

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
Washington, D.C.

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In the Matter of:

SANDRA BERNAL,

Respondent.

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Docket No. 10-3624-DB

DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By Notice of Proposed Debarment dated January 07, 2010 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent SANDRA BERNAL that HUD was proposing her debarment from future participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government for a period of three years from the date of the final determination of this action. The Notice further advised Respondent that her proposed debarment was in accordance with the procedures set forth in 2 CFR parts 180 and 2424. In addition, the Notice informed Respondent that her proposed debarment was based upon her improper conduct in her dealings as a Direct Endorsement Underwriter for First Lincoln Mortgage Corporation (FLMC).

A telephonic hearing on Respondent's proposed debarment was held in Washington, D.C. on March 24, 2010, before the Debarring Official's Designee, Mortimer F. Coward. Respondent was present by phone along with her attorney, Steven Afra, Esq. Terri Roman, Esq. appeared on behalf of HUD. The record closed on April 22, 2010.

Summary

I have decided, pursuant to 2 CFR part 180, to debar Respondent from future participation in procurement and nonprocurement transactions, as a participant, principal, or contractor with HUD and throughout the Executive Branch of the Federal Government for a period of 18 months from the date of this Determination. My decision is based on the administrative record in this matter, which includes the following information:

1. The Notice of Proposed Debarment dated January 7, 2010.
2. A letter from Respondent dated January 19, 2010, to the Debarring Official Designee requesting a hearing on her proposed debarment.
3. A letter from Respondent dated March 9, 2010, to the Debarring Official's Designee responding to the Government's allegations against her.

4. A letter dated April 7, 2010, from Respondent's attorney with accompanying attachments addressed to the Debarring Official's Designee.
5. The Government's Pre-Hearing Brief in Support of a Three-Year Debarment filed March 3, 2010 (including all exhibits and attachments thereto).
6. The Government's Post-Hearing Brief in Support of a Three-Year Debarment filed April 20, 2010.

### Government Counsel's Arguments

Government counsel states that Respondent at all relevant times was a Direct Endorsement Underwriter who worked for FLMC. In Respondent's capacity as an underwriter, she was involved in the origination and underwriting of nine HUD mortgages that are at issue in this proceeding. Specifically, Government counsel charges that Respondent failed to properly verify the source and adequacy of funds for the downpayment made by a borrower, Jack Cruz, as required by HUD Handbook 4155.1 REV-5, ¶ 2-10. Counsel charges that Respondent approved the Cruz loan despite discrepancies in the supporting documentation with respect to the timing of transactions which generated the borrower's funds to meet his closing costs.

Counsel further alleges that in the Greg Robinson case, Respondent failed to verify properly and analyze Robinson's income and employment in accordance with HUD Handbook 4155.1 REV-5, ¶ 2-6. The income used to approve Robinson's loan was not supported by the documents in the closing file or the documentation was incomplete or missing pages. Notwithstanding these deficiencies, Respondent approved the loan which induced HUD to insure the mortgage.

Counsel also charges that in each of the nine loans at issue here, Respondent failed to analyze properly the borrowers' credit history in violation of HUD Handbook 4155.1 REV-5, ¶ 2-3. According to counsel, Respondent provided no justification for her decisions to approve loans for borrowers with derogatory credit information after a review of the borrowers' justifications. For example, in the case of co-borrowers Terrence Coleman and Panesha Sanders, the credit report showed 11 unpaid collection accounts; however, Respondent did not provide an explanation or documentation to support her decision to approve the loan. A failure by Respondent to provide supporting documentation or an explanation for approving the loan, counsel argues, is also evident in the other eight loans approved by Respondent. In each of the loans, the borrowers had derogatories or serious questions about their credit history for which no satisfactory explanation was recorded in the borrowers' respective files.

Government counsel cites the case of two borrowers, Valerie Perry and Boysie Jordan, in which Respondent approved their loans although the mortgages exceeded the debt-to-income ratios stated in HUD Handbook 4155.1 REV-5, ¶ 2-13. In the Perry case and in the Jordan case, the total fixed payment-to-income ratio was 64 percent and 55.7 percent, respectively, exceeding the ratio of 41 percent in accordance with the cited HUD Handbook. Additionally, Respondent noted no compensating factors (as set forth in the

cited HUD Handbook)<sup>1</sup> in the Mortgage Credit Analysis Worksheet (MCAW) that could support her approval of the loans. Counsel also charges that in the Greg Robinson case, there was a discrepancy in the co-borrowers address based on the supporting documentation submitted. Respondent failed to resolve the discrepancy as required under HUD Handbook 4000.4 REV-1 CHG 2, ¶2-4(C) and approved the loan.

Counsel also alleges that in the Jack Cruz and Saintilien/Musac cases, Respondent accepted faxed income /employment documentation without ascertaining the authenticity of the documents. In the Cruz case, the pay stubs and W-2's were faxed from a mortgage broker, Cruz's 2006 tax return, a bill of sale, a deposit slip, and other documentation verifying the source of Cruz's funds for closing were faxed from an unknown source. In the Musac case, his pay stubs and W-2's were faxed from a broker not approved by HUD, Amerisfirst Mortgage and Investment, Inc., which received a broker fee for its services, including processing Musac's loan application. Counsel argues that Respondent's actions here were not consistent with the requirements of HUD Handbooks 4155.1 REV-5, ¶ 3-1<sup>2</sup>, and 4000.2 REV-3, ¶3-5.

In summarizing Respondent's actions in the cases at issue here, Government counsel charges that Respondent falsely certified on form HUD-92900-A, Addendum to the URLA, that the loans were diligently written and eligible for FHA insurance. Counsel argues that, given Respondent's violations of the HUD Handbooks' requirements cited *supra* and other HUD authorities, "Respondent knew or had reason to know that her certifications were false."

Counsel argues that Respondent is subject to the debarment regulations at 2 CFR part 180 in that as a Direct Endorsement Underwriter, she approved and submitted loans for FHA insurance, which are covered transactions as defined in 2 CFR 180.970. Further, Respondent's certification of the nine loans discussed above, which HUD insured based on her approval, is cause for debarment under 2 CFR §§ 180.800(b) and (d).<sup>3</sup>

Counsel concludes that Respondent's conduct was willful and egregious, as well as lengthy and frequent, and her conduct demonstrates a lack of present responsibility. Respondent's misconduct, continues counsel, "demonstrates that she cannot be trusted to comply with HUD requirements as a participant in HUD programs, and especially as a Direct Endorsement Underwriter." Counsel argues that a three-year debarment is

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<sup>1</sup> Among the compensating factor listed in the Handbook are - - "A. The borrower has successfully demonstrated the ability to pay housing expenses equal to or greater than the proposed monthly housing expense for the new mortgage over the past 12-24 months. \* \* \* D. Previous credit history shows that the borrower has the ability to devote a greater portion of income to housing expenses. \* \* \* F. There is only a minimal increase in the borrower's housing expense."

<sup>2</sup> Handbook 4155.1 REV-5, ¶ 3-1 provides that "Lenders may not accept or use documents relating to the credit, employment or income of borrowers that are handled by or transmitted from or through interested third parties (e.g., real estate agents, builders, sellers) or by using their equipment."

<sup>3</sup> 2 CFR § 180.800(b) provides that a Federal agency may debar a person for "Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as (1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions; (2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or (3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction" 2 CFR § 180.800(d) sanctions debarment for "Any other cause of so serious or compelling a nature that it affects your present responsibility."

warranted in this case, after reviewing similar debarment cases in which a like period of debarment was imposed.

### Respondent's Arguments

Respondent attributes the problems associated with the nine loans at issue here partly to the poor management and dysfunctional operations at her then-employer, FLMC. Respondent argues that she has been an underwriter for twenty-two years. Her underwriting decisions had never been challenged until HUD proposed her debarment based on her work at FLMC. According to Respondent, she was employed at FLMC for about six months but voluntarily left as she saw problems developing. Respondent notes that the nine questioned loans closed between July 30 and September 18, 2007, a period during which FLMC "was experiencing staff turnovers and major internal disruptions." Respondent asserts that she is fully aware of HUD's underwriting guidelines and the necessary documentation to be included in the file to support a decision to approve a loan. Further, in the case of a "non-standard" loan which can be supported with additional documentation, it has been her practice to include the additional documentation to justify approving the loan.

With respect to HUD's first charge that Respondent failed to properly verify the source and adequacy of funds for the down payment and/or closing costs on the Cruz loan, Respondent argues that she "did not deem [it] necessary to verify since it was less than 2 % of [the] sales price." Respondent notes that "sufficient documentation was obtained" to verify the source of the \$5642.90 required at closing. The funds, according to Respondent, came from the sale of Cruz's vehicle. Respondent adds that she obtained the "copy of the original title from the borrower [Cruz] to show he had full ownership; affidavit from both the borrower and the purchaser detailing the transaction along with a copy of the bill of sale and copy of the check given." Respondent explains the bill of sale being dated July 18, 2007, two days after a deposit of \$5,600.00 was made to Cruz's account, as a "transaction amongst mutual friends." Respondent further explains that she accepted the deposit slip because it matched the account number and name on the account at TD Bank North and the "file should have contained two months['] bank statements prior to the deposit."<sup>4</sup>

Respondent answers the Government second charge that she failed to verify properly and analyze a borrower's (Greg Robinson) income and employment by stating that, after her review of the documents at issue, i.e., Gov't Exs. 5, 6, and 7, "it does not

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<sup>4</sup> Government counsel charged that the "file did not contain a bank statement or Verification of Deposit form to indicate that the borrower had an account with Banknorth or actually made the \$5,600 deposit." Government counsel who, presumably, had access to the file did not dispute Respondent's claim that the file contained the affidavits, the copy of the title of the vehicle that was sold, and a copy of the \$5,800.00 check for the sale of the vehicle. Government exhibits 2 and 3, respectively, show a bill of sale for \$5,800.00 for a vehicle with the named seller being Jack Cruz and a deposit receipt for \$5,600.00 dated 7-16/2007 along with a statement showing an available balance of \$7,290.73 as of 7-18/2007 (or 7-16/2007). It is not easily apparent which date is imprinted on the statement because the copy is not clear. Both the deposit receipt and the statement of the available balance show the same TD Banknorth account number of B243216145, but do not identify the account holder by name.

appear” that she was the underwriter for the loan. Respondent states that the “signature on the MCAW is not [hers] and the 92900 addendum does not match [her] signature either.”<sup>5</sup>

Respondent disagrees with the Government’s charge that she failed to properly analyze borrowers’ credit history to ensure HUD’s minimum credit requirements were met. As a general response to this charge, Respondent, while admitting that “these individuals [i.e., the borrowers] experienced credit delinquencies in the past,” argues that, based on her review of their situations and the documents they provided, she “deemed [it] acceptable to approve [the] loans.” Respondent asserts that “[A]ll these loans had supporting documentation to approve with the credit background [and] [t]hese borrowers were put in a better position.”

In response to the Government’s allegation in the Coleman/Sanders case that the credit report disclosed 11 unpaid collection accounts, including one for child support totaling \$3,235.00, Respondent, in her March 9, 2010, letter, writes that Government “Exhibit 8 provided sufficient supporting documentation with a detailed explanation for the derogatory credit.” Respondent adds that she does not understand how “these documents were not provided with the file when they were shipped.”<sup>6</sup> Respondent’s further explanation for approving the Coleman/Sanders loan is that the borrower was then an “existing FHA borrower” and his “credit profile shows that he paid his mortgage for 23 months 0 x 30.” Respondent concludes that “[a]lthough borrower struggled with his other liabilities he maintained his housing on time.”

With respect to the Cruz loan, Respondent asserts that Cruz “did explain and provided proof paid,” responding to the Government’s allegation that there was no documentation or explanation from Cruz for a \$3,615.00 judgment and four collection accounts reported to the credit bureau. Respondent states that Cruz’s explanation should have been part of the credit package. Respondent adds that it has always been a condition of her approving a loan that the borrower explain and “provide proof paid of collection even though guidelines state they need not be paid; judgments always mandatory that they show they have been satisfied.”

