

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 awards. Proposed suspensions and terminations must be reviewed by FALD prior to execution. Every grant and cooperative agreement 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, "Government-wide Debarment and Suspension (Nonprocurement)."

B. Enforcement. Enforcement actions may include, but are not limited to, discussions of corrective actions needed, written notice delineating needed actions; pre-enforcement warnings; imposition of high-risk special award conditions; suspension of the award, suspension of payment, or both; termination of the award; or debarment and suspension of the recipient pursuant to 2 CFR Part 1326. See 15 CFR §§ 14.62 or 24.43, as applicable.

1. **Pre-Enforcement Actions.** If a violation of an award is not material, discussions with the recipient of corrective actions needed or a written notice delineating needed actions may be sufficient to resolve the situation. 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 pre-enforcement warning may be appropriate, which identifies the problem and the expected time frame for the recipient to resolve the matter. A warning should also include the actions the operating unit intends to take if the problem is not corrected promptly.
2. **High-Risk Special Award Conditions.** If a recipient materially fails to comply with the terms and conditions of an award, the Grants Officer may impose high-risk special award conditions pursuant to 15 CFR §§ 14.14 or 24.12. Such special conditions may include placing the recipient on reimbursement only, or other requirements unique to the circumstances at hand. The recipient must be notified of the high-risk special award conditions and informed of corrective actions necessary to remove the restrictions in accordance with 15 CFR §§ 14.14 and 24.12.
3. **Suspension of Payments.** Suspension of payments is an enforcement action available to the Grants Officer when he/she determines it is necessary to temporarily withhold payments of funds pending correction of identified deficiencies by the recipient or more severe enforcement action by the Grants Officer. Such action may be carried out 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. At a minimum, the notice must be sent by certified mail or electronically, and must state that the Department is imposing suspension of payments, the reason(s) why, and what corrective action is necessary by the recipient to remedy the situation. If immediate action is not necessary to protect the government's interest, the Grants Officer should provide 30 days notice, informing the recipient that, unless information is received within the 30 days establishing compliance by the recipient with the requested remedial actions, the Department will proceed with the suspension of payments. A suspension of payments may be imposed regardless of whether the recipient has submitted any 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 termination of the award.

4. **Suspension of Award.** Suspension of an award is an enforcement action available to the Grants Officer when he/she determines that circumstances under an award warrant temporarily stopping all activities under an award, including making payments to the recipient, pending the recipient taking corrective actions as specified by the Grants Officer. Such action may be carried out by suspending the Recipient's access to the Department of Treasury's ASAP System, when the terms of the award provide for payments to the recipient through ASAP. 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. Suspension of an award must be documented in writing and included in the official award file. The recipient must be notified of the suspension in writing. At a minimum, the notice must be sent by certified mail, must state that the Department is imposing suspension of the award, the reason 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 30 days notice, informing the recipient that, unless information is received within the 30 days establishing compliance by the recipient with the requested remedial actions, the Department will proceed with the suspension of the award. 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 termination of the award. 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.

5. **Termination for Cause.** The Grants Officer may terminate any DOC award for material noncompliance. Material noncompliance 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 cause actions must be documented in the official award file in writing. The recipient must be notified of the termination action in writing using the same minimum requirements listed under a suspension in Paragraph 3. above if a suspension did not precede the termination action. See 15 CFR § 14.61(a)(2) and (3) or 15 CFR § 24.43, as applicable.

6. Termination for Convenience. In financial assistance, the Federal Government may not terminate an award unilaterally for the convenience of the government. However, 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 to the Grants Officer written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Grants Officer determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety.

All termination for convenience actions must be documented in the official award file in writing. See 15 CFR §§ 14.61(a) and 24.44.

7. Debarment and Suspension of a Recipient. Suspension and debarment of a recipient are actions taken pursuant to 2 CFR Part 1326 which implements EOs 12549 and 12689. The actions are intended to suspend or debar a recipient organization from participating in any Federal program, government-wide. Suspension and debarment are imposed, not as punishments but to protect the interests of the government. The integrity or responsibility of an applicant or recipient is at issue in a suspension or debarment, 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. All of the regulatory requirements of 2 CFR Part 1326 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 suspensions and debarments under 2 CFR Part 1326.

C. Concurrent Actions. Occasionally, when considering an administrative enforcement action, the Grants Officer may discover or be aware that other actions are concurrently ongoing or are about to be initiated against a recipient and/or its officers or employees. Such other actions may include OIG audits and/or investigations, and criminal or civil investigations/prosecutions by the Department of Justice. In such instances, it is important to coordinate, to the extent possible, any proposed administrative enforcement action with the authorities pursuing the other actions, in order to avoid any adverse impact on those other actions. Accordingly, when 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), FALD must be informed about the other actions, so that it can assist, if necessary, in the proper coordination with the other authorities. In addition, FALD must be informed of any other actions when the Grants Officer requests FALD's review of lesser administrative enforcement actions.