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August 8, 2022

Submitted Via Federal Express & Via Email

The Honorable Xavier Becerra
Secretary, U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, D.C. 20201

The Honorable Carole Johnson
Administrator, U.S. Health Resources & Services Administration
5600 Fishers Lane
Rockville, MD 20857

Re: Section 553(e) Petition to Amend Regulations Governing Penalties & Waivers Under the National Health Services Corps Loan Repayment Program

Dear Secretary Becerra & Administrator Johnson:

The National Student Legal Defense Network (“Student Defense”), Brandi Barrick, Kelsey Bowser, and Rhonda Williams submit the below petition pursuant to 5 U.S.C. § 553(e) to request that the United States Department of Health and Human Services (“HHS”) promptly amend its regulations to address the crippling financial penalties being assessed against individual medical professionals who participate in the National Health Service Corps Loan Repayment Program (the “Program”).

As you know, the Program was established by Congress to address healthcare staffing shortages in certain urban, rural and tribal communities by using student loan forgiveness to incentivize working in these communities. Congress also created certain checks on the system—to guard against fraud and ensure that the benefits were only provided to those professionals who met their terms of service. Yet as detailed reporting from the *Wall Street Journal* has highlighted, HHS and the Health Resources & Services Administration (“HRSA”) have administered the Program in an unyielding way, refusing to release program participants from draconian penalties that usurp the Program’s core purpose.

Congress never intended for the penalty provisions to be administered in this way, whereby medical professionals who have fallen out of compliance with the program through no fault of their own (including due to the COVID-19 pandemic) are pushed to financial ruin.

Thankfully, HHS and HRSA have the opportunity to right this wrong and ensure that the Program is administered consistent with Congressional intent. Through the regulatory fixes proposed in this petition, the Department can remedy the wrongs caused by the unjust administration of the Program and ensure that they are never repeated.

Please contact the undersigned counsel at Student Defense if you have any questions or would like to discuss this further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alex Elson', written in a cursive style.

Alexander S. Elson

Daniel A. Zibel

alex@defendstudents.org

dan@defendstudents.org

cc (by email):

Samuel Bagenstos, General Counsel, Department of Health and Human Services

Sean McCluskie, Chief of Staff, Department of Health and Human Services

James Kvaal, Under Secretary, Department of Education

**BEFORE THE UNITED STATES DEPARTMENT
OF HEALTH & HUMAN SERVICES**

*In re: National Health Service Corps
Loan Repayment Program*

Petition by the National Student Legal
Defense Network, Brandi Barrick, Kelsey
Bowser, and Rhonda Williams

**PETITION TO AMEND UNITED STATES DEPARTMENT OF HEALTH
& HUMAN SERVICES REGULATIONS PURUSANT TO SECTION 553(e)
OF THE ADMINISTRATIVE PROCEDURE ACT**

1. The National Student Legal Defense Network (“Student Defense”) and Brandi Barrick, Kelsey Bowser, and Rhonda Williams bring this petition to amend regulations pursuant to 5 U.S.C. § 553(e) to address crippling financial penalties being assessed by the Department of Health and Human Services (the “Department” or “HHS”) against medical professionals who joined the National Health Service Corps (“NHSC” or “Service Corps”) Loan Repayment Program (the “Program”). The NHSC Loan Repayment Program was established by Congress to eliminate healthcare shortages in certain urban, rural and tribal communities. It gives healthcare providers the opportunity to have their student loans repaid in exchange for working in communities with limited access to care.

2. Some medical professionals, however, have fallen out of compliance with the Program through no fault of their own, based on reasons related to the COVID-19 pandemic or even incorrect information provided by the Department. The statutory

scheme includes a safety valve for such situations, permitting partial or total waiver or suspension when continued participation in the Program would be impossible or pose an extreme hardship and enforcement against the individual would be unconscionable. *See* 42 U.S.C. § 254o(d)(2).

3. Notwithstanding the Congressionally-mandated safety valve, the Department's implementing regulations are so narrow and their adjudication of requests so inflexible that relief has been foreclosed for many deserving participants, who are now on the brink of financial ruin at the hands of the Department.

4. Petitioner Brandi Barrick, a nurse practitioner, received \$25,000 in loan repayment in exchange for working in a clinic in an underserved area in Pennsylvania. After losing her job during the COVID-19 pandemic and despite her efforts to find other qualifying employment, she faces penalties in excess of \$85,000. Her request for a hardship waiver was denied. *See infra* at ¶¶ 31-45. Petitioner Kelsey Bowser, a nurse who was promoted by her employer and relied on the agency's representation that she could accept that promotion and remain in compliance with the Program, is now facing a stunning \$270,000 in penalties for \$8,300 in loan forgiveness. Her attempts to negotiate with the Department have been fruitless, and her waiver request remains pending. *See infra* at ¶¶ 53-60. Petitioner Rhonda Williams, a dental hygienist in Georgia, was accepted into the program in July 2020 and received \$23,000 in loan forgiveness. Eleven months into the program, she lost her job when her clinic closed

its dental hygiene program, and she now owes approximately \$117,000 in penalties. *See infra* at ¶¶ 46-52.

5. The Department’s adjudication of waivers and suspensions is particularly crucial because of the draconian penalties imposed on participants who are deemed to be in “breach” of the agreement for “failing either to begin [their] service obligation . . . or to complete [their] service obligation” 42 U.S.C. § 254o(c)(1). Those found to be in breach must pay the sum of: (1) the monetary amount paid by the United States for time not served; (2) **\$7,500 for each month left in the contract**; and (3) interest at the maximum legal prevailing rate.¹ *Id.* Because the statutory penalties are so harsh, it is imperative that the Department exercise its discretion with respect to the safety valve in a manner consistent with the Congressional goals for the Program.

6. The Department’s failure to act has left potentially hundreds of well-meaning medical professionals liable for penalties that will cause financial ruin, even though they are trying to find reasonable qualifying employment and fell out of compliance due to events outside of their control. *See Exhibit A*, Rebecca Smith and Rebecca Ballhaus, *Program to Cut Student Debt Sticks Some With Even More*, *Wall Street Journal* (Feb. 9, 2022) <<https://www.wsj.com/articles/program-to-cut-healthcare-providers-student-debt-sticks-some-with-even-more-11644421910>>. The COVID-19

¹ With respect to other, related programs, such as the NHSC Scholarship Program or “special loans for former Corps members to enter private practice,” the statute provides for treble damages. *See* 42 U.S.C. §§ 254o(b)(1), 254p(d).

pandemic has exacerbated this problem, as the healthcare sector in the United States lost 1.4 million jobs when hospitals and clinics were forced to cut services or close facilities entirely. *See* Ex. A. The Department's continued assessment of severe penalties on participants who are unable to complete their service obligations through no fault of their own, even in the unprecedented circumstances created by the COVID-19 pandemic, deters new participants from joining the Program and jeopardizes healthcare for underserved communities.

7. The Department must take immediate action to amend its regulations. For the reasons stated herein, the Department has "good cause" to waive notice-and-comment rulemaking or, in the alternative, immediately to issue a notice of proposed rulemaking with a brief comment period that proposes to make four changes. *First*, the Department should propose to amend its regulations to state that an individual is automatically entitled to a waiver of the statutory penalties where the NHSC-approved site terminates their employment through no fault of their own and the individual is unable to find a reasonable replacement site within 60 minutes of their home. *Second*, the Department should propose to amend its regulations to clarify that a breach of the agreement occurs only when there is some fault on the part of the participant, as required by the plain language of the statute. *See* 42 U.S.C. § 254o(c) (providing that breach occurs by virtue of a participant "*failing* . . . to complete [their] service obligation" (emphasis added)). *Third*, the Department should propose to amend its regulations to set forth a non-exhaustive list of additional factors the Secretary will consider in

determining whether to waive or suspend a participant's service or payment obligations, including: a participant's inability to relocate for reasons such as childcare obligations, custody, family obligations, and financial circumstances; the extent to which the participant was at fault for the termination of their employment; the participant's inability to fulfill work obligations due to medical or family reasons; and circumstances related to factors giving rise to a Presidential declaration of National Emergency pursuant to 50 U.S.C. § 1622, or decisions by the Secretary of Education to waive or modify requirements relating to the repayment of student loans, pursuant to 20 U.S.C. § 1098bb. *Fourth*, the Department should propose to clarify that there is no limit on the number of one-year suspensions a participant may receive. Petitioners also request that the Department make all of these changes retroactive.

JURISDICTION

8. We bring this petition to amend the Department's regulations pursuant to the Administrative Procedure Act ("APA"), 5 U.S.C. § 553(e).²

9. One of the ways that HHS "identif[ies] the need for a rule" is through a Section 553(e) petition for rulemaking. *See* HHS Regulations Toolkit at 1-2,

² Petitioners anticipate that this petition could be of significant public interest, and they support members of the public who wish to submit comments in response. To ensure the completeness and public availability of the administrative record, we urge the Department to open expeditiously a docket for the petition on Regulations.gov. *See* 21 C.F.R. § 10.30(b)(1), (d) (describing a similar process used by the Food and Drug Administration).

<https://www.hhs.gov/sites/default/files/regulations/rulemaking-tool-kit.pdf>.

HHS “reviews these petitions to decide whether to take action.” *Id.* It is also HHS’s stated goal to “encourage[] more effective public participation in the regulatory process.” *See* 80 Fed. Reg. 240 at 77,960 (Dec. 15, 2015), <https://www.govinfo.gov/content/pkg/FR-2015-12-15/pdf/2015-30620.pdf>.

STATEMENT OF INTEREST

10. Student Defense is a non-profit, non-partisan organization, recognized as tax-exempt under section 501(c)(3) of the Internal Revenue Code, that works to advance students’ rights to educational opportunity and to ensure that higher education provides a launching point for economic mobility. Student Defense routinely works on issues related to debt relief under numerous federal student aid programs. Student Defense’s address is 1701 Rhode Island Ave, N.W., Washington, DC 20036.

11. Student Defense advocates for student borrowers who participate in the Loan Repayment Program. Through advocacy, litigation, and regulatory work, Student Defense is committed to ensuring that the Loan Repayment Program is implemented consistent with Congressional intent and does not substantially harm participants through no fault of their own.

12. Brandi Barrick is a nurse practitioner in Carlisle, Pennsylvania, who specializes in women’s health.

13. Kelsey Bowser is a nurse in Cumberland Furnace, Tennessee, which is one hour outside of Nashville.

14. Rhonda Williams is a dental hygienist in Forsyth, Georgia.

BACKGROUND

A. The National Health Service Corps Loan Repayment Program

15. The NHSC Loan Repayment Program is administered by the Health Resources and Services Administration (“HRSA”) within HHS. Congress first authorized the Service Corps in 1970 to offer student scholarships in return for service in medically understaffed areas. In 1987, Congress authorized the Department to create the Loan Repayment Program. *See* 42 U.S.C. § 2541-1.

16. The Program enables licensed primary-care providers to receive loan repayment assistance in return for working in medically understaffed areas. Participants sign contracts under which as much as \$50,000 in student loans are repaid in exchange for a two-year initial term of full-time service at an NHSC-approved facility (or up to \$25,000 for half-time service). *See* NHSC Loan Repayment Program <<https://nhsc.hrsa.gov/loan-repayment/nhsc-loan-repayment-program>> (last updated Feb. 2022). Participants may also apply for additional loan-repayment funds to pay off remaining loans through one-year continuation service contracts. *See id.* An example participant contract is attached as Exhibit B.

17. According to *The Wall Street Journal*, nearly 20,000 clinicians participated in the Service Corps as of February 2022. *See* Ex. A. The Program provides primary healthcare to nearly 21 million Americans. *See id.*

18. In an effort to discourage medical professionals from abandoning their commitment after receiving the scholarships or loan repayment funds, Congress decided to impose steep penalties for participants who “breach[] the written contract” by “failing . . . to complete” their initial two-year service obligations. 42 U.S.C. § 254o(c)(1).

19. Participants originally faced penalties of \$1,000 per month for each month of an unfulfilled contract. In 2002, however, Congress increased the penalties to \$7,500 per month of unfulfilled service (or \$3,750 per month for part-time service). *See* 42 U.S.C. § 254o(c)(1)(B). The government is also entitled to recover all amounts paid to the participant for any portion of their contract not served, as well as interest on the entire amount from the date of the “breach.” *Id.* § 254o(c)(1)(A), (C).³ For a participant who is deemed to have “breach[ed]” early in their contract, the statutory penalties could amount to hundreds of thousands of dollars—far exceeding the value of the potential loan repayment.

20. With respect to other, related programs, the statutory penalties are likewise devastating, including a treble-damages provision. *See* 42 U.S.C. §§ 254o(b)(1) (treble damages imposed for breach of the NHSC Scholarship Program), 254p(d) (treble

³ The interest rate is currently over eight percent. *See* U.S. Dep’t of Health & Human Servs., Interest Rates on Overdue and Delinquent Debts <<https://www.hhs.gov/about/agencies/asfr/finance/financial-policy-library/interest-rates/index.html>> (last reviewed Aug. 8, 2022).

damages imposed for breach of “special loans for former Corps members to enter private practice”).

21. Clearly, in imposing these harsh penalties, Congress sought to deter participants who defaulted on their obligations voluntarily, such as those who left to pursue more lucrative work. As then-Representative John Kasich stated:

These are people who got the loans based on the supposition they were going to go to the rural areas and they never went. . . . We are not talking about the people who lived up to their obligations. We are talking about people who *failed* to live up to their obligations. **We are talking about the couple who does not want to pay, where they pay their maid more than it costs to repay their loan; the doctor with his \$200,000 income who welshed on his deal.** That is what we are looking at here.

...

I want to make it clear that what we want to do is to take the few who are abusing the system and make sure we get on them. . . . **It is not to cast dispersions [*sic*] on the program or the physicians who contribute so much every single day but on the ones who are the rotten apples in that barrel.** Let us get them out of it and let us make them pay.”

133 Cong. Rec. H23617-23618 (Sept. 9, 1987) (emphasis added).

22. Nevertheless, the language of the penalty provision in 42 U.S.C. § 254o(c) has swept in many participants who have lost their jobs at NHSC-approved facilities through no fault of their own and have been unable to find replacement work. As *The Wall Street Journal* described:

Among them are a dental hygienist in Georgia who lost her job and will owe \$117,000 if she can’t find a new one that qualifies; a nurse in Tennessee who says she received wrong information on whether a job change would qualify and now stands to owe \$270,000; and a dentist who lost her job with just 40 days left to serve and was threatened with owing

\$31,000 if she couldn't find another. These sums are beyond any other debt they owe from their education.

Ex. A; *see* Examples of Participants Facing Unfair Penalties, *infra* at ¶¶ 31-60.

23. For participants trying to find replacement work at an NHSC-approved facility so they can remain in compliance with the Program's requirements, the Department's current interpretation of the service obligation places no geographic limitation on where participants must go, such that participants could be required to move thousands of miles away. Participants thus must decide between paying penalties that are orders of magnitude greater than the amount they received through the Program, or leaving behind their homes and potentially their families.

B. Waivers and Suspensions

24. The NHSC statutory scheme contains a safety valve for participants to temporarily suspend or permanently waive their service and payment obligations. *See* 42 U.S.C. § 254o(d)(2). But the Department's interpretations of the statute and regulations have made that relief nearly impossible to obtain.

25. The statute provides that the Secretary shall "provide for the partial or total waiver or suspension of any obligation of service or payment by an individual under . . . 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.” *Id.*⁴

26. HHS regulations prescribe the criteria that employees may consider when reviewing waiver or suspension requests. The regulations require the Department to consider:

- (1) The participant’s present financial resources and obligations;
- (2) The participant’s estimated future financial resources and obligations; and
- (3) The extent to which the participant has problems of a personal nature, such as physical or mental disability, terminal illness in the immediate family which so intrude on the participant’s present and future ability to perform as to raise a presumption that the individual will be unable to perform the obligation incurred.

42 C.F.R. § 62.12(d); *see also id.* § 62.28 (incorporating the above rules by reference).

27. HHS employees processing these requests have interpreted that list of factors as exhaustive and declined to consider other factors. *See Rendleman v. Shalala*, 21 F.3d 957, 961 (9th Cir. 1994) (noting that the agency has decided to “interpret this regulation as identifying each and every relevant consideration”).⁵

⁴ On March 24, 2021, a Department employee informed a program participant via email that participants are eligible to receive no more than three one-year suspensions. *See Exhibit C*. That three-year limitation does not appear in the statute or regulations.

⁵ Denial of a waiver request is “reviewable by a court of law and may be overturned when that action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.” *United States v. Vanborn*, 20 F.3d 104, 112 (4th Cir. 1994).

28. Waivers are exceedingly difficult to obtain. According to *The Wall Street Journal*, the Service Corps granted only 17 service waivers in fiscal year 2021. The previous year, it granted 23 requests out of 49 total, or 47%. See Exhibit D, Rebecca Smith & Rebecca Ballhaus, *Medical Program Offering Student-Debt Relief Takes Hard Line in Covid-19 Pandemic*, *Wall Street Journal* (Apr. 27, 2022) <<https://www.wsj.com/articles/medical-program-offering-student-debtrelief-takes-hard-line-in-covid-19-pandemic-11651053781>>.

29. By continuing to assess onerous penalties and doing so without providing meaningful exceptions for deserving participants, the Department not only hurts Program participants who could not complete their service obligations due to circumstances beyond their control, but also deters future participation by healthcare professionals who have heard of and fear injustice from an unyielding government agency. Indeed, some participants are calling it a “deal with the devil.”

30. Unless it changes its approach to the statutory safety valve, the Department risks the Program’s continuity into the future, leaving thousands of individuals in underserved areas without consistent healthcare and failing to effectuate the very purpose for which the Program was enacted with bipartisan support.

C. Examples of Participants Facing Unfair Penalties

Brandi Barrick

31. Brandi Barrick, a nurse practitioner in Carlisle, Pennsylvania, who specializes in women’s health, was accepted into the Program in 2019. Ms. Barrick

signed a contract for \$25,000 in debt relief in exchange for two years of half-time service as a family nurse practitioner at an NHSC-approved facility. She began work at Hamilton Health Center in Harrisburg, Pennsylvania in February 2018, wanting to be sure that she was a good fit for the job before applying to the loan repayment program because she had read about the steep penalties for breaching the contract. In August 2019, after having received a positive evaluation and two raises, she signed the contract, confident that she would be working at Hamilton for years to come.

32. Less than eight months later, Hamilton suffered a decrease in revenue during the COVID-19 pandemic and Ms. Barrick lost her job with well over a year remaining on her NHSC contract.

33. Ms. Barrick diligently tried to find another qualifying job in her area, and she applied to half a dozen NHSC-approved facilities—all of the facilities within approximately ninety minutes of her home. She interviewed for several jobs and never heard back from the other facilities. Despite those efforts, she has been unable to find a job at a qualifying facility and has now exhausted every option within ninety minutes of her home.

34. Should she be found in breach, she faces over \$85,000 in penalties. *See* Ex. A. Paying the debt would cause her to lose her house.

35. Ms. Barrick's husband has stage IV kidney cancer, multiple myeloma, diabetes, chronic kidney disease, post-traumatic stress disorder, and other conditions. He is receiving treatment locally in Pennsylvania and is unable to work because of his

health conditions. Ms. Barrick was not aware that his cancer had returned when she signed up for the contract.

36. Ms. Barrick and her husband have a two-year-old son, who was born prematurely. Both Ms. Barrick and her son suffered medical complications from the birth.

37. In July 2020, Ms. Barrick's health insurance ended, putting her family under further financial strain. She later purchased a plan through the marketplace for approximately \$1,000 a month.

38. Citing the "extreme hardship" imposed by her husband's health condition, her family's financial straits, and her inability to find a job at an NHSC-approved site in her area, Ms. Barrick applied for a waiver of her NHSC service obligation. *See Exhibit E.*

39. On July 30, 2020, HHS denied Ms. Barrick's waiver request.⁶ In its denial, HHS agreed that "requiring [Ms. Barrick] to relocate or commute a long distance in order to complete [her] service obligation would have a potential adverse impact on [her] husband's health and wellbeing." *See Exhibit E*, at 2. But, the letter continued, Ms. Barrick purportedly "retain[ed] the capacity to complete [her] service obligation if

⁶ HHS did grant Ms. Barrick a one-year suspension of her service obligation based on the "temporary extreme hardship" associated with requiring her to "relocate or commute a long distance."

an NHSC site becomes available within [her] local commuting area.” *Id.* at 3. HHS provided no facts or analysis regarding when, if ever, such a position was likely to open.

40. HHS also wrote that, despite Ms. Barrick representing that she was “unemployed and had no income,” she “maintain[ed] an active unrestricted license as a Family Nurse Practitioner” and was “capable of generating an income for years to come.” *Id.* HHS was therefore “unable to conclude that [she] lack[ed] the current and future ability to pay [her] debt in accordance with the terms of [her] contract.” *Id.*

41. Ms. Barrick has approximately \$60,000 of student debt in addition to her other financial obligations.

42. Ms. Barrick responded to the letter denying her waiver request on March 22, 2021. *See Exhibit C.* In her response, she noted that she had applied to clinics up to 90 minutes away and was unable to find a job at an approved facility. *See id.* at 3. She also said that she had looked into working at a COVID-19 vaccination clinic, but she was told by an HHS employee that these clinics no longer qualified for the Program. *See id.* Ms. Barrick reiterated that she had been terminated without fault by Hamilton Health. *Id.* She implored the Department as follows: “I am asking—begging—for you to please reconsider your decision given the circumstances of my situation. Human being to human being—please help me!” *Id.*

43. In response, HHS suggested that Ms. Barrick request a renewal of her suspension but informed her for the first time that participants may obtain a one-year suspension only three times. *See id.* at 1. Ms. Barrick later learned that it is HHS

“internal policy” to allow “up to 3 years of consecutive suspension.” See Exhibit G. HHS also suggested that, “[a]s the country opens up as folks are being vaccinated, there will be more positions opening” and concluded that “with a valid [nurse practitioner] license, you will be able to find a position at a NHSC approved site or you may request another suspension.” Ex. C at 3.

44. Ms. Barrick just completed the second year of her suspension, which expired in July 2022. She has applied for a third year, which, if granted, would run until July 2023 and, under the Department’s own internal policy, be the last year of consecutive suspension Ms. Barrick could receive.

45. The temporary suspension leaves Ms. Barrick in an untenable limbo of needing to continue searching for work at an NHSC-approved facility while trying to support her family, all with no guarantee that she will obtain another suspension. Ms. Barrick told reporters that participating in the Program was “the worst decision I’ve ever made.” Ex. A; *see also* Sanika Bhargaw, *Carlisle Nurse Faces \$90k in Debt After Job Loss*, *ABC 27* (last updated Feb. 28, 2022) <<https://www.abc27.com/news/local/carlisle-west-shore/carlisle-nurse-facing-thousands-in-debt-after-job-loss>>; Jessica Babb, *Cumberland County Woman Could Lose House Due to Loan Program Penalties*, *Local 21 News* (Mar. 3, 2022) <<https://local21news.com/news/local/cumberland-county-woman-could-lose-house-due-to-loan-program-penalties>>.

Rhonda Williams

46. Rhonda Williams, a dental hygienist in Forsyth, Georgia, was accepted to the Service Corps in July 2020 and had \$23,000 in debt repaid. Eleven months into the Program, she lost her job when her clinic closed its dental hygiene program. *See Ex. A.*

47. The Service Corps notified her that if she did not find another qualifying position, she would owe approximately \$117,000 in penalties—more than five times the amount of her original loan relief. That sum includes \$105,000 in monthly penalties for the time remaining on her contract. *See id.*

48. Ms. Williams has interviewed at two clinics in her area with no success. *See id.*

49. Ms. Williams asked the Service Corps for help finding a qualifying position. She received two suggestions: a facility 200 miles away in South Carolina, and a facility 370 miles away in North Carolina. *See id.*

50. Ms. Williams is not licensed to practice in North Carolina or South Carolina. *See id.*

51. Ms. Williams has joint custody of her 15-year-old son in Georgia, and she cannot move to another state. *See Ex. D.*

52. Ms. Williams has applied for and received a suspension that expires in April 2023. Because childcare obligations and family considerations are not included

on the list of factors HHS will consider in weighing a suspension or waiver, Ms. Williams would face long odds in securing a waiver.

Kelsey Bowser

53. Kelsey Bowser, a nurse in Tennessee, was accepted to the Service Corps Loan Repayment Program in July 2021. Ms. Bowser was also admitted to the Rural Community Loan Repayment Program, a specialized loan-repayment program focused on rural areas that requires a three-year commitment. She received loan aid of \$8,300 and agreed to three years of service.

54. Ms. Bowser applied to the Program at the recommendation of her employer, a mental-health clinic. After a month of service, her employer offered her a \$10,000 raise and a promotion to nurse supervisor at a nearby facility in Nashville, Tennessee.

55. Ms. Bowser called the Service Corps in approximately mid-August 2021 to ask whether the relocation would comply with her contract, and she was told over the phone that it would. After she accepted the promotion and submitted the formal transfer request, it was denied on the ground that the new position qualified for the Service Corps' traditional loan-repayment program, but not for the special rural program. By this time, her old job had been filled.

56. Ms. Bowser was told that unless she found a qualifying job in the special program, she would owe the government a staggering \$270,000 in penalties, more than thirty times the original amount of loan aid.

