

Department of State

§ 140.8

the provision of assistance to meet the requirements of section 487 is warranted. This decision shall be made in consultation with the agency proposing the assistance and other appropriate bureaus and agencies. In making this determination, the Country Narcotics Coordinator shall take into account:

(i) The extent to which such individual would have control over assistance received;

(ii) The extent to which such individual could benefit personally from the assistance;

(iii) Whether such individual has acted alone or in collaboration with others associated with the entity;

(iv) The degree to which financial or other resources of the entity itself have been used to support drug trafficking; and

(v) Whether the provision of assistance to the entity can be structured in such a way as to exclude from the effective control or benefit of the assistance any key individuals with respect to whom a negative determination has been made.

(c) *Violations Identified Subsequent to Obligation.* The foregoing procedures provide for a determination before funds are obligated. If, however, subsequent to an obligation of funds an assistance recipient or a key individual of such recipient is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking (e.g., the head of a recipient entity changes during the course of an activity and the new head is found to have been engaged in drug trafficking), appropriate action should be taken, including, if necessary, termination of the assistance. Agreements shall be written to permit termination of assistance in such circumstances.

§ 140.7 Multilateral institutions and international organizations.

Assistance provided to or through multilateral institutions or international organizations is subject to this part as follows:

(a) Where the government agency providing assistance has reasonable grounds to suspect that a recipient multilateral institution or international organization may be or may

have been involved in drug trafficking, the provisions of § 140.6 shall apply.

(b) Where the government agency providing assistance designates the recipient of assistance from the multilateral institution or international organization and the designated recipient is a covered individual or entity, the provisions of this part shall apply as if the assistance were provided directly to the designated recipient.

(c) Where the government agency providing assistance does not designate the recipient of assistance from the multilateral institution or international organization, this part do not apply, other than as provided in paragraph (a) of this section, except that the agency's agreement with the multilateral institution or international organization shall stipulate that such entity is to make reasonable efforts, as necessary, to ensure that the assistance is not diverted in support of drug trafficking.

Example: The State Department provides \$600,000 to the United Nations for the United Nations Drug Control Program, specifically designating that Government D of a covered country receive \$150,000 and Corporation E receive \$60,000 for training programs in a covered country. Individuals who will receive training are not specifically designated by the State Department. The United Nations is a covered entity based on § 140.4(a)(1); Government D is a covered entity based on §§ 140.4(b) and 140.7(b); Corporation E is not a covered entity under §§ 140.4(b) and 140.7(b) because it has been designated to receive less than \$100,000 in assistance (§ 140.3(c)(2)). Participant trainees are not covered individuals because they fall under the exception contained in § 140.7(c) (see also § 140.4(a)(2)).

§ 140.8 Recipients of scholarships, fellowships, and participant training.

(a) *Procedures.* Individuals who are located in a covered country and who are proposed recipients of scholarships, fellowships, or participant training, except those falling under the exception contained in § 140.7(c), are subject to the review procedures, criteria, and procedures concerning violations identified subsequent to obligation of funds set forth in § 140.6. Such review of recipient individuals is in addition to the provisions applicable to the recipient entity providing the assistance.

(b) *Certifications.* Individuals who are located in a covered country and who

are proposed recipients of scholarships, fellowships, or participant training shall also be required to certify prior to approval that, within the last ten years, they have not been convicted of a narcotics offense, have not been engaged in drug trafficking, and have not knowingly assisted, abetted, conspired, or colluded with others in drug trafficking. False certification may subject the assistance recipient to U.S. criminal prosecution under 18 U.S.C. Sec. 1001 and to withdrawal of assistance under this part.

§ 140.9 Other non-governmental entities and individuals.

(a) *Procedures.* Section 140.9 applies to private voluntary agencies, educational institutions, for-profit firms, other non-governmental entities and private individuals. A non-governmental entity that is not organized under the laws of the United States shall be subject to the review procedures and criteria set forth in § 140.6(a) and (b). A non-governmental entity that is organized under the laws of the United States shall not be subject to such review procedures and criteria. However, an agency providing assistance shall follow such review procedures and criteria, as modified by section § 140.14, if the agency has reasonable grounds to suspect that a proposed U.S. non-governmental entity or a key individual of such entity may be or may have been involved in drug trafficking or may have been convicted of a narcotics offense. Procedures set forth in § 140.6(c) concerning violations identified subsequent to obligation shall apply to both U.S. and foreign non-governmental entities.

Examples: (1) A \$100,000 grant to a covered U.S. university for participant training would not be subject to the review procedures and criteria in § 140.6(a) and (b). However, a proposed participant would be subject to the review procedures and criteria in § 140.6(a) and (b) as part of the agency's approval process.

(2) A \$100,000 grant to a covered foreign private voluntary agency for participant training would be subject to the review procedures and criteria in § 140.6(a) and (b). In addition, each proposed participant would be subject to the review procedures and criteria in § 140.6(a) and (b) as part of the agency's approval process.

(b) *Refunds.* A clause shall be included in grants, contracts, and other agreements with both U.S. and foreign non-governmental entities requiring that assistance provided to or through such an entity that is subsequently found to have been engaged in drug trafficking, as defined in this part, shall be subject to refund or recall.

(c) *Certifications.* Prior to approval of covered assistance, key individuals (as described in § 140.6(a)(3)) in both U.S. and foreign non-governmental entities shall be required to certify that, within the last ten years, they have not been convicted of a narcotics offense, have not been engaged in drug trafficking and have not knowingly assisted, abetted, conspired, or colluded with others in drug trafficking. False certification may subject the signatory to U.S. criminal prosecution under 18 U.S.C. Sec. 1001.

§ 140.10 Intermediate credit institutions.

(a) *Treatment as Non-Governmental Entity or as a Foreign Government Entity.* Intermediate credit institutions (“ICIs”) shall be subject to either the procedures applicable to foreign government entities or those applicable to non-governmental entities, depending on the nature of the specific entity. The Assistant Secretary of State for International Narcotics and Law Enforcement Affairs or the Assistant Secretary's designee, in consultation with the agency proposing the assistance and other appropriate bureaus and agencies, shall determine (consistent with the definition of “foreign state” set forth in the Foreign Sovereign Immunities Act, 28 U.S.C. 1603(a) and made applicable by § 140.5) whether the ICI will be treated as a non-governmental entity or a foreign government entity.

(b) *Refunds.* In addition to measures required as a consequence of an ICI's treatment as a non-governmental entity or a foreign government entity, a clause shall be included in agreements with all ICIs requiring that any loan greater than \$1,000 provided by the ICI to an individual or entity subsequently