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

In the Matter of: THOMAS J. JOY Respondent.	HUDALJ 93-1906-DB Decided: November 1, 1993

Dennis J. Kelly, Esquire
Robert S. Halpern, Esquire
For the Respondent

Georjan D. Overman, Esquire
For the Government

Before: Paul G. Streb
Administrative Law Judge

INITIAL DETERMINATION

STATEMENT OF THE CASE

This matter concerns the appeal of Thomas J. Joy ("the Respondent") from a notice of suspension and proposed debarment issued on August 24, 1992, by the General Deputy Assistant Secretary for Housing, U.S. Department of Housing and Urban Development ("the Government" or "HUD"). That official proposed to debar Mr. Joy for five years, commencing October 9, 1991, from participating in federal nonprocurement transactions throughout the executive branch of the federal government, and from participating in procurement contracts with HUD. He also suspended Mr. Joy from further participation in HUD programs pending the outcome of the proposed debarment. The suspension superseded a Limited Denial of Participation ("LDP") in HUD programs issued on October 9, 1991, and affirmed on December 10, 1991, by HUD's Boston Regional Administrator.

On September 24, 1992, Mr. Joy appealed his suspension and proposed debarment. A hearing was held on February 23-25, 1993, in Boston, Massachusetts. The record closed on April 28, 1993, upon receipt of post-hearing briefs from both parties.

ANALYSIS, FINDINGS AND CONCLUSIONS

Background

The Taunton Housing Authority ("THA") is a public housing authority located in Taunton, Massachusetts. It is governed by a Board of Commissioners and managed by an Executive Director. THA operates housing programs funded by the state and federal government. The Section 8 program, which provides rent subsidies to individuals, is one of the federally funded programs. Government's Exhibit ("Ex. G") 1. THA and HUD entered into both a Public Housing Annual Contributions Contract ("PH ACC") pertaining to the federal public housing programs, and a Section 8 Annual Contributions Contract ("Section 8 ACC") pertaining to that program. PH ACC (Nov. 1969) (unmarked exhibit); Ex. G-15.

From 1981 until his suspension, Mr. Joy was under contract with THA to be its Fee Accountant; as such, he provided accounting services regarding state and federal programs. In 1982, THA hired him to work as a part-time employee in the job of Assistant Executive Director; as such, he had various duties regarding financial matters concerning state and federal programs. In 1987, he was reassigned from that position and worked as a part-time Administrative Assistant until March 1992; in that job, he had various duties regarding financial matters concerning state programs. In 1989, he entered into an arrangement with THA to be a Computer Consultant; as such, he provided consulting services through 1990 regarding the automation of THA, including its state and federal programs. Hearing Transcript ("Tr.") 19, 468-72, 481-83, 515-524; Ex. G-42.

In 1991, THA was audited by the HUD Region I Inspector General's Office. Ex. G-1. Robert N. Doocey, a Senior Auditor, was in charge of the audit. Tr. 15, 18-19. Steven O. Nunef, a HUD Financial Analyst, and Richard Kluck, a HUD manager, were involved in the resolution of the audit findings with THA. Tr. 267-69, 371-73. Based on the audit findings, the Government brought this action against Mr. Joy. Generally, the Government alleges that Mr. Joy engaged in a conflict of interest by holding three THA positions simultaneously, and that he improperly charged the Section 8 program for expenses unrelated to that program.

Burden Of Proof

A proposed debarment will be sustained if the Respondent is covered by the applicable HUD regulations, if there is cause for debarment, and if debarment is necessary to protect the public interest and the federal government's interest in doing business with responsible persons. 24 C.F.R. §§ 24.110, .115, .300. The Government bears the burden to prove by a preponderance of the evidence that there is cause for

debarment; Respondent has the burden to establish mitigating circumstances. *Id.* § 24.313(b)(3) and (4).

A suspension will be sustained if the Respondent is covered by the regulations, if there is cause for suspension, and if the immediate action of suspension is necessary to protect the public interest and the federal government's interest in doing business with responsible persons. *Id.* 24 C.F.R. §§ 24.110, .115, .400. The Government bears the burden to prove by "adequate evidence" that there is cause for the suspension. *Id.* §§ 24.313(b)(3) and (4), .400(b)(1), .413.

