

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
BOARD OF CONTRACT APPEALS
WASHINGTON, D.C.

In the Matter of:

KAY YARBROUGH,

Respondent.

HUDBCA No. 92-C-7514-D33
Docket No. 92-1810-DB

For the Respondent:

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For the Government:

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DETERMINATION BY ADMINISTRATIVE JUDGE JEAN S. COOPER

October 28, 1992

Statement of the Case

By letter dated December 26, 1991, Kay Yarbrough, Respondent in this case, was notified that the U.S. Department of Housing and Urban Development (HUD) intended to debar her from participation in primary and lower-tier transactions as a participant or principal at HUD, including HUD procurement contracts, and throughout the Executive Branch of the Federal Government, for a period of five years. Pending determination of debarment, Yarbrough was suspended pursuant to 24 C.F.R. §24.405(a)(2).

HUD proposes the five-year debarment of Yarbrough based on an alleged willful and egregious pattern of serious irregularities in loan origination practices while Yarbrough was a loan officer at Gateway Mortgage Company (Gateway). Specifically, HUD charges Yarbrough with facilitating or allowing the submission of false documents to HUD in the

processing of seventeen loans for HUD-FHA mortgage insurance. HUD also charges that Yarbrough participated in a scheme with realtors, salespersons, and mortgagors that enabled mortgagors to evade meeting HUD's minimum investment requirement for insured mortgages, in that Yarbrough knew but hid the fact that sellers were paying all or a part of the down payment and closing costs for mortgagors, which resulted in those seller credits not being utilized to reduce the maximum allowable mortgage amount. In addition, HUD charges that verification documents were handcarried by mortgagors, realtors, and salespersons with Yarbrough's knowledge and consent, in violation of HUD requirements. It further charges that Yarbrough failed to conduct a face-to-face interview with at least eleven of the mortgagors, although she represented that she had conducted such interviews, and that she therefore failed to properly obtain and report information relative to mortgagor eligibility, which facilitated the presentation of false information and documentation submitted to HUD. HUD charges that Yarbrough acquiesced in or caused mortgagors to make false certifications to HUD on HUD Form 92900 and HUD-1 Settlement Statements. HUD cites 24 C.F.R. §§24.305(b),(d), and (f) as grounds for Yarbrough's debarment, based on these alleged violations of HUD program requirements.

Yarbrough denies all of the charges made by the Government. At the hearing, no evidence of any wrongdoing by Yarbrough in the Devoz, ██████████ Haggerty, Clark, Griffin/Jackson, Hernandez, or Gaddis transactions was presented by the Government in its case-in-chief, and charges concerning those transactions were dismissed for failure of proof.

RELEVANT HANDBOOK REQUIREMENTS FOR LOANS INSURED BY HUD-FHA

HUD Handbook 4000.2 REV 1 (Mortgagee's Handbook - Application Through Insurance - Single Family) describes the HUD policies and procedures required of approved mortgagees in preparing and submitting applications to HUD for mortgage insurance. Chapter 5 of Handbook 4000.2 REV-1 describes the loan origination responsibility of the mortgagee. Paragraph 5-1 of the Handbook requires that mortgagees develop loans:

in accordance with accepted practices of prudent lending institutions and HUD requirements. They must obtain and verify information with at least the same care that would be exercised in originating a loan in which the mortgagee would be entirely dependent on the property as security to protect its investment.

Paragraph 5-2 of Handbook 4000.2 REV-1 describes the procedures for obtaining borrower approval from HUD for mortgage insurance by use of HUD Form 92900, Application for Insured Mortgage. It states that the Form 92900 provides the information necessary to determine the borrower's probable ability to make the payments on the mortgage and to maintain the property. Paragraph 5-2(a) of the handbook provides, in pertinent part:

In accordance with prudent lending practices, a face-to face interview with the loan applicant must be conducted by a company employee, at which time the fully completed loan application should be reviewed with the loan applicant. HUD requires

that the Form HUD 92900 be completed prior to the applicant(s) signing the form. The applicant(s), in signing, are certifying that the information on the form is true and correct to the best of their knowledge and belief.

Paragraph 5-5 of the Handbook describes how information for the Form 92900 is to be collected. Paragraph 5-5 states in pertinent part:

It is the mortgagee's responsibility to carefully ascertain and report all assets and liabilities for the prospective purchaser. It is important to emphasize that the credit report, verification of employment, and verification of deposits be sent directly to the mortgagee and not pass through the hands of any third party, including the borrower or real estate agent. Allowing the form to be handcarried by an interested party greatly increases the chance that false or inaccurate information may be submitted to HUD. The mortgagee must not permit the applicant borrower, or its own employees to sign any credit document or other form in blank. The purpose of having a party to the transaction sign any form is to acknowledge and/or certify the accuracy of its content. These objectives cannot be accomplished if a form is signed in blank. In addition, the opportunity to submit false information to HUD is greatly increased.

Paragraph 5-5(b) of the Handbook describes the verification of employment and income of applicants for an insured mortgage. It states that HUD Form 92004-G, the Verification of Employment (VOE), must be sent by the mortgagee directly to the borrower's and co-borrower's employer, and that the VOE is to be returned directly to the mortgagee. The Handbook further states that the VOE must not pass through the hands of the applicant, real estate agent, or any other third party.

