



United States Department of Education
Office of Hearings and Appeals

In the Matter of
Leo Frank THOMAS, Jr.
Respondent

Docket No. 23-22-DA
Debarment Action

Decided: November 15, 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 September 28, 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

In the Matter of Thomas, Docket No. 23-22-DA
Decision of Debarring Official

Notice informed Respondent that the proposed debarment was based upon Respondent's criminal conviction in *United States v. Thomas*, No. 20-CR-32 (M.D. Ga. Dec. 15, 2022) for conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349.

The Notice included a copy of the First Superseding Indictment, dated June 15, 2022; the Plea Agreement, signed by the Respondent and agreed to on September 29, 2022; the written Change of Plea, dated September 29, 2022; the transcript of the Change of Plea Hearing held September 29, 2022; the transcript of the Sentencing Hearing held December 15, 2022; and the Judgment in a Criminal Case, dated December 15, 2022, reflecting the court's findings and sentence.

Based on the same conduct, Respondent has been suspended from procurement and nonprocurement transactions since September 28, 2023.

The Department mailed the Notice to Respondent's last known home address and the Notice was delivered and picked up at a postal facility on October 2, 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 October 3, 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 November 6, 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

In the Matter of Thomas, Docket No. 23-22-DA
Decision of Debarring Official

(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

In the Matter of Thomas, Docket No. 23-22-DA
Decision of Debarring Official

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.

In the Matter of Thomas, Docket No. 23-22-DA
Decision of Debarring Official

(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).

In the Matter of Thomas, Docket No. 23-22-DA
Decision of Debarring Official

“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 September 29, 2022, Respondent pleaded guilty before a Federal District Court in the Middle District of Georgia to one count of conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349.

On September 29, 2022, the Court adjudicated Respondent guilty in accordance with his plea. On December 22, 2022, the Court sentenced him to 36 months imprisonment; restitution of \$11,821,022 to the Department, jointly and severally with his four co-defendants; and \$100 assessment.

In the Matter of Thomas, Docket No. 23-22-DA
Decision of Debarring Official

Beginning in or around August 2010 and continuing until at least in or around May 2018, Respondent lived in Columbus, Georgia, where he was affiliated with Apex School of Theology's Columbus, Georgia learning center ("Apex Columbus"). From 2010 through 2011, Respondent was enrolled at Apex Columbus as a student pursuing a masters degree. In approximately 2012, Respondent became an Apex Columbus employee, starting as a teaching assistant and then serving as an instructor. During the time that Respondent was a teaching assistant and an instructor at Apex Columbus, THQMAS worked with his co-conspirators to effectuate the scheme and conspiracy, including: enrolling students at Apex Columbus who were not eligible or qualified, submitting false and fabricated student applications for students, creating student work to falsely make it appear as if the students were actually attending classes and submitting their schoolwork, impersonating students on online platforms (including Populi, Inc.), impersonating teachers in electronic systems, and fraudulently obtaining money from "students," including in the form of student financial aid refund checks.

Respondent and his co-conspirators conspired to enroll individuals at Apex Columbus who they knew were not eligible. To do this, Respondent and his co-conspirators completed student applications for enrollment, including adding in or altering student email addresses to email addresses that Respondent or his co-conspirators created. Respondent and his co-conspirators were aware that Apex School of Theology ("Apex Main") required each student's application to include a "spiritual autobiography." Respondent knew that his co-conspirators wrote "spiritual autobiographies" to be included in student applications as if written by the student and knew that the "spiritual autobiographies" would be evaluated as part of the students' applications for enrollment.