Jurisdiction

The regulations governing debarment and suspension apply to all persons who have participated, are currently participating, or may reasonably be expected to participate in transactions under federal nonprocurement programs. 24 C.F.R. § 24.110(a). While working for THA, Mr. Joy exercised control over expenditures for federally subsidized housing programs. Tr. 491-94, 531-32. Therefore, he is covered by the regulations. *See id.* §§ 24.105 (m) and (p)(13), 24.110(a)(1)(i).

Analysis Of The Allegations

Conflict Of Interest

The Government alleges that Mr. Joy's simultaneous holding of three THA positions constituted a conflict of interest under three separate contractual and regulatory provisions -- § 515 of part two of the PH ACC, § 2.13 of part two of the Section 8 ACC, and 24 C.F.R. § 85.36(b). Complaint, Count 5. A related allegation is that Mr. Joy administered his own contract as Fee Accountant in violation of 24 C.F.R. § 85.36(b). Complaint, Count 6. I find these allegations to be sustained as to the alleged violation of § 2.13 of part two of the Section 8 ACC and 24 C.F.R. § 85.36(b).[1]

As discussed above, Mr. Joy served simultaneously as Administrative Assistant, Fee Accountant, and Computer Consultant at THA. He was a salaried THA employee occupying the position of Administrative Assistant for state programs. Tr. 20; Ex. G-13. He had a contract with THA to be its Fee Accountant for state and federal programs. Tr. 468. He also had an arrangement with THA, but no contract, to provide computer consulting services concerning state and federal programs. Ex. G-64.

[1] In view of the finding that Mr. Joy engaged in a conflict of interest in violation of those two provisions, it is unnecessary to decide whether there was a conflict of interest under § 515 of the PH ACC.

Section 2.13 of part two of the Section 8 ACC, entitled "Conflict of Interest Provisions," provides that:

> A. Neither the PHA [Public Housing Authority] nor any of its contractors or their subcontractors shall enter into any contract, subcontract, or arrangement, in connection with the [Section 8] Program in which any of the following classes of persons has an interest, direct or indirect, during tenure or for one year thereafter:
>
> * * *
>
> 2. Any employee of the PHA who formulates policy or who influences decisions with respect to the Program.

Ex. G-15 at 3. Mr. Joy does not specifically dispute the applicability of § 2.13 to him. As Fee Accountant, Mr. Joy was a THA contractor. He entered into an arrangement with THA to provide computer consulting services that were connected in part with the Section 8 program. Tr. 23; Ex. G-41. Moreover, he was a THA employee who formulated policy and influenced decisions regarding the Section 8 program. In addition to being a salaried employee as Administrative Assistant, his Fee Accountant contract was renewed annually without competition. Moreover, as discussed below, he had responsibility for all financial matters at THA, and he charged his Computer Consultant fees to the Section 8 program. Consequently, I find that Mr. Joy engaged in a conflict of interest as defined in § 2.13 of the Section 8 ACC. Therefore, Count 5 is sustained.

The pertinent provision of 24 C.F.R. § 85.36(b)(3) states that:

> No employee . . . of the grantee . . . shall participate in . . . [the] administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when [t]he employee . . . has a financial or other interest in the firm selected for award.

As Administrative Assistant, Mr. Joy was an employee of a grantee (THA). Also, he had a financial interest in his contract as Fee Accountant, which was supported by Section 8 funds. Tr. 188. As Administrative Assistant, Mr. Joy participated in the administration of his Fee Accountant contract. Under that contract, Mr. Joy was responsible for performing all accounting services for THA; for assisting and advising it as a financial analyst for cash management; and for assisting it in preparing state and federally-funded budgets. Ex. G-66. As Administrative Assistant, Mr. Joy was responsible for insuring that his work as Fee Accountant regarding state programs was properly performed. The job description of Mr. Joy's Administrative Assistant position shows that he occupied "a highly responsible administrative position, in which [he] actively assist[ed] [the] executive director in all aspects of fiscal management of the agency" concerning state programs. He was "responsible for the completeness and accuracy of all budgetary and financial records, required by the authority itself or by another governmental agency providing funding to the authority." He was required to

"be in a position to develop, install and monitor all controls necessary to protect the financial integrity of the organization." Ex. G-13.