HUD Handbook 4060.1, entitled Mortgagee Approval Handbook, also contains instructions in Appendix 1 applicable to the gathering of information necessary to complete the Form 92900. Appendix 1 of Handbook 4060.1 states in pertinent part:

Preparation of Form HUD-92900 Application

- (1) In accordance with prudent lending practices, at least one time prior to the submission of the final application to HUD, a face-to-face interview with the loan applicant must be conducted by a company employee. The most preferable time for such face-to-face interviews is immediately prior to the signing of the final loan application (Form HUD-92900), at which time the fully completed loan application should be reviewed with the loan applicant. The interview with the applicant should include a review of the occupancy certification to minimize the likelihood of a false certification regarding intention to occupy.
- (2) The preliminary credit application form used by the mortgagee should require, in accordance with accepted prudent loan origination practices, that the

applicant mortgagor list each outstanding liability, including mortgage liabilities, and each asset, including real property. The mortgagee should obtain complete responses to all questions. All conflicts in information should be resolved and the loan file documented.

- (3) As required by HUD regulations, 24 C.F.R. Sections 203.2(a)(2) and 203.10, all loans submitted to HUD must be fully processed by employees of the mortgagee.
- (4) In accordance with prudent lending practices, the mortgagee must not permit the applicant mortgagor, or its own employees to sign any credit document or other form in blank.
- (5) HUD Handbook 4000.2 paragraph 3-7, requires the mortgagee to obtain and verify the correctness of information with at least the same care that would have been exercised had it been entirely dependent on the property as security to protect its investment. Accordingly, the final application Form HUD-92900 must list all assets and liabilities known to the mortgagee. Consideration should be given by the mortgagee to requiring some level of review by management or supervisory officials of all cases submitted to HUD for mortgage insurance.

HUD Handbook 4200.2 REV-1 sets out the applicable minimum investment requirements for borrowers. Section 2-7 of Handbook 4200.2 REV-1 states in pertinent part:

- 2-7. MINIMUM INVESTMENT BY BORROWER. The borrower's investment in the property must be equal to the difference between the total cost of acquisition and the amount of the mortgage to be insured, but at least 3 percent of the cost of acquisition. In no instance may his/her investment be less than the difference between the cost of acquisition (the total cost including repairs, alterations or additions, plus closing costs, but exclusive of non-realty items or prepaid expenses) and the amount calculated by applying the appropriate formula from paragraph 2-6b. to the acquisition cost.

FINDINGS OF FACT

1. Kay Yarbrough has been a loan officer with various mortgage companies from 1983 to the present. She is currently employed at Reliance Mortgage, originating conventional loans. From late 1988 until she resigned in May, 1990, Yarbrough was a loan officer at Gateway in Dallas, Texas. During her employment with Gateway, Yarbrough was the loan officer for a number of home loans insured by HUD-FHA. (Tr. 934-935.)

2. Gateway was a Direct Endorsement (DE) lender. As a DE lender, Gateway underwrote loans for HUD, and submitted them to HUD after closing for issuance of a

mortgage insurance certificate. HUD relies on its DE lenders to originate and underwrite loans using prudent lending practices, and following HUD requirements and procedures outlined in relevant HUD Handbooks. The HUD-approved underwriter for Gateway was Ray Walker. (Exhs. G1-G5; Tr. 55-69, 762.)

3. It was Yarbrough's duty as a loan officer to generate loan business for Gateway by calling on builders, developers, and realtors, and attending professional functions to publicize Gateway's loan origination services. Once Gateway was contacted about a potential borrower, a loan officer would contact the borrower, meet the borrower if at all possible, and take a preliminary loan application, using the FNMA Form 1003. Yarbrough usually conducted preliminary loan application interviews at realtors' offices, rather than at Gateway, for the convenience of the borrowers. It was her duty to record the information given to her during the preliminary loan application interview on the FNMA Form 1003, to have the borrowers sign and date it, and to sign and date it herself, marking on the form whether she had gathered the information from the borrower in a face-to-face interview, by telephone, or by mail. (Tr. 936-939.)

4. Verifications of employment, deposit, and rent would also need to be signed by the borrowers so that they could be sent out by the Gateway loan processors. It was Gateway's practice, and Yarbrough's, that the borrowers would sign these forms in blank, usually at their preliminary loan interview, before the names and addresses of their employer, bank, credit union, or landlord was filled in, as appropriate to each form. Yarbrough would give the completed FNMA Form 1003 and the signed verifications to Renee Divins, who was the supervisor of the loan processors at Gateway. Divins would assign each case to a loan processor, who would send out all of the verifications after having the necessary information typed in, would order a credit report on each borrower, and collect and collate the required information for the loan file. The processors would also prepare the HUD Form 92900, which is the application for mortgage insurance. According to Michael Ranier, the President of Gateway, it was also Yarbrough's duty to coordinate with the loan processing staff and to help get loans processed and closed. However, Yarbrough preferred to play no further role in the processing or closing of a loan after she brought the preliminary application back to Gateway, unless circumstances required her to do so. (Tr. 759, 779-780; 939-942.)

