

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

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In the Matter of **Docket No. 95-118-DA**

**PROPOSED DEBARMENT OF**  
**JAMES F. MOORED,** Debarment Proceeding  
Respondent.

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Appearances: Peter S. Leyton, Esq., and Gerald M. Ritzert, Esq., Ritzert & Leyton, P.C.,  
Fairfax, Virginia, for James F. Moored.

Edmund J. Trepacz, II, Esq., Office of the General Counsel, United States Department of  
Education, Washington, D.C., for the Office of Student Financial Assistance Programs.

Before: Judge Richard F. O'Hair

**DECISION**

On August 10, 1995, Mr. James F. Moored was issued a "Notice of Proposed Governmentwide Debarment from Federal Nonprocurement Transactions," pursuant to 34 C.F.R. § 85.312 which alleged the violation of regulations applicable to the programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA). 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.* The Notice informed Mr. Moored that the proposal to debar him was based upon his conviction for fraud, which indicates a lack of business integrity and business honesty which, in turn, questions the propriety of further federal government dealings with him. I have jurisdiction to decide this matter by virtue of a Delegation of Authority from the Director, Office of Hearings and Appeals.

Mr. Moored exercised his right to oppose this proposed debarment in accordance with the provisions of 34 C.F.R. § 85.313, by filing a brief and exhibits with this tribunal. [See footnote 1 \\*](#)  
He also

requested the opportunity for oral argument and a hearing on this matter to address what he described as disputes over material facts in issue. These disputes include an allegation that the proposed debarment is premised on factual inaccuracies. Additionally, he expressed a desire to elaborate on mitigation factors and to argue that a debarment would be punitive and not serve remedial purposes.

The regulations do not require that any additional proceedings, such as an oral argument or an evidentiary hearing, be conducted in a situation, such as here, where the debarment is based upon a conviction or civil judgment. 34 C.F.R. § 85.314(a). Conducting an additional proceeding is reserved for situations where there is a genuine dispute as to facts material to the debarment. 34 C.F.R. § 85.314(b)(1). Mr. Moored's argument that the proposed debarment is premised on factual inaccuracies refers to errors which occurred during the sentencing proceeding and were corrected at the appellate level. The conviction, which was based upon Mr. Moored's plea of guilty, was not addressed by the appellate court. Consequently, I find there is no dispute as to the material fact, his federal conviction for wire fraud, which forms the foundation for this proposed debarment. The remaining issues he wishes to address in an evidentiary hearing, i.e., personal factors which mitigate the seriousness of his offense, and the punitive nature of a debarment, have been adequately addressed by both parties in their written submissions to this tribunal. I conclude there is no dispute over the facts material to the proposed debarment and, therefore, respondent's request for an oral argument or an evidentiary hearing is denied.

The August 10, 1995, Notice of Proposed Governmentwide Debarment, references Mr. Moored's March 30, 1992, guilty plea to one count of wire fraud in violation of 18 U.S.C. § 1343 in the United States District Court, Western District of Michigan, Southern Division. He was charged with submitting certain false information on May 4, 1990, with intent to defraud, via facsimile machine, from Washington, D.C. to Kent County, Michigan, to further his application for a loan in an amount in excess of \$868,239. The false information was contained in a document entitled "Ratification of May 1, 1991 Stock Purchase Agreement" and it was submitted as evidence of a stock option Mr. Moored possessed. The document was transmitted to an attorney for the private, professional lender, to be used as collateral for Mr. Moored's requested loan. This stock option purportedly represented stock worth at least the value of the loan, when in fact it was only worth between \$530,000 and \$650,000. A check in the amount of \$868,239, representing the loan proceeds, was delivered to Mr. Moored and was cashed, but it was not paid by the lender's bank. Mr. Moored subsequently repaid this amount to the necessary party. The parties agreed that the lender suffered no loss and Mr. Moored realized no gain as a result of this fraud.

