

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

In the Matter of:

ROBIN PATTERSON,

Petitioner.

24-AF-0205-OH-004

May 29, 2025

INITIAL DECISION AND ORDER

This matter is before this Court upon a request for hearing submitted by Robin Patterson (“Petitioner”) on April 3, 2024, pursuant to 5 U.S.C. § 5514 as implemented by 24 C.F.R. §§ 17.83 *et seq.* Petitioner, who is an employee of the United States Department of Housing and Urban Development (“HUD”), requests review of a decision by HUD to seek repayment of an alleged nontax debt totaling \$1,916.00 by offsetting her salary. HUD alleges that the debt arose because the appropriate Federal Employees’ Group Life Insurance (“FEGLI”) premiums were not withheld from Petitioner’s pay.

PROCEDURAL HISTORY

After Petitioner requested a hearing, this Court issued a *Notice and Scheduling Order* on April 4, 2024, requiring HUD to file a copy of the administrative record and HUD’s position by April 24, 2024, and requiring Petitioner to file her response to HUD’s position by May 14, 2024. On April 24, 2024, HUD filed the *Administrative Record* and the *Government’s Statement of Position*. On May 10, 2024, Petitioner filed her *Response*, which requested that HUD reconsider her waiver request. This case is now ripe for review.

APPLICABLE LAW

Salary Offset. HUD is authorized to collect repayment of a debt owed by a federal employee to the United States via deductions at officially established pay intervals from the employee’s pay account. *See* 5 U.S.C. § 5514; 24 C.F.R. §§ 17.83 *et seq.* Upon determining that the employee is indebted, HUD must, at least 30 days prior to the first pay deduction, provide the employee with written notice of the intent to offset the employee’s salary. *See* 24 C.F.R. § 17.89. Thereafter, the employee may request a hearing concerning: (1) the existence or amount of the debt; or (2) HUD’s proposed offset schedule. *See id.* § 17.91(a). Hearings regarding salary offset matters are conducted in accordance with 5 U.S.C. § 5514, 24 C.F.R. Part 17, and 24 C.F.R. Part 26, Subpart A. *See id.* § 17.89(g).

FEGLI. The federal government established the FEGLI Program in 1954. Pub. L. No. 83-598, 68 Stat. 736 (1954); *see* 5 U.S.C. §§ 8701 *et seq.* FEGLI is administered by the United

States Office of Personnel Management (“OPM”), which makes available optional life insurance (“Basic coverage”) to certain employees of the federal government. 5 U.S.C. § 8714a. OPM also offers *additional* optional life insurance coverage (“Optional coverage”) to those employees who are eligible for Basic coverage. 5 U.S.C. § 8714b.

Employees are responsible for paying their enrollee share of insurance premiums for every pay period during which they are enrolled. 5 U.S.C §§ 8714a, 8714b; 5 C.F.R. § 890.502(a). The employee’s share of costs for Basic coverage and Optional coverage must be withheld from the employee’s pay during each period that such insurance is in effect. 5 U.S.C §§ 8714a, 8714b.

If the employing office makes an administrative error as to the employee’s enrollment, the employing office may retroactively correct the error. 5 C.F.R. § 870.103(a). When an agency erroneously under-withholds a premium from an individual’s pay, the agency must submit the under-withheld amount to OPM for deposit regardless of whether the agency recovers the under-deduction. *Id.* §§ 870.401(f), 870.402(f), 870.404(d).

Waiver of Debt. The FEGLI statute provides that the collection of amounts properly due may be waived by the agency if, “in the judgment of the agency, the individual is without fault and recovery would be against equity and good conscience.” 5 U.S.C. § 8714b(d)(2). Interestingly, the regulations promulgated by OPM to implement the FEGLI statute require agencies to apply the general waiver statute at 5 U.S.C. § 5584, rather than the FEGLI statute, when determining whether to waive collection of FEGLI premium under-deductions. *See* 5 C.F.R. § 870.404(d). Like the FEGLI statute, the general waiver statute also authorizes a waiver to be granted if “collection of [the debt] would be against equity and good conscience” but adds the additional consideration of whether collection is “not in the best interests of the United States.” 5 U.S.C. § 5584(a).