5. Yarbrough was a prolific producer of loan business for Gateway. She brought with her a clientele that she had already developed who referred loan business to her. Gateway's caseload increased so much after Yarbrough joined the company that additional personnel was hired to process the loan business generated by Yarbrough. (Tr. 235, 255-257, 760, 763, 825-826, 948-949.)

6. Yarbrough was the loan officer for the loan transactions involving [REDACTED] Romero (aka Mendoza); [REDACTED] Haggerty; [REDACTED] Rejcek, [REDACTED] Sherman, [REDACTED] Cress, [REDACTED] Douglas, [REDACTED] Garza, [REDACTED] Garza, [REDACTED] Sandoval, [REDACTED]

██████████ Torres, and ██████████ Whitfield. In each transaction, Yarbrough marked that she had personally gathered the information on the FNMA Form 1003 directly from the borrowers. For the Douglas transaction, she marked on the FNMA Form 1003 that she had obtained the preliminary loan information from the Douglases by mail and telephone. For the Sandoval transaction, she marked on the FNMA Form 1003 that she had obtained the information by telephone. For the other transactions, she marked on the FNMA Form 1003 that she had obtained the information directly from the borrowers in a face-to-face interview. Yarbrough signed each FNMA Form 1003 as the interviewer of the borrowers. (Exhs. G-6, G-32, G-38, G-47, G-60, G-64, G-82, G-87, G-91, G-108, G-112, G-116.)

7. The only mortgagors that Yarbrough interviewed personally, without using anyone else as an intermediary, were the Shermans and Rejceks. Although Yarbrough testified that she had interviewed each borrower as she had indicated on the FNMA Form 1003's, I find that, based on the preponderance of the credible evidence, Yarbrough did not personally interview any of the other borrowers to obtain the information on the FNMA Form 1003. She may have met the borrowers at some time either before or after they purchased their houses, but she did not conduct the preliminary loan application interviews at which the information used by the lender to collect and verify required documentation of credit worthiness is first presented. I find that Yarbrough arranged to have Jeff Bosse, a realtor and developer, or Bosse's wife Donna, conduct the preliminary loan application interviews of ██████████ Romero (aka Mendoza); ██████████ Haggerty; ██████████ Douglas, ██████████ Garza, ██████████ Garza, ██████████ Sandoval, ██████████ Torres, and ██████████ Whitfield. Jeff or Donna Bosse directly interviewed the Spanish-speaking borrowers who could not speak English. Yarbrough does not speak Spanish and understands only a few words. I find that Yarbrough was not asking the questions in English and having the Bosses translate the questions into Spanish for the borrowers, as she claimed. The Bosses conducted those interviews without Yarbrough's participation. Yarbrough did reverify a few terms with the Sandovals in a three-way telephone call with the Sandovals, Bosse, and Yarbrough, but she was not the interviewer of the Sandovals for the preliminary loan application. I further find that she did not interview ██████████ Cress, but utilized information provided to her by ERA Realty to complete the FNMA Form 1003 for ██████████ Cress.

Each of the borrowers who testified had a clear recollection of the person to whom they gave the financial information that appears on the FNMA Form 1003. They were emphatic that they had given it to someone other than Yarbrough, usually Jeff Bosse. Jeff Bosse confirmed that he collected preliminary loan application information for Yarbrough and obtained the signatures of the borrowers on blank FNMA Form 1003's, as well as on the required verification forms and releases. Yarbrough provided him with these forms and he would give them back to her after they were signed by the borrowers. Yarbrough would transfer the information collected by Bosse onto the signed FNMA Form 1003s, and would sign and date them after marking on the forms that she had interviewed the borrowers. Brenda Flasowski, a loan processor at Gateway, observed Yarbrough transferring information about borrowers onto blank pre-signed FNMA Form 1003's. (Tr. 252, 259, 264, 331, 404,

455, 474, 482, 484, 613, 658, 710, 714-716, 726, 727-728, 739-740, 743, 745, 749, 755, 761-763, 1111, 1113-1115, 1119-1122, 1122-1123, 1168, 1170, 1172-1174, 1179, 1197, 1239, 1240, 1285, 1288, 1294.)

8. Michael Ranier and Ray Walker, the Gateway underwriter, caught Yarbrough in the process of transferring information collected by Bosse about the Douglases onto a blank FNMA Form 1003. They confronted Yarbrough and ordered her not to do such a thing again because it was against Gateway policy. Yarbrough assured Ranier and Walker that it was an atypical incident they had witnessed, and that she would reverify all of the information by telephone with the Douglases. I find that Yarbrough did not reverify the information, and did not subsequently speak with ██████ Douglas by telephone to do so, despite her testimony to the contrary. ██████ Douglas' testimony that she never spoke with him by telephone or otherwise was convincing. Yarbrough did not represent on the FNMA Form 1003 that she had interviewed the Douglases face-to-face. (Tr. 761-763, 771, 773-774, 964, 1226, 1230, 1231.)

9. False information permeated the preliminary loan application and application for mortgage insurance (HUD Form 92900) of ██████ Romero, who was actually ██████ Mendoza, wife of ██████ Mendoza. ██████ Mendoza's loan application stated that she was a single woman named ██████ Romero, rented an apartment at ██████ Melba, Dallas, Texas, was the office manager of Garcia's Auto Sales, and had a car loan with ABC Motors. In fact, Romero did not live at ██████ Melba, which was a property owned by Jeff Bosse. She did not work for Garcia's Auto Sales in any capacity, and she did not have a car loan with ABC Motors, which was the employer of ██████ Mendoza. Jeff Bosse devised the scheme to present ██████ Mendoza as an unmarried borrower when he realized that ██████ Mendoza had too many credit problems to qualify for a loan. Because Texas is a community property law state, if a loan applicant is married, their spouse's credit must be taken into account, and the loan is given to the couple, rather than one individual. Bosse coached ██████ Mendoza to sign her name to all loan documents as ██████ Romero, and also "created" the false rental information, and false employment for her that was subsequently "verified" by a forged Verification of Employment (VOE). The scheme to defraud in the Romero/Mendoza case was created by Jeff Bosse with the complicity of the Mendozas. There is no evidence at all that Yarbrough knew of the scheme to present false information about ██████ Mendoza or otherwise participated in it. Ultimately, the Mendozas did not even know that they had bought a house. They had told Bosse that they did not want to go through with the purchase. The Mendozas were unaware that the loan had been closed until they received a notice of foreclosure on the mortgage. There is no evidence that Yarbrough was in any way involved in the closing, or that she was aware that ██████ Romero (Mendoza) had refused to close the sale. (Exhs. G-6, G-19, G-22, G-23, G-26, G-27, G-28, R-13, B-1; Tr. 972-974, 997-1003, 1022, 1193, 1238, 1243, 1248, 1254-1256, 1258-1259, 1274, 1276-1277, 1279, 1280, 1302-1303.)

10. Although Yarbrough was the loan officer for the Douglas transaction, she did no more than copy information that Jeff Bosse provided to her onto a pre-signed FNMA Form

1003, on which she indicated that the information was obtained from the Douglases by mail and telephone. Neither Yarbrough nor any other Gateway employee interviewed the Douglases face-to-face, or went over the loan application with them before it was sent to the underwriter. The loan was underwritten without the signature of either borrower on the HUD Form 92900. Renee Divins, the loan processor supervisor, testified that Yarbrough insisted that the Douglas loan be underwritten without either of their signatures, and that Yarbrough brought sufficient pressure to get the loan underwritten in that fashion. Although Yarbrough denied it, I credit Divins' testimony as the more credible. False information about the Douglases was provided to Yarbrough by Bosse, which got transferred onto the HUD Form 92900 and the closing statement (HUD 1). The VOE, W-2, and pay stub purporting to accurately reflect the income of [REDACTED] Douglas were all fabricated, and those documents were relied upon by Gateway in underwriting the mortgage. There is no evidence that Yarbrough knew that Bosse had provided her false information or that false documentation was in the Douglas file. Also, the Douglases were given cash to make the earnest money deposit by Bosse, and this was not revealed on the HUD 1. Bosse claimed that the cash he gave the Douglases was for work performed on the house as "sweat equity." However, there was no indication of any "sweat equity" arrangement in the contract of sale, and neither of the Douglases made any reference to getting cash in exchange for work done on the property. I do not credit Bosse's testimony on that matter, nor do I credit his testimony that he told Yarbrough the Douglases had a "sweat equity" agreement with him for which he gave them money. (Exhs. G-82, G-83, G-84, G-86, G-83A; Tr. 304, 307, 331-332, 334, 34-342, 966-967, 1128-1130, 1160; 1163-1164, 1127-1128.)

11. When Yarbrough interviewed [REDACTED] Sherman, she did not record on the FNMA Form 1003 a monthly payment that the Shermans were making to Mrs. Sherman's father for an automobile. The automobile had been purchased by Mrs. Sherman's father for the Shermans' sole use. Although Mrs. Sherman's father was liable to GMAC for the monthly car payments, not the Shermans, the Shermans had an oral contract by which they paid the car payment each month to Mrs. Sherman's father. This monthly payment would not appear on any credit report for the Shermans because the debtor of record was Mrs. Sherman's father. The Shermans both testified that they told Yarbrough about the monthly payment they were making. Yarbrough denies that the Shermans told her about the payment. The Shermans both testified that they explained their payment obligation on the car to Yarbrough, who told them that it was "not relevant" because it was not legally their liability, but was the liability of Mrs. Sherman's father. I find the Shermans' testimony to be more credible on whether they told Yarbrough about the monthly payments. I conclude that Yarbrough decided to omit this information from the FNMA Form 1003 because she knew that the car payments would not appear on a credit report for the Shermans. (Exhs. G-60, G-62; Tr. 360-362, 365-366, 368-369, 371-372, 957.)

