

## § 890.1017

had a physical, mental, or emotional condition that reduced his level of culpability before or during the period in which he committed the violations in question.

(c) *Absence of factors.* The absence of aggravating or mitigating factors shall have no effect to either increase or lower the nominal period of debarment.

### **§ 890.1017 Determining length of debarment based on revocation or suspension of a provider's professional licensure.**

(a) *Indefinite term of debarment.* Subject to the exceptions set forth in paragraph (b) of this section, debarment under 5 U.S.C. 8902a(c)(1) shall be for an indefinite period coinciding with the period during which the provider's license is revoked, suspended, restricted, surrendered, or otherwise not in effect in the State whose action formed the basis for OPM's debarment.

(b) *Aggravating circumstances.* If any of the aggravating circumstances set forth in § 890.1016 apply, OPM may debar the provider for an additional period beyond the duration of the licensure revocation or suspension.

### **§ 890.1018 Determining length of debarment for an entity owned or controlled by a sanctioned provider.**

OPM shall determine the length of debarments of entities under 5 U.S.C. 8902a(c)(2) based on the type of violation committed by the person with an ownership or control interest. The types of violations actionable under this provision are:

(a) *Owner/controller's debarment.* The debarment of an entity based on debarment of an individual with an ownership or control interest shall be for a period concurrent with the individual's debarment. If any aggravating or mitigating circumstances set forth in § 890.1016 apply solely to the entity and were not considered in setting the period of the individual's debarment, OPM may debar the entity for a period longer or shorter than the individual's debarment.

(b) *Owner/controller's conviction.* The debarment of an entity based on the criminal conviction of a person with an ownership or control interest for an offense listed in 5 U.S.C. 8902a(b)(1)–(4)

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shall be for a period of not less than 3 years, subject to adjustment for any aggravating or mitigating circumstances set forth in § 890.1016 applying solely to the entity.

(c) *Owner/controller's civil monetary penalty.* The debarment of an entity based on a civil monetary penalty imposed on a person with an ownership or control interest, shall be for a period of not less than 3 years, subject to adjustment for any aggravating or mitigating circumstances set forth in § 890.1016 applying solely to the entity.

### **§ 890.1019 Determining length of debarment based on ownership or control of a sanctioned entity.**

OPM shall determine the length of debarments of individual providers under 5 U.S.C. 8902a(c)(3) based on the type of violation committed by the sanctioned entity owned or controlled by the person with an ownership or control interest. The types of violations actionable under this provision are:

(a) *Entity's debarment.* If a provider's debarment is based on his ownership or control of a debarred entity, the debarment shall be concurrent with the entity's debarment. If any of the aggravating or mitigating circumstances identified in § 890.1016 applies directly to the provider that owns or controls the debarred entity and was not considered in setting the period of the entity's debarment, OPM may debar the provider for a period longer or shorter, respectively, than the entity's debarment.

(b) *Entity's conviction.* If a provider's debarment is based on the criminal conviction of an entity he owns or controls for an offense listed in 5 U.S.C. 8902a(b)(1)–(4), OPM shall debar the provider for a period of no less than 3 years, subject to adjustment for any aggravating or mitigating circumstances identified in § 890.1016 that apply to the provider as an individual.

(c) *Entity's civil monetary penalty.* If a provider's debarment is based on a civil monetary penalty imposed on an entity he owns or controls, OPM shall debar him for 3 years, subject to adjustment on the basis of the aggravating and mitigating circumstances listed in

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§ 890.1016 that apply to the provider as an individual.

### **§ 890.1020 Determining length of debarment based on false, wrongful, or deceptive claims.**

Debarments under 5 U.S.C. 8902a(c)(4) and (5) and 5 U.S.C. 8902a(d)(1) and (2) shall be for a period of 3 years, subject to adjustment based on the aggravating and mitigating factors listed in § 890.1016.

### **§ 890.1021 Determining length of debarment based on failure to furnish information needed to resolve claims.**

Debarments under 5 U.S.C. 8902a(d)(3) shall be for a period of 3 years, subject to adjustment based on the aggravating and mitigating factors listed in § 890.1016.

### **§ 890.1022 Contesting proposed permissive debarments.**

(a) *Right to contest a proposed debarment.* A provider proposed for debarment under a permissive debarment authority may challenge the debarment by filing a written contest with the debarring official during the 30-day notice period indicated in the notice of proposed debarment. In the absence of a timely contest, the debarment shall become effective as stated in the notice, without further action by OPM.

(b) *Challenging the length of a proposed debarment.* A provider may contest the length of the proposed debarment, while not challenging the debarment itself, or may contest both the length of a debarment and the debarment itself in the same contest.

### **§ 890.1023 Information considered in deciding a contest.**

(a) *Documents and oral and written arguments.* A provider may submit documents and written arguments in opposition to the proposed debarment and/or the length of the proposed debarment, and may appear personally or through a representative before the debarring official to provide other relevant information.

(b) *Specific factual basis for contesting the proposed debarment.* A provider's oral and written arguments shall identify the specific facts that contradict the basis for the proposed debarment as

stated in the notice of proposed debarment. A general or unsupported denial of the basis for debarment does not raise a genuine dispute over facts material to the debarment, and the debarring official shall not give such a denial any probative weight.

(c) *Mandatory disclosures.* Regardless of the basis for the contest, providers are required to disclose certain types of background information, in addition to any other information submitted during the contest. Failure to provide such information completely and accurately may be a basis for OPM to initiate further legal or administrative action against the provider. The specific items of information that shall be furnished to OPM are:

(1) Any existing, proposed, or prior exclusion, debarment, penalty, or other sanction imposed on the provider by a Federal, State, or local government agency, including any administrative agreement that purports to affect only a single agency;

(2) Any criminal or civil legal proceeding not referenced in the notice of proposed debarment that arose from facts relevant to the basis for debarment stated in the notice; and

(3) Any entity in which the provider has a control interest, as that term is defined in § 890.1003.

### **§ 890.1024 Standard and burden of proof for deciding contests.**

OPM shall demonstrate, by a preponderance of the evidence in the administrative record as a whole, that a provider has committed a sanctionable violation.

### **§ 890.1025 Cases where additional fact-finding is not required.**

In each contest, the debarring official shall determine whether a further fact-finding proceeding is required in addition to presentation of arguments, documents, and information. An additional fact-finding proceeding is not required when:

(a) *Prior adjudication.* The proposed debarment is based on facts determined in a prior due process adjudication. Examples of prior due process proceedings include, but are not limited to, the adjudication procedures associated with: