

However, a service agreement may not require reimbursement based on—

(1) An employee's failure to maintain performance at a particular level (unless the employee is separated based on unacceptable performance); or

(2) An involuntary separation for reasons other than misconduct, unacceptable performance, or a negative suitability determination under 5 CFR part 731 (e.g., an involuntary separation resulting from a reduction in force or medical reasons).

§ 537.108 Loss of eligibility for student loan repayment benefits.

(a) An employee receiving student loan repayment benefits from an agency is ineligible for continued benefits from that agency if the employee—

(1) Separates from the agency;

(2) Does not maintain an acceptable level of performance, as determined under standards and procedures prescribed by the agency; or

(3) Violates a condition in the service agreement, if the agreement specifically provides that eligibility is lost when the condition is violated.

(b) For the purpose of applying paragraph (a)(2) of this section, an acceptable level of performance is one that is equivalent to level 3 ("Fully Successful" or equivalent) or higher, as described in 5 CFR 430.208(d). An employee loses eligibility for student loan repayment benefits if his or her most recent official performance evaluation does not meet this requirement.

§ 537.109 Employee reimbursements to the Government.

(a) An employee is indebted to the Federal Government and must reimburse the paying agency for the amount of any student loan repayment benefits received under a service agreement if he or she—

(1) Fails to complete the period of service required in the applicable service agreement (except as provided by paragraph (b) of this section); or

(2) Violates any other condition that specifically triggers a reimbursement requirement under the agreement.

(b) An agency may not apply paragraph (a) of this section based on an employee's failure to complete the re-

quired period of service established under a service agreement if—

(1) The employee is involuntarily separated for reasons other than misconduct, unacceptable performance, or a negative suitability determination under 5 CFR part 731; or

(2) The employee leaves the paying agency voluntarily to enter into the service of any other agency, unless reimbursement to the agency is otherwise required in the service agreement, as provided by § 537.107(e).

(c) If an agency and an employee mutually agree to modify an existing service agreement to provide additional student loan repayment benefits for additional service (as provided by § 537.107(b)), the modified service agreement may stipulate that, if the employee completes the initial service period but fails to complete the additional service period, he or she is required to reimburse the paying agency only for the amount of any student loan repayment benefits received during the additional service period.

(d) If an employee fails to reimburse the paying agency for the amount owed under paragraph (a) of this section, a sum equal to the amount outstanding is recoverable from the employee under the agency's regulations for collection by offset from an indebted Government employee under 5 U.S.C. 5514 and 5 CFR part 550, subpart K, or through the appropriate provisions governing Federal debt collection if the individual is no longer a Federal employee.

(e) An authorized agency official may waive, in whole or in part, a right of recovery of an employee's debt if he or she determines that recovery would be against equity and good conscience or against the public interest. (See 5 U.S.C. 5379(c)(3).)

(f) Any amount reimbursed by, or recovered from, an employee under this section must be credited to the appropriation account from which the amount involved was originally paid. Any amount so credited must be merged with other sums in such account and must be available for the same purposes and time period, and subject to the same limitations (if any), as the sums with which merged. (See 5 U.S.C. 5379(c)(4).)