



United States Department of Education
Office of Hearings and Appeals

In the Matter of
Marjorie O'NEILL
Respondent

Docket No. 22-36-DA
Debarment Action

Decided: December 8, 2022

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 May 27, 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

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informed Respondent that the proposed debarment was based upon Respondent's criminal conviction in *United States v. O'Neill*, No. 21-CR-160-2 (E.D. Pa. May 5, 2022) for conspiracy to commit fraud, in violation of 18 U.S.C. § 371. The Notice included a copy of the Judgment in a Criminal Case attesting to Respondent's guilty pleas and corresponding Federal criminal conviction, a Waiver of Indictment, and the Information setting out the underlying facts.

Based on the same conduct, Information, and guilty pleas, Respondent has been suspended from procurement and nonprocurement transactions since November 19, 2021.

Respondent has not responded to the Notice.

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;

(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

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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. 3801–3812).

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).

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

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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.

(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.

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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.

(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(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

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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;

(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

On May 25, 2021, after waiving prosecution by indictment, Respondent pled guilty before a Federal District Court in the Eastern District of Pennsylvania to one count of conspiracy as reflected in an Information. The Court subsequently accepted Respondent’s plea and found her guilty. Following a sentencing hearing, on May 5, 2022 the Court adjudicated Respondent guilty; sentenced her to 1 year probation, a \$1000 fine, and \$100 special assessment; and entered a Judgment accordingly.

Temple University is a public university based in Philadelphia, Pennsylvania. One of Temple University’s 17 schools and colleges is the Richard J. Fox School of Business Management (Fox). Currently and at the time of Respondent’s actions, Temple University and Fox received funding from Federal student aid programs under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. §§ 1070 et. seq. During the period of Respondent’s conspiracy, Fox offered a number of programs leading to a master’s degree in business administration (MBA), including a full-time MBA program, a part-time MBA program, an executive MBA program, and an on-line MBA program.

A number of organizations publish annual rankings of what they claim to be the country’s best business schools and specific business degree programs. One of the more influential of the rankings is published by U.S. News and World Report (U.S. News). Each organization determines their rankings based on a proprietary assessment of a number of factors, including admissions selectivity; an average of incoming students’ grade point average, standardized

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test scores, and pre-program work experience; post-graduate job placement rates; and the particular program's reputation. How U.S. News, in particular, rates a business degree program can impact the program's reputation among potential applicants, current students, employers, and peer institutions. Higher rankings can make it easier for graduates to find employment. Higher rankings also often lead to increased number of applicants, which in turn enhances the school's admission selectivity options and can lead to increased enrollment and tuition revenue.

At Fox, there was a direct correlation between the U.S. News rankings of its online and part-time MBA programs and the number of students who enrolled in those programs. The higher the programs were ranked, the more students enrolled in the programs the following academic year.

In the summer of 2013, Respondent and two other Fox employees met with U.S. News representatives to discuss the school's concerns that Fox had been ranked too low in the past. During the meeting, Respondent learned that U.S. News did not perform audits of the data provided by the schools regarding their online MBA programs because U.S. News lacked the staff to do so. After the meeting, Respondent passed this information onto other Fox administrators and employees, including Michael Perry¹ (Dean of Fox at the time) and Ira Gibson² (one of Fox's statistics professors at the time). While Respondent served as the primary liaison with U.S. News, before submitting information each year, she frequently received guidance or direction from Dean Perry or Professor Gibson.

Respondent learned that U.S. News had not been crediting some of the Fox MBA programs for one of the major factors U.S. News would otherwise consider, the average Graduate Management Admission Test (GMAT) scores for its students. The percentage of students who took the GMAT in some of Fox's MBA programs was below 75%, U.S. News' cutoff for including the average GMAT score in its calculations.

In addition to what Respondent learned on her own, Fox paid U.S. News for access to some of the detailed data that the various business schools had provided it. Respondent shared this data with Professor Gibson, who reverse-engineered it to determine how much weight U.S. News was assigning to each factor. Around June 2014, Professor Gibson informed Dean Perry and

¹ All person's names in this decision—except those of Respondent, counsel, and representatives of the Department of Education—are pseudonyms.

² A pseudonym.

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Respondent that he had discovered two factors that appeared to significantly affect U.S. News' rankings of part-time MBA programs: (1) the length of work experience of incoming part-time MBA students and (2) the percentage of *all* of a school's MBA students who could be classified as "part-time." The larger each number, the higher a part-time MBA program would be rated by U.S. News.