Respondent answers the Government’s charge in the Jordan case that she did not adequately explain their derogatory credit history by pointing out that Gov’t Exhibits 10 and 11 “show[ ] that documents appear to be incomplete,” and the credit report is missing.

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<sup>5</sup> An examination of Respondent’s signature on other documents that she does not deny signing (see, e.g., the Cruz MCAW, Gov’t Ex. 3, and Respondent’s signature on the copy of her New York State Driver License, included as an attachment to her post-hearing submission of April 7, 2010) and the signature on the Robinson MCAW clearly shows two different signatures. The signature on the Robinson MCAW does not match the signature on Respondent’s driver’s license.

<sup>6</sup> Gov’t Ex. 8 is a collection of credit reports for the borrower and co-borrower, Coleman and Sanders. Some of the reports are difficult to read because they are poor copies; nevertheless, the reports show several State tax liens which were released and several accounts that were past due and submitted to collection. Ex. 8 contains no other documents.

<sup>7</sup> Respondent also states that the borrower provided documentation to show the expenses paid for his mother's medical care.<sup>8</sup>

Respondent claims in the Grice case that "the majority of the credit collection accounts were being disputed and there should have been a credit supplement" to evidence this.<sup>9</sup> Respondent also claims that the student loan was "being repaid per the report." In addition, Respondent writes that the collection accounts that were paid on the HUD-1 were the undisputed accounts, according to the borrowers.<sup>10</sup>

Respondent states that she does "not recall [the McNish] loan." Respondent points out that the MCAW does not have her signature and "the compensating factors listed do not reflect [her] common wording in regards to approving a loan."<sup>11</sup>

As with the McNish case, Respondent states that she does not recall the Musac/Saintilien case and "the signature on the addendum appears to not be [her] signature."<sup>12</sup>

In the Perry case, Respondents addresses HUD's charge that she failed to consider the borrower's contingent liability on a car loan Respondent co-signed with her son, by explaining that "since the credit report shows no 30 days late [she] did not include in borrowers' liability due to the 12 months' history provided." Respondent agrees that although the printout shows payment reversals, the payments were not 30 days late because "as soon as the payment was reversed it was again paid," and "there should have been an explanation to this effect." Respondent acknowledges HUD's observation that there was a previous refinance in January 2007, with the proceeds thereof used to pay off the mortgage balance, 13 credit accounts, and the borrower received \$21,302.85 at closing. Respondent adds that the borrower used the funds received at closing to "establish savings for medical reasons of which documentation was provided to support." With respect to the

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<sup>7</sup> Exhibit 10 is a Credit Score Disclosure Report from First American CREDCO, a reseller of credit scores, thus there is no detailed credit report as would be supplied by the nationally recognized credit reporting agencies. Exhibit 11 is a copy of the HUD-1 and Addendum relating to the loan at issue in this proceeding.

<sup>8</sup> The Government indicated in its charge the borrowers had stated that the expenses incurred in taking care of their mother resulted in their derogatory credit history. The statement from the borrowers was not entered into evidence and is not a part of this record.

<sup>9</sup> No credit supplement was produced. The Government had specifically charged that the borrowers' credit explanation was unacceptable because it did not address Mark Grice's six collection accounts, including a defaulted student loan, and Dorothy Grice's 27 collection accounts, and there was no evidence the borrowers had paid off the accounts.

<sup>10</sup> The Addendum to the HUD-1 at Gov't Ex. 14 shows a payoff of three (NCO Fin., Superior Asset, and Metropolitan St. Louis Water District) of the more than 30 accounts that were in collection.

<sup>11</sup> HUD charged that this loan qualified for REFER FHA Total Scorecard documentation, the borrowers' report indicated a bankruptcy that had been discharged in February 2007, and collection accounts posted after February 2007. The borrowers' explanation for their delinquent mortgage payments in 2005, that their agreement with the mortgage company to delay the payments, because of hurricane damage to their house, fell through, was not supported by documentation in the file. Government counsel also argued that the borrowers' explanation for their late payments in 2006, that is, their daughter's tuition and upcoming marriage, demonstrated a lack of creditworthiness.

