

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