



OFFICE OF THE UNDER SECRETARY OF DEFENSE

4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

MAY 21 2008

PERSONNEL AND
READINESS

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (M&RA)
ASSISTANT SECRETARY OF THE NAVY (M&RA)
ASSISTANT SECRETARY OF THE AIR FORCE (MR)
DIRECTOR, DEFENSE FINANCE AND ACCOUNTING SERVICE

SUBJECT: Repayment of Unearned Portions of Bonuses, Special Pay, and Educational Benefits or Stipends

Effective immediately, this Directive-type memorandum establishes modified Department of Defense (DoD) policy guidance on repayment of unearned portions of bonuses, special pay, educational benefits and stipends (hereinafter referred to as "pay or benefit"), consistent with Deputy Secretary of Defense (DSD) policy memorandum, *Repayment of Unearned Portions of Bonuses, Special Pay, and Educational Benefits or Stipends*, dated April 8, 2005 (attachment A). This memorandum also supersedes PDUSD(P&R) memorandum, *Repayment of Unearned Portions of Bonuses, Special Pay, and Educational Benefits or Stipends*, dated September 18, 2007, and fully implements section 303a(e) of subchapter I, chapter 5, title 37, United States Code (U.S.C.).¹

A member who enters into a written agreement with specified conditions for receipt of a pay or benefit, is entitled to the full amount of the pay or benefit if the member fulfills the conditions for that pay or benefit. The DSD policy memorandum recognized that, at the time, members were subject to statutory repayment authorities with varied requirements, and that repayment would be aggressively pursued for any unearned portion of a pay or benefit, as appropriate. However, it was also understood there may be circumstances that support the need to refrain from taking such action. For example, if a member is unable to fulfill the conditions of the agreement due to the member's death not the result of the member's own misconduct, repayment is not sought and any unpaid portion of a pay is included in a deceased member's final pay. The DSD authorized the USD(P&R) to establish additional exceptions if repayment 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.

Pursuant to this policy memorandum, a member who fulfills the requirements specified in a written agreement related to the member's receipt of a pay or benefit is entitled to the full amount of the pay or benefit specified under that agreement. (37 U.S.C. §303a(e); DSD policy memorandum, dated April 8, 2005.) Any failure to fulfill the service requirements specified in the written agreement may result in termination of the agreement and the member's repayment of an unearned portion of the pay or benefit. As a general rule, repayment will not be sought if the member's inability to fulfill the eligibility requirements is due to circumstances determined reasonably beyond the member's control:

¹ This implementation anticipates and applies to the transfer and consolidation of special pays, incentive pays, and bonus authorities under section 661 of the National Defense Authorization Act for Fiscal Year 2008 (NDAA FY08), Public Law 110-181, as the Department transitions to full implementation of subchapters II and III of chapter 5, title 37, U.S.C., as provided for under section 662 of the NDAA FY08. Specifically, section 323 of title 37, U.S.C., was transferred and redesignated as section 355 by section 661(c) of the NDAA FY08, effective January 28, 2008. A conforming amendment under section 661(c)(2) makes section 355 subject to the new repayment authority under section 373 of subchapter III, chapter 5, title 37, U.S.C. Section 661(c) was implemented by the USD(P&R) policy memorandum, *Critical Skills Retention Bonus (CSR)*, dated March 14, 2008.

- (1) Repayment shall 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 account.
- (2) Repayment shall 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 separation or retirement for disability described under Chapter 61 of title 10, U.S.C., that was 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, shall be paid to the member upon separation from service. Repayment will be sought and any unpaid balances may not be paid to members who incur a disability as a result of their misconduct. (*See* 10 U.S.C. §1207.) In all other instances involving a member's separation for medical reasons not falling under Chapter 61, which were not the result of the member's misconduct, the Secretary concerned has the discretion to determine whether to require repayment of the unearned portion of the pay or benefit, or to pay an unpaid balance of a pay or benefit.
- (3) Subject to the enlistment authorities under titles 10 and 37, U.S.C., and the relevant regulations of the Secretary concerned, a member 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 enlisted bonus or special pay entitlements shall be addressed prior to discharge from a Military Department.
- (4) Repayment will not be sought and the Secretary concerned will not pay any remaining unpaid portion of a pay or benefit under the following circumstances, unless otherwise authorized by the Secretary concerned under paragraph (5) below:
 - The member's employment in another military specialty or assignment rotation is directed;
 - The member's military specialty or assignment is phased out or eliminated;
 - The member's military specialty or assignment is otherwise affected by a force structure or other mission essential requirement; or,
 - The member's hardship separation from service.
- (5) Under all other circumstances, the Secretary concerned has the discretion to, at some point in the process, render a case-by-case determination that the member's repayment of, or the Military Department's full payment of an unpaid portion of, a pay or benefit is appropriate based on the following:
 - Contrary to a personnel policy or management objective;
 - Against equity and good conscience; or
 - Contrary to the best interest of the United States.

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

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

The table at attachment B reflects the policy stated in this memorandum and will be published in the DoD Financial Management Regulations (DoDFMR). DoD Issuances governing pay and benefits, subject to the repayment provisions in section 303a(e) of title 37, U.S.C., shall be updated to refer to the table at attachment B, as published in the DoDFMR.


