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# LEGAL EXPENSE FUND GUIDE FOR EMPLOYEES

2023

## **LEGAL EXPENSE FUND GUIDE FOR EXECUTIVE BRANCH EMPLOYEES**

This Guide is for employees who may want to establish a legal expense fund (LEF) to help pay for legal expenses arising out of the employee's official position.<sup>1</sup> This document is designed to be a reference guide for your questions about LEFs and the governing regulation, 5 C.F.R part 2635, subpart J. It will explain:

- the type of legal matters for which an LEF may be used,
- the requirements for the trust and the trustee,
- acceptable donations and expense payments,
- the quarterly and termination reporting requirements, and
- your recusal obligations under the regulation.

This guide also has hyperlinks to helpful resources.

If you would like to establish a legal expense fund under subpart J you should start by contacting your employing agency's ethics office. The contact information for the Designated Agency Ethics Officials (DAEOs) can be found here: [https://www.oge.gov/web/oge.nsf/about\\_ethics-contact-list](https://www.oge.gov/web/oge.nsf/about_ethics-contact-list). If you are a DAEO or the representative of an anonymous whistleblower and have questions, please contact the U.S. Office of Government Ethics (OGE), at 202-482-9300, and ask for the LEF program manager or email [LEF@oge.gov](mailto:LEF@oge.gov).<sup>2</sup>

This Guide does not address the other options possibly available to you for legal assistance, such as *pro bono* legal services or assistance from your union or other employee organization. If you are interested in those options, contact your employing agency's ethics office.

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<sup>1</sup> Employees may not establish legal expense funds under subpart J for legal matters that are primarily personal (e.g., estate planning or divorce proceedings).

<sup>2</sup> Throughout this Guide, OGE regularly refers employees to their employing agency's ethics office. Please note, however, that DAEOs must have their own trusts and quarterly reports approved by OGE directly. In addition, the representatives of anonymous whistleblowers are not required to contact the agency ethics office and may instead contact OGE directly with questions and have OGE review the trust and quarterly reports for approval.

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## Definitions

**Anonymous Whistleblower** – Under subpart J, an anonymous whistleblower means an employee who makes or believes to be making a protected report or disclosure under 5 U.S.C. § 2302(b)(8) or 5 U.S.C. § 2302(b)(9) (Prohibited Personnel Practices), 5 U.S.C. § 416 (reporting matters of urgent concern to intelligence community Inspectors General), 50 U.S.C. 3517 (complaints filed with Inspectors General), 50 U.S.C. § 3033 (complaints filed with the Inspector General of the Intelligence Community), or 28 C.F.R. § 27.1 (Making a Protected Disclosure), and who seeks to remain anonymous.

**Designated Agency Ethics Official (DAEO)** – The DAEO is the employee at an agency who has responsibility for the agency’s ethics program.

**Legal Expense Fund (LEF)** – An LEF is a trust established by an executive branch employee to raise funds to pay for the legal expenses that arise from a covered legal matter (discussed in detail below).

**U.S. Office of Government Ethics (OGE)** – OGE oversees the executive branch ethics program. OGE issued the Legal Expense Fund regulation, and is responsible for interpreting the regulation, providing advice to agencies and reviewing agency compliance, conducting secondary review of the LEF documents of senior executive branch officials and first-level review of the LEF documents of DAEOs and anonymous whistleblowers, and posting LEF documents on the OGE website.

## Types of Legal Matters For Which an LEF May Be Used

An employee may establish an LEF to pay for a legal matter arising in connection with:

- the employee's past or current official position,
- the employee's prior position on a campaign, or
- the employee's prior position on a Presidential Transition Team.

As used in the regulation, a legal matter is considered to arise in connection with such a position if the employee would not be involved in the legal matter had they not held the status, authority, or duties associated with the position. An employee may not use an LEF to pay for expenses from a personal legal matter, such as a divorce or drafting a will. The following examples are provided to illustrate when an LEF would be permissible:

*Example 1:* A Federal Housing Finance Agency employee was driving to conduct an onsite visit at a regulated entity when the employee had an automobile accident. The employee, along with the agency, is sued by the other driver in the accident. If the employee needs to retain their own legal counsel, they may establish an LEF to help pay for the legal expenses, because this matter arose in connection with their official position.

*Example 2:* A Central Intelligence Agency employee is facing administrative disciplinary action due to an issue with the employee's security clearance and would like to seek financial assistance to pay for an attorney. Because this matter arose in connection with their official position, the employee may establish an LEF to help pay for the legal expenses.

*Example 3:* A Transportation Security Administration employee retains legal counsel due to an investigation into inappropriate behavior at their former employing agency, the Department of Labor, and the employee establishes an LEF to pay for the associated legal expenses. Because this matter arose in connection with their past official position, the employee may establish an LEF to help pay for the legal expenses.

*Example 4:* A Department of Interior employee is being investigated by the Inspector General for potential misuse of Government resources while on official travel. The Internal Revenue Service (IRS) is separately investigating the employee for misreporting household income on the employee's personal taxes. The employee may establish an LEF concerning the Inspector General investigation because the legal matter arose in connection with their official position. However, they could not use the LEF to pay for legal expenses for the unrelated IRS investigation because that legal matter did not arise in connection with the employee's official position.

*Example 5:* The Federal Election Commission (FEC) is investigating the expense payments made by a presidential campaign. FEC staff seeks to interview a former campaign staff person, who is now an employee of the Executive Office of the President, about their knowledge about the payments. The employee may establish an LEF to pay for legal expenses because the legal matter arose from the employee's work on the

campaign.

Note: If you are no longer an Executive branch employee, you do not have to comply with the LEF regulation should you wish to establish a legal expense fund. If you have questions regarding whether your legal matter is covered by the regulation, please contact your employing agency's ethics office.

## Establishing an LEF Trust

At the point you begin considering an LEF, OGE encourages you to reach out to your employing agency's ethics officials. They will be able to assist you in this process and be able to inform you about any agency-specific requirements that exist. You also may want to consult with them about other options to pay for legal services including *pro bono* legal services, legal services paid for by your union or other employee organization, or financial support from family or others with whom you have a personal relationship.

If you decide to create an LEF to help pay your legal expenses for a covered legal matter, you must establish a trust to collect donations and pay permitted expenses. OGE recommends that you consult with a trust lawyer who is licensed in the state whose laws will govern the trust to draft a trust instrument for you. OGE understands engaging a lawyer may be an expensive barrier for some executive branch employees, which is in part, why OGE has created resources that you can use in preparing your trust document. The [Model Trust Provisions](#) can be used either by your trust attorney or in conjunction with pre-drafted legal products available online to reduce the cost of legal counsel.

### Required Trust Provisions

You will be both the grantor, the person who creates the trust, and the beneficiary of the trust. The trust is required to contain the following legal provisions to be in compliance with the regulation:

- A provision stating that the purpose of the trust is to receive contributions and pay legal expenses in connection with a covered legal matter. The legal matter must be identified in this provision;<sup>3</sup>
- A provision identifying you as the beneficiary of the trust with a statement that you cannot control the trust or receive any other benefit other than the payment of legal expenses for the named legal matter;
- A provision addressing the required qualifications of the trustee and any successor trustee;
- A provision addressing which state's laws govern the trust;
- A provision requiring the trustee to provide information to the beneficiary (you) needed to complete required LEF reports and financial disclosure reports, if you are a filer, and to meet the required recusal obligations;
- A provision describing permissible and prohibited contributions;
- A provision describing permissible expense payments;
- A provision requiring the trustee to inform donors and payees that their information will be posted on the OGE website;
- A provision requiring the trust document's approval by your employing agency and then requiring the trustee to provide a signed copy to the agency; and
- A provision explaining the distribution of excess funds at the termination of the trust.

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<sup>3</sup> This requirement does not apply to anonymous whistleblowers.

OGE has created model trust provisions for the requirements discussed above. You can find the model trust provisions ([Model Trust Provisions](#)) on the OGE website. If you hire counsel to help you draft your trust document, OGE encourages you to provide them with a copy of or link to the model trust provisions.

### LEF Trustee Requirements

While the trust document is being prepared, you also need to identify someone who can serve as trustee for your trust. The trustee will be in charge of administering the trust on your behalf. The regulation prohibits certain types of individuals from being your LEF trustee. The trustee may not be:

- You;
- Your spouse, parent, or child;
- An employee of the Federal executive, legislative, or judicial branches;
- A foreign national;
- A foreign agent;
- A lobbyist; or
- A person who has interests that may be substantially affected by the performance or nonperformance of your official duties.

