



United States Department of Education
Office of Hearings and Appeals

In the Matter of
Erica MONTGOMERY
Respondent

Docket No. 23-24-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 Montgomery, Docket No. 23-24-DA
Decision of Debarring Official

Notice informed Respondent that the proposed debarment was based upon Respondent's criminal conviction in *United States v. Montgomery*, 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 16, 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 on October 3, 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 14, 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 7, 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

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects [Respondent's] present responsibility.

In the Matter of Montgomery, Docket No. 23-24-DA
Decision of Debarring Official

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 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.

In the Matter of Montgomery, Docket No. 23-24-DA
Decision of Debarring Official

(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.

(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.

In the Matter of Montgomery, Docket No. 23-24-DA
Decision of Debarring Official

(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 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 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 September 16, 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 December 15, 2022, the Court adjudicated Respondent guilty in accordance with her plea. On December 22, 2022, the Court sentenced her to 51 months imprisonment; restitution of \$11,821,022 to the Department, jointly and severally with her four co-defendants; and \$100 assessment.

Beginning in or around August 2010 and continuing until at least in or around May 2018, Respondent lived in Columbus, Georgia, where she owned and managed a tax preparation service called Dylon Tax Service. In or around 2011, an individual, A.B., recruited Respondent to attend Apex School of Theology (“Apex”). Respondent completed an Apex application and Free

In the Matter of Montgomery, Docket No. 23-24-DA
Decision of Debarring Official

Application for Federal Student Aid (“FAFSA”) and was admitted as a student at Apex. Based on the materials she submitted, Respondent was awarded federal financial aid which covered the total cost of her enrollment in Apex and provided her additional funds, in the form of a financial aid refund check. The refund check was intended to cover over other college expenses. Respondent enrolled at APEX primarily to gain access to the financial aid refund check.

After enrolling at Apex, Respondent began completing FAFSAs for individuals who were interested in enrolling at the Columbus campus of Apex (“Apex Columbus”) to obtain access to federal financial aid refund checks. The individuals paid Respondent a fee that varied in amount based on the size of the refund check the individual received. Respondent collected the student refund checks in different ways: on one occasion, she arranged for the check to be mailed to her office and deposited the check for herself, paying a portion to the student; on other occasions, she would coordinate with the student to endorse the check in the student’s name and deposit it into her account. Most often, a student would notify Respondent when a refund check was received, Respondent would meet the student at a bank or pawn shop where the student would cash the refund check and pay Respondent her fee in cash.

In order to complete the prospective student’s FAFSA, Respondent would create a username and password in the prospective student’s name, or a PIN, depending on what the Department required. Respondent’s co-conspirators knew that she was submitting false information in support of student FAFSA applications. At times, Respondent and her co-conspirators corresponded over email sharing the usernames and passwords of students at Apex Columbus to facilitate this process. When Respondent logged in under a student’s name for FAFSA, or otherwise, she 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 Department form that she, rather than the named student, was completing the forms.

Students were sometimes required to fill out portions of their applications to enroll as students at Apex Columbus, but if any information was missing, Respondent supplied it before delivering the application to her co-conspirators at Apex Columbus. Respondent coordinated with her co-conspirators to ensure that prospective students who paid her for completing a fraudulent FAFSA would be admitted and enrolled. Respondent communicated with her co-conspirators about the checklist of requirements for a student’s application. As part of its application process, Apex required that students complete a “spiritual autobiography” to state the reasons they wished to attend a theological school. Because the students had no such intentions, Respondent and her co-

In the Matter of Montgomery, Docket No. 23-24-DA
Decision of Debarring Official

conspirators wrote and directed others to write fabricated spiritual autobiographies in the students' names and included them in applications.

Respondent received word of mouth referrals for her fraudulent FAFSA applications. Additionally, she also recruited individuals to enroll at Apex, including individuals she met while gambling. Respondent knew that the individuals she recruited were not eligible or qualified to enroll at Apex. When recruiting individuals to pose as students, Respondent assured them that they did not need to actually attend classes or do schoolwork. Rather, Respondent agreed to arrange for others to complete the students' work.

Respondent was aware that some of her co-conspirators created fake general equivalency degrees for students to enable them to enroll at Apex. Respondent was also aware that some of her co-conspirators' income was tied to the number of students enrolled at Apex Columbus and that Respondent's recruiting of additional students generated additional money for those co-conspirators. In order to facilitate the enrollment of fraudulent students, Respondent provided records from the FAFSA applications she completed to certain co-conspirators to facilitate the process of making it look like the students were enrolled and attending classes.

During the scheme, Respondent co-conspirators took over responsibility for completing and submitting the students' homework, while Respondent focused on the fraudulent FAFSA applications. When Respondent completed and submitted a student's FAFSA and completed that student's homework assignments and exams, Respondent kept the complete amount of cash the student paid her from the student's financial aid refund check. When Respondent completed and submitted a student's FAFSA but one of her coconspirators completed that student's homework assignments and exams, Respondent would pay her co-conspirators a portion of the cash the student paid Respondent from the student's financial aid refund check.

Respondent coordinated with her co-conspirators on how best to affect their scheme. At all relevant times, Respondent knew and understood that her agreement with her co-conspirators was unlawful.

Respondent admitted that beginning in or around August 2010 and continuing until at least in or around May 2018, she conspired with her co-defendants 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 aid; (2) obtained portions of the students' awarded, but fraudulent, financial aid for her own use; (3) caused the concealment of these false and fraudulent FAFSA applications; and (4) 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 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 his burden that she is presently responsible and that debarment is not necessary. To her credit, Respondent pleaded guilty in a Federal criminal trial. As part of her sentence, she has been ordered to pay restitution of \$11,821,022 to the Department, jointly and severally with her 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:

(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,

In the Matter of Montgomery, Docket No. 23-24-DA
Decision of Debarring Official

(3) Occupies a technical or professional position capable of substantially influencing the development or out- come 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: