



Termination Policy

Supporting the August 12, 2020 2 CFR 200 Revision

Version 1
October 2022

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1. Revision History

Revision Number	Revision Date	Summary of Changes	Author
0	-	Initial policy	Benjamin Spears

2. Approvals

This document requires the following approvals:

Name	Title
Stephanie Stone	TAD Director

3. Purpose and Scope of Document

This document reviews changes to termination regulations in Title 2 of the Code of Federal Regulations (referred to as 2 CFR part 200, as amended from time to time, or the Uniform Guidance) as published by the Office of Management and Budget (OMB) on August 13, 2020 (issued in 85 FR 495406), details termination policies for the U.S. Department of Housing and Urban Development (HUD), and satisfies the requirements of 2 CFR 200.340(b) which requires HUD to clearly and unambiguously specify termination provisions applicable to its awards.

4. Authorities & References

- 1) 2 CFR 200.340 Termination.
- 2) 2 CFR 200.341 Notification of termination requirement.
- 3) 2 CFR 200.342 Opportunities to object, hearings, and appeals.

5. Definitions

Definitions are from 2 CFR part 200 and the FY 2020/2021 Community Compass Technical Assistance (CCTA) Notice of Funding Opportunity (NOFO).

Budget period - The time interval from the start date of a funded portion of an award to the end date of that funded portion during which recipients are authorized to expend the funds awarded, including any funds carried forward or other revisions pursuant to § 200.308.

Cooperative Agreement Officer (CAO) — Responsible for the management and fiscal oversight of the cooperative agreement awards.

Customers — Recipients of HUD funding, including state and local grantees, public housing authorities (PHAs), owners and managers of HUD-assisted housing, Continuum of Care organizations (CoCs), nonprofit grantees, Homeless Management Information System (HMIS) Leads, HUD-approved housing counseling agencies and counselors, tribal organizations, Indian tribes, tribally-designated housing entities (TDHEs), FHA-approved multifamily lenders, and residents and participants in HUD-funded programs.

Disaster Recovery Grant Reporting System (DRGR) - The financial and information management system used by HUD to manage Community Compass awards. The system is used for the submission and approval of vouchers and associated work plans.

Federal Awardee Performance and Integrity Information System (FAPIIS) – a database that contains information to support award decisions as required by the Federal Acquisition Regulation (FAR). FAPIIS is a web-enabled application.

Government Technical Monitor (GTM) — As defined by HUD, the individual designated to provide technical monitoring, advice, and assistance to aid the Government Technical Representative (GTR) in the technical direction and evaluation of a successful applicant's performance. The GTM provides programmatic expertise and input to proposed TA work plans, quarterly status reports, invoices, and reviews and approves products. In some offices, the Program Office Technical Assistance Coordinator (POTAC) for a TA provider fulfills this role rather than a GTM.

Government Technical Representative (GTR) — As defined by HUD, the individual who is responsible for the technical direction and evaluation of a successful applicant's performance. The GTR is responsible for review and approval of work plans, quarterly performance and financial reports, and vouchers. GTRs serve as representatives of the Cooperative Agreement Officer who has responsibility for the management and fiscal oversight of the cooperative agreement awards.

Office of Management and Budget (OMB) – The OMB serves the President of the United States in overseeing the implementation of his or her vision across the Executive Branch. OMB's mission is to assist the President in meeting policy, budget, management, and regulatory objectives and to fulfill the agency's statutory responsibilities.

Period of Performance - The total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions, or budget periods. Identification of the period of performance in the Federal award per § 200.211(b)(5) does not commit the awarding agency to fund the award beyond the currently approved budget period.

TA Provider - A recipient of a Community Compass Technical Assistance and Capacity Building Program cooperative agreement and other awards linked to CFDA 14.259.

Termination – means the ending of a Federal award, in whole or in part at any time prior to the planned end of period of performance. A lack of available funds is not a termination.