Mr. Joy argues that the excerpts quoted above from his Administrative Assistant job description were merely "boilerplate," and that he actually performed other duties in that position. However, he did not specifically deny performing the managerial functions described above, and the job description was provided to the auditors by Mr. Joy, himself. Moreover, the Executive Director, Mr. Thomas, told the auditors that he "did not know the financial aspect of the Authority," and he referred their questions concerning THA's financial problems to Mr. Joy. Tr. 138. This evidence shows that Mr. Joy was effectively in control of financial matters at THA. Given that evidence and the job description, it is reasonable to conclude that, as Administrative Assistant, Mr. Joy participated in the administration of his Fee Accountant contract by virtue of having responsibility for oversight of all aspects of financial management regarding state programs. Consequently, I find that Mr. Joy engaged in a conflict of interest and that he violated 24 C.F.R. § 85.36(b). Therefore, Counts 5 and 6 are sustained.[2]

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[2] Mr. Joy argues that HUD should be barred from claiming a conflict of interest between his positions of Administrative Assistant and Fee Accountant because HUD authorized him to perform that dual role. It is unnecessary to address this contention. Any bar to the claim of conflict of interest between those positions has no applicability to the conflict of interest under the Section 8 ACC because the latter conflict involved the positions of Administrative Assistant and Computer Consultant. Mr. Joy does not contend that HUD authorized him to perform that dual role. In fact, there is no evidence that HUD was aware of Mr. Joy's arrangement as Computer Consultant until the audit. Tr. 565. Thus, even if I agreed with Mr. Joy's contention, the outcome of this case would be the same.

Improper Charges To Section 8 Accounts

The Government alleges that Mr. Joy improperly charged $82,457 to THA's Section 8 program account for the following expenses that were not related to the Section 8 program: $5,180 for bonuses for Authority employees, $40,568 for computer equipment, $10,507 for office materials, and $26,202 for consulting services. Complaint, Count 1. The Government alleges that Mr. Joy made some of those charges in order to benefit personally, and that such action constituted a conflict of interest. In this regard, it is alleged that he paid himself a $500 bonus for his work as Administrative Assistant; he purchased the computer equipment for his use in his capacity as Fee Accountant; and he paid himself $4,600 for performing services as a Computer Consultant that he was

supposed to provide under his Fee Accountant contract.[3] The Government contends that Mr. Joy's actions were prohibited by HUD regulations and by "§§ 101 and 306 of the Section 8 ACC." Complaint, Counts 2-4. Mr. Joy does not disagree that he charged $82,457 to the Section 8 program; however, he generally denies that his actions were improper. I find the allegation concerning the bonus to be sustained; I do not find the other allegations to be sustained.

The Government's reliance on "§§ 101 and 306 of the Section 8 ACC" is misplaced. The Section 8 ACC does not contain a section 101 or a section 306. Although the PH ACC contains those sections, the PH ACC pertains to public housing, not the Section 8 program.[4]

However, HUD regulations provide a basis for the allegations of improper charges to the Section 8 program. Generally, those regulations prohibit the making of

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[3] In its Brief, the Government argues that Mr. Joy also improperly charged his Administrative Assistant salary to the Section 8 program. However, because this allegation was not included in the Complaint, it may not serve as a basis for the suspension and proposed debarment. *See* 24 C.F.R. § 26.10(b) ("The complaint shall state the grounds upon which the administrative action is based.") Evidence was introduced at the hearing concerning that issue in the context of other issues -- whether there was a conflict of interest under Section 515 of the PH ACC and whether HUD should be barred from claiming such a conflict. However, as discussed above, those issues need not be decided here.

[4] Section 101 of the PH ACC provides for efficiency and economy in the development and administration of individual housing projects. Generally, § 306 requires housing authorities to comply with state and local laws when making purchases and entering into contracts concerning the public housing program, and to award such contracts to the lowest bidder. There is no factual allegation in the Complaint regarding a violation of those requirements. Evidence was introduced at the hearing concerning the issue of Mr. Joy's compliance with certain procurement requirements. However, that matter can not serve as a basis for the suspension and proposed debarment because it was not alleged in the Complaint. *See* 24 C.F.R.
§ 26.10(b) ("The complaint shall state the grounds upon which the administrative action is based.")

charges to the Section 8 program for costs not related to that program. In order to be an allowable cost for a federal program, the cost must be necessary and reasonable for proper and efficient administration of that program; such a cost is allowable to the extent of the benefits received by the program. *See* OMB Circular A-87 (unmarked exhibit); 24 C.F.R. § 85.22.

