

§ 2004.27

requiring the requester and other parties to the legal proceeding to agree that the transcript of the testimony will be kept under seal or will only be used or made available in the particular legal proceeding for which testimony was requested. The Counsel may also require a copy of the transcript of testimony at the requester's expense.

(b) The OIG may offer the employee's written declaration in lieu of testimony.

(c) If authorized to testify pursuant to this part, an employee may testify as to facts within his or her personal knowledge, but, unless specifically authorized to do so by the Counsel, the employee shall not:

(1) Disclose confidential or privileged information;

(2) Testify as to facts when the Counsel determines such testimony would not be in the best interest of OIG, HUD and the United States; or

(3) Testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of OIG. This provision does not apply to requests from the United States for expert or opinion testimony.

§ 2004.27 Restrictions that apply to released records.

(a) The Counsel may impose conditions or restrictions on the release of official records and information, including the requirement that parties to the proceeding obtain a protective order or execute a confidentiality agreement to limit access and any further disclosure. The terms of the protective order or of a confidentiality agreement must be acceptable to the Counsel. In cases where protective orders or confidentiality agreements have already been executed, OIG may condition the release of official records and information on an amendment to the existing protective order or confidentiality agreement.

(b) If the Counsel so determines, original OIG records may be presented for examination in response to a demand or request, but they are not to be presented as evidence or otherwise used in a manner by which they could lose their identity as official OIG records,

24 CFR Ch. XII (4-1-04 Edition)

nor are they to be marked or altered. In lieu of the original records, certified copies will be presented for evidentiary purposes.

§ 2004.28 Procedure in the event of an adverse ruling.

If the Counsel declines to approve a demand for records or testimony and the court or other authority rules that the demand must be complied with irrespective of the instructions from the OIG 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 *United States ex rel. Touhy v. Ragen*, 340 U.S. 462.

§ 2004.29 Fees.

(a) *Generally.* The Counsel may condition the production of records or appearance for testimony upon advance payment of a reasonable estimate of the costs to OIG.

(b) *Fees for records.* Fees for producing records will include fees for searching, reviewing, and duplicating records, costs of attorney time spent in reviewing the demand or request, and expenses generated by materials and equipment used to search for, produce, and copy the responsive information. Costs for employee time will be calculated on the basis of the hourly pay of the employee (including all pay, allowance, and benefits). Fees for duplication will be the same as those charged by OIG in its Freedom of Information Act Regulations at 24 CFR part 2002.

(c) *Witness fees.* Fees for attendance by a witness will include fees, expenses, and allowances prescribed by the court's rules. If no such fees are prescribed, witness fees will be determined based upon the rule of the federal district court closest to the location where the witness will appear. Such fees will include cost of time spent by the witness to prepare for testimony, in travel, and for attendance in the legal proceeding.

(d) *Payment of fees.* You must pay any applicable witness fees for current OIG