

§ 1070.36

purpose of obtaining instructions from the General Counsel.

§ 1070.36 Procedure in the event of an adverse ruling.

If a stay or, or other relief from, the effect of a demand made pursuant to sections 1070.34 and 1070.35 of this subpart is declined or not obtained, or if the court or other judicial or quasi-judicial authority declines to stay the effect of the demand made pursuant to sections 1070.34 and 1070.35 of this subpart, or if the court or other authority rules that the demand must be complied with irrespective of the General Counsel's instructions not to produce the material or disclose the information sought, the employee upon whom the demand has been made shall respectfully decline to comply with the demand citing this subpart and *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

§ 1070.37 Considerations in determining whether the CFPB will comply with a demand or request.

(a) In deciding whether to comply with a demand or request, CFPB officials and attorneys shall consider, among other pertinent considerations:

(1) Whether such compliance would be unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand arose;

(2) Whether the number of similar requests would have a cumulative effect on the expenditure of CFPB resources;

(3) Whether compliance is appropriate under the relevant substantive law concerning privilege or disclosure of information;

(4) The public interest;

(5) The need to conserve the time of CFPB employees for the conduct of official business;

(6) The need to avoid spending time and money of the United States for private purposes;

(7) The need to maintain impartiality between private litigants in cases where a substantial government interest is not implicated;

(8) Whether compliance would have an adverse effect on performance by the CFPB of its mission and duties;

12 CFR Ch. X (1-1-14 Edition)

(9) The need to avoid involving the CFPB in controversial issues not related to its mission;

(10) Compliance would interfere with supervisory examinations, compromise the CFPB's supervisory functions or programs, or undermine public confidence in supervised financial institutions; and

(11) Compliance would interfere with the CFPB's ability to monitor for risks to consumers in the offering or provision of consumer financial products and services.

(b) Among those demands and requests in response to which compliance will not ordinarily be authorized are those with respect to which any of the following factors, inter alia, exist:

(1) Compliance would violate a statute or applicable rule of procedure;

(2) Compliance would violate a specific regulation or Executive order;

(3) Compliance would reveal information properly classified in the interest of national security;

(4) Compliance would reveal confidential or privileged commercial or financial information or trade secrets without the owner's consent;

(5) Compliance would compromise the integrity of the deliberative processes of the CFPB;

(6) Compliance would not be appropriate or necessary under the relevant substantive law governing privilege;

(7) Compliance would reveal confidential information; or

(8) Compliance would interfere with ongoing investigations or enforcement proceedings, compromise constitutional rights, or reveal the identity of a confidential informant.

(c) The CFPB may condition disclosure of official information pursuant to a request or demand on the entry of an appropriate protective order.

§ 1070.38 Prohibition on providing expert or opinion testimony.

(a) Except as provided in this section, and subject to 5 CFR 2635.805, CFPB employees or former employees shall not provide opinion or expert testimony based upon information which they acquired in the scope and performance of their official CFPB duties, except on behalf of the CFPB or the United States or a party represented