United States Department of Education
Office of Hearings and Appeals

In the Matter of

Charles D. WALLER

Respondent

Docket No. 24-01-DA

Debarment Action

Decided: January 23, 2024

Notice Debarring and Suspending Official:
Susan D. Crim
United States Department of Education

Before
RODGER A. DREW, JR.
Chief Administrative Judge
Debarring and Suspending Official

I. PROCEDURAL HISTORY

On December 6, 2023, the Notice Debarring and Suspending Official for the U.S. Department of Education (Department) issued Respondent a second Notice of Proposed Government-Wide Debarment from Federal Procurement and Non-Procurement Transactions (Notice) pursuant to 2 C.F.R. §§ 180.615 and

180.805. The Notice informed Respondent that the proposed debarment was based upon Respondent's criminal conviction in *United States v. Waller*, No. 20-CR-300 (N.D. Ohio Apr. 19, 2023) for four counts of student loan fraud, in violation of 20 U.S.C. § 1097.

The Notice included a copy of the Indictment, dated June 11, 2020; the Minutes of Criminal Proceedings, dated April 19, 2023, summarizing Respondent's sentencing proceedings; the Sentencing Memorandum, dated April 12, 2023, submitted by Respondent's attorney; the Judgment in a Criminal Case, dated April 20, 2023; and the Amended Judgment in a Criminal Case, dated April 25, 2023, reflecting the court's findings and sentence. Respondent was sentenced to 5 years of probation, a special assessment of $400, a fine of $10,000.00; and restitution of $61,565.00 to the Department.

The Department mailed a second Notice to Respondent's last known home address on December 6, 2023.[1] The Notice was returned to the Department on December 27, 2023, after a no one responded to a notification left by the U.S. Postal Service on December 11, 2023. The Department also emailed a copy of the Notice to Respondent's counsel of record from his criminal case on December 21, 2023. The Administrative Actions and Appeals Service Group of the Department's Federal Student Aid forwarded the Notice to the Office of Hearings and Appeals on January 2, 2024. Respondent has not responded to the Notice. The 35 days after the Department sent the undeliverable Notice provided for in 2 C.F.R. § 180.820 to respond to the Notice having expired, the official record is closed as of January 22, 2024.

II. GOVERNING PRINCIPLES

A. Basis for Debarment

A Debarring Official has the discretion to exclude or "debar" a person from participating in various nonprocurement transactions directly or indirectly involving the Federal Government for, among other reasons:

> Conviction of or civil judgment for—
>
> (1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

[1] The original Notice was sent to an incomplete address.

> (2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;
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> (3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or
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> (4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects [Respondent's] present responsibility.

2 C.F.R. § 180.800(a).

> *Conviction* means—
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> (a) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of nolo contendere; or
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> (b) Any other resolution that is the functional equivalent of a judgment, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.

2 C.F.R. § 180.920.

> *Civil judgment* means the disposition of a civil action by any court of competent jurisdiction, whether by verdict, decision, settlement, stipulation, other disposition which creates a civil liability for the complained of wrongful acts, or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 [31 U.S.C. §§ 3801–12].

2 C.F.R. § 180.915.

The decision to debar is based on all information contained in the official record. 2 C.F.R. § 180.845(b).

The debarring official need not debar, even if a cause for debarment exists. The official may consider the seriousness of Respondent's acts or omissions and any mitigating or aggravating factors. 2 C.F.R. § 180.845(a).

The debarring official may consider following mitigating and aggravating factors, along with other factors if appropriate in light of the circumstances of the case:

(a) The actual or potential harm or impact that results or may result from the wrongdoing.

(b) The frequency of incidents and/or duration of the wrongdoing.

(c) Whether there is a pattern or prior history of wrongdoing. For example, if [Respondent has] been found by another Federal agency or a State agency to have engaged in wrongdoing similar to that found in the debarment action, the existence of this fact may be used by the debarring official in determining that [Respondent has] a pattern or prior history of wrongdoing.

(d) Whether [Respondent is] or [has] been excluded or disqualified by an agency of the Federal Government or [has] not been allowed to participate in State or local contracts or assistance agreements on a basis of conduct similar to one or more of the causes for debarment specified in this part.

(e) Whether [Respondent has] entered into an administrative agreement with a Federal agency or a State or local government that is not governmentwide but is based on conduct similar to one or more of the causes for debarment specified in this part.

(f) Whether and to what extent [Respondent] planned, initiated, or carried out the wrongdoing.

(g) Whether [Respondent has] accepted responsibility for the wrongdoing and recognize[s] the seriousness of the misconduct that led to the cause for debarment.

(h) Whether [Respondent has] paid or agreed to pay all criminal, civil and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government, and [has] made or agreed to make full restitution.

(i) Whether [Respondent has] cooperated fully with the government agencies during the investigation and any court or administrative action. In determining the extent of cooperation, the debarring official may consider when the cooperation began and whether [Respondent] disclosed all pertinent information known to [Respondent].

(j) Whether the wrongdoing was pervasive within [Respondent's] organization.

> (k) The kind of positions held by the individuals involved in the wrongdoing.
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> (l) Whether [Respondent's] organization took appropriate corrective action or remedial measures, such as establishing ethics training and implementing programs to prevent recurrence.
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> (m) Whether [Respondent's] principals tolerated the offense.
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> (n) Whether [Respondent] brought the activity cited as a basis for the debarment to the attention of the appropriate government agency in a timely manner.
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> (o) Whether [Respondent has] fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.
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> (p) Whether [Respondent has] effective standards of conduct and internal control systems in place at the time the questioned conduct occurred.
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> (q) Whether [Respondent has] taken appropriate disciplinary action against the individuals responsible for the activity which constitutes the cause for debarment.
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> (r) Whether [Respondent has] had adequate time to eliminate the circumstances within your organization that led to the cause for the debarment.
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> (s) Other factors that are appropriate to the circumstances of a particular case.

2 C.F.R. § 180.860.

B. Effect of Debarment

A person debarred by a Federal agency is excluded from participating in covered transactions with *any* Federal agency during the period of debarment. 2 C.F.R. § 180.130.

Nonprocurement covered transactions subject to debarment (unless excepted by 2 C.F.R. § 180.215) include grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurances, payments for specified uses, and donation agreements. 2 C.F.R. §§ 180.210, 180.970.

A person excluded from participation in nonprocurement transactions is also ineligible to participate in Federal procurement transactions under the Federal Acquisition Regulation. 2 C.F.R. § 180.140.

C. Length of Debarment

The length of debarment is based on the seriousness of the action(s) that formed the basis for the debarment. "Generally, debarment should not exceed three years. However, if circumstances warrant, the debarring official may impose a longer period of debarment." 2 C.F.R. § 180.865(a).

"In determining the period of debarment, the debarring official may consider the factors in § 180.860. If a suspension has preceded [Respondent's] debarment, the debarring official must consider the time [Respondent was] suspended." 2 C.F.R. § 180.865(b).

D. Standard of Proof

The Department has "the burden to prove that a cause for debarment exists." 2 C.F.R. § 180.855(a). The Department "must establish the cause for debarment by a preponderance of the evidence." 2 C.F.R. § 180.850(a). "*Preponderance of the evidence* means proof by information that, compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not." 2 C.F.R. § 180.990.

"If the proposed debarment is based upon a conviction or civil judgment, the standard of proof is met." 2 C.F.R. § 180.850(b). "Once a cause for debarment is established, [Respondent has] the burden of demonstrating to the satisfaction of the debarring official that [Respondent is] presently responsible and that debarment is not necessary." 2 C.F.R. § 180.855(b).