57. Notably, when Ms. Bowser was first told that the transfer was acceptable, she was still within the 60-day window in which she could have terminated her contract in exchange for return of the \$8,300.⁷ If she had received proper advice at that time, she either would have terminated the contract or decided not to accept the promotion. By the time she switched jobs and received the formal denial, the 60-day window had lapsed and Ms. Bowser was told she could not simply repay the \$8,300. She also asked whether she could start over and switch into the standard program because the Nashville site was approved for that program. That request was also denied.

58. Ms. Bowser had been on a contract suspension, which ended in July 2022. HHS, consistent with its policy that there is no geographic limitation on the location of the replacement site, recently told Ms. Bowser that there is a job opening at a site in Chattanooga, Tennessee, which is over two hours from her home outside Nashville.

59. Ms. Bowser cannot commute to Chattanooga, due to custody issues with her 10-year-old child, who must remain close to her home in Cumberland Furnace, outside of Nashville. When Ms. Bowser originally moved to the outskirts of Nashville, which is three hours away from her husband, he sought full custody of their child. She

⁷ Section F of the NHSC contract provides that the Secretary “may terminate this Contract if, within sixty (60) days following the execution of the Contract (i.e., signature of both parties), the applicant: a. submits a written request to terminate this Contract; and b. repays all amounts paid to, or on behalf of, the applicant under Paragraph 2 of Section A of this Contract.” Ex. B.

is concerned that moving even farther from her husband to work at an NHSC-approved site in Chattanooga would jeopardize her custody rights.

60. Ms. Bowser applied for a waiver in July 2022 on the grounds that: (i) the agency is at fault for giving her bad advice (especially when she was still within the termination window); and (ii) it would be an extreme hardship to relocate to Chattanooga due to her family circumstances. Ms. Bowser's waiver application remains pending and, like that of Ms. Williams, faces long odds because childcare obligations and family considerations are not included in the list of factors HHS will consider in adjudicating a waiver request.

ACTION REQUESTED

61. To ensure that NHSC Loan Repayment Program participants who have fallen out of compliance with the Program terms through no fault of their own are not subject to punitive penalties, the Department should find "good cause" to waive notice-and-comment rulemaking and immediately issue a final rule that: (1) amends 42 C.F.R. § 62.12 to state that an individual is automatically entitled to a waiver of the penalties where the NHSC-approved site terminates a participant's employment through no fault of the participant and the individual is unable to find a reasonable replacement site within 60 minutes of their home; (2) clarifies that the reference to "failing" in 42 U.S.C. § 254o requires fault on the part of the individual program participant; (3) amends 42 C.F.R. § 62.12(d) to include additional factors and clarifies that the enumerated factors are non-exhaustive; and (4) clarifies that there is no limit on the number of one-year

suspensions that a participant may obtain. The Department should also make all of these changes retroactive.

A. Automatic Waiver of Penalties

62. The Department should amend 42 C.F.R. § 62.12 to state that an individual is automatically entitled to a waiver *of the statutory penalties* imposed where a participant's breach results from being terminated by an NHSC-approved site through no fault of the participant and they are unable to find a reasonable replacement site in their geographic area. Specifically, a reasonable replacement site should be limited to NHSC-approved sites that are within 60 minutes of a participant's home by the means of transportation reasonably available to them. Such a change would *not* affect payments on *principal loan amounts*, for which Program participants would still be liable.

63. For Program participants like the individual petitioners—who lost their jobs through no fault of their own, face dire financial circumstances during an unprecedented global pandemic, and have sought in good faith to find qualifying employment—it is inconsistent with the Congressional goals underlying the Program to inflict financially ruinous penalties. As discussed above, through the harsh penalties, Congress sought to deter “rotten apples” with the penalties, such as doctors who accepted the loan forgiveness and then left qualifying employment for more lucrative positions. *See supra* at ¶ 21 (quoting 133 Cong. Rec. H23617-18 (Sept. 9, 1987) (“We are talking about the couple who does not want to pay, where they pay their maid more than it costs to repay their loan; the doctor with his \$200,000 income who welshed on

his deal.”). The penalties were not supposed to be levied “against people who went to rural areas,” but instead against “people who got the loans based on the supposition they were going to go to the rural areas and they never went.” *Id.*; *see also* 136 Cong. Rec. H35101 (Oct. 26, 1990) (remarks justifying penalties against an OB-GYN who had “resigned” from a community health center and “bought out the remainder of his contract,” which forced the center to close down obstetric services altogether). The legislative history suggests that Congress did not contemplate these punitive penalties reaching participants like petitioners who took no affirmative actions to breach their contracts.

64. In fact, waiving the draconian penalties may make it more likely that Program participants repay the principal loan amount they owe and make the Department whole. Faced with penalties in the hundreds of thousands, participants may feel that full repayment is futile and thus default on their financial liabilities, including on the principal loan amount, entirely. A more fairly administered Program is likely to increase the odds of repayment.

B. Clarification of “Failing [to] Complete”

65. Section 2540(c), which sets forth liability for breach of contract, also requires clarification. Specifically, the Department should make clear that participants may be found in “breach” of their agreement only by “failing” to begin or complete their service in the Program, 42 U.S.C. § 2540(c), which requires some finding of fault on the part of the participant.

66. In ordinary usage, to “fail” signifies “[f]ault, negligence, or refusal” on the part of the person who has “failed” to do something. *See Black’s Law Dictionary* 711 (4th ed. 1968). Under that definition, participants do not breach their contract when they are unable to complete their service through no “fault, negligence, of refusal” of their own. 42 U.S.C. § 2540(c).

67. This interpretation is in accord with Supreme Court case law, which has interpreted “fail[ed]” to require some affirmative act or omission by the person who has “failed.” In *Williams v. Taylor*, 529 U.S. 420 (2000), the Court interpreted “failed to” in the habeas context to “connote[] some omission, fault, or negligence on the part of the person who has failed to do something.” *Id.* at 431-432. A person has not “failed” to do something where their “diligent efforts to perform an act are thwarted, for example, by the conduct of another or by happenstance.” *Id.* at 432. As the Court noted, “[h]ad Congress intended a no-fault standard, it would have had no difficulty in making its intent plain. It would have had to do no more than use, in lieu of the phrase ‘has failed to,’ the phrase ‘did not.’” *Id.*

68. Congress likewise could have easily signaled its intent to apply a no-fault standard here by writing that an individual breaches where he or she “*does not* complete such service obligation.” But the statute does not use that language.

69. Requiring fault on the participant’s part also squares with the legislative history of the penalty provisions, which—again—reflects an intent to punish the “bad apples” who voluntarily walked away from their commitments. *See supra* at ¶ 21.

C. Consideration of Additional Factors

70. The Department should further amend 42 C.F.R. § 62.12(d) to include an additional, non-exhaustive list of factors it will consider “[i]n determining whether to waive or suspend any or all of the service or payment obligations of a participant as imposing an undue hardship and being against equity and good conscience.”

71. These factors should include:

- a. A participant’s inability to relocate for reasons such as childcare obligations, custody, family obligations, and financial circumstances;
- b. The extent to which the participant was at fault for the termination of their employment;
- c. A participant’s inability to fulfill work obligations due to medical or family reasons; and,
- d. Circumstances related to factors giving rise to a Presidential declaration of National Emergency pursuant to 50 U.S.C. § 1622, or decisions by the Secretary of Education to waive or modify requirements relating to the repayment of student loans, pursuant to 20 U.S.C. § 1098bb.

72. Consideration of additional factors is particularly compelling here, where (1) the Department’s current interpretation of the “undue hardship” provision is not a product of the Department’s expertise; and (2) the scant explanations offered for denying hardship waivers run counter to the evidence before the Department. *See*

American Clinical Laboratory Association v. Becerra, ___ F.4th ___, 2022 WL 2760816, at *5 (D.C. Cir. July 15, 2022).

73. Further, the current set of factors “fail[s] to consider an important aspect of the problem,” namely no-fault employment termination and the exacerbation of that problem during the COVID-19 pandemic. *Id.*

D. Clarification of Number of Suspensions Permitted

74. For the avoidance of doubt, the Department should further clarify that there is no limit on the number of one-year suspensions a participant may receive.

75. At least one Program participant has been informed by an HHS employee that there is an “internal policy” at HHS of allowing “up to 3 years of consecutive suspension.” *See* Ex. G; *supra* at ¶ 43.

76. That three-year limitation does not appear in the statute or regulations, nor does the statute provide any justification for imposing it. That same HHS employee admitted as much, stating that this limitation “is not a requirement.” *Id.*

77. To avoid the imposition of arbitrary caps on the number of suspensions participants may receive, the Department should clarify that an individual is entitled to a suspension (if not a waiver) “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,” without consideration of the number of suspensions previously granted. 42 U.S.C. § 254o(d)(2).

E. Retroactive Application

78. Finally, the Department should evaluate penalties that have already been assessed under its new standard when exercising its discretion to grant waivers to provide relief to NHSC Program participants for whom already-assessed service or payment obligations impose an undue hardship and are against equity and good conscience.

79. The Department “*may* waive or suspend any service or payment obligation incurred by a participant whenever compliance by the participant (i) is impossible, or (ii) would involve extreme hardship to the participant and if enforcement of the service or payment obligation would be against equity and good conscience.” 42 C.F.R. § 62.12(b)(2) (emphasis added). There is no limitation on the Department’s discretionary waiver power to only prospective matters.

80. Applying the statute retroactively via rulemaking is consistent with the purpose of the presumption against retroactivity. The traditional reason supporting the presumption against statutory retroactivity—the “unfairness of imposing new burdens on persons after the fact”—does not apply here. *Landgraf v. USI Film Products*, 511 U.S. 244, 270 (1994). The only unfairness would lie in continuing to impose extreme penalties on Program participants.

STATEMENT OF GROUNDS FOR EXPEDITED ACTION

A. There is Good Cause to Waive Notice-and-Comment Rulemaking

81. The Department has statutory authority to bypass the notice-and-comment rulemaking process where there is “good cause” to find that such process would be “unnecessary[] or contrary to the public interest.” 5 U.S.C. § 553(b)(B).

82. “Good cause under Section 553 of the APA is determined on a ‘case-by-case basis, based on the totality of the factors at play.” *National Education Association v. DeVos*, 379 F. Supp. 3d 1001, 1020 (N.D. Cal. 2019) (citing *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018)); *see also Sorenson Communications Inc. v. FCC*, 755 F.3d 702, 706 (D.C. Cir. 2014) (explaining that the good cause analysis is an “inevitably fact-or-context dependent” inquiry); *Azar*, 911 F.3d at 576 (holding that good cause may be found where “delay would do real harm to life, property, or public safety”).

83. The Department should bypass the notice-and-comment rulemaking process because there is “good cause” to find that engaging in that process under these circumstances would be “unnecessary[] or contrary to public interest.” 5 U.S.C. § 553(b)(B).

84. Courts have upheld the assertion of the good-cause waiver “where delay would imminently threaten . . . physical property.” *Sorenson Communications*, 755 F.3d at 706; *see also Arizona State Department of Public Welfare v. Department of Health, Education and Welfare*, 449 F.2d 456, 481 (9th Cir. 1971), *cert. denied*, 405 U.S. 919 (1972) (concluding that the agency had good cause to issue regulations without notice and comment

because of the need to provide guidance prior to imminent hearings); *Texaco, Inc v. Federal Emergency Administration*, 531 F.2d 1071, 1082 (Emer. Ct. App. 1976) (compelling and “urgen[t]” situation justified making regulations effective immediately). The threat of fiscal peril may justify bypassing the notice-and-comment requirement. *Sorenson Communications*, 755 F.3d at 707.

85. As discussed above, Congress has required the Department to adopt regulations that provide a safety valve for Program participants facing “extreme hardship” in light of service or penalty obligations.

86. That safety valve fails to account for situations in which Program participants are unable to complete their service through no fault of their own, including situations in which a clinic or hospital reduced its staff and/or closed facilities in light of the COVID-19 pandemic or where a participant relied on incorrect advice by Department staff.

87. Many Program participants currently face extreme financial penalties due to an inability to carry out the terms of their Program agreement through no fault of their own.

88. In this context, engaging in the time-intensive notice-and-comment rulemaking process would be contrary to public interest, as “delay would do real harm” financially to these Program participants. *See Azar*, 911 F.3d at 576.

B. The Amendments Should Be Effective Immediately

89. The amendments should be effective immediately upon publication under the exception in the APA for a “substantive rule which grants or recognizes an exemption or relieves a restriction.” 5 U.S.C. § 553(d)(1).

90. For the same reasons that there is good cause to bypass notice-and-comment rulemaking, there is also good cause for allowing the rule to take immediate effect. *See supra* at ¶¶ 81-88.

CONCLUSION

91. For the foregoing reasons, the National Student Legal Defense Network, Brandi Barrick, Kelsey Bowser, and Rhonda Williams petition the Department to amend its regulations to ensure that participants in the National Health Service Corps Loan Repayment Program who are unable to work through no fault of their own are not burdened with crippling financial penalties. Petitioners believe that the Department should waive notice-and-comment rulemaking; in the alternative, the Department should immediately issue a notice of proposed rulemaking with a brief comment period that proposes to: (i) state that an individual is automatically entitled to a waiver of the statutory penalties where participant’s breach results from being terminated by an NHSC-approved site through no fault of the participant and they are unable to find a reasonable replacement site within 60 minutes of their home; (ii) clarify that the reference to “failing . . . to complete such service obligation” in 42 U.S.C. § 2540(c) requires fault on the part of the participant; (iii) include additional factors the Secretary

will consider in determining whether to waive or suspend a participant's service or payment obligations; and (iv) clarify that there is no limit on the number of one-year suspensions a participant may receive.

Respectfully submitted,

/s/ Alexander S. Elson

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Bowser, and Rhonda Williams

AUGUST 8, 2022

Exhibit A

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<https://www.wsj.com/articles/program-to-cut-healthcare-providers-student-debt-sticks-some-with-even-more-11644421910>

U.S.

Program to Cut Student Debt Sticks Some With Even More

Healthcare workers can get loan relief for serving needy areas, but if they lose their jobs, they face giant penalties for not fulfilling their contracts

By *Rebecca Smith* [Follow](#) and *Rebecca Ballhaus* [Follow](#)

Feb. 9, 2022 10:51 am ET

Thousands of healthcare workers join the National Health Service Corps each year, pledging to work in places with too few medical providers in exchange for help repaying their student loans.

Job disruptions caused by the pandemic have shaken that bargain. Layoffs have put a growing number of these workers in violation of their contracts and exposed them to heavy penalties, sometimes many times the aid they received.

Instead of financial relief, they risk falling far deeper in debt.

Brandi Barrick, a nurse practitioner in Carlisle, Pa., thought she had found an ideal way to ease her student-loan burden. In August 2019, she was accepted into one of the Service Corps' loan-repayment programs and, to her delight, received \$25,000 in debt relief.

Less than eight months later, Mrs. Barrick lost her job. The clinic where she worked said a drop in elective procedures, tied to Covid-19's spread, had hurt its revenue.

Within a month, the Service Corps put Mrs. Barrick on notice that if she didn't find another qualifying job in 90 days, she would owe the federal government \$85,557. That consisted of a portion of her loan aid plus penalties for every unserved month in her two-year contract. It was in addition to other student debt she owes.

"I thought I was doing something good to help my family financially," she said. "Instead, I quite possibly ruined my family financially."

The Service Corps provides primary healthcare to close to 21 million Americans. Thanks to an \$800 million funding boost last fiscal year, healthcare workers' participation surged 23% to nearly 20,000 clinicians, its highest field strength ever.



Signing a contract with the Service Corps can yield tens of thousands of dollars of student-loan relief. But if participants lose their jobs and can't find others that qualify, they owe the government \$7,500 for every month left in their contracts, plus interest, currently at more than 9%.

The rules have been in place for two decades, but the pandemic has put new pressure on participants as some stressed hospitals and clinics furlough workers and close facilities. The U.S. healthcare sector lost 1.4 million jobs shortly after the coronavirus struck, when clinics cut services and saw their revenues fall. As of November, there were 2.7% fewer U.S. healthcare jobs than pre-pandemic—this despite some hospitals grappling with staff shortages and overworked providers nearly two years into Covid-19.

Finding a new qualifying job without having to move can be difficult. Clinics and positions that qualify under one program may not qualify under another. The result leaves some clinicians, who signed up to work in areas with medical shortages, instead facing major new financial burdens of their own.

Among them are a dental hygienist in Georgia who lost her job and will owe \$117,000 if she can't find a new one that qualifies; a nurse in Tennessee who says she received wrong information on whether a job change would qualify and now stands to owe \$270,000; and a dentist who lost her job with just 40 days left to serve and was threatened with owing \$31,000 if she couldn't find another. These sums are beyond any other debt they owe from their education.

In each case, the clinicians were told that if their contracts go into default, they will have one year to pay the penalties. There is no appeals process.

The penalties can't be discharged through bankruptcy until seven years after default, and then only if a bankruptcy court decides that failing to dismiss the debts would be "unconscionable."

Luis Padilla, director of the Service Corps, said its loan-repayment programs are key to increasing the health workforce in medically needy areas of America. Thousands of organizations use them and are staunch advocates of the programs, he said.



"We're disheartened to hear there are participants who weren't happy and whose needs weren't met," said Dr. Padilla, a physician who is a past participant in the program.

The penalties are written into the law, meaning the authority to change them rests with Congress. Dr. Padilla said it is unfortunate some people don't appear to understand the penalties when they sign up.

"I don't know why they don't read every word," he said. "But did I read every word of my mortgage agreement? Probably not."

Neither Dr. Padilla nor the agency would comment on the fairness of the penalties.

The Service Corps was authorized by Congress in 1970. It is a part of the Health Resources and Services Administration, an agency that falls under the Department of Health and Human Services. Its director isn't a presidential appointee.

At first, it offered students scholarships in return for working in medically understaffed areas after graduation. To deter participants from skipping out once their education costs had been paid, Congress imposed treble damages for not fulfilling contracts—three times the scholarship money. Penalties go to the U.S. Treasury, not the Service Corps.

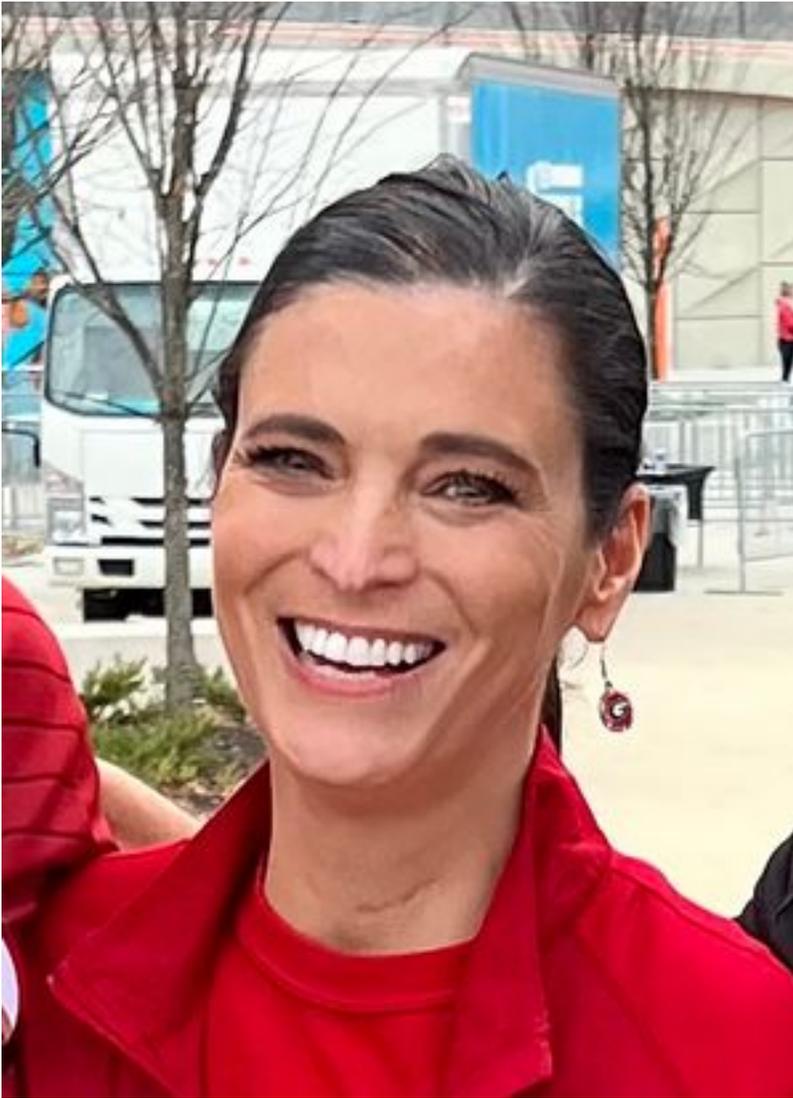
The agency added a loan-assistance program in 1987. Its participants initially faced penalties of \$1,000 for each month of an unfulfilled contract, but in 2002, with support from the Service Corps, Congress raised that to \$7,500. Overnight, someone who had gained the maximum loan relief, \$50,000, risked owing more than \$200,000 for breaching the contract at an early stage.

A senior Republican congressional aide said penalties were stiffened because of concerns that doctors were exploiting the system by collecting loan relief and then leaving for higher-paying jobs.

A Senate committee report at the time said the increase was intended to bring the loan program in line with the scholarship program. Yet the scholarship program had a 12% default rate between 1980 and 1999, while just 3% had defaulted in the loan-repayment program since its start, a government official told a Senate subcommittee in 2000.

The penalties are clearly stated in the contracts and spelled out in guidelines to the programs. The Service Corps' ads, however, make little or no mention of the penalties. "Is Your New Year's Resolution to Be Debt-Free? NHSC can help!" reads an email the Service Corps sent to prospective applicants last month. It doesn't mention the consequences of not following through.

The Service Corps said it tries to accommodate participants who lose their jobs. Providers can suspend their contracts and take up to 90 days to find a new job, a period the agency increased from 30 days when the pandemic began. Time in suspension gets tacked onto the end of contracts.



Jerry N. Harrison, executive director of New Mexico Health Resources Inc., a nonprofit that recruits health workers to the state, said, “The Corps, in my experience, is very rigid in holding people to the letter of their contracts.”

Rhonda Williams, a dental hygienist in Forsyth, Ga., thought the Service Corps was a godsend when it accepted her in July 2020, giving her \$23,000 to pay down her student debt. Eleven months in, she lost her job when her clinic closed its dental-hygiene program.

The Service Corps notified her that if she didn’t find another qualifying position, she would owe the federal government about \$117,000—more than five times her loan relief. The sum would include \$105,000 in monthly penalties for the time remaining on her contract.

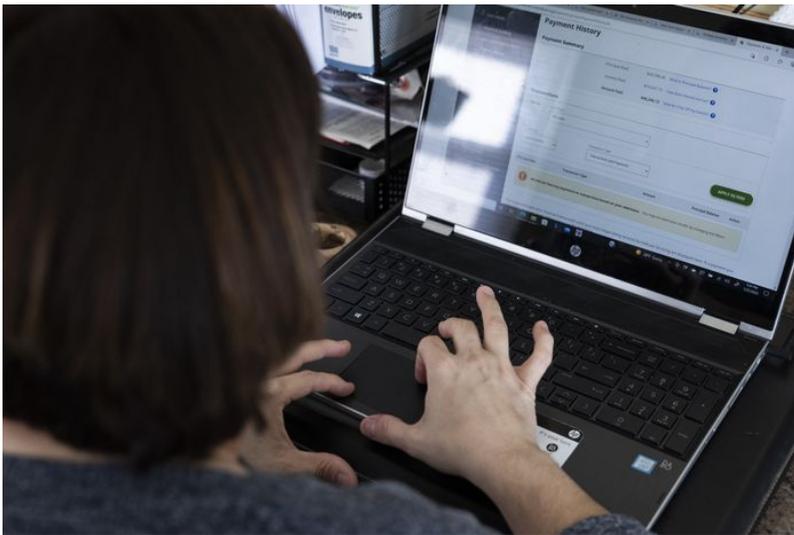
Ms. Williams said she interviewed at two clinics but wasn’t hired. She asked the Service Corps for help finding a qualifying position. It directed her to a health center in Greenville, S.C., 200 miles away, and to one in Spring Lake, N.C., 370 miles away.

Ms. Williams isn't licensed in those states, and she has two children, one of whom splits his time between his parents. "I didn't even call," she said.

Ms. Williams said she has no means of paying the penalty and is considering having surgery for a painful hand condition so she could apply for a medical-related suspension to buy more time. Paying the government \$117,000, she said, is "just not even possible."

The Service Corps declined to comment on Ms. Williams' situation or other individual cases, citing privacy concerns. A spokesman said, "We continue to work with them to address their specific cases."

The Service Corps' Dr. Padilla said people have to be willing to move to find another job that qualifies. "That may be down the street, across town or across the state or across the country. This is a national program," he said.



Clinic administrators are split on the merits of the penalty system. "It is harsh, but, being on the employer side, I appreciate it because it gives us an ability to lean into retaining those providers," said Ellen Piernot, a physician who is chief operating officer for Golden Valley Health Centers in Merced, Calif. Golden Valley has 11 employees who are in the loan-repayment programs.

Dave Kohler, employee development officer for Cascadia Behavioral Healthcare in Portland, Ore., said the penalty structure warrants re-examination. "It's like a bank charging an overdraft fee on someone living paycheck to paycheck," Mr. Kohler said. "People are exhausted."

