UNITED STATES CODE SERVICE

TITLE 37. PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

CHAPTER 5. SPECIAL AND INCENTIVE PAYS

**§ 373. Repayment of unearned portion of bonus, incentive pay, or similar benefit, and termination of remaining payments, when conditions of payment not met**

(a) Repayment and termination. Except as provided in subsection (b), a member of the uniformed services who is paid a bonus, incentive pay, or similar benefit, the receipt of which is contingent upon the member's satisfaction of certain service or eligibility requirements, shall repay to the United States any unearned portion of the bonus, incentive pay, or similar benefit if the member fails to satisfy any such service or eligibility requirement, and the member may not receive any unpaid amounts of the bonus, incentive pay, or similar benefit after the member fails to satisfy such service or eligibility requirement.

(b) Exceptions.

 (1) Discretion to provide exception to termination and repayment requirements. Pursuant to the regulations prescribed to administer this section, the Secretary concerned may grant an exception to the repayment requirement and requirement to terminate the payment of unpaid amounts of a bonus, incentive pay, or similar benefit if the Secretary concerned determines that the imposition of the repayment and termination requirements with regard to a member of the uniformed services would be contrary to a personnel policy or management objective, would be against equity and good conscience, or would be contrary to the best interests of the United States.

 (2) Special rule for deceased and disabled members.

 (A) If a member of the uniformed services dies or is retired or separated with a combat-related disability, the Secretary concerned--

 (i) shall not require repayment by the member or the member's estate of the unearned portion of any bonus, incentive pay, or similar benefit previously paid to the member; and

 (ii) shall require the payment to the member or the member's estate of the remainder of any bonus, incentive pay, or similar benefit that was not yet paid to the member, but to which the member was entitled immediately before the death, retirement, or separation of the member, and would be paid if not for the death, retirement, or separation of the member.

 (B) Subparagraph (A) does not apply if the death or disability of the member is the result the member's misconduct.

 (C) The amount to be paid under subparagraph (A)(ii) shall be equal to the full amount specified by the agreement or contract applicable to the bonus, incentive pay, or similar benefit as if the member continued to be entitled to the bonus, incentive pay, or similar benefit following the death, retirement, or separation.

 (D) Amounts to be paid to a member or the member's estate under subparagraph (A)(ii) shall be paid in a lump sum not later than 90 days after the date of the death, retirement, or separation of the member, whichever applies.

 (E) In this paragraph, the term "combat-related disability" has the meaning given that term in section 1413a(e) of title 10.

 (3) Special rule for members who receive sole survivorship discharge.

 (A) If a member of the uniformed services receives a sole survivorship discharge, the Secretary concerned--

 (i) shall not require repayment by the member of the unearned portion of any bonus, incentive pay, or similar benefit previously paid to the member; and

 (ii) may grant an exception to the requirement to terminate the payment of any unpaid amounts of a bonus, incentive pay, or similar benefit if the Secretary concerned determines that termination of the payment of the unpaid amounts would be contrary to a personnel policy or management objective, would be against equity and good conscience, or would be contrary to the best interests of the United States.

 (B) In this paragraph, the term "sole survivorship discharge" means the separation of a member from the Armed Forces, at the request of the member, pursuant to the Department of Defense policy permitting the early separation of a member who is the only surviving child in a family in which--

 (i) the father or mother or one or more siblings--

 (I) served in the Armed Forces; and

 (II) was killed, died as a result of wounds, accident, or disease, is in a captured or missing in action status, or is permanently 100 percent disabled or hospitalized on a continuing basis (and is not employed gainfully because of the disability or hospitalization); and

 (ii) the death, status, or disability did not result from the intentional misconduct or willful neglect of the parent or sibling and was not incurred during a period of unauthorized absence.

(c) Effect of bankruptcy. An obligation to repay the United States under this section is, for all purposes, a debt owed the United States. A discharge in bankruptcy under title 11 does not discharge a person from such debt if the discharge order is entered less than five years after--

 (1) the date of the termination of the agreement or contract on which the debt is based; or

 (2) in the absence of such an agreement or contract, the date of the termination of the service on which the debt is based.

(d) Definitions. In this section:

 (1) The term "bonus, incentive pay, or similar benefit" means a bonus, incentive pay, special pay, or similar payment, or an educational benefit or stipend, paid to a member of the uniformed services under a provision of law that refers to the repayment requirements of this section or section 303a(e) of this *title [37 USCS § 303a(e)*].

 (2) The term "service", as used in subsection (c)(2), refers to an obligation willingly undertaken by a member of the uniformed services, in exchange for a bonus, incentive pay, or similar benefit offered by the Secretary concerned--

 (A) to a member in a regular or reserve component who remains on active duty or in an active status;

 (B) to perform duty in a specified skill, with or without a specified qualification or credential;

 (C) to perform duty in a specified assignment, location or unit; or

 (D) to perform duty for a specified period of time.