The trustee will have a number of responsibilities to carry out for your benefit because they are a fiduciary, which means they have to operate the trust in your best interest. The trustee will exercise exclusive control of the trust property. They also are responsible for operating the trust so that it complies with the regulations, applicable state law, and the trust document, including providing you with the information necessary to comply with the financial disclosure reporting requirements of the Ethics in Government Act<sup>4</sup> and 5 C.F.R. part 2634, if required, as well as the reporting requirements of the LEF regulation. OGE recommends that when you are choosing a trustee that you consider both the restrictions on who can be a trustee as well as the duties they will be carrying out on your behalf. Note that the trustee is permitted to pay themselves trustee fees under the regulation. You should determine whether you want to pay your trustee when drafting the trust document and discuss trustee fees with any trustee you consider retaining.

OGE has drafted a trustee handbook as a resource for your trustee, which can be found here: [Trustee Handbook](#). This handbook addresses the responsibilities of the trustee in more detail and can be used to provide prospective trustees with information about the position.

### Approval of Your LEF Trust

Once you have a draft trust document and a proposed trustee identified, you should provide the draft trust document and information about the trustee to your employing agency's ethics officials. If you are a DAEO, you must provide the documents to OGE. Anonymous whistleblowers may choose to provide the documents to OGE or to the ethics office at the agency at which they are employed. If you are a DAEO or an anonymous whistleblower working with OGE, you may submit your draft documents to OGE by emailing them to [LEF@oge.gov](mailto:LEF@oge.gov).

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<sup>4</sup> 5 U.S.C. § 13104(a)(2).

Your employing agency's ethics officials will review any information submitted to them to ensure that the matter qualifies as a covered legal matter. They also will review the trust document and trustee information to ensure both comply with the regulatory requirements. Your employing agency's ethics officials may request that you make changes to the trust document or to the trustee in order to comply with regulation. The agency has 30 days to complete its review and the DAEO must approve the trust and the trustee if both comply with the regulation and the legal matter is covered by the regulation.

Once you are notified that your legal expense fund is approved, you should take the steps necessary to execute the trust document. Trust documents often have to be signed and notarized to be effective. In addition, most states will require you to provide a nominal amount of money, for example \$10-\$20, to legally establish the trust. You must provide a copy of the executed trust document to your DAEO.<sup>5</sup> That trust document will be transmitted to OGE for posting on the OGE website and, for some filers, a secondary review by OGE.<sup>6</sup> The secondary review at OGE also must be completed within 30 days and is conducted to ensure compliance with the regulation. If OGE staff finds a deficiency in the trust document or trustee, they will be in contact with you through your employing agency's ethics office with suggested steps to remedy the deficiency.<sup>7</sup> You may be required to modify your trust document or change your trustee if OGE identifies an issue of noncompliance.

As soon as the executed trust document is filed with your employing agency, the trustee may begin to raise funds for the trust. You may begin raising funds even if OGE is conducting a secondary review of your trust. OGE encourages you to review the "Solicitation of Contributions" section before you start raising funds.

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<sup>5</sup> DAEOs and anonymous whistleblowers submit their documents to OGE, using [LEF@oge.gov](mailto:LEF@oge.gov).

<sup>6</sup> As provided at 5 C.F.R. 2635.1004(g)(2)(ii), filers requiring secondary review at OGE are:

- The Postmaster General
- The Deputy Postmaster General
- The Governors of the Board of Governors of the United States Postal Service
- Employees of the White House Office and the Office of the Vice President
- Officers and employees in offices and positions which require confirmation by the Senate, other than members of the uniformed services and Foreign Service Officers below the rank of Ambassador.

<sup>7</sup> Employees should note that use of an LEF may be restricted due to failures to remedy deficiencies.

## Recusal Requirement

The regulation requires you to recuse from certain matters, known as “particular matters involving specific parties” in which you know the following person is a party or represents a party to the matter:

- the trustee of your LEF trust; and
- a donor who gives \$250 or more to the trust in a calendar year.

