

From:
Sent:
To:

Monday, March 3, 2025 2:14 PM

Cc:
Subject:

RE: Grant terminations

Hi Everyone,

Following up from my email last week regarding EJ grants that were terminated. In a meeting late last week with OMS/OGD we learned that the Agency management decision to direct termination of the EJ grants was made with the knowledge that some of the grants do not contain the T&C about termination for Agency priorities. Based on that conversation with OMS and OGD it is clear that no decision to retract the terminations is forthcoming. It will play out via the disputes process, or litigation, for those recipients that choose to pursue those avenues.

The termination memoranda contain standard language identifying the following bases for the grant being terminated as inconsistent with Agency priorities:

- The grant provides funding for programs that promote or take part in DEI initiatives that conflict with the Agency's policy of prioritizing merit, fairness, and excellence in performing our statutory functions;
- The grant provides funding for programs that promote or take part in environmental justice initiatives that conflict with the Agency's policy of prioritizing merit, fairness, and excellence in performing our statutory functions;
- The grant provides funding for other initiatives that conflict with the Agency's policy of prioritizing merit, fairness, and excellence in performing our statutory functions;
- The grant provides funding for programs that are not free from fraud, abuse, waste, or duplication;
- The grant provides funding for programs that otherwise fail to serve the best interests of the United States.

I would anticipate that recipients that raise objections to the terminations or file disputes will raise certain common arguments that the award should not have been terminated. Outlined below are considerations for responding to potential recipient arguments.

- The award does not contain a T&C providing that the Agency may unilaterally terminate the award a change in program policy or Agency priorities.
 - Consideration for response – EPA may decide the dispute in favor of the recipient because the T&C regarding termination for changes in Agency priorities is not included in the award.
 - Alternative consideration for response – Determine the Agency termination of the award is an exercise of the requirement to ensure the award is consistent with public policy requirements under 2 CFR 200.300. Having determined the award is not consistent with current Agency funding priorities EPA terminated the award.
- The Agency termination is not consistent with the nationwide Preliminary injunction issued on 2/21 in National Association of Diversity Officers in Higher Education v Trump. The PI precludes, among other things, termination of equity-related grants.

It has come to our attention (see attached email from OEJECR) that Regions 3, 4, 5, 6, 7, and 8, have issued notices of termination to recipients of Regional Thriving Communities Technical Assistance Center grants advising that the grants have been terminated on "changes in priorities" grounds pursuant to the version of 2 CFR 200.340(a)(2) and EPA General Terms and Conditions effective August 13, 2020 through September 30, 2024. If the information OEJECR provided us is accurate, the termination notices contain a significant error because the grants do not contain a Term and Condition indicating EPA can unilaterally terminate the grant based on changes in Agency priorities. OEJECR has provided records establishing that all the affected TCTAC grants were amended at various times in December 2024 to incorporate the General Terms and Conditions effective October 1, 2024, and the version of 2 CFR 200.340 that EPA adopted on July 3, 2024. The December 2024 amendments to the Regional TCTAC grants revised the termination provisions as follows:

Notwithstanding the General Term and Condition "Termination", ***EPA maintains the right to terminate the Assistance Agreement only as specified in 2 CFR 200.339 and the version of 2 CFR 200.340 applicable to EPA grants as of July 1, 2024 pursuant to 89 FR 55262 (July 3, 2024) , when the noncompliance with the terms and conditions is substantial such that effective performance of the Assistance Agreement is materially impaired or there is adequate evidence of waste, fraud, or abuse, prompting adverse action by EPA per 2 CFR 200.339, through either a partial or full termination. In accordance with 2 CFR 200.341, EPA will provide the Recipient notice of termination.***

If EPA partially or fully terminates the Assistance Agreement, EPA must (1) de-obligate uncommitted funds and reobligate them to another Eligible Recipient to effectuate the objectives of the Environmental Justice Thriving Communities Technical Assistance Centers (TCTAC) Program within 90 days of the de-obligation and (2) amend the Recipient's Assistance Agreement to reflect the reduced amount, based on the de-obligation.

(emphasis added)

In the referenced July 3, 2024, Federal Register Notice EPA advised the public that for awards issued or amended to add funds after July 3, 2024, EPA would include terms and conditions expressly indicating when the Agency is preserving the right to unilaterally terminate awards on the grounds that the awards no longer effectuate program goals or agency priorities. The Federal Register Notice is also attached.

Additionally, on February 21, 2025, the U.S. District Court for the District of Maryland issued a Preliminary Injunction in *National Association of Diversity Officers in Higher Education et. al. v. Trump* that may limit EPA's discretion to terminate grants based on concerns regarding funding programs that promote equity and environmental justice. The termination actions taken against the Regional TCTAC's may also be encompassed in the Preliminary Injunction. We will coordinate appropriately within EPA and externally as necessary and advise further when information regarding the implementation of the preliminary injunction becomes available.

For those of you in Regions 3, 4, 5, 6, 7 and 8 please alert your Grants Management Officer and Dispute Decision Official of the potential error. Given that the termination notices contain dispute rights it is probably that the recipients will file a dispute based on the error. ORC attorneys in other regions are copied here for awareness of the issue in case similar grants are identified for termination in your region. Going forward please remember to check for this issue, i.e., whether the award has a term and condition that allows for termination for changes in Agency priorities, if you are asked to provide advice on any legal concerns or considerations for an award being considered for termination.

Please consult with me if you'd like to discuss a particular termination.

Assistant General Counsel, [REDACTED]