From at least July 2014 until at least July 2018, Respondent conspired with Dean Perry and Professor Gibson to devise a scheme through the use of wire communication in interstate and foreign commerce to defraud and obtain money from Fox applicants, students, and donors, by means of materially false and fraudulent pretenses, representations, and promises, in violation of 18 U.S.C. § 1343.

In furtherance of the conspiracy, Respondent, Dean Perry, and Professor Gibson falsely represented to U.S. News that 100 percent of Fox's online MBA students had taken the GMAT, when in reality, only a small percentage had done so. Had they reported the accurate information, it would have negatively impacted Fox's U.S. News ranking. Ultimately, after applying the false information provided by Respondent, Dean Perry, and Professor Gibson, U.S. News ranked Fox's online MBA program in a three-way tie for first place, up from ninth place the previous year without the false information. In each of the next three years, Respondent conspired with Dean Perry and Professor Gibson to repeat the false representations to U.S. News that all of Fox's online MBA entrants had taken the GMAT. For each of those years, U.S. News ranked Fox's online MBA program in first place outright.

For Fox's part-time MBA program, Professor Gibson urged Respondent to falsify the number of part-time students by combining Fox's part-time MBA students with the students in the separate executive MBA and online MBA programs by considering those programs to also be part-time. Respondent replied by indicating that reporting the online MBA students as part-time "might be pushing the ethics here since they are full-time not part-time." Professor Gibson renewed his suggestion and ultimately Respondent, Dean Perry, and Professor Gibson agreed to combine the part-time, executive, and online MBA program students when reporting to U.S. News two factors, the average amount of work experience of incoming part-time MBA students and the percentage of *all* MBA students who were part-time.

Even though the U.S. News questionnaire clearly differentiated between full-time, part-time, executive, and online MBA programs and included a definition that specifically categorized the executive and online MBA programs as full-time, Respondent nevertheless combined the number of part-time, executive, and online MBA program students. As a result of this fraudulent manipulation, U.S. News ranked Fox's part-time MBA program as number 20 in the

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nation, up from number 53 the prior year with accurate data. The following two years, Respondent once again conspired with Dean Perry and Professor Gibson to falsely report the part-time program data. Based on the false information, U.S. News ranked Fox's part-time MBA program as number 16 the next year and then number 7 the year after that.

In addition to the false representations about the number of students who had taken the GMAT and the number of part-time MBA students, Respondent also intentionally provided U.S. News with false and misleading information about (a) admissions data to make Fox appear more selective, (b) the mean grade point averages of incoming students, and (c) the average student indebtedness to make Fox appear more affordable. Respondent made these misrepresentations without the knowledge of Dean Perry or Professor Gibson, but she made them to further the goals of their conspiracy to fraudulently inflate Fox's U.S. News rankings.

Eventually U.S. News learned that some of the information that Fox had provided was erroneous, after which U.S. News immediately removed the affected Fox programs from its rankings. After Temple University became aware of U.S. News' action, it hired a law firm to conduct an outside investigation of Fox's data reporting to U.S. News. The law firm interviewed a number of persons, including Respondent, Dean Perry, and Professor Gibson, each of whom materially misrepresented their knowledge of and participation in the conspiracy.

IV. ANALYSIS

The basis for this debarment action is a conviction of conspiracy to commit wire fraud. 2 C.F.R. § 180.920(a). 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. §§ 180.850(b), 180.830(a)(1). Accordingly, Respondent has the burden, based on the official record, of demonstrating that she is presently responsible and that debarment is not necessary. 2 C.F.R. §§ 180.855(b), 180.845(a). Respondent has not replied to the Notice and has thus failed to meet her burden that she is presently responsible and that debarment is not necessary.

Respondent participated in the conspiracy for approximately four years, evidencing a pattern of wrongdoing. Her actions resulted in U.S. News reporting inaccurate rankings for Fox MBA programs and resultingly defrauded Fox's applicants, students, and donors. Respondent was not alone in the conspiracy, nor was she the most senior member of Fox's faculty and staff involved. In many instances she took directions from others. In other instances she acted on her own in furtherance of the conspiracy.

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To her credit, Respondent pled guilty in a Federal criminal trial. As a result of her plea, she has been suspended from procurement and nonprocurement transactions for nearly 13 months, since November 19, 2021.

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 period of time Respondent has already been suspended, she 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 five additional 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 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.

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A handwritten signature in blue ink, appearing to read "Rodger A. Drew, Jr." with a stylized flourish at the end.

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