Recusal means that you must refrain from participation in the matter or, if the matter has already started, cease your participation in the matter. Particular matters involving specific parties (“party matters”) are proceedings in which the legal rights of identified people or entities will be affected or there is a transaction or series of related transactions between identified people or entities. Common party matters include judicial proceedings, claims, contracts, grants, investigations, and permit applications. You should consult with your employing agency’s ethics officials so they can help you determine what types of party matters you work on, if any, and then from which party matters you should recuse. If you have a question regarding whether the work you do involves party matters or what recusal entails, you should consult with your employing agency’s ethics officials.

The time period during which you cannot participate in a party matter involving the trustee or a donor is called the recusal period. The recusal period for the trustee starts the moment they become the trustee and lasts until two years after they stop being the trustee. The recusal period for the donor starts on the day on which the amount they have given totals at least \$250 in a calendar year and it ends two years after the last donation in that same calendar year. If the same donor gives \$250 or more in a subsequent year, then the recusal period runs from the last donation in that subsequent calendar year.

Below is a series of examples to help illustrate the recusal requirement:

*Example 1:* An employee at a U.S. Attorney’s office has an LEF and the trustee is a partner at a local law firm. The employee is on the team of lawyers prosecuting an individual. The employee learns that the trustee for the LEF will be on the defense team for the individual being prosecuted. The employee may not participate in the prosecution.

*Example 2:* An employee at the Social Security Administration (SSA) who reviews the denial of disability claims has an LEF. The employee is in the process of completing a quarterly report and notices that there is a \$500 donation from a John Bright of Mobile, Alabama. The next year the employee is given a claim denial to review for a John Bright of Mobile, Alabama. At this point, the employee should notify their supervisor that they may not be permitted to review this claim. The supervisor may either reassign the claim or direct the employee to seek additional information from the trustee to determine if it is the same John Bright. If it is the same person or if the employee is unable to make a definitive determination, the employee must refrain from reviewing the claim.

*Example 3:* A Department of Education employee who helps review grant applications and awards grants has an LEF. In 2023, Education for Tomorrow, a 501(c)(3) organization gave \$1,000 to the employee's LEF. Education for Tomorrow makes a second donation of \$1,000 to the LEF in 2025. In late 2026, the employee is assigned to review a grant application for Education for Tomorrow. Because the employee is still in the recusal period due to the second donation, the employee must inform their supervisor that they are prohibited from participating in the review of this grant application.

*Example 4:* A Veterans Administration (VA) employee is working on policy relating to what health care services can be accessed by veterans. The VA employee has an LEF. An individual who qualifies for VA services and would be impacted by the policy the employee is working on as a member of a discrete and identifiable class. Since the policy is a particular matter of general applicability, rather than a party matter, the employee may continue to work on the policy and is not required to recuse.

In addition to the recusal obligation imposed by Subpart J, you will also need to consider whether you should recuse from matters involving your legal counsel under the Impartiality Regulation found at 5 C.F.R § 2635.502. OGE encourages you to discuss recusal from party matters where your legal counsel is a party or represents a party with your employing agency's ethics officials.

## Contributions

### Solicitation of Contributions

When soliciting contributions for your LEF, you may reference your official position, but only if doing so would not be viewed as a misuse of your official position under the Standards of Conduct, Misuse of Position at 5 C.F.R. 2635 Subpart G.

Specifically, your solicitation may discuss your government job and the fact that the legal matter arose during the course of your official duties, but you may not imply that the government sanctions or endorses your LEF by, for example, using your agency's seal or letterhead. If you choose to reference your official position, you may not do so in a way that induces or coerces another person to donate to your LEF. For instance, implying in your solicitation that you may take an official action if the individual donates to your LEF would be prohibited under this rule.

In addition, you may not use government resources, such as government equipment or your government email address (for example, .gov or .mil addresses), when soliciting contributions. You also may not use official government time, to include assigning your subordinates, to work on any matter related to your LEF. Finally, you may not use non-public information in furtherance of your solicitation by, for example, disclosing nonpublic details of an investigation to solicit contributions.

*Example 1:* An employee at a component of the Department of Homeland Security (DHS) has established an LEF to help pay for legal expenses relating to an internal investigation into inappropriate behavior in their department. To solicit funds for the LEF, the employee has created a website where they indicate that they are a DHS employee who is raising money because they need to hire an attorney to assist them in clearing their name of a miscommunication at work regarding inappropriate behavior. The page contains no other references to the employee's official position. The employee's solicitation does not constitute a misuse of their official position.

