

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

In the Matter of:

ERIKA ETZEL,

Respondent.

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Docket No. 10-3616-DB

DEBARRING OFFICIAL'S DETERMINATION

Introduction and Background

By Notice of Suspension and Proposed Debarment dated October 20, 2009, ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent ERIKA ETZEL of her immediate suspension along with 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 five years from the date of the final determination of this action. The Notice further advised Respondent that her suspension and proposed debarment were in accordance with the procedures set forth in 2 C.F.R. parts 180 and 2424 and were "based upon information indicating alleged irregularities of a serious nature in [Respondent's] business dealings with the Government." The alleged irregularities, the Notice recited, involved Respondent's "acts and omissions as an employee and underwriter . . . for a HUD/FHA-approved direct endorsement and lender insurance mortgagee." The Notice alleged that the irregularities involved thirteen FHA-insured mortgage transactions. Specifically, Respondent was alleged to have used documentation to qualify "borrowers [which] contained discrepancies and/or inconsistencies [and that her] failure to question and/or resolve these discrepancies/inconsistencies prior to approving the mortgage is a violation of HUD requirements."

In a letter dated November 18, 2009, from her attorney, Respondent requested a hearing in accordance with the Notice. Pursuant to Respondent's request, the Debarring Official's Designee on January 15, 2010, issued an Order Setting Hearing Date and Submission Deadline. In the interim, the parties had filed a Joint Motion for Referral to an Administrative Law Judge for Fact Finding, asserting, *inter alia*, that "there will be many issues of disputed facts in these proceedings." The Debarring Official granted the motion in an Order issued February 11, 2010. Subsequently, the Debarring Official issued the

Referral Order on February 26, 2010, which, pursuant to 2 C.F.R. § 180.245(c), allows the "debaring official to refer disputed material facts to another official for findings of fact." Administrative Judge Vanessa L. Hall on January 6, 2012, issued an Initial Determination.

Discussion

In the Initial Determination of January 6, 2012, the Administrative Judge made findings of fact. As indicated *supra*, this case was referred to the AJ pursuant to 2 C.F.R. § 180.845(c), which provides that

The debaring official may refer disputed material facts to another official for findings of fact. The debaring official may reject any resultant findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

I have carefully read the Initial Determination, including the exhaustive treatment by the AJ of the disputed facts, and find no reason to disturb her findings of fact. I adopt and incorporate herein by reference the Initial Determination of January 6, 2012, except insofar as I specifically reject any finding that I determine the AJ is not authorized to make pursuant to 2 C.F.R. § 180.245(c). Along with making findings of fact, the AJ made conclusions of law and a finding that Respondent be debarred for three years.

As was held in a companion case¹ dealing with like issues as presented in this case, there is no authority in the debarment regime specifically authorizing an AJ to make conclusions of law or to recommend, or not, debarment or appropriate terms of debarment. Accordingly, while an AJ's recommendation with respect to final action on a proposed debarment may be treated with deference, a debaring official, because the regulation confers on him the exclusive power to debar, is not at liberty to cede this regulatory grant of power to an AJ.² For that reason, a debaring official, when faced with an unsolicited recommendation or finding in an Initial Determination, must treat the recommendation or finding as a gratuitous superfluity. The debaring official, in fealty to the regulations, must determine *de novo* or independently an appropriate period of debarment, if any, notwithstanding the AJ's recommendation or finding.

The AJ's findings in this case indisputably support the imposition of a period of debarment. Respondent's actions, as the facts as found by the AJ clearly demonstrate, were serious and in clear violation of HUD's underwriting guidelines. The authority to take action against an errant participant in a HUD program is to be found in 2 C.F.R. § 180.125(b), which authorizes HUD as a federal agency "to exclude from Federal programs persons who are not presently responsible." The period of exclusion is to be determined in

¹ See the Debaring Official's Determination in *In the Matter of Lisa Burns*, Docket No. 10-3617-DB, January, 19, 2012, (unpublished decision).

² The grant of the power to debar, or not to debar, is to be found at 2 C.F.R. § 180.845(a), which provides that the "debaring official may debar you" etc.

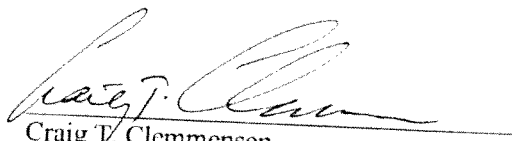
accordance with 2 C.F.R. § 180.865. Respondent's errors and omissions in the thirteen loans at issue clearly show that she is not presently responsible. In arriving at this conclusion, I have considered the arguments and mitigating factors, *inter alia*, raised by Respondent. However, I do not find that her explanations and arguments negate the conclusion that she is not presently responsible. Respondent's exclusion is necessary to "protect the public interest." *Id.* at (a).

Conclusion

Accordingly, based on the administrative record in this matter, in particular the findings of fact set forth in the Initial Determination of January 6, 2012 (*In the Matter of Erika Etzel*, HUDOA No. 10-IH-005-D5, unpublished decision), I have determined that Respondent's suspension, which commenced on October 20, 2009, shall terminate immediately. Further, Respondent is debarred from today's date until October 20, 2012.³ In accordance with 2 C.F.R. §§ 180.870(b)(2)(i) through (b)(2)(iv), Respondent's "debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 C.F.R. chapter 1), unless an agency head or an authorized designee grants an exception."

Dated: _____

1/19/12


Craig T. Clemmensen
Debarring Official

³ Under 2 C.F.R. § 180.865(b). "If a suspension has preceded your debarment, the debarring official must consider the time you were suspended."