Respondent will not have an opportunity to challenge the facts upon which the proposed department is based if—

> (1) [Respondent's] debarment is based upon a conviction or civil judgment;
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> (2) [Respondent's] presentation in opposition contains only general denials to information contained in the Notice of Proposed Debarment; or
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> (3) The issues raised in [Respondent's] presentation in opposition to the proposed debarment are not factual in nature, or are not material to the debarring official's decision whether to debar.

2 C.F.R. § 180.830(a).

III. FINDINGS OF FACT

1. On December 15, 2021, Respondent pleaded guilty to all four charged counts of student loan fraud, in violation of 20 U.S.C. § 1097, before a Federal

District Court in the Northern District of Ohio. On April 29, 2022, he withdrew his original guilty plea and on November 29, 2022, he reentered a guilty plea to all four counts pursuant to a revised plea agreement.

A. Background

2. Respondent was the owner of the Ohio Barber Academy, Inc. ("OBA"), dba Flawless Barber Academy ("Flawless"), located in Cleveland, Ohio. Merrillville Beauty College ("MBC"), was a for-profit beauty college/vocational school located in Merrillville, Indiana.

3. The U.S. Department of Education ("the Department") is an agency of the United States government responsible for administering various educational programs throughout the United States, including those authorized by Title IV of the Higher Education Act ("HEA") of 1965, as amended, and applicable federal regulations relating to student financial assistance, institutional eligibility, and student eligibility.

4. Business Owner 1 was the owner of MBC. MBC had participated in the Department Student Financial Aid Programs, primarily the Pell Grant Program. A Pell Grant is a federal grant awarded to students for post-secondary education at colleges, universities, and career schools. Pell Grant funds are provided and insured under Title 20, United States Code, Chapter 28, Subchapter IV.

5. OBA / Flawless was not eligible to participate in the Department Student Financial Assistance programs. On or about February 2, 2008, Respondent submitted an application and applied for OBA's eligibility to participate in the Department financial aid programs. Respondent was denied eligibility by the Department for failing to meet the financial responsibility standards and administrative capability requirements, specifically, by having a negative net worth, by not being current on its long term debt, and for not keeping sufficient supporting documentation for its cash receipt and cash disbursement transactions. On or about February 2, 2009, the Department sent Respondent a letter setting forth the reasons why OBA's application was denied.

B. Financial Aid Regulations

6. For an educational institution to be eligible to participate in the Department of Education Student Financial Aid Programs, and to receive federal financial aid funds on behalf of its students, a school had to, among other things: (1) be licensed in the state in which it operates; (2) be accredited by a national accrediting body; (3) sign a Program Participation Agreement ("PPA"); and (4) abide by financial aid rules and regulations.

7. The National Accrediting Commission of Career Arts and Sciences ("NACCAS") was an accrediting body for cosmetology schools.

8. The Student Financial Aid Programs consisted of various grant and loan programs, including Pell Grants, Direct Student Loans, and Family Federal Educational Loans (formerly Guaranteed Student Loans). Authority to participate in these programs, as well as the program regulations, were described in PPAs.

9. On or about January 15, 2009, Business Owner 1 signed a PPA with the Department, on behalf of MBC, agreeing that MBC would comply with all Title IV, HEA, program requirements, as well as any conditions specified by the Department in the PPA as described in 20 U.S.C. § 1094(a)(l). By entering into the PPAs with the Department, MBC and its officers accepted the responsibility to act as fiduciaries in the administration of the Title IV, HEA, programs. As fiduciaries, MBC and its officers were subject to the highest standard of care and diligence in administering the Title IV, HEA, programs and in accounting to the Secretary of Education for the funds received as described in 34 C.F.R. §§ 668.82(a) and (b).

10. If the Department determined that a school did not meet the fiduciary standard of conduct, either through its failure to comply with Title IV, HEA, program standards and requirements or through acts of affirmative misconduct, it could revoke a school's PPA.

