
CHAPTER 5. TERMINATIONS

This chapter describes the policies and procedures relating to various termination situations. There are two categories of terminations: Terminations for Mutual Convenience and Terminations for Cause. In a Termination for Mutual Convenience, both HUD and the Recipient agree that the project activities specified in the Grant Agreement cannot proceed. In a Termination for Cause, HUD takes an action to terminate a Grant based on a finding and determination of default by the Secretary; and the Recipient disagrees with this action.

5-1 TERMINATION FOR MUTUAL CONVENIENCE.

- A. General. A Termination for Mutual Convenience occurs when: 1) both HUD and the Recipient are in agreement that the project activities specified in the Grant Agreement cannot proceed and that no UDAG funds have been drawn down and 2) the Recipient sends a letter to HUD signed by an authorized official formally requesting such a Termination.
- B. Determination of Need. Either Headquarters or the Field Office may make a preliminary determination of the need for Termination for Mutual Convenience after consultation with and agreement by the Recipient.

If the Field Office first makes the preliminary determination, it shall forward its recommendation to Headquarters along with a copy of the Recipient's letter and shall inform the Regional CPD Office of its recommendation. Upon acceptance of the Field Office's recommendation of Termination for Mutual Convenience and receipt of the Recipient's letter, Headquarters shall initiate a Termination for Mutual Convenience.

If Headquarters makes the preliminary determination, it shall inform the Field and Regional Offices before proceeding. Regardless of which office of HUD makes the initial determination of need, the following procedures shall apply.

- C. Procedure for Termination for Mutual Convenience: Headquarters Action. Headquarters shall initiate the Termination for Mutual Convenience by preparing a termination package consisting of the following item:
 - 1. A Termination Letter addressed to the Recipient which shall:
 - a. Give the general basis or reason for the agreement to terminate and cite the Recipient's letter requesting the Termination;

- b. Set the effective date of the termination. The termination date shall also be the date after which no Grant funds may be drawn down by the Recipient, if authorization to draw down Grant funds exists; and
 - c. Require the Recipient to notify all Participating Parties to the Grant Agreement of the Termination.
- 2. A HUD 7082A entitled Funding Approval Under Section 119 of the Housing and Community Development Act of 1974 (Public Law 93-383), as amended, deobligating Grant funds in the proper amount.
- 3. A memorandum addressed to the Regional Administrator through Regional CPD, Attention: Field Office Manager informing those offices of the Termination and setting forth the applicable procedures to be taken to complete the Termination.
- 4. A Grant Agreement cover sheet with Termination for Mutual Convenience language on the signature page.
- D. Distribution of Termination Package After Execution. Headquarters shall send:
 - 1. The Termination Letter and Grant Agreement cover sheet with signature page to the Recipient.
 - 2. The memorandum, the Grant Agreement cover sheet with signature page, and the original HUD-7082A to the Regional Administrator through Regional CPD, Attention: Field Office Manager.
- E. Procedure for Termination: Field Office Action. Upon receipt of the HUD-7082A, the Field Office shall forward it to the RAD for deobligation of the appropriate amount of Grant funds.

5-2 TERMINATION FOR CAUSE.

- A. General. Pursuant to 24 CFR Part 570, HUD may terminate a Grant Agreement on the basis of a finding and determination of default by the Secretary. Any deviation from, or failure to perform under, the Grant Agreement is defined as a default.

In the event of a default, it is important for HUD to build a record of the steps it takes to determine the default and to notify the Recipient of the default. In addition, HUD will monitor the steps the Recipient takes to cure the default prior to determining whether to terminate the grant.

The Termination for Cause procedure shall be used both in projects when no UDAG funds have been drawn down and UDAG funds have been drawn down. In a Termination for Cause, HUD takes an action with which the Recipient disagrees.

- B. Determination of Default. Either Headquarters or the Field Office may find that the Recipient has failed to meet the terms of the Grant Agreement and is in default of one or more of its provisions. Headquarters and the Field Office shall consult as early as possible in the process to assess whether the Recipient or any Participating Parties are failing to meet the performance criteria established in the Grant Agreement.
- C. Building a Record. As a matter of course, HUD staff in the Field Office and Headquarters should document all communications between HUD staff and the Recipient regarding aspects of a UDAG project. It becomes particularly important in the context of a termination action. For internal use, telephone logs may be helpful, but these logs must be converted periodically into a letter to the Recipient.

These letters, summarizing the events which have transpired and highlighting any advice or warnings HUD may have issued, serve as an administrative record. This record will support any future action HUD may take.

For example, if, in the course of its monitoring, the Field staff determines that one or more of the scheduled dates for performance has not been met, they must begin to document the failure to perform and build an administrative record. In any default such as a date slippage, one way to start the administrative record would be to first telephone the Recipient to determine why one or more of the scheduled performance dates has been missed.

If the Recipient is aware of the default and is undertaking corrective actions, the Field Office should ask the Recipient to document in writing the corrective actions it is taking to cure the default.

In some cases, the Recipient may respond to HUD's inquiry but report that the default still exists. For example, this could occur because:

- 1. Corrective measures have been agreed to by HUD and the Recipient, but have not yet begun; or

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2. Corrective measures may have begun but have not yet been completed.

While there may be several conversations between HUD staff and the Recipient regarding these matters, HUD staff must periodically summarize what has transpired in a letter to the Recipient.

By contrast, if HUD brings what appears to be a default to the Recipient's attention and the Recipient indicates that it is not taking steps to cure the default and fails to explain why no corrective action is required; or fails to document in writing the steps it is taking; or, if, after a reasonable period of time, the Recipient is not able to cure the default, HUD may begin termination procedures.

- D. Notice of Project Default (Warning). Terminating a UDAG project is a Headquarters responsibility which builds on the actions taken and administrative record built by Headquarters and the Field Office. At the point where a default is cited, the Field Office should send Headquarters copies of its telephone logs and correspondence with the Recipient. Similarly, if Headquarters has documentation, it should provide this information to the Field Office.

Based on the record compiled to date, Headquarters shall take the first step in the termination process by issuing a Notice of Project Default (Warning). The Notice shall state the reason(s) for HUD's concerns about the project and cite the specific sections of the Grant Agreement under which the Recipient is in default. The Notice shall also give the Recipient a specific timeframe in which to take corrective action to cure the default or explain to HUD why no corrective action is required.

The Notice of Project Default (warning) shall also state that the next step in this process, should the Recipient fail to cure the default, will be the issuance of a Notice of Proposed Termination for Cause by HUD. This Notice and its import are described in paragraph 5-2 D.

At this juncture, HUD may also take other appropriate corrective or remedial actions, including an action by the Field Office to suspend the Recipient's access to Grant funds, if HUD has approved LBC's and the Recipient has the appropriate environmental and/or historical clearances.

As in the case of the Field Office's notification to a Recipient of a default, the Recipient may respond to the Notice of Project Default (Warning) by indicating that the default still exists; or propose a corrective action with which HUD does not agree or the Recipient may fail to respond within a reasonable period of time.

Headquarters shall then issue a follow-up letter that indicates the response, if any, the Recipient has submitted to the Notice of Project Default (Warning) along with any advice and/or judgments HUD has reached as to how to proceed and the timeframe for doing so.

It is possible that there may be several more exchanges between the Recipient and Headquarters in an effort to cure the default. It is essential that these be documented and periodic letters sent to the Recipient.

- E. Notice of Proposed Termination for Cause. If, despite HUD's guidance and assistance, and the issuance of a Notice of Project Default (Warning), the Recipient is unable to cure the default, Headquarters shall send the Recipient a letter which shall serve as a Notice of Proposed Termination for Cause, also known as a "35-day letter" or a "T-35." A copy of the Notice shall also go to the Regional and Field Offices.

This Notice shall:

1. Advise the Recipient of the default;
2. Give the Recipient 35 days to: (a) demonstrate that the problem(s) has been corrected or (b) provide a written explanation as to why the grant should not be terminated;
3. Require the Recipient to inform all Participating Parties of this Notice; and
4. Provide an opportunity for an informal consultation, to meet or discuss the situation by telephone, within the 35-day response period.

In order to give the "reasonable notice and opportunity for hearing" required by Section 111 of the Housing and Community Development Act of 1974, as amended, HUD shall follow the procedures and remedies for noncompliance with the regulations as set forth in 24 CFR Part 570.913 for those Recipients located in Maine, New Hampshire, Massachusetts, Rhode Island and Puerto Rico.

Headquarters shall review the response and, after consultation

with the Field Office, shall make a determination whether the default has been cured and shall follow the procedures set forth below.

- F. Results of the Notice of Proposed Termination for Cause. As a result of HUD's issuance of the Notice of Proposed Termination for Cause, one of two situations will develop: the Recipient will cure the default or the Recipient will fail to cure the default.
1. Default Cured. If HUD determines that the default has been cured, Headquarters shall advise the Recipient in writing of such determination; a copy of the letter shall be sent to the Field Office and the Regional Office. This action by HUD voids the Notice of Proposed Termination for Cause.
 2. Default Not Cured. If HUD determines that the default has not been cured, the suspension of the Recipient's access to Grant funds shall continue in effect and Headquarters shall initiate a termination of the Urban Development Action Grant. The appropriate Field and Regional Office shall be apprised of all terminations by Headquarters.
- G. Procedures for Termination: Headquarters Action. If HUD Headquarters, in concert with the Field Office, decides to terminate a UDAG project, Headquarters shall prepare a termination package consisting of the following items:
1. A Termination Letter which shall: state the reason for the Termination, including a chronology and/or other context for HUD's decision; set an effective date for the Termination; advise the Recipient that its authority to draw down Grant funds under the Line of Credit is terminated on the date of the Termination Letter, if authority to draw down Grant funds exists; that it has no further right to or interest in any Grant funds remaining in the Line of Credit; and require the Recipient to notify all Participating Parties to the Grant Agreement of the Termination;
 2. A HUD 7082A deobligating Grant funds in the proper amount; and
 3. A memorandum to the Field Office informing it of the Termination and indicating that it should forward the 7082A to RAD.
- H. Distribution of Termination Package Upon Execution. The procedure for distribution of all termination materials shall be the same as that set forth in Paragraph 5-1 D.

I. Procedure for Termination: Field Office Action.

1. Projects with No Disbursement of UDAG Funds. The Field Office shall follow the procedure set forth in Paragraph 5-1 E.
2. Projects with Partial Disbursement of Grant Funds. Even if HUD takes an action to terminate the Recipient's access to the UDAG funds remaining in the Line of Credit for a project, the Recipient must still account for the funds it has drawn down. Because the particular facts in each situation will vary, Headquarters and the Field Office will determine subsequent steps to close out a terminated project with a partial disbursement of UDAG funds.