

In the Matter of
GOVERNMENTWIDE DEBARMENT
FROM
FEDERAL NONPROCUREMENT TRANSACTIONS

SYLVESTER SMITH

Docket No. 93-92-DA

DECISION

This **DECISION** is issued by the United States Department of Education (Department) pursuant to 34 C.F.R. § 85.314. I have jurisdiction to act in this matter by virtue of a Delegation of Authority from the Secretary to me to act as the Department's Designated Deciding Debarment and Suspension Official. The regulations, 34 C.F.R. Part 85, and the Nonprocurement Debarment and Suspension Procedures mailed to Sylvester Smith govern this debarment.

On August 3, 1993, Sylvester Smith, of Longwood, Florida, was issued a "Notice of Proposed Governmentwide Debarment from Federal Nonprocurement Transactions" pursuant to 34 C.F.R. § 85.312. The notice informed him that the proposed debarment was based upon his conviction by the United States District Court for the Middle District of Florida of two counts of aiding and abetting in the making of false claims against the United States Departments of Labor and Education, in violation of 18 U.S.C. § 287. He was also informed that he had the right to submit information and argument in opposition to the proposed debarment.

On August 15, 1993, Mr. Smith submitted a letter, with attachments, in which he argued that debarment should be denied as it is too severe an action because, although he does not contest his guilt, he believes that there are mitigating circumstances that should be considered. Some of the reasons asserted are that he was not an equity owner of the organization and did not personally benefit from the wrongdoing; he was duped by the active wrongdoer; he is an unemployed middle manager who would be devastated by debarment; and he has had exemplary performance in his previous, responsible positions.

On September 1, 1993, Counsel for the Notice Official submitted a Response in which he stated that the trial court convicted Mr. Smith, consistent with his pleas of guilty, of two specific intent crimes. He argued that the offenses are serious and justify the imposition of debarment.

First, I find that there is no dispute as to material facts. Next, pursuant to 34 C.F.R. § 85.300, I must consider the seriousness of the person's acts or omissions and any mitigating factors in determining whether to debar an individual, recognizing that it is the policy of the Federal

Government to conduct business only with responsible persons. In light of the foregoing, I find that debarment is warranted based on Mr. Smith's conviction of offenses directly connected with the administration of the Federal student financial assistance programs and that these offenses directly and adversely relate to whether he is a responsible person for purposes of administering Federal funds.

Under 34 C.F.R. § 85.320, the period of debarment is to be commensurate with the seriousness of the cause(s) of debarment, generally not to exceed three years. Based on the facts and circumstances herein, I have determined that the period of debarment in this case will be three years.

I order that Sylvester Smith be DEBARRED from initiating, conducting, or otherwise participating in any covered transaction under the nonprocurement programs and activities of any Federal agency. As a result, he is not eligible to receive Federal financial and nonfinancial assistance or benefits from any Federal agency under nonprocurement programs and activities. Also, he may not act as a principal, as defined in 34 C.F.R. § 85.105(p), on behalf of any person in connection with any 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. § 85.215.

SO ORDERED

ERNEST C. CANELLOS,
Deciding Debarment and
Suspension Official

Dated: September 24, 1993