<sup>12</sup> In light of Respondent's response here, she did not answer HUD charges that the loan was approved despite collection accounts and past due payments for HFC, GEMB, and Credit First accounts that occurred within two months of the closing date. HUD also noted the payment of eight collection accounts and four credit accounts paid at closing along with the borrowers' receipt of \$23,075.22 as shown on the HUD-1.

August 2007 refinancing, the proceeds of which were used to pay off the mortgage balance and eight credit accounts, with the borrowers' receiving \$6,584.88 at closing. Respondent notes that it "was utilize[d] to payoff additional credit that appeared after the fact and build up savings for unforeseen expenses." Respondent further notes that "[a]lthough borrower experienced credit delinquencies [,] she never was late on her mortgage past or present."<sup>13</sup>

In the Plower case, Respondent explained that the reason for the borrower's delinquencies (the credit report, HUD notes, shows 16 collection accounts totaling \$14,781.00) was the death of the borrower's "daughter of which he provided a copy of the death certificate and death announcement." The "borrower also provided doctors' letters to support" his wife's "trying to cope with the death," according to Respondent. In response to HUD's observation that the collection accounts and mortgage balance were paid from the loan that closed July 30, 2007, along with the borrower's receiving \$1,066.94, Respondent explained that "during the progression [sic] the borrower refinanced to clear some open debts and pay off the Fremont mortgage which was currently an ARM loan and be put in a better position." With respect to the missing MCAW and page 3 of the 92900A, Respondent writes that she "can only assume these documents along with the credit supporting documents were not included when the file was shipped."

In the Robinson case, Respondent reiterates that she "cannot recall underwriting this loan."<sup>14</sup> As a general comment to this charge, Respondent notes that during the period when the questioned loans were approved, there was a tremendous reduction in the shipping staff and other departments in FLMC. Respondent believes that the "missing documentation could have been carelessness of individuals responsible to package and send binders to HUD."

Respondent answers HUD charge that she approved loans in the Perry and Jordan cases with a debt-to-income (DTI) ratio that exceeded HUD/FHA standards without documenting adequate compensating factors, by asserting that in the former case the borrower would save \$400.00 per month after the refinancing, which put her "in a better position."<sup>15</sup> Respondent justifies approving the Jordan loan despite the DTI ratio exceeding HUD's guidelines on the basis that the borrowers "saved overall \$1800.00 in monthly debts." Respondent states that she "considered [the savings] a significant benefit [because] the borrowers were on a fixed income."

Respondent responds to the charge that she failed to address discrepancies in documents used to approve FHA mortgages, i.e., the Robinson case, by again reiterating that the loan "does not appear to be underwritten by" her.

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<sup>13</sup> Respondent did not specifically respond to the FHA Total Scorecard documentation level of "Refer" in her explanation of her actions in approving this loan.

<sup>14</sup> HUD alleges that Respondent approved the loan although she failed to obtain an explanation from the borrower for a derogatory credit history and judgment. The HUD-1, notes Government counsel, shows that a \$3,763.00 judgment, two collection accounts for \$3,905.00, a car loan of \$25,692.00, and the balance of the mortgage of \$326,274.26 were all paid at closing from the proceeds.

<sup>15</sup> In the "Remarks" section of the MCAW, it is noted that "although ratios are high [borrower] will save approx \$472 per month by paying off all debts except car note."

Respondent disputes HUD charge that she failed to ensure that verifications and other supporting documentation did not pass through the hands of an interested third party. In the Cruz case, Respondent states that although the broker sent the file to FLMC, they reverified and obtained original copies from the borrower along with verifications of employment. Respondent explained that the broker fee that was paid was "strictly the broker points agreed upon" and that after the file was submitted to FLMC "the broker no longer had access to the file." According to Respondent, the 1040's that the Government alleged were faxed from an unknown source were in fact faxed by Cruz from a friend's fax machine. The 1040's, Respondent continues, were resigned at closing and also should have been part of the credit and income package. As previously indicated, Respondent denies that the Musac/Santilien loan was underwritten by her and insists that the signature on the documents is not hers.