The share of participants who suspended their contracts climbed to 11% in fiscal 2020 from 7.5% the year before. In the fiscal year ended last September, 9.5% of participants suspended

their contracts, about 40% of them citing Covid-19 work disruptions.

Besides a 90-day suspension, workers can seek to suspend a contract for up to a year at a time, in some cases for up to three years, but they have to prove that compliance would “involve extreme hardship.” To get a permanent waiver, a participant would have to prove that being forced to fulfill the contract would be “unconscionable.”

The five-year rate of defaults—which occur when the government determines participants have breached a contract—is about 1%, according to the agency, which is down from before Congress raised the penalty. The rate of defaults has fluctuated, and its relationship to the penalty levels isn’t clear.



The Service Corps declined to provide data on defaults resulting in collection activity.

The Service Corps’ original loan-repayment program requires participants to work at a qualifying job for two years in exchange for up to \$50,000 in loan relief. The agency added two more loan-repayment programs in 2018. One that is focused on fighting substance abuse offers up to \$75,000 of loan relief, and one for rural areas offers up to \$100,000. Both have three-year commitments.

Kelsey Bowser, a nurse in Tennessee who works for a mental-health clinic, said she applied for the rural-focused program at the recommendation of her clinic and was approved last

July. She received loan aid of \$8,300 and agreed to three years of service.

After a month, her employer offered her a promotion: a nursing supervisor job at a different clinic, 45 minutes away in Nashville, that would raise her annual salary by \$10,000.

Ms. Bowser said she called the Service Corps to ask whether the job switch would comply with her contract and was told that it would. She took the job and submitted a formal transfer request.

It was denied.

It turned out the Nashville clinic qualified for the Service Corps' traditional loan-repayment program but not for the newer program Ms. Bowser was in. She was told that unless she found a qualifying job in the newer program, she would owe the government \$270,000—more than 30 times the loan aid she got by entering the program.

By then, her old job had been filled.

“This just has the potential to ruin my entire life and everything I have worked so hard for,” Ms. Bowser wrote to a Service Corps analyst in December, pleading for help. The analyst said she understood the frustration but offered no solution.

She is currently in a 90-day contract suspension while she figures out what to do.



Penalties apply even if a service period is nearly over when a job is lost. Dentist Desireé Outlaw signed up in late 2019 and got \$50,000 worth of help in paying what she said was \$550,000 of debt from her dental studies. When the pandemic began in early 2020, her clinic in Canton, N.Y., closed.

She found a qualifying position in East Hartford, Conn., and moved there with her young daughter. Then last November, after fulfilling almost 95% of her two-year contract, she lost that job, too.

The Service Corps told her if she didn't find a third position for the last 40 days of her contract, she would owe \$31,000—consisting of a pro rata portion of her loan aid, \$15,000 in damages covering two months, plus an additional \$13,265 to hit the agency's minimum penalty.

“It’s literally indentured servitude,” Dr. Outlaw said.

The Service Corps suggested she apply for positions in Rhode Island and Maine. Instead, she applied to every qualifying facility in Connecticut. More than two months after losing her job in East Hartford, she found one about an hour away, which she expects will enable her to serve out her remaining 40 days.

For Mrs. Barrick in Pennsylvania, trying to get back into compliance after losing her nurse-practitioner job has been excruciating. Her contract suspension, extended to more than two years, expires in July.

She is in a part-time program, which means her penalty for each unserved month is \$3,750—still enough to drive her debt so high she says she would lose her house if she had to pay it. The Service Corps declined to comment on her case, as it did on the others.

Mrs. Barrick said she has applied to nearly a dozen qualifying facilities in her area but hasn't been offered a job. The Service Corps told her about two sites with open positions. One was 700 miles away in Illinois. The other was in California.

Mrs. Barrick's husband has kidney cancer, now in Stage IV, and is receiving treatment locally in Pennsylvania.

She applied for a permanent waiver soon after losing her job in 2020, citing her husband's illness. It was denied. In written communications with Mrs. Barrick reviewed by The Wall Street Journal, the Service Corps said it had determined that compliance with her contract "is not impossible and does not involve an extreme hardship."

Joining the loan-repayment program, Mrs. Barrick said, was "the worst decision I've ever made."



Write to Rebecca Smith at rebecca.smith@wsj.com and Rebecca Ballhaus at Rebecca.Ballhaus@wsj.com

Appeared in the February 10, 2022, print edition as 'Student-Loan Aid Plan Can Make Debt Worse'.

Exhibit B



NATIONAL HEALTH SERVICE CORPS LOAN REPAYMENT PROGRAM FY 2019 CONTRACT HALF-TIME CLINICAL PRACTICE (TWO YEARS, HPSA 14 OR HIGHER)	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES HEALTH RESOURCES AND SERVICES ADMINISTRATION BUREAU OF HEALTH WORKFORCE
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Section 338B of the Public Health Service Act ("Act") authorizes the Secretary of Health and Human Services ("Secretary") to repay the graduate and/or undergraduate educational loans of applicants selected to be participants in the National Health Service Corps Loan Repayment Program ("Loan Repayment Program"). In return for these loan repayments, applicants must agree to provide primary health services in a manner determined by the Secretary for a period of obligated service through full-time clinical practice in a Health Professional Shortage Area ("HPSA") designated by the Secretary in accordance with section 332 of the Act. Pursuant to section 331(i) of the Act, the Secretary may waive the requirement of full-time clinical practice and allow service through half-time clinical practice. An applicant becomes a participant in the Loan Repayment Program only if this Contract is signed by the applicant and by the Secretary or his or her designee.

The terms and conditions of participating in the Loan Repayment Program are set forth below.

Section A: Obligations of the Secretary

Subject to the availability of funds appropriated by the Congress of the United States for the Loan Repayment Program and the National Health Service Corps ("NHSC"), the Secretary agrees to:

1. Pay, in the amount provided in paragraph 2 of this Section, the undersigned applicant's qualifying graduate and/or undergraduate educational loans for actual costs paid for:
 - a. tuition expenses;
 - b. all other reasonable educational expenses, including fees, books, and laboratory expenses, incurred by the applicant; or
 - c. reasonable living expenses as determined by the Secretary.

Qualifying graduate and/or undergraduate educational loans consist of the principal, interest, and related expenses of the government and commercial loans received by the applicant for the above-listed expenses, for such loans incurred prior to the applicant's submission of the application leading to this Loan Repayment Program Contract.

2. Pay, in accordance with the service option specified in Section B.1.b below, up to \$25,000 for 2 years of half-time clinical practice at an NHSC-approved site with a HPSA score of 14 or higher. If the applicant's total outstanding balance of qualifying educational loans is less than the amount payable under the applicant's selected service option, the Secretary will pay the applicant's outstanding qualifying loans balance.
3. Waive the requirement of full-time clinical practice and accept the applicant's half-time clinical practice, in a HPSA selected by the Secretary, pursuant to section 331(i) of the Act for applicants who have selected a half-time service option.
4. Make loan repayments for a year of obligated service no later than the end of the fiscal year in which the applicant completes such year of service.
5. Reassign the applicant to another NHSC-approved site for the remaining period of his/her service obligation if the applicant's employment at the NHSC-approved site ceases for any reason and the Secretary determines that a reassignment is warranted.

Section B: Obligations of the Applicant

1. The applicant agrees to:
 - a. Accept loan repayments from the Secretary and apply those loan repayments, during the period of obligated service, to reduce the applicant's qualifying graduate and/or undergraduate educational loans.
 - b. Serve his or her period of obligated service by providing primary health services for **two years** in the **half-time clinical practice** (as defined in paragraphs i through v below) of his or her health profession in the HPSA to which the applicant is assigned by the Secretary as a member of the NHSC (either as a civilian employee of the United States or as an individual who is not an employee of the United States). **For this service option, the applicant may receive up to \$25,000 and agrees to serve his or her entire period of obligated service at an NHSC-approved site with a HPSA score of 14 or higher.**

i. A **half-time clinical practice** is defined as a minimum of 20 hours per week (not to exceed 39 hours per week), for a minimum of 45 weeks per service year. The remainder of the service year (approximately 7 weeks) may, as authorized by the approved service site(s), be spent away from the practice for holidays, vacation, continuing professional education, illness, or any other reason. Failure to meet the minimum 45 weeks per service year will extend the service obligation end date or result in a breach of the Loan Repayment Program Contract, as determined by the Secretary. The minimum 20 hours per week may be compressed into no less than 2 days per week, with no more than 12 hours of work to be performed in any 24-hour period. Time spent "on-call" will not count toward the 20-hour week, except to the extent that the applicant provides patient care during the "on-call" period. Time worked in excess of the minimum 20 hours per week cannot be applied to any other work week and will not count toward the service obligation.

ii. **For all half-time health professionals, except as noted in subparagraphs (iii) and (iv) below**, at least 16 of the minimum 20 hours per week must be spent providing patient care in the outpatient ambulatory care setting(s) at the approved service site(s), during normally scheduled office hours. Of the minimum 16 hours per week of patient care, teaching shall not exceed 4 hours per week. The remaining 4 hours of the minimum 20 hours per week must be spent providing patient care at the approved service site(s), providing patient care in alternative settings as directed by the approved service site(s), or performing clinical-related administrative activities. Clinical-related administrative, management or other activities shall not exceed 4 hours per week.

Telehealth: Self-employed participants are not eligible for NHSC service credit for telehealth services. Other LRP participants may receive NHSC service credit for providing telehealth services if:

- 1) all of a participant's originating sites and distant sites are NHSC-approved and meet the HPSA score requirements of the LRP contract signed by the participant (e.g., if the participant's LRP contract requires service in a HPSA scoring 14 or higher, both the originating site(s) and the distant site(s) must have associated HPSA scores of 14 or higher). Unless an NHSC LRP participant receives prior written approval

from the NHSC, the participant will not receive NHSC service credit for telehealth services provided from a distant site, or to an originating site, that was not identified in the participant's LRP application.

2) the participant is available to provide in-person care at the direction of each approved telehealth site regardless of whether such sites are distant or originating sites.

3) Telehealth services are furnished using an interactive telecommunications system, defined as multimedia communications equipment that includes, at a minimum, audio and video equipment permitting two-way, real time interactive communication between the patient at the originating site and the NHSC clinician at the distant site. Telephones, facsimile machines, and electronic mail systems do not meet the definition of an interactive telecommunications system.

- iii. **For half-time OB/GYN physicians, family medicine physicians who practice obstetrics on a regular basis, providers of geriatric services, pediatric dentists, and certified nurse-midwives**, at least 11 of the minimum 20 hours per week must be spent providing patient care in the outpatient ambulatory care setting(s) at the approved service site(s), during normally scheduled office hours. Of the minimum 11 hours per week of patient care, teaching shall not exceed 4 hours per week. The remaining 9 hours of the minimum 20 hours per week must be spent providing patient care at the approved service site(s), providing patient care in alternative settings as directed by the approved service site(s), or performing clinical-related administrative activities (limited to 4 hours per week).
 - iv. **For half-time physicians, physician assistants, nurse practitioners, and certified nurse-midwives serving in a Critical Access Hospital (CAH) or Indian Health Services (IHS) Hospital**, at least 8 of the minimum 20 hours per week must be spent providing patient care in the hospital-affiliated outpatient ambulatory care setting(s) at the approved service site(s), during normally scheduled office hours. Of the minimum 8 hours per week of patient care, teaching shall not exceed 4 hours per week. The remaining 12 hours of the minimum 20 hours per week must be spent providing patient care at the CAH or IHS Hospital that is an approved service site or in the hospital-affiliated outpatient ambulatory care setting(s) at the approved service site(s), providing patient care in the hospital-affiliated skilled nursing facility or swing bed unit, or performing clinical-related administrative activities (limited to 4 hours per week).
 - v. **For all half-time health professionals**, teaching shall not exceed 4 hours per week of the allotted patient care hours for the applicant's discipline.
- c. Comply with the NHSC Loan Repayment Program regulations at Title 42, Code of Federal Regulations (CFR), Part 62, Subpart B.
 - d. Comply with the debarment and suspension regulations found at Title 2, CFR, Part 180, as supplemented by Title 2, CFR, Part 376.
 - e. Maintain a current, full, permanent, unrestricted, and unencumbered license, certificate, or registration, as applicable, to practice his or her health profession as required by applicable State or Federal law. Applicants who are behavioral and mental health providers (except psychiatric nurse specialists) further agree that they will be able to practice their health profession independently and unsupervised during the period of obligated service.
 - f. Promptly report to the NHSC any change in his/her status as a half-time clinician at the approved service site(s).
 - g. Submit to the NHSC semi-annual online verifications of service through the Customer Service Portal, and any other documents as required by the Secretary, relating to compliance with the applicable clinical practice requirement during the period of obligated service.
 - h. Be liable in accordance with the damages formula in Section C below, if his or her employment at the NHSC-approved site ceases for any reason and the Secretary, in his or her discretion, determines not to reassign the applicant, or, if the applicant does not resume service at another NHSC-approved site within the time period specified by the Secretary.

Section C: Breach of Written Loan Repayment Contract

1. If the applicant, for any reason, fails to begin or complete the period of obligated service specified in Section B, the applicant shall be liable to the United States for an amount equal to the sum of:
 - a. the total of the amounts paid by the United States to, or on behalf of, the applicant under Paragraph 2 of Section A of this Contract for any period of obligated service not served;
 - b. an amount equal to the product of the number of months of obligated service not completed by the applicant, multiplied by \$3,750 for the months of half-time service not completed; and
 - c. interest on the amounts described in a. and b. of this paragraph at the maximum legal prevailing rate, as determined by the Treasurer of the United States, from the date of the breach;except that the total amount the United States is entitled to recover under this Section shall not be less than \$31,000.
2. Any amount the United States is entitled to recover shall be paid within 1 year of the date the Secretary determines that the applicant is in breach of this written Contract.

Section D: Cancellation, Suspension, and Waiver of Obligation

1. Any service or payment obligation incurred by the applicant under this Contract will be canceled upon the applicant's death.
2. The Secretary may waive or suspend the applicant's service or payment obligation incurred under this Contract if the Secretary determines, based on an applicant's written request and supporting documentation, that the applicant's compliance with the terms and conditions of this Contract is:
 - a. impossible or
 - b. would involve extreme hardship and enforcement would be unconscionable.

Section E: Contract Continuation

1. The applicant may, in accordance with procedures established by the Secretary, request a continuation of this Contract.
2. Subject to the availability of funds appropriated by the Congress of the United States for the Loan Repayment Program and the NHSC, the Secretary may approve a request for Contract continuation in accordance with the Secretary's established policies in effect at the time of the continuation.
3. The Secretary's approval of a request for a continuation of this Contract is subject to the applicant's compliance with all applicable eligibility and selection criteria in effect at the time of the continuation. A request for a continuation of this Contract will not be approved if prior loan repayments received under this Contract were not applied, during the period of obligated service, to reduce the applicant's qualifying graduate and/or undergraduate educational loans.

Section F: Contract Termination

1. The Secretary may terminate this Contract if, within sixty (60) days following the execution of the Contract (i.e., signature of both parties), the applicant:
 - a. submits a written request to terminate this Contract; and
 - b. repays all amounts paid to, or on behalf of, the applicant under Paragraph 2 of Section A of this Contract.

The Secretary or his or her authorized representative must sign this Contract before it becomes effective.

Applicant Name (please print):	
Applicant's Signature:	Date:
Secretary of Health and Human Services or Designee:	Date:
HRS-860 (Revised 12/2018 - BHW, HRSA, DHHS)	

This electronic signature page applies only to the preceding Contract, ID number 6015469. Each signature below applies to the appropriate location on the document, identified by role.

Signature: Electronically signed by Brandi Barrick

Role: Applicant

Date: Aug 26, 2019 8:32:47 PM

Signature: Electronically signed by Jamie King

Role: OFAM Approver, HRSA

Date: Sep 12, 2019 2:54:48 PM

Exhibit C

-----Original Message-----

From: Rishi, Anjum (HRSA) <ARishi@hrsa.gov>

To: [REDACTED]

Sent: Wed, Mar 24, 2021 12:23 pm

Subject: RE: NHSC-Waiver decision

Dear Ms. Barrick,

Currently you are under a suspension of your NHSC LRP service until July 30, 2021. If you are unable to resume service at an NHSC-approved site to complete your NHSC service obligation by July 30, 2021, you can request a renewal of your suspension at your Customer Service Portal. Participant's may request a suspension, one year at a time, for up to three years, with appropriate documentation.

In order to assist you with your search here is a list of resources and links below:

Ø **Health Workforce Connector** - <https://connector.hrsa.gov/>

The Health Workforce Connector contains open job opportunities and information on NHSC-approved sites.

Ø **Federally Qualified Health Centers (FQHCs)** - <https://findahealthcenter.hrsa.gov/>

FQHCs are auto-approved as eligible NHSC-approved sites.

Please note: The site must meet the HPSA score requirement of 14 or higher.

Ø **Indian Health Service (IHS) Jobs Center** - <https://www.ihs.gov/jobs> and <https://www.ihs.gov/careeropps/contactrecruiter/>

The IHS Jobs Center contains open job opportunities available at Federal IHS and Tribal sites. Please note: Not all the IHS or Tribal sites listed are NHSC-approved service sites. Please keep in mind that sites sometimes do not list all their vacancies and job seekers have to cold call.

As the country opens up as folks are being vaccinated, there will be more positions opening. In fact, a quick search on the HWC in your area is showing an open position for a FNP in Women's Health at La Comunidad Hispana - Women's Health Center in West Grove. Therefore, with a valid NP license, you will be able to find a position at a NHSC approved site or you may request another suspension.

Sincerely,

Anjum.

Anjum Rishi, MD MS

Public Health Analyst

HRSA/Bureau of Health Workforce (BHW)

Division of Participant Support and Compliance (DPSC)

Legal and Compliance Branch (LCB)

5600 Fishers lane, Room 15W-05A

Rockville, Maryland 20850

FAX: 301-480-6732

Phone: 301-443-1167

Email: arishi@hrsa.gov



HRSA

Health Resources & Services Administration



From: [REDACTED]
Sent: Monday, March 22, 2021 8:42 PM
To: Rishi, Anjum (HRSA) <ARishi@hrsa.gov>
Subject: Re: NHSC-Waiver decision

I never responded to your previous email because I essentially felt there simply wasn't any point. I still feel that that's probably the case but I'm at a point now where I need to say something. I know you are simply doing your job. And, I know you probably get multiple waiver requests for many different reasons. However, I do feel my situation is definitely unique given the circumstances surrounding it. And, likely is nothing you've ever encountered before given that the reason I was terminated was due to a pandemic.

Person to person, I would like you to truly understand what I have been going through these past few years. And, hopefully have some compassion and understanding for our situation. I married my husband in November 2017. We knew prior to getting married that he had kidney cancer. However, the doctors seemed hopeful that removing his kidney would cure it all. He had his kidney removed April 2017. So, by November, we were excited to start our life together. We wanted to have kids. We wanted to travel. We wanted a house that we could call our home. We have accomplished some of those items. We've traveled locally from time to time. Unfortunately, not this past year. But, prior to that we would take weekend trips. After 3 miscarriages, we finally had a son who is absolutely amazing. And, we purchased a home together in 2018. But, we wanted to do so much more.

My husband has had multiple struggles with the cancer returning several times since 2019. And, on Friday, our world kind of came crashing down. His cancer is now in his lungs, possibly liver and spleen as well. And, he needs to start treatment. We were in the process of trying to have another baby. That hope is gone. Once he starts treatment, it is not recommended due to the risk of birth defects. So, not only am I grieving the loss of hope I had for having another baby, I also am struggling with the reality that I am likely going to lose my husband in the next few years. He is never going to see his son grow up and that literally breaks my heart. The life I had is truly gone. The happily ever after we had hoped for is gone. My world is truly forever changed.

In your decision to deny my waiver, you didn't feel that enforcing the contract would create a significant hardship. It already has. I'm not sure how you can't see that as a person. I am on anxiety medication that I wasn't on before all this happened. I am now on two different blood pressure medications. Again, unnecessary before all of this. Your decision and the other struggles I am already going through have caused this. At a time that I should be focusing on caring for my husband and son, I am constantly worrying about how I'm going to resolve this - all because I was terminated for NO CAUSE. I did absolutely nothing wrong and I am paying for it

I did absolutely nothing wrong and I am paying for it.

I do not understand why Hamilton health faced no repercussions for the actions they took against me. They have an agreement with you as well (see attached document). Why is that irrelevant? They terminated me April 1st reportedly due to financial reasons yet posted a position for a nurse practitioner two weeks later (attached). Why was that acceptable? They received millions of dollars from the government to help with the pandemic but still chose to terminate me. Again, I don't understand why they were allowed to get away with this and I have to suffer. It simply is not fair.

In an effort to try to find employment at an approved location, I searched on my computer along with the app to figure out which locations are within driving distance. I searched as far out as 1 1/2 hours away. I contacted the point of contact at 7 locations and emailed my resume to them. These locations include: Broadtop Medical, Berks SHCH, Welsh Mountain, Hamilton Health, Sadler Health, Lancaster Health Center, and Family First of York. Of the locations that I contacted, I heard back and interviewed at 3 of them. These included: Sadler, Lancaster, and Family First. I was rejected by Lancaster and still have not heard back from the others. In addition to looking into these, I also looked into helping with the covid pandemic assisting with vaccination clinics. According to your website, that is still an alternative but must be approved. I contacted Antoinette Pride and she informed me that that no longer applies. In addition to this, I contacted Carolyn Ballard to discuss if my current employer - Planned Parenthood - would potentially be eligible to offer the NHSC LRP. According to her, Planned Parenthood only provides care to women and only provides birth control. While that is not accurate at all, that was the response I received.

I have been trying my best to get this off my shoulders. I don't know what else to do at this point. You agreed that moving would create a hardship for us given our situation. But, what am I to do if nobody is willing to hire me? The problem I am facing is - although my degree is in Family Practice - I have only worked in women's health since graduation. I have been out of school for nearly 8 years now. Given my lack of experience in Family Practice, I am finding it impossible to locate a job. The only location nearby that offers women's health specifically is Hamilton Health. And, they are the ones that terminated me.

I am, once again, asking for help. Asking for some compassion and understanding for the situation I have been put into. I waited approximately 1 1/2 years to sign and accept the LRP. Prior to signing it in 2019, I received a good evaluation along with two raises. I signed the contract in good faith fully expecting to work there for at least the next 5-10 years. I had absolutely no reason to suspect that I would ever be terminated. I had no reason to ever think that a pandemic would end up costing me my job. Nobody did. But, here we are. I am asking - begging - for you to please reconsider your decision given the circumstances of my situation. Human being to human being - please help me!

Sincerely,

Brandi Barrick

-----Original Message-----

From: Rishi, Anjum (HRSA) <ARishi@hrsa.gov>

To: [REDACTED]

Sent: Wed, Jul 29, 2020 6:29 pm

Subject: NHSC-Waiver decision

Dear Ms. Barrick,

My name is Anjum Rishi and I work for the NHSC, Legal and Compliance Branch (LCB). The NHSC has reached a decision on your waiver request. Attached please find your waiver decision letter.

Sincerely,

Sincerely,

Anjum.

Anjum Rishi, MD MS
Public Health Analyst
HRSA/Bureau of Health Workforce (BHW)
Division of Participant Support and Compliance (DPSC)
Legal and Compliance Branch (LCB)
5600 Fishers lane, Room 15W-05A
Rockville, Maryland 20850
FAX: 301-480-6732
Phone: 301-443-1167
Email: arishi@hrsa.gov



Exhibit D

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<https://www.wsj.com/articles/medical-program-offering-student-debtrelief-takes-hard-line-in-covid-19-pandemic-11651053781>

U.S.

Medical Program Offering Student-Debt Relief Takes Hard Line in Covid-19 Pandemic

National Health Service Corps says it is bound by rules that require participants to pay back loans plus penalties if they default

By *Rebecca Smith* [Follow](#) and *Rebecca Ballhaus* [Follow](#) / Photographs by Taylor Glascock for *The Wall Street Journal*

April 27, 2022 6:03 am ET

A federal agency that gives healthcare workers relief on their student loans in exchange for working in underserved communities didn't show greater flexibility than in previous years to participants seeking to pause or exit their obligations amid the Covid-19 pandemic, according to newly released data.

As clinics closed their doors and laid off staff after the pandemic hit, large numbers of healthcare workers suddenly found themselves in violation of their contracts with the National Health Service Corps. When workers broke those contracts—voluntarily or not—they were exposed to heavy penalties, sometimes amounting to many times the loan relief received.

The number of requests for suspensions, which allow workers to pause their contracts for 90 days or as long as a year at a time without penalty, nearly doubled from fiscal year 2019 to 2020, from 974 to 1,853, according to data the Service Corps provided to *The Wall Street Journal* in response to a public-records request. The total annual requests hit 1,911 in fiscal year 2021. A significant funding boost last spring allowed the program to expand participation by 23% to about 20,000 clinicians.