12. When Yarbrough started to interview [REDACTED] Rejcek, the interview was interrupted by [REDACTED] Rejcek's son. Yarbrough left the FNMA Form 1003 with the Rejceks to fill out, and Yarbrough returned to complete the interview at a later date. [REDACTED] Rejcek is sure that she or [REDACTED] Rejcek told Yarbrough about a number of

liabilities, including a VISA card balance due of over \$ [REDACTED], a Discover card balance due of almost \$ [REDACTED], a Mobil gas card balance due of \$ [REDACTED], and other smaller liabilities totaling an additional \$ [REDACTED]. Although Rejcek claimed that she filled out much of the information on the FNMA Form 1003 in her own hand, she did not fill in the section of the form for liabilities. Yarbrough wrote "NONE" in inch-high bold letters across that part of the form. [REDACTED] Rejcek signed the FNMA Form 1003 on July 7, 1989, but [REDACTED] Rejcek did not sign it until the closing on September 1, 1989. Yarbrough denied that the Rejceks ever told her about any of their liabilities. All of the liabilities, with the exception of the Mobil gas card, appeared on the credit reports for the Rejceks, and they were listed on the HUD Form 92900. [REDACTED] Rejcek claimed that [REDACTED] Norcross, who was the Rejceks' real estate agent, loaned the Rejceks \$500 to cover their downpayment, but the Rejceks never repaid him because he failed to make some promised repairs on the house. Although Yarbrough is now married to Norcross, there is no evidence that she knew about this alleged unrepaid loan. [REDACTED] Rejcek was a problematic witness who was unusually suggestible. She had "firm" recollections of a number of events, such as when [REDACTED] Rejcek signed certain forms, that are refuted by the documentary evidence. It is therefore difficult to credit her "firm" recollections of what she told Yarbrough. [REDACTED] Rejcek stated that she did not "notice" that no liabilities were listed on the FNMA Form 1003 when she signed it. [REDACTED] Rejcek filled out the FNMA Form 1003, and it is unlikely that the Rejceks told Yarbrough about the liabilities but did not write them on the form that [REDACTED] Rejcek filled out. It is also unlikely that either Rejcek could have missed the word "NONE" written so large and bold, particularly because it is located on the form above where they placed their signatures. On balance, I find Yarbrough's testimony that the Rejceks did not tell her about their liabilities at their loan application interview to be more credible. [REDACTED] Rejcek's testimony was not sufficiently reliable for me to find that Yarbrough knew about the Rejceks' liabilities but deliberately left them off of the FNMA Form 1003. There would have been no reason for her to have done so because the liabilities would have, and did, appear on the credit report subsequently obtained for the Rejcek application. (Exhs. G-47, G-48; Tr. 562, 569-577, 587, 597, 953-956.)

13. The transaction with [REDACTED] Haggerty was a straw buyer transaction, in which [REDACTED] Haggerty never intended to live in the house that they purchased through Jeff Bosse. They believed they had only co-signed a loan for their son, [REDACTED] Haggerty, who had failed to qualify for a loan because of poor credit. In fact, [REDACTED] Haggerty were not co-signers of [REDACTED] Haggerty's loan. They were the only borrowers. There was a false lease created by Jeff Bosse to make it appear that [REDACTED] Haggerty had rented the home they already owned to a third party who was a former girlfriend of [REDACTED] Haggerty. The lease was designed to bolster the impression that the senior Haggertys actually intended to live in the house they purchased through Bosse. The senior Haggertys are both illiterate, and had no idea what they were signing or what had, in fact, been planned by [REDACTED] Haggerty and Jeff Bosse to make the transaction appear to be acceptable to Gateway and HUD. They are well-meaning, elderly people, and their purpose in becoming involved in this transaction was to make it possible for their son to have the house he wanted. [REDACTED] Haggerty is presently the owner-

of-record of the property. The senior Haggertys transferred the property to him one year after the closing. Bosse had asked Yarbrough about the requirements for a legal transfer of the property to ████████ Haggerty during the initial loan application period. She was on notice that the ultimate goal of the senior Haggertys was at sometime in the future to place the house in ████████ Haggerty's name.

The Haggerty transaction was a subject of speculation and discussion in the Gateway office. The loan processor for the transaction, Brenda Flasowski, testified that she is positive that Yarbrough knew what was happening at the time with the Haggerty transaction, including the use of a false lease, and that it was a strawbuyer transaction. Flasowski testified that she suspected that it was a strawbuyer transaction at the time she was processing the loan and is sure that Yarbrough, as the loan officer, was also aware, or at least suspected it. Flasowski admitted that she was deeply resentful of Yarbrough, and that it was really only a "gut feeling" Flasowski had that Yarbrough knew about the false underpinnings of the Haggerty transaction. Her explanation for her reasons for believing that Yarbrough had guilty knowledge about the transaction was inconsistent, overwrought, and ultimately of little probative value. Yarbrough denied any knowledge of the falsity of the lease, the fact that this was a strawbuyer transaction, or that the senior Haggertys would not ever be living in the property purchased through Bosse. There is insufficient evidence in this record for me to find that Yarbrough knew that the Haggerty transaction was a strawbuyer transaction, or that the lease was a document created to defraud Gateway and HUD. There is no evidence that Yarbrough drew up the lease. ████████ Haggerty testified that he doubted that Yarbrough knew the transaction was a strawbuyer transaction. Bosse stated that he did not tell her the lease was a fabrication. Bosse also gave cash to the Haggertys, through ████████ Haggerty, to close the loan, but there is no evidence that Yarbrough had any knowledge of that. (Exhs. G-31, G-32, G-34, G-35, G-36; Tr. 212, 215, 218-219, 240-243, 248, 273-282, 283, 310-311, 449-451, 457-459, 481-483, 486-487, 494, 496, 500, 977, 980-982, 1060, 1107, 1196.)