11. Under 34 C.F.R. § 600.20(c)(l), an institution that was currently designated as eligible and wished to expand the scope of its eligibility had to apply to the Secretary of Education for approval to add a location at which the institution would offer 50 percent or more of an educational program, if one of the following conditions applied, otherwise it must report to the Secretary of Education under § 600.21: ·

a) The institution participated in the Title IV, HEA, programs under a provisional certification, as provided in 34 C.F.R. § 668.13;

b) The institution received Title IV, HEA, program funds under the reimbursement or cash monitoring payment method, as provided in 34 CFR part 668, subpart K; or

c) The institution acquired the assets of another institution that provided educational programs at that location during the preceding year and participated in the Title IV, HEA, programs during that year.

34 C.F.R. § 600.3 l(a)(3)(ii). Further, to participate in any Title IV, HEA, program, the institution had to meet the fiduciary standard of conduct under 34 C.F.R. § 668.82(a) and (b)(l).

12. The Department required an institution reporting its establishment of an additional location to submit an Application for Approval to Participate in Federal Student Aid Programs ("E-App") specifying that purpose. Similarly, an institution wishing to re-establish its eligibility and certification to participate in the Title IV, HEA, programs following a change in ownership resulting in a change in control had to submit an E-App specifying that purpose under 34 C.F.R. § 600.20(b)(2)(ii) and (g)(2).

13. Section L of the E-App contained a certification that, among other things, stated that, to the best of the signatory's knowledge and belief, all information in the E-App was true and correct, and acknowledged that if the signatory provided false or misleading information, the Department may deny the application.

14. Under the provisions of 34 C.F.R. § 668.40(a)(l)(iii), an institution lost its eligibility on the date that it permanently closed its main campus, or when it ceased to provide educational programs at its main campus for a reason other than a normal vacation period or a natural disaster that directly affected the institution.

C. The Scheme to Defraud

15. From in or around November 2014, and continuing until in or around August 2015, Respondent, devised a scheme and artifice to defraud the Department of Pell Grant funds. Respondent did so by the following means and methods.

16. On or about May 23, 2014, Respondent created the Midwestern School Group, LLC, in the state of Delaware. This was a proprietary school.

17. In or around 2013, Individual A introduced Respondent to Business Owner 1. Respondent and Business Owner 1 developed a plan for Respondent to purchase MBC through a management company, so that MBC could maintain its accreditation with NACCAS and eligibility to participate in the Student Financial Aid Programs.

18. On or about November 11, 2013, Business Owner 1 purchased Flawless from Respondent. Respondent caused a contract to be submitted to NACCAS, signed by both Respondent and Business Owner 1, with a purported purchase price of $150,000. In truth and in fact, and as Respondent then well knew, this purchase agreement was fraudulent, and the sale actually transacted based only on a handshake and one dollar.

19. On or about January 30, 2014, NACCAS approved Flawless as an additional location.

20. On or about February 10, 2014, Business Owner 1, president of MBC at the time, submitted an E-App to the Department in which he represented that MBC had established Flawless as an additional location. In submitting the E-App, Business Owner 1 represented to the Department that Flawless was owned by MBC.

21. On or about March 11, 2014, in reliance upon the information included in the E-App, the Department issued an Eligibility and Certification Approval Report to MBC indicating that the scope of MBC's institutional eligibility included Flawless as an additional location of MBC.

22. On or about May 22, 2014, an MBC bank account received Title IV, HEA, program funds for students attending Flawless in Ohio.

23. On or about June 10, 2014, Respondent purchased MBC from Business Owner 1. The purchase agreement was for $50,000 plus a portion of the Pell Grant funds disbursed.

24. On or about May 15, 2015, Respondent signed a PPA with the Department agreeing that MBC would comply with all rules and regulations regarding student financial aid. The provisional certification contained a clause for restriction on growth for MBC because of the change in ownership. The restriction on growth prohibited MBC from adding new programs or locations not already approved by the Department. Moving the main campus to the Flawless location in Ohio and closing the MBC Indiana campus were not approved.

