

Department of State

§ 218.36

and, if possible, settle the complaint on terms that are mutually agreeable. The agency may seek the assistance of any involved State program agency.

(3) The agency will put any agreement in writing and have it signed by the parties and an authorized official of the agency.

(4) The settlement shall not affect the operation of any other enforcement efforts of the agency, including compliance reviews and other individual complaints which may involve the recipient.

(5) The settlement is not a finding of discrimination against a recipient.

(b) *Formal investigation.* If the agency cannot resolve the complaint through informal investigation, it will begin to develop formal findings through further investigation of the complaint. If the investigation indicates a violation of these regulations, the agency will attempt to obtain voluntary compliance. If the agency cannot obtain voluntary compliance, it will begin enforcement as described in § 218.36.

§ 218.35 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by these regulations; or

(b) Cooperates in any mediation, investigation, hearing, or other part of the agency's investigation, conciliation, and enforcement process.

§ 218.36 Compliance procedure.

(a) An agency may enforce the Act and these regulations through:

(1) Termination of a recipient's Federal financial assistance from the agency under the program or activity involved where the recipient has violated the Act and these regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge. Therefore, cases which are settled in mediation or prior to a hearing, will not involve termination of a recipient's Federal financial assistance from the agency.

(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 by the Act and these regulations.

(ii) Use of any requirement of or referral to any Federal, state, or local government agency which will have the effect of correcting a violation of the Act or these regulations.

(b) The agency will limit any termination under paragraph (a)(1) of this section to the particular recipient and particular program or activity the agency finds in violation of these regulations. The agency will not base any part of a termination on a finding with respect to any program or activity of the recipient which does not receive Federal financial assistance from the agency.

(c) The agency will take no action under paragraph (a) of this section until:

(1) The agency head has advised the recipient of its failure to comply with these regulations and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have lapsed after the agency head has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the Federal program or activity involved. The agency head shall file a report whenever any action is taken under paragraph (a) of this section.

(d) The agency head also may defer granting new Federal financial assistance from the agency to a recipient when a hearing under paragraph (a)(1) of this section is initiated.

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

(2) The agency will not begin a deferral until the recipient has received a notice of opportunity for a hearing under paragraph (a)(1) of this section.