
Part 3 Post-Award

Section 07 Termination and Enforcement

A. Principles

Purpose. This Grants Policy Directive (GPD) outlines HHS policies for actions, collectively termed "enforcement," that may be taken by the awarding agency in the event of grantee non-compliance with the terms and conditions of award. Termination is one of several types of enforcement actions covered by this GPD.

Scope. This GPD supplements the provisions of 45 CFR Parts 74 and 92, and of other regulations, covering particular subject areas, such as human subjects or scientific misconduct, that may result in enforcement actions treated in this GPD. Therefore, it covers actions that may be taken on an institutional basis or a grant-by-grant-basis or that may affect the participation of a Principal Investigator (PI) or other key individuals. It also supplements the coverage of GPD 2.01, which deals with a specific type of enforcement action—designation of a grantee as "high-risk/special award conditions."

Although this GPD deals primarily with actions that may be taken following award, it also addresses actions that may result in an award(s) not being made on the basis of a grantee's prior action or inaction.

This GPD applies to all HHS discretionary grants and grant programs, and to cost disallowances under mandatory grants. Disallowances and other enforcement actions under mandatory grants will be addressed in GPD 5.01.

B. Policy

Enforcement actions should be used when necessary and appropriate, but they should be consistent with the type, duration, and significance of the grantee's non-compliance and with the objective the awarding agency wants to achieve. OPDIVs contemplating enforcement actions are encouraged to use alternative dispute resolution (ADR) techniques (see subsection 3.07 D below) where possible to avoid the need for an enforcement action(s).

Enforcement actions vary in their significance and severity.

Administrative enforcement actions include temporarily withholding cash payments or placing a grantee on a reimbursement payment method, suspending or terminating an ongoing award(s), suspending or debaring an organization from future awards, disallowing costs, and withholding support (i.e., denial of a noncompeting continuation award). Each of these types of enforcement actions is discussed in the following section, including, as appropriate, responsible offices/officials, use considerations, effect, and other pertinent information, such as appeal rights. In addition, there may be other legal remedies available in a given situation.

Enforcement is an extension of monitoring (see GPD 3.06). As part of the monitoring process, the awarding agency should be reviewing both the programmatic and business management aspects of grantee performance and compliance. Based on the documented findings of the monitoring process, including timely review of reports (e.g., financial status reports, audit reports, progress reports) and site visits, the grantee should be advised of any problems noted and be given the opportunity to correct them, as appropriate.

In general, there is no single triggering event that mandates that the awarding agency take a particular enforcement action; however, there may be instances in which termination is the most appropriate first course of action and is necessary to protect the interests of the Government and the public. Otherwise, enforcement actions (singly or in combination) should escalate in severity based on the demonstrated unwillingness or inability of the grantee to take corrective action, as specified by the awarding agency.

Operating Divisions (OPDIVs) are required to take timely action to advise grantees of non-compliance and take appropriate enforcement action(s). Generally, this should occur within 60 days of a documented finding. With respect to a delinquent report, an OPDIV should advise a grantee of noncompliance when a report is 30 days overdue, i.e., 30 days after its due date or any mutually agreed upon revised due date.

Following notification of non-compliance, if time frames are not established in regulation, OPDIVs must ensure that any time frames provided to grantees to take corrective action or that indicate the awarding agency's intention to withhold or discontinue funding are reasonable. This does not preclude immediate action if necessary to protect the interests of the Government and the public.

In general, a Grants Management Officer (GMO) is the only individual authorized to take an enforcement action, including notification of intent to take an enforcement action as well as the action itself [exceptions are discussed below and in subsection 3.07 C(5)]. However, whenever suspension or termination, withholding of support, or Government-wide suspension or debarment is being contemplated, senior program and administrative managers of the awarding agency and the Office of General Counsel (OGC) should be consulted prior to either advising the grantee of the intended action or submitting documentation to another level in the OPDIV or at HHS. For all other types of enforcement actions, these officials should receive a copy of the notification sent to the grantee.