*Example 2:* A Transportation Security Administration (TSA) employee retains legal counsel due to an investigation into inappropriate behavior in their department, and the employee establishes a legal expense fund in accordance with this subpart. To solicit funds for the LEF, the trustee sent a solicitation letter in which they indicate that the beneficiary is a TSA employee and they display the TSA seal. Neither the employee nor the legal expense fund's trustee may use the TSA agency seal in materials to imply the Government endorses the legal expense fund.

*Example 3:* A senior official at the White House sets up a LEF to pay for legal expenses in connection with an investigation related to an action taken by the White House. The official asks the White House's webmaster to design a website to help them raise funds for the LEF. However, the official may not task subordinates with any work relating to administration of the legal expense fund

because it is a misuse of position.

### Contribution Rules

You have a joint responsibility with the trustee to ensure that donors to the LEF trust are permissible under the LEF regulation. A donor may not contribute more than \$10,000 in any calendar year. Permissible donors fall within one of four general categories:

1. Individuals,
2. National committees of a political party,
3. Campaigns of a candidate for President or Vice President, and
4. Certain 501(c)(3) organizations.

The specific requirements for the donors in each of these categories are discussed in detail below.

Under the regulation, donations from legal entities like corporations, or limited liability companies are very limited. For-profit entities may never donate to an LEF. Non-profit donors are limited to the categories listed above. For example, because none of the following non-profit entities fall under any of the categories listed above, they cannot donate to an LEF: a Senate or House campaign; any political action committee (PAC), including the President's or Vice President's PAC; or a 501(c)(4) organization.

### Assistance with Donor Restrictions

Each category of donor has certain restrictions that limit the ability of the donor to donate to your LEF. These restrictions are tied to the work that you do for the executive branch and the mission and work of your employing agency. As noted above, no for-profit entities, such as public companies or professional services firms, are permitted to donate to an LEF. Generally, the fact that an individual donor is employed by a company that has business before the agency will not mean that the individual donor is prohibited from donating. There are, however, prohibitions on donations from officers and directors of entities that have business before the agency. You, along with the trustee, should consult with your employing agency's ethics officials to determine if a company or other business entity has business before your agency.

To ensure the trustee has the information needed to apply the donor restrictions, OGE recommends that you hold a meeting with the trustee and the DAEO (or other agency ethics officials), at your employing agency shortly after the approval of the trust. You should be prepared to provide answers to the following questions for the trustee:

- Is there a particular focus of your work?
- Are there industries, companies, organizations, or individuals that are affected by your work?
- Does your work affect the interests of large and diverse groups of people, such as policies related to social security benefits or passports?

If, for example, you work on legal matters involving individuals (such as investigations or litigation) or claims for benefits by individuals (such as medical or health benefits), you may need to provide the trustee with information about individual donors and whether you are working on a legal matter or claim involving an individual donor who is a party to a matter on which you are working.

### Individuals

Any individual may donate to an LEF unless the individual is:

- An agent of a foreign government as defined in 5 U.S.C. § 7342(a)(2);
- A lobbyist as defined by 2 U.S.C. § 1602(10) who is currently registered pursuant to 2 U.S.C. § 1603(a);
- A foreign national;
- Acting on behalf of, or at the direction of, another individual or entity in making a donation;
- An anonymous donor;
- Seeking official action by the employee beneficiary's agency;
- Doing business or seeking to do business with the employee beneficiary's agency;
- Conducting activities regulated by the employee beneficiary's agency other than regulations or actions affecting the interests of a large and diverse group of persons;
- Substantially affected by the performance or nonperformance of the employee beneficiary's official duties; or
- An officer or director of an entity that is substantially affected by the performance or nonperformance of the employee beneficiary's official duties.

With regard to individuals seeking official action from the employee beneficiary's agency, donations are not prohibited from individuals seeking action from the agency on something that affects a large and diverse group of people, such as filing a tax return or applying for a passport. However, the employee beneficiary could not participate in the particular matter where the donor is an identifiable party, such as the donor's tax audit. The trustee may need to contact you or your employing agency to determine if an individual meets one of the last five restrictions listed in the bullets above.

