

Agency for International Development

§ 207.01

(b) The General Counsel, or his designee, in consultation with appropriate Agency officials, and in light of the considerations listed in §206.6, will determine whether the person on whom the demand was served should respond to the demand.

(c) To the extent he deems it necessary or appropriate, the General Counsel, or his designee, may also require from the party causing such demand to be issued or served a plan of all reasonably foreseeable demands, including but not limited to names of all employees and former employees from whom discovery will be sought, areas of inquiry, length of time of proceedings requiring oral testimony and identification of documents to be used or whose production is sought.

§206.4 Procedure where a decision concerning a demand is not made prior to the time a response to the demand is required.

If the response to the demand is required before the instructions from the General Counsel, or his designee, are received, an attorney designated by the Department of Justice for the purpose shall appear with the employee or former employee upon whom the demand has been made, and shall furnish the court or other authority with a copy of the regulations contained in this part and inform the court or other authority that the demand has been, or is being, as the case may be, referred for the prompt consideration of the General Counsel and shall respectfully request the court or other authority to stay the demand pending receipt of the requested instructions.

§206.5 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 §206.4 pending receipt of instructions, or if the court or other authority rules that the demand must be complied with irrespective of instructions not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand, citing this part and *United*

States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951).

§ 206.6 Considerations in determining whether production or disclosure should be made pursuant to a demand.

(a) In deciding whether to make disclosures pursuant to a demand, the General Counsel, or his designee, may consider, among things:

(1) Whether such disclosure is appropriate under the rules of procedure governing the case or matter in which the demand arose, and

(2) Whether disclosure is appropriate under the relevant substantive law concerning privilege.

(b) Among the demands in response to which disclosure will not be made are those demands with respect to which any of the following factors exist:

(1) Disclosure would violate a statute or a rule of procedure,

(2) Disclosure would violate a specific regulation,

(3) Disclosure would reveal classified information, unless appropriately declassified by the originating agency,

(4) Disclosure would reveal trade secrets or proprietary information without the owner's consent,

(5) Disclosure would otherwise adversely affect the foreign policy interests of the United States or impair the foreign assistance program of the United States, or

(6) Disclosure would impair an ongoing Inspector General or Department of Justice investigation.

PART 207—INDEMNIFICATION OF EMPLOYEES

§ 207.01 Policy.

(a) A.I.D. may indemnify, in whole or in part, its employees (which for the purpose of this regulation includes former employees) for any verdict, judgment or other monetary award which is rendered against any such employee, provided that the conduct giving rise to the verdict, judgment or award was taken within the scope of his or her employment with the Agency and that such indemnification is in the interest of the United States, as determined by the Administrator, or his

or her designee, in his or her discretion.

(b) A.I.D. may settle or compromise a personal damage claim against its employee by the payment of available funds, at any time, provided the alleged conduct giving rise to the personal damage claim was taken within the scope of employment and that such settlement or compromise is in the interest of the United States, as determined by the Administrator, or his or her designee, in his or her discretion.

(c) Absent exceptional circumstances, as determined by the Administrator or his or her designee, A.I.D. will not entertain a request either to agree to indemnify or to settle a personal damage claim before entry of an adverse verdict, judgment or monetary award.

(d) When an employee becomes aware that an action has been filed against the employee in his or her individual capacity as a result of conduct taken within the scope of his or her employment, the employee should immediately notify A.I.D. that such an action is pending.

(e) The employee may, thereafter, request either: (1) Indemnification to satisfy a verdict, judgment or award entered against the employee or (2) payment to satisfy the requirements of a settlement proposal. The employee shall submit a written request, with documentation including copies of the verdict, judgment, award or settlement proposal, as appropriate, to the General Counsel. The General Counsel may also seek the views of the Department of Justice. The General Counsel shall forward the request and the General Counsel's recommendation to the Administrator for decision.

(f) Any payment under this part either to indemnify an employee or to settle a personal damage claim shall be contingent upon the availability of appropriated funds.

(5 U.S.C. 301; 22 U.S.C. 2381(a))

[53 FR 29658, Aug. 8, 1988]

PART 208—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

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