A HUD employee may seek to have the repayment of a debt via salary offset waived by the Secretary. *See* 5 U.S.C. § 5584(a)(2). The Secretary’s review of a HUD employee’s waiver request is contained within the HUD Office of the Chief Human Capital Officer (“OCHCO”). Once OCHCO’s decision of whether to grant a waiver is made, that decision is not subject to this Court’s review. *See* 5 U.S.C. § 5514(a)(2)(D) (limiting this Court’s jurisdiction in salary offset cases to the following issues: (1) the existence of the debt, (2) the amount of the debt, and (3) the terms of the repayment schedule).

FINDINGS OF FACT

Petitioner was hired by the Library of Congress (“LOC”) in 2006. On February 7, 2006, Petitioner submitted a Standard Form 2817 (“SF-2817”) to the LOC electing Basic coverage and Optional coverage. For her Optional coverage, Petitioner elected Option B “five times my pay” coverage (“5X Option B coverage”), which insured her life for five multiples of her annual rate of basic pay, and Option C “2 multiples” coverage (“2X Option C coverage”), which insured the lives of her spouse and eligible dependent children. *See* OPM, FEGLI Handbook, at 7 (June 2019); *see also* OPM, FEGLI Program Booklet, at 8-9 (Aug. 2004). When Petitioner separated from the LOC on December 1, 2015, she was still enrolled with 5X Option B coverage and 2X Option C coverage.

Petitioner returned as a federal employee with the LOC on September 16, 2019. Petitioner did not submit a new SF-2817, and was enrolled in only Basic coverage. Petitioner stated that she did not submit a new SF-2817 in September 2019 because (1) a LOC Human Resources Specialist informed her that if she intended to elect only Basic coverage, she was not required to submit a new SF-2817; and (2) the “General Instructions” in the SF-2817 state, “[b]y law, unless you waive all coverage or are ineligible, you are automatically covered for Basic life insurance as an employee.”

On July 17, 2022, Petitioner transferred to HUD and continued to be enrolled only in Basic coverage. In July 2023, a human resources specialist for the Bureau of the Fiscal Service’s Administrative Resource Center (“ARC”) conducted a routine records review and noticed that Petitioner was enrolled in only Basic coverage. ARC then informed Petitioner that she should have been enrolled in 5X Option B coverage. Petitioner promptly submitted a new SF-2817 to elect only Basic coverage.

The National Finance Center generated two bills to collect the difference in FEGLI premiums from Petitioner for the time that Petitioner had been employed by HUD. The first bill, dated August 8, 2023, is in the amount of \$1,845.50 and is for the difference in FEGLI premiums from July 31, 2022, through July 15, 2023. The second bill, dated November 16, 2023, is in the amount of \$70.50 and is for the difference in FEGLI premiums from July 15, 2022, through July 30, 2022. The bills listed Petitioner’s rights as an employee, including the right to inspect and copy the records related to the debt, the right to enter into a written agreement for a repayment schedule different from HUD’s proposed schedule, and the right to request a hearing.

Petitioner submitted a Request for Waiver of Overpayment (“Waiver Request”), dated September 22, 2023. In a letter from ARC to OCHCO, dated November 17, 2023, ARC (1) explained the circumstances that led to the alleged debt, (2) described the process for waiver request review, and (3) stated that ARC found no indication of fraud, fault, misrepresentation, or lack of good faith on Petitioner’s part. On March 7, 2024, an internal memorandum was prepared for the HUD Chief Human Capital Officer (1) stating that there was no indication of fraud, misrepresentation, or lack of good faith on Petitioner’s part, (2) conceding that HUD was responsible for the error that caused the overpayment, and (3) recommending that Petitioner’s Waiver Request be disapproved. On March 26, 2024, OCHCO informed Petitioner that her Waiver Request was denied.

