

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

In the Matter of:

REBECCA HERNANDEZ,

Petitioner.

24-VH-0029-AG-022  
(Claim No. 721021534)

January 8, 2025

**DECISION AND ORDER**

Rebecca Hernandez (“Petitioner”) filed a *Hearing Request* seeking a hearing concerning the amount, enforceability, or payment schedule of a debt allegedly owed to the United States Department of Housing and Urban Development (“HUD” or the “Secretary”). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of debts owed to the United States government.

**JURISDICTION**

The Secretary of HUD has designated the judges of this Office of Hearings and Appeals (“Tribunal”) to adjudicate contested cases where the Secretary seeks to collect debts by means of administrative wage garnishment. This hearing is conducted in accordance with procedures set forth in 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81.

**APPLICABLE LAW**

The agency has the initial burden of proof to show the existence and amount of the debt. 31 C.F.R. § 285.11(f)(8)(i). Thereafter, a petitioner may show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. *Id.* § 285.11(f)(8)(ii). In addition, a petitioner may present evidence that the terms of any proposed repayment schedule are unlawful, that the repayment schedule would cause an undue financial hardship to the petitioner, or that collection of the debt may not be pursued due to operation of law. *Id.*

**PROCEDURAL HISTORY**

On November 14, 2023, Petitioner filed the *Hearing Request*. Then, this Tribunal issued a *Notice of Docketing, Order, and Stay of Referral* staying the issuance of a wage withholding order until the issuance of this *Decision and Order*. On December 18, 2023, HUD filed the *Secretary’s Statement that Petitioner’s Debt is Past Due and Legally Enforceable* (“*Statement*”).

On March 13, 2024, the Tribunal issued an *Order to Show Cause* requiring Petitioner to show cause why the decision should not be rendered in favor of the Secretary. Petitioner has not responded to the Tribunal's *Order to Show Cause*. This case is now ripe for review.

### **FINDINGS OF FACT**

Petitioner executed a Subordinate Note ("Note"), dated December 15, 2014, in favor of HUD in the principal amount of \$9,853.74. In exchange for the Note, HUD advanced funds to Petitioner's primary lender as a means of providing foreclosure relief to Petitioner.

By terms of the Note, it becomes due when the primary note and related mortgage, deed of trust, or similar security instrument are no longer insured by the Secretary. On or about July 2, 2022, the Note became due when the Federal Housing Administration insurance on Petitioner's primary mortgage was terminated, as the primary lender indicated that the mortgage was paid in full. Once the Note became due, Petitioner was to make payment on the Note to HUD.

Petitioner failed to make payment on the Note. The Secretary has made efforts to collect the debt from Petitioner but has been unsuccessful. Accordingly, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- i. \$9,853.74 as the unpaid principal balance as of October 31, 2023;
- ii. \$123.15 as the unpaid interest on the principal balance at 3% per annum through October 31, 2023;
- iii. \$649.42 as the unpaid penalties and administrative costs as of October 31, 2023; and
- iv. interest on said principal balance from November 1, 2023, at 3% per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceeding ("Notice"), dated October 17, 2023, was sent to Petitioner. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), the Notice afforded Petitioner the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms. Petitioner has not entered into a written repayment agreement with HUD.

HUD proposes a wage garnishment repayment schedule of \$295.17 per month,<sup>1</sup> or an amount equal to 15% of Petitioner's disposable income. The Secretary requests that this Tribunal find Petitioner's debt past due and legally enforceable and the Secretary's proposed repayment schedule fair.

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<sup>1</sup> HUD attempted to obtain Petitioner's current income information but was unsuccessful. HUD states that a repayment schedule of \$295.17 per month will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards.

## **DISCUSSION**

Petitioner objects to the proposed wage garnishment but does not contest the existence, amount, or status of the debt allegedly owed<sup>2</sup> or claim that the proposed garnishment would create a financial hardship. As support, Petitioner offers a copy of the Subordinate Note in which she agreed to a “Borrower’s Promise to Pay that, [i]n return for a loan received from Lender, Borrower promises to pay the principal sum of nine-thousand-eight-hundred-fifty-three dollars and seventy-four cents (US \$9,853.74) to the order of the Lender.” (Emphasis removed). No further evidence was presented by Petitioner in support of her objection. The Secretary however offers the same Note to prove that the debt is enforceable against Petitioner and even adds to her claim where the debt should be paid in full.<sup>3</sup>

According to the Note, Petitioner is responsible for repaying the debt should default occur. Both parties have acknowledged that the subject debt is in default and is currently owed. In the absence of evidence to the contrary, this Tribunal finds Petitioner’s claim of unenforceability fails for lack of sufficient evidence to prove a default does not otherwise exist. See *In re Samuel and Delisha Thuo*, HUDOHA No. 23-VH-0126-AG-067 (Sept. 20, 2024); *In re Anna Bolton*, HUDOHA No. 23-VH-0146-AG-077 (Sept. 13, 2024); *In re John Tipton*, HUDOHA No. 23-VH-0153-AO-083 (Sept. 12, 2024).

Should Petitioner wish to negotiate repayment terms with HUD, this Tribunal is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of HUD.<sup>4</sup> Should Petitioner experience materially changed financial circumstances in the future, she is entitled to seek reassessment of the repayment schedule under 31 C.F.R. § 285.11(k).<sup>5</sup>

## **ORDER**

Based on the foregoing, the Tribunal finds the subject debt to be past due and legally enforceable against Petitioner in the amount claimed by the Secretary. It is

**ORDERED** that the Secretary is authorized to seek 15% of Petitioner’s disposable pay by administrative wage garnishment in satisfaction of the debt due. It is

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<sup>2</sup> With the *Hearing Request*, Petitioner submitted a copy of a Subordinate Deed of Trust, which is evidence of Petitioner’s indebtedness to HUD.

<sup>3</sup> The Secretary filed a *Statement* with a copy of the Note and the Declaration of Brian Dillon, wherein Mr. Dillon, Director of the Asset Recovery Division in HUD’s Financial Operations Center, states the full amount of the debt allegedly owed by Petitioner. The payment of the Note “must be made at the U.S. Department of Housing and Urban Development, c/o NOVAD Management Consulting Shepherd Mall 2401 NW 23rd Street, Suite 1A Oklahoma City, OK 73107.”

<sup>4</sup> The U.S. Department of the Treasury has authority to negotiate and accept settlement offers related to this debt and can be reached by contacting HUD Counsel assigned to this matter.

<sup>5</sup> (k) Financial hardship. (1) A debtor whose wages are subject to a wage withholding order under this section, may, at any time, request a review by the agency of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.

**FURTHER ORDERED** that the *Notice of Docketing, Order, and Stay of Referral* imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**.

SO ORDERED.  
  
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Vanessa L. Hall  
Administrative Judge

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**Finality of Decision.** Pursuant to 31 C.F.R. § 285.11(f)(12), this constitutes the final agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. §§ 701 *et seq.*).