6. Termination Scenarios

Awards made before August 13, 2020 may be terminated in whole or in part according to 2 CFR 200.339 – 200.342. Awards made after August 13, 2020 and managed by HUD may be terminated in whole or in part according to five scenarios listed in 2 CFR 200.340 and listed below.

- 1) By HUD, if a TA Provider fails to comply with the terms and conditions of the award – see 200.340(a)(1).
- 2) By HUD, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities - see 200.340(a)(2).

This guide includes award termination policies for how HUD assesses whether an award effectuates program goals or agency priorities.

- 3) By HUD, with consent of TA Provider, in which case the termination conditions are agreed upon, including effective date and portion of the award to be terminated – see 200.340(a)(3).
- 4) By the TA Provider, in a notice detailing the reasons, effective date, and the portion to be terminated – see 200.340(a)(4).
- 5) By HUD, according to termination provisions included in the award – see 200.340(a)(5).

7. Notification of termination requirement

Section 200.341 details actions that HUD must take when terminating an award when there is a material failure to comply with award terms and conditions, including a notification requirement. Section 200.341(b) lists five termination notice requirements if there is a material failure by the TA Provider to comply with the U.S. Constitution,

Federal statutes, regulations, or terms and conditions of the award. The notification must state that the termination decision:

- 1) Will be reported to FAPIIS – see 200.341(b)(1)
- 2) Will be available in FAPIIS for at least five years from the date of termination – see 200.341(b)(2)
- 3) Considers information in FAPIIS when judging whether the TA Provider is qualified to receive an award – see 200.341(b)(3)
- 4) Allows the TA Provider to comment on any information in FAPIIS – see 200.341(b)(4); and that
- 5) The notice must state that the TA Provider’s comments must be considered by Federal awarding agencies – see 200.341(b)(5).

Materials to assist with termination notifications and reporting are included at the end of this document, including the following:

- 1) A sample notice of termination in this guide’s Tools and Resources section
- 2) A suggested checklist of information to catalogue when making a termination
- 3) A Guide for FAPIIS reporting developed by HUD in 2022.

8. HUD Termination Process

When the need for termination has been identified, whether originated from the program office, GTM, GTR, TA Provider, or other, HUD will follow this process:

- 1) GTR ensures termination documentation and background is thorough and includes program input
- 2) GTR drafts a termination notice and submits to the GTM for review (must comply with the requirements listed in 200.341b)
- 3) GTR incorporates feedback from GTM
- 4) GTR submits termination notice to the CAO for review
- 5) CAO coordinates with OGC as necessary
- 6) CAO delivers termination notice to the TA Provider by e-mail
- 7) GTR monitors communitycompass@hud.gov for any objection or appeals from TA Provider during the 30 day appeal period - see 200.340(c)(1)(ii)
- 8) In coordination with CAO, GTR facilitates response(s) to objections or appeals from TA Provider
- 9) GTR drafts final termination notice and submits to the GTM for review
- 10) GTR incorporates feedback from GTM
- 11) GTR submits final termination notice to the CAO for review
- 12) CAO delivers final termination notice to the TA Provider by e-mail
- 13) If applicable, the closeout lead facilitates closing and reallocation of funds.

9. Termination Provisions for Awards

According to 2 CFR 200.340(b), HUD should clearly and unambiguously specify termination provisions applicable to each award. This section includes detailed termination provisions for awards managed by HUD. Specifically, HUD’s termination provision, found in the HUD Grants Management Handbook 2210.17 REV 3.2, is as follows:

Consistent with 2 CFR 200.340, HUD may unilaterally terminate this award in whole or in part:

- a) *if a recipient fails to comply with the terms and conditions of the award including statutory or regulatory requirements; or*
- b) *if the award no longer effectuates the program goals or agency priorities. Situations in which HUD may terminate an award under this provision are:*
 - (i) *There is a material change in the recipient’s ability to execute the objective(s) of an award between the time of award and tasking of specific assignments and HUD determines that it is in the government’s interest to terminate the award;*
 - (ii) *HUD obtains evidence that was not considered in making the award that causes HUD to significantly question the feasibility of the intended objective(s) of the award and HUD determines that it is in the government’s interest to terminate the award; or*
- c) *HUD reaches an agreement with the award recipient, in which case the termination conditions are agreed upon by both parties.*

10. Tools and Resources

These tools and resources assist HUD GTRs in executing a termination and helps award recipients understand HUD's termination criteria, opportunities for corrective action, and communication they will receive from HUD if a termination is pursued.

- 1) CHECKLIST: Suggested criteria for material failure to comply with award terms and conditions – to be used by the GTR to form a conceptual framework for reasons under which a termination decision might be necessary.
 - a) Unresponsive to requests for corrective action(s), and/or
 - b) Failure to achieve minimum expected standards, and/or
 - c) Multiple repeated deficiencies (for instance repeated failure to meet expectations of technical assistance engagements and administrative requirements), and/or
 - d) Illegal or fraudulent actions.

- 2) CHECKLIST: Actions to take before making a final determination – to be used by the GTR to record reasons for termination and notify the TA Provider.
 - a) Send e-mail from GTR to TA Provider with issue(s) that would serve as the basis for termination and list of corrective action(s)
 - b) Include review comments in TA Provider's Quarterly Performance Review(s) (QPR) with issue(s) that would serve as the basis for termination and list of corrective action(s)
 - c) Deliver monitoring findings with issue(s) that would serve as the basis for termination and list of corrective action(s)
 - d) Deliver a formal corrective action memorandum from the CAO

- 3) CHECKLIST: Termination determination – to be used by the GTR to catalogue information related to a termination decision.
 - a) TA Provider name
 - b) TA Provider UEI
 - c) Date of first notice of intent to terminate
 - d) If applicable, date(s) written objections or appeals are delivered to communitycompass@hud.gov inbox
 - e) Effective date of termination
 - f) Amount and percentage of total award to be terminated
 - g) Reason(s) for termination according to 200.340(a)
 - i) Material failure to comply with the award terms and conditions
 - ii) No longer effectuates program goals or agency priorities
 - iii) Two party agreement between HUD and TA Provider
 - iv) TA Provider initiated
 - v) According to termination provisions in the award
 - h) Attached documentation of reasons for termination
 - i) E-mails
 - ii) Electronic copies of mailed notice
 - i) Store all related materials to the termination in the GTR e-working files on the J Drive.

- 4) TEMPLATE: Corrective Action Memorandum – to be written by the GTR and delivered by the CAO to the TA Provider.

[Date]

[Name of primary point of contact for TA Provider]

[Mailing address of TA Provider]

Subject: Corrective action memorandum for [award(s) ID and name]

Dear Mr./Ms. [name],

The United States Department of Housing and Urban Development (HUD) issues this corrective action memorandum documenting performance deficiencies related to the subject awards. This notice serves to record [history of prior notices related to possible termination and need for corrective actions].

HUD has determined that your organization must submit an award management improvement plan outlining how [TA Provider] will improve its performance in [number] critical elements of the subject award(s). The critical elements are: [list of reasons for possible termination]. Deficiencies in these critical elements are identified below:

[Reason 1]

[Reason 2]

[Reason 3]

Award Management Improvement Plan

To ensure continued collaboration, HUD requires [TA Provider] to develop and submit an award management improvement plan that addresses the deficiencies. The award management improvement plan must detail activities that [TA Provider] will complete to bring the management and performance of the subject awards into compliance with the cooperative agreement, its provisions, and 2 CFR 200. HUD offers [TA Provider] the opportunity to meet regularly to ensure [TA Provider] understands its obligations and the requirements of this memorandum. HUD also offers [TA Provider] technical assistance to help improve its performance and overall capacity to manage the subject awards.