Mr. Moored raises an objection that debarring him would be a Fifth Amendment violation because it would punish him twice for the same offense. In support of his argument he refers to a Supreme Court decision, *United States v. Halper*, 490 U.S. 435 (1989), wherein the Court held that a defendant who already has been punished in a criminal prosecution may not be subjected to an additional civil sanction to the extent that the second sanction may not fairly be characterized as remedial, but only as a deterrent or retribution. Clearly, the nature of this debarment proceeding is not meant to serve as a deterrent, a form of retribution, or any other purpose of punishment, but solely as a means available to the Federal government to protect its assets. 34 C.F.R. § 85.115. Despite his assertions to the contrary, I find the debarment process is remedial in that it serves as a legitimate governmental means to prevent a person who has engaged in serious misconduct from having access to governmental assets for a specified period of time. This is a civil remedy which is not so extreme or divorced from the needs of the government so as to constitute a punishment within the realm of the Double Jeopardy Clause. *See Bae v. Shalala*, 44 F.3d 489 (7th Cir. 1995); *United States v. Furlett*, 974 F.2d 839 (7th Cir. 1992); *United States v. Bizzell*, 921 F.2d 263 (10th Cir. 1990).

In a debarment proceeding, the cause for debarment must be proved by a preponderance of the evidence, and where the debarment is based upon a conviction, the standard shall be deemed to have been met. 34 C.F.R. § 85.314(c)(1). Accordingly, I find that Mr. Moored's March 30, 1992 federal conviction for wire fraud supports the proposed Governmentwide debarment. Furthermore, his debarment is remedial in nature because his misconduct indicates a lack of business integrity and honesty which, in turn, questions the propriety of Federal government dealings with him for a specified period of time.

Mr. Moored next argues that, in light of many mitigating circumstances, the period of the debarment should be less than the three years advocated by ED. He explains that a three year debarment period would substantially deprive him of his livelihood because the bulk of his professional career has involved some level and type of involvement with student financial aid and Title IV services. Since 1990 he has been the president of his consulting firm where he has been involved in providing training in financial aid program management and computer systems, as well as handling institutional accreditation matters. He supports his wife and three children from income predominantly (approximately 75%) derived from this Title IV consulting work. In an attempt to minimize the seriousness of the offense, he points out that within days of the discovery of the false documents he confessed his wrongdoing and ultimately pleaded guilty to one count of wire fraud. Subsequent to this 1992 conviction he served a sentence of slightly more than six months in prison. He also emphasizes the absence of a history of any violations and the fact that his fraudulent act did not involve any Federal activity or Title IV funds, thus it was not a public transaction.

Under the provisions of 34 C.F.R. § 85.320(a) the period of debarment should be commensurate with the seriousness of the cause and in no case should exceed three years. After considering the fact that the wire fraud offense did not involve Title IV funds, all funds were

repaid to the lender, the length of time which has elapsed since the offense and conviction, the absence of evidence of any other misconduct, and the detrimental effect this debarment may have on Mr. Moored's ability to provide financial support for his family, I have decided to limit the period of this debarment to one year and six months.

#### ORDER

On the basis of the foregoing, it is hereby ORDERED that Mr. James F. Moored be debarred from initiating, conducting, or otherwise participating in any covered transaction under the nonprocurement programs and activities of any Federal agency, and is ineligible to receive Federal financial and nonfinancial assistance or benefits from any Federal agency or activity for a period of one year and six months, effective with the date of this decision. He may not act as a principal, as defined in 34 C.F.R. § 85.105, on behalf of any person in connection with 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. § 85.215.

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Judge Richard F. O'Hair  
Deciding Debarment and Suspension Official

Dated: April 3, 1996

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SERVICE

A copy of the attached initial decision was sent by certified mail, return receipt requested to the following:

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[Footnote: 1](#) \* Respondent's motions to file exhibits, dated February 6, 1996, and March 4, 1996, are granted.

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