DISCUSSION

HUD claims that Petitioner is indebted to it in the amount of \$1,916.00 for unpaid life insurance premiums due for Optional coverage.¹ HUD argues that Petitioner should have been enrolled in 5X Option B coverage when she transferred to HUD in July of 2022.² Petitioner argues that she intended to enroll in only Basic coverage before she transferred to HUD.

¹ HUD believes that Petitioner’s total debt to HUD and the LOC resulting from unpaid life insurance premiums is \$6,828.11. The portion of that amount that is allegedly owed to the LOC is not the subject of this appeal.

² Although Petitioner elected 2X Option C coverage in February 2006, HUD does not argue that Petitioner should have been enrolled in 2X Option C coverage when she transferred to HUD because Petitioner had no family members that were eligible for 2X Option C coverage as of April 2019. See OPM, FEGLI Handbook, at 20, 32 (June 2019); SF-2817, at 4 (Nov. 2011).

I. The debt in this case is valid.

Here, it is undisputed that Petitioner elected 5X Option B coverage on February 7, 2006. Petitioner then left federal service in December 2015. And Petitioner did not submit a new SF-2817 when she returned to the LOC in 2019.

The SF-2817 and FEGLI Handbook provide that an employee, who returns to federal service after a break of 180 days or more and who does not submit a new SF-2817, will be enrolled in the same Optional coverage that the employee had before separating from federal service. See SF-2817, at 5 (Nov. 2011); OPM, FEGLI Handbook, at 10 (June 2019); see also SF-2817, at 6 (June 2000); OPM, FEGLI Program Booklet, at 8-9 (Aug. 2004). Therefore, when Petitioner transferred to HUD, she should have been enrolled in the 5X Option B coverage that she had before she separated from federal service in December 2015.

Pursuant to FEGLI regulations, Petitioner's 5X Option B coverage was considered in effect when she transferred to HUD in 2022. See *In re Renner*, HUDOHA 18-AF-0087-OH-002, at 5 (Apr. 2, 2019) ("[T]he effective date for Optional coverage is not contingent upon the employee's elections being appropriately entered into a payroll system or the withholding of premiums from the employee's pay.").³ However, HUD's systems did not reflect that Petitioner had 5X Option B coverage until 2023. This error in HUD's systems, for which HUD concedes responsibility, resulted in the appropriate premiums not being withheld from Petitioner's pay, as required by statute and regulation. See 5 U.S.C. § 8714b(d) (indicating that employees are responsible for paying their enrollee share of insurance premiums for every pay period during which the Optional coverage is in force); 5 C.F.R. § 870.402.⁴

Thus, this Court finds that the appropriate FEGLI premium amounts were not withheld from Petitioner's pay. Because the appropriate premiums were not withheld, Petitioner incurred a valid debt to the government. See *Renner*, *supra*, at 5-6 (finding the alleged debt valid because the appropriate FEGLI premium amounts were not withheld from petitioner's pay).

II. HUD has proven the amount of the debt.

HUD has the burden to prove the amount of the debt in question. See 24 C.F.R. § 26.24(g) ("The burden of proof shall be upon the proponent of an action or affirmative defense... unless otherwise provided by law or regulation."). HUD must meet its burden by a preponderance of the evidence. 24 C.F.R. § 26.25(a).

³ All prior HUD salary offset decisions cited herein are available at <https://www.hud.gov/stat/oha/salary-offset>.