Respondent declares that she "cannot comprehend how [the missing documents] were not enclosed in the binders submitted to HUD." In her 22 years as an underwriter, Respondent states that she always included supporting documentation, and "have never encountered missing documentation of this magnitude."

#### Findings of Fact

1. Respondent was at all relevant times an underwriter employed by FLMC, a HUD-approved Direct Endorsement Lender.
2. Respondent had 22 years' experience underwriting HUD loans.
3. Respondent worked at FLMC from April 2007 to November 2007 during which time the nine loans at issue in this proceeding were underwritten by FLMC.
4. The nine loans at issue closed between July 30, 2007, and September 18, 2007.<sup>16</sup>
5. FLMC, during the relevant times, was experiencing staff turnovers and reductions along with management problems.
6. FLMC subsequently went out of business.
7. FLMC's demise makes it difficult to gain access to the files at issue here.

#### Conclusions

Based on the above Findings of Fact, I have made the following conclusions:

1. As a Direct Endorsement Underwriter of HUD-insured loans, Respondent was a participant in covered transactions, and is subject to the debarment regulations at 2 CFR part 180.

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<sup>16</sup> The closing dates are as follows, as can be best determined from the documents in the record: Flower - 7/30/07; Robinson - 8/2/07; Cruz - 8/03/07; Musac/Santilien - 8/10/07; Perry - 8/14/07; Jordan - 9/04/07; Grice - 9/18/07; Coleman/Sanders - actual date not found, but available relevant documents would suggest about mid-August; McNish - the only relevant document in the record is the MCAW, which is unsigned and undated.

2. The Government's evidence in the Robinson case failed to establish that Respondent was the underwriter on the loan. The MCAW has a signature of Sandra Bernal that purports to be the signature of Respondent. *See* Gov't Ex. 4, the only document introduced in the Robinson case that arguably ties Respondent to the case. Respondent denies that it is her signature and the purported signature does not match the exemplars of Respondent's signature in the record. The Government, neither at the hearing nor in its post-hearing submission, addressed Respondent's denial. Nor did the Government attempt to establish the authenticity of the MCAW signature or adduce independent evidence that Respondent underwrote the loan. The Government in the Robinson case, therefore, has failed to "establish the cause for debarment by a preponderance of the evidence." *See* 2 CFR 180.850(a). Similarly in the Mcnish case, the MCAW is unsigned and the Government presented no evidence to tie Respondent to this case. Accordingly, the Government has not met its burden pursuant to 2 CFR 180.850(a). The Musac/Saintilien case is also of this genre. Respondent disputes that this was one of her loans. The two Government exhibits, 18 and 19, presented in support of its allegations show no association of Respondent to the Musac/Saintilien case. Ex. 18 consists of credit reports of the two borrowers. Ex. 19 consists of one page of the HUD-1, along with an itemization of the disbursements made at closing and an addendum to the HUD-1. None of the documents bears Respondent's signature, nor a writing that arguably ties her to the case. Moreover, the Government at no time alleged that Respondent was the only underwriter employed at FLMC during the period at issue here.
3. In its post-hearing submission, the Government argues that "Respondent has not submitted expert handwriting analysis to verify her claim" that she did not underwrite the three loans. That is true; however, as shown here, two of the cases had no documents signed by Respondent. The putative signature on the MCAW in the Robinson case, because of Respondent's challenge to its validity, should have been authenticated by the Government in the first place. Pursuant to 2 CFR 180.855, HUD "has the burden to prove that a cause for debarment exists." A material element in establishing that a "cause for debarment" exists is "adequate evidence." The Government's evidence in the three cases discussed above was not adequate.
4. In the Cruz case, the gravamen of the charge is that the source of funds Cruz used for the downpayment and closing costs was not properly verified or adequately documented and the supporting documents were submitted through interested third parties. Government counsel argued that the file did not contain a bank statement or verification of deposit. The available evidence, i.e., the deposit receipt, the account balance, and the bill of sale, Gov't Exs. 2 and 3, adequately show that the proceeds from the sale of the vehicle were deposited in an account with Banknorth. The two-day difference between the date of the bill of sale and the deposit of the proceeds is of negligible value.