Once the awarding agency decides to proceed with an enforcement action, depending on the significance of the action, the letter or other document may be co-signed by another management official of the awarding agency in addition to the GMO. If an individual serving in an audit resolution capacity will be notifying a grantee of a cost disallowance based on audit findings and demanding repayment, that individual must have a valid GMO delegation provided by the OPDIV's Chief GMO.

C. Enforcement Actions

Temporarily withholding cash payments or using reimbursement method of payment. A grantee's ability to draw down funds from the Payment Management System (PMS) or other payment system may be temporarily restricted as a means of obtaining a delinquent report(s) or causing other types of corrective actions that may be accomplished by the grantee within a relatively short period of time. It results in increased administrative effort on the part of the awarding agency, and requires close coordination with the payment office. Withholding cash payments are not appealable at either the OPDIV level or to the Departmental Appeals Board. (DAB).

A grantee may be converted from an advance payment basis to a reimbursement payment method or placed on a reimbursement payment method at the outset of an award if the awarding agency determines that the grantee's cash management practices are inadequate, cash or financial reporting is deficient, or for other reasons associated with financial management. With the exception for construction grants [see Title 45 CFR, Parts 74.22(e) and 92.21(d)], this type of action may be taken only if a grantee is designated "high-risk/special award conditions" (see GPD 2.01) and must be done on an entity-wide basis for all awards made by the designating awarding agency. Converting an award to reimbursement will not resolve an underlying systemic issue.

Placing the grantee on a reimbursement payment method affects the awards of the initiating awarding agency only but the concerns leading to this action should be discussed with PMS (Division of Payment Management/PSC). In addition, "high-risk/special award conditions" designation requires placement of the grantee on the Departmental Alert List and makes other awarding agencies aware of the nature of the problem. The action to designate a grantee as "high-risk/special award conditions" can be taken in anticipation of or during an award. The grantee may not appeal the designation at the OPDIV level or to the DAB, but may seek reconsideration by the designating agency.

Suspension or termination.

Suspending or terminating an award for cause

(1) Suspension may be used as a means of obtaining compliance if other lesser enforcement actions have failed or the public health or welfare is threatened. However, suspension should not ordinarily be used as a sanction when the awarding agency is not prepared to proceed to a termination in the event the deficiency is not corrected.

(2) If a suspension is lifted and performance resumes on the basis of grantee assurances of corrective actions taken or in process, the award should be amended to allow for close monitoring of those efforts, i.e., through a designation of "high-risk/special award conditions," if the organization is not already in that status. If not appropriate to lift the suspension (e.g., it is not possible for the grantee to take corrective actions), the awarding agency should proceed with taking necessary steps to terminate the award, resulting in the cessation of awarding agency funding.

(3) A suspension or termination action may be taken on one or more awards or a portion of an award(s) as a result of a finding of non-compliance. However, unless the material non-compliance affects individual awards and can be corrected on that basis, suspension/termination may not be the appropriate remedy and it may have significant adverse impacts on both the awarding agency and the grantee.

(4) The propriety of termination—as opposed to another type(s) of enforcement action—should be carefully considered when it is likely that future programmatically viable applications will be forthcoming from an organization and business management deficiencies may not have been corrected.

(5) A terminated award shall be closed out as promptly as possible. In addition, the final costs of the terminated award(s) may be negotiated if the grantee has un-cancelable obligations.

(6) While program regulations may provide for other appeal processes (e.g. Head Start suspensions, see 45 CFR Part 1303.13), a suspension is generally not appealable; however a termination for cause may be appealed. After obtaining concurrence by any program official required by regulation, the final letter advising the grantee of the intent to terminate, signed by the GMO, should include the necessary language to inform the grantee of its appeal rights and associated time frames.

Termination by mutual agreement or by the grantee

(1) Termination by mutual agreement or termination at the request of the grantee are not considered enforcement actions and are not appealable.

(2) The timing, cost allowability, and other conditions of these types of terminations are subject to negotiation between the grantee and the awarding agency GMO.

