



May 26, 2023
LA-23-05

LEGAL ADVISORY

TO: Designated Agency Ethics Officials

FROM: Emory A. Rounds, III
Director

SUBJECT: Overview of the Final Rule Regarding Legal Expense Funds

This Legal Advisory provides an overview of the final Legal Expense Fund Regulation published on May 25, 2023. The final rule promulgates 5 C.F.R. part 2635, subpart J that governs the creation, operation, and termination of legal expense funds (LEFs) and the use of *pro bono* legal services for legal actions that arise “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.”¹ The rule also amends 5 C.F.R. part 2635, subpart B to create exceptions for gifts given by an established employee organization and amends 5 C.F.R. § 2634.907(g) regarding the gift reporting requirements for confidential financial disclosure filers who are anonymous whistleblowers. The final rule will become effective on November 21, 2023. In addition to an overview of the rule, this Legal Advisory includes an attachment that details the changes by regulatory section.

I. Subpart J – Legal Expense Funds

A. *Scope*

The final rule creates a new subpart J of 5 C.F.R. part 2635 governing the establishment and operation of LEFs and creates a process for the approval of the acceptance of *pro bono* legal services for covered legal matters. Under subpart J, an employee may establish an LEF or accept *pro bono* legal services for legal matters that arise “in connection with the employee’s past or current official position, the employee’s prior position on a campaign of a candidate for President or Vice President, or the employee’s prior position on a Presidential Transition Team,”² which are considered “covered legal matters” for purposes of the regulation. If an

¹ 5 C.F.R. § 2635.1002(a).

² *Id.* § 2635.1002(a).



employee has a personal legal matter, such as a divorce or an estate-planning issue, subpart J is not applicable to any legal expense fund relating to those expenses.³

B. *Establishment of an LEF*

An employee who establishes an LEF for legal expenses arising from a covered legal matter must create a trust that conforms to both the LEF regulation and the governing state law.⁴ An LEF may be for the benefit of only a single employee, and an employee may only have one LEF at a time.⁵ The employee will be the grantor of the trust, but may not be the trustee of the trust.⁶ The employee must select a trustee who is not:

- The spouse, parent, or child of the employee beneficiary;
- An employee of the Federal executive, legislative, or judicial branches;
- A foreign national;
- A foreign agent;⁷
- A lobbyist;⁸ or
- A person who has interests that may be substantially affected by the performance or nonperformance of the employee beneficiary's official duties.⁹

The trustee exercises exclusive control of the trust property.¹⁰ They are responsible for operating the trust so that it complies with the regulation, applicable state law, and the trust document.¹¹ The trustee also is a fiduciary for the employee beneficiary.¹² They must provide the employee beneficiary with the information necessary to comply with the financial disclosure reporting requirements of the Ethics in Government Act¹³ and 5 C.F.R. part 2634, as well as the reporting requirements¹⁴ of the LEF regulation.¹⁵ In addition, the trustee must inform donors and payees that their names will be disclosed on the OGE website, and provide them with a Privacy Act Statement.¹⁶

Once the employee has identified a trustee and established a trust, the employee, their representative, or the proposed trustee must submit the trust document for approval to the Designated Agency Ethics Official (DAEO) at the agency at which the employee is employed.¹⁷

³ If an employee would like to accept *pro bono* legal assistance or raise funds from third parties to pay legal expenses that arise from a personal legal matter, agency ethics officials will need to determine if it is permissible under 5 C.F.R. part 2635, subpart B.

⁴ 5 C.F.R. § 2635.1004(a).

⁵ *Id.* § 2635.1004(d), (i).

⁶ *Id.* § 2635.1004(b), (c)(1).

⁷ As defined in 5 U.S.C. § 7342(a)(2).

⁸ A lobbyist as defined by 2 U.S.C. § 1602(10) who is currently registered pursuant to 2 U.S.C. § 1603(a).

⁹ 5 C.F.R. § 2635.1004(c).

¹⁰ *See id.* § 2635.1005(b).

¹¹ *Id.* § 2635.1005(a)(1).

¹² *Id.* § 2635.1005(a)(2).

¹³ *See* 5 U.S.C. § 13104(a)(2).

¹⁴ *See* 5 C.F.R. § 2635.1007.