However, the HUD officials who testified for the Government conceded that, under HUD's policies, the restrictions on the use of Section 8 funds are not absolute. Although Section 8 funds are maintained in a single checking account, they are reflected on the books in two accounts -- the operating expense account and the reserve account. The operating expense account is used for costs related to the day-to-day operation of the program, e.g., salaries. If there is a surplus in that account at the end of a year, it goes into the operating reserve account. The reserve account need not be used for the

Section 8 program. Rather, it can be used for any housing-related purpose, state or federal. Tr. 88, 174-75, 187, 374-76, 386, 562.

It is clear that the $82,457 charged to the Section 8 program was used for housing-related purposes; THA's sole mission is to operate housing programs, and there is no evidence that any of the expenditures was inconsistent with that mission. It is undisputed that, ultimately, the $82,457 was charged to the reserve account. However, HUD asserts that Mr. Joy acted improperly by charging those costs initially to the expense account as they were incurred and then making changes at the end of the year to reflect that those costs were charged instead to the reserve account. HUD asserts that he should have charged the costs directly to the reserve account. Thus, the essence of the Government's allegation is that he used an improper accounting method. Although I agree that Mr. Joy's accounting method is questionable, the Government has not shown that it is clearly improper or specifically proscribed.

According to HUD Financial Analyst Nunef, there were two drawbacks to Mr. Joy's accounting method. It could have resulted in HUD's sending additional funds that were not needed, and the reserve account could have been depleted. However, Mr. Joy showed everything on the books, and there was no evidence that HUD was misled into sending such funds. Also, Mr. Nunef conceded that it was unlikely that THA's large reserve would be depleted. Tr. 89, 174-187, 215-16, 377-79, 386-87, 393-98.

Moreover, Mr. Joy was not making charges to the expense account on the basis of a mere hope that there would be sufficient funds in the reserve account at the end of the year. Rather, THA had built a reserve account of approximately $135,000 over a ten-year period, and that amount was available at the beginning of 1989 when Mr. Joy began making the charges. At the end of 1990, the reserve account contained more than $100,000. Thus, the reserve account had sufficient funds to enable Mr. Joy to

charge it directly, but he was not aware that his method was proscribed.[5] Tr. 524, 559-61;
Ex. D-7, D-8.

Further, despite their views on the drawbacks of Mr. Joy's accounting method, HUD's witnesses conceded that the "bottom line" was the same under both methods and that accountants could have reasonable differences of opinion regarding the proper

method to use. They also conceded that Mr. Joy's method was in compliance with the Generally Accepted Accounting Principles (GAAP) of the American Institute Of Certified Public Accountants (AICPA). Tr. 186, 387. Most importantly, there is no evidence that Mr. Joy's accounting method was clearly improper or specifically proscribed. Consequently, Mr. Joy's use of it can not serve as a basis for suspension or debarment.

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[5] Mr. Nunef asserted that, pursuant to a recently enacted restriction, the use of reserve funds must be approved by a housing authority's board of directors. However, the complaint did not allege that Mr. Joy violated that restriction. *See* 24 C.F.R. § 26.10(b) ("The complaint shall state the grounds upon which the administrative action is based.") Furthermore, although Mr. Nunef beleived that Mr. Joy charged some of the costs after that restriction was enacted, he did not identify the restriction with any specificity, he was not sure when it was enacted, he did not specify the costs, and his testimony in this regard was "[o]ff the top of [his] head." Tr. 376. Such vague testimony can not serve as the basis for a finding that Mr. Joy violated the restriction. Moreover, Mr. Joy testified, without rebuttal, that the THA Board had given him the authority to automate THA, and most of the costs in question were used for that purpose. Tr. 563-64.

Cf. In re White, HUDALJ No. 92-1848-DB(LDP), slip op. at 8 (Final Determination, March 22, 1993) (Government must demonstrate that the prohibition on which an LDP is based is unambiguous). Therefore, Count 1 is not sustained.

The related allegations that Mr. Joy charged certain costs in order to benefit personally is sustained only as to the $500 bonus that he received as Administrative Assistant. Mr. Joy admitted that he should not have received a bonus. Tr. 535; Respondent's Brief at 10. The bonuses were paid to employees involved in the implementation of the Section 8 program. Mr. Joy was involved in that program as Fee Accountant and Computer Consultant. However, he had no involvement in the Section 8 program in the capacity in which he received the bonus -- Administrative Assistant for state programs. Therefore, Count 2 is sustained.

I find no merit to the allegation that Mr. Joy purchased the computer equipment for his use in his capacity as Fee Accountant. The THA Board had authorized the automation of its operations. Tr. 563-64. The computers were used by various employees, and THA benefited from the resulting improvement in efficiency. Tr. 407-09. Thus, Mr. Joy did not have exclusive use of the computers, and any benefit that he derived from them was merely incidental. Therefore, Count 3 is not sustained.

I find no merit to the allegation that Mr. Joy paid himself $4,600 for performing services as a Computer Consultant that he was supposed to provide under his Fee Accountant contract. As Computer Consultant, Mr. Joy participated in the development of computer programs that would automate the systems for allocating costs among THA's various programs and for adjusting rent payable by tenants. Tr. 223; Ex. G-38. Mr. Joy's Fee Accountant contract required him to provide "accounting services," not to develop computer programs. Ex. G-66. Therefore, Count 4 is not sustained.

Cause For Debarment

The regulations set forth various acts and omissions that constitute cause for debarment. 24 C.F.R. § 24.305. The Government asserts that Respondent's actions constitute cause for debarment under several regulatory provisions. The first regulation invoked by the Government is § 24.305(b), which provides that debarment may be imposed for:

> Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:
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> * * *
>
> (3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

The Government also invokes § 24.305(f), which provides that:

> . . . HUD may debar a person from participating in any programs or activities of the Department for material violation of a statutory or regulatory provision or program requirement applicable to a public agreement or transaction . . . .

Mr. Joy does not dispute that there is cause for debarment under those provisions. He knowingly engaged in a conflict of interest that was prohibited by HUD regulations and the Section 8 ACC. Thus, I find that there is cause for debarment in this matter.[6]

Public And Governmental Interest

The next issue for consideration is whether the debarment of Mr. Joy for five years, commencing October 9, 1991, is necessary to protect the public interest and the federal government's interest in doing business with responsible persons. The debarment process is not punitive in nature. *Id.* § 24.115(b). Rather, it protects public and governmental interests by precluding persons who are not "responsible" from conducting business with the federal government. *See id.* § 24.115(a) and (b); *Delta Rocky Mountain Petroleum, Inc. v. U.S. Dep't of Defense*, 726 F. Supp. 278, 280 (D. Colo. 1989).

"Responsibility" is a term of art which encompasses business integrity and honesty. *See, e.g., Delta Rocky Mountain Petroleum,* 726 F. Supp. at 280. Determining "responsibility" requires an assessment of the current risk that the government will be injured in the future by doing business with a respondent. *See Shane Meat Co., Inc. v. U.S. Dep't of Defense,* 800 F.2d 334, 338 (3d Cir. 1986). That assessment may be based on past acts. *See, e.g., Agan v. Pierce*, 576 F. Supp. 257, 261 (N.D. Ga. 1983).

Clearly, Mr. Joy's action of engaging in a conflict of interest and his receipt of a $500 bonus are serious matters that affect his present responsibility. However, I

conclude that the proposed five-year debarment would be excessive, punitive, and not in the public interest.

First, HUD regulations clearly contemplate that in the ordinary case no more than three years of debarment is appropriate, and that only drug cases and other extraordinary cases warrant longer sanctions. In this regard, 24 C.F.R. § 24.320

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[6] The Government also contends that cause for debarment exists under 24 C.F.R. § 24.305(d). Because cause for debarment exists under other regulatory provisisons, it is not necessary to decide whether cause exists under that section.

provides that:

> (a) Debarment shall be for a period commensurate with the seriousness of the cause(s)...
>
> (1) Debarment for causes other than those related to a violation of the requirements of Subpart F of this part [reguiring a drug-free workplace] generally should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed.
>
> (2) In the case of a debarment for a violation of the requirements of Subpart F of this part (*see* § 24.305(c)(5)), the period of debarment shall not exceed five years.