(3) If the grantee requests that a grant be terminated in whole or in part, the awarding agency should concur and take the necessary action.

(4) The awarding agency may also terminate the remainder of an award when a grantee requests that a portion be terminated.

Withholding a non-competing continuation award.

An awarding agency may withhold (deny) a non-competing continuation award within a previously approved project period on several bases, not all of which are considered enforcement actions. If an award is withheld because a grantee is delinquent in submitting required reports, fails to show satisfactory progress in achieving the objectives of the project or otherwise fails to meet the terms and conditions of award in a prior budget period(s) of the award, or the grantee's management practices fail to provide adequate stewardship of Federal funds, withholding an award is an enforcement action. As such, it is appealable in that its effect is essentially a termination. Once an award is withheld, it normally will not be restored, unless the agency ruling is overturned on appeal. Therefore, this type of enforcement action should not be used when a more immediate type of enforcement action, such as withholding payment, may result in the grantee correcting the deficiency. Further, a GMO should take the appropriate enforcement action as soon as there is a finding of material non-compliance rather than waiting to deny a non-competing continuation award.

Disallowing costs.

Costs incurred may be disallowed on the basis of audit findings, review of reports, or on other bases.

When costs are disallowed, they must be repaid by the grantee to the Federal Government from non-Federal funds. The repayment generally should be by check or offset (e.g., the awarding agency reducing the equivalent amount from an active or future grant award), but repayment may be accomplished by other legally available means. When offset is employed, the grantee must use non-Federal funds in order to maintain the required level of effort under the grant being offset.

The GMO should consult with OGC and the Debt Collection Officer /OS Finance Office before taking actions resulting in a collection action to ensure consistency with appropriations requirements and applicable regulatory requirements. When repayment is requested, it is considered a debt.

Disallowances may be appealed to the DAB as provided in 45 CFR Part 16, unless they are subject to the requirements of 45 CFR Part 96 which provides the grantee the opportunity for a hearing using another hearing forum prior to any appeal to the DAB.

Under either discretionary or mandatory grants, when offset is used, the awarding agency must ensure that the funds used to restore the amount offset are actually devoted to the program and derived from non-Federal funds; are treated as Federal funds for purposes of the applicable cost principles; are used before new Federal funds are drawn from PMS. Expenditure of funds used to restore the amount offset must also comply with the terms and conditions of the award.

Governmentwide Suspension and Debarment.

Action to suspend or debar an organization or individual is subject to the requirements of 45 CFR Part 76. The suspending/debarring official for HHS is the Deputy Assistant Secretary for Grants and Acquisition Management. This is the most severe of the enforcement actions listed in this section. Suspension or debarment has wide-reaching consequences since a suspension or debarment by HHS has government-wide effect. Once an organization is debarred, agencies must determine whether to continue with existing awards and new awards are precluded unless an exceptional process (as specified in 45 CFR Part 76) is followed.

D. Grant Appeals

Every effort should be made by the awarding agency to resolve issues with grantees before they result in formal disputes. If the issues cannot be resolved and the grantee has an appeal right, the grantee must be advised of that right as part of the GMO's final decision. That decision should provide sufficient background and rationale for the determination to enable the grantee to understand the agency position and determine whether to appeal. If an action is not appealable, it may be helpful to provide that information to the grantee.

The DAB's jurisdiction and its procedures are provided in 45 CFR Part 16. Some OPDIVs also have preliminary appeals required by regulation that must be exhausted prior to the DAB considering an appeal.

If a grantee files an appeal with the DAB, the DAB will inform the parties about the possibility of using alternative dispute resolution (ADR) techniques. The Department encourages the use of ADR (see 45 CFR 74.91). In general, the awarding agency should not take any final action on an appealable action until the time period for submission of an appeal has lapsed (30 days from receipt of the GMO's final decision) without action by the grantee. Once an appeal has been filed, the awarding agency may not take any final action until the DAB decision is issued. Exceptions are contained in 45 CFR Part 16.22(b).