14. A number of the borrowers received cash from real estate developers and realtors to use as down payments or to cover closing costs, none of which was revealed on any loan documents. Others utilized phony gift letters or simply did not make the required down payment or pay the closing costs shown on their statements. The undisclosed cash payments, if known, would have required a reduction in the maximum mortgage amount insured by HUD. If the downpayments were not made by the borrowers, they would not have met HUD's minimum investment requirement for a mortgage insured by HUD. One developer, Janet Gast, and her colleague, Tim Tschosik, who regularly gave borrowers cash for these purposes, kept it a secret, and did not tell Yarbrough about the payments. Bosse stated that the Douglas transaction and the Whitfield transaction involved "sweat equity" for which he gave the borrowers cash, but this is not credible testimony, nor do I believe Bosse that Yarbrough or other Gateway employees had been told this by Bosse. Yarbrough emphatically denied that she knew or suspected that cash was being given to borrowers by developers or realtors. The evidence in the record is not sufficiently credible to support a finding that Yarbrough knew about any of the cash payments to borrowers, phony gift letters, or any alleged downpayments or payments at closing that were not made by

borrowers. (Tr. 68-69, 80-81, 173, 180, 189, 191, 196, 202, 205-206, 207, 461-462, 615,, 660-662, 691, 702-703, 729-730, 738, 748, 945-947, 996, 1027, 1094, 1124-1125, 1130, 1126-1130, 1159-1164, 1179-1180, 1183.)

15. Gateway has a policy that allows a loan application package to be submitted for underwriting without the signatures of all borrowers on the application and other papers, so long as all documents were signed by all borrowers at closing. Gateway's policy is based, in part, on its understanding of Texas community property law, by which the signature of one spouse can bind the other in a real property transaction. Yarbrough followed Gateway's policy by submitting FNMA Form 1003's for married couples with only one signature. The Douglas loan package was the only one lacking the signatures of both borrowers on the application at the time that it was underwritten. HUD requires that the signatures of all borrowers be on all relevant loan documents. (Tr. 231, 823-824, 794-795, 860-861, 960, 997, 1042, 1059.)

16. Gateway forbids interested third parties to handle verification forms or preliminary loan applications. It was company policy that loan officers were to take preliminary loan applications face-to-face from borrowers. The Gateway computer was programmed to mark all computerized documents that a face-to-face interview had been conducted by the loan officer at the preliminary application stage. Yarbrough did not comply with this policy. She also provided packets of blank forms, including verification forms, to at least one interested third party, Jeff Bosse, in violation of Gateway policy. (Tr. 528, 793, 1089-1090, 1206-1207.)

17. The Gateway loan processors assumed that Yarbrough had interviewed all loan applicants in a face-to-face interview if she had so indicated on the FNMA Form 1003. The loan processors further assumed, based on the manner in which Yarbrough filled out the FNMA Form 1003, that both Gateway's requirement for a face-to-face interview, and HUD's requirement for a face-to-face interview, had been satisfied by Yarbrough. Although there was no company policy directing which employee should obtain the signatures of borrowers on the HUD Form 92900 and go over that form with them, it was the practice at Gateway that loan officers usually performed these tasks. The Gateway loan processors assumed that Yarbrough was performing those tasks unless they were specifically asked to do them in a given transaction. (Tr. 508, 510, 511, 634-635, 645, 780, 793.)

18. It was not Yarbrough's duty as a loan officer to evaluate the information and documentation received to support a loan application. It was the duty of the loan processors and the underwriter to perform those functions. Yarbrough also was not a closing agent, and she did not appear at closings on behalf of Gateway. Although some borrowers testified that they believed she may have been present at their closing, I find that they either had her confused with the female closing agent, or mistook her presence before the closing as her participation in the closing itself. I credit Yarbrough's testimony that she did not attend closings, which was corroborated by Jeff Bosse for the closings that he attended. (Tr. 778-779, 936-943, 1149.)

19. Gateway had a reputation among real estate developers as an "easy" lender to use to get "hard" loans approved. Janet Gast assumed that reputation meant that Gateway personnel did not verify paperwork carefully. However, Gast did not view any particular loan officer, Yarbrough included, as being "easier" than another for purposes of taking a preliminary loan application. (Tr. 204-206.)

20. Yarbrough was experiencing personal problems in 1988-1989 that affected her ability to concentrate on her duties as a loan officer. She went through a difficult divorce and was having tax payment problems. She also was a self-described cocaine addict during that period. During that period, she started missing appointments to conduct preliminary loan application interviews, and she turned over the function of gathering information for the preliminary loan application to interested third parties, such as Jeff Bosse. She also avoided going over the HUD Form 92900 with borrowers and obtaining their signatures on that form, with the result that Bosse was also sometimes performing that function. (Exh. G-8; Tr. 1007-1009, 1016, 1020, 1089, 1168-1170, 1206-1207.)

DISCUSSION

HUD is proposing the five-year debarment of Yarbrough based on her alleged participation in a scheme to defraud HUD by inducing the Department to insure mortgages based on false information and documentation, and by fostering schemes to evade HUD's minimum investment requirement by covering-up donations of cash made by realtors and developers to borrowers. The Government charges that Yarbrough furthered these schemes by failing to interview borrowers face-to-face but reporting that she had done so, and by allowing interested third parties to handle verification forms. HUD cites 24 C.F.R. §§24.305(b), (d) and (f) as grounds for Yarbrough's debarment.