The instant case does not involve drugs. Moreover, the Government has not established that the instant case is extraordinary. Far more serious matters are listed among the causes for debarment in 24 C.F.R. § 24.320, e.g., conviction for fraud, embezzlement, and bribery. The allegation that Mr. Joy improperly charged $82,457 to a federally funded account was not sustained.

Moreover, there are several mitigating factors. The $500 bonus was not an extremely large sum, and Mr. Joy paid it back soon after Mr. Doocey notified him of the problem. There was no evidence that Mr. Joy benefitted personally from the conflict of interest other than by holding the positions themselves. For example, the Government did not allege that he charged higher than the market rate for his computer consulting services. Also, there was no evidence that his performance in one position suffered as a result of his holding the other positions. Further, there was no evidence that Mr. Joy had previously engaged in misconduct. *See In re Emily Guillen and Emily Investments,* 1992 WL 45853, HUDBCA No. 91-7008-D99, slip op. at 3 (citations omitted) (Final Determination, April 9, 1992) (among the factors to be considered in mitigation are the sums of money involved, prior instances of misconduct, and remedial steps taken upon notification of the violation).

However, there is an aggravating factor involving Mr. Joy's conduct after the LDP was imposed. The Government asserts that Mr. Joy violated the terms of the LDP and suspension, and that that misconduct should be considered in determining the appropriate period of debarment. Because this matter is closely related to the issue of Mr. Joy's present responsibility, it is a proper consideration. In this regard, HUD informed Mr. Joy in the October 9, 1991 LDP notice that he was barred from "future participation, direct or indirect, in all assisted housing programs . . . ." Ex. G-74. The August 24, 1992 notice of suspension, which superseded the LDP, reiterated the prohibition on participation in covered transactions and procurement contracts.

After the LDP was imposed on October 9, 1991, Mr. Joy continued to work for THA as Administrative Assistant for state programs until March 8, 1992, and as Fee

Accountant for state programs until December 31, 1991. Tr. 468, 482. In both capacities, he was paid from state funds and ostensibly worked only on state matters. Tr. 248, 264. However, he also provided assistance during that period to John S. Sullivan, who replaced him as Fee Accountant for federal programs. He continued to assist Mr. Sullivan for a short period of time after March 8, 1992, (approximately 1-10 days) during which he was paid by Mr. Sullivan. Tr. 255-57.

Mr. Joy's assistance to Mr. Sullivan involved HUD programs and consisted of explaining THA's books, the budget process, and the audit findings to him, giving him trial balances, helping him close the audit findings, locating records and data for him that was stored in the new computer system, and answering his questions on matters such as the Section 8 program, HUD financing, and the automation of the system. Tr. 243, 249, 252-54. After Mr. Sullivan ceased paying Mr. Joy, Mr. Sullivan called him periodically -- approximately once every 4-12 weeks -- to seek his assistance in finding things, learning the background of various matters, and locating data on the computer system.
Tr. 256-61.

As Mr. Joy's assistance to Mr. Sullivan involved the Section 8 program, HUD financing, the audit report, and other aspects of HUD programs, I find that Mr. Joy was participating, at least indirectly, in HUD programs. Moreover, Mr. Joy was a participant by virtue of his paid employment by Mr. Sullivan, who was a participant himself, during part of the time in question. Tr. 263; 24 C.F.R. § 24.110(a)(1)(ii)(C)(11) and (22).

However, it is clear that the purpose of Mr. Joy's actions was to provide for a smooth transition during the beginning of Mr. Sullivan's tenure as Fee Accountant. As Mr. Joy explained, "I was just assisting him so that he could understand how [THA] operated. We didn't do any accounting work. We didn't post any ledgers or prepare any documents. We just basically looked at the systems that were in place at Taunton." Tr. 546-47. Although the Government contends that Mr. Joy actually did all the work necessary to resolve the audit findings after the LDP was imposed, the record shows that Mr. Joy had written the resolutions to those findings in the summer of 1991, prior to the LDP. When Mr. Sullivan took over, Mr. Joy explained his proposed resolutions, and Mr. Sullivan concurred and forwarded them to HUD. Tr. 242-45; 547-48.

