



Office of Appeals  
U.S. Department of Housing and Urban Development  
Washington, D.C. 20410-0001

In the Matter of:

**Teresa D. Guyette,**

Petitioner

HUDOA No. 11-H-CH-LL15  
Claim No. 7210036190A

Teresa D. Guyette  
13131 Rocky Ledge  
Mesquite, TX 75180

Pro se

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For the Secretary

**DECISION AND ORDER**

Petitioner was notified, pursuant to 31 U.S.C. §§ 3716 and 3720A, that the Secretary of the U.S. Department of Housing and Urban Development intended to seek administrative offset of any federal payments due to Petitioner in satisfaction of a delinquent and legally enforceable debt allegedly owed to HUD.

Petitioner made a request for a hearing concerning the existence, amount, or enforceability of the debt allegedly owed to HUD. The Office of Appeals has jurisdiction to determine whether Petitioner's debt is past due and legally enforceable pursuant to 24 C.F.R. § 17.170(b). The administrative judges of the Office of Appeals have been designated to conduct a hearing to determine whether the debt allegedly owed to HUD is legally enforceable. 24 C.F.R. §§ 17.152 and 17.153. As a result of Petitioner's hearing request, this Office temporarily stayed referral of the debt to the U.S. Department of Treasury for offset on January 25, 2011. (Notice of Docketing, Order, and Stay of Referral.)

**Background**

Petitioner executed and delivered a Partial Claims Promissory Note ("Note") dated September 1, 2001, payable to the order of the Secretary of Housing and Urban Development ("HUD") in the amount of \$7,590.32. (Secretary's Statement ("Sec'y. Stat."), filed March 30, 2011, ¶ 2). The Note was executed and delivered to evidence a loan that was made by HUD to

Petitioner as a means of providing foreclosure relief by payment of arrearages on her primary FHA-insured mortgage. (Sec'y. Stat., Ex. B, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl."), ¶ 4.)

The Note cited specific events that made the debt become due and payable, one of these events being if the Petitioner has paid in full all amounts due under the primary note and related mortgage insured by the Secretary. (Sec'y. Stat., Ex. A, Note, ¶ 3(A); Ex. B., Dillon Decl., ¶ 4.) The Note also stated that "Payment shall be made at the Office of the Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, SW, Washington, DC 20410 or any such other place as Lender may designate in writing by notice to Borrower. (Sec'y. Stat., Ex. A, ¶ 3(B).) On or about November 4, 2003, the FHA insurance on the first mortgage was terminated, as the lender indicated the mortgage was paid in full. (*Id.* at ¶ 5; Dillon Decl., ¶ 4.)

HUD has attempted to collect on the claim from Petitioner, but Petitioner remains delinquent. Petitioner is indebted to HUD on the claim in the following amounts:

- (a) \$6,122.14 as the unpaid principal balance as of February 28, 2011;
- (b) \$224.51 as the unpaid interest on the principal balance at 4% per annum through February 28, 2011; and
- (c) interest on said principal balance from March 1, 2011 at 4% per annum until paid.

(Sec'y. Stat. ¶ 6; Dillon Decl. ¶ 5.)

A Notice of Intent to Collect by Treasury Offset, dated May 14, 2007, was mailed to Petitioner. (Sec'y. Stat. ¶ 7; Dillon Decl. ¶ 6.)

### Discussion

The Deficit Reduction Act of 1984, 31 U.S.C. § 3720A, provides Federal agencies with a remedy for the collection of debts owed to the United States Government. Petitioner bears the initial burden of submitting evidence to prove that the debt is not past-due or legally enforceable. 24 C.F.R. § 17.152(b); *Juan Velazquez*, HUDBCA No. 02-C-CH-CC049 (September 25, 2003).

Petitioner challenges the existence of the alleged debt, asserting that she paid the debt to Principal Residential Mortgage Inc. ("Principal"), who held her primary note. (Pet'r.'s Hr'g. Req., p. 1; Pet'r.'s Letter, filed March 9, 2011.) Petitioner contends that she believed Principal would forward the funds to HUD. (Pet'r.'s Letter) Petitioner further states that the HUD loan was unnecessary because she "arranged with Principal to make double house payments over an eight-month period to catch up and make good on my mortgage." (Pet'r.'s Hr'g. Req., p. 4.) Petitioner claims Principal kept the extra payments rather than using them to pay the HUD loan.

As evidence that the HUD loan was paid in full, Petitioner submits Mortgage Interest Statements showing payments on the primary loan in 2001 and 2002. (Pet'r.'s Hr'g. Req., pp. 10-12.) The Mortgage Interest Statements show multiple payments in February and March of 2001, and in January, June, September, October, November, and December of 2002.

The Secretary states that Petitioner's Mortgage Interest Statements show the HUD loan as being applied to Petitioner's account in July of 2001. (Sec'y. Stat., ¶ 8; Dillon Decl., ¶ 7, Ex. A1.) The Secretary adds, however, that the Subordinate Note does not call for monthly payments or for payments to Principal on HUD's behalf. Rather, the Note matures only upon the occurrence of certain events, and payment must be made at the FHA-Comptroller's office or such other contact as specified by HUD. (Sec'y. Stat., Ex. A, ¶ 3(B).) As evidence, the Secretary offers a copy of the Note for the Court's review.


Upon further examination of the Note, the manner of payment for this loan is as indicated by the Secretary. No payments were required prior to the triggering events listed in section 3(A) of the Note. The language of the Note further shows that Principal was not authorized to collect payments on HUD's behalf, and the record also shows that Petitioner has produced no evidence proving that HUD otherwise extended such authorization. Petitioner's payments to Principal were therefore not in compliance with the terms of the Note and thus were not applied to the debt that is the subject of this proceeding. Petitioner's evidence only shows that Petitioner made payments to Principal on the primary note, but not towards the satisfaction of the HUD loan here at issue. Consequently, I find Petitioner's position that Principal was obligated to forward Petitioner's extra payments towards the payment of the alleged debt is erroneous. Without evidence from Petitioner to better substantiate that the HUD loan has been paid in full, or that HUD released Petitioner from her obligation to repay this loan, I further find that Petitioner remains legally obligated to pay the debt that is the subject of this proceeding.

#### **ORDER**

For the reasons set forth above, I find that the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary.

The Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative offset is **VACATED**. It is hereby

**ORDERED** that the Secretary is authorized to refer this matter to the U.S. Department of the Treasury for administrative offset of any payment due Petitioner.

  
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Vanessa L. Hall  
Administrative Judge

September 28, 2011