

LAW REVIEW¹ 13012

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Enlist in Reserve Component to Repay Student Loans?

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

9.0--Miscellaneous

Q: I am 29 years old and have a master's degree in Clinical Psychology. I work for the Department of the Army as a civilian employee, working with wounded warriors. I am considering joining the Army Reserve and have met with a recruiter. My principal interest in joining the Army Reserve is that I understand that by enlisting and serving I can get a substantial part of my outstanding student loan debt paid by the Army. I have read that under sections 16301 and 16302 of title 10 of the United States Code I can get 15% of my student loan debt paid off for each year that I serve satisfactorily in the Army Reserve. Thus, if I serve for six years I can get 90% of my student loan debt paid off.

¹I invite the reader's attention to <https://www.roa.org/page/LawCenter>. You will find more than 2000 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

²BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For 43 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at SWright@roa.org.

I brought this up with the recruiter, and he checked with the Commanding Officer of the Recruiting District. The recruiter and his supervisor say that there is no such provision for repayment of student loan debt that would apply to me. What gives?

A: For your convenience, I have reprinted sections 16301 and 16302 below, in their entirety. Please note that the statute says that the Department of Defense *may* repay student loan debt for service members under certain circumstances. *This is not an entitlement.* Rather, this is an incentive that the Army and the other services are *permitted* to offer to recruit qualified service members. If your enlistment contract provides for this loan repayment in exchange for satisfactory service, then the Army will live up to the bargain. If your enlistment contract does not provide for this benefit, you will not get it.

The Army and the other services make determinations year-by-year and specialty-by-specialty as to the need for these incentives. Because of the slow economy and the high civilian unemployment rate, the services are doing very well with recruiting in recent years, and these recruiting incentives have been cut way back. The Recruiting District is apparently telling you that this particular incentive is not available at this time, at least for your particular specialty. The answer may be different next year, if the economy picks up and recruiting slows down.

If you decide to enlist in the Army Reserve, you will be presented a detailed, multi-page enlistment contract. It is essential that you read the contract carefully *before* you sign it. This written enlistment contract is the *entire contract* between you and the Army. Recruiters sometimes lie—they are under a lot of pressure to make their quotas. If the recruiter has promised you some benefit but the enlistment contract does not include it, you can count on *not* receiving that benefit.

The *parol evidence rule* most definitely applies to military enlistment contracts. That rule has been defined as follows: “Under this rule, when parties put their agreement in writing, all previous oral agreements merge in the writing and a contract as written cannot be modified or changed by parol [verbal] evidence, in the absence of a plea of mistake or fraud in the preparation of the writing.” *Black’s Law Dictionary, Revised Fourth Edition*, page 1273.

(a)

(1)Subject to the provisions of this section, the Secretary of Defense **may repay—**

(A)any loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 ([20 U.S.C. 1071](#) et seq.);

(B)any loan made under part D of such title (the William D. Ford Federal Direct Loan Program, [20 U.S.C. 1087a](#) et seq.);

(C)any loan made under part E of such title ([20 U.S.C. 1087aa](#) et seq.); or

(D)any loan incurred for educational purposes made by a lender that is—

- (i)**an agency or instrumentality of a State;
- (ii)**a financial or credit institution (including an insurance company) that is subject to examination and supervision by an agency of the United States or any State;
- (iii)**a pension fund approved by the Secretary for purposes of this section; or
- (iv)**a nonprofit private entity designated by a State, regulated by that State, and approved by the Secretary for purposes of this section.

Repayment of any such loan shall be made on the basis of each complete year of service performed by the borrower.

(2)The Secretary of Defense **may** repay loans described in paragraph (1) in the case of any person for service performed as a member of the Selected Reserve of the Ready Reserve of an armed force in a reserve component and in an officer program or military specialty specified by the Secretary of Defense. The Secretary may repay such a loan only if the person to whom the loan was made performed such service after the loan was made.

(b)The portion or amount of a loan that may be repaid under subsection (a) is 15 percent or \$500, whichever is greater, for each year of service, plus the amount of any interest that may accrue during the current year.

(c)If a portion of a loan is repaid under this section for any year, interest on the remainder of the loan shall accrue and be paid in the same manner as is otherwise required. For the purposes of this section, any interest that has accrued on the loan for periods before the current year shall be considered as within the total loan amount that shall be repaid.

(d)Nothing in this section shall be construed to authorize refunding any repayment of a loan.

(e)A person who transfers from service making the person eligible for repayment of loans under this section (as described in subsection (a)(2)) to service making the person eligible for repayment of loans under section [2171](#) of this title (as described in subsection (a)(2) of that section) during a year shall be eligible to have repaid a portion of such loan determined by giving appropriate fractional credit for each portion of the year so served, in accordance with regulations of the Secretary concerned.

(f)The Secretary of Defense shall, by regulation, prescribe a schedule for the allocation of funds made available to carry out the provisions of this section and section [2171](#) of this title during any year for which funds are not sufficient to pay the sum of the amounts eligible for repayment under subsection (a) and section [2171 \(a\)](#) of this title.

(g)The Secretary of Homeland Security **may** repay loans described in subsection (a)(1) and otherwise administer this section in the case of members of the Selected Reserve of the Coast Guard Reserve when the Coast Guard is not operating as a service in the Navy.

(h)Except a person described in subsection (e) who transfers to service making the person eligible for repayment of loans under section [2171](#) of this title, a member of the armed forces who fails to complete the period of service required to qualify for loan repayment under this section shall be subject to the repayment provisions of section [303a](#) (e) of title [37](#).

(i)The Secretary of Defense may prescribe, by regulations, procedures for implementing this section, including standards for qualified loans and authorized payees and other terms and conditions for making loan repayments. Such regulations may include exceptions that would allow for the payment as a lump sum of any loan repayment due to a member under a written agreement that existed at the time of a member's death or disability.

10 U.S.C. 16301 (**emphasis supplied**).

(a)Under regulations prescribed by the Secretary of Defense and subject to the other provisions of this section, the Secretary concerned may repay—

(1)a loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 ([20](#) U.S.C. [1071](#) et seq.);

(2)any loan made under part D of such title (the William D. Ford Federal Direct Loan Program, [20](#) U.S.C. [1087a](#) et seq.); or

(3)a loan made under part E of such title ([20](#) U.S.C. [1087aa](#) et seq.) after October 1, 1975;

(4)a health professions education loan made or insured under part A of title VII of the Public Health Service Act ([42](#) U.S.C. [292](#) et seq.) or under part B of title VIII of such Act ([42](#) U.S.C. [297](#) et seq.); and

(5)a loan made, insured, or guaranteed through a recognized financial or educational institution if that loan was used to finance education regarding a basic professional qualifying degree (as determined under regulations prescribed by the Secretary of Defense) or graduate education in a health profession that the Secretary of Defense determines to be critically needed in order to meet identified wartime combat medical skill shortages.

(b)The Secretary concerned may repay loans described in subsection (a) only in the case of a person who—

(1)performs satisfactory service as an officer in the Selected Reserve of an armed force; and

(2)possesses professional qualifications, or is enrolled in a program of education leading to professional qualifications, in a health profession that the Secretary of Defense has determined to be needed critically in order to meet identified wartime combat medical skill shortages.

(c)

(1)The amount of any repayment of a loan made under this section on behalf of any person shall be determined on the basis of each complete year of service that is described in subsection (b)(1) and performed by the person after the date on which the loan was made.

(2)The annual maximum amount of a loan that may be repaid under this section shall be the same as the maximum amount in effect for the same year under subsection (e)(2) of section 2173 of this title for the education loan repayment program under such section.

(d)The authority provided in this section shall apply only in the case of a person first appointed as a commissioned officer on or before December 31, 2012.

10 U.S.C. 16302 (emphasis supplied).

NOTE: On January 2, 2013, President Obama signed into law the National Defense Authorization Act for Fiscal Year 2013. Section 612(a) of this new law amended 10 U.S.C. 16302(d) by extending the end date for this incentive program from December 31, 2012 to December 31, 2013.

Update – May 2022

The law has been amended such that 10 U.S.C. § 16302 applies only to those who were first appointed as a commissioned officer on or before December 31, 2022.³

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This article is one of 1800-plus “Law Review” articles available at www.roa.org/page/lawcenter. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

ROA is almost a century old—it was established in 1922 by a group of veterans of “The Great War,” as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For many decades, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs.

³10 U.S.C. § 16302(d).

Indeed, ROA is the *only* national military organization that exclusively supports America's Reserve and National Guard.

Through these articles, and by other means, we have sought to educate service members, their spouses, and their attorneys about their legal rights and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA or eligible to join, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any one of our nation's seven uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve.

If you are eligible for ROA membership, please join. You can join on-line at www.roa.org or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

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