

§ 140.10

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"

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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 found to have been convicted of a narcotics offense or engaged in drug trafficking, as defined in this part, shall be subject to refund or recall.

§ 140.11 Minimum enforcement procedures.

Sections 140.6 through 140.10 represent the minimum procedures that each agency providing assistance must apply in order to implement FAA Section 487. Under individual circumstances, however, additional measures may be appropriate. In those cases, agencies providing assistance are encouraged to take additional steps, as necessary, to ensure that the statutory restrictions are enforced.

§ 140.12 Interagency review procedures.

If the agency proposing the assistance disagrees with a determination by the Country Narcotics Coordinator to withhold assistance or take other measures, the agency may request that the determination be reviewed by the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs in coordination with other appropriate bureaus and agencies. Unless otherwise determined by the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs, the assistance shall continue to be withheld pending resolution of the review.

§ 140.13 Notification to foreign entities and individuals.

(a) Unless otherwise determined under §140.13(b), if a determination has been made that assistance to a foreign entity or individual is to be withheld, suspended, or terminated under this