

1981—Subsec. (a). Pub. L. 97-35, §2709(d)(1), inserted provision respecting requirements of applicable State law, substituted references to sections 254m(a) and 234 of this title, for reference to section 294u(a) of this title, and in cl. (2) struck out priority requirement under section 254f(c) of this title.

Subsec. (b)(1)(B). Pub. L. 97-35, §2709(d)(2), inserted “(i)” before “shall not” and added cl. (ii).

Subsecs. (c) to (g). Pub. L. 97-35, §2709(d)(3), added subsecs. (c) to (g).

1980—Subsec. (a). Pub. L. 96-538 substituted in par. (2) “which has” for “which (A) has” and struck out subpar. (B) which referred to a health manpower shortage area which has a sufficient financial base to sustain private practice and provide the individual with income of not less than the income of members of the Corps, and struck out provision following par. (2) which provided that in the case of an individual described in par. (1), the Secretary release the individual from his service obligation under this subsection only if the Secretary determines that the area in which the individual is serving met the requirements of cl. (B) of par. (2).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective Oct. 1, 1977, see section 408(b)(1) of Pub. L. 94-484, set out in part as a note under section 254l of this title.

EFFECTIVE DATE; SAVINGS PROVISION; CREDIT FOR PERIOD OF INTERNSHIP OR RESIDENCY BEFORE SEPTEMBER 30, 1977, TOWARDS SERVICE OBLIGATION

See section 408(b)(2) of Pub. L. 94-484, set out as a note under section 254l of this title.

#### § 254o. Breach of scholarship contract or loan repayment contract

##### (a) Failure to maintain academic standing; dismissal from institution; voluntary termination; liability; failure to accept payment

(1) An individual who has entered into a written contract with the Secretary under section 254l of this title and who—

(A) fails to maintain an acceptable level of academic standing in the educational institution in which he is enrolled (such level determined by the educational institution under regulations of the Secretary);

(B) is dismissed from such educational institution for disciplinary reasons; or

(C) voluntarily terminates the training in such an educational institution for which he is provided a scholarship under such contract, before the completion of such training,

in lieu of any service obligation arising under such contract, shall be liable to the United States for the amount which has been paid to him, or on his behalf, under the contract.

(2) An individual who has entered into a written contract with the Secretary under section 254l-1 of this title and who—

(A) in the case of an individual who is enrolled in the final year of a course of study, fails to maintain an acceptable level of academic standing in the educational institution in which such individual is enrolled (such level determined by the educational institution under regulations of the Secretary) or voluntarily terminates such enrollment or is dismissed from such educational institution before completion of such course of study; or

(B) in the case of an individual who is enrolled in a graduate training program, fails to

complete such training program and does not receive a waiver from the Secretary under section 254l-1(b)(1)(B)(ii) of this title,

in lieu of any service obligation arising under such contract shall be liable to the United States for the amount that has been paid on behalf of the individual under the contract.

##### (b) Failure to commence or complete service obligations; formula to determine liability; payment to United States; recovery of delinquent damages; disclosure to credit reporting agencies

(1)(A) Except as provided in paragraph (2), if an individual breaches his written contract by failing (for any reason not specified in subsection (a) or section 254p(d) of this title) to begin such individual's service obligation under section 254l of this title in accordance with section 254m or 254n of this title, to complete such service obligation, or to complete a required residency as specified in section 254l(f)(1)(B)(iv) of this title, the United States shall be entitled to recover from the individual an amount determined in accordance with the formula

$$A = 3\phi \left( \frac{t-s}{t} \right)$$

in which “A” is the amount the United States is entitled to recover, “ $\phi$ ” is the sum of the amounts paid under this subpart to or on behalf of the individual and the interest on such amounts which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States; “t” is the total number of months in the individual's period of obligated service; and “s” is the number of months of such period served by him in accordance with section 254m of this title or a written agreement under section 254n of this title.

(B)(i) Any amount of damages that the United States is entitled to recover under this subsection or under subsection (c) shall, within the 1-year period beginning on the date of the breach of the written contract (or such longer period beginning on such date as specified by the Secretary), be paid to the United States. Amounts not paid within such period shall be subject to collection through deductions in Medicare payments pursuant to section 1395ccc of this title.

(ii) If damages described in clause (i) are delinquent for 3 months, the Secretary shall, for the purpose of recovering such damages—

(I) utilize collection agencies contracted with by the Administrator of the General Services Administration; or

(II) enter into contracts for the recovery of such damages with collection agencies selected by the Secretary.

(iii) Each contract for recovering damages pursuant to this subsection shall provide that the contractor will, not less than once each 6 months, submit to the Secretary a status report on the success of the contractor in collecting such damages. Section 3718 of title 31 shall apply to any such contract to the extent not inconsistent with this subsection.

(iv) To the extent not otherwise prohibited by law, the Secretary shall disclose to all appropriate credit reporting agencies information relating to damages of more than \$100 that are entitled to be recovered by the United States under this subsection and that are delinquent by more than 60 days or such longer period as is determined by the Secretary.

(2) If an individual is released under section 254n<sup>1</sup> of this title from a service obligation under section 234<sup>1</sup> of this title (as in effect on September 30, 1977) and if the individual does not meet the service obligation incurred under section 254n<sup>1</sup> of this title, subsection (f) of such section 234<sup>1</sup> of this title shall apply to such individual in lieu of paragraph (1) of this subsection.

(3) The Secretary may terminate a contract with an individual under section 254l of this title if, not later than 30 days before the end of the school year to which the contract pertains, the individual—

(A) submits a written request for such termination; and

(B) repays all amounts paid to, or on behalf of, the individual under section 254l(g) of this title.

**(c) Failure to commence or complete service obligations for other reasons; determination of liability; payment to United States; waiver of recovery for extreme hardship or good cause shown**

(1) If (for any reason not specified in subsection (a) or section 254p(d) of this title) an individual breaches the written contract of the individual under section 254l-1 of this title by failing either to begin such individual's service obligation in accordance with section 254m or 254n of this title or to complete such service obligation, the United States shall be entitled to recover from the individual an amount equal to the sum of—

(A) the total of the amounts paid by the United States under section 254l-1(g) of this title on behalf of the individual for any period of obligated service not served;

(B) an amount equal to the product of the number of months of obligated service that were not completed by the individual, multiplied by \$7,500; and

(C) the interest on the amounts described in subparagraphs (A) and (B), at the maximum legal prevailing rate, as determined by the Treasurer of the United States, from the date of the breach;

except that the amount the United States is entitled to recover under this paragraph shall not be less than \$31,000.

(2) The Secretary may terminate a contract with an individual under section 254l-1 of this title if, not later than 45 days before the end of the fiscal year in which the contract was entered into, the individual—

(A) submits a written request for such termination; and

(B) repays all amounts paid on behalf of the individual under section 254l-1(g) of this title.

(3) Damages that the United States is entitled to recover shall be paid in accordance with subsection (b)(1)(B).

**(d) Cancellation of obligation upon death of individual; waiver or suspension of obligation for impossibility, hardship, or unconscionability; release of debt by discharge in bankruptcy, time limitations**

(1) Any obligation of an individual under the Scholarship Program (or a contract thereunder) or the Loan Repayment Program (or a contract thereunder) for service or payment of damages shall be canceled upon the death of the individual.

(2) The Secretary shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment by an individual under the Scholarship Program (or a contract thereunder) or the Loan Repayment Program (or a contract thereunder) whenever compliance by the individual is impossible or would involve extreme hardship to the individual and if enforcement of such obligation with respect to any individual would be unconscionable.

(3)(A) Any obligation of an individual under the Scholarship Program (or a contract thereunder) or the Loan Repayment Program (or a contract thereunder) for payment of damages may be released by a discharge in bankruptcy under title 11 only if such discharge is granted after the expiration of the 7-year period beginning on the first date that payment of such damages is required, and only if the bankruptcy court finds that nondischarge of the obligation would be unconscionable.

(B)(i) Subparagraph (A) shall apply to any financial obligation of an individual under the provision of law specified in clause (ii) to the same extent and in the same manner as such subparagraph applies to any obligation of an individual under the Scholarship or Loan Repayment Program (or contract thereunder) for payment of damages.

(ii) The provision of law referred to in clause (i) is subsection (f) of section 234<sup>1</sup> of this title, as in effect prior to the repeal of such section by section 408(b)(1) of Public Law 94-484.

**(e) Inapplicability of Federal and State statute of limitations on actions for collection**

Notwithstanding any other provision of Federal or State law, there shall be no limitation on the period within which suit may be filed, a judgment may be enforced, or an action relating to an offset or garnishment, or other action, may be initiated or taken by the Secretary, the Attorney General, or the head of another Federal agency, as the case may be, for the repayment of the amount due from an individual under this section.

**(f) Effective date**

The amendment made by section 313(a)(4) of the Health Care Safety Net Amendments of 2002 (Public Law 107-251) shall apply to any obligation for which a discharge in bankruptcy has not been granted before the date that is 31 days after October 26, 2002.