Michael L. Dominguez
Principal Deputy

Attachment
As stated

cc:

Under Secretary of Defense (Comptroller)

Assistant Secretary of Defense (Reserve Affairs)

Commandant (CG-12), U.S. Coast Guard

Director, Division of Commissioned Personnel, U.S. Public Health Service

Director, National Oceanic and Atmospheric Administration Corps Operations – NC



DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

APR 8 2005

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
UNDER SECRETARIES OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

SUBJECT: Repayment of Unearned Portions of Bonuses, Special Pay, and Educational Benefits or Stipends

This memorandum establishes Department of Defense (DoD) policy on repayment of unearned portions of bonuses, special pays, or educational benefits or stipends authorized under titles 10 and 37, U.S. Code, when the conditions of the pay or benefit are not met. The implementation of this policy shall be consistent with the governing statutes.

Any individual who enters into a written agreement that contains specified conditions for receipt of a bonus, special pay, educational benefit, or stipend is entitled to the full amount of the pay or benefit if the individual fulfills the conditions for that pay or benefit.

If the conditions for the pay or benefit are not fulfilled, and the individual is subject to statutory repayment provisions, the individual shall be required to repay the United States the percentage of the pay or benefit representing the unexpired part of the service for which the pay or benefit was provided. If an individual becomes unable to fulfill the conditions of an agreement due to death, not the result of his or her misconduct, repayment shall not be sought, and any unpaid portion of a bonus or special pay is to be included in a deceased individual's final pay account.

Additional exceptions may be granted if repayment would be contrary to a personnel policy or management objective, would be against equity and good conscience, or would be contrary to the best interest of the United States. The Under Secretary of Defense (Personnel and Readiness) may establish criteria for granting exceptions under this paragraph and may delegate that authority in writing.

This policy is effective immediately to the extent permitted by law, and supersedes all previous DoD policy memoranda, including the Deputy Secretary of Defense Memorandum dated May 17, 1994, subject: "Recoupment of Education Assistant Funds, Bonuses and Special Pay from Persons Disenrolled or Separated on the Basis of Homosexual Conduct," governing recoupment of unearned portions of bonuses, pays, and educational benefits or stipends and shall apply to existing agreements (to the extent it



OSD 06762-05

does not affect the Service member adversely). This policy will not affect pending litigation (if any) governed by previous policy. Conforming amendments to the DoD issuances cited in the attachment, and regulations of the Military Departments, shall be brought into compliance with this policy within 180 days.

A handwritten signature in black ink, appearing to read "Paul Wolfowitz", with a stylized flourish at the end.

Attachment:
As stated

Department of Defense (DoD) Issuance Type and Number	DoD Issuance Title	Office of Primary Responsibility
DoDD 6000.12	Health Services Operations and Readiness	ASD(HA)
DoDI 6000.13	Medical Manpower and Personnel	ASD(HA)
DoDD 1205.20	Reserve Component Incentive Programs	ASD(RA)
DoDI 1205.21	Reserve component Incentive Programs Procedures	ASD(RA)
DoDD 1304.21	Enlistment and Reenlistment Bonuses for Active Members	PDUSD(P&R)
DoDD 1315.7	Military Personnel Assignments	PDUSD(P&R)
DoDD 1332.23	Service Academy Disenrollment	PDUSD(P&R)
DoDD 1215.8	Senior ROTC Programs	USD(P&R)
DoDD 1322.10	Policy on Graduate Education for Military Officers	PDUSD(P&R)
DoDD 1322.8	Voluntary Education Programs for Military Personnel	PDUSD(P&R)
DoDI 1322.25	Voluntary Education Programs	PDUSD(P&R)
DoD 7000.14-R	Department of Defense Financial Management Regulations	USD(C)

SUBJECT: Disposition of the Unearned Portions of Bonuses, Special Pay, Educational Benefits or Stipends – Table for Issuance in the DoD Financial Management Regulation

A. General policy:

(1) A member who enters into a written agreement with specified conditions for receipt of a bonus, special pay, educational benefit or stipend (hereinafter referred to as “pay or benefit”), is entitled to the full amount of the pay or benefit if the member fulfills the conditions for that pay or benefit.

(2) If the member does not fulfill the service conditions specified in the written agreement for the pay or benefit and the member is subject to repayment of the unearned portion of that pay or benefit under section 303a(e) of title 37, United States Code, such repayment will be pursued, except under the conditions noted in B, below.

B. 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 the eligibility requirements related to a pay or benefit is due to circumstances determined reasonably beyond the member’s control. Payment of any unpaid portion of the pay or benefit will be subject to the discretion of the Secretary concerned. (Table 1).

TABLE 1.

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 or benefit	and	any unpaid portion of the bonus, special pay, or student loan repayment under Titles 10 or Title 37, United States Code (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 Chapter 61 of Title 10, U.S.C.	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	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 concerned determines that recoupment 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 concerned 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 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 concerned makes a determination consistent with Rule 9, Column E.

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 or benefit	and	any unpaid portion of the bonus, special pay, or student loan repayment under Titles 10 or Title 37, United States Code (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		will be paid. <i>(In this case, the member is considered to have completed the full term of service on the former enlistment contract.)</i>
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 concerned 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 concerned makes a determination consistent with Rule 9, Column E.
8	Is separated from service under a hardship separation		will not be sought		will not be paid, unless the Secretary concerned makes a determination consistent with Rule 9, Column E.
9	Does not fulfill the service conditions for the pay or benefit under any other circumstance		will be sought, unless the Secretary 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 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 repayment, 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

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