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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2635

RIN 3209-AA50

Notice and Request for Comments: Legal Expense Fund Regulation

AGENCY: Office of Government Ethics (OGE).

ACTION: Advance notice of proposed rulemaking and notice of public hearing.

SUMMARY: The U.S. Office of Government Ethics invites comments on this advance notice of proposed rulemaking (ANPRM) for consideration in developing a legal expense fund regulation.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Email: usoge@oge.gov; Fax: (202) 482-9237; Mail/Hand Delivery/Courier: Office of Government Ethics, Suite 500, 1201 New York Avenue, NW, Washington, DC 20005-3917.

FOR FURTHER INFORMATION CONTACT: Rachel McRae, Associate Counsel, General Counsel and Legal Policy Division, Office of Government Ethics, Suite 500, 1201 New York Avenue NW, Washington, DC 20005-3917; Telephone: (202) 482-9300; TTY: (800) 877-8339; FAX: (202) 482-9237.

SUPPLEMENTARY INFORMATION: There is currently no statutory or regulatory framework in the executive branch for establishing a legal expense fund, and the U.S. Office of Government Ethics (OGE) has not approved or disapproved any specific legal expense funds. In the legislative branch, legal expense funds are governed by House and Senate legal expense fund

regulations. See House Committee on Ethics, “Contributions to a Legal Expense Fund,” U.S. House of Representatives, <http://ethics.house.gov/contributions-legal-expense-fund>; and Senate Select Committee on Ethics, Senate Ethics Manual, Government Printing Office, 2003, <https://www.ethics.senate.gov/downloads/pdffiles/manual.pdf>, pages 30-31. OGE’s role has been limited to providing guidance to help ensure that executive branch employees who may receive distributions from a legal expense fund will be in compliance with the ethics laws and rules if they accept such a distribution. See OGE Legal Advisory LA-17-10 (2017). However, this limited approach to legal expense funds does not fully address potential appearance concerns with the creation and operation of legal expense funds for the benefit of executive branch employees.

Accordingly, OGE is seeking stakeholder input through this advance notice of proposed rulemaking, to request input on issues specifically related to legal expense funds, including, but not limited to, the following topics:

1. Donors and donations to legal expense funds. For example:
 - a. Should there be limitations on the types of donors to legal expense funds? If so, what should those limitations be? Why?
 - b. Should there be contribution limits to legal expense funds? If so, what should that amount be? Why?
 - c. Should donations of *pro bono* legal services to legal expense funds be permitted? Why or why not? Should employees be allowed to accept *pro bono* services outside of a legal expense fund? Why or why not?
2. Beneficiaries of and use of funds from legal expense funds. For example:

- a. Should there be limits on the permissible beneficiaries? If so, what should those limits be and why?
 - b. Should there be limits on the number of eligible beneficiaries for a legal expense fund? Why or why not?
 - c. What limits, if any, should there be on permissible uses of donated funds?
3. Transparency of legal expense funds. For example:
- a. Should the document establishing the legal expense fund be required to be publicly disclosed? Why or why not?
 - b. Should contributions be subject to reporting requirements? If so, should there be a threshold amount for disclosure? What type of information should be disclosed and what should the requirements for disclosure be? Why?
 - c. Should any disclosure information be made publicly available? If disclosure information is made publicly available, how and where should the information be disclosed?
4. Establishment, management, and termination of legal expense funds. For example:
- a. Should legal expense funds be the exclusive mechanism for employees to receive contributions toward legal assistance? Why or why not?
 - b. What types of requirements should be imposed on legal expense fund trustees or managers, if any?
 - c. Should there be any restrictions on the legal structure used to establish a legal expense fund (*e.g.*, trust, limited liability company, etc.)? Why or why not?
 - d. What entities, if any, should have oversight authority over legal expense funds? Why?

- e. Should there be limitations on solicitation of donations to a legal expense fund? If so, what limitations should be placed on solicitations and why?
- f. What, if any, requirements should there be concerning how legal expense funds can be terminated? Why?
- g. Should existing legal expense funds be required to conform to new regulations? Why or why not?

OGE invites input from all interested members of the public and encourages commenters to provide explanations and support for their answers or preferred policy positions.

Submit a Written Comment

To submit a written comment to OGE regarding this advance notice of proposed rulemaking, please email usoge@oge.gov, send a fax to: (202) 482-9237, or submit a paper copy to: Office of Government Ethics, Suite 500, 1201 New York Avenue, NW, Washington, DC 20005-3917. Individuals must include OGE's agency name and the words "Legal Expense Fund Regulation" in all written comments. All written comments, including attachments and other supporting materials, will become part of the public record and be subject to public disclosure. Written comments may be posted on OGE's website, www.oge.gov. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

Written comments generally will not be edited to remove any identifying or contact information.

Virtual Public Hearing

In addition to accepting written comments, OGE will hold a virtual public hearing on May 22, 2019 from 1:00 p.m to 4:00 p.m. EST. Individuals who would like to present comments at the public hearing must register by sending an email to usoge@oge.gov. Registration will be accepted until May 17, 2019. The email should include "Legal Expense Fund Hearing" in the

subject line and include the name of the presenter along with the general topic(s) the individual would like to address. OGE will make scheduling determinations on a first-come, first-served basis based on the time and date the email was received. Each participant will be limited to five minutes, and OGE will notify registrants of the time slot reserved for them. An individual may make only one presentation at the public hearing. OGE reserves the right to reject the registration of an entity or individual that is affiliated with an entity or individual that is already scheduled to present comments, and to select among registrants to ensure that a broad range of entities and individuals is allowed to present. Participation in the virtual public hearing does not preclude any entity or individual from submitting a written comment.

Registration is also required to listen to the the public hearing. Please email usoge@oge.gov to receive the call-in number. Registration will be accepted until May 17, 2019. The virtual public hearing also will be recorded and a transcript of the hearing will be posted on OGE's website, www.oge.gov.

Approved: April 10, 2019.

Emory Rounds

Director, U.S. Office of Government Ethics.

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