Mr. Sullivan agreed with Mr. Joy's assessment of the nature of his role; he explained that, "Tom basically helped me to interpret both the federal and state [audit] findings and basically helped me in the transition to move on much quicker." Tr. 254-55. Mr. Joy's paid employment was initiated by Mr. Sullivan, who believed that he needed a longer transition period. Tr. 255-56. After the paid employment ended, Mr. Sullivan's conversations with Mr. Joy were brief, and Mr. Sullivan did not view Mr. Joy as a consultant. Tr. 260-62. The benefit derived by Mr. Joy -- a short period of pay from
Mr. Sullivan -- was minimal. However, Mr. Joy's action of imparting his unique knowledge was highly beneficial to Mr. Sullivan and THA. Tr. 247.

It is unlikely that Mr. Joy consciously sought to violate the the terms of the LDP. It was Mr. Joy, not the Government, who called Mr. Sullivan as a witness to explain Mr. Joy's actions in an apparent attempt to show that Mr. Joy acted in THA's interest after the LDP was imposed. The Government was unaware of Mr. Joy's assistance to Mr. Sullivan. Government's Brief at 14. Nevertheless, Mr. Joy acted irresponsibly regarding his obligations under the LDP. He should have known that he was violating the terms of the LDP and suspension by assisting Mr. Sullivan, and he should have sought HUD's permission before performing any actions which could be construed as a violation of the LDP.

Upon consideration of all the circumstances of the sustained allegations in the Complainant, the mitigating factors, and the aggravating factor, I conclude that a 26-month debarment is appropriate in this case. In my judgment, such a debarment will suffice to protect the public interest and the federal government's interest in doing business with responsible persons.

Suspension

Cause For Suspension

Cause for suspension exists upon "adequate evidence" either to suspect the commission of an offense listed in 24 C.F.R. § 24.305(a) or that cause for debarment under § 24.305 may exist. *Id*. § 24.405(a). "Adequate evidence" is defined as "[i]nformation sufficient to support the reasonable belief that a particular act or omission has occurred." *Id.* § 24.105(a). The "adequate evidence" standard is a minimal one; it is similar to the standard of probable cause for an arrest, search warrant, or preliminary hearing in criminal cases. *In re Guillen*, slip op. at 11 (citations omitted).

I find that there is "adequate evidence" to support Mr. Joy's suspension pending the outcome of this proceeding. As discussed above, the audit revealed that Mr. Joy was involved in the improper use of federal funds and a conflict of interest. Thus, it was reasonable to believe that cause for debarment existed.

Need For Immediate Action

HUD is authorized to impose suspensions to protect the public and governmental interest, but not for purposes of punishment. *See* 24 C.F.R. § 24.115(b). Suspension is a serious action, and may be imposed only when immediate action is necessary to protect the public interest. *Id*. § 24.400(b). In view of the findings in the audit report concerning Mr. Joy's involvement in violations of the contract and HUD regulations, I find that Mr. Joy's immediate suspension was warranted to promote public confidence in the integrity of HUD's Section 8 program and to protect the public interest.

DETERMINATION AND ORDER

The proposal to debar Mr. Joy for five years is NOT SUSTAINED; it is ORDERED that that action be replaced by a 26-month debarment commencing October 9, 1991.

The suspension of Mr. Joy pending the outcome of this proceeding is SUSTAINED.

FINALITY AND SECRETARIAL REVIEW

This Initial Determination shall be final unless the Secretary of HUD or the Secretary's designee, within 30 days of receipt of a request for review, decides as a matter of discretion to review the Determination. Any party may request such a review in writing within 15 days of receipt of the Determination. 24 C.F.R. § 24.314(c).

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PAUL G. STREB
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this INITIAL DETERMINATION issued by PAUL G. STREB, Administrative Law Judge, in HUDALJ 93-1906-DB, were sent to the following parties on this 1st day of November, 1993, in the manner indicated:

_____
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