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

In the Matter of: JACOB H. RUSSELL, Petitioner.	25-AF-0079-OH-002 September 2, 2025

Appearances:

Richard E. Hiller, Esq.
Shuey Smith LLC
Shreveport, Louisiana
For the Petitioner

Sarah E. Assaid, Esq.
U.S. Department of Housing and Urban Development
Washington, D.C.
For the Government

BEFORE: Alexander FERNÁNDEZ-PONS, Administrative Law Judge

DECISION AND ORDER

This matter is before the Court upon a petition for review of a proposed offset of a federal employee's salary. On October 16, 2024, the U.S. Department of Housing and Urban Development ("HUD") initated salary offset proceedings pursuant to 5 U.S.C. § 5514, as implemented by 24 C.F.R. §§ 17.83 to 17.113, to collect $21,765.02 allegedly owed to HUD by employee Jacob H. Russell ("Petitioner") due to an overpayment associated with a relocation incentive. Petitioner timely filed a hearing request with this Court on November 19, 2024, pursuant to 5 U.S.C. § 5514(a)(2)(D).

PROCEDURAL HISTORY

Upon receipt of Petitioner's hearing request, the Court issued a *Notice and Scheduling Order* staying collection pursuant to 24 C.F.R. § 17.89(h) pending issuance of this Decision and notifying the parties that the hearing would be limited to a review of the written record absent a showing of good cause for an oral hearing. Neither party requested an oral hearing.

HUD filed a position statement and the Administrative Record on December 12, 2024. Petitioner, through counsel, filed a position statement on December 30, 2024. HUD filed a supplemental brief on July 31, 2025, pursuant to an order of the Court.

On August 4, 2025, Petitioner filed a *Motion for Injunctive Relief, Penalties and Attorney Fees* that responded to some of the points raised in HUD's supplemental brief and asserted that HUD had begun garnishing Petitioner's paychecks in contravention of the Court's prior stay order. On August 12, 2025, the Court issued an *Order Granting Relief from Garnishment.* On August 14, 2025, HUD filed a response to Petitioner's motion and noted therein that the Government had already taken steps to reverse the accidental garnishment.

The record is now closed and this matter is ripe for decision.

PERTINENT LEGAL PRINCIPLES

Salary Offset Proceedings. The Secretary of HUD is authorized to seek repayment of a debt owed by a federal employee to the United States via deductions at officially established pay intervals of up to 15% of the employee's disposable pay. 5 U.S.C. § 5514(a)(1); see 24 C.F.R. §§ 17.83 *et seq*. Upon determining that an employee is so indebted, the Secretary must, at least thirty days prior to the first paycheck deduction, provide the employee with notice of HUD's intent to offset the employee's salary, as well as an opportunity for a hearing on (1) the existence of the debt, (2) the amount of the debt, and (3) the terms of the repayment schedule. Id. § 5514(a)(2)(A), (D); see 24 C.F.R. § 17.89. The employee may petition this Court for such a hearing, which is conducted by an Administrative Law Judge in accordance with the procedural rules in 24 C.F.R. part 26, subpart A. See 24 C.F.R. §§ 17.89(g); 17.91.

Standard and Burden of Proof. The Court must conduct a de novo review of the proposed administrative action at issue in this case salary offset to determine whether the action is supported by a preponderance of the evidence. 24 C.F.R. § 26.25(a). HUD, as the proponent of the administrative action, bears the burden of proof. Id. § 26.24(g); see also 5 U.S.C. § 556(d) (stating general rule that, "[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof" in administrative proceedings); Schaffer *ex rel.* Schaffer v. Weast, 546 U.S. 49, 56 (2005).

Relocation Incentives. Under 5 U.S.C. § 5753, entitled "Recruitment and relocation bonuses," the "Office of Personnel Management [OPM] may authorize the head of an agency to pay a bonus" under certain circumstances to an individual who accepts a position that would otherwise be difficult to fill. As relevant here, a bonus may be paid to a current federal employee who "must relocate to accept a position in a different geographic area." 5 U.S.C. § 5753(b)(2)(B)(ii)(II); 5 C.F.R. § 575.201. OPM's implementing regulations state that "the employee must establish a residence in the new geographic area before the agency may pay a relocation incentive" and that the incentive "may be paid only if the employee maintains residency in the new geographic area for the duration of the service agreement." 5 C.F.R. § 575.205(b). It is the agency's responsibility to document in writing, before the employee enters on duty, "that the employee established a residence in the new geographic area, as required by § 575.205(b)." Id. § 575.208(a)(1)(iv), (a)(3).

