

**VOLUME 7A, CHAPTER 2: “REPAYMENT OF UNEARNED PORTION OF BONUSES AND OTHER BENEFITS”**

**SUMMARY OF MAJOR CHANGES**

All changes are denoted by **blue font**.

Substantive revisions are denoted by an asterisk (\*) symbol preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are denoted by **bold, italic, blue, and underlined font**.

The previous version dated **July 2014** is archived.

<b>PARAGRAPH</b>	<b>EXPLANATION OF CHANGE/REVISION</b>	<b>PURPOSE</b>
All	Updated hyperlinks and formatting to comply with current administrative instructions.	Revision
0201	Added “Purpose” and “Authoritative Guidance” paragraphs to comply with current administrative instructions.	Addition
020303.E	Revised content to comply with current administrative instructions	Revision
Bibliography	Changed section 0202 to “POLICY,” and updated statutes and references.	Revision

Table of Contents

0201 GENERAL ..... 3

    \*020101. Purpose ..... 3

    \*020102. Authoritative Guidance ..... 3

0202 POLICY ..... 3

    020201. Payment Disposition ..... 3

    020202. Definition ..... 3

    020203. Bankruptcy ..... 4

0203 REPAYMENT AND NON-REPAYMENT CONDITIONS ..... 4

    020301. Conditions Under Which Repayment Will Be Sought..... 4

    020302. Delegation of Authority ..... 4

    \*020303. Conditions Under Which Repayment Will Not Be Sought..... 4

    020304. Conditions Under Review by the Secretary of the Military Department ..... 6

Table 2-1. Disposition of Unearned Portions of Bonuses, Special Pay, Educational Benefits, or Stipends ..... 7

\*BIBLIOGRAPHY ..... 10

## CHAPTER 2

**REPAYMENT OF UNEARNED PORTION OF BONUSES AND OTHER BENEFITS**

## 0201 GENERAL

## \*020101. Purpose

This chapter establishes policy pertaining to the repayment of unearned portions of bonuses and other benefits. A member, of the uniformed services, who enters into a written agreement with specified service conditions for receipt of a bonus, special or incentive pay, educational benefits, stipend, or similar payment (hereinafter referred to as “pay or benefit”) is entitled to the full amount of the pay or benefit if the member fulfills the required conditions. Failure to fulfill the conditions specified in the written agreement may result in termination of the agreement and the member may be required to repay the unearned portion of the pay or benefit. Such repayment will be pursued unless the member’s failure to fulfill the specified conditions is due to circumstances determined reasonably beyond the member’s control. Conditions under which repayment will not be sought are set forth in section 0203.

## \*020102. Authoritative Guidance

The bibliography at the end of this chapter lists the authoritative references.

## 0202 POLICY

## 020201. Payment Disposition

The Secretary of the Military Department concerned may establish, by regulation, procedures for determining the amount of the repayment required. Service regulations will apply the rules in Table 2-1 for disposition of unearned portions of the pay or benefit.

## 020202. Definition

The term “service,” as used in this chapter, refers to an obligation willingly undertaken by a member of the uniformed services in exchange for a pay or benefit offered by the Secretary of Defense or the Secretary of the Military Department concerned to do one or more of the following:

- A. Remain on active duty;
- B. Remain in an active status in a Reserve Component;
- C. Perform duty in a specified skill, with or without a specified qualification or credential;
- D. Perform duty at a specified location; or

- E. Perform duty for a specified period of time.

020203. Bankruptcy

An obligation to repay a pay or benefit to the United States is, for all purposes, a debt owed to the United States. A discharge in bankruptcy does not discharge a person from such debt if the discharge order is entered less than 5 years after:

- A. The date of the termination of the agreement or contract on which the debt is based; or

- B. The date of the termination of service on which the debt is based, in the absence of such agreement or contract.

0203 REPAYMENT AND NON-REPAYMENT CONDITIONS

020301. Conditions Under Which Repayment Will Be Sought

- A. When the conditions of a written agreement are not fulfilled and repayment is determined appropriate, the member will be required to repay the United States the unearned portion of a pay or benefit. In cases other than death of a member, the Secretary of the Military Department concerned will advise the Defense Finance and Accounting Service (DFAS) of the disposition of any unearned portion of a pay or benefit.

- B. Repayment will be sought, and any unpaid balances may not be paid to members who incur a disability because of their misconduct.

020302. Delegation of Authority

The Secretary of the Military Department concerned may, through regulation, delegate the authority to make repayment determinations consistent with the criteria set forth in section 0203, but not below the O-6 or equivalent level. If delegated, then the Military Departments will specify the level and the scope of the authorized delegation in implementing regulations.

\*020303. Conditions Under Which Repayment Will Not Be Sought

As a general rule, repayment action will not be pursued in situations in which the member's inability to fulfill specified service conditions related to a pay or benefit is due to circumstances determined reasonably beyond the member's control. Payment of any unpaid portion of pay or benefit will be subject to the rules in Table 2-1, which in appropriate circumstances provide discretion to the Secretary of the Military Department concerned to pay unearned portions based on case-by-case determinations.

- A. Repayment will not be sought, and any remaining unpaid portion of a pay or benefit due to a member under a written agreement that existed at the time of the member's

death, which was not the result of the member's misconduct, is payable as a lump sum in the settlement of the decedent's final military pay entitlements.

B. Repayment will not be sought, and any remaining unpaid portion of a pay or benefit due to a member under a written agreement will be paid at the time of separation or retirement for a disability incurred in the line of duty in a combat zone designated by the President of the United States or the Secretary of Defense, or in a combat-related operation designated by the Secretary of Defense, and/or for a combat-related disability. In such case, any remaining unpaid portion of a pay or benefit due to a member will be paid to the member upon separation from service.

C. Subject to the enlistment authorities, and the relevant regulations of the Secretary of the Military Department concerned, a member who was paid a bonus or special pay for a period of enlistment in a Military Department, who is discharged for immediate reenlistment or appointment in a Military Department for which no bonus or special pay is paid, may be considered to have completed the full term of service specified in the former enlistment contract, provided the term of the latter reenlistment or appointment includes the remaining period of service from the former enlistment. The member's enlistment bonus or special pay entitlements will be addressed prior to discharge from a Military Department.

D. Repayment will not be sought, and the Secretary of the Military Department concerned will not pay any remaining unpaid portion of a pay or benefit under the following circumstances, unless otherwise authorized by the Secretary of the Military Department concerned under subparagraph 020304.B:

1. The member's employment in another military specialty or assignment rotation is directed;
2. The member's military specialty or assignment is phased out or eliminated;
3. The member's military specialty or assignment is otherwise affected by force structure or other mission essential requirements; or
4. The member is separated from service under a hardship separation or sole survivor discharge.

\* E. Pursuant to [Title 10 United States Code \(U.S.C.\), section 1171](#), enlisted members who are discharged within 12 months before the expiration of an enlistment, reenlistment, or extension of enlistment are considered to have completed the terms of the enlistment, reenlistment, or extension of enlistment for which the bonus was paid. Thus, recoupment is not required for the unearned portion of the pay or benefit arising from the early discharge. The Military Departments are responsible for determining whether a member's early discharge is made pursuant to 10 U.S.C. § 1171 and advising DFAS of the determination.

020304. Conditions Under Review by the Secretary of the Military Department

A. In instances involving a member's separation for medical reasons, which were not the result of the member's misconduct, the Secretary of the Military Department concerned has the discretion to determine whether to require repayment of the unearned portion of pay or benefit, or to pay an unpaid balance of a pay or benefit.

B. Under circumstances not specifically mentioned in this chapter, the Secretary of the Military Department concerned has the discretion to, at some point in the process, render a case-by-case determination. [See Table 2-1.](#)

Table 2-1. Disposition of Unearned Portions of Bonuses, Special Pay, Educational Benefits, or Stipends

	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
<b>R U L E</b>	<b>If a member under a written agreement for a pay or benefit</b>	<b>and</b>	<b>then repayment of the unearned portion of the pay or benefit</b>	<b>and</b>	<b>any unpaid portion of the bonus, special pay, or student loan repayment under 10 U.S.C. or 37 U.S.C.</b>
<b>1</b>	Dies, through no misconduct of the member		will not be sought		will be paid in the member's final pay.
<b>2</b>	Incur 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 of the United States 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.
<b>3</b>		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 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 makes a determination consistent with Rule 9, Column E.
<b>4</b>		the member continues in service in another capacity	will not be sought if the Secretary of the Military Department concerned 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 makes a determination consistent with Rule 9, Column E.

Table 2-1. Disposition of Unearned Portions of Bonuses, Special Pay, Educational Benefits, or Stipends (Continued)

	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
<b>R U L E</b>	<b>If a member under a written agreement for a pay or benefit</b>	<b>and</b>	<b>then repayment of the unearned portion of the pay or benefit</b>	<b>and</b>	<b>any unpaid portion of the bonus, special pay, or student loan repayment under 10 U.S.C. or 37 U.S.C.</b>
<b>5</b>	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 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 makes a determination consistent with Rule 9, Column E. <i>(In this case, the member may be considered to have completed the full term of service on the former enlistment contract.)</i>
<b>6</b>	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 makes a determination consistent with Rule 9, Column E.
<b>7</b>	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 makes a determination consistent with Rule 9, Column E.
<b>8</b>	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 makes a determination consistent with Rule 9, Column E.

Table 2-1. Disposition of Unearned Portions of Bonuses, Special Pay, Educational Benefits, or Stipends (Continued)

	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
<b>R U L E</b>	<b>If a member under a written agreement for a pay or benefit</b>	<b>and</b>	<b>then repayment of the unearned portion of the pay or benefit</b>	<b>and</b>	<b>any unpaid portion of the bonus, special pay, or student loan repayment under 10 U.S.C. or 37 U.S.C.</b>
<b>9</b>	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, 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, 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.

## \*BIBLIOGRAPHY

**CHAPTER 2 – REPAYMENT OF UNEARNED PORTION OF BONUSES AND OTHER BENEFITS**

## 0201 – GENERAL

Office of the Under Secretary of Defense Personnel and Readiness (P&R) Memo, May 21, 2008  
 Under Secretary of Defense (USD) (P&R) Memo, February 6, 2009

## \*0202 – POLICY

37 U.S.C. § 303a(e) and § 373  
 USD (P&R) Memo, May 21, 2008  
 USD (P&R) Memo, February 6, 2009  
 020203 37 U.S.C. § 303a(e) and § 373(c)

## 0203 – REPAYMENT AND NON-REPAYMENT CONDITIONS

USD (P&R) Memo, May 21, 2008  
 USD (P&R) Memo, February 6, 2009  
 020301.B 10 U.S.C. § 1207  
 020303.B 10 U.S.C., Chapter 61  
 10 U.S.C. § 1413a(e)  
 020303.E 10 U.S.C. § 1171  
 020304.A 10 U.S.C., Chapter 61

## Table 2-1

USD (P&R) Memo, May 21, 2008  
 USD (P&R) Memo, February 6, 2009  
 Rule 2 10 U.S.C., Chapter 61  
 10 U.S.C. § 1413a(e)