

§ 1172.36 Enforcement procedure.

(a) NEH may enforce the Act and the regulations in this part through:

(1) Termination of a recipient's Federal financial assistance under the program or activity involved where the recipient has violated the Act or the regulations in this part. Prior to such termination, a recipient must have the opportunity for a hearing on record before an administrative law judge who must determine that a violation has occurred. Therefore, NEH will not terminate a recipient's Federal financial assistance in a case that has been settled in mediation, or prior to a hearing, unless the case is reopened because of a violation of the settlement agreement.

(2) Any other means authorized by law, including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or the regulations in this part.

(ii) Use of any requirement of, or referral to, any Federal, State, or local government agency that will have the effect of correcting a violation of the Act or this part.

(b) NEH will limit any termination under § 1172.36(a)(1) to the particular recipient and particular program or activity, or portion thereof, that NEH finds in violation of the Act or the regulations in this part. NEH will not base its decision to terminate on any findings with respect to any other program or activity of the recipient that does not receive Federal financial assistance from NEH.

(c) NEH will not take action under § 1172.36(a) until:

(1) The Chairman has advised the recipient of its failure to comply with the Act or the regulations in this part, and that NEH has determined that voluntary compliance cannot be obtained, and

(2) Thirty (30) days have elapsed after the Chairman has sent a written report of the circumstances and grounds of the action to the Congressional Committee(s) having legislative jurisdiction over the program or activity involved. The Chairman will file such report whenever it takes action under § 1172.36(a).

(d) NEH also may defer granting new Federal financial assistance to a recipient when a hearing under § 1172.36(a)(1) is initiated.

(1) New Federal financial assistance includes all assistance for which NEH requires an application or approval, including renewal or continuation of existing activities, or authorization of new activities, during the deferral period. New Federal financial assistance does not include assistance approved prior to the beginning of a termination hearing under § 1172.36(a)(1), or increases in funding as a result of changed computation of formula awards.

(2) NEH will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under § 1172.36(a)(1). NEH will not continue a deferral for more than sixty (60) days unless a hearing has begun within that time, or the time for beginning the hearing has been extended by mutual written consent of the recipient and NEH. NEH will not continue a deferral

for more than thirty (30) days after the close of the hearing, unless the hearing results in a finding against the recipient.

(3) NEH will limit any deferral to the particular recipient and particular program or activity, or portion thereof, that NEH finds in violation of the Act or the regulations in this part. NEH will not base the deferral decision any finding with respect to any other program or activity of the recipient that does not receive Federal financial assistance from NEH.