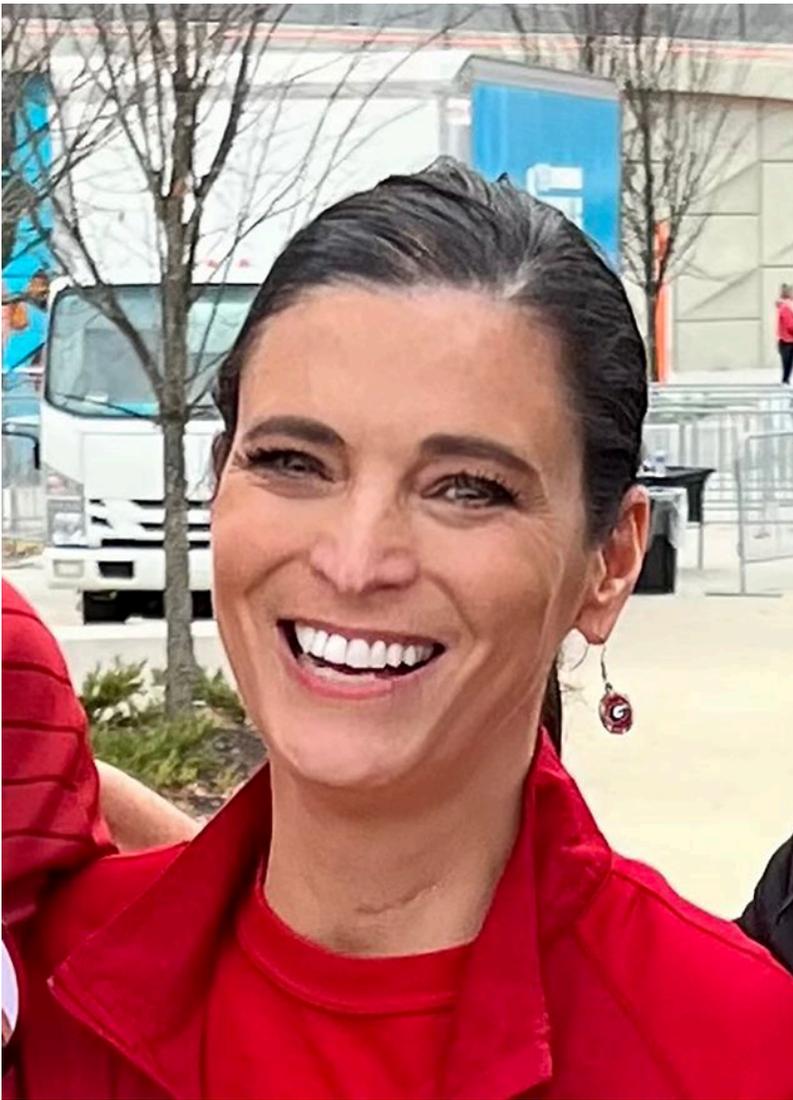


Yet the Service Corps approved a smaller share of suspension requests after the pandemic struck than before it: 85% in fiscal year 2021 and 84% in 2020, down from about 87% in 2019, 2018 and 2017. Taking into account the number of requests for suspensions that were subsequently canceled—in situations where, for example, participants realized a suspension wasn't necessary or decided to default instead—the Service Corps approved about 97% of requests in 2021 and 98% in 2020, down from nearly 99% in 2019.

The Service Corps also was fairly inflexible regarding requests for waivers, which allow participants to permanently terminate their obligations, in cases of extreme hardship. It granted 23 of 49 requests in fiscal year 2020—or 47%, down from a 52% approval rate in 2019, before the pandemic hit. In fiscal year 2021, it granted 17 waivers, fewer than any year since 2017. This year, it approved an additional waiver requested in 2021.

A spokesman for the Health Resources and Services Administration, the Department of Health and Human Services agency that oversees the Service Corps, said the agency approved all suspension requests from participants who cited the pandemic and that most participants who had Covid-related interruptions to their contracts have returned to service.

In February, the Journal chronicled the circumstances of several healthcare workers who joined the Service Corps in exchange for student-loan relief but who ran afoul of intricate rules and were threatened with penalties of \$7,500 for each month remaining on their contracts. The workers said they struggled to find new jobs that qualified and to navigate the Service Corps' bureaucracy.



Rhonda Williams, a dental hygienist in Forsyth, Ga., whose clinic cited Covid-related cuts when it terminated her in the summer of 2021, was told she would owe the federal government about \$117,000—more than five times the amount of loan relief she received—if she didn't find another qualifying position.

Ms. Williams, who was included in the Journal's February article, remains in limbo. The suspension she had received expired this month. She said she has been unable to find a qualifying job nearby and can't move out of the state because she shares custody of a child with her former husband. She is seeking an additional contract suspension, but hasn't heard back from the Service Corps about her request.

"I just want this to be over," she said.

The Service Corps, which doesn't comment on individual cases, says it tries to accommodate program participants but has rules it needs to follow. Its priority is to see that there are

enough clinicians in the program to serve the 21 million Americans who rely on them for their primary healthcare.

Zachariah Rollins, a physician assistant in Pocatello, Idaho, joined the Service Corps in 2018, garnering \$50,000 in loan relief in exchange for a commitment for two years of service. At the time, he had \$150,000 in student loans from a 26-month physician-assistant program.

In 2019, with just a few months left on his contract, his clinic placed him on administrative leave after he filed a series of ethics complaints there. Soon after that, the clinic terminated his employment, according to records seen by the Journal.

Mr. Rollins applied for a handful of jobs that would have kept him in compliance with his Service Corps contract, but after determining that the closest one—more than a two-hour drive from his home—would have resulted in a pay cut, he decided he wanted out of the Service Corps.

“I didn’t want to be stuck anymore,” said Mr. Rollins, who has a wife and three children and had money saved up from his previous, 15-year career working for the federal government.

On Dec. 17, 2019, Mr. Rollins told the Service Corps he wanted to default on his contract. The penalty: \$74,774.28—nearly \$25,000 more than he had received in loan relief—plus more than 10% interest, which the Service Corps agreed not to charge him if he paid the penalty in a lump sum.

But his troubles didn’t end there. When Mr. Rollins sought to refinance his house last spring, he found his credit score had plummeted nearly 400 points. He pulled his credit report and found the federal government had referred his case to collections because he hadn’t paid about \$1,000 in accrued interest that the Service Corps had said it would waive.

When he called the Service Corps, he said, the agency agreed a mistake had been made and stopped the debt collection. He said his credit score hasn’t fully recovered.

The HRSA spokesman declined to comment on Mr. Rollins’s case but said: “In the rare instance when a participant defaults on their NHSC contract, every effort is made to work out repayment plans prior to initiating statutorily required enforcement activities. In the even rarer instance of any error in the process, the program is committed to working with our partners across government to address the issue.”

Dr. Laura Craig, a Chicago psychiatrist, signed up for the Service Corps in 2019 and received \$75,000 in loan relief. About 2½ years into her three-year commitment, she changed jobs to better balance work with her role as a new mother.



She left a qualifying position on the South Side of Chicago and took a job, 14 blocks away, at a Department of Veterans Affairs clinic. Both facilities serve low-income patients.

With the job change, Dr. Craig fell out of compliance with her contract. In January, she received a warning that she would have to pay \$85,839, plus interest of 9.375%, unless she quickly found a qualifying job. The sum included \$67,500 in penalties for the nine months that remained on her contract, plus \$18,339 as a pro rata share of loan relief she had received.

“That’s a ton of money,” she said, adding that although she thought it would have been fair to pay back a share of the loan assistance with interest, she was shocked by the \$7,500-a-month penalty for time remaining on her contract. When she tried to appeal her case, she said, “I would get extremely rigid and legal responses.”



But then she got a lucky break.

The Service Corps decided to regard her as compliant, at least for now, because she was working at an emergency Covid-19 relief site. She is keeping her fingers crossed that the designation will continue until she completes the last few months of her contract.

The HRSA spokesman declined to comment on Dr. Craig's case, but said that participants generally are allowed to finish out their contracts at emergency Covid-19 relief sites even if the public-health emergency expires.

Write to Rebecca Smith at rebecca.smith@wsj.com and Rebecca Ballhaus at Rebecca.Ballhaus@wsj.com

Appeared in the April 28, 2022, print edition as 'Service Corps Snags Healthcare Workers'.

Exhibit E

NARRATIVE SUMMARY

To Whom It May Concern:

I am not requesting this waiver based on impossibility. My request for the waiver is solely based on the extreme hardship the enforcement would cause for myself and my family. I am asking for your consideration of the waiver due to the extreme burden the repayment of the contract would impose on myself and my family.

The past three years have been filled with struggle after struggle for my husband and me. Just when we think we are getting ahead; something comes along and knocks us back down. In a nutshell, 2017 included several deaths, a diagnosis of kidney cancer for my now husband, major surgery involving kidney removal, an engagement and later a wedding, a new puppy, and a first pregnancy which resulted in a miscarriage. In 2018, I decided to quit my job and started working at Hamilton Health. The year continued on with another surgery for my husband, two more pregnancies and losses, the selling of our houses and the purchase of our home, and a near death experience for our new dog due to being attacked at her daycare.

In 2019, I became pregnant for the fourth time not expecting it to work given my history. But we were trying to be hopeful that this would finally be a good year. However, when I was around 30 weeks pregnant, my husband suddenly became sick. He ended up being hospitalized for a total of 9 days before he was finally discharged. Nobody thought he was going to make it during that time – including the doctors. He had developed a pulmonary embolism along with pneumonia. It was a very scary time for all of us. But he pulled through and was able to come home. Little did we know, this was the start of everything to come.

I digress a little. There were multiple reasons that I accepted the job at Hamilton in 2018. One of those reasons was the possibility of loan repayment. For anyone with student loan debt, that would certainly be appealing. And it was. I looked into it when I first started but opted not to apply the first year. I saw the potential penalties for not completing the two year commitment. And I wanted to be certain that this was a good fit for me. As a result, I waited to apply until 2019. By this time, I had learned how the process worked and knew I had until the middle of the year or so to decide and accept if I was awarded the money. By August when I had signed the contract, I had received a good evaluation at Hamilton along with two significant raises. I felt confident based on my knowledge at the time that I would be working there for years to come.

What I did not know was that our life was about to change even more than expected. I gave birth to my son – [REDACTED] - almost a month early on September 10, 2019. I had developed pre-eclampsia and was induced. Ultimately, he was born via c-section. I had complications with the c-section which required multiple doctor's visits after I was discharged almost a week later. My maternity leave was filled with doctor's visits. Our son was not gaining weight initially, so he was being seen frequently. I was being seen frequently because of the complications I had. And my husband was still following-up with his doctors from his recent hospitalization. It was an exhausting couple of weeks as we were all recovering.

My husband's health continued to decline, and he was unable to return to work full-time. In October 2019, he had a bone marrow biopsy due to some abnormal bloodwork and we received another

devastating diagnosis – multiple myeloma. This was a shock to us. He had survived kidney cancer and now was facing another type of cancer. When you look at the statistics, 1 in 46 people will develop kidney cancer and 1 in 108 will develop multiple myeloma. But, to have both??? Only 1-3 percent of survivors will develop a second type of cancer like this. It just seemed so unbelievable that this was actually happening. We were trying to start our lives together and now we were faced with yet another obstacle to overcome.

We thought things could not possibly get worse but sadly, we were wrong. My husband ended up hospitalized again right around Thanksgiving. He was having severe back pain and could not even walk. He was literally crawling to the bathroom. So, we went to the ER to be evaluated. My husband had recently seen an oncologist at [REDACTED] and he ordered an MRI based on the severe back pain he was having. So, we mentioned it at the ER, and they went ahead and performed it. The results brought yet another shock to us. It showed a mass in his inferior vena cava. It did not specify what it was but there was concern for cancer. I spent all of Thanksgiving thinking again that I was going to lose my husband. During this time, our primary health insurance ended due to my husband being unable to return to work. I had to pick up coverage through Hamilton Health while my husband was in the hospital.

He spent five days in the hospital that time before he was discharged. But, of course, further testing needed to be completed. They recommended a biopsy of the area. However, due to the location of the mass, it was difficult finding a local doctor that would perform the biopsy due to the risk involved. He did not end up having the biopsy done until January 2020. And a week or so later, it was confirmed that his kidney cancer was back.

We were referred to the original doctor who removed his kidney, but he did not want to even attempt surgery. So, we started looking for another opinion. [REDACTED] was listed as one of the best for urologic cancers. We scheduled there and went down towards the end of January for an appointment. The first thing he recommended was surgery. As of then, the PET scan was only showing concerns in the area of the IVC. Because of that, he recommended only surgery at this time. If the surgery does not work, then immune therapy is the next step. But, due to the side effects/risks with immune therapy, he did not recommend starting that until it is needed – especially given my husband's multiple co-morbidities. He scheduled for surgery at [REDACTED] in the beginning of March.

We went down the night before and he had surgery on March 4th. He was in for 6 days total, several in the ICU. It was another rough surgery – worse than the first. With the first one, he had 40 staples left to right across his abdomen. This one involved 36 staples top to bottom on his abdomen. The entire time he was at [REDACTED] I was right by his side. It was an exceptionally long, stressful week but I did what I needed to do. For better or worse, right? I was there and I will continue to be there.

