UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:

RICHARD DUANE WIDLER,
R.W. EXCHANGE

Respondents

HUDALJ 92-1766-DB

Decided: June 18, 1992

Charles H. Torres, Esq.
Douglas D. Koktavy, Esq.
For Respondents

Georjan D. Overman, Esq.
For the Department

Before: ALAN W. HEIFETZ
Chief Administrative Law Judge

INITIAL DETERMINATION

Statement of the Case

This proceeding arose pursuant to 24 CFR 24.100 *et seq.* as a result of an action taken by the Assistant Secretary for Housing-Federal Housing Commissioner of the U.S. Department of Housing and Urban Development ("the Department" or "HUD") on September 17, 1991, proposing to debar Richard Duane Widler ("Respondent") and his named affiliate, R.W. Exchange (together, "Respondents"). If debarred, Respondents would be prohibited from participating in covered transactions as either participants or principals at HUD and throughout the Executive Branch of the Federal government and from participating in procurement contracts with HUD.

The action taken by HUD was based on Respondent's conviction for violations of 18 U.S.C. §§371, 1001 and 1010. HUD proposed to debar Respondents for a period of five years from the date of Respondent's Limited Denial of Participation ("LDP") by the Denver, Colorado HUD Office on June 12, 1991. Respondents were also suspended pending the outcome of any hearing on the proposed debarment. The suspension superseded the LDP.

Respondents requested a hearing on the proposed debarment by a letter to HUD's Office of Program Enforcement dated October 15, 1991. Because the action is based solely upon a conviction, the hearing in this case is limited under 24 CFR 24.313(b)(2)(ii) to submission of documentary evidence and written briefs. An Order dated November 14, 1991, established a schedule for the filing of briefs. In compliance with that schedule, as amended by subsequent order, the Department filed its brief on December 16, 1991; Respondents filed their response on February 24, 1992; and the Department filed its reply on March 11, 1992. Having received no further pleadings, this matter is ripe for decision.

Findings of Fact

1. Pursuant to the HUD/Federal Housing Administration ("FHA") single-family home mortgage insurance program, the Federal government provides insurance for private lenders against loss on mortgage loans granted to qualified borrowers. In conjunction with that program, HUD established the Direct Endorsement Program, whose purpose was to simplify and expedite the process by which lenders could secure mortgage insurance endorsements from HUD. Under the Direct Endorsement Program, the lender can underwrite and close FHA-insured mortgage loans without prior HUD review and approval. HUD rules and regulations set forth the standards and qualifications which have to be met by borrowers and lenders in order to obtain FHA mortgage insurance. When the Direct Endorsement lender determines that the standards and qualifications have been met, it issues a Certificate of Commitment that binds HUD to insure the property. Gov't. Ex. 1 at 1-2; Gov't. Ex. 3 at 1-2.

2. HUD requires that the borrower submit, through the Direct Endorsement lender, an Application for Commitment for Insurance ("Application") and supporting documentation. The documentation is to show that the borrower has adequate financial resources to make the required minimum investment from his own funds, *i.e.*, a downpayment, and that the borrower has, and will continue to have income adequate to meet the monthly mortgage payments. Gov't. Ex. 1 at 2; Gov't. Ex. 3 at 2.

3. If a borrower does not intend to reside in the property, HUD mandates that the maximum insurable loan will be 85% of the property's appraised value. The borrower is required to make a 15% investment in the property in order to assure an actual financial stake in the property, thereby increasing the likelihood that mortgage payments will be made, and decreasing the likelihood of default. HUD also requires the submission of a property appraisal. Gov't. Ex. 1 at 2; Gov't. Ex. 3 at 2.

4. HUD requires that the lender certify that the Application information, relating to the borrower's income, assets and liabilities, has been obtained directly from the borrower. The lender and borrower also are required to certify that the information supporting the borrower's qualifications is accurate. Gov't. Ex. 1 at 2.

5. The borrower is required to submit, through the lender, a Settlement Statement ("HUD-1") which shows, *inter alia*, the amount of cash paid at the closing by

the borrower. The information on the HUD-1 enables HUD to ascertain whether the borrower has made the required minimum investment. Gov't. Ex. 1 at 2-3.

6. HUD requires that the lender and borrower certify that the information submitted to HUD, including the Application, the HUD-1 and the Certificate of Commitment, is true and accurate. Gov't. Ex. 1 at 3.

7. U.S. Mortgage Company ("U.S. Mortgage"), located in Denver, Colorado, was an approved Direct Endorsement Program lender in the HUD single-family mortgage insurance program. Gov't. Ex. 1 at 3; Gov't. Ex. 3 at 2.

8. During the mid-1980s, Respondent was an independent real estate agent residing in Arvada, Colorado. He operated a real estate brokerage firm under the business name R.W. Exchange. Gov't. Ex. 3 at 2; Gov't. Brief at 4.

9. Donald Austin and James Grandgeorge were real estate investors and partners. Austin sold properties upon which U.S. Mortgage loans were generated. Austin and Grandgeorge were each one-third stockholders of Fidelity Escrow Services, Inc. Gov't. Ex. 1 at 3.

10. From 1984 through 1986, Austin and Grandgeorge perpetrated a massive scheme, involving between 700 and 800 properties and some 25 to 30 "investors," to fraudulently obtain HUD/FHA insured mortgages under the Direct Endorsement Program and profit thereby. Pursuant to the scheme, Austin and others would purchase multiple unit properties which were divided into single family dwellings by means of party wall agreements. Using inflated appraisals, purported "buyers" would then obtain mortgage loans from U.S. Mortgage, using falsified documentation, including loan applications, in order to "purchase" the single family dwellings. U.S. Mortgage would process the false documentation and submit the loans for HUD/FHA insurance. At closing the strawbuyers signed HUD-1s representing that they had made the required minimum investment when, in fact, they had not. Austin and Grandgeorge paid the strawbuyers $1,000 per property for applying for and obtaining the mortgages. After closing and prior to disbursing any funds, U.S. Mortgage would sell the mortgages to secondary mortgage companies at a profit. Gov't. Ex. 1 at 4-12; Gov't. Ex. 2 at 1-3.

11. In early 1985, Respondent agreed with Austin to locate mostly multi-unit residential properties in the Denver, Colorado, metro area for co-conspirators to purchase as described in finding no. 10, above. In exchange for locating properties, Respondent received a commission of 3% of the purchase price from co-conspirators.[1]

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[1]The record does not indicate the total amount of commissions Respondent received. The Department states that it has not attempted to calculate that amount, but suggests that an inference as to that amount be drawn from the price range of the properties Respondent himself purchased as a strawbuyer. *See* Gov't. Reply Brief at 6-7. The inference suggested by the Secretary, however, is speculative, and is therefore impermissible.

Eighty-four such properties were located and sold by Respondent.[2] Gov't. Ex. 2 at 2-3; Gov't. Ex. 3 at 4-5.

12. Between July 1, 1985, and July 30, 1986, Respondent agreed with other co-conspirators to act as the purchaser of 23 properties. He applied for mortgage loans at U.S. Mortgage to finance the purchases. At settlement, Respondent acquired a mortgage from U.S. Mortgage for each of the properties. At closing, he purported to make a cash investment as a downpayment, but in fact, made no actual investment. Instead, for his participation in the scheme, he received $1,000 for each property from a co-conspirator. For each such property, Respondent signed a HUD-1 indicating that he had made a cash payment in the amount listed, although he knew he had not made any cash payment. Gov't. Ex. 2 at 2; Gov't. Ex. 3 at 4-6.

