



United States Department of Education
Office of Hearings and Appeals

In the Matter of
Elaine M. LEVIDOW
Respondent

Docket No. 22-21-DA
Debarment Action

Decided: December 6, 2022

For Respondent:
Alan V. Edmunds, Esq. and
Jacalyn Crecelius, Esq.
The Edmunds Law Firm

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 March 2, 2022, the Notice Debarring and Suspending Official for the U.S. Department of Education (Department) issued Respondent a Notice of Proposed Government-Wide Debarment from Federal Procurement and Non-Procurement Transactions (Notice) pursuant to 2 C.F.R. § 180.805. The Notice informed Respondent that the proposed debarment was based upon Respondent’s criminal conviction in *United States v. Levidow*, No. 2:20-CR-00105 (M.D. Fla. Sept. 15, 2021) for wire fraud, in violation of 18 U.S.C. §§ 2 and 1343, and financial aid fraud, in violation of 18 U.S.C. § 2 and 20 U.S.C. § 1097(a). The Notice included a copy of the Judgment in a Criminal Case attesting to Respondent’s guilty pleas and corresponding Federal criminal conviction and the certified plea agreement, in which Respondent and the Government mutually agreed to specified terms and underlying facts.

On April 7, 2022, Respondent responded to the Notice with a Request to Remove Proposed Debarment (Opposition). In the Opposition, Respondent indicated that she “pled guilty to the allegation counts listed above because she was advised by her attorney to plea in order to reduce her sentence and avoid the expense of a federal trial” (Opposition at 4) and “denies that her guilty plea adversely reflects on her current judgment, trustworthiness, or future dealings.” (Opposition at 5) Respondent requested that she not be debarred at all based on her “lengthy record of excellence as a trusted educator, impeccable academic and professional record, and her active contribution to her community” (Opposition at 23) Respondent further made “a formal request for a hearing or personal appearance in this matter, should her written response fail to mitigate the Department’s concerns.” (Opposition at 24)

On July 1, 2022, the Department filed a Response to Respondent’s Opposition. On July 15, 2022, Respondent filed a Rebuttal to the Department’s Response. On August 2, 2022, the Department filed a Reply to Respondent’s Rebuttal.

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—

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

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(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

(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—

(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

(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. 3801–3812).

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 the Respondent's acts or omissions and any mitigating or aggravating factors. 2 C.F.R. § 180.845(a).

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The debarring official may consider the 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].

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

(k) The kind of positions held by the individuals involved in the wrongdoing.

(l) Whether [Respondent's] organization took appropriate corrective action or remedial measures, such as establishing ethics training and implementing programs to prevent recurrence.

(m) Whether [Respondent's] principals tolerated the offense.

(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.

(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.

(p) Whether [Respondent has] effective standards of conduct and internal control systems in place at the time the questioned conduct occurred.

(q) Whether [Respondent has] taken appropriate disciplinary action against the individuals responsible for the activity which constitutes the cause for debarment.

(r) Whether [Respondent has] had adequate time to eliminate the circumstances within your organization that led to the cause for the debarment.

(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.

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.

“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 debarment is based if—

- (1) [Respondent’s] debarment is based upon a conviction or civil judgment;
- (2) [Respondent’s] presentation in opposition contains only general denials to information contained in the Notice of Proposed Debarment; or
- (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

In her plea agreement before the Federal District Court, Respondent certified that the following facts are true:

Beginning in or about July 2017, and continuing until in or about April 2019, Respondent knowingly devised and participated in a scheme to defraud the Department of in excess of \$90,000 in Title IV Federal Student Assistance (FSA) funds.

Respondent was the owner and Chief Executive Officer of The Training Domain, Inc., and through a website, Respondent held out Training Domain as offering business software application courses to improve the employability skills of individuals. Respondent entered into a Federal Student Aid Program Participation Agreement on or about June 16, 2015. In the Agreement, Respondent agreed to comply with all applicable laws, regulations, and provisions. Respondent renewed the Program Participation Agreement with the Department until January 24, 2020, when she voluntarily withdrew Training Domain from all Title IV, Higher Education Act programs.