Respondent and his co-conspirators were also aware that students were required to apply to receive federal financial aid using the Department's Free Application for Federal Student Aid ("FAFSA"). Respondent and his co-conspirators completed FAFSAs for the students, logging into the Department websites impersonating the students and fraudulently representing that the student was the one completing the application. This enabled "students" to receive awards of federal financial aid in the form of Pell Grants and Direct Loans. When Respondent logged in under a student's name for FAFSA, or otherwise, he did so knowing that the Department forms require the student to attest that he or she (or his or her parents) completed the information. If a third party were to complete the information for a student, that information would have been required to be included as part of the form. Respondent never disclosed in a FAFSA or other the Department form that he, rather than the named student, was completing the forms. Respondent and his co-conspirators

In the Matter of Thomas, Docket No. 23-22-DA
Decision of Debarring Official

charged “students” a fee for completing the FAFSA application. Respondent was paid for each “student” for whom he submitted a FAFSA.

Respondent and his co-conspirators also impersonated “students” so that the “students” would continue to receive financial aid money. In order to impersonate “students” and submit schoolwork in the students’ names, Respondent would create a username and password in the prospective student’s name for the Populi online system. Respondent and his co-conspirators shared the “student” email addresses and passwords in their own email correspondence. Respondent would then log in as the “student” in the Populi system to submit student homework, including weekly assignments, midterms, and finals in the students’ name. Although Respondent submitted these school assignments in the students’ names, Respondent or his co-conspirators actually completed the assignments. Respondent was paid each semester for each “student” for whom he completed the schoolwork. Respondent knew that “students” made these payments out of their financial aid refund checks.

When Respondent created a username and password for a “student” and submitted school assignments in their name, he did so knowing that it was necessary to facilitate the scheme because the Department required “students” to maintain a grade-point-average (GPA) above 2.0 to continue to receive financial aid.

Respondent also impersonated students to arrange for financial aid refund checks to be mailed directly to him and his co-conspirators at Apex Columbus (or to addresses that they controlled) rather than to the “students.” Respondent and his co-conspirators knew that Apex Main was obligated to send refund checks to students directly, but Respondent and his coconspirators impersonated students to change where the financial aid refund checks were sent in order to have easier access to the financial aid money. On at least one occasion in or around January 2015, Respondent emailed individuals at Apex Main impersonating a student, T.T., and requesting that the student’s financial aid check be sent to the Apex Columbus site rather than T.T.’s address. Respondent knew that T.T. had not made such a request. Respondent also did this for students other than T.T.

Respondent coordinated with his co-conspirators on how best to affect their scheme. During the scheme, Respondent primarily took responsibility for completing and submitting students’ school assignments, often at the direction of his co-conspirators. As a result of the scheme, Respondent and his co-conspirators were able to enrich themselves and each other, from proceeds generated from federal financial aid funds.

Respondent admitted that beginning in or around August 2010 and continuing until at least in or around May 2018, he conspired with his co-defendants

In the Matter of Thomas, Docket No. 23-22-DA
Decision of Debarring Official

and others to: (1) submit and cause to be submitted via wire false and fraudulent FAFSA applications to the Department for students who did not qualify for financial aid; (2) impersonate students by signing into students' Populi accounts and submitting school assignments in students' names; (3) obtain portions of the students' awarded, but fraudulent, financial aid for his own use; (4) cause the concealment of these false and fraudulent FAFSA applications and false and fraudulent school assignments; and (5) in doing so, defrauded the Department and the United States Government in violation of Title 18, United States Code, Section 1349.

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. §§ 180.830(a)(1), 180.850(b). Accordingly, Respondent has the burden, based on the official record, of demonstrating that he 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 his burden that he is presently responsible and that debarment is not necessary. To his credit, Respondent pleaded guilty in a Federal criminal trial. As part of his sentence, she has been ordered to pay restitution of restitution of \$11,821,022 to the Department, jointly and severally with his four co-defendants.

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, the multiple instances of Respondent's fraudulent activities, and the large amount of federal financial aid funds he conspired to fraudulently obtain, he 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 34 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:

In the Matter of Thomas, Docket No. 23-22-DA
Decision of Debarring Official

(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:*