

11. ENFORCEMENT

A. Overview

The Grants Officer, in consultation with the Program Office, is authorized to take appropriate actions if recipients fail to meet their obligations under financial assistance awards. Proposed suspensions and terminations must be reviewed by FALD prior to execution. Every financial assistance award contains a provision for suspension and/or termination of the award for deficient project performance, poor financial management, non-payment of accounts receivable, and/or other non-compliance or deficiency problems. Suspension or termination of an individual award is not an action covered by the provisions of 2 CFR Part 1326 and Part 180 (Nonprocurement Debarment and Suspension).

B. Enforcement

See 2 CFR § 200.339 (Remedies for noncompliance) through 2 CFR § 200.343 (Effects of suspension and termination). Enforcement actions may include but are not limited to:

- discussions of corrective actions needed,
- written notice delineating needed actions,
- pre-enforcement warnings,
- imposition of risk-based specific award conditions,
- suspension of the award, suspension of payment, or both,
- termination of the award,
- debarment or suspension of the recipient pursuant to 2 CFR Part 1326 and Part 180.

1. **Pre-Enforcement Actions.** The recipient's noncompliance and appropriate corrective actions may be communicated through discussions or written notification if a violation of an award is not material. Discussions or written notices should identify the problem and establish a time frame for the recipient to take corrective action. If the recipient fails to respond or implement corrective action, a written pre-enforcement warning, which identifies the problem and the expected time frame for the recipient to resolve the matter, may be appropriate. A pre-enforcement warning should also include the actions the operating unit intends to take if the problem is not corrected promptly.

2. **Risk-based Specific Award Conditions.** If a recipient fails to comply with the terms and conditions of an award, the Grants Officer may impose specific award conditions pursuant to 2 CFR § 200.208 (Specific conditions). Specific conditions may include placing the recipient on reimbursement only, or other requirements unique to the circumstances. The recipient must be notified in writing of the specific award conditions and informed of corrective actions necessary to remove the specific condition in accordance with 2 CFR § 200.208(d). The level of enforcement action taken should be risk-based and consistent with the nature of the noncompliance.

3. **Suspension of Payments.** The Grants Officer may suspend payments after determining it is necessary to temporarily withhold payments of funds pending the correction of identified deficiencies by the recipient. A suspension of payment may be implemented by suspending the Recipient's access to the Department of Treasury's Automated Standard Application for Payment (ASAP) System when the terms of the award provide for payments to the recipient through ASAP. The imposition of a suspension of payments does not halt activities under an award, and the recipient may continue to incur costs during the suspension of payments. Only the Grants Officer is authorized to suspend payments under an

award or lift the suspension once it is imposed.

The recipient must be notified of the suspension in writing. The notice must be sent by certified mail or electronically, with confirmation of receipt. The notice must state:

- that DOC is imposing suspension of payments,
- the reason(s) why, and
- what corrective action the recipient or subrecipient must take to remedy the situation.

If immediate action is not necessary to protect the government's interest, the Grants Officer should provide the recipient 30 calendar days' notice that DOC will proceed with the suspension of payments if compliance is not established by the recipient within 30 calendar days of the date of the notice. A suspension of payments may be imposed regardless of whether the recipient has submitted pending payment requests. If specified corrective actions are not taken, the Grants Officer may, after considering the best interests of the government, take more severe enforcement action, including suspension or termination of the award.

4. Suspension of Award. The Grants Officer may suspend an award, in part or in its entirety, after determining it is necessary to temporarily halt all activities under an award, including making payments to the recipient, pending corrective actions by the recipient. All activities under an award must cease and no costs may be incurred by the recipient during the suspension. Only the Grants Officer is authorized to suspend an award or lift a suspension once it is imposed.

The recipient must be notified of the suspension in writing and a copy of the notification must be included in the official award file. The notice must be sent by certified mail or electronically with confirmation of receipt. The notice must state:

- that DOC is imposing suspension of the award or a portion of the award (if applicable),
- the reasons why, and
- what the recipient can do to remedy the situation.

