

CHAPTER 2-270

ENFORCING AND TERMINATING ASSISTANCE AGREEMENTS

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2-270-00 What does this chapter do?

This chapter explains the policies and procedures we may take if you materially fail to comply with any condition of an assistance award you received from us, the Office of Surface Mining Reclamation and Enforcement (OSM). It also explains how you and we may agree to terminate an agreement for our mutual convenience.

2-270-10 Where do these rules come from?

These rules come from the *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*, known as the *Grants Common Rule*, at 43 CFR 12 Subpart C.

2-270-20 What enforcement actions may we take if you do not meet the requirements of the assistance agreement?

- A. We may determine you to be in noncompliance if you or your subrecipient materially fails to comply with any term of an assistance award. The condition which is not met may be from a Federal law or regulation, a commitment or assurance in your application or approved plan, a condition in the award document, or any other requirement.
- B. If you are in noncompliance, and do not appear to be taking steps to resolve the problem, we may take one or more of the following actions as we consider appropriate.
1. Temporarily stop cash payments until you correct the problem or we take more severe enforcement action. Alternatively, we may review each drawdown request you make and decide whether to approve it for payment.
 2. Disallow both the Federal and non-Federal expenditures for all or part of the cost of the activity not in compliance. When we disallow a cost, you cannot spend Federal funds for that cost, and if you spend non-Federal funds for it you cannot claim them as match.

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3. Wholly or partly suspend the current award. Suspension means that we temporarily stop your authority to obligate additional OSM funds under this assistance agreement. We will suspend the assistance agreement until you correct the deficiency or we decide to terminate the agreement.
 4. Wholly or partly terminate the current award. Termination means that this assistance agreement ends immediately.
 5. Do not approve any future assistance awards for the program.
 6. Take other remedies that may be legally available.
- B. In addition to these remedies, we may also consider debarment, which prohibits an entity or a person from receiving any Federal financial assistance. See Chapter [2-110](#) for more information on debarment and suspension.

2-270-30 What process must we follow before we take any enforcement actions to reduce, suspend or terminate an assistance agreement?

- A. When we identify deficiencies, we must work with you to resolve the issue. If we cannot resolve the deficiency, our office which awarded the assistance agreement must propose an enforcement action to the appropriate regional director (RD) and obtain his concurrence. The region must also coordinate proposed enforcement actions with our Assistant Director, Program Support (AD,PS) and Division of Financial Management (DFM).
- B. The awarding office must send you written notice of the proposed action by certified mail. The notice must inform you that reduction, suspension or termination of the grant agreement will begin no earlier than 30 days after the date of the notice if you do not take remedial action within that period.
- C. The awarding office must give you opportunity to consult with OSM during the 30-day notice period.
- D. If you do not take any remedial action, or appeal the decision, within the 30-day notice period, the awarding office will take action to reduce, suspend or terminate the assistance agreement.
- E. You may appeal the regional decision to the Director of OSM in writing. You must explain the reasons why you are requesting review. We must receive your appeal within 30 days of the written notice.
- F. You may appeal the Director's decision to the Department of the Interior's Office of Hearings and Appeals in writing, outlining the reasons for requesting review. You must file this appeal within 30 days of the Director's decision.

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2-270-40 What specific steps must we take to stop payments?

- A. The awarding office must coordinate with DFM when it first considers stopping payments on an assistance agreement, and throughout the process of deciding, and carrying out the suspension.
- B. The awarding office must inform you that we have decided to withhold payments on your assistance agreement. We must tell you the date when we plan to stop payments.
- C. DFM will work with Treasury to stop payments.
- D. When the issue has been resolved or the deficiency corrected, we will pay out all funds that we withheld during the period of the suspension.

2-270-50 What specific steps must we take to suspend an assistance agreement?

- A. You must not incur any obligations under the assistance agreement when the agreement is suspended. Any costs obligated at this time are unallowable.
- B. Costs which you properly incurred before the effective date of the suspension are allowable. They must have been necessary for the immediate needs of the program. They cannot have been incurred in anticipation of the suspension.
- C. You must refund any unobligated Federal assistance funds you may have on hand.
- D. The suspension will remain in effect until you correct the deficiency, or we take further enforcement action.

2-270-60 What specific steps must we take to terminate an assistance agreement for cause?

- A. We may terminate an assistance agreement for cause in any of the following circumstances. We may terminate the whole agreement or just part of it.
 - 1. We may terminate an agreement if you have materially failed to comply with the terms and conditions of the agreement, and resolution does not seem probable.
 - 2. We may terminate all or part of your regulatory grant if approval of all or part of your regulatory program is withdrawn, or if we take over all or part of your regulatory program.
 - 3. We may terminate your Abandoned Mine Land (AML) grant if approval of your reclamation, or regulatory program is withdrawn.

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- B. Costs incurred after termination of an award are not allowable except as follows.
 - 1. Costs which we specifically authorize are allowable.
 - 2. Other costs after termination are allowable if they result from obligations which you properly incurred before the effective date of the termination, and were not able to cancel. The obligations cannot have been in anticipation of the termination.
- C. You must return any unobligated funds to us.

2-270-70 How can you or we agree to terminate an assistance agreement for convenience?

- A. You may terminate an assistance agreement for convenience by sending a written notice to OSM. Your notice must state the effective date and explain the reasons for the termination. If you are only terminating part of the agreement, you must identify the part to be terminated. If you propose a partial termination, and we determine that the remaining part of the award will not accomplish its purpose, we may terminate the entire award.
- B. We may terminate an assistance agreement with your consent if we agree that continuing the project or program would not produce benefits worth the additional costs. We may terminate the entire agreement or a part of it. You and we must agree upon the termination conditions, including the effective date. For a partial termination, we must also agree on the part of the agreement to be terminated.
- C. We will process a termination for convenience as an amendment to the assistance agreement. The amendment must be approved by the authorized official in our awarding office.
- D. You must not incur costs after termination of an assistance agreement. Such costs are not allowable unless we approve them, or you properly incur the obligation before the termination date.
- E. After termination, we must pay you for the Federal share of valid obligations. You must return any unobligated funds to us.