**Department of Defense Financial Management Regulation, Volume 7A: Military Pay Policy and Procedures, Chapter 2 – Repayment of unearned portion of bonuses and other benefits.**

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| **DISPOSITION OF UNEARNED PORTIONS OF BONUSES, SPECIAL PAY, EDUCATIONAL BENEFITS, OR STIPENDS**  |
| **A**  | **B**  | **C**  | **D**  | **E**  |
| **R** **U** **L** **E**  | **If a member under a written agreement for a pay or benefit**  | and  | **then repayment of the unearned portion of the pay of benefit**  | **and**  | **any unpaid portion of the bonus, special pay or student loan repayment under Title 10 or Title 37 United States Codes (U.S.C.)**  |
| **1**  | Dies, through no misconduct of the member  |  | **will not be sought**  |  | will be paid in the member’s final pay  |
| **2**  | Incurs an injury or illness, through no misconduct of the member, that precludes the member from fulfilling the service conditions specified in the written agreement  | the member is separated or retired for disability under ***10 U.S.C., chapter 61***.  | will not be sought  | if such separation or retirement is for a disability incurred in the line of duty in a combat zone designated by the President or the Secretary of Defense or in a combat-related operation designated by the Secretary of Defense, and/or involves a combat-related disability as defined in ***10 U.S.C. 1413a(e)***  | will be paid to the member upon separation  |
| **3**  |  | the member is separated, other than as described in Rule 2, for medical reasons as a result of an injury or illness  | will not be sought, unless the Secretary of the Military Department concerned (or designee) determines that repayment of the unearned portion is appropriate due to a personnel policy or management objective, equity or good conscience, or it is in the best interest of the United States  |  | will not be paid, unless the Secretary of the Military Department concerned (or designee) makes a determination consistent with Rule 9, Column E. |
| **4**  | the member continues in service in another capacity  | will not be sought if the Secretary of the Military Department concerned (or designee) determines that to recoup the unearned portion would be contrary to a personnel policy or management objective, against equity or good conscience, or contrary to the best interest of the United States  |  | will not be paid, unless the Secretary of the Military Department concerned (or designee) makes a determination consistent with Rule 9, Column E. |

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| **A**  | **B**  | **C** | **D**  | E |
| **RULE**  | **If a member under a written agreement for a pay or benefit**  | **and**  | **then repayment of the unearned portion of the pay of benefit**  | **and**  | **any unpaid portion of the bonus, special pay or student loan repayment under Title 10 or Title 37 United States Codes (U.S.C.)**  |
| **5**  | Is an enlisted member paid a bonus or special pay and is discharged for immediate reenlistment or appointment in a Military Department for which no bonus or special pay is paid  | the term of the latter reenlistment or appointment includes the remaining period of service from the former enlistment  | will not be sought if the Secretary of the Military Department concerned (or designee) determines that to recoup the unearned portion would be contrary to a personnel policy or management objective, against equity or good conscience, or contrary to the best interest of the United States  |  | will not be paid unless the Secretary of the Military Department concerned (or designee) makes a determination consistent with Rule 9, Column E. *(In this case, the member may be considered to have completed the full term of service on the former enlistment contract.)* |
| **6**  | Is directed by the Service concerned to transfer into another military specialty or assignment rotation  |  | will not be sought |  | will not be paid, unless the Secretary of the Military Department concerned (or designee) makes a determination consistent with Rule 9, Column E. |
| **7**  | Is in a military occupational specialty or assignment that is phased out or eliminated, or otherwise affected by a force structure or other mission essential requirement  |  | will not be sought |  | will not be paid, unless the Secretary of the Military Department concerned (or designee) makes a determination consistent with Rule 9, Column E. |
| **8**  | Is separated from service under a hardship separation, or a sole survivor discharge  |  | will not be sought |  | will not be paid, unless the Secretary of the Military Department concerned (or designee)makes a determination consistent with Rule 9, Column E. |
| **9** | Does not fulfill the service conditions for the pay or benefit under any other circumstances  |  | will be sought, unless the Secretary of the Military Department concerned (or designee), at some point in the process makes a case-by-case determination that to require repayment of an unearned portion of the pay or benefit would be contrary to a personnel policy or management objective, against equity or good conscience, or contrary to the best interest of the United States |  | will not be paid unless the Secretary of the Military Department concerned (or designee), at some point in the process, makes a case-by-case determination that to refrain from paying an unpaid portion of the pay, benefit or student loan would be contrary to a personnel policy or management objective, against equity or good conscience, or it is in the best interest of the United States. |