When I returned to work from his hospitalization, the coronavirus epidemic was just starting to become an issue. The first week I was back, not much changed. However, the next week showed a significant decrease in patient volume. Then on April 1st, I was informed that I was being completely terminated from my job. I expected there would be a decrease in hours, but I never expected this. I had been there for two years and we had a new nurse practitioner that just started. They knew I was under contract through the NHSC. They knew my husband was on permanent disability due to his health issues. And, they knew we had a baby at home. I never expected they would do this to me given the circumstances. But they did.

DIAGNOSIS

Major Diagnoses for my husband include: Stage 4 Kidney Cancer, Multiple Myeloma, Type 1
Diabetes, Stage 3 – Chronic Kidney Disease,
Hypertension, Diabetic retinopathy, PTSD, history of a
PE, history of pneumonia

CURRENT TREATMENT

He is on medication therapy for most of his diagnoses. He has had two major surgeries in the past 3 years for the diagnosis of kidney cancer. His most recent surgery was completed on March 4th, 2020 at [REDACTED]. He spent several days in the ICU and was hospitalized for a total of 6 days. He is and will continue to be monitored by bloodwork and CT scans periodically to determine when more treatment is needed.

PROGNOSIS

This is a hard question to answer for several reasons. One reason being, we try not to think about this at all. Our focus is on today – not what the future holds. We know that it is very unlikely that his surgery in March completely removed the cancer. Given that it has already returned once, it is likely it will return. According to Dr. [REDACTED] the likely location for it to return will be the lungs given that he had a PE in July of 2019. If/when it does return, immune therapy will be recommended. But, given his multiple co-morbidities, treatment is being withheld until it is necessary due to the risks involved. His multiple myeloma could take months or even years to become a problem. That is unknown at this time. What we do know – it is there, and it will never go away. The same can be said for his other conditions. They are only going to get worse with time. How much time? Nobody can honestly answer that.

AFFECT OF DISABILITY ON EMPLOYMENT

My husband is on permanent disability as of January 2020. He is unable to work given the health conditions he is dealing with. This has also affected me as well. We have a 9-month-old son – almost 10 months – that we need to care for. I rely very heavily on family and friends to help with the baby and with my husband. After I returned from maternity leave, I decreased my work hours to 32/week. I needed an additional day off because of the multiple doctor's appointments that my husband has. For the first two months of the year, we had at least 1 appointment every single Thursday. I missed two weeks of work in March due to his surgery. I have also had to take additional time off for appointments/procedures earlier this year.

When I signed the NHSC loan repayment contract in August 2019, I never expected any of this to happen. I knew I was going to have a baby. And I thought I was doing something that would help my family. I did not know that my husband was going to be diagnosed with multiple myeloma. I did not know that his kidney cancer was going to come back. And I certainly did not know that a pandemic was going to cost me my job. Had I known all of this, I never ever would have signed the contract.

I have been looking for a job since April and have not been able to find one. Anywhere. I have looked at other local NHSC sites and have reached out to their point of contacts with no response. I did not attempt to go to a site to treat covid patients primarily because of my husband's health. If I bring that home to him, he will not likely survive.

I am asking for you to please have compassion for our situation. I am currently unemployed with no employment prospects. My husband is on permanent disability. Our health insurance just ended on June 30th and I am trying to figure out what we are going to do there. I am trying desperately to find a job so we can get our bills paid and health insurance taken care of. For us, moving is simply not an option. Due to my husband's compromised health situation and the need for family support to help care for him and our son, making a move away from our current home would be devastating for our family. In less than 8 months, my husband was hospitalized overnight three times for a total of 20 days. This does not include all the outpatient procedures and office visits he has had over the past year. I simply cannot do this without the support and help from my family and friends. Due to my husband's continued medical care needs and the significant reduction in our income, we are not in a financial position that would afford us the ability to pay back the amount requested.

I was driving home tonight from parent's house. My husband was in the passenger's seat and my son was in his car seat in the back. He was back there babbling loudly and kept saying "DaDaDaDa" over and over again. I couldn't help but smile while listening to him. But, as much as it made me smile, it also broke my heart. I can't help but wonder if my husband is going to live long enough for my son to remember him. I know both my husband and I think these thoughts, but it is not something we talk about. We try extremely hard to stay positive. But I know I am likely going to be burying my husband in the next few years. I am medically trained and know the reality of the situation. However, knowing something and going through it are two different things. I dread the day when we have to actually go through this.

I have been advised by your employees that I will not qualify for a waiver based on my situation. I am aware that legally, you do not have to help us. But my hope is that you will choose to help based on your moral and ethical convictions. While I can appreciate that there are many people in need at this time, I am asking that you take our unique circumstances into consideration and provide us with an approval of the waiver. Thank you for your time and your consideration. Please do not hesitate to reach out to me if you have any questions or concerns. Stay healthy!

Sincerely,



Brandi Barrick

Exhibit F



Bureau of Health Workforce
Division of Participant Support and Compliance

July 30, 2020

Brandi Barrick, FNP



Dear Ms. Barrick:

This letter responds to your request for a waiver of your National Health Service Corps (NHSC) Loan Repayment Program (LRP) service obligation, including the damages you would incur if you fail to complete your remaining service obligation. For the reasons discussed below, we determined that your request does not meet the regulatory criteria for a waiver. Accordingly, your request for a waiver is denied. However, we did determine that your circumstances qualify you for a temporary suspension of your service obligation.

Statute and Regulatory Criteria

By statute (42 U.S.C. § 254o(d)(2)), a waiver may be granted only when compliance with the NHSC service or payment obligation (1) is impossible, or (2) would involve extreme hardship to the individual and if enforcement of the obligation with respect to any individual would be unconscionable. By regulation (42 C.F.R. § 62.12, made applicable by 42 C.F.R. § 62.28), compliance would be impossible if you documented that you suffer from a physical or mental disability that results in your permanent inability to perform your service or other activities, which would be necessary to comply with your obligation. In determining whether compliance with the obligation would be an extreme hardship, the regulations require us to consider:

1. Your present financial resources and obligations;
2. Your estimated future financial resources and obligations; and
3. The extent to which you have problems of a personal nature, such as a physical or mental disability or terminal illness in the immediate family, which so intrude on your present and future ability to perform as to raise a presumption that you would be unable to perform the obligation incurred.

Your Current Service Obligation

As a condition of receiving an NHSC LRP award for \$25,000, you signed a contract in which you agreed to provide two year (731- days) of half-time service as a Family Nurse Practitioner (FNP) at an NHSC-approved site to which you would be assigned by the Secretary of Health and Human Services. You began serving your obligation on September 12, 2019, at Hamilton Health

Center (HHC) - South Allison Hill, Harrisburg, Pennsylvania. According to our records, you have 578 half-time days left to serve in order to complete your two-year half-time service obligation.

Your Waiver Request

You requested a waiver for personal and financial reasons that you believe prevent you from completing your NHSC LRP service obligation. In your waiver request, you stated that your site terminated your employment due to low patient volume resulting from the COVID-19 pandemic. You noted that you have been searching for a new job since April, but were unable to find a job at another NHSC approved site. You explained that your husband had a recurrence of kidney cancer, and was diagnosed with multiple myeloma. Because of your husband's medical condition, you do not want to work at an emergency COVID site due to the risk of bringing the virus home to your family. You also informed the NHSC that you are unable to relocate, because you need support from your family to take care of your husband and child. In addition, you indicated that you would be unable to pay your NHSC debt, because your husband is on permanent medical disability; you have experienced a significant reduction in your income; and you have medical bills.

The Impossibility Standard

The "impossibility" criterion requires us to consider whether a waiver applicant suffers from a physical or mental disability that results in his or her permanent inability to perform the service or other activities which would be necessary to comply with the obligation (i.e., the ability to serve or to pay the statutory damages for failing to serve). The documentation you submitted does not indicate that you personally suffer from a physical or mental disability, which would make you permanently unable to fulfill your service obligation or to generate income as a Family Nurse Practitioner, which could be used to pay the debt you will incur if you breach your contract. Thus, you do not qualify for a waiver on the basis of the impossibility standard.

The Extreme Hardship Standard

A. Problems of a personal nature

The documentation we received regarding your husband's health included medical records from [REDACTED] and [REDACTED] (spanning from April 30, 2017 to June 19, 2020), which indicated the following diagnoses: renal cell cancer, nephrectomy, recurrence of cancer, multiple myeloma in remission, hypertension, diabetes, and multiple other medical issues. The documentation we received also included several letters from your friends and family who are your support system and provide you with regular assistance because of your husband's chronic medical conditions.

Based on the medical documentation and the chronicity of your husband's health diagnoses, we concluded that requiring you to relocate or commute a long distance in order to complete your service obligation would have a potential adverse impact on your husband's health and well-being. However, the documentation you submitted did not indicate that your circumstances

would preclude daily commuting to an NHSC-approved service site. Thus, you retain the capacity to complete your service obligation if an NHSC site becomes available within your local commuting area. Accordingly, we were unable to conclude that you have problems of a personal nature that raise a presumption that you will be permanently unable to perform your service obligation.

B. Current and Estimated future Financial Resources and Obligations

We also reviewed your present and estimated future financial resources and obligations as indicated by the documentation you submitted to support your waiver request. The documentation we reviewed included your financial statement of debtor (FSD) form dated July 5, 2020, bank statements, W-2s, and income tax returns from 2017 to 2019. At the time you submitted your waiver request, you indicated that you were unemployed and had no income. The documentation you submitted indicated that your household adjusted gross income (AGI) was \$122,408 on your joint income tax return from 2017; \$118,395 for 2018; and \$103,370 for 2019. Your FSD also listed bank accounts with a total balance of approximately \$20,796.93 and an investment account with a balance of approximately \$43,229.94. After allowing for your monthly expenses, your FSD also indicates that you are capable of generating a positive monthly cash flow (once you resume employment).

Although you are currently unemployed, you still maintain an active unrestricted license as a Family Nurse Practitioner. Based on your current age and future earning potential, we believe that you are capable of generating an income for years to come within the profession for which you received NHSC funding. The documentation you provided did not indicate that you would be unable to devote future financial resources toward the payment of your debt, if you elected to breach your contract. Accordingly, we were unable to conclude that you lack the current and future ability to pay your debt in accordance with the terms of your contract.

Our Determination

Based on the documentation you submitted, we concluded that compliance with your NHSC LRP obligation is not impossible and does not involve an extreme hardship such that enforcement of your obligation would be against equity and good conscience. Therefore, we are unable to grant your request for a waiver of your NHSC LRP obligation based on the impossibility or extreme hardship standards.

There are certain circumstances where participants may be eligible for a temporary suspension of their service obligation due to an extreme hardship that prevents the participant from performing his/her service obligation. A suspension may be granted when compliance with the NHSC LRP obligation (1) is temporarily impossible, or (2) would temporarily involve extreme hardship, and if enforcement would be against equity and good conscience. As noted above, we determined that it would cause you a hardship if you were required to relocate or commute a long distance in order to complete your service obligation. Accordingly, based on the documentation you submitted, we determined that it would be a temporary extreme hardship to require you to resume your NHSC service at this time. Therefore, we approved a one-year suspension of your service obligation, starting with the date of this letter.

If you are unable to resume service at an NHSC-approved site to complete your NHSC service obligation by July 30, 2021, you can request a renewal of your suspension at the NHSC Customer Service Portal located at <http://programportal.hrsa.gov/>. We also encourage you to utilize the Health Workforce Connector website to search for job openings in your field (<https://connector.hrsa.gov/connector/>). The website is periodically updated with job openings that you can filter by your field of practice, Health Professional Shortage Area (HPSA) score, and geographic location.

If you have any questions regarding this determination, please contact Anjum Rishi in the Legal and Compliance Branch at arishi@hrsa.gov or 301-443-1167.

Sincerely,



Antoine Smith, MPH, CDR, USPHS
Director

Exhibit G

----- Forwarded Message -----

From: Rishi, Anjum (HRSA) <arishi@hrsa.gov>

To: [REDACTED]

Sent: Thursday, July 7, 2022 at 04:22:07 PM EDT

Subject: RE: NHSC-Waiver decision

Dear Ms. Barrick,

Typically, up to 3 years of consecutive suspension is our internal policy, however it is not a requirement. At the end of 3 years we generally reach a decision on whether the participant is eligible for a waiver or suspension, based on the specifics of the case. Our record shows that you had 2 years of consecutive suspension for personal hardship and your current renewal request will be your 3rd suspension.

Sincerely,

Anjum.

From: [REDACTED]

Sent: Wednesday, July 6, 2022 8:59 PM

To: Rishi, Anjum (HRSA) <ARishi@hrsa.gov>

Subject: [EXTERNAL] Re: NHSC-Waiver decision

I recently submitted a suspension renewal request. I was told by you previously that I am only eligible for a suspension for up to 3 years. I am not finding any documentation showing a limitation to the amount of suspension renewals available. Can you please send me a copy showing that you can only be approved for a suspension for up to 3 years?

Thank you,

Brandi Barrick