Payment of a relocation incentive is contingent upon the employee entering into a written service agreement to complete a certain period of employment with the agency. 5 U.S.C. § 5753(c)(1). The statute requires the service agreement to include, among other things, the commencement and termination dates of the required service period, or provisions for the determination thereof. 5 U.S.C. § 5753(c)(2). Unless there is an initial training period, the

service period begins "upon the commencement of service at the new duty station," or on the first day of the first pay period beginning thereafter. 5 C.F.R. § 575.210(b); see also 5 U.S.C. § 5753(c)(2)(C) (indicating that service period generally begins "upon the commencement of service with the agency or movement to a new position or geographic area").

Under OPM's regulations, if the employee fails to maintain residency in the new geographic area for the duration of the service agreement, an authorized agency official must terminate the agreement and notify the employee in writing. 5 C.F.R. § 575.211(b), (d). Upon termination, "the employee is entitled to retain relocation incentive payments previously paid by the agency that are attributable to the completed portion of the service period," but must repay excess amounts, and is not entitled to receive further payments. Id. § 575.211(f).

BACKGROUND AND FINDINGS OF FACT

Petitioner is an employee of HUD's Office of Multifamily Production who resides in the Boston area. On July 14, 2021, HUD's Deputy Chief Human Capital Officer signed a memo approving a relocation incentive for Petitioner "for the position of [redacted], in Headquarters, Washington, D.C." The memorandum documented HUD's determination that the position would likely be difficult to fill in the absence of a relocation incentive, and indicated that Petitioner would receive an incentive equating to 15% of his annual salary for two years. The memorandum did not include any information about where Petitioner lived and did not document that Petitioner had established a residence in the Washington, D.C., area.

On July 15, 2021, HUD and Petitioner entered into a Relocation Incentive Service Agreement ("Agreement").[1] The Agreement stated that Petitioner agreed to remain in his position with HUD for two years and that he would receive a relocation incentive totaling $36,759 in biweekly installments over the course of the two-year service period. The Agreement did not specify the commencement or termination dates of the service period or explain how those dates would be determined, but according to HUD, "the service period was supposed to begin on August 1, 2021, the effective date of the official (relocation) personnel action."

Regarding geographic location, the Agreement contained a line identifying the "LIMITS OF GEOGRAPHIC LOCATION" as the "Washington/Baltimore metropolitan area." The Agreement did not include any information about where Petitioner lived and did not expressly state that Petitioner must relocate his residence. However, the Agreement stated: "An authorized official will terminate this relocation incentive service agreement if the employee … fails to maintain residency in the new geographic area for the duration of the service agreement, or if the employee otherwise fails to fulfill the terms of this service agreement and the conditions under which the employee must repay a relocation incentive."

Petitioner alleges that he attempted to move his family to Washington, D.C., but was unable to do so because his wife could not find a suitable job and because of various family medical issues, including a traumatic brain injury suffered by his three-year-old son. Petitioner asserts that, instead of moving, he used the incentive payments to cover the expense of traveling to Washington, D.C., on days he was required to report to the physical office.

[1] The copy of the Agreement submitted by HUD as part of the Administrative Record is unsigned, though neither party challenges its authenticity. It contains a blank signature line dated July 15, 2021.

Petitioner further alleges that HUD and his supervisors have known where he lives all along, and that supervisor David Wilderman told him the Agreement would not be terminated unless Petitioner failed to report to work in Washington, D.C., on his in-office days. HUD counters that it does not believe Petitioner had his office's permission to refrain from relocating his residence, citing "his supervisor's numerous requests for proof of relocation." Neither party submitted evidence to support these assertions or to otherwise shed light on the circumstances surrounding the execution of the Agreement and what Petitioner's supervisor(s) knew.

On October 16, 2024 more than three years after entering into the Agreement the Government sent Petitioner a Notice of Overpayment of Salary and Demand for Payment seeking recovery of $21,765.02, which represents the gross amount of the incentive received by Petitioner less mandatory tax withholdings. The Notice indicated that Petitioner could either pay the debt in a lump sum, agree to a repayment schedule, ask HUD to waive collection, or request a hearing. Otherwise, if he took no action, the Government would begin offsetting his salary by 15% of his disposable net pay, estimated at $478.55 per pay period. Petitioner requested a hearing, initiating the instant proceeding.

On August 13, 2025, after this Court had ordered supplemental briefing concerning, among other things, whether and how HUD had notified Petitioner of termination of the Agreement, HUD sent Petitioner a letter informing him that the Agreement had been terminated due to failure to maintain residency in the Washington/Baltimore metropolitan area for the duration of the designated service time.