The purpose of debarment is to assure the Government that it only does business with "responsible" persons and entities. 24 C.F.R. §24.115(a). The term "responsible," as used in the context of suspension and debarment, is a term of art which includes both the ability to perform a contract satisfactorily and the honesty and integrity of the participant. 48 Comp. Gen. 769 (1969). Even if cause for debarment is established by a preponderance of the evidence, existence of a cause alone does not automatically require that a debarment be imposed. The test for whether a debarment is warranted is present responsibility, although a lack of present responsibility may be inferred from past acts. Schlesinger v. Gates, 249 F.2d 111 (D.C. Cir. 1957); Stanko Packing Co. v. Bergland, 489 F.Supp 947, 949 (D.D.C. 1980). In deciding whether to debar a person, all pertinent information must be assessed, including the seriousness of the alleged acts or omissions, and any mitigating circumstances. 24 C.F.R. §§24.115(d), 24.314(a) and 24.320(a). A debarment shall be used only to protect the public interest and not for purposes of punishment. 24 C.F.R. §24.115(b).

The Government may only debar participants, principals and their affiliates, as defined in 24 C.F.R. §24.105. Yarbrough is a participant and a principal as defined in 24 C.F.R. §24.105(m) and (p)(2). She is a "participant" because she has acted on behalf of

Gateway in covered transactions, which include HUD-insured loan originations, and is reasonably expected to do so in the future, if permitted. She is a "principal" because loan officers are specifically listed in the regulatory definition principals. 24 C.F.R. §24.105(p)(2). Therefore, Yarbrough is subject to debarment by HUD if cause for debarment is established, and if her debarment is necessary to protect HUD and the public.

The record in this case does not establish that Yarbrough participated in schemes to defraud HUD by either knowingly allowing false information and documents to be included in loan applications, or by covering up cash contributions to borrowers from realtors or developers to evade HUD's minimum investment requirement. There were schemes to defraud HUD; that is abundantly evident from the record. However, there is insufficient probative evidence in this record to conclude that Yarbrough knew about them.

Those schemes were devised by realtors and developers, not Yarbrough, and the borrowers were often knowing participants in both schemes, which were to their financial benefit. The false information and documentation created a more positive picture of borrowers' credit worthiness than their true credit and employment histories, thus inducing both Gateway and HUD to approve and insure loans that would likely have been denied if correct information were presented. The unrevealed payment of cash to borrowers by realtors and developers to cover either the downpayment required by HUD for mortgages it insured, or closing costs, resulted in artificially inflated maximum mortgage amounts being insured and was a subterfuge to avoid HUD's minimum investment requirement. The result was that more public monies were committed to insure those mortgages than was allowed, and the borrowers did not have the financial stake in their home purchase that is at the heart of HUD's minimum investment requirement.

Yarbrough breached her obligation as a loan officer to follow prudent lending practices. She allowed verification forms to be handled by interested third parties, in violation of clear HUD program requirements and Gateway policy. An interested third party, Jeff Bosse, took advantage of the forms given to him by Yarbrough to have false employment information "verified" in the case of ██████████ Mendoza. Likewise, the false earnings information for the Douglas transaction was "verified" in a Bosse-generated transaction. Had Yarbrough not provided verification forms to Bosse, the false verifications may have still been produced in those two cases because the fraud, including "verification" of false information, was in place before Yarbrough had a role to play as loan officer. However, by ceding control over the most secured documents in a lender's arsenal, the verifications, Yarbrough smoothed the way for Bosse's scheme to work.

Yarbrough's failure to gather information directly from borrowers through a preliminary loan application interview set up Gateway and HUD as easy targets for fraud. The lender is expected to control the lending process, not the realtor or the developer. Most of the borrowers never met Yarbrough. Their only contact was with the realtor, usually Jeff Bosse. Even if Bosse brought them to Gateway to sign some papers for closing, they barely registered the difference between Bosse's role and that of Gateway as the lender. Yarbrough

was responsible for that situation. She falsely marked on preliminary loan applications that she had interviewed most of the borrowers face-to-face. The other Gateway employees relied on Yarbrough's false representations; they assumed that the required face-to-face interview had been done, a requirement of both Gateway and HUD.

HUD's requirement of a face-to-face interview is a general requirement. It does not specify when the interview must take place, or who must conduct it. However, HUD does suggest that it should be done when it can best serve its purpose of verification of information, after the Form 92900 is filled out, but prior the signing of it by the borrowers. Gateway's requirement focused on a different time period, the initial application that would be the basis for all verifications and documentary proof collected by the lender. Thus, it was the loan officer who was expected to conduct the face-to-face interview at the beginning of the loan process. Ideally, face-to-face interviews should be conducted at both of these phases in the loan process to ensure both a reliable verification process and a reliable application for mortgage insurance. However, the requirement is satisfied by conducting one at any time before the loan package is submitted for underwriting. After that, any face-to-face interview held is irrelevant because it cannot serve the purpose of assuring that the decision to approve and underwrite a loan is made on true, complete and correct information.

