

#### § 404.31

Ex-Im Bank or is otherwise inappropriate under any applicable administrative or court rules;

(c) Appearance of bias—whether the testimony and/or production of records could result in the public perception that Ex-Im Bank is favoring one party over another, or advocating the position of a party to the proceeding;

(d) Furtherance of agency policy—whether the testimony and/or production of records is consistent with the policy and mission of the Ex-Im Bank;

(e) Prevention of fraud or injustice—whether the disclosure of the information requested is necessary to prevent the perpetration of fraud or injustice;

(f) Relevance to litigation—whether the testimony and/or production of records sought is relevant to the subject litigation;

(g) Necessity—whether the testimony and/or production of records, including a release of such *in camera*, is appropriate or necessary as determined by either the procedural rules governing the legal proceeding, or according to the relevant laws concerning privilege;

(h) Availability from another source—whether the information sought through testimony or production of records is available from another source;

(i) Violations of laws or regulations—whether the testimony and/or production of records would violate a statute, regulation, executive order, or other official directive;

(j) Classified information—whether the testimony and/or production of records would improperly reveal information classified pursuant to applicable statute or Executive Order; and

(k) Compromise of rights and interests—whether the testimony and/or production of records would compromise any of the following: law enforcement interests, constitutional rights, national security interests, foreign policy interests, or the confidentiality of commercial and/or financial information.

#### § 404.31 Procedure for declining to testify and/or produce records.

Ex-Im Bank personnel receiving a demand to provide testimony and/or produce records regarding information acquired in the course of their perform-

#### 12 CFR Ch. IV (1–1–13 Edition)

ance of official duties, or due to their official status, and who have not received written authorization from the General Counsel to provide such information, shall:

(a) Respectfully decline to answer or appear for examination on the grounds 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.

#### § 404.32 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.

#### § 404.33 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 § 404.32 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

## Export-Import Bank of the U.S.

## § 407.2

sought, the Ex-Im Bank personnel upon whom the demand has been made shall respectfully decline to comply with the demand (*United States ex rel. Touhy v. Ragen*, 340 U.S. 462).

### § 404.34 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.

### § 404.35 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.

### § 404.36 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.

## Subparts D–E [Reserved]

## PART 405 [RESERVED]

## PART 407—REGULATIONS GOVERNING PUBLIC OBSERVATION OF EX-IM BANK MEETINGS

Sec.

407.1 Purpose, scope and definitions.

407.2 Closing meetings.

407.3 Procedures applicable to regularly scheduled meetings.

407.4 Procedures applicable to other meetings.

407.5 Certification by General Counsel.

407.6 Transcripts, recordings and minutes of closed meetings.

407.7 Relationship to Freedom of Information Act.

AUTHORITY: Sec. (g) Government in the Sunshine Act, 5 U.S.C. 552b(g); secs. (b) through (f), 5 U.S.C. 552b.

SOURCE: 42 FR 12417, Mar. 4, 1977, unless otherwise noted.

### § 407.1 Purpose, scope and definitions.

(a) Consistent with the principles that: (1) The public is entitled to the fullest practicable information regarding the decision-making processes of the Federal Government, and (2) the rights of individuals and the ability of the Export-Import Bank of the United States to carry out its statutory responsibilities should be protected, this part is promulgated pursuant to the directive of section (g) of the Government in the Sunshine Act, 5 U.S.C. 552b(g), and specifically implements sections (b) through (f) of said Act, 5 U.S.C. 552b (b) through (f).

(b) The term *meeting* means any meeting of the Board of Directors of Eximbank at which a quorum is present and where deliberations determine or result in the joint conduct or disposition of official Eximbank business.

(c) The term *regularly scheduled meeting* means meetings of the Board of Directors or the Executive Committee which are held at 9:30 a.m. on Thursday of each week.

(d) The term *General Counsel* means the General Counsel and his or her designees.

[42 FR 12417, Mar. 4, 1977, as amended at 47 FR 12136, Mar. 22, 1982; 49 FR 41237, Oct. 22, 1984; 72 FR 66043, Nov. 27, 2007]

### § 407.2 Closing meetings.

(a) Except where Eximbank finds that the public interest requires otherwise, a meeting, or any portion thereof, may be closed to the public, where the Board of Directors determines that such meetings, or any portion thereof, or information pertaining to such meeting, or any portion thereof, is likely to: