

§ 404.34

that such testimony is forbidden by this subpart;

(b) Request the opportunity to consult with the General Counsel;

(c) Explain that only upon consultation may they be granted approval to provide such testimony;

(d) Explain that providing such testimony or records absent approval may subject the individual to criminal liability under 18 U.S.C. 641, as well as other applicable laws, and other disciplinary action; and

(e) Request a stay of the request or demand pending a determination by the General Counsel.

[71 FR 14361, Mar. 22, 2006. Redesignated at 87 FR 41034, July 11, 2022]

§ 404.34 Procedure in the event a decision concerning a demand is not made prior to the time a response to the demand is required.

If response to a demand is required before a determination has been rendered by the General Counsel, the U.S. Attorney or such other attorney as may be designated for the purpose will appear with the Ex-Im Bank personnel upon whom the demand has been made, and will furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been or is being, as the case may be, referred for prompt consideration of the General Counsel. The court or other authority shall be requested respectfully to stay the demand pending determination by the General Counsel.

[71 FR 14361, Mar. 22, 2006. Redesignated at 87 FR 41034, July 11, 2022]

§ 404.35 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 404.34 pending a determination by the General Counsel, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the General Counsel not to produce the material or disclose the information sought, the Ex-Im Bank personnel upon whom the demand has been made shall respectfully decline to comply with the

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demand (*United States ex rel. Touhy v. Ragen*, 340 U.S. 462).

[71 FR 14361, Mar. 22, 2006. Redesignated and amended at 87 FR 41034, 41042, July 11, 2022]

§ 404.36 Procedure for demands for testimony or production of documents regarding confidential information.

In addition to compliance with the requirements of this subpart, demands to provide testimony and/or produce records that concern information protected by the Privacy Act, 5 U.S.C. 552a, or any other authority mandating confidentiality of certain classes of records or information, must also satisfy the requirements for disclosure imposed by such authority before records may be produced or testimony given.

[71 FR 14361, Mar. 22, 2006. Redesignated at 87 FR 41034, July 11, 2022]

§ 404.37 Procedures for requests for Ex-Im Bank employees to provide expert or opinion testimony.

No Ex-Im Bank personnel may, unless specifically authorized by the General Counsel, testify in any legal proceeding as an expert or opinion witness as to any matter related to his or her duties or the functions of the Ex-Im Bank, including the meaning of Ex-Im Bank documents. Any demand for expert or opinion testimony shall comply with the policies and procedures outlined in this subpart.

[71 FR 14361, Mar. 22, 2006. Redesignated at 87 FR 41034, July 11, 2022]

§ 404.38 No private right of action.

Nothing in this subpart shall be construed as creating any right, substantive or procedural, enforceable at law or equity by a party against Ex-Im Bank or the United States.

[71 FR 14361, Mar. 22, 2006. Redesignated at 87 FR 41034, July 11, 2022]

Subparts D–E [Reserved]

PART 405 [RESERVED]