

(i) Disclosure would result in OIG appearing to favor one litigant over another;

(j) Disclosure relates to documents that were produced by another agency;

(k) The demand or request is in conformance with all other applicable rules;

(l) The demand or request is sufficiently specific to be answered; and

(m) For any other good cause.

**§ 2004.22 Filing requirements for demands or requests for documents or testimony.**

You must comply with the following requirements whenever you issue demands or requests to an OIG employee for official records and information or testimony.

(a) Your request must be in writing and must be submitted to the Counsel. If you serve a subpoena on OIG or on an OIG employee before submitting a written request and receiving a final determination from the Counsel, OIG will oppose the subpoena on grounds that your request was not submitted in accordance with this subpart.

(b) Your written request must contain the following information:

(1) The caption of the legal proceeding, docket number, and name and address of the court or other authority involved;

(2) A copy of the complaint or equivalent document setting forth the assertions in the case and any other pleading or document sufficient to show relevance;

(3) A list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the testimony or records sought;

(4) A statement as to how the need for the information outweighs the need to maintain any confidentiality of the information and outweighs the burden on OIG to produce the records or provide testimony;

(5) A statement indicating that the information sought is not available from another source, from other persons or entities, or from the testimony of someone other than an OIG employee, such as a retained expert;

(6) If testimony is requested, the intended use of the testimony, a general summary of the desired testimony, and a showing that no document could be provided and used in lieu of testimony;

(7) A description of all prior decisions, orders, or pending motions in the case that bear upon the relevance of the requested records or testimony;

(8) The name, address, and telephone number of counsel to each party in the case; and

(9) An estimate of the amount of time that the requester and other parties will require with each OIG employee for time spent by the employee to prepare for testimony, in travel, and for attendance in the legal proceeding.

(c) The OIG reserves the right to require additional information to complete your request where appropriate.

(d) Your request should be submitted at least 30 days before the date that records or testimony are required. Requests submitted less than 30 days before records or testimony are required must be accompanied by a written explanation stating the reasons for the late request and the reasons for expedited processing.

(e) Failure to cooperate in good faith to enable the Counsel to make an informed decision may serve as the basis for a determination not to comply with your request.

**§ 2004.23 Service of subpoenas or requests.**

Subpoenas or requests for official records or information or testimony must be served on the Counsel to the Inspector General, Office of Inspector General, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 8260, Washington, DC 20410-4500.

**§ 2004.24 Processing demands or requests.**

(a) After service of a demand or request to testify, the Counsel will review the demand or request and, in accordance with the provisions of this subpart, determine whether, or under what conditions, to authorize the employee to testify on matters relating to official information and/or to produce official records and information.

(b) The OIG will process requests in the order in which they are received. Absent exigent or unusual circumstances, OIG will respond within 30 days from the date that we receive all information necessary to the evaluation of the demand or request. The time for response will depend upon the scope of the request.

(c) The Counsel may grant a waiver of any procedure described in this subpart where a waiver is considered necessary to promote a significant interest of OIG, HUD, and the United States, or for other good cause.

**§ 2004.25 Final determination.**

The Counsel makes the final determination on demands and requests to employees for production of official records and information or testimony. All final determinations are within the

sole discretion of the Counsel. The Counsel will notify the requester of the final determination, the reasons for the grant or denial of the demand or request, and any conditions that the Counsel may impose on the release of records or information, or on the testimony of an OIG employee.

**§ 2004.26 Restrictions that apply to testimony.**

(a) The Counsel may impose conditions or restrictions on the testimony of OIG employees including, for example, limiting the areas of testimony or 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