(July 1, 1944, ch. 373, title III, §338E, formerly title VII, §754, as added Pub. L. 94-484, title IV, §408(b)(1), Oct. 12, 1976, 90 Stat. 2286; amended Pub. L. 95-83, title III, §307(g), Aug. 1, 1977, 91 Stat. 391; renumbered §338D and amended Pub. L. 97-35, title XXVII, §2709(a), (e)(1)-(4)(A), Aug.

<sup>1</sup> See References in Text note below.

13, 1981, 95 Stat. 908, 911; Pub. L. 97-414, § 8(g)(2), Jan. 4, 1983, 96 Stat. 2061; renumbered § 338E and amended Pub. L. 100-177, title II, §§ 201(2), 202(e), title III, § 308(a), Dec. 1, 1987, 101 Stat. 992, 997, 1006; Pub. L. 100-203, title IV, § 4052(b), Dec. 22, 1987, 101 Stat. 1330-97; Pub. L. 100-360, title IV, § 411(f)(10)(B), July 1, 1988, 102 Stat. 780; Pub. L. 101-597, title II, § 203(a), Nov. 16, 1990, 104 Stat. 3027; Pub. L. 107-251, title III, § 313(a), Oct. 26, 2002, 116 Stat. 1651; Pub. L. 108-163, § 2(l)(1), Dec. 6, 2003, 117 Stat. 2022.)

### Editorial Notes

#### REFERENCES IN TEXT

Section 234 of this title, referred to in subsecs. (b)(2) and (d)(3)(B)(ii), was repealed by Pub. L. 94-484, title IV, § 408(b)(1), Oct. 12, 1976, 90 Stat. 2281, effective Oct. 1, 1977.

Section 254n of this title, referred to in subsec. (b)(2), in the original referred to section 753, meaning section 753 of the Public Health Service Act, which was classified to section 294v of this title. Section 753 was redesignated section 338C of the Public Health Service Act by Pub. L. 97-35, title XXVII, § 2709(a), Aug. 13, 1981, 95 Stat. 908, and was transferred to section 254n of this title. Section 338C of the Public Health Service Act was renumbered section 338D by Pub. L. 100-177, title II, § 201(2), Dec. 1, 1987, 101 Stat. 992.

Section 313(a)(4) of the Health Care Safety Net Amendments of 2002, referred to in subsec. (f), is section 313(a)(4) of Pub. L. 107-251, which amended subsec. (d)(3)(A) of this section. See 2002 Amendment note below.

#### CODIFICATION

Section was formerly classified to section 294w of this title prior to its renumbering by Pub. L. 97-35.

#### PRIOR PROVISIONS

A prior section 338E of act July 1, 1944, was renumbered section 338F by Pub. L. 100-177 and classified to section 254p of this title, and subsequently renumbered 338G by Pub. L. 101-597.

#### AMENDMENTS

2003—Subsec. (c)(1). Pub. L. 108-163, § 2(l)(1)(A), realigned margins.

Subsec. (f). Pub. L. 108-163, § 2(l)(1)(B), added subsec. (f).

2002—Subsec. (a)(1). Pub. L. 107-251, § 313(a)(1), substituted semicolon for comma at end of subpar. (A) and “; or” for comma at end of subpar. (B), struck out “or” at end of subpar. (C), and struck out subpar. (D) which read as follows: “fails to accept payment, or instructs the educational institution in which he is enrolled not to accept payment, in whole or in part, of a scholarship under such contract.”

Subsec. (b)(1)(A). Pub. L. 107-251, § 313(a)(2)(A)(ii)-(iv), struck out “either” before “to begin”, substituted “254n of this title,” for “254n of this title or”, and inserted “or to complete a required residency as specified in section 254(f)(1)(B)(iv) of this title,” before “the United States” the first time appearing.

Pub. L. 107-251, § 313(a)(2)(A)(i), made technical amendment to reference in original act which appears in text as reference to section 254p of this title.

Subsec. (b)(3). Pub. L. 107-251, § 313(a)(2)(B), added par. (3).

Subsec. (c)(1). Pub. L. 107-251, § 313(a)(3)(A)(ii), added subpars. (A) to (C) and concluding provisions and struck out former subpars. (A) to (C) which related, respectively, to amounts to be recovered in the case of a contract for a 2-year period of obligated service, in the case of a contract for a period of obligated service of greater than 2 years where the breach occurred before the end of the first 2 years of such period, and in the

case of a contract for a period of obligated service of greater than 2 years, where the breach occurred after the first 2 years of such period.

Pub. L. 107-251, § 313(a)(3)(A)(i), in introductory provisions, made technical amendment to reference in original act which appears in text as reference to section 254p(d) of this title.

Subsec. (c)(2). Pub. L. 107-251, § 313(a)(3)(B), added par. (2) and struck out former par. (2) which read as follows: “For purposes of paragraph (1), the term ‘unserved obligation penalty’ means the amount equal to the product of the number of months of obligated service that were not completed by an individual, multiplied by \$1,000, except that in any case in which the individual fails to serve 1 year, the unserved obligation penalty shall be equal to the full period of obligated service multiplied by \$1,000.”

Subsec. (c)(3), (4). Pub. L. 107-251, § 313(a)(3)(B), (C), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: “The Secretary may waive, in whole or in part, the rights of the United States to recover amounts under this section in any case of extreme hardship or other good cause shown, as determined by the Secretary.”

Subsec. (d)(3)(A). Pub. L. 107-251, § 313(a)(4), substituted “7-year period” for “five-year period”.

Subsec. (e). Pub. L. 107-251, § 313(a)(5), added subsec. (e).

1990—Subsec. (d)(3). Pub. L. 101-597 designated existing provision as subpar. (A) and added subpar. (B).

1988—Subsec. (b)(1)(B)(i). Pub. L. 100-360 made technical amendment to directory language of Pub. L. 100-203, see 1987 Amendment note below.

1987—Pub. L. 100-177, § 202(e)(6), inserted “or loan repayment contract” in section catchline.

Subsec. (a). Pub. L. 100-177, § 202(e)(1), designated existing provisions as par. (1), and former pars. (1) to (4) as subpars. (A) to (D), respectively, and added par. (2).

Subsec. (b)(1). Pub. L. 100-177, § 202(e)(2), designated existing provisions as subpar. (A), made technical amendments to references to sections 254m, 254n, and 254p of this title wherever appearing to reflect renumbering of corresponding sections of original act, inserted “under section 254l of this title” after first reference to “service obligation” as the probable intent of Congress, struck out at end “Any amount of damages which the United States is entitled to recover under this subsection shall, within the one year period beginning on the date of the breach of the written contract (or such longer period beginning on such date as specified by the Secretary for good cause shown), be paid to the United States.”, and added subpar. (B).

Subsec. (b)(1)(B)(i). Pub. L. 100-203, as amended by Pub. L. 100-360, inserted at end “Amounts not paid within such period shall be subject to collection through deductions in Medicare payments pursuant to section 1395ccc of this title.”

Subsec. (c). Pub. L. 100-177, § 202(e)(4), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 100-177, §§ 202(e)(3), (5), 308(a), redesignated subsec. (c) as (d), in pars. (1), (2), and (3), inserted “or the Loan Repayment Program (or a contract thereunder)”, and in par. (3) inserted “, and only if the bankruptcy court finds that nondischarge of the obligation would be unconscionable”.

1983—Subsec. (b)(1). Pub. L. 97-414 substituted “section 254p(d)” for “section 254q(b)”.

1981—Subsec. (a). Pub. L. 97-35, § 2709(e)(1), (2), redesignated subsec. (b) as (a) and, as so redesignated, in introductory text substituted “254l” for “294t” and added par. (4). Former subsec. (a), which related to liability of individual upon failure to accept payment, was struck out.

Subsec. (b). Pub. L. 97-35, § 2709(e)(1), (3), redesignated subsec. (c) as (b) and, as so redesignated, designated existing provisions as par. (1) and made numerous changes to reflect renumbering of subpart sections, and added par. (2). Former subsec. (b) redesignated (a).

Subsecs. (c), (d). Pub. L. 97-35, § 2709(e)(1), (4)(A), redesignated subsec. (d) as (c) and, as so redesignated, in

par. (2) inserted reference to partial or total waiver. Former subsec. (c) redesignated (b).

1977—Subsec. (c). Pub. L. 95-83 substituted “‘ $\phi$ ’ is the sum of the amounts paid under this subpart to or on behalf of the individual and the interest on such amounts which would be payable if at the time the amounts were paid they were loans” for “‘ $\phi$ ’ is the sum of the amount paid under this subpart to or on behalf of the individual and the interest on such amount which would be payable if at the time it was paid it was a loan”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2003 AMENDMENT

Amendments by Pub. L. 108-163 deemed to have taken effect immediately after the enactment of Pub. L. 107-251, see section 3 of Pub. L. 108-163, set out as a note under section 233 of this title.

##### EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-251, title III, §313(b), Oct. 26, 2002, 116 Stat. 1652, which provided that the amendment to this section made by section 313(a)(4) of Pub. L. 107-251 was applicable to any obligation for which a discharge in bankruptcy had not been granted before the date that was 31 days after Oct. 26, 2002, was repealed by Pub. L. 108-163, §§2(i)(2), 3, Dec. 6, 2003, 117 Stat. 2023, effective immediately after enactment of Pub. L. 107-251.

##### EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-597, title II, §203(b), Nov. 16, 1990, 104 Stat. 3027, provided that: “With respect to any financial obligation of an individual under subsection (f) of section 225 of the Public Health Service Act [former 42 U.S.C. 234], as in effect prior to the repeal of such section by section 408(b)(1) of Public Law 94-484, the amendment made by subsection (a) of this section [amending this section] applies to any bankruptcy [sic] proceeding in which discharge of such an obligation has not been granted before the date that is 31 days after the date of the enactment of this Act [Nov. 16, 1990].”

##### EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100-360, amendment by Pub. L. 100-360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, effective as if included in the enactment of that provision in Pub. L. 100-203, see section 411(a) of Pub. L. 100-360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

##### EFFECTIVE DATE

Section effective Oct. 1, 1977, see section 408(b)(1) of Pub. L. 94-484, set out in part as a note under section 254l of this title.

EFFECTIVE DATE; SAVINGS PROVISION; CREDIT FOR PERIOD OF INTERNSHIP OR RESIDENCY BEFORE SEPTEMBER 30, 1977, TOWARDS SERVICE OBLIGATION

See section 408(b)(2) of Pub. L. 94-484, set out as a note under section 254l of this title.

##### SPECIAL REPAYMENT PROVISIONS

Pub. L. 100-177, title II, §204, Dec. 1, 1987, 101 Stat. 1000, provided that an individual who breached a written contract entered into under section 254l of this title by failing either to begin such individual's service obligation in accordance with section 254m of this title or to complete such service obligation; or otherwise breached such a contract; and, as of Nov. 1, 1987, was liable to United States under subsec. (b) of this section was to be relieved of liability to United States under such section if the individual provided notice to Secretary and service in accordance with a written contract with the Secretary that obligated the individual to provide service in accordance with section and au-

thorized Secretary to exclude an individual from relief from liability under this section for reasons related to the individual's professional competence or conduct.

##### EXISTING PROCEEDINGS

Pub. L. 100-177, title III, §308(b), Dec. 1, 1987, 101 Stat. 1006, provided that: “The amendment made by subsection (a) [amending this section] applies to any bankruptcy proceeding in which discharge of an obligation under section 338E(d)(3) of the Public Health Service Act [42 U.S.C. 254o(d)(3)] (as redesignated by sections 201(2) and 202(e)(3) of this Act) has not been granted before the date that is 31 days after the date of enactment of this Act [Dec. 1, 1987].”

#### § 2540-1. Fund regarding use of amounts recovered for contract breach to replace services lost as result of breach

##### (a) Establishment of Fund

There is established in the Treasury of the United States a fund to be known as the National Health Service Corps Member Replacement Fund (hereafter in this section referred to as the “Fund”). The Fund shall consist of such amounts as may be appropriated under subsection (b) to the Fund. Amounts appropriated for the Fund shall remain available until expended.

##### (b) Authorization of appropriations to Fund

For each fiscal year, there is authorized to be appropriated to the Fund an amount equal to the sum of—

(1) the amount collected during the preceding fiscal year by the Federal Government pursuant to the liability of individuals under section 254o of this title for the breach of contracts entered into under section 254l or 254l-1 of this title;

(2) the amount by which grants under section 254q-1 of this title have, for such preceding fiscal year, been reduced under subsection (g)(2)(B) of such section; and

(3) the aggregate of the amount of interest accruing during the preceding fiscal year on obligations held in the Fund pursuant to subsection (d) and the amount of proceeds from the sale or redemption of such obligations during such fiscal year.

##### (c) Use of Fund

##### (1) Payments to certain health facilities

Amounts in the Fund and available pursuant to appropriations Act may, subject to paragraph (2), be expended by the Secretary to make payments to any entity—

(A) to which a Corps member has been assigned under section 254f of this title; and

(B) that has a need for a health professional to provide primary health services as a result of the Corps member having breached the contract entered into under section 254l or 254l-1 of this title by the individual.

##### (2) Purpose of payments

An entity receiving payments pursuant to paragraph (1) may expend the payments to recruit and employ a health professional to provide primary health services to patients of the entity, or to enter into a contract with such a professional to provide the services to the patients.