



UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

March 22, 2010

CERTIFIED MAIL R. R.
7009 0820 0002 0033 4932

Mr. Aubrey Mervin Smart, Jr.

Re: Docket No. 09-55-DA

**NOTICE OF GOVERNMENT-WIDE DEBARMENT FROM FEDERAL
PROCUREMENT AND NON-PROCUREMENT TRANSACTIONS**

This notice is issued by the United States Department of Education (Department) pursuant to 34 C.F.R. § 85.870 to inform you that you are **DEBARRED EFFECTIVE THE DATE OF THIS LETTER** from participating in any covered transactions under federal procurement and non-procurement programs and activities of any federal agency. As a consequence of being debarred, you are not eligible to receive federal financial and non-financial assistance or benefits from any federal agency under procurement or non-procurement programs and activities. Also, you may not act as a principal on behalf of any person in connection with a covered transaction. A principal is defined in 34 C.F.R. § 85.995 and includes any key employee or other person who has a critical influence on or substantive control over a covered transaction. This debarment is effective for all covered transactions unless an agency head or authorized designee grants an exception for a particular transaction in accordance with 34 C.F.R. § 85.120.

On October 29, 2009, the Department issued to you a Notice of Proposed Government-Wide Debarment from Federal Procurement and Non-Procurement Transactions, and informed you of your right to submit information and argument in opposition to such an action. That Notice was mailed to you at your last known address of record via U.S.P.S., Certified Mail, Return Receipt Requested. You received the Notice on November 3, 2009.

Under the applicable regulations, one subject to a proposed debarment is given 30 days from receipt of the Notice to oppose the proposed action. Thirty days have passed from

the date of notice, and this office has received no correspondence from you contesting the contents of the October 29, 2009, Notice. The matter is now considered timely.

In your capacity as business manager and financial officer of Coastal Bend College (CBC), an organization receiving Federal Education Grant Funds, you used electronic fund transfers to move \$127,541.85 from CBC's general fund account to your own personal bank account between February 4, 2008, and April 22, 2008. On October 8, 2008, you were charged by the grand jury for embezzling, stealing and intentionally misapplying property which was under the care, custody, and control of CBC. You pleaded guilty to embezzlement under 18 U.S.C. § 666 on November 24, 2008. The court accepted your plea of guilty and found you guilty of violating 18 U.S.C. § 666. Consequently, the court sentenced you to 18 months imprisonment and two year probation. You were also ordered to pay \$122,522.81 in restitution, with interest waived.

Based upon your plea and your conviction, **I FIND** that debarment is warranted. The uncontested record and the Notice of Proposed Government-Wide Debarment from Federal Non-Procurement Transactions, dated October 29, 2009, demonstrate that debarment should be imposed inasmuch as these violations constitute serious charges and cause for debarment under 34 C.F.R. §§ 85.800 (a)(3).

Under 34.C.F.R. § 85.865, the period of debarment is to be commensurate with the seriousness of the cause(s) for debarment. The charges levied against you in the Notice of Proposed Government-Wide Debarment from Federal Non-Procurement Transactions dated October 29, 2009, and which have gone without comment, constitute a serious threat to governmental programs. Accordingly, I have determined that the period of debarment will be **THREE** years, effective the date of this letter. The regulations contained in 34 C.F.R. Part 85, and the Non-Procurement Debarment and Suspension Procedures mailed with the Notice of October 29, 2009, govern this debarment.

SO ORDERED,

(b) (6)

Frank J. Furey,
Deciding Debarment
and Suspension Official