

The Next Front in the Administration's Sponsored Research Crackdown: What Recipients of Federal Funding—Particularly Grantees—Should Know About Suspension and Debarment

by Alex Hontos, Eric Weisenburger, Chris DeLong, and Matthew Gillespie

The Trump Administration's effort to remake the Federal government's relationship with Higher Ed and research grantees continues to gather steam, and an unprecedented recent letter to Harvard presages a potentially new front: the use of suspension and debarment to further the Administration's policy prerogatives. Lawyers advising federal grantees ought to take note—and this eUpdate provides a primer.

Background

On May 5, 2025, Secretary of Education Linda McMahon issued a letter to Harvard University advising that "Harvard should no longer seek GRANTS from the federal government, since none will be provided," and that "today's letter marks the end of new grants for the University." This decision is purportedly based on a "long list of Harvard's consistent violations of its own legal duties." Among the alleged violations, the letter accuses Harvard of "disastrous mismanagement" of its endowment fund, and of engaging in "hateful discrimination" in its student-admissions process. This letter seems to be a de facto debarment of Harvard, potentially imperiling billions of dollars in Federal research funding for Harvard for years to come.

What is Suspension & Debarment – And How Is This Supposed to Work?

While not identified in the letter, federal regulations establish a detailed and highly prescriptive process by which agencies can prevent entities or individuals from receiving future federal grants. Debarment means the entity is prohibited from doing certain business with the Federal government, including grants, many procurements, scholarship, loans, and subsidies, typically (but not always) for no more than three years. See 2 C.F.R. § 180.925. A suspension, on the other hand, is the shorter corollary to a debarment, and is typically effective pending an investigation, or a judicial or

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administrative proceeding. See 2 C.F.R. § 180.1015.

In the grant context, debarment has traditionally been limited to the most egregious examples of malfeasance by grant recipients, such as fraud. Agencies may debar entities on four general grounds:

1. Conviction of or civil judgment for fraud, financial crimes, or “any other offense indicating a lack of business integrity or business honesty that seriously and directly affects [your] present responsibility”;
2. “Violation of the terms of a public agreement or transaction so serious as to affect the integrity of a Federal agency program”;
3. Doing business with ineligible persons, owing a substantial uncontested debt to the Federal government, violation of a voluntary exclusion, suspension, or debarment agreement with the Federal government, or violation of the Drug-Free Workplace Act of 1988; or
4. “Any other cause that is so serious or compelling in nature that it affects your present responsibility.”

2 C.F.R. § 180.800.[1] An entity’s “present responsibility” refers to whether the entity’s debarment would be in the public interest, and whether the entity “could or should be entrusted with public funds or a public contract at the present time or going forward...” *Uzelmeier v. United States HHS*, 541 F. Supp. 2d 241, 248 (D.D.C. 2008). Determining an entity’s “present responsibility” involves an analysis of “the seriousness of the acts [leading to proposed debarment] and the mitigating or aggravating factors,” including, for example, the entity’s “procedures,” “management oversight,” and “quality control.” *Tech. Testing Int’l LLC v. United States EPA*, Civil Action No. 3:16-CV-3165-B, 2017 U.S. Dist. LEXIS 127144 (N.D. Tex. July 21, 2017) (denying motion for preliminary injunction brought by debarred grant recipient seeking to reverse debarment decision). Similarly, the Federal Acquisition Regulation, while applicable to federal contracts rather than grants, sets forth analogous standards for “responsibility” in FAR 9.104-1, which includes having the ability to perform the contract, having a satisfactory performance record, having a “satisfactory record of integrity of business ethics,” and being “otherwise qualified and eligible” for the award.

Grounds for suspension are more limited. An entity may be suspended if:

1. there is an indictment or “other adequate evidence” (defined as information sufficient to support the reasonable belief of a particular act or omission) to suspect an offense identified in the debarment regulation; or
2. there is “adequate evidence” to suspect there is a cause for debarment; and
3. immediate action is necessary to protect the public interest.

2 C.F.R. § 180.700. Only an agency head, or an official designated by an agency head, may debar or suspend an individual or entity. See 2 C.F.R. §§ 180.930, 180.1010. If an agency proposes debarment, it must send a “Notice of Proposed Debarment” which must identify (1) the reasons for proposing debarment sufficient to put the entity on notice of the conduct or transactions upon which the proposed debarment is based; (2) the regulatory basis for debarment; (3) the relevant agency procedures governing debarment; and (4) the government-wide effect of debarment. See 2 C.F.R. § 180.805.

Similarly, agencies must send a “Notice of Suspension” notifying the entity that (1) it has been suspended; (2) the basis of the suspension; (3) that the suspension is temporary pending the completion of an investigation or resulting legal or debarment proceeding; (4) the relevant agency procedures governing suspension; and (5) the government-wide effect of suspension. See 2 C.F.R. § 180.715.

These procedures are mandatory. Where the Federal government has not “invoke[ed] formal debarment proceedings” as explained here, but still “effectively barred” an entity from “virtually all government work,” courts have explained this is a “de facto debarment” that would violate the entity’s due-process rights. See *Bannum, Inc. v. Samuels*, 221 F. Supp. 3d 74, 86 (D.D.C. 2016) (explaining law on de facto debarment) (internal quotations omitted).

What Rights Do You Have If Your Institution is Targeted for Debarment or Suspension?

Institutions subject to a proposed debarment or a suspension have the right to administratively challenge these agency actions by notifying the debarring or suspending official. See 2 C.F.R. §§ 180.815, 180.720. But they must act fast: an entity suspended or proposed for debarment generally has only 30 days to contest the suspension or proposed debarment. See 2 C.F.R. §§ 180.820, 180.725. If challenged, the agency has the burden of proof to establish grounds for debarment by a preponderance of the evidence. See 2 C.F.R. § 180.850.^[2] If the appellant shows there is a genuine dispute of material facts, the debarring or suspending official can hold an informal hearing where the appellant can present and confront witnesses and introduce other evidence. 2 C.F.R. §§ 180.830, 180.840, 180.735, 180.745. Once the record is closed, the agency has 45 days to make a final decision. 2 C.F.R. §§ 180.870, 180.755.

If the agency’s debarring or suspending official upholds the proposed debarment or suspension, that decision can be challenged in federal court through the Administrative Procedure Act: under the APA, agency actions can be overturned if they are found to be arbitrary, capricious, an abuse of discretion, unsupported by substantial evidence, not in accordance with the law, or contrary to a constitutional right, power, privilege, or immunity. 5 U.S.C. § 706. Courts have shown willingness to reverse suspensions and debarments, including for failure to follow procedural requirements. See, e.g., *Friedler v. GSA*, 271 F. Supp. 3d 40 (D.D.C. 2017) (setting aside debarment because government did not provide required notice and an opportunity to respond to issues on which debarment was based); *Sloan v. HUD*, 231 F.3d 10 (D.C. Cir. 2000) (ordering agency to void suspension due, in part, to the agency’s failure to explain its decision); *Inchcape Shipping Servs. Holdings v. United States*, No. 13-953 C, 2014 U.S. Claims LEXIS 1570 (Fed. Cl. Jan. 2, 2014) (temporarily enjoining the Federal government from enforcing a suspension against an entity due, in part, to government’s failure to base its decision on adequate evidence).

It remains to be seen whether the Harvard letter is a one-off. But given the Administration’s use of grant terminations, stop work orders, investigations, and demands for changes to project terms and new certifications, it is plausible that the

Administration may leverage suspension and debarment—including de facto debarments—to further its policy goals in the coming years and against organizations, like universities and research institutions, that are unaccustomed to this harsh government remedy. Dorsey’s knowledgeable attorneys are available to help institutions suspended or proposed for debarment.

[1] Title II of the Code of Federal Regulations, Part 180 includes the Office of Management and Budget’s “Guidelines to Agencies on Government-Wide Debarment and Suspension (Nonprocurement),” and has been adopted by the Department of Education. See 2 C.F.R. § 3485.12.

[2] Suspending officials have “wide discretion” in making suspension decisions (2 C.F.R. § 180.705), but the Federal Acquisition Regulation once again may provide insight by analogy: the FAR states suspensions must be “imposed on the basis of adequate evidence,” and based on a determination “that immediate action is necessary to protect the Government’s interest.” 48 C.F.R. § 9.407-1.