

security instrument is no longer insured by the Secretary or when the property is no longer occupied by the purchaser as his or her principal residence.” (*Id.*, ¶ 2.)

On or around July 15, 2009, the FHA mortgage insurance on the original Note and Security Instrument was terminated as the mortgagee indicated the mortgage was paid in full. (Sec’y Stat., ¶ 3; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), dated November 10, 2011, ¶ 4.) Therefore, and pursuant to the terms and conditions of the Subordinate Note, the debt is now past due and legally enforceable. (Sec’y Stat., ¶ 4.)

The Secretary has attempted to collect the amounts due under the Note, but Petitioner remains in default. (Sec’y Stat., ¶ 5; Dillon Decl. ¶ 5.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$6,088.93 as the unpaid principal as of October 31, 2011;
- b) \$30.42 as the unpaid interest on the principal balance at 1% per annum through October 31, 2011;
- c) \$401.88 as the unpaid penalties and administrative costs as of October 31, 2011; and
- d) Interest on said principal balance from November 1, 2011, at 1% per annum until paid.

(Sec’y Stat., ¶ 6; Dillon Decl., ¶ 5.)

A Notice of Intent to Collect by Treasury Offset was mailed to Petitioner on August 1, 2011. (Sec’y Stat., ¶ 7; Dillon Decl., ¶ 6.) HUD acknowledged that the date of the debt on the Notice of Intent to Collect by Administrative Offset was listed incorrectly, and, that the correct date of the debt being incurred is June 27, 2007, and that date is accurately stated on the Note which was executed by Petitioner. (Sec’y Stat., ¶ 8; Dillon Decl., ¶ 6.) However, Petitioner was not harmed or injured by the scrivener’s error related to the incorrect date identified on the Notice of Intent to Collect by Administrative Offset.

The Secretary respectfully submits that Petitioner’s debt is past due and legally enforceable.

DISCUSSION

Petitioner may present evidence that: 1) the terms of the repayment schedule are unlawful; 2) collection would cause an undue financial hardship to Petitioner; or, 3) collection of the debt may not be pursued due to operation of law. (*Id.*) See 31 C.F.R. § 285.11(f)(8)(ii). Petitioner challenges collection of the alleged debt on the grounds that the debt was paid in full. (Petitioner’s Hearing Request (“Pet’r Hr’g Req.”), filed October 31, 2011). Here, Petitioner claims that she “contacted EverHome Mortgage Company for additional information available on the SF Partial Claim. Petitioner submitted a letter dated August 18, 2009 from EverHome

Mortgage Company to Petitioner that Loan No. 0000492868, for her property address, was paid in full on July 15, 2009.” (Id., p.1) However, the evidence as presented by Petitioner was insufficient because it failed to prove that the subject debt was included in the amount reflected in the EverHome Mortgage letter to Petitioner.

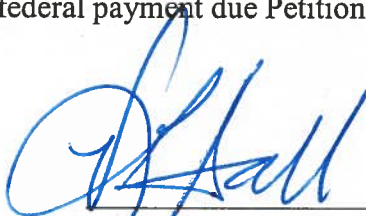
The Secretary has, however, met his initial burden of proof to show that the alleged debt exists in the amount he claimed was owed by Petitioner. See 31 C.F.R. § 285.11(f)(8)(ii). The Secretary contends that Petitioner’s debt became due when the first mortgage was paid in full. (Sec’y Stat., ¶ 3; Dillon Decl., ¶ 4 .) Further the Secretary states that “Consistent with the terms and conditions of the Subordinate Note, the payment for the subject debt is now past due and legally enforceable.” (Id.) As support, the Secretary submitted a copy of the Subordinate Note signed by Petitioner in which Petitioner accepted and agreed to the terms and covenants of the Subordinate Note. (Sec’y Stat., Ex.1, “Note”).

Without more sufficient documentary evidence to support Petitioner’s claim and better refute or rebut the Secretary’s position, Petitioner’s claim that the amount of the alleged debt is incorrect must fail for lack of proof. This Court has consistently maintained that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past-due or enforceable.” *Darrell Van Kirk*, HUDBCA No. 03-A-CH-AWG03 (January 27, 2003) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Therefore, I find that Petitioner’s claim challenging the amount owed on the subject debt fails for lack of proof.

ORDER

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

ORDERED that the Secretary is authorized to seek collection of this outstanding debt by means of administrative offset of any federal payment due Petitioner.



Vanessa L. Hall
Administrative Judge

March 30, 2012