13. In connection with the properties Respondent purchased as a strawbuyer:

a. On or about May 10, 1985, Respondent submitted a HUD Request for Verification of Employment. In the Verification of Employment, Respondent represented that he was employed as a foreman at General Contractors Ltd., whose mailing address was P.O. Box 1013, Arvada, Colorado, 80001, and that he had been employed since 1982. He also submitted an FHA Residential Loan application dated May 10, 1985, which stated that he had been employed for 2-1/2 years as a foreman at General Contractors Ltd. at the same address. Respondent knew that the statements were false, since he had never been employed in that capacity. The post office box number was, in fact, that of a co-conspirator. Respondent submitted these false statements because he believed his income as a realtor was too variable to permit him to qualify for the HUD-insured mortgage loans. Gov't. Ex. 2 at 3-4; Gov't. Ex. 3 at 6.

b. On or about July 10, 1986, Respondent submitted an Application in which he falsely stated that he and his wife had $[redacted] in cash assets and that he was employed as a foreman at General Contractors Ltd., earning $[redacted] per month. In a Request for Verification of Employment, dated June 1, 1986, Respondent falsely stated that he had been employed by General Contractors Ltd., P.O. Box 1013, Arvada, Colorado, 8001 since April 1981, and was earning $[redacted] per month. Respondent knew the statements were false, but agreed to make them in order to influence HUD to insure the mortgages. Gov't. Ex. 2 at 4; Gov't. Ex. 3 at 6.

c. Respondent signed and submitted a HUD-1 dated July 3, 1986, involving the sale of four properties to Capitol Cities Properties. The document indicated that Respondent had or would have an $[redacted] profit from the sale. Respondent submitted the HUD-1 as part of his application to purchase seven other properties located on W. 51st Ave., Arvada, Colorado. Respondent knew he would not be making an actual

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[2]The Amended Information that was filed by the U.S. Attorney for the District of Colorado (*see* finding no. 18) listed 84 properties as "included" in those Respondent located for co-conspirators. Gov't. Ex. 3 at 4.

profit from the sale to Capitol Cities Properties, but submitted the document to influence HUD to insure the mortgages on the W. 51st Ave. properties, and to make the loan package look legitimate. Gov't. Ex. 2 at 4; Gov't. Ex. 3 at 6.

14. As part of the conspiracy, in March 1986, Respondent acquired nine properties located on E. 33rd Ave., Denver, Colorado, on behalf of Austin and Grandgeorge. He purchased the properties for $90,000, or $10,000 per unit. To make the purchase, Respondent applied for and obtained a mortgage loan from World Savings and Loan in his own name. Austin and Grandgeorge contributed the money necessary for the 10% downpayment. Respondent further agreed to act as seller of the properties for Austin and Grandgeorge, and sold the properties on or about May 23, 1986, to other strawbuyers. The nine units were divided by party wall agreements and resold to the strawbuyers for $62,000 per unit. Respondent and each strawbuyer signed a HUD-1 for each of the nine properties, stating that for each property, the borrower had paid $9,764.82 in cash as a downpayment. Respondent and the strawbuyers knew the statements were false. Co-conspirators compensated the strawbuyers for having applied for HUD-insured mortgages at U.S. Mortgage by paying them approximately $1,000 per property. The profit on the sale was approximately $273,000. Respondent signed over that profit to Austin. Austin then paid Respondent approximately $10,000 for his participation in the purchase and sale of the E. 33rd Ave. properties. Gov't. Ex. 2 at 4-5; Gov't. Ex. 3 at 6-7.

15. After the HUD Denver Regional Office took notice of unusually high appraisals for certain properties in the Denver area, HUD's Office of Inspector General ("OIG") audited U.S. Mortgage.[3] On December 11, 1986, OIG issued an "interim" audit report concerning U.S. Mortgage's activities. OIG found serious violations with U.S. Mortgage's performance in HUD's Direct Endorsement Program. Based on those violations, HUD's Mortgagee Review Board suspended U.S. Mortgage's HUD/FHA mortgagee approval on December 19, 1986.[4]

16. In December 1986, after the Mortgagee Review Board suspended U.S. Mortgage's mortgagee approval, Respondent attempted to locate another mortgage company to create mortgages for his co-conspirators. Gov't. Ex. 2 at 5; Gov't. Ex. 3 at 8.