If immediate action is not necessary to protect the government's interest, the Grants Officer should provide the recipient a minimum of 30 calendar days' notice that DOC will proceed with suspension of the award if compliance is not established by the recipient within 30 calendar days of the notice. Suspension of an award may result in a no-cost extension of the award period to compensate for the work that was not conducted on the project during the suspension.

If specified corrective actions are not taken, the Grants Officer may take more severe enforcement action, such as termination of the award.

5. Termination for Noncompliance with Award Terms (frequently referred to as termination for cause). Per 2 CFR § 200.340(a)(1), after providing FALD an opportunity to review and comment, the Grants Officer may terminate any DOC award, in part or in its entirety for noncompliance, which includes, but is not limited to:

- violation of the terms and conditions of the award;

- failure to perform award activities in a satisfactory manner;
- improper management or use of award funds; or
- fraud, waste, abuse, mismanagement, or criminal activity.

All termination for material noncompliance actions must be documented in the official award file. The recipient must be notified of the termination action in writing using the same minimum requirements listed above in Paragraph 4, if a suspension notifying the recipient of potential termination for noncompliance did not precede the termination action. *See* 2 CFR §§ 200.339 (Remedies for noncompliance) and 200.340 (Termination).

6. Termination by Mutual Agreement or by the Recipient. Per 2 CFR § 200.340(a)(2) and (a)(3), an award may be terminated under the following conditions:

a. By the Grants Officer with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or

b. By the recipient upon sending the Grants Officer a written notification of the reasons for such termination, the effective date, and, in the case of partial termination, the portion of the award to be terminated. However, if the Grants Officer determines in the case of partial termination that the remaining portion of the Federal award will not accomplish the purposes for which the Federal award was made, it may terminate the Federal award in its entirety.

All termination actions must be documented in the official award file. *See* 2 CFR § 200.340 (Termination).

Per 2 CFR 200.340 (a)(4), an award may be terminated by the Federal agency or pass-through entity pursuant to the terms and conditions of the Federal award, including, to the extent authorized by law, if an award no longer effectuates the program goals or agency priorities.

7. Reporting of Termination Actions. The Grants Officer must report material failure award terminations to the OMB-designated integrity and performance system in SAM.gov using the Contractor Performance Assessment Reporting System (CPARS). *See* 2 CFR § 200.340 (Termination), and 2 CFR § 200.341 (Notification of termination requirement).

8. Debarment and Suspension of a Recipient. Debarment and suspension of a recipient are actions taken pursuant to 2 CFR Part 1326 and Part 180, which implements EO's 12549 and 12689. The actions are intended to debar or suspend a recipient organization from participating in any Federal program. Debarment and suspension are imposed not as punishments, but to protect the interests of the government. The integrity or present responsibility of an applicant or recipient is at issue in a debarment or suspension, and such action is imposed only in egregious circumstances, e.g., when a recipient or applicant has been indicted and/or convicted of a criminal offense, or the facts indicate the recipient's actions indicate a lack of present responsibility. All regulatory requirements of 2 CFR Part 1326 and Part 180 must be met before a recipient organization can be debarred or suspended from participation in Federal programs. This action must be distinguished from suspension of an individual award by a Grants Officer as discussed above. The FALD shall review all proposed debarments and suspensions under 2 CFR Part 1326 and Part 180.

C. Concurrent Actions

Occasionally, when considering an administrative enforcement action, the Grants Officer may discover or be aware that other actions are ongoing or are likely to be initiated against a recipient and/or its officers or employees. Other actions may include OIG audits and/or investigations, and criminal or civil investigations/prosecutions by the Department of Justice. If the Grants Officer is proposing enforcement action requiring FALD review and an opportunity to comment (suspensions and terminations) or requiring FALD clearance (proposed debarments and suspensions under 2 CFR Part 1326 and Part 180), FALD must be informed about the other actions, so that it can assist, if necessary, in the proper coordination with the other authorities. The Grants Officer must inform FALD of any other actions when requesting FALD's review of lesser administrative enforcement actions or of non-enforcement termination (by mutual agreement or by the recipient).