



process and equal protection because the Consolidated List does not state the type of sanction imposed on those listed. The Government responded to Appellant's motion, contending that 5 U.S.C. § 500, et seq. is not applicable to debarment actions pursuant to 24 C.F.R., Part 24; the Department has complied with 24 C.F.R. § 2.62 or, in the alternative, failure to comply constituted harmless error; and the inclusion of Appellants on the Consolidated List, if they are debarred, would not violate their constitution rights because the list does indicate the extent of restriction, i.e. type of sanction, imposed.

### Decision

Debarments by the Department of Housing and Urban Development are imposed pursuant to 24 C.F.R., Part 24. That regulation was promulgated pursuant to the general rule-making authority of the Secretary under 42 U.S.C. § 3535(d). The Administrative Procedure Act, 5 U.S.C. § 500, et seq., is only applicable to hearings mandated by statute, not those provided for by agency rule-making authority. 5 U.S.C. § 554(a). The courts have held that even though a full Administrative Procedure Act hearing is not required, "considerations of basic fairness" require administrative regulations establishing standards for debarment procedures to include notice of specific charges; an opportunity to cross-examine adverse witnesses; and an opportunity to present evidence. Gonzales v. Freeman, 334 F. 2d 570 (D.C. Cir; 1964), Horne Brothers, Inc. v. Laird, 463 F. 2d 1268 (D.C. Cir. 1972). However, the precise format of such a hearing has been left to the individual agencies. The HUD regulation applicable to debarment provides for a hearing that comports with the letter and spirit of Gonzales and Horne Brothers, supra.

Appellant's contention that 24 C.F.R. § 2.62 applies to a proposed debarment hearing is incorrect. That regulatory provision is applicable to effectuate the provisions of Title VI of the Civil Rights Act of 1964 to the end that no person shall be excluded from participation in any program receiving Federal financial assistance from HUD on the basis of race, color or national origin. 24 C.F.R. §2.1. The procedures for a debarment hearing are wholly contained in 24 C.F.R., Part 24.

Finally, Appellants contend that their constitutional rights to due process and equal protection will be violated if they are debarred and their names are placed on the Consolidated List because the list does not state the "extent of restriction imposed, i.e., debarment, suspension, or other sanction, as required by Title 24, Code of Federal Regulations, §24.21(e)". As Appellants have observed, the Consolidated List is required by regulation to show the extent of restrictions imposed. Appellant has offered no evidence that the Consolidated List does not contain such information. Furthermore, Appellants have no standing to raise this issue because they have not yet been

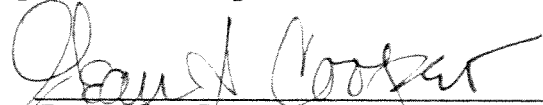
debarred, nor have their names been placed on the Consolidated List.

Appellants have raised no grounds that support a dismissal of the above debarment action. Appellants shall immediately prepare for a hearing.

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The Motion to Dismiss is denied.

ORDERED this 8th day of January, 1982.



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Jean S. Cooper  
Administrative Judge  
HUD Board of Contract Appeals