As a part of her scheme to defraud and to obtain money from the Federal Government, Respondent assisted students in applying for FSA funds. She knew that some of the students she assisted were ineligible to receive FSA funds. Specifically, she knew that some did not have the required high school diploma or General Educational Development (GED) certificate and one was ineligible as a result of having been convicted of a felony and sentenced to life imprisonment. In other instances, Respondent applied for FSA loans for some students without the student's knowledge, forging the student's signature on the applications. When some students learned of the forged FSA applications and threatened to report her, Respondent paid them to keep them from filing complaints.

According to students enrolled at Training Domain, Respondent sent students some instructional videos, but she frequently canceled classes and did not hold classes for the minimum of 600 hours of instruction required to be eligible for FSA funding. Although Respondent represented Training Domain to be an educational institution, she did not use the FSA funds she received to pay for students' tuitions since her business did not hold required classes. Instead, Respondent used the proceeds of the FSA funds to pay for her own personal expenses and to pay a portion to some students so they would not report her for submitting FSA loan applications without their consent.

The investigation into Respondent's criminal actions began as a result of a routine compliance audit. On December 11, 2018, Respondent provided the auditor a computer and various documents to review. The auditor observed that

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some GED certificates had the same GED number but were for two different students, while some high school diplomas were identical except for the student's name. Another of the diplomas contained a graduation date before the student was born. The auditor compared the information on the diplomas with information Training Domain had provided to the Department. The auditor noted that in some cases, a student had stated on their financial aid application that they had graduated from a high school which differed from the high school listed on the copy of the diploma in their student file. During the auditor's visit Respondent paid some Training Domain students who did not otherwise attend class to sit in a classroom and stage a fictitious class.

IV. ANALYSIS

The basis for this debarment action is a conviction for commission of criminal fraud in connection with obtaining FSA funds. 2 C.F.R. § 180.920(a). Thus, the Department has met its burden of proof and Respondent does not have an opportunity to challenge the underlying facts as evidenced in the official record. 2 C.F.R. §§ 180.850(b), 180.830(a)(1). The official record is closed effective November 1, 2022. Accordingly, Respondent has the burden of demonstrating that she is presently responsible and that debarment is not necessary based on the official record. 2 C.F.R. §§ 180.855(b), 180.845(a).

Respondent carried out her various fraudulent activities over approximately 21 months, evidencing a pattern of wrongdoing. She defrauded the United States Government by falsifying documents to indicate that various individuals were eligible for FSA funds when she knew they were not. She forged other documents to apply for and receive FSA funds on behalf of other individuals without their consent. Her scheme involved more than \$90,000 in funds that should have been available to aid the legitimate higher education efforts of qualified students.

Respondent was the owner and Chief Executive Officer of Training Domain. She was not carrying out the bidding of someone higher up in the organization. When her scheme was about to be uncovered during an audit, rather than cooperate fully, she forged additional documents and staged a fictitious class.

To her credit, Respondent pled guilty in a Federal criminal trial. However, in these proceedings, Respondent now attempts to minimize her culpability—despite being bound by the judgment of the Federal District Court—she intimates that she pled guilty only because she was following the advice of her attorney and denies that guilty plea adversely reflects on her current judgment, trustworthiness, or future dealings.

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.

Respondent 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 three years*, effective with the date of this decision.

Further, 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 outcome 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

CERTIFICATE OF SERVICE

This decision has been sent by electronic message attachment, delivery receipt confirmation requested, to:

Susan D. Crim
Notice Debarring and Suspending Official
U.S. Department of Education Federal Student Aid
Via email: susan.crim@ed.gov

Alan V. Edmunds, Esq.
Jacalyn Crecelius, Esq.
The Edmunds Law Firm
Via OES automatic delivery.