¹⁵ *Id.* § 2635.1005(a)(3).

¹⁶ *Id.* § 2635.1005(a)(4).

¹⁷ *Id.* § 2635.1004(f)(1).

Until the DAEO approves the trust, the employee may not solicit or accept contributions for, or make any distributions from, the LEF trust.¹⁸

Anonymous whistleblowers¹⁹ and DAEOs will submit their trust documents to OGE for approval.²⁰ Anonymous whistleblowers are permitted to be anonymous to everyone except the trustee for their trust²¹ and the trustee or a representative of the anonymous whistleblower may submit the trust document on their behalf.²² Until OGE approves the trust, these employees may not solicit or accept contributions for, or make any distributions from, the LEF trust.²³

The DAEO (or OGE, for trusts it reviews) has 30 days to determine if the trust document and the trustee meet the requirements of the regulation.²⁴ If the DAEO determines the trust and trustee satisfy the requirements of the regulation, the DAEO must approve the LEF trust.²⁵ If not, the DAEO must identify the deficiencies for the employee so that they can be remedied. Once all deficiencies have been remedied, the DAEO must approve the LEF trust.²⁶ Following DAEO approval, the LEF trust may begin to accept contributions and make distributions to cover legal expenses. For employees in positions that require second-level OGE review of their LEF trusts,²⁷ the LEF trust can begin to accept contributions after the initial DAEO approval, in order to prevent delays.²⁸

Following approval of the LEF trust, the DAEO must transmit the trust document to OGE within seven calendar days.²⁹ OGE will make all approved trust documents available to the public on the OGE website within 30 days of receipt.³⁰

OGE will conduct a second-level review³¹ of the trust documents to ensure compliance with the regulation within 30 days of receipt for the following employees:

- The Postmaster General

¹⁸ *Id.* § 2635.1004(e).

¹⁹ “*Anonymous whistleblower* means an employee who makes or intends to make a disclosure or report, or who engages in an activity protected under 5 U.S.C. 2302(b)(8), 5 U.S.C. 2302(b)(9), 5 U.S.C. 416, 50 U.S.C. 3517, 50 U.S.C. 3033, or 28 C.F.R. 27.1, and who seeks to remain anonymous.” *Id.* § 2635.1003.

²⁰ *Id.* § 2635.1004(f)(2), (g)(3).

²¹ *Id.* § 2635.1004(d)(2).

²² *Id.* § 2635.1004(f)(2).

²³ *Id.* § 2635.1004(e).

²⁴ *Id.* § 2635.1004(g).

²⁵ *Id.* § 2635.1004(g)(1)(i).

²⁶ *Id.*

²⁷ As provided at 5 C.F.R. § 2635.1004(g)(2)(ii), trusts of the following employees require second-level review:

- 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.

²⁸ 5 C.F.R. § 2635.1004(e).

²⁹ *Id.* § 2635.1004(g)(1)(ii).

³⁰ *Id.* § 2635.1004(k).

³¹ *Id.* § 2635.1004(g)(2).

- 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.³²

If OGE identifies deficiencies, OGE staff will notify the agency and employee, who will have 30 days to remedy them.³³ In most cases, the trust will be permitted to accept contributions while the employee remedies any deficiency. There are, however, some deficiencies that would constitute significant noncompliance with the regulation that would require the suspension of fundraising until the deficiency is remedied.³⁴ For example, if OGE discovered in its review that the trustee was a registered lobbyist, OGE would consider the impermissible trustee to be significant noncompliance with subpart J and would require the suspension of the trust until a permissible trustee was approved.

C. *Permissible Contributions and Distributions*

An LEF trust may accept a contribution from any single permissible donor of not more than \$10,000 in a calendar year.³⁵ Permissible donors fall into four categories: 1) an individual; 2) a national committee of a political party; 3) a campaign of a candidate for President or Vice President; and 4) a 501(c)(3) organization. For an individual to donate, the individual may not be:

- 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.³⁶

³² *Id.* § 2635.1004(g)(2)(ii).

³³ *Id.* § 2635.1004(g)(2)(i). For details on the consequences of noncompliance, *see infra* Section I.F.

³⁴ 5 C.F.R. § 2635.1007(h)(3).

³⁵ *Id.* § 2635.1006(a), (c).

³⁶ *Id.* § 2635.1006(b)(1).

A national committee of a political party must qualify as such under 52 U.S.C. § 30101(14) and (16).³⁷ Presidential and Vice Presidential campaigns may pay the legal expenses for those who worked on the campaign “provided that the donation is not otherwise prohibited by law and [they are] not substantially affected by the performance or nonperformance of an employee beneficiary’s official duties.”³⁸ Finally, a 501(c)(3) organization³⁹ may make a contribution if it has been established for more than two years and “is not substantially affected by the performance or nonperformance of an employee beneficiary’s official duties.”⁴⁰

The LEF trust may make payments for legal expenses related to the covered legal matter for which the LEF was established.⁴¹ Legal expenses are not limited to attorneys’ fees, but rather include expenses such as expert witness fees, filing fees, photocopying costs, travel costs related to the legal matter, and document review services. The LEF trust may also make payments for expenses incurred in soliciting contributions or administering the fund, such as paying a website developer to create a website to accept contributions.⁴² Finally, the LEF trust may pay tax liabilities that result from the creation, operation, or administration of the trust.⁴³

D. *Reporting Requirements for an LEF*

The employee beneficiary must file quarterly reports regarding the LEF that contain information about each contribution and distribution of \$250 or more.⁴⁴ Most employee beneficiaries will file these reports with their DAEO.⁴⁵ For anonymous whistleblowers and DAEOs, the reports will be filed with OGE.⁴⁶ A representative or the trustee can file these reports with OGE anonymously for an employee that qualifies as an anonymous whistleblower.⁴⁷ The reports are due on April 30, July 30, October 30, and January 30 for contributions and distributions in the preceding quarter.⁴⁸ The employee beneficiary or trustee may make a written request for a 30-day extension of this deadline for good cause.⁴⁹

For contributions of \$250 or more, the report must state the donor’s name, employer, and city and state of residence, as well as the date and amount of the contribution.⁵⁰ For distributions of \$250 or more, the report must state the name of the person or entity paid, and the date, amount, and purpose of the payment.⁵¹ If the LEF had contributions from a single donor or made

³⁷ *Id.* § 2635.1006(b)(2).

³⁸ *Id.*

³⁹ 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.” *Id.* § 2635.1006(b)(3)(i).

⁴⁰ *Id.* § 2635.1006(b)(3).

⁴¹ *Id.* § 2635.1006(d)(1).

⁴² *Id.* § 2635.1006(d)(2).

⁴³ *Id.* § 2635.1006(d)(3).

⁴⁴ *Id.* § 2635.1007(a). The form to complete the quarterly reports will be posted to the OGE website prior to the implementation date of the regulation.

⁴⁵ *Id.* § 2635.1007(b)(1).

⁴⁶ *Id.* § 2635.1007(b)(2), (f)(3).

⁴⁷ *Id.* § 2635.1007(b)(2).

⁴⁸ *Id.* § 2635.1007(c).

⁴⁹ *Id.* § 2635.1007(e).

⁵⁰ *Id.* § 2635.1007(a)(1).

⁵¹ *Id.* § 2635.1007(a)(2).

distributions to a single payee that totaled more than \$250 in a calendar year but were not reported on a prior quarterly report because each individual contribution or expense payment was below \$250, those contributions and distributions must be reported on the quarterly report due on January 30.⁵²

If an employee who has an LEF terminates their employment with the executive branch, that employee is required to file an Employment Termination Report by their last day of employment.⁵³ This report will contain information about reportable contributions and distributions since the end of the previous quarter.⁵⁴ In addition, the report must include a statement regarding whether the trust will remain active after the employee beneficiary leaves the executive branch.⁵⁵

Agency ethics officials and OGE (for the reports it reviews) must review the reports within 30 days of receipt.⁵⁶ Reviewers should determine if 1) all required information is reported for each contribution and distribution and 2) the contributions to and distributions from the trust are in compliance with the regulation.⁵⁷ If the quarterly report is for a trust that receives second-level review by OGE,⁵⁸ the report should be forwarded for review within seven days of the agency completing its review.⁵⁹ If OGE has questions regarding the information in the report, OGE will reach out to the agency ethics official (or the contact for anonymous whistleblower reports) to obtain additional information.⁶⁰ Agency ethics officials and employee beneficiaries have 30 calendar days to provide the additional information and take any necessary corrective action.⁶¹ If the report does not receive second-level review by OGE, then the report should be forwarded to OGE for posting on the OGE website within seven days of the agency completing its review.⁶² OGE will post all reports it receives within 30 calendar days of receipt.⁶³

E. *Termination of an LEF*

An employee beneficiary may voluntarily terminate an LEF trust at any time or when the purpose of the fund is fulfilled or no longer exists.⁶⁴ The employee beneficiary is required to

⁵² *Id.* § 2635.1007(a)(1), (2).

⁵³ *Id.* § 2635.1007(d).

⁵⁴ *Id.* § 2635.1007(d)(1).

⁵⁵ *Id.* § 2635.1007(d)(2).

⁵⁶ *Id.* § 2635.1007(f)(1), (2).

⁵⁷ *Id.* § 2635.1007(f)(1)(i), (2)(i).

⁵⁸ Reports of the following employees require second-level review:

- 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.

Id. § 2635.1007(f)(2)(ii).

⁵⁹ *Id.* § 2635.1007(f)(1)(ii), (2).

⁶⁰ *Id.* § 2635.1007(f)(2)(i).

⁶¹ *Id.*

⁶² *Id.* § 2635.1007(f)(1)(ii).

⁶³ *Id.* § 2635.1007(g).

⁶⁴ *Id.* § 2635.1008(a).

terminate the LEF trust within 90 days of the conclusion of the covered legal matter or 90 days of the last expense being paid, whichever is later.⁶⁵ If, at the time of termination, the LEF trust has remaining funds, the trustee must distribute those funds to a 501(c)(3) organization or return them, on a pro-rata basis, to the donors.⁶⁶ The trustee may not choose an organization established by the trustee or employee beneficiary or an organization for which the trustee or employee beneficiary, their spouse, or their child is an officer, director, or employee.⁶⁷ In addition, the organization may not be one with which the employee has a covered relationship within the meaning of 5 C.F.R. § 2535.502(b)(1).⁶⁸

Following the termination of the LEF, the employee beneficiary must file a trust termination report that includes information about the contributions received and expense payments made, including any excess fund donation, between the end of the preceding quarter and the termination date.⁶⁹ This report is due 30 days after the termination of the LEF trust. As with other reports, a representative or the trustee may file this report anonymously with OGE for an employee that qualifies as an anonymous whistleblowers.⁷⁰

F. *Noncompliance*

If an LEF trust receives a contribution that is not permissible under 5 C.F.R. § 2635.1006, 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.⁷¹ If a report or any other required document is not timely filed, the LEF trust must not accept contributions or make distributions until the report or required document is filed.⁷² If there is continuing or significant noncompliance with any provision of the regulation, OGE may determine the LEF trust may not accept contributions or distributions for a given time frame or order termination of the LEF trust.⁷³

G. *Acceptance of Pro Bono Legal Services*

An employee may solicit or accept the provision of *pro bono* legal services for covered legal matters.⁷⁴ Under this regulation, *pro bono* legal services include what is typically considered *pro bono* work—an attorney, law firm, or 501(c)(3) legal services provider providing legal services without cost to the client—and also a 501(c)(3) organization hiring and paying an attorney or law firm to represent a client, as there is no cost to the client.⁷⁵ Before the employee accepts any *pro bono* legal services, the employee must consult with an agency ethics official

⁶⁵ *Id.* § 2635.1008(b).

⁶⁶ *Id.* § 2635.1008(c).

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* § 2635.1008(d).

⁷⁰ *See id.*

⁷¹ *Id.* § 2635.1007(h)(1). If the donation cannot be returned due to the donor's death or the inability to locate the donor, "then the contribution must be donated to a 501(c)(3) organization meeting the requirements in section 1008(c)." *Id.*

⁷² *Id.* § 2635.1007(h)(2).

⁷³ *Id.* § 2635.1007(h)(3).

⁷⁴ Employees do not need to create an LEF trust solely for *pro bono* services solicited or accepted in accordance with 5 C.F.R. § 2635.1009.

⁷⁵ *See id.* § 2635.1003.

and receive a determination that the *pro bono* legal service provider meets the requirements of 5 C.F.R. § 2635.1009. The agency must complete this determination within 30 days of the employee seeking approval.⁷⁶

The evaluation regarding whether typical *pro bono* legal services will be permissible is two-tiered. First, the agency ethics officials will need to determine if the law firm, organization, or entity that employs the attorney(s) providing the legal services has interests that may be substantially affected by the performance or nonperformance of the employee's official duties.⁷⁷ If the law firm, organization, or entity of the attorney(s) providing legal services has such interests, then the employee may not receive the *pro bono* legal services from that entity. If the law firm, organization, or entity meets the requirement, the agency ethics official then must determine if the attorney or attorneys doing the legal work meet certain qualifications. To provide *pro bono* legal services, the attorney may not be:

- A foreign agent;⁷⁸
- A foreign national;
- A lobbyist;⁷⁹ or
- A person who has interests that may be substantially affected by the performance or nonperformance of the employee's official duties.⁸⁰

If the attorney or attorneys meet these requirements, the employee may accept the *pro bono* services.

If the employee is seeking to have a 501(c)(3) organization pay for the legal services, the evaluation is three-tiered. First, the agency ethics official must make the following determinations about the organization:

- It is a 501(c)(3) organization;⁸¹
- It was established more than two years ago; and
- It does not have interests that may be substantially affected by the performance or nonperformance of the employee's official duties.⁸²

Following that determination, the agency ethics official also must determine that the attorney(s) and the legal services organization hired by the 501(c)(3) organization to provide the legal services meet the same requirements outlined above for attorneys and law firms providing *pro bono* legal services.⁸³ If the agency ethics official determines that the arrangement complies with the regulation, the 501(c)(3) organization is permitted to pay all of the costs associated with the legal representation.

⁷⁶ See *id.* § 2635.1009(d).

⁷⁷ See *id.* § 2635.1009(a)(2).

⁷⁸ An agent of a foreign government as defined in 5 U.S.C. § 7342(a)(2).

⁷⁹ A lobbyist as defined by 2 U.S.C. § 1602(10) who is currently registered pursuant to 2 U.S.C. § 1603(a).

⁸⁰ See 5 C.F.R. § 2635.1009(a)(1).

⁸¹ 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." *Id.* § 2635.1006(b)(3)(i).

⁸² See *id.* § 2635.1009(b).

⁸³ See *id.*

H. *Appeal Rights*

Employees may appeal a denial of both an LEF trust and receipt of *pro bono* services.⁸⁴ They also may appeal an agency's failure to act within 30 days to approve either a LEF or *pro bono* services.⁸⁵ An employee files an appeal by emailing or mailing the request to the Director of OGE.⁸⁶ The appeal must be submitted within 60 days of the denial or 90 days of a request on which the agency has not acted.⁸⁷ For anonymous whistleblowers and DAEOs, the initial request will be acted on by OGE staff and any appeal will be considered by the Director.⁸⁸

I. *Recusal Requirement*

The LEF regulation imposes a mandatory recusal requirement for any employee who utilizes subpart J. Specifically, the employee must recuse from particular matters involving specific parties in which the employee knows the trustee or a *pro bono* legal services provider is a party or represents a party from the time the trustee or *pro bono* legal services provider begins providing services until two years after the date they last provided services.⁸⁹ The employee also must recuse from particular matters involving specific parties in which the employee knows a donor who made a donation of \$250 or more in a calendar year is a party or represents a party from the date of the most recent donation by that donor until two years after the donation.⁹⁰

II. **Changes to Subpart B**

The final rule clarifies that payments for legal expenses arising from an employee's past or current official position are given *because of* the employee's official position, and thus are subject to the gift rules in 5 C.F.R. part 2635, subpart B. The final rule provides an example of how the clarification is applied:

A Department of Transportation 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 use this subpart to establish a legal expense fund concerning the Inspector General investigation because the legal matter arose in connection with their official position. However, this subpart [i.e., subpart J] would not apply to the unrelated IRS investigation because that legal matter did not arise in connection with the employee's official position.⁹¹

Previously, payments for employees' legal expenses were considered to be given because of the underlying legal matter, not the employee's status as a federal employee, and thus were not

⁸⁴ *See id.* §§ 2635.1004(g)(4), 1009(d).

⁸⁵ *See id.*

⁸⁶ *See id.* § 2635.1004(g)(4).

⁸⁷ *Id.* §§ 2635.1004(g)(4), 1009(d).

⁸⁸ *Id.* § 2635.1004(g)(4).

⁸⁹ *See id.* § 2635.1002(c)(2).

⁹⁰ *See id.*

⁹¹ *Id.* § 2635.1003 ex. 1.

considered to be given “because of official position.” As long as the legal expense payments were not from prohibited sources, they were not subject to the requirements of subpart B. Going forward, executive branch employees will not be able to rely on this interpretation. Accordingly, any contribution to an LEF trust or provision of *pro bono* services to help pay for or provide legal services for a covered legal matter must either comply with all the requirements of subpart J or conform to a specific subpart B exception.

Consistent with this clarified interpretation, the regulation creates a specific exception to the subpart B gift rule for contributions to LEFs and the provision of *pro bono* services that comply with the requirements of subpart J.⁹² In addition, the regulation creates a subpart B exception for benefits, including legal services, offered to an employee from an established employee organization, as long as the employee is eligible for the benefits under the rules established in the organization’s governance documents.⁹³ This new exception allows employees to accept gifts of legal services offered by unions and other employee organizations and provides another mechanism for lower-level employees to access legal services for legal matters related to their official position.

III. Reporting of Contributions and *Pro Bono* Services on Financial Disclosure Reports

Under the Ethics in Government Act,⁹⁴ public financial disclosure filers are required to report gifts aggregating to more than \$480⁹⁵ received from any one source in the reporting period.⁹⁶ Confidential disclosure filers are subject to a similar requirement under 5 C.F.R. § 2634.907(g). As a result of these requirements, financial disclosure filers must report contributions from a single donor or *pro bono* legal services received from a single legal services provider in excess of \$480 on their financial disclosure reports, in addition to the quarterly reports as discussed above.

In the final rule, OGE has created a new gift reporting exception in 5 C.F.R. § 2634.907(g)(5)(iv) that permits anonymous whistleblowers to exclude otherwise reportable contributions and *pro bono* services from their confidential financial disclosure reports. OGE was not able to create a similar exception for public financial disclosure filers because the gift reporting requirements and the exceptions to those requirements are determined by statute.

IV. Additional Guidance

Over the next few months, OGE plans to issue additional guidance for ethics officials related both to managing the LEF program and the approval of *pro bono* legal services that will include tools to assist in review of LEF documents. OGE also intends to issue guidance for employees to answer questions and to explain how to establish an LEF trust, with some model language for the provisions required by the regulation. Finally, OGE will issue guidance for

⁹² See *id.* § 2635.204(n).

⁹³ See *id.* § 2635.204(c)(2)(iv).

⁹⁴ 5 U.S.C. § 13101 *et. seq.*

⁹⁵ This amount is updated every three years by regulation, and will be updated again in 2026. OGE will issue a Legal Advisory regarding the revised gift reporting thresholds.

⁹⁶ 5 U.S.C. § 13104(a)(2).

trustees regarding their obligations under the regulation and tools for them to get the information they need about contributors.

In addition to the above guidance, OGE will also release an approved form for completing quarterly and termination reports.

V. Questions

Agency ethics officials with questions about the Legal Expense Fund Regulation may contact their OGE Desk Officer.

ATTACHMENT

Legal Expense Fund Regulation Revision Table

Section	Revision
5 C.F.R. § 2634.907(g)	Anonymous whistleblowers are not required to report legal expense fund contributions or the receipt of <i>pro bono</i> legal services on their OGE Form 450.
5 C.F.R. § 2635.203(h)	Adds a definition for legal expense fund.
5 C.F.R. § 2635.203(i)	Adds a definition for <i>pro bono</i> legal services.
5 C.F.R. § 2635.204(c)	Adds an exception for gifts from an established employee organization.
5 C.F.R. § 2635.204(n)	Adds an exception for legal expense funds established under subpart J and <i>pro bono</i> legal services accepted pursuant to the requirements of subpart J.
Subpart J of 5 C.F.R. part 2635	Establishment and operation of legal expense funds and acceptance for <i>pro bono</i> legal services for legal actions that arise in connection with an employee's past or current official position, prior position on a campaign, or prior position on a Presidential Transition Team.