DISCUSSION AND CONCLUSIONS OF LAW

HUD asserts that Petitioner is not entitled to retain the relocation incentive it previously paid him because he did not actually relocate, thereby failing to comply with the terms of the Agreement. HUD concludes that the incentive he received amounted to an overpayment, resulting in a debt owed to the Government in the amount of $21,765.02.

Petitioner argues that he did not violate the Agreement because the Agreement does not define the term "relocation" and does not specify or explain that he must relocate his residence. Petitioner further argues that, because the entire duration of the two-year service period specified in the Agreement was completed before HUD issued a notice of termination under 5 C.F.R. § 575.211(d), HUD is not entitled to repayment under § 575.211(f). Petitioner also asserts that he is entitled to recover attorney fees.

For the reasons discussed below, the Court finds that HUD has not established the existence of a valid, recoverable debt and that Petitioner may seek attorney fees.

I. HUD has not established the existence of the claimed debt.

As an incentive to induce Petitioner to accept a purportedly hard-to-fill position in Washington, D.C., HUD entered into an Agreement with him whereby it would pay him a 15% bonus over the next two years if he stayed in his new position for the duration of that time. Though Petitioner has remained in the new position for more than two years, HUD now seeks to claw back the incentive payments because Petitioner did not use them to relocate his residence, thereby violating the terms of the Agreement, according to HUD.

The Agreement is dated July 15, 2021, and provides that HUD will pay the incentive in installments over the course of a two-year service period. The service period began on or about August 1, 2021, and ended on or about August 1, 2023.

HUD was required to terminate the Agreement and notify Petitioner of the termination in writing in the event that he failed to maintain residence in the new geographic area during the service period. See 24 C.F.R. § 575.211(b), (d). But HUD did not send Petitioner a notice of termination until August 13, 2025, more than two years after he had completed the agreed service period and the relocation incentive had been paid in full.[2] Under 5 C.F.R. § 575.211(f), an employee is entitled to retain all incentive payments "attributable to the completed portion of the service period." Cf. Armour & Co. v. Nard, 463 F.2d 8, 11 (8th Cir. 1972) (stating that "generally, the exercise of a power of termination [of an agreement] will have prospective operation only," citing Corbin on Contracts § 1266 at 66); see also Sid Richardson Carbon & Gasoline Co. v. Interenergy Res., Ltd., 99 F.3d 746, 754 & n.8 (5th Cir. 1996) (citing same general rule to explain that termination does not apply retroactively and only discharges contractual obligations that remain executory). Because Petitioner's entire two-year service period was completed on or about August 1, 2023, HUD's *post hoc* exercise of its power of termination does not obligate Petitioner to repay the incentive.

HUD argues that the service period never actually began, and therefore no portion of it was "completed" within the meaning of 5 C.F.R. § 575.211(f), because Petitioner failed to relocate his residence. In essence, HUD is arguing that moving his residence was a mandatory component of Petitioner's required service under the Agreement and that his failure to relocate constituted a breach of contract justifying HUD's rescission of the payments it made thereunder.[3]

However, the Court finds that the service period began when Petitioner entered on duty in his new position. The Agreement was supposed to specify the beginning and end dates for the service period or explain how those dates would be determined. 5 U.S.C. § 5753(c)(2). It did not do so. As there was no provision of the Agreement dictating otherwise, the regulations required the service period to begin "upon the commencement of service at the new duty station." 5 C.F.R. § 575.210(b). Petitioner officially relocated to a new duty station in Washington, D.C., effective August 1, 2021. Petitioner maintains, and HUD does not dispute, that he reported to his new duty station for all of his required in-office hours during the two years he received payments under the Agreement i.e., for the duration of the agreed-upon service period and has continued to do so to this day.

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[2] HUD suggests that Petitioner should have already been aware the Agreement was terminated because HUD was already trying to recoup the incentive. But HUD did not commence collection efforts until the incentive had been paid in full, so whatever the exact date was when Petitioner understood HUD's intent, the termination post-dated the completion of the two-year service period.

[3] Both parties have couched their arguments in terms of whether Petitioner's failure to relocate constituted a breach of contract. However, the Federal courts have held that a relocation incentive service agreement does not, by itself, constitute an "effective contract." See, e.g., Coyner v. United States, No. 20-712C, 2021 WL 306400, at *5 (Fed. Cl. Jan. 29, 2021) (characterizing a relocation incentive as a statutory employment benefit effectuated by a service agreement and declining to exercise jurisdiction over employee's breach of contract claim on grounds that "an appointed [federal] employee's rights are governed by statute and not by 'ordinary contract principles'") (citing Adams v. United States, 391 F.3d 1212, 1221 (Fed. Cir. 2004)). Thus, the parties' rights and obligations effectuated by the Agreement must be assessed in conjunction with the statute and regulations governing relocation incentives instead of looking solely to the four corners of the Agreement under principles of contract law.