5. I credit Respondent's testimony and written statement that, among other things, she received an affidavit from both Cruz and the purchaser with respect to the sale of the vehicle, a copy of the title to the vehicle, and a copy of the check for the sale of the vehicle, and that the deposit slip matched the name and account number on the bank account. The fact that the bank statement itself was not introduced into evidence to show conclusively the match between the deposit slip and the account is a cause for concern. The Respondent was given the benefit of the doubt here because she is unable to retrieve any of the files from FLMC. Also, there is credible evidence that FLMC did not maintain its files properly. See the letter from MaryAnn Lunetta and especially the notarized letter from Brian Rizzuto submitted as attachments to the April 7, 2010, letter from Respondent's attorney, describing, among other things, the file storage and management practices of FLMC.
6. Some of Cruz' documents may have been submitted through an interested third party. However, the fact that Respondent ensured that they were independently verified and resubmitted removed any taint associated with the original submission. Accordingly, for these reasons, I conclude that the Government has not established a cause for Cruz's debarment by a preponderance of the evidence.
7. The only documents submitted in the Coleman/Sanders case are the borrowers' credit reports. Respondent does not deny that she was the underwriter for this loan. Respondent claims that she does not understand how the relevant documentation which explained the Borrowers' derogatory credit was not included in the file. Respondent indicates that she considered Respondent's timely payment of his existing mortgage for the past 23 months in approving the loan. HUD Handbook 4155.1 REV-5, ¶ 2-13 A. allows the underwriter to consider as a compensating factor, the fact that the borrower has successfully demonstrated his ability over the past 12 to 24 months to pay housing expenses equal or greater than the proposed housing expense.
8. Respondent claims that, after the refinancing, the borrowers (Coleman and Sanders) were in a better position. Because of the paucity of the documentation in this case, it is not known what the borrowers' past or present housing expenses were or are. If the credit delinquencies were properly explained and documented, arguably, Respondent's actions may be beyond reproach. It is not enough for the Government to have relied only on the submission of derogatory credit reports, which the Respondent claims were sufficiently explained and documented. The Government produced no other documents, e.g., the MCAW, the HUD-1, which may have allowed a further analysis of Respondent's actions in this case. I conclude, therefore, that in the Coleman/Sanders case, the Government's evidence was inadequate and does not establish a cause for debarment by a preponderance of the evidence. 2 CFR §§ 180.850(a) and 900.
9. The Jordan case raises two issues: Insufficient documentation to explain the borrowers' derogatory credit history and approval of the loan by Respondent that exceeded HUD's fixed payment-to-income ratio guidelines of 41 percent by more than 14 percent. Respondent again

claims that HUD reviewed an incomplete file. Respondent's recollection is that the expenses paid by the borrowers to take care of their mother, which the borrowers claim accounted for their delinquencies, was documented and should have been in the credit package. Respondent justifies approving the loan in excess of HUD's ratio on the basis that it saved the borrowers \$1800.00 per month in expenses. Respondent claims that the MCAW at Exhibit 28 was her initial one; she does not know why it was stamped final since she did not finish explaining her compensating factors. Nothing about the MCAW seems to be an initial one. Respondent added two compensating factors in the Remarks block of the MCAW - - the savings of \$1800.00 and the fact that the borrowers were retirees. These are not compensating factors under HUD guidelines. Accordingly, Respondent's failure to document cognizable compensating factors in violation of HUD Handbook guidelines provides cause for debarment.

