



OFFICE OF GOVERNMENT ETHICS

Privacy Act of 1974; System Records

AGENCY: Office of Government Ethics.

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, the Office of Government Ethics (OGE) proposes to establish a new Governmentwide system of records covering executive branch legal expense fund trust documents, reports, and other name-retrieved legal expense fund records.

DATES: This system of records will be effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], subject to a 30-day period in which to comment on the routine uses, described below. Please submit any comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES:

Email: Comments may be submitted to OGE by email to usoge@oge.gov.

(Include reference to “OGE/GOVT-3 comment” in the subject line of the message.)

Mail, Hand Delivery/Courier: Office of Government Ethics, 1201 New York Avenue NW, Suite 500, Attention: Jennifer Matis, Associate Counsel, Washington, DC 20005-3917.

Comments may be posted on OGE’s website, <https://www.oge.gov>. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Jennifer Matis, Associate Counsel, at the U.S. Office of Government Ethics; telephone: 202-482-9216; TTY: 800-877-8339; Email: jmatis@oge.gov.

SUPPLEMENTARY INFORMATION:

OGE is concurrently adding a new subpart J to the Standards of Ethical Conduct for Executive Branch Employees at 5 CFR part 2635. See 87 FR 23769 (Apr. 21, 2022). The new subpart J contains the standards for an employee's acceptance of payments for legal expenses through a legal expense fund for a matter arising in connection with the employee's official position, the employee's prior position on a campaign, or the employee's prior position on a Presidential Transition Team.

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, this document provides public notice that OGE is creating a new Governmentwide system of records to cover records collected, generated, maintained, and disclosed under OGE's legal expense fund (LEF) regulation published at 5 CFR part 2635, subpart J. A Governmentwide system of records is a system of records where one agency (in this case, OGE) has regulatory authority over records in the custody of multiple agencies and the agency with regulatory authority publishes a system of records notice that applies to all of the records regardless of their custodial location.

This system of records covers the information required to be collected, generated, maintained, and disclosed by executive branch agencies pursuant to the new subpart J, including information from current Federal employees establishing, maintaining, and terminating legal expense funds, and information from legal expense fund trustees, donors, and payees. The system of records also permits agencies and OGE to share legal expense fund information with each other as necessary to administer the provisions of the regulation, and permits the posting of such information on OGE's website as required by the regulation.

The LEF regulation requires that employees who wish to establish a legal expense fund do so through a trust with a single, named employee beneficiary and a trustee. It also requires an employee beneficiary to file quarterly reports that include information

regarding members of the public who contribute payments for legal expenses (donors) and members of the public who receive payments from a legal expense fund (payees), as well as termination reports upon the termination of the trust and/or executive branch employment. The trust documents, quarterly reports, and termination reports will be posted directly on OGE's website in accordance with 5 CFR 2635.1007(g). These trust documents and reports are generally first submitted to the Designated Agency Ethics Officials (DAEO) at the beneficiary's employing agency but transmitted to OGE for posting. However, the regulation permits anonymous whistleblowers to choose to submit their trust document and reports directly to OGE. DAEOs who create a LEF will also submit their trust document and reports directly to OGE.

This system of records also covers information collected or generated by executive branch agencies in the course of administering the LEF regulation, including information necessary to track and review LEF trust documents, quarterly reports, and termination reports, and information relevant to conflict-of-interest determinations.

SYSTEM NAME AND NUMBER:

OGE/GOVT-3, OGE Legal Expense Fund Trust Documents, Reports, and Other Name-Retrieved Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Government Ethics, 1201 New York Avenue, NW, Suite 500, Washington, DC 20005-3917, and designated agency ethics offices.

SYSTEM MANAGER(S):

- a) For records filed directly with the Office of Government Ethics by non-OGE employees: General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW, Washington, DC 20005-3917.

- b) For records filed with a Designated Agency Ethics Officials (DAEO) at the agency where the employee beneficiary is employed: The DAEO at the department or agency concerned.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title IV of the Ethics in Government Act of 1978, 5 U.S.C. 13101 et seq.; sections 201(a) and 403 of Executive Order 12674 (as modified by E.O. 12731); 5 U.S.C. 7301, 7351(c), and 7353(b)(1); 5 CFR part 2635, subpart J.

PURPOSE(S) OF THE SYSTEM:

The purpose of the system is to collect, generate, maintain, and disclose the information necessary to administer the provisions of the OGE legal expense fund (LEF) regulation at 5 CFR part 2635, subpart J. This includes, but is not limited to, obtaining information relevant to a conflict-of-interest determination and disclosing information on the OGE website pursuant to the regulation. It contains information from executive branch employees establishing legal expense funds as well as information regarding legal expense fund trustees, donors, and payees. It also contains related information collected or generated by OGE or other agencies in the process of collecting, reviewing, tracking, maintaining, and disclosing legal expense fund records. The system of records also permits agencies and OGE to share legal expense fund information with each other as necessary to administer the provisions of the regulation and permits the posting of such information on OGE's website as required by the regulation.

Although all beneficiaries must be current executive branch employees at the time the legal expense fund is created, information may be collected or remain in the system of records after the employee beneficiary has left employment with the executive branch.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system of records contains records about executive branch employees who seek to create a legal expense fund, pursuant to 5 CFR part 2635, subpart J, for the

purpose of accepting donations and disbursing payments for legal expenses for a 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. Information may be collected or remain in the system of records after the employee beneficiary has left employment with the executive branch. This system also contains records about members of the public who contribute payments for legal expenses (donors), members of the public who receive payments from a legal expense fund (payees), and members of the public who serve as a beneficiary's trustee or representative in establishing and maintaining a legal expense fund.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains all information or material, retrieved by name or other personal identifier, which is created or received by OGE or other agencies in the course of administering the legal expense fund provisions of the regulation at 5 CFR part 2635, subpart J. The system of records also contains records generated by agencies in the course of administering the legal expense fund provisions of 5 CFR part 2635, subpart J. The categories of records include, but are not limited to, the following:

- legal expense fund trust documents;
- quarterly reports;
- trust termination reports;
- employment termination reports;
- names and contact information of beneficiaries, beneficiary representatives, donors, and trustees; and
- tracking information and deliