

U.S. Office of Government Ethics

HANDBOOK for **LEGAL EXPENSE FUND TRUSTEES**

2023

Handbook for Legal Expense Fund Trustees

Thank you for agreeing to serve as a Legal Expense Fund (LEF) trustee. You are an important partner for the employee beneficiary through your work ensuring that all contributions and payments are permissible under the governing regulation, 5 C.F.R part 2635, subpart J. This document is designed to be a reference guide for questions about your role and the regulation.

If you have more in depth questions you can consult the regulation or contact the Designated Agency Ethics Official (DAEO) at the beneficiary's employing agency. The contact information for the DAEOs can be found here: https://www.oge.gov/web/oge.nsf/about_ethics-contact-list.

If you are the trustee for a DAEO or an anonymous whistleblower, please contact the U.S. Office of Government Ethics (OGE), at 202-482-9300, and ask for the LEF program manager to discuss any questions or you can email LEF@oge.gov.¹

¹ Throughout this guide, OGE regularly refers trustees to "the DAEO at the beneficiary's employing agency." Please note, however, that trustees for DAEOs and anonymous whistleblowers are not required to contact the beneficiary's employing agency and may instead contact OGE directly with questions. The trustee for an anonymous whistleblower should not reveal the employee's identity to the agency or to OGE.

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Definitions and Background

Anonymous Whistleblower – Under the regulation 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, 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.

Covered Legal Matter – Covered legal matters include matters 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.

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 established by an executive branch employee to raise funds to pay for the legal expenses that arise from a “covered legal matter.”

U.S. Office of Government Ethics (OGE) – OGE oversees the executive branch ethics program. For purposes of this handbook, OGE’s primary responsibilities include: (1) making and interpreting the Legal Expense Fund regulation; (2) providing advice to agencies and reviewing agency compliance with the regulation through OGE’s examination function; (3) conducting second-level review of the LEF documents of senior executive branch officials and first-level review of the LEF documents of DAEOs and anonymous whistleblowers; and (4) posting LEF documents on the OGE website.

Contributions

As trustee, it is your responsibility to ensure that donors and donations to the LEF trust are permissible under the LEF regulation. No donor may contribute more than \$10,000 in a calendar year. Additionally under the regulation, donations from legal entities like corporations, partnerships, and limited liability companies are very limited. For-profit entities may never donate to an LEF. Non-profit donors are limited to the categories discussed below. For example, the following non-profit entities cannot donate to an LEF because none of the entities fall within the four categories discussed below: a Senate or House campaign; any political action committee (PAC), including the President or Vice President's PAC; or a 501(c)(4) or 501(c)(6) organization.

Permissible donors fall within one of four general categories:

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

The specific requirements for the donors in each of these categories are discussed in detail below following general information about donor restrictions and recommendations for information gathering to assist with your administration of the trust.

Donor Restrictions and Information Gathering Recommendations

Each category of donor has certain restrictions that limit the ability of the donor to donate to an individual employee beneficiary's LEF. These restrictions are tied to the work that the beneficiary does for the executive branch and the mission and work of the beneficiary's employing agency. As noted above, no for-profit entities, such as public companies or professional services firms, are permitted to donate to an LEF. For most donors, 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 beneficiary.

To ensure you have the information needed to apply the donor restrictions, OGE recommends that you hold a meeting with the beneficiary and the DAEO, or other agency ethics officials, at the beneficiary's employing agency shortly after the approval of the trust. Prior to this meeting, OGE recommends you review the website of the agency at which the beneficiary is employed to get a sense of the mission of the agency and the different areas that it regulates. OGE suggests you gather the information below at the meeting to help you determine when you may need to do some further research on a donor. First, you should seek information about the work the beneficiary does, including:

- Is there a particular focus for the work?
- Are there industries, companies, organizations, or individuals that are affected by the work?
- Is it work that affects the interests of large and diverse groups of people, such as social security benefits?

The answers to these questions will help you to create a list of companies and entities to watch out for when reviewing donor information. The answers also will highlight when you will need to determine if the donor is an officer or director of the entity or ask additional questions about the donor's job duties. If, for example, you learn at the meeting that the beneficiary works on agency actions such as legal matters involving individuals or claims for benefits by individuals, you may need input from the beneficiary on whether the beneficiary is working on a legal matter or claim involving an individual donor. Alternatively, the beneficiary could provide you a list of individuals who the trust may not accept donations from.

You could, when appropriate (such as for very senior officials), also seek additional information about the work of the beneficiary's employing agency, including:

- Are there industries, companies, organizations, or individuals that regularly seek official action from the agency?
- Are there industries, companies, organizations, or individuals that currently do business with the agency or regularly do business with the agency?

All of this information will assist you in your donor review and will provide you with a basis to understand which donors are clearly permissible and for which donors you may need additional input from the beneficiary or DAEO.

Political Parties

To donate, 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). If you have concerns about a potential political party donor, you can research the committee on the Federal Election Commission (FEC) website. The FEC encourages national party committees to seek advisory opinions to verify whether the committee qualifies under applicable law and regulations.² FEC advisory opinions can be found here: <https://www.fec.gov/data/legal/advisory-opinions/>.

Campaigns

Presidential and Vice Presidential campaigns can pay the legal expenses only for those who worked on the campaign. Once a qualifying campaign makes a donation to an LEF, you will need to verify that the beneficiary of the trust was employed by or volunteered for the campaign before accepting a donation. You will also need to work with the beneficiary to determine if the campaign is substantially affected by the performance or nonperformance of the employee beneficiary's official duties. If the campaign is affected, then it may not donate to the employee beneficiary's LEF. For example, a beneficiary who worked for the FEC likely would not be able to accept donations from a Presidential campaign.

² See <https://www.fec.gov/help-candidates-and-committees/registering-political-party/qualifying-as-a-political-party-committee/> (last visited Oct. 26, 2022).

501(c)(3) Organizations

A 501(c)(3) organization³ may make a contribution only if it has been established for more than two years. If you have questions about how long an organization has been established, OGE recommends you consult publicly available information about the entity, such as its website and state corporate (and other legal entity) registration websites. If you have questions regarding whether the entity qualifies as a 501(c)(3), OGE recommends that you use the Internal Revenue Services' Tax Exempt Organization Search tool: <https://www.irs.gov/charities-non-profits/tax-exempt-organization-search>. You also must determine if the 501(c)(3) organization may be substantially affected by the performance or nonperformance of the beneficiary's official duties. If the organization would be affected, then the organization is not a permissible donor. The information garnered in an initial meeting with the beneficiary and the DAEO may assist in this determination for most organizations. OGE recommends that you consult with the beneficiary and ethics officials at the employing agency if you need additional assistance making a determination.

Individuals

Finally, 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;
- Donating anonymously;
- 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.

Many of these categories of prohibited donors are discussed above in the *Donor Restrictions and Information Gathering Recommendations* section. In addition, there are resources to assist you with determining whether a donor is prohibited and some general guideposts that you can follow. OGE has designed a sample donor format to assist you with ascertaining whether the donor meets the qualifications discussed above. You can find the sample donor format here: [Sample](#)

³ 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).

[Donor Format](#). If there are indicia that a donor may be a registered foreign agent, you can search the Department of Justice filings, <https://efile.fara.gov/ords/fara/f?p=1235:10>, to determine if the donor is registered. There also are similar databases to search if you have indicia that a donor is a lobbyist. Lobbyists register with both the U.S. House of Representatives and U.S. Senate. You can search for registrations with the Clerk of the House here: <https://lobbyingdisclosure.house.gov/lookup.asp>, and with the Secretary of the Senate here: <https://lda.senate.gov/system/public/>.

With regard to individuals seeking official action, donations are not prohibited from individuals seeking action on something that affects a large and diverse group of people, such as filing a tax return, applying for a passport, or applying for social security benefits. If you need to determine if someone is an officer or director of a company or other organization that may be substantially affected by the performance of the beneficiary's official duties, the officers and directors of a company or organization are typically listed on the website of the company or organization. In addition for public companies, you can consult both the annual report and the annual proxy statement. The proxy statement will provide the names of all of the directors and five senior officers. Likewise, the information garnered in an initial meeting with the beneficiary and the DAEO may assist in the determinations about the last five bullets listed above. If you need further assistance making a determination, OGE recommends that you consult with the beneficiary and ethics officials at the employing agency.

Information Collection

When you accept contributions for the LEF, you will have the responsibility to collect some information from the donors so that you can provide information to the beneficiary for quarterly reporting purposes, 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 in the appendix to this document. OGE has designed a sample donor format to provide a model for the collection of this information, in addition to ascertaining whether the donor meets the qualifications discussed above. You can find the sample donor format here: [Sample Donor Format](#).

Impermissible Donations

If you determine that the trust has received a donation that is not permitted by the regulation, that donation must be returned to the donor. If you are 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 handbook. If the trust has insufficient funds to return a donation at the time it is determined to be impermissible, the employee must promptly provide funds to the trust so that the trustee is able to return the donation. The employee must take this action because they are responsible for ensuring that they do not receive an impermissible gift.

Distributions

As trustee, it is your responsibility to distribute money from the trust to pay for permissible expenses. The trust may pay for:

- Expenses of 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. You are permitted to pay yourself trustee fees under the regulation subject to whether and what amount of fees are permissible under both the terms of trust document and the applicable state law. Additional fundraising and administration costs that are permissible include, but are not limited to, website design and hosting to accept contributions, fundraising cost, and assistance with tax filings. If you have questions about whether a payment is permissible under the regulation, please contact the DAEO at the beneficiary's employing agency.

As with donors, you also have 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 in the appendix to this document.

Quarterly and Termination Reports

The beneficiary is 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 here: [OGE Form 601](#). The reports are due 30 days after the end of each quarter:

- 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, the trust/beneficiary will be prohibited from accepting contributions and making distributions until the report is filed.

The report must be filed with the DAEO of the beneficiary's employing agency, or with OGE for trusts where the beneficiary is a DAEO or an anonymous whistleblower. The report may be filed by the beneficiary or by you, the trustee, on behalf of the beneficiary. For all trusts, except those of anonymous whistleblowers, the report must be signed by the beneficiary even if it is filed by you.

The cover page of the report requires the beneficiary's name, position, and agency.⁴ It also requires you to indicate the quarter and year of the report and has a field for the beneficiary's signature. The beneficiary 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, the beneficiary 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
- Amount of the contribution.

If a donor gave multiple donations in the quarter totaling \$250 or more, 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. Reports should only contain the information required to be reported by the regulation. Do not include any other information, such as personal addresses.

⁴ 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
				3/27/2024	\$200

Distributions

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

- The name of the payee
- Date of the payment
- Amount of the payment
- 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.” Reports should only contain the information required to be reported by the regulation. Please do not include anything that is subject to the attorney-client privilege or attorney work product. Consult with the beneficiary’s legal counsel if you have questions. 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	3/31/2024	\$2,500	Trustee fees

As trustee, you must complete a year-end review of all donations and payments to determine if any donor made contributions or payee received payments of \$250 or more during the year that were not reported on a quarterly report. For example, Donor A made a contribution in the first quarter of \$175 and a contribution of \$100 in the third quarter, neither of which were previously reported. Those previously unreported contributions and payments must be reported on the January 30 quarterly report.

Employment Termination Reports

If the beneficiary leaves employment in the executive branch, then the beneficiary must file an Employment Termination Report with the DAEO at the beneficiary's employing agency or at OGE for the reports of DAEOs and anonymous whistleblowers. 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 the beneficiary leaves the executive branch. There is a box on the cover page of the report to indicate whether the trust will continue. The report is due by the beneficiary's last day of employment. If the report is filed prior to the beneficiary's last day of employment, the trust may not accept any additional contributions nor make any additional distributions between the date of filing and the beneficiary's last day.

Trust Termination Reports

If the trust is terminated while the beneficiary is still employed in the executive branch, then the beneficiary must file a Trust Termination Report with the DAEO at the beneficiary's employing agency or at OGE for the reports of DAEOs and anonymous whistleblowers. 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 on the distribution schedule the 501(c)(3) organization to which any remaining funds will be donated. 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, will be sent to OGE for posting on the OGE website. 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.

Other Trustee Responsibilities

Under the regulation, you have numerous obligations:

- You are a fiduciary for the beneficiary and must act as such in relation to trust property and the purpose of the trust.
- You must ensure that the beneficiary has no control over the trust property.
- The regulation requires you to provide information to the beneficiary so that they can comply with the additional financial disclosure reporting requirements of the Ethics in Government Act, 5 U.S.C. §§ 13101 *et seq.* and/or the financial disclosure regulation found at 5 C.F.R. part 2634.
- You also have an obligation to keep beneficiaries informed of donors and payees, so the beneficiary may properly recuse as required by the Legal Expense Fund regulation.
- Finally, you must operate the trust in accordance with the trust document consistent with the applicable state trust law.

OGE has drafted model trust language covering selected portions of the trust so the trustees and beneficiaries can ensure that the trust document is requiring the trustee to act in compliance with the regulation. The *Model Trust Provisions* can be found here: [Model Trust Provisions](#).

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, you either must choose a 501(c)(3) organization for donation of the funds or return the remaining funds to the donors in proportion to their donation.

If you chose to donate the funds, you must, using your sole discretion, choose the entity to which the funds are donated. You may not choose a 501(c)(3) organization that was established by you or the beneficiary. In addition, the beneficiary, their spouse, and their child must not be an officer, director, or employee of the organization, nor may the organization be one with which the beneficiary has a covered relationship within the meaning of § 2635.502(b)(1). You should consult with the beneficiary and the DAEO regarding with which organizations the beneficiary has 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.