⁴ This Court notes that Petitioner's beneficiaries likely could have collected on a claim for the 5X Option B coverage despite HUD's failure to deduct the appropriate premiums. See *Renner*, *supra*, at 6 (accepting testimony that, in the event of an insurance claim, insured employee's Official Personnel Folder containing SF-2817 would have been reviewed to determine the amount of benefits, even if the information from the SF-2817 had not been correctly entered into HUD's systems); *In re Jerry*, No. 05-29-WA, at 5 (U.S. Dep't of Educ. Feb. 16, 2006) (stating that an employee's beneficiaries are entitled to receive life insurance benefits that the employee elected even if insufficient life insurance premium payments are deducted), available at <https://oha.ed.gov/oha/files/2019/03/2005-29-WA.pdf>.

HUD has shown that Petitioner received bills from the National Finance Center on August 8, 2023 and November 16, 2023. The bills collectively total \$1,916.00, which is the amount of the debt claimed by HUD. Petitioner has not provided evidence or arguments to dispute this claimed amount. This Court finds that the documentary evidence within the record sufficiently proves that Petitioner's debt to HUD totals \$1,916.00.

III. HUD's review of Petitioner's waiver request was flawed.

Petitioner also argues that OCHCO's denial of her waiver request must be reversed because (1) the LOC and HUD were negligent in conducting service record reviews at the time of her appointments; and (2) there is no indication of fraud, fault, misrepresentation, or lack of good faith on Petitioner's part. However, as noted above, this Court lacks jurisdiction to review the denial. See 24 C.F.R. §§ 17.89(g), 17.91(a); *In re Colby*, HUDOHA 24-JM-0130-OH-001, at 2 (Sep. 12, 2024) (noting that OCHCO's decisions regarding waivers are not subject to this Court's review).

Even though this Court does not review denials of waiver requests, it remains concerned that OCHCO's denial letter does not adequately justify its conclusion. Pursuant to 5 U.S.C. § 5584, when a waiver is denied, the agency must explicitly state whether it has found fraud, misrepresentation, fault, or lack of good faith by the petitioner. If no such finding is made, the denial must clearly articulate why collection of the debt would nonetheless be equitable, in good conscience, and in the best interests of the United States. See 5 U.S.C. § 5584(a).

Here, although OCHCO states generally "that collection of the debt owed is equitable, in good conscience, and is [in] the best interest of the United States[.]" it does not provide any substantive reasoning or explanation to support this conclusion. If reviewing OCHCO's waiver denial were within this Court's jurisdiction, this Court would vacate and remand the decision for further explanation and consideration. Thereafter, should OCHCO continue to deny the waiver upon reconsideration, its correspondence with Petitioner must explicitly set forth the rationale underlying its determination. See 5 U.S.C. § 5584.

It is uncertain whether HUD would have reached a different decision had it conducted a more detailed and transparent review. Nevertheless, the Court reiterates its previously articulated concern regarding the inherent difficulties that may arise when the office responsible for an administrative error is also tasked with deciding whether to waive the debts resulting from that same error. Such circumstances present legitimate questions concerning fairness, even if administratively permissible or considered in HUD's best interests. This Court has consistently highlighted similar procedural and transparency issues in prior cases, including *In re Bhatti*, HUDOHA 19-JM-0034-OH-001 (May 1, 2019); *Renner*, *supra*; *In re Hooks*, HUDOHA 20-AF-0069-OH-001 (Aug. 20, 2020); *In re Rawlins*, HUDOHA 20-AF-0017-OH-002 (July 31, 2020); *In re Hernandez*, HUDOHA 23-JM-0130-OH-002 (June 3, 2024); and *Colby*, *supra*. Collectively, these cases illustrate the continuing need for greater transparency and clarity in OCHCO's waiver determinations. Employees requesting waivers deserve a clear explanation as

to why their requests are denied, allowing them to make informed decisions regarding further review, and greater transparency would benefit HUD employees and the Department alike.

Nevertheless, recognizing the clear limits of its jurisdiction, this Court must decline to rule on the substance of OCHCO's decision regarding Petitioner's waiver request.

IV. Petitioner's repayment schedule should be reduced to mitigate the financial burden caused by HUD's error.

HUD proposes to take deductions from Petitioner's bi-weekly pay, equal to 15% of Petitioner's net disposable pay, until the subject debt is paid in full. Petitioner argues that HUD's proposed offset schedule will cause her undue hardship because the LOC might collect approximately \$5,303.55 for unpaid FEGLI premiums at the same time.

This Court is authorized to determine the repayment schedule in salary offset cases. See 24 C.F.R. § 17.95. If possible, the installment payments will be sufficient in size and frequency to liquidate the debt in three years. 24 C.F.R. 17.105(b). Installment payments of less than \$25 per pay period or \$50 per month will be accepted in only the most unusual circumstances. Id.

The circumstances in this case are most unusual. Here, HUD concedes responsibility for the error that caused the overpayment and found no indication of fraud, misrepresentation, or lack of good faith on the part of Petitioner. In addition, Petitioner was told by a LOC Human Resources Specialist that if she intended to elect only Basic coverage, then she was not required to submit a new SF-2817. Moreover, Petitioner asserts that the proposed repayment schedule will cause her undue hardship because the LOC might also collect unpaid FEGLI premiums. The repayment schedule in this case should reflect these circumstances. Accordingly, this Court will limit the amount of the offset to \$50 per month until the debt is paid in full. See Renner, supra (imposing a repayment schedule of no more than \$50 per month under most unusual circumstances).

ORDER

This Court finds that Petitioner owes a valid debt in the amount of \$1,916.00 to HUD. However, a reduction of HUD's proposed repayment schedule is warranted to mitigate the financial burden caused by HUD's error. Accordingly, it is **ORDERED** that Petitioner shall be required to pay no more than \$50 per month until the subject debt is paid in full.⁵ And the debt shall remain interest free. Petitioner is free to make lump sum payments at her discretion. It is

⁵ Note that "until the subject debt is paid in full" is to be read regardless of pay status: active, retired, or otherwise.

FURTHER ORDERED that the *Stay of Collection Proceedings* in this matter, ordered on April 4, 2024, is **VACATED**.

So ORDERED,



ALEXANDER FERNANDEZ-PONS
CN = ALEXANDER FERNANDEZ-
PONS C = US O = U.S. Government
OU = Department of Housing and Urban
Development, Office of the Secretary
2025.05.29 12:22:29 -04'00'

Alexander Fernández-Pons
Administrative Law Judge

Notice of appeal rights. The appeal procedure is set forth in detail in 24 C.F.R. §§ 26.25(f) and 26.26. This *Order* may be appealed by any party to the Secretary of HUD by petition for review. Any petition for review and the required brief must be filed with the Secretary within 30 days after the date of this *Order*. An appeal petition shall be accompanied by a written brief, not to exceed 15 pages, specifically identifying the party's objections to this *Order* and the party's supporting reasons for those objections. Any statement in opposition to a petition for review must be received by the Secretary within 20 days after service of the petition. The opposing party may submit a brief, not to exceed 15 pages, specifically stating the opposing party's reasons for supporting this *Order*, or for objecting to any part of this *Order*.

Service of appeal documents. Any petition for review or statement in opposition must be served upon the Secretary by mail, facsimile, or electronic means at the following:

U.S. Department of Housing and Urban Development
Attention: Secretarial Review Clerk
451 7th Street S.W., Room 2130
Washington, DC 20410
Facsimile: (202) 485-9475
Scanned electronic document: secretarialreview@hud.gov

Copies of appeal documents. Copies of any petition for review or statement in opposition shall also be served on the opposing party(s), and on this HUD Office of Hearings and Appeals.

Finality of decision. The agency decision becomes final as indicated in 24 C.F.R. § 26.26(m).

Judicial review of final decision. After exhausting all available administrative remedies, any party adversely affected by a final decision may seek judicial review of that decision in a United States Court of Appeals. A party must file a written petition in that court within 20 days of the issuance of the Secretary's final decision.