The award management improvement plan must document new policies and procedures that [TA Provider] will implement, and resources that it will use to improve award management and administration. The submitted award management improvement plan shall include details on improvements such as milestones, dates, responsible parties, and associated training or supports that [TA Provider] will provide to ensure successful implementation of award. HUD may request changes, if deemed necessary, to the submitted award management improvement plan.

The reasons listed in this corrective action memorandum demand [TA Provider's] immediate attention. [TA Provider] must submit a written award management improvement plan by [due date]. Solutions to the deficiencies should focus on the very near term (to be accomplished within 30-to-60 days). [TA Provider] should provide a complete timeline and thorough justification for any solutions to deficiencies that require greater than 60 days.

We look forward to helping you correct performance deficiencies, as we value your continued partnership with HUD and its customers. We also value your commitment to furthering HUD's mission through technical assistance and capacity building.

Sincerely,
[CAO signature, title, and name]

- 5) TEMPLATE: Final termination notice – to be written by the GTR and delivered by the CAO to the TA Provider. Text in brackets indicates information that must be adjusted for each case. All citations to termination provisions in 2 CFR are dependent on award date and must be adjusted to the governing Uniform Guidance for the award year.

[Date]
[Name of primary point of contact for TA Provider]
[Mailing address of TA Provider]

Subject: Termination notice for [award(s) ID and name]

Dear Mr./Ms. [name],

The United States Department of Housing and Urban Development (HUD) issues this notice of termination according to [2 CFR Part 200.341 Notification of termination requirement]. This notice serves to inform [TA Provider] of its failure to satisfy corrective actions listed in a memo dated [date] and delivered to [point of contact], and that HUD intends to terminate the subject award effective [date of termination].

This notice of termination has been finalized in coordination with the subject award's program office partners, including [GTM first and last name].

Reasons for termination

HUD has decided to terminate the subject award due to [TA Provider's] failure to:

- 1) [Reason 1 as detailed in corrective action memorandum]
- 2) [Reason 2 as detailed in corrective action memorandum]
- 3) [Reason 3 as detailed in corrective action memorandum]
- 4) Failure to satisfy corrective actions listed in a memorandum dated [date] and delivered to [point of contact].

Amount of award to be terminated

HUD intends to terminate the subject award for [value of termination] which represents [percentage of total award].

Termination decision reporting

As required by [2 CFR Part 200.341], HUD is required to report the material failure of [TA Provider] to comply with the U.S. Constitution, Federal statutes, regulations, or terms and conditions of the subject award. In accordance with [2 CFR Part 200.341], HUD must notify you that:

- 1) HUD will report this termination decision to the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS);
- 2) The termination decision will be available in FAPIIS for a period of five years from the date of termination, then archived;
- 3) Federal awarding agencies that consider making a Federal award to [TA Provider] during that five year period must consider that information in judging whether [TA Provider] is qualified to receive the Federal award, when the Federal share of the Federal award is expected to exceed the simplified acquisition threshold over the period of performance;
- 4) [TA Provider] may comment on any information FAPIIS contains about [TA Provider] for future consideration by Federal awarding agencies. [TA Provider] may submit comments to the awardee integrity and performance portal accessible through SAM (currently CPARS);
- 5) Comments submitted by [TA Provider] will be considered by Federal awarding agencies when determining whether [TA Provider] is qualified for a future Federal award.

Timeline for appeal

[TA Provider] may appeal HUD's decision to terminate the subject award by sending an e-mail to communitycompass@hud.gov. Any appeals must be delivered to communitycompass@hud.gov within 30 calendar days of the date of this letter.

Sincerely,
[CAO signature, title, and name]

- 6) RESOURCE: FAPIIS Reporting Guide – For detailed guidance on FAPIIS reporting events, including termination, refer to the FAPIIS Reporting Guide posted to the HUD Sharepoint site.