Under 5 C.F.R. § 575.208(a)(1)(iv), HUD was required to document that Petitioner had also relocated his residence to the new geographic area. And under 5 C.F.R. § 575.211(b), HUD's remedy in the event that Petitioner failed to maintain residence in that area during the service period was to promptly terminate the Agreement and stop making payments.[4] However, due to HUD's failure to take these actions, substantial performance of the Agreement occurred. HUD obtained the intended benefit of its bargain under the Agreement because Petitioner accepted, and remains in, a position HUD had determined would be difficult to fill. In exchange, HUD paid the full amount of the promised incentive in installments over the course of the two years. By this conduct, HUD implicitly affirmed that Petitioner was fulfilling the agreed terms of service.

For the foregoing reasons, the Court finds that Petitioner satisfied the mandatory service requirement and "completed" the entire service period required under the Agreement, within the meaning of 5 C.F.R. § 575.211(f), and that HUD is not entitled to unilaterally rescind the payments it made in exchange for Petitioner's service.

II. Petitioner may seek attorney fees under the Equal Access to Justice Act.

In his December 30, 2024 position statement and his August 4, 2025, *Motion for Injunctive Relief, Penalties and Attorney Fees*, Petitioner asserts that he is entitled to recover his attorney fees expended in this adjudication and would like the opportunity to do so.

The Equal Access to Justice Act ("EAJA") permits an award of fees and costs to a non-governmental "prevailing party" in certain adversarial administrative adjudications where the record, as a whole, shows that the Government's position in the adjudication was not substantially justified. 5 U.S.C. § 504. EAJA is applicable to HUD salary offset proceedings. 24 C.F.R. § 14.115(a)(6). A party seeking an EAJA award in a HUD salary offset proceeding must file an application with this Court containing the information set forth 24 C.F.R. § 14.200, including an itemized statement of fees and expenses. The application cannot be filed until after the applicant prevails in the underlying adjudication. 24 C.F.R. § 14.215.

In this case, Petitioner has not yet filed a formal EAJA application or provided an itemized statement of fees and expenses incurred, and any application or award under EAJA would be premature before determination of his "prevailing party" status. Accordingly, to the extent he is requesting an award or ruling on attorney fees, the Court declines to act on the request at this time. After this Decision issues, Petitioner may seek an award of fees by filing an application in accordance with 5 U.S.C. § 504 and 24 C.F.R. part 14.

[4] HUD argues it would be impractical to hold the Government to the standard of "discover[ing] Petitioner's breach of contract [i.e., his failure to relocate his residence] in real-time to rescind the relocation incentive payment," especially in light of HUD's generous telework policy while the Agreement was in effect. The Court disagrees. HUD employees' home addresses are recorded in the agency's personnel and payroll systems and in each employee's telework agreement, which is signed by the employee's supervisor. HUD should have known that Petitioner did not actually relocate. To the extent this rendered him ineligible for a relocation incentive, HUD was responsible for making this determination, and should not have approved the incentive and paid it for two years. It would be unjust to allow HUD to now impose the cost of its lack of diligence on Petitioner, especially when HUD has not alleged or presented any evidence of bad faith on Petitioner's part, and given Petitioner's claim that his supervisors knew he had not moved and led him to believe this was acceptable.

CONCLUSION AND ORDER

HUD bears the burden of proving the existence of a valid, enforceable debt recoverable from Petitioner via salary offset. See 24 C.F.R. § 26.24(g). HUD argues that Petitioner incurred such a debt when he received a relocation incentive without actually relocating, rendering the incentive an "overpayment." However, the record shows that Petitioner completed the entire service period required under the parties' Relocation Incentive Service Agreement. He is therefore entitled under 5 C.F.R. § 575.211(f) to retain all of the incentive payments he received. Accordingly, HUD has failed to establish that an overpayment occurred or that Petitioner owes HUD a debt arising out of the relocation incentive.

Because the record does not establish the existence of the claimed debt, HUD is not authorized to offset Petitioner's salary under 5 U.S.C. § 5514 or to refer the claimed debt to the Department of the Treasury for offset. This debt collection proceeding is hereby **DISMISSED**.

So **ORDERED**,

ALEXANDER FERNANDEZ-PONS
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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 address:

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.