



United States Department of Education
Office of Hearings and Appeals

In the Matter of
Daisy GULSBY
Respondent

Docket No. 23-13-DA
Debarment Action

Decided: July 10, 2023

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 5, 2023, 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. Gulsby*, No. 22-CR-44 (M.D. Fla. Mar. 31, 2023) for embezzlement, theft, purloining, and conversion of United States government funds, in violation of 18 U.S.C. § 641. The Notice included a copy of the Indictment, dated February 1, 2022; the Notice of Maximum Penalties, Elements of Offense, Personalization of Elements, and Factual Basis, dated November 8, 2022, the Judgment in a Criminal Case, dated March 31, 2023; and the Amended Judgment in a Criminal Case, dated April 28, 2023; attesting to Respondent's guilty pleas and corresponding Federal criminal conviction.

Based on the same conduct and the Indictment, Respondent has been suspended from procurement and nonprocurement transactions since April 15, 2022.

The Department mailed the Notice to Respondent's last known home address on May 5, 2023, and the Notice was delivered and left with an individual on May 8, 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 May 11, 2023. Respondent has not responded to the Notice. The 30 days from receipt provided for in 2 C.F.R. § 180.820 to respond to the Notice having expired, the official record is closed as of June 12, 2023.

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

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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—

(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. §§ 3801–12].

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 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

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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.

(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.

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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.

(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.

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).

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“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

On November 29, 2022, Respondent pleaded guilty before a Federal District Court in the Middle District of Florida to five counts each of embezzlement, theft, purloining, and conversion of in excess of \$1,000 of public money belonging to the United States and the Department in violation of 18 U.S.C. § 641.

On December 16, 2022, the Court adjudicated Respondent guilty in accordance with her plea. On March 31, 2023, the Court sentenced her to imprisonment for 14 months, supervised release for 3 years upon release from

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imprisonment, restitution to be determined, and a \$500 special assessment; and entered a Judgment accordingly.

On April 28, 2023, in an Amended Judgment, the Court determined that her sentence to restitution would be in the sum of \$181,000.

Respondent was a financial aid specialist at Manatee Technical College (“MTC”). MTC was located in the Middle District of Florida and received funds from the Department. During her employment at MTC, Respondent knowingly and willfully embezzled, stole, purloined, and converted to her own use and the use of another, in excess of \$1,000 of funds that belonged to the United States and the Department, with the intent to deprive the United States and the Department of the use and benefit of those funds.

Specifically, Respondent instructed MTC Pell grant recipients who were MTC students to obtain money orders for unused proceeds from the students’ Pell grants. Respondent misrepresented to the students that Respondent would then use the money orders to refund the United States the unused grant money.

On or about February 23, 2017, August 14, 2018, March 28, 2019, March 25, 2020, and December 16, 2020, Respondent converted the funds to her own use and benefit.

During her employment with MTC, Respondent received over 400 money orders from MTC students and converted over \$300,000 to her own use and benefit.

IV. ANALYSIS

The basis for this debarment action is a conviction of embezzlement, theft, purloining, and conversion of United States government funds. 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. §§ 180.830(a)(1), 180.850(b). 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. §§ 180.845(a), 180.855(b). 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.

Over the course of roughly three years, Respondent used her position of trust as a financial aid specialist at MTC to fraudulently obtain from MTC students over \$300,000 in unused financial aid proceeds and convert the funds to her own use. While she should have been the gatekeeper and watchdog for

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the attempted fraud of others, she exploited her position and manipulated MTC students to further her scheme.

To her credit, Respondent pleaded guilty in a Federal criminal trial. As part of her sentence, she has been ordered to pay \$181,000 restitution to the United States. As a result of her plea, she has been suspended by the Department from procurement and nonprocurement transactions for over 14 months, since April 15, 2022.

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, and the egregious circumstances of Respondent's years-long abuse of her position of trust, 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 36 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.

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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.



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