### Campaigns and Political Parties

To donate to an LEF, the national committees of a political party must qualify as such under the federal campaign finance laws at 52 U.S.C. §§ 30101(14) and (16). The trustee can research whether a party qualifies under the statute on the Federal Election Committee website. Presidential and Vice Presidential campaigns can pay the legal expenses only for those who worked on the campaign. If you worked on a Presidential or Vice Presidential campaign, you should inform the trustee. If a party or a campaign is affected by your work, then it may not donate to your LEF. This does not mean that the party or campaign has positions on the issues that are the focus of your agency, but rather that your work affects campaigns and parties. For

example, an employee who reviews campaign filings for the FEC likely would not be able to accept donations from a campaign or political parties.

### 501(c)(3) Organizations

A 501(c)(3) organization<sup>8</sup> may make a contribution to your LEF only if it has been established for more than two years. If the trustee has questions about how long an organization has been established, OGE recommends the trustee consult publicly available information about the entity, such as its website and state corporate (and other legal entity) registration websites. If the trustee has questions regarding whether the entity qualifies as a 501(c)(3), OGE recommends that the trustee use the Internal Revenue Services' Tax Exempt Organization Search tool: <https://www.irs.gov/charities-non-profits/tax-exempt-organization-search>. If the organization would be affected by your official duties, then the organization is not a permissible donor. OGE recommends that you or your trustee consult with your employing agency's ethics officials if you are unsure.

### Information Collection

When the trustee accepts contributions for the LEF, they will have the responsibility to collect some information from the donors so that they can provide information to you to complete your quarterly reporting, which is discussed in detail below. The information to be collected is discussed in the *Legal Expense Fund Trustee's Guide for Privacy Act and Paperwork Reduction Act Compliance*, which is available on the OGE website as an appendix to the *Handbook for Legal Expense Fund Trustees* ([Trustee Handbook](#)).

### Impermissible Donations

If you or the trustee determine that you have received a donation that is not permitted by the regulation, that donation must be returned to the donor as soon as possible but in no case later than the next quarterly reporting due date. If the trustee is unable to locate the donor or the donor has died, the contribution may be donated to a 501(c)(3) organization that meets the requirements discussed in the "Trust Termination" section of this Guide. If the trust has insufficient funds to return a donation at the time it is determined to be impermissible, you must promptly provide the funds to the trust so that the trustee is able to return the donation. You must take this action because you are responsible for ensuring that you do not receive an impermissible gift.

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<sup>8</sup> To qualify as a 501(c)(3) organization, it must be "described in section 501(c)(3) of the Internal Revenue Code and exempt from taxation under section 501(a) of the Internal Revenue Code." 5 CFR § 2635.1006(a)(3)(i).

## Distributions

It is the trustee's responsibility to distribute money from the trust to pay for permissible expenses. The trust may pay for:

- Expenses resulting from the legal matter that is the basis for the trust;
- Expenses incurred in soliciting contributions or administering the trust; and
- Tax liabilities that result from the creation, operation, or administration of the trust.

Legal expenses are not limited to attorneys' fees, but rather can include things like expert witness fees, filing fees, photocopying costs, travel costs related to the legal matter, and document review services. Your trustee also is permitted to pay themselves trustee fees under the regulation. Additionally, fundraising and administration costs are permissible expenses. Examples include, but are not limited to, website design and hosting to accept contributions, fundraising expenses, and assistance with tax filings. If you have questions about whether a payment is permissible under the regulation, please contact your employing agency's ethics officials.

As with donors, the trustee has an obligation to track information about payees in order to assist the beneficiary with their reporting obligations. The information to be collected is discussed in the *Legal Expense Fund Trustee's Guide for Privacy Act and Paperwork Reduction Act Compliance*, which is available on the OGE website as an appendix to the *Handbook for Legal Expense Fund Trustees* ([Trustee Handbook](#)).

## Quarterly and Termination Reports

You are required to file reports each quarter detailing contributions and distributions of \$250 or more during the quarter. The quarterly report form, [OGE Form 601](#), is available on the OGE website. Specifically, reports are due on the following dates:

- April 30 for the first quarter
- July 30 for the second quarter
- October 30 for the third quarter
- January 30 for the fourth quarter.

It is important that the reports are filed on time. If the report is not filed by the due date, you/your LEF will be prohibited from accepting contributions and making distributions until the report is filed.

The report must be filed with the DAEO of your employing agency, or with OGE if you are a DAEO or an anonymous whistleblower. The report may be filed by you or the trustee, on your behalf; however, as the executive branch employee, you are ultimately responsible for the reports being timely filed. Unless you qualify as an anonymous whistleblower, you will be required to sign the report.

