicians employed by the Army Reserve may not exceed 595 and by the Air Force Reserve may not exceed 90. If at any time the number of non-dual status technicians employed by the Army Reserve and Air Force Reserve exceeds the number specified in the limitation in the preceding sentence, the Secretary of Defense shall require that the Secretary of the Army or the Secretary of the Air Force, or both, take immediate steps to reduce the number of such technicians in order to comply with such limitation.

(2) The total number of non-dual status technicians employed by the National Guard may not exceed 1,950. If at any time the number of non-dual status technicians employed by the National Guard exceeds the number specified in the limitation in the preceding sentence, the Secretary of Defense shall require that the Secretary of the Army or the Secretary of the Air Force, or both, take immediate steps to reduce the number of such technicians in order to comply with such limitation.

(3) An individual employed as a non-dual status technician as described in subsection (a)(3) shall not be considered a non-dual status technician for purposes of paragraphs (1) and (2).

(d) EXCEPTION FOR TEMPORARY EMPLOYMENT.—(1) Notwithstanding section 10218 of this title, the Secretary of the Army or the Secretary of the Air Force may employ, for a period not to exceed two years, a person to fill a vacancy created by the mobilization of a military technician (dual status) occupying a position under section 10216 of this title.

(2) The duration of the temporary employment of a person in a military technician position under this subsection may not exceed the shorter of the following:

(A) The period of mobilization of the military technician (dual status) whose vacancy is being filled by the temporary employee.

(B) Two years.

(3) No person may be hired under the authority of this subsection after January 6, 2013.

(e) CONVERSION OF POSITIONS.—(1) No individual may be newly hired or employed, or rehired or reemployed, as a non-dual status technician for purposes of this section after September 30, 2017.

(2) By not later than October 1, 2017, the Secretary of Defense shall convert all non-dual status technicians to positions filled by individuals who are employed under section 3101 of title 5 or section 1601 of this title and are not military technicians.

(3) In the case of a position converted under paragraph (2) for which there is an incumbent employee on October 1, 2017, the Secretary shall fill that position, as converted, with the incumbent employee without regard to any requirement concerning competition or competitive hiring procedures.

(4) Any individual newly hired or employed, or rehired or employed, to a position required to be filled by reason of paragraph (1) shall¹ an individual employed in such position under section 3101 of title 5 or section 1601 of this title.

(Added Pub. L. 105-85, div. A, title V, §523(a)(1), Nov. 18, 1997, 111 Stat. 1736; amended Pub. L. 106-65, div. A, title V, §523, Oct. 5, 1999, 113 Stat. 598; Pub. L. 106-398, §1 [[div. A], title IV, §414(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A-94; Pub. L. 107-314, div. A, title IV, §414(d), Dec. 2, 2002, 116 Stat. 2527; Pub. L. 108-136, div. A, title IV, §415, Nov. 24, 2003, 117 Stat. 1453; Pub. L. 111-383, div. A, title V, §513, title X, §1075(b)(53), Jan. 7, 2011, 124 Stat. 4210, 4372; Pub. L. 112-239, div. A, title X, §1076(e)(7), (f)(45), Jan. 2, 2013, 126 Stat. 1951, 1955; Pub. L. 114-92, div. A, title X, §1053(b)(1), Nov. 25, 2015, 129 Stat. 981; Pub. L. 114-328, div. A, title X, §1084(b), Dec. 23, 2016, 130 Stat. 2421.)

REFERENCES IN TEXT

Section 8016 of the Department of Defense Appropriations Act, 1996 (Public Law 104-61; 109 Stat. 654), referred to in subsec. (b)(4), was set out as a note under section 10101 of this title prior to repeal by Pub. L. 105-85, div. A, title V, §522(e), Nov. 18, 1997, 111 Stat. 1735.

AMENDMENTS

2016—Subsec. (e). Pub. L. 114-328 amended subsec. (e) generally. Prior to amendment, subsec. (e) related to phased-in termination of non-dual status positions.

2015—Subsec. (e). Pub. L. 114-92 added subsec. (e).

2013—Subsec. (c)(3). Pub. L. 112-239, §1076(f)(45), substituted “considered” for “consider”.

Subsec. (d)(3). Pub. L. 112-239, §1076(e)(7), substituted “after January 6, 2013” for “after the end of the 2-year period beginning on the date of the enactment of this subsection”.

2011—Subsec. (a)(3). Pub. L. 111-383, §513(a)(1), added par. (3).

Subsec. (c)(1). Pub. L. 111-383, §1075(b)(53), substituted “The” for “Effective October 1, 2007, the” and struck out “after the preceding sentence takes effect” after “If at any time”.

Subsec. (c)(3). Pub. L. 111-383, §513(b), added par. (3).

Subsec. (d). Pub. L. 111-383, §513(a)(2), added subsec. (d).

2003—Subsec. (c)(1). Pub. L. 108-136 substituted “may not exceed 595 and by the Air Force Reserve may not exceed 90” for “and Air Force Reserve may not exceed 175”.

2002—Subsec. (c)(2). Pub. L. 107-314 substituted “The total number” for “Effective October 1, 2002, the total number” in first sentence and struck out “after the preceding sentence takes effect” after “If at any time” in second sentence.

2000—Subsec. (c)(2). Pub. L. 106-398 substituted “October 1, 2002” for “October 1, 2001”.

1999—Pub. L. 106-65, §523(b), struck out “military” after “status” in section catchline.

Subsec. (a). Pub. L. 106-65, §523(a)(1)(A), struck out “military” after “non-dual status” in introductory provisions.

Subsec. (a)(1), (2). Pub. L. 106-65, §523(a)(1)(B), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

“(1) was hired as a military technician before the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998 under any of the authorities specified in subsection (c); and

“(2) as of the date of the enactment of that Act is not a member of the Selected Reserve or after such date ceased to be a member of the Selected Reserve.”

¹ So in original. The word “be” probably should appear.

Subsec. (c). Pub. L. 106-65, §523(a)(2), added subsec. (c).

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-65, div. A, title V, §525, Oct. 5, 1999, 113 Stat. 600, provided that: “The amendments made by sections 523 and 524 [amending this section and section 709 of Title 32, National Guard] shall take effect 180 days after the date of the receipt by Congress of the plan required by section 523(d) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85; 111 Stat. 1737) [set out below] [plan received by Congress from Under Secretary of Defense, Personnel and Readiness on Sept. 21, 1999, see Cong. Rec., vol. 145, pt. 15, 21975, Ex. Comm. 4276] or a report by the Secretary of Defense providing an alternative proposal to the plan required by that section.”

PLAN FOR FULL UTILIZATION OF MILITARY TECHNICIANS (DUAL STATUS)

Pub. L. 105-85, div. A, title V, §523(d), (e), Nov. 18, 1997, 111 Stat. 1737, provided that:

“(d) PLAN FOR FULL UTILIZATION OF MILITARY TECHNICIANS (DUAL STATUS).—(1) Not later than 180 days after the date of the enactment of this Act [Nov. 18, 1997], the Secretary of Defense shall submit to Congress a plan for ensuring that, on and after September 30, 2007, all military technician positions are held only by military technicians (dual status).

“(2) The plan shall provide for achieving, by September 30, 2002, a 50 percent reduction, by conversion of positions or otherwise, in the number of non-dual status military technicians that are holding military technicians positions, as compared with the number of non-dual status technicians that held military technician positions as of September 30, 1997, as specified in the report under subsection (c) [111 Stat. 1737].

“(3) Among the alternative actions to be considered in developing the plan, the Secretary shall consider the feasibility and cost of each of the following:

“(A) Eliminating or consolidating technician functions and positions.

“(B) Contracting with private sector sources for the performance of functions performed by military technicians.

“(C) Converting non-dual status military technician positions to military technician (dual status) positions or to positions in the competitive service or, in the case of positions of the Army National Guard of the United States or the Air National Guard of the United States, to positions of State employment.

“(D) Use of incentives to facilitate attainment of the objectives specified for the plan in paragraphs (1) and (2).

“(4) The Secretary shall submit with the plan any recommendations for legislation that the Secretary considers necessary to carry out the plan.

“(e) DEFINITIONS FOR CATEGORIES OF MILITARY TECHNICIANS.—In this section [enacting this section]:

“(1) The term ‘non-dual status military technician’ has the meaning given that term in section 10217 of title 10, United States Code, as added by subsection (a).

“(2) The term ‘military technician (dual status)’ has the meaning given the term in section 10216(a) of such title.”

§ 10218. Army and Air Force Reserve technicians: conditions for retention; mandatory retirement under civil service laws

(a) SEPARATION AND RETIREMENT OF MILITARY TECHNICIANS (DUAL STATUS).—(1) An individual employed by the Army Reserve or the Air Force Reserve as a military technician (dual status) who after October 5, 1999, loses dual status is subject to paragraph (2) or (3), as the case may be.

(2) If a technician described in paragraph (1) is eligible at the time dual status is lost for an un-