25. From on or about November 4, 2014, through on or about July 29, 2015, Respondent paid a family member, Individual B, to make it appear that Individual B was a student at MBC, when in truth and fact, and as Respondent then well knew, Individual B was not a student, was not taking classes, and had no intention of being a student.

26. From on or about November 4, 2014, through on or about July 29, 2015, Respondent failed to report some of MBC' s monthly enrollment reports to the Indiana Professional Licensing Agency ("IPLA"), as required by the state of Indiana.

27. From on or about November 4, 2014, through on or about July 29, 2015, Respondent caused false and fictitious enrollment and attendance reports to be submitted to IPLA and the Department. In these reports, Respondent represented that students attended MBC, when in truth and in fact, and as Respondent then well knew, no students actually attended MBC.

28. Based on Respondent's false and fraudulent representations, the Department awarded over $300,000 in Pell Grant funds to MBC in the names of students actually attending Flawless in Ohio.

29. As a result of Respondent's scheme to defraud, Respondent fraudulently obtained over $300,000 in Pell Grant funds to which the school was not entitled, on behalf of students attending Flawless in Ohio that were not eligible to receive the funds.

30. On or about the following dates, Respondent knowingly and willfully, obtained and attempted to obtain, by fraud and materially false statements, funds, assets, and property exceeding $200 that had been provided and insured under Title 20, Chapter 28, Subchapter IV of the United States Code: July 21, 2015–Student 1 (Count One), July 24, 2015–Student 2 (Count Two), July 29, 2015–Student 3 (Count Three), and July 29, 2015–Student 4 (Count Four).

IV. ANALYSIS

The basis for this debarment action is a conviction of student loan fraud, including making materially false statements. 2 C.F.R. § 180.800(a)(l) and (3). There being a conviction, the Department has met its burden of proof and Respondent does not have an opportunity to challenge the facts upon which the proposed debarment is based. 2 C.F.R. §§ 180.830(a)(1), 180.850(b). Accordingly, Respondent has the burden, based on the official record, of demonstrating that he is presently responsible and that debarment is not necessary. 2 C.F.R. §§ 180.845(a), 180.855(b). Respondent has not replied to the Notice and has thus failed to meet his burden that he is presently responsible and that debarment is not necessary. To his credit, Respondent pleaded guilty in a Federal criminal trial. As part of his sentence, he has been ordered to pay restitution of $61,565.00 to the Department.

V. CONCLUSION

On the basis of the foregoing, it is hereby **ORDERED** that Respondent be **DEBARRED** from initiating, conducting, or otherwise participating in any covered transactions set forth in 2 C.F.R Subpart B for federal procurement and non-procurement program activities of any federal agency.

Taking into consideration the multiple instances of Respondent's fraudulent activities and the amount of federal financial aid funds he fraudulently obtained, he is ineligible to receive federal financial and non-financial assistance or benefits from any federal agency under procurement or non-procurement program activities *for a period of 24 months*, effective with the date of this decision.

Further, during the period of debarment, Respondent may not act as a principal on behalf of any person in connection with a covered transaction. A principal is defined in 2 C.F.R. § 180.995 as follows:

(a) An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or

(b) A consultant or other person, whether or not employed by the participant or paid with Federal funds, who—

(1) Is in a position to handle Federal funds;

(2) Is in a position to influence or control the use of those funds; or,

(3) Occupies a technical or professional position capable of substantially influencing the development or out- come of an activity required to perform the 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 2 C.F.R. § 180.135.

This decision constitutes a **FINAL AGENCY DECISION**. In accordance with 2 C.F.R. § 180.140, this debarment shall be recognized by, and is effective for, executive branch agencies as a debarment under the Federal Acquisition Regulation.

RODGER A. DREW, JR.
Chief Administrative Judge
Debarring and Suspending Official