The cover page of the report will require your name, position, and agency.<sup>9</sup> It will also require you to indicate the quarter and year of the report and has a field for your signature. You may sign either in ink or electronically. If an electronic signature is used, it must be a legally recognized electronic signature. The cover page is followed by two schedules—one for contributions and one for distributions.

### Contributions

For each donor who gave \$250 or more in a quarter, you must report:

- The name of the donor;
- If the donor is an individual, the donor's employer;
- City and state of residence/location;
- Date of the contribution; and
- Amount of the contribution.

If a donor gave multiple donations in the quarter totaling \$250 or more, please report the date of each donation. *See* lines 3 and 3.1 in the table below for an example of multiple donations from a single donor. For a donor organization, leave the employer field blank. *See* line 2 below for a contribution from an organization.

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<sup>9</sup> Anonymous whistleblower reports should include an identifier agreed to with OGE so that the reports for a single anonymous whistleblower can be tracked.

Here is a sample contribution report:

#	Donor Name	City/State	Employer	Date	Amount
1	John Smith	Arlington, VA	ABC Corporation	1/23/2024	\$500
2	Legal Assistance Association	Washington, DC		2/15/2024	\$5,000
3	Molly Drew	Bethesda, MD	Helpers Hospital		
3.1				1/16/2024	\$200
3.2				3/27/2024	\$200

### Distributions

For each person or entity who was paid \$250 or more in a quarter, you must report:

- The name of the payee,
- Date of the payment,
- Amount of the payment, and
- Purpose of the payment.

The purpose of the payment does not have to be detailed. In fact, OGE recommends entries such as “legal services,” “filing fees,” or “tax payment.” Please do not include anything that is subject to the attorney-client privilege or attorney work product. Consult with your legal counsel if you have questions about attorney-client privilege or attorney work product. In addition, do not report billing rates or hours billed—“legal services” is a sufficient description of the purpose under the regulation.

Below is a sample of a distribution report.

#	Payee Name	Date	Amount	Purpose
1	New Tech Inc.	1/5/2024	\$7,500	Website design and hosing
2	Park, Johnson, and Ruiz LLP	2/25/2024	\$21,205	Legal services
3	Park, Johnson, and Ruiz LLP	3/25/2024	\$47,639	Legal services
4	Arshia Shah	3/312024	\$2,500	Trustee fees

### Year-End Review

You must ask the trustee to complete a year-end review of all donations and payments to determine if any donor made contributions or payee received payments aggregating \$250 or more during the year that were not reported on a quarterly report. For example, if Donor A made a contribution in the first quarter of \$175 and a contribution of \$100 in the third quarter, and

neither donation was previously reported, those previously unreported contributions must be reported on the January 30 quarterly report.

### Employment Termination Reports

If you leave employment in the executive branch, then you must file an Employment Termination Report using the OGE FORM 601 with the DAEO at your employing agency (or at OGE if you are a DAEO or an anonymous whistleblower). This report will contain information about the contributions to and distributions from the trust from the end of the last quarter through the date of termination. The report will also need to indicate if the trust will continue after you leave the executive branch; you are permitted to continue the trust, but it will no longer be regulated by the rules of Subpart J. There is a box on the cover page of the report to indicate whether the trust will continue. The report is due by your last day of employment. If the report is filed prior to your last day of employment, the trust may not accept any additional contributions nor make any additional distributions between the date of filing and your last day.

### Trust Termination Reports

If the trust is terminated while you are employed in the executive branch, then you must file a Trust Termination Report using the OGE Form 601 with the DAEO at your employing agency, or at OGE if you are a DAEO or an anonymous whistleblower. This report will contain information about the contributions to and distributions from the trust from the end of the last quarter through the date of termination of the trust. It also must report the 501(c)(3) organization to which any remaining funds will be donated on the distribution schedule or if the remaining funds will be returned pro rata to the donors. There is a box on the cover page of the report to indicate that the trust is terminating. The report is due 30 days after the trust terminates.

### Public Posting

All reports filed with agencies, except those containing classified information and those of anonymous whistleblowers, will be posted on the OGE website after the reports have been reviewed and will be publically available. The OGE website will allow individuals to search for reports by the beneficiary's name, position, or agency. The reports of DAEOs will also be posted on the OGE website. Reports should only contain the information required to be reported by the regulation. Do not include any other information, such as fee schedules, personal addresses, and account numbers.

## Trust Termination

The beneficiary may choose to voluntarily terminate the trust at any time. The trust, however, is required to terminate within 90 days of the resolution of the legal matter for which the trust was created or within 90 days of the last expenditure for that legal matter, whichever is later. If there are excess funds at the time of termination, the trustee either must choose to donate the remaining funds to a 501(c)(3) organization<sup>10</sup> or to return the remaining funds to the donors in proportion to their donation.

If the trustee chooses to donate the funds, the trustee may not choose a 501(c)(3) organization that was established by the trustee or by you. In addition, you, your spouse, and your child may not be an officer, director, or employee of the organization, nor may the organization be one with which you have a covered relationship within the meaning of § 2635.502(b)(1).<sup>11</sup> The trustee may wish to consult with you and ethics officials at your employing agency regarding the organizations with which you have a covered relationship. The trust must also be terminated in a manner that complies with both governing state law and the trust document. For information regarding the requirements of trust termination reports, please see “Quarterly and Termination Reports” above.

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<sup>10</sup> Per 5 C.F.R. § 2635.1009, the trustee has sole discretion to select the 501(c)(3) organization receiving excess donations.

<sup>11</sup> Per 5 C.F.R. § 2635.502(b)(1), An employee has a covered relationship with:

- A person, other than a prospective employer described in § 2635.603(c), with whom the employee “has or seeks a business, contractual or other financial relationship with involves other than a routine consumer transaction;”
- A person who is a member of the employee’s household or a relative with whom the employee has a close personal relationship;
- A person with whom the employee knows their spouse, parent, or dependent child is serving or is seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee;
- Any person for whom the employee has served in the last year as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee;
- Any organization, other than a political party, in which the employee is an active participant.

## Noncompliance

If your LEF receives an impermissible contribution, the trustee must return the contribution to the donor as soon as possible but in no case later than the next quarterly reporting due date. If the trust has insufficient funds to return a donations at the time it is determined to be impermissible, you must promptly provide funds to the trust so that the trustee is able to return the donation. If a report or any other required document is not timely filed, the LEF must not accept contributions or make distributions until the report or required document is filed. Additionally, if there is continuing or significant noncompliance with any provision of the regulation, OGE may determine the LEF may not accept contributions or make distributions for a given time frame or may order termination of the LEF trust. Examples of continuing noncompliance include a pattern of late quarterly reports or a pattern of improper distributions or contributions. Examples of significant noncompliance includes the trustee registering as a lobbyist or foreign agent or failure to file quarterly reports.

## Appeal Rights

You may appeal both a denial of approval for your LEF and the failure to approve your LEF within 30 days of your request for approval. You may file an appeal by emailing the request to [LEF@oge.gov](mailto:LEF@oge.gov) or mailing the request to the Director of OGE at the address listed on the OGE website, <https://www.oge.gov>. The appeal must be submitted within 60 days of the denial or 90 days of a request on which your employing agency has not acted. In your request letter please include:

- Your name;
- Your employing agency;
- The date you submitted your request;
- The name of the agency ethics official with whom you have been working on the request, with their email and phone number;
- The date of the denial (if there has been one); and
- The reason you have been provided for the denial of or the delay in approval.

Additionally, the envelope or email containing the request and the letter itself should both clearly indicate that the subject is a legal expense fund appeal. You must also include the draft trust document and information about your proposed trustee. OGE staff will review the materials that you provide and may seek additional information from your employing agency's ethics officials and/or you. Appeals by anonymous whistleblowers and DAEOs, will be considered by the Director of OGE. OGE will post additional information about the appeal process on the OGE website.

## Additional Questions

If you have remaining questions about Legal Expense Funds, please contact the DAEO at your employing agency, [https://www.oge.gov/web/oge.nsf/about\\_ethics-contact-list](https://www.oge.gov/web/oge.nsf/about_ethics-contact-list) or you may contact OGE at [LEF@oge.gov](mailto:LEF@oge.gov) or at 202-482-9300 and ask to speak with the LEF Program Manager. If you are a DAEO or an anonymous whistleblower please contact OGE using one of the methods discussed above.