Questions

If you have remaining questions after reading this handbook, please contact either the DAEO of the beneficiary's employing agency, https://www.oge.gov/web/oge.nsf/about_ethics-contact-list, or OGE at LEF@oge.gov or 202-482-9300 (ask to speak with the LEF Program Manager).

Appendix

Expires 7/31/29

Legal Expense Fund Trustee's Guide for Information Collection Compliance

Thank you for agreeing to serve as a Legal Expense Fund (LEF) trustee. You are an important partner for the employee beneficiary through your work ensuring that all contributions and payments are permissible under the governing regulation, 5 C.F.R part 2635, subpart J. This document is designed to be a reference guide for your information collection responsibilities. If you have questions, you can consult the regulation or contact the Designated Agency Ethics Official (DAEO) at the beneficiary's employing agency. The contact information for the DAEOs can be found here: https://www.oge.gov/web/oge.nsf/about_ethics-contact-list. If you are the trustee for a DAEO or an anonymous whistleblower, please contact the U.S. Office of Government Ethics (OGE), at 202-482-9300, and ask for the LEF program manager to discuss any questions.⁵

Information Collection for Donations

When you accept contributions for the LEF, you will have the responsibility to collect some information from the donors so that you can provide information to the beneficiary for quarterly reporting purposes, which will be discussed in detail in the Trustee Handbook. For each contribution, you are required to collect:

- 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.

You are also required to inform donors that their information will be disclosed on the OGE website and to provide them with a copy of the Privacy Act statement, which is an attachment to this document.

Information Collection for Expense Payments

As with donors, you also have an obligation to track information about payees in order to assist the beneficiary with their reporting obligations. For each payment, you are required to track the name of the person or entity paid, and the date, amount, and purpose of the payment. You are also required to inform payees that their information will be disclosed on the OGE

⁵ Throughout this Guide, OGE regularly refers trustees to "the DAEO at the beneficiary's employing agency." Please note, however, that trustees for DAEOs and anonymous whistleblowers are not required to contact the beneficiary's employee agency and may instead contact OGE directly with questions. The trustee for an anonymous whistleblower should not reveal the employee's identity to agency or OGE.

website and to provide them with copy of the Privacy Act statement, which is in an attachment to this document.

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The beneficiary of the trust is 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 here: [OGE Form 601](#). The reports are due 30 days after the end of each quarter:

- April 30 for the first quarter
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It is important that the reports are filed on time. If the report is not filed by the due date, the trust/beneficiary will be prohibited from accepting contributions and making distributions until the report is filed.

The report must be filed with the DAEO of the beneficiary's employing agency, or with OGE for trusts where the beneficiary is the DAEO or an anonymous whistleblower. The report may be filed by the beneficiary or by you, the trustee, on behalf of the beneficiary. For all trusts, except those of anonymous whistleblowers, the report must be signed by the beneficiary even if it is filed by you.

All reports filed with agencies, except those containing classified information, will be sent to OGE for posting on the OGE website. 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.

Burden information (donor and payee information): The collection of information from donors and payees for quarterly and termination reports is estimated to take an average of 5 minutes per response. Pursuant to the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and no person is required to respond to, a collection of information unless it displays a currently valid OMB control number. That number, 3209-0012, is displayed here.

ATTACHMENT

PRIVACY ACT STATEMENT FOR LEF TRUSTS AND REPORTING INFORMATION

OGE's Legal Expense Fund Regulation at 5 CFR part 2635 subpart J ("LEF Regulation") requires the reporting of this information. The information will be reviewed by Government officials to determine compliance with the LEF Regulation and other applicable ethics laws and regulations and provide advice regarding the trust beneficiaries recusal requirements. The information will also be used to permit transparency into the finances of legal expense funds. Failure to provide the requested information may result in the legal expense fund not being approved, prior approval for the legal expense fund being withdrawn, or suspension of the ability to raise or spend funds. Contributions received by executive branch employees for legal expenses that are not in compliance with the LEF Regulation may violate the Standards of Conduct for Employees of the Executive Branch and result in disciplinary action.

This information will be publically posted to the OGE website at www.oge.gov (subject to certain exceptions set forth in the LEF Regulation) in accordance with [OGE/GOVT-3](#), Legal Expense Fund Trust Documents, Reports, and Other Name-Retrieved Records, routine use "c." Please see [OGE/GOVT-3](#) for more information about the maintenance and disclosure of this information.