§ 537.105 Criteria for payment.

(a) General criteria. Before authorizing student loan repayment benefits for an employee (or job candidate), an agency must make a written determination that—

(1) The employee (or job candidate) is highly qualified and otherwise eligible (as described in §537.104); and

(2)(i) In a case where the authorization is granted to recruit a job candidate to fill an agency position, the agency otherwise would encounter difficulty in filling a position with a highly qualified individual; or

(ii) In a case where the authorization is granted to retain a current employee of the agency, the employee otherwise is likely to leave the agency for employment outside the Federal service and it is essential to retain the employee based on the employee's high or unique qualifications or a special need of the agency.

(b) Retention considerations. In making a determination under paragraph (a)(2)(ii) of this section, an agency must consider the extent to which the employee's departure would affect the agency's ability to carry out an activity or perform a function that is deemed essential to its mission.

(c) Current Federal employees. An agency may not authorize student loan repayment benefits to recruit an individual from outside the agency who is currently employed in the Federal service.

(d) Selecting employees. When selecting employees (or job candidates) to receive student loan repayment benefits, agencies must ensure that benefits are awarded without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition.

§ 537.106 Conditions and procedures for providing student loan repayment benefits.

(a) General conditions. (1) Student loan repayment benefits may be provided at the discretion of the agency and are subject to such terms, limitations, or conditions as may be mutually agreed to in writing by the agency and the employee (or job candidate) as part of a service agreement under §537.107.

(2) The student loan to be repaid must be a qualifying student loan as set forth in paragraph (b) of this section.

(3) The agency must document in writing each approval of student loan repayment benefits. An authorized agency official must review and approve each written determination. The written determination must show the employee (or job candidate) meets the criteria specified in §537.105.

(4) An authorized agency official must approve student loan repayment benefits in connection with a recruitment action before the job candidate actually enters on duty in the position for which he or she was recruited. The agency and the job candidate may sign the service agreement consistent with §537.107 before the job candidate begins serving in the position, but the agency may not begin making loan payments until the job candidate begins serving in the position.

(5) Student loan repayment benefits are in addition to basic pay and any other form of compensation otherwise payable to the employee involved.

(6) Appropriate tax withholdings must be deducted or applied at the time any payment is made. Since these tax implications could create a financial hardship for the recipient of the student loan repayment benefit, agencies may lessen the impact of tax withholdings on an employee's paycheck in one of the following ways:

(i) Make smaller payments at periodic intervals throughout the year, rather than issue payments under this part in one lump sum;

(ii) Allow the employee to write a check to the agency to cover his or her tax liability, rather than have the tax liability withheld from the employee’s paycheck;

(iii) Deduct the amount of taxes to be withheld from the student loan repayment benefit before the balance is issued as a loan payment to the holder of the loan.

NOTE TO §537.106(a)(6): Contact the Internal Revenue Service for further details concerning these options, as well as the tax

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§ 537.107 Service agreements.

(a) Before an employing agency makes any loan payments for an employee, the employee (or job candidate) must sign a written service agreement to complete a specified period of service with the agency and to reimburse the agency for the student loan repayment benefit when required by §537.109. The service agreement also may specify any other employment conditions the agency considers to be appropriate, including the employee's (or job candidate's) position and the duties he or she is expected to perform, his or her work schedule, his or her level of performance, and the geographic location of his or her position. (See §§537.108 and 537.109.) The service agreement may address the possibility that, during the period the agreement is in effect, the agency may modify the agreement to provide student loan repayment benefits in addition to those fixed in the agreement based on contingencies or conditions specified in the agreement.

(b) The minimum period of service to be established under a service agreement is 3 years, regardless of the amount of student loan repayment benefits authorized. The agency and the employee may mutually agree to modify an existing service agreement, subject to the limitations at §537.106(c)(2), to provide additional student loan repayment benefits for additional service without the need for an entirely new service agreement (which would require a new 3-year minimum service period). Periods of leave without pay, or other periods during which the employee is not in a pay status, do not count toward completion of the required service period. Thus, the service completion date must be extended by the total amount of time spent in non-pay status. However, as provided by 5 CFR 353.107, absence because of uniformed service or compensable injury is considered creditable toward the required service period upon reemployment.