10. In the Grice case, even if Respondent's explanation for approving the loan were accepted, it is clear that most of the Borrowers' debt, whether disputed or not, did not figure in Respondent's calculations as she approved the loan. In the circumstances, also, the borrowers' derogatory credit history was hardly overcome by any compensating factors that Respondent could advance.<sup>17</sup> Respondent's actions violated HUD Handbook 4155.1 REV-5, in that she failed to analyze properly the borrowers' credit history. Respondent's failure provides cause for debarment.
11. Respondent makes no claim in the Perry case that documents are missing or that she provided an explanation for approving the loan at the time she underwrote the loan. Respondent's after-the-fact explanation does not justify her failure to document contemporaneously her reasons for approving the loan. Respondent's claim that the borrower was never late on her mortgage is a compensating factor that should have been documented at the time of underwriting. More critically, because of the borrower's numerous delinquencies and the fact that this loan was "Referred" under FHA Total Scorecard, Respondent was required to do a careful analysis and explanation before approving the loan. Additionally, Respondent's approval of the loan resulted in an increase in the fixed payment-to-income ratio from 55 percent to 64 percent without Respondent's documenting any compensating factors therefor. Respondent's actions violated HUD's guidelines set forth in the above-cited HUD Handbook and provides cause for her debarment.
12. In the Plover case, Government counsel acknowledges that the MCAW and the form HUD 92900A were missing from the file. Respondent, it would appear from her March 9, 2010, letter, had included an explanation for approving the loan in the file. Because other documents

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<sup>17</sup> In her notarized statement submitted as an attachment to her attorney's letter of April 7, 2010, Respondent certifies that the signature on the Grice form HUD-92900 is not hers. Respondent, however, based on her recollection of events with respect to this loan (see Respondent's March 9, 2010, letter to the Debarring Official's Designee) seems very familiar with the approval process for the loan. I conclude, therefore, that even if the signature on the form HUD-92900 is not hers, Respondent was, nonetheless, the underwriter of the Grice loan.

also may be missing from the file, thus giving some credence to Respondent's claim that an explanation and supporting documents were prepared at time of underwriting to justify her approving the loan, I conclude that the Government has not established the cause for debarment in this case by a preponderance of the evidence.

13. In summary, for the reasons discussed above, I find that the Government did not establish cause for Respondent's debarment in the Robinson, Musac/Saintilinen, Menish, Cruz, Plower, and Coleman/Sanders cases. I find that the Government established cause for the Respondent's debarment in the Jordan, Grice, and Perry cases.
14. The Government established cause for Respondent's debarment pursuant to 2 CFR §§ 180.800(b)(1) and (3). As Respondent's actions relate to these authorities, it is clear that Respondent's failure to comply with HUD's authorities, cited *supra*, was willful. I do not find that Respondent's actions, as urged by the Government, show a history of failure to perform because they occurred over a period of less than two months. Respondent was, by her own admission, an underwriter for over 22 years, and was familiar with relevant HUD underwriting authorities and guidelines. There is fairly credible evidence that Respondent's employer, FLMC, may have contributed in part to some of Respondent's failures. For that reason, Respondent was not held responsible for the failures in those cases identified above. In the other cases for which Respondent was held responsible, even acknowledging FLMC's shortcomings, it is clear that Respondent's actions did not comport with established authorities.
15. Respondent's actions described here raise grave doubts with respect to her business integrity and personal honesty.
16. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.

17. HUD cannot effectively discharge its responsibility and duty to the public if participants in its programs or programs that it funds fail to act with honesty and integrity.

#### DETERMINATION

Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I have determined, in accordance with 2 CFR §§ 180.870(b)(2)(i) through (b)(2)(iv), to debar Respondent for a period of 18 months from the date of this Determination. Respondent's debarment is effective for covered transactions from the date of this Determination. Respondent's "debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception."

Dated: \_\_\_\_\_

6/2/10



\_\_\_\_\_  
Craig Clemmensen  
Debarring Official

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of June 2010, a true copy of the  
DEBARRING OFFICIAL'S DETERMINATION was served in the manner indicated.



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Corlis Stevenson  
Debarment Docket Clerk  
Departmental Enforcement Center (Operations)

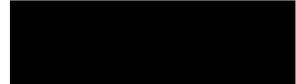
**HAND-CARRIED**

Mortimer F. Coward, Esq.  
Debarring Official's Designee

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Terri L. Roman, Esq.  
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**FIRST CLASS MAIL**

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