

§ 602.284

be provided and used in lieu of the testimony or other appearance requested.

(c) The General Counsel is authorized to consult with the requesting party or his or her counsel to: (1) Refine and limit the request so that compliance is less burdensome, or (2) obtain information necessary to make the determination described in § 602.282 of this part. Failure of the requesting party or his or her counsel to cooperate in good faith with the General Counsel to enable the Chairman to make an informed determination under this subpart may serve as the basis for a determination not to comply with the request.

[51 FR 41940, Nov. 20, 1986. Redesignated at 56 FR 28477, June 21, 1991]

§ 602.284 Scope of permissible testimony.

(a) The scope of permissible testimony by an FCA employee is limited to that set forth in the written authorization granted that employee by the Chairman.

(b) FCA employees are not authorized to give opinion testimony. The FCA, as the regulatory agency charged with the responsibility of examining, supervising, and regulating the banks and associations and other institutions organized or chartered under the Farm Credit Act of 1971, as amended, relies on the ability of its employees to gather full and complete information in order to carry out its statutory responsibilities. The use of FCA employees to give opinion testimony would hamper the FCA's ability to carry out its statutory responsibilities and would cause a serious administrative burden on the FCA's staff.

[51 FR 41940, Nov. 20, 1986. Redesignated at 56 FR 28477, June 21, 1991]

§ 602.285 Manner in which testimony is given.

(a) Authorized testimony of FCA employees will be made available only through depositions or written interrogatories. FCA employees are not authorized to appear and testify in court or to give interviews prior to a deposition or otherwise.

(b) Where, in response to a request, the Chairman determines that circumstances warrant authorizing testi-

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mony by an FCA employee, the requesting party shall cause a subpoena to be served on the employee in accordance with applicable Federal or State rules of procedure, with a copy of the subpoena sent by registered mail to the General Counsel.

(c) Normally, authorized depositions will be taken at the FCA office to which the employee is assigned, and at a time arranged with the employee that is reasonably fixed to avoid substantial interference with the performance of the employee's duties.

(d) Upon completion of the deposition of an FCA employee, a copy of the transcript of the testimony shall be furnished at the expense of the party requesting the deposition to the General Counsel for the FCA's files.

[50 FR 7331, Feb. 22, 1985, as amended at 51 FR 41940, Nov. 20, 1986. Redesignated at 56 FR 28477, June 21, 1991]

§ 602.286 Manner in which documents will be produced.

(a) An FCA employee's authorization to produce official documents is limited to the authority granted that employee by the Chairman.

(b) Prior to the release of any official documents authorized by the Chairman to be released, the requesting party shall obtain a protective order satisfactory in form to the FCA from the court before which the action is pending to preserve the confidentiality of the documents subsequently produced.

(c) Certified or authenticated copies of official FCA documents authorized by the Chairman to be released under this subpart will be provided upon request.

[51 FR 41940, Nov. 20, 1986. Redesignated at 56 FR 28477, June 21, 1991]

§ 602.287 Fees.

Unless waived or reduced, the following fees shall be charged for documents produced by the FCA in connection with requests subject to this subpart:

(a) *Searches for documents.* \$1.50 for each one-quarter hour (or fraction thereof) per employee for time spent by clerical personnel in excess of the first quarter hour and \$3.15 for each one-

quarter hour (or fraction thereof) per employee for time spent by professional or managerial personnel in excess of the first quarter hour in locating, examining, preparing or copying the documents, and for transportation of personnel and documents necessary to the search.

(b) *Copying of documents.* Ten cents per copy of each page made by photocopy or similar process. Normally, only one copy will be provided. Additional copies will be provided only upon a showing of demonstrated need.

(c) *Certification or authentication of documents.* \$3.00 per certification or authentication.

(d) *Computer searches.* Services of personnel in the nature of a computer search shall be charged for at rates prescribed in paragraph (a) of this section. A charge shall be made for the computer time involved, based upon the prevailing level of costs to the FCA and upon the particular types of computer and associated equipment and the amount of time that such equipment is utilized. A charge shall also be made for any substantial amount of special supplies or materials used to contain, present, or make available the output of computers, based upon prevailing levels of costs to the FCA and upon the type and amount of such supplies or materials that are used.

(e) *Other costs.* When other services and materials not specifically identified in this section are requested and provided, their actual cost to the FCA shall be charged.

(f) *Payment of fees.* A bill will be forwarded to the requesting party upon completion of the production. Payment shall be made by check or money order payable to the FCA.

[50 FR 7331, Feb. 22, 1985. Redesignated at 56 FR 28477, June 21, 1991]

§ 602.288 Responses to demands served on FCA employees.

(a) Any FCA employee who is served with a demand in a legal proceeding shall immediately notify the General Counsel of such service, of the testimony or documents described in the demand and of all relevant facts.

(b) When authorization to testify or to produce documents has not been granted by the Chairman, FCA counsel

shall provide the party issuing the demand or the court with a copy of the regulations contained in this subpart and shall inform the party issuing the demand or the court that the employee upon whom the demand has been made is prohibited from testifying or producing documents without the prior approval of the Chairman.

(c) If the court rules that the demand must be complied with irrespective of instructions from the Chairman not to produce the documents or disclose the information sought, the FCA employee upon whom the demand has been made shall respectfully decline to comply with the demand.

(d) A determination under this subpart to comply or not to comply with any demand shall not constitute an assertion or waiver of privilege, lack of relevance, technical deficiencies or any other ground for noncompliance. The FCA reserves the right to oppose any demand on any legal ground independent of its determination under this subpart.

[50 FR 7331, Feb. 22, 1985, as amended at 51 FR 41940, Nov. 20, 1986. Redesignated at 56 FR 28477, June 21, 1991]

§ 602.289 Responses to demands served on non-FCA employees or entities.

(a) FCA reports of examinations or such other reports generated or adopted by the FCA, or any documents related thereto are the property of the FCA and are not to be disclosed to any person without the FCA's consent.

(b) If any person who has possession of an FCA report of examination or such other report generated or adopted by the FCA, or any documents related thereto is served with a demand in a legal proceeding directing that person to produce such FCA documents or to testify with respect thereto, such person shall immediately notify the FCA General Counsel of such service, of the testimony and described documents in the demand, and of all relevant facts. Such person shall also object to the production of such documents or information contained therein on the basis that the documents are the property of the FCA and cannot be released without FCA's consent and that their production must be sought from the FCA following the procedures set forth in