§ 140.5 Overview.

This subpart sets forth the enforcement procedures applicable pursuant to §140.4 to the various types of covered individuals and entities with respect to covered assistance. Section 140.6 establishes the procedures applicable to foreign government entities, including any such entity that is covered by the definition of a “foreign state” set forth in the Foreign Sovereign Immunities Act, 28 U.S.C. Sec. 1603(a). Section 140.7 establishes the procedures applicable to multilateral institutions and international organizations. Section 140.8 establishes the procedures applicable to recipients of scholarships and fellowships and participant trainees. Section 140.9 establishes the procedures applicable to non-governmental entities. Section 140.10 sets forth additional procedures applicable to intermediate credit institutions. Sections 140.11 through 140.14 contain general provisions related to the enforcement process.

§ 140.6 Foreign government entities.

(a) Determination Procedures. (1) The Country Narcotics Coordinator shall be responsible for establishing a system for reviewing available information regarding narcotics offense convictions and drug trafficking of proposed assistance recipients under this section and, except under the circumstances described in §140.6(a)(6), determining whether a proposed recipient is to be denied such assistance or other measures are to be taken as a result of the application of FAA Section 487.

(2) Prior to providing covered assistance to or through a proposed recipient, the agency providing the assistance shall provide the Country Narcotics Coordinator in the country in which the proposed recipient is located or, as appropriate, where assistance is to be provided, the information specified in §140.6(a)(3) in order that the Country Narcotics Coordinator may carry out his or her responsibilities under this part.

(3) In each case, the agency proposing the assistance shall provide to the Country Narcotics Coordinator the name of each key individual within the recipient entity who may be expected to control or benefit from assistance as well as other relevant identifying information (e.g., address, date of birth) that is readily available. If a question arises concerning who should be included within the group of key individuals of an entity, the agency providing the assistance shall consult with the Country Narcotics Coordinator, and the decision shall be made by the Country Narcotics Coordinator. If the agency proposing the assistance disagrees with the Country Narcotics Coordinator’s decision regarding who should be included within the group of key individuals, the agency may request that the decision be reviewed by the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs in consultation with other appropriate bureaus and agencies. Any such review undertaken by the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs shall be completed expeditiously.

(4) Within fourteen calendar days after receiving the name of a proposed recipient and other relevant information, the Country Narcotics Coordinator shall determine whether any available information may warrant withholding assistance or taking other measures under this part, based on the activities of the proposed recipient.
criteria set forth in §140.6(b). If, during
that period, the Country Narcotics Co-
dinator determines that available in-
formation does not so indicate, he or
she shall notify the proposing agency
that the assistance may be provided to
the proposed recipient.
(5) If, during the initial fourteen-day
period, the Country Narcotics Coordi-
nator determines that information ex-
ists that may warrant withholding as-
sistance or taking other measures
under this part, then the Country Nar-
cotics Coordinator shall have another
fourteen calendar days to make a final
determination whether the assistance
shall be provided or withheld or such
other measures taken.
(6) A decision to withhold assistance
or to take other measures based on in-
formation or allegations that a key in-
dividual who is a senior government of-
official of the host nation has been con-
icted of a narcotics offense or has been
engaged in drug trafficking shall be
made by the Assistant Secretary of
State for International Narcotics and
Law Enforcement Affairs, or by a high-
er ranking official of the Department
of State, in consultation with other ap-
propriate bureaus and agencies. For
the purpose of this part, “senior gov-
ernment official” includes host nation
officials at or above the vice minister
level, heads of host nation law enforce-
ment agencies, and general or flag offi-
cers of the host nation armed forces.
(b) Criteria to be Applied. (1) A deci-
sion to withhold assistance or take
other measures shall be based on
knowledge or reason to believe that the
proposed recipient, within the past ten
years, has:
(i) Been convicted of a narcotics of-
ense as defined in this part; or
(ii) Been engaged in drug trafficking,
regardless of whether there has been a
conviction.
(2) Factors that may support a deci-
sion to withhold assistance or take
other measures based on reason to be-
lieve that the proposed recipient has
been engaged in drug trafficking ac-
tivities within the past ten years when
there has been no conviction of such an
offense may include, but are not lim-
ited to, the following:
(i) Admission of participation in such
activities;
(ii) A long record of arrests for drug
trafficking activities with an unex-
plained failure to prosecute by the
local government;
(iii) Adequate reliable information
indicating involvement in drug traf-
icking.
(3) If the Country Narcotics Coordi-
nator knows or has reason to believe
that a key individual (as described in
§140.6(a)(3)) within a proposed recipient
entity has been convicted of a nar-
cotics offense or has been engaged in
drug trafficking under the terms of
this part, the Country Narcotics Coor-
dinator must then decide whether
withholding assistance from the entity
or taking other measures to structure
the provision of assistance to meet the
requirements of section 487 is war-
ranted. 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 indi-
vidual would have control over assist-
ance received;
(ii) The extent to which such individ-
ual 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 traf-
ficking; and
(v) Whether the provision of assist-
tance to the entity can be structured in
such a way as to exclude from the ef-
teffective control or benefit of the assist-
ance 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, subse-
quent to an obligation of funds an as-
sistance 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 activ-
ity and the new head is found to have
§ 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 were provided directly to the designated recipient.

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 collided 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