17. On June 15, 1987, HUD OIG issued a "final" audit report concerning U.S. Mortgage. In that report, OIG:

> found that U.S. Mortgage disregarded HUD requirements and prudent lending practices in originating loans. As a result of

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[3]Respondents' allegations concerning HUD facilitation of the scheme are discussed *infra*.

[4]The December 11, 1986 audit report was not introduced into the record. The only evidence concerning its content is a summary set forth in the December 19, 1986, letter advising U.S. Mortgage that its mortgagee approval had been suspended. Gov't. Ex. 4.

> serious weaknesses in U.S. Mortgage's originating practices, individuals were able to perpetrate an extensive scheme to fraudulently obtain FHA insurance on investor mortgages.

Gov't. Ex. 5 at i.

18. Pursuant to a plea agreement with Respondent, on February 20, 1991, the U.S. Attorney for the District of Colorado filed a one-count Amended Information charging Respondent with conspiracy to make false statements to HUD, in violation of 18 U.S.C. §§371, 1001 and 1010. Respondent agreed to plead guilty to the information, to testify as a government witness in any proceeding related to the facts of his case, and to pay a $50 victim/witness assessment fee at the time of sentencing. Gov't. Ex. 2 at 1; Gov't. Ex. 3.

19. On April 17, 1991, the United States District Court for the District of Colorado found Respondent guilty in accordance with his plea. The Court committed Respondent to the custody of the Attorney General or his duly authorized representative for five years, on the condition that he be incarcerated for four months, with the remainder of the sentence suspended, and that he be placed on probation for five years. As a special condition of his probation, Respondent was required to be placed on home detention for two months with a monitoring device. Respondent was also required to make restitution to HUD in the amount of $12,000, payable in installments during the period of probation, and to pay the victim/witness assessment fee described above. Finally, Respondent was ordered to undergo mental health counseling as directed by the Probation Officer. Gov't. Ex. 6.

20. On May 22, 1991, a superseding indictment was filed in the United States District Court for the District of Colorado charging 13 individuals in connection with the scheme to fraudulently obtain HUD-insured mortgages from U.S. Mortgage. The Superseding Indictment contained 123 counts, charging multiple violations of 18 U.S.C. § 1341 (mail fraud), 18 U.S.C. §1343 (wire fraud), 18 U.S.C. §1010 (false statements) and 18 U.S.C. §2(a) (aiding and abetting). Austin and Grandgeorge were among the individuals charged. Gov't. Ex. 1.

21. The District Court conducted its criminal trial from November 4, 1991, through December 30, 1991. Eight of the 13 defendants charged in the indictment pleaded guilty to various offenses. The remaining five were tried: Austin, Grandgeorge, John LaGuardia, President of U.S. Mortgage, Mark Druva, an appraiser for U.S. Mortgage, and William Stoll, of Fidelity Escrow Services. On December 30, 1991, a 12 member federal jury returned verdicts finding LaGuardia, Druva and Stoll not guilty on all counts charged in the indictment.[5] Austin and Grandgeorge were found guilty on 95 and 65 counts, respectively, and were sentenced on February 10, 1992. Austin's and Grandgeorge's sentences included up to 3 years imprisonment each and payment, jointly

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[5]Neither the government nor Respondents demonstrate that these acquittals have any impact on the issues in this case. *See* Gov't. Reply Brief at 3, and Resps.' Brief at 7.

and severally, of $12,618,772 in restitution. Resps'. Brief at 1-2; Gov't. Reply Brief at 2-3; Gov't. Ex. 8.

22. By letter dated June 12, 1991, HUD's Regional Administrator-Regional Housing Commissioner for the Denver, Colorado Regional Office issued an LDP against Respondent based upon his conviction. The LDP barred Respondent from participating in all HUD programs throughout the jurisdiction of the Denver Regional Office for a period of one year. Gov't. Ex. 7.

23. As detailed above, by letter dated September 17, 1991, HUD's Assistant Secretary for Housing-Federal Housing Commissioner proposed to debar Respondent and R.W. Exchange for a period of five years from the date of the LDP, and suspended them pending the outcome of this proceeding.

24. As of December 16, 1991, the total loss to HUD on 16 of the 23 properties for which Respondent served as the strawbuyer (*see* finding no. 12, above) and 7 of the 9 E. 33rd Ave. properties which Respondent acquired for Austin and Grandgeorge and then sold to other strawbuyers (*see* finding no. 14, above) was $1,320,601.64.[6] Rinde-Thorsen Declaration at 3-4; Gov't. Ex. A.

Discussion

1. Respondent and His Named Affiliate Are Subject to Debarment Under 24 CFR Part 24

Respondent, as a real estate agent and operator of a real estate brokerage firm, as well as a strawbuyer, engaged in HUD/FHA-insured mortgage transactions, and is thereby considered a "participant" and "principal" in "covered transactions." 24 CFR 24.105(m) and (p), 24.110(a)(1). Respondent is therefore subject to HUD's debarment regulations.

Respondent conducted his real estate business under the name R.W. Exchange. According to the Department, R.W. Exchange is a "business entity" and should be debarred along with Respondent as an affiliate, pursuant to 24 CFR 24.105(b). Gov't. Brief at 11. Respondent does not challenge the Department's assertion that R.W. Exchange is an affiliate. Accordingly, R.W. Exchange is subject to HUD's debarment regulations as an affiliate.

2. Respondent's Conviction Constitutes Cause for Debarment

Pursuant to the Department's debarment regulations, HUD may institute debarment proceedings based on a conviction for the following causes:

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[6]The Department avers that HUD's actual losses on the properties for which information was available may ultimately be greater. However, this speculation bears no weight in reaching a determination in this case.

> (1) Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction. 24 CFR 24.305(a)(1).
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> (2) Embezzlement, theft, forgery bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice. *Id.* at 24.305(a)(3).

Additionally, a debarment may be based on "[a]ny other cause of so serious or compelling a nature that it affects the present responsibility of a person." *Id.* at 24.305(d).

Respondents do not challenge the existence of cause for debarment. Indeed, 24 CFR 24.313(b)(3) provides that cause for debarment must be established by a preponderance of the evidence, a standard deemed met by proof of a conviction. As Respondent was convicted of conspiring to make false statements to HUD in order to fraudulently obtain HUD insured mortgage loans from U.S. Mortgage and profit thereby, the Department has satisfied its burden that cause for debarment exists under 24 CFR 24.305(a)(1) and (a)(3). Having concluded that cause for debarment exists under 24 CFR 24.305(a)(1) and (a)(3), I need not consider whether cause also exists under 24 CFR 24.305(d).

3. A Five-Year Period of Debarment is Warranted

The existence of cause does not necessarily require that a respondent be debarred. Debarment is a discretionary action; HUD must also determine whether a respondent's conduct is serious, whether debarment is necessary to protect the public interest, and whether there are any mitigating factors. *See* 24 CFR 24.115(a), (b) and (d). The respondent has the burden of proof for establishing mitigating circumstances. *Id.* at 24.313(b)(4). The period of debarment must be commensurate with the seriousness of the cause(s), and for causes such as those present in this case, it generally should not exceed three years. *Id.* at 24.320(a)(1). However, "[w]here circumstances warrant, a longer period of debarment may be imposed." *Id.*

The debarment process is not intended as a punishment, rather, it protects governmental interests not safeguarded by other laws. *Id.* at 24.115(b). *See also Joseph Constr. Co. v. Veterans Admin.*, 595 F. Supp. 448, 452 (N.D. Ill. 1984). These governmental and public interests are safeguarded by precluding persons who are not "responsible" from conducting business with the Federal government. *See* 24 CFR 24.115(a). *See also Agan v. Pierce*, 576 F. Supp. 257 (N.D. Ga. 1983); *Stanko Packing Co., Inc. v. Bergland*, 489 F. Supp. 947, 948-49 (D.D.C. 1980).

"Responsibility" is a term of art which encompasses business integrity and honesty. *See* 24 CFR 24.305. *See also Gonzalez v. Freeman*, 334 F.2d 570, 573 & n.4, 576-77

(D.C. Cir. 1964). Determining "responsibility" requires an assessment of the current risk that the government will be injured in the future by doing business with a respondent. *See Shane Meat Co., Inc. v. U.S. Dep't of Defense*, 800 F.2d 334, 338 (3d Cir. 1986). That assessment may be based on past acts, including a previous criminal conviction. *See Agan*, 576 F. Supp. at 261; *Delta Rocky Mountain Petroleum, Inc. v. U.S. Dep't of Defense* 726 F. Supp. 278 (D. Colo. 1989).

The government asserts that imposition of five-year period of debarment is appropriate in this case, based on the nature and number of transactions for which Respondent was convicted, the losses incurred by HUD in connection with Respondent's conduct, and a rejection of Respondents' proffered evidence in mitigation.

Respondents have correctly recognized the seriousness of the conduct for which Widler was convicted, and have acknowledged that some sanction is necessary to protect the public interest. However, they expound a lengthy series of mitigating circumstances and request that the period of debarment be limited to one year, or through the date of this initial determination. To that end they aver that:

1. The federal District Court Judge who sentenced Respondent did not view Widler as a repeat offender, since she characterized Respondent's conduct as a "one-time occurrence;"

2. The federal District Court Judge viewed Respondent, as well as the government, as a victim of Austin's scheme;

3. HUD's loss calculation is based on allegedly high appraisals, which were reviewed and approved by HUD itself;

4. Respondent has already been punished as a result of the sentence imposed by the federal District Court Judge;

5. The fact that the government's investigation has not resulted in a finding of any additional wrongdoing during the considerable amount of time that has passed since he committed the acts for which he was convicted demonstrates that Respondent does not have a tendency to be involved in criminal activity;

6. Respondent's criminal activity ended in the Fall of 1986, contrary to the suggestion of the government that it continued through his plea in 1991;

7. Respondent has demonstrated remorse and responsibility for his actions, as demonstrated by his voluntary plea of guilty, his cooperation with the government while still subject to four months incarceration, and his having to pay the government $12,000 in restitution;

8. Respondent's credit has been ruined, and he faces sanction by the Colorado Real Estate Commission; and

9. HUD has unclean hands, and consideration should be given to its role in facilitating the unlawful acts at issue. The government investigation, which took five years, revealed HUD conduct that led Respondent to believe his actions were permissible. *Id.* at 9-10.

For the reasons discussed below, none of the factors enumerated by Respondents sufficiently militates against imposition of the five-year period of debarment sought by the Department.

Although the federal District Court Judge commented that, in her view, Respondent's criminal conduct was a "one-time occurrence" and that she doubted Respondent would "ever be in trouble on real estate matters in the future," those comments were made in different contexts than those involved here. The District Court Judge's remarks were made during criminal sentencing while responding to the question whether Respondent's conviction would automatically prevent him from doing business in a regulated real estate industry. Those remarks did not address the assessment of Respondent's present responsibility; that is, whether he currently possesses the requisite integrity and honesty to do business with the government. In making that determination, consideration should be given to the District Court Judge's remarks, not cited by Respondent, that his conduct was "very serious" and constituted "stealing from the Government."

The punishment Respondent has already endured is also not persuasive evidence in mitigation.[7] The punitive effect of a criminal sentence has no relevance *per se* to the remedial purpose of debarment; i.e., to protect governmental interests not otherwise protected. Likewise, Respondent's diminished credit rating and his sanction by state real estate regulators, even if viewed as having a punitive effect, are not relevant to the issue of present responsibility. They are consequences of his actions and have not been shown to be indicia of rehabilitation.

Although in excess of five years have passed since the last unlawful act for which Widler was convicted, two concerns negate any mitigating effect which could otherwise be given to that passage of time. First, after U.S. Mortgage was suspended by the Mortgagee Review Board, he proceeded to seek out another underwriter to further the conspiracy. Respondents do not deny that those efforts were made with knowledge that U.S. Mortgage had been suspended and that they knew the reasons for the suspension. Those attempts were made approximately five months after the last of the other overt acts for which Widler was convicted. Second, other than establishing his cooperation with the government pursuant to a plea agreement, he has failed to adduce any

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[7]Respondent makes specific reference to his payment of $12,000 in restitution. *See* Resps'. Brief at 3. However, he fails to note that he was paid $23,000 for acting as a strawbuyer, $10,000 for his participation in the purchase and sale of properties to other strawbuyers (*see* finding nos. 12 and 14, above), and received a 3% commission on the properties he located for other co-conspirators to buy (*see* finding no. 11, above).

affirmative evidence that since 1986, his personal or professional conduct has been of such exemplary character as to demonstrate present responsibility.

Most significantly, much of Respondents' argument in support of mitigation merely seeks to shift blame onto others, namely Austin and HUD. His self-depiction as one of Austin's victims and his reliance on purported HUD involvement as a contributing factor to his fall demonstrate that he has yet to take full responsibility for his unlawful actions.

Contrary to the picture painted by Respondents, it is far from clear that either the judge who sentenced Austin or the prosecution in Austin's trial viewed Widler as a victim. Although in sentencing Austin, the judge characterized some, and even many, of the strawbuyers as victims, those references did not explicitly, or otherwise necessarily, include Widler. Similarly, the prosecution theorized that some of the strawbuyers were victims, but did not refer specifically to Widler as one of them. Indeed, because Widler not only acted as a strawbuyer, but also actively participated in the scheme by locating properties for co-conspirators and by purchasing properties on behalf of Austin and Grandgeorge for other strawbuyers to purchase, there is little, if any, reason to conclude that Widler was merely a dupe. His focus on the "educated" unindicted strawbuyers who believed their involvement in the scheme to be legal, and who were not required to make restitution from their profits, gives little, if any, reason to conclude that he fully appreciates his responsibility for his own actions.

Respondent gives great weight to the role HUD purportedly played in the events for which he has been held accountable, including the losses it incurred and its purported suppression of certain audit findings. However, a review of any such evidence is unnecessary here. Even assuming the complicity of some government employees, the blatant and distinct criminality of Respondent's overt acts relating to strawbuying and falsification of documents cannot be gainsaid. That is not to say, of course, that any government employee or official who engages in improper or unlawful conduct should not be held accountable. It is only to conclude that such conduct may be the appropriate subject of separate actions against those individuals.

The duration of a debarment should be the minimum necessary to insure that risk to government mortgage insurance programs is minimized by assuring that real estate agents and the businesses they operate act in connection with those programs with the highest degree of honesty and integrity. The period should be long enough to demonstrate that the government takes the conduct at issue seriously, and that it will refrain from doing business with debarred contractors and grantees until they have had sufficient time to reflect on the cause for their debarment and to conform their conduct to the standard of present responsibility. Given the breadth of Widler's participation in the unlawful conspiracy, the lack of any objective evidence of remorse, the lack of any evidence upon which one could conclude that he fully appreciates the consequences of his own conduct or that he is now willing to conform his conduct to the standard of a presently responsible government contractor or grantee, and the lack of any other demonstrated factor in mitigation, a period of debarment of five-years is warranted.

Conclusion and Determination

Upon consideration of the public interest and the entire record in this matter, I conclude and determine that cause exists to debar Richard Duane Widler and his named affiliate, R.W. Exchange, from further participation in covered transactions and lower tier covered transactions for five years from the date of his suspension on June 12, 1991.

ALAN W. HEIFETZ
Chief Administrative Law Judge