Yarbrough crippled the lending process from the outset by imprudently turning it over to interested third parties, in violation of HUD program requirement and Gateway policy. She gave those with fraud on their minds the opportunity to freely create false applications, unfettered by the screening process that a prudent lender performs. A face-to-face interview may not weed out most frauds. However, the failure to conduct one means that the initial screening gate of the interview is abandoned to those with the most to gain from lax lending practices. See, In the Matter of Joan Galati, HUDBCA No. 88-3455-D64 (March 10, 1989). Not only did Yarbrough fail to perform this critical function; she lied about it on the FNMA Form 1003, to the detrimental reliance of Gateway. She set in motion a chain of events which led to an unreliable certification on which decisions to insure were made. Yarbrough lied again at her hearing on this aspect of the case against her. There is no other way to characterize her testimony.

This is the case against Yarbrough that has been proven. It is far less in scope or seriousness than the charges on which HUD has proposed a five-year debarment, although it is indeed serious. Other Gateway employees, including the loan processors and the underwriter, also failed to follow prudent lending practices that may have avoided the approval and insurance of at least a few of the loans that are the subject of this case. However, it was Yarbrough who made Gateway a lender where fraudulent schemes could gain a firm foothold at the earliest stage of the lending process by her absolutely appalling, lazy, and ultimately dishonest abdication of her responsibilities as a loan officer in the loan origination process. She apparently saw her role as that of a "rainmaker," a producer of business. She was in a great hurry to produce more and more business. She appeared to disdain the tedious business of actually taking a preliminary loan application, and did everything she could to avoid it. The result of Yarbrough's corner-cutting is that public

monies have been committed to insure loans that should not have been insured at all, or should have been insured for lesser amounts.

HUD cites three regulatory causes for debarment. I find that HUD has carried its evidentiary burden to establish cause for debarment of Yarbrough pursuant to 24 C.F.R. §§24.305(b)(3) and (f). I find that Yarbrough willfully violated HUD program requirements applicable to the public transaction of originating loans to be insured by HUD. 24 C.F.R. §24.305(b)(3). Yarbrough admitted her familiarity with the HUD requirements of a face-to-face interview, and that interested third parties are not allowed to handle verification forms. I further find that Yarbrough committed material violations of HUD program requirements applicable to insurance of mortgages. 24 C.F.R. §24.305(f).

Yarbrough has been temporarily suspended pending determination of debarment, based on adequate evidence that one or more causes for debarment may exist and a necessity to immediately protect the public. 24 C.F.R. §§24.400(b) and 24.405(a). That suspension was properly applied in this case. HUD proposes to debar Yarbrough for five years. Pursuant to HUD's regulations, debarment is to be for a period commensurate with the seriousness of the causes on which it is based. However, debarments "generally should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed." 24 C.F.R. §24.320(a)(1).

The centerpiece of HUD's case, which it failed to prove, was Yarbrough's knowing participation in the fraudulent schemes of Jeff Bosse and Janet Gast. Had HUD proven Yarbrough's complicity in either the false information scheme or the unreported payments of cash to borrowers, five years would certainly be an appropriate period of debarment. Indeed, an indefinite debarment of at least five years would not have been excessive. However, of the charged conduct, HUD only was able to prove Yarbrough's irresponsible method of obtaining preliminary loan application information, and her careless handling of verification forms. Those irresponsible actions, although they do not merit a five year debarment, are indeed serious grounds for debarment, particularly because Yarbrough denied at all times that they had occurred, even after being confronted with witness after witness who had never met her before, let alone been interviewed by her about their credit-worthiness. She showed absolutely no understanding of the reason why a face-to-face interview has to be conducted by a lender's employee, rather than just anyone who is willing and able to write down the required information. She assumed that since all information had to be verified, the initial interview was not particularly important as an information screening tool. Her conduct, as opposed to her untruthful protestations, speaks to this attitude.

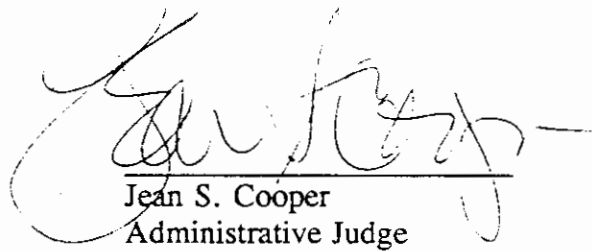
I find no mitigation in this record of those acts that have been established by proof. Indeed, I am appalled by Yarbrough's abuse of the hearing process when she testified untruthfully under oath. She is in no way presently responsible. However, because she was not an active participant in fraud, as charged, I feel constrained from applying more than a three-year period of debarment. Nonetheless, because her lack of present responsibility is so glaring and troubling, I cannot, in good conscience, credit Yarbrough with the time she has

been suspended in calculating the period of her debarment, because that time has not been used by her to become responsible, as evidenced by her conduct at her hearing. The public needs a substantial period of protection from Yarbrough.

A debarment of three years from this date is necessary to protect HUD and the public.

CONCLUSION

For the foregoing reasons, it is my determination that Kay Yarbrough shall be debarred for a period of three years from this date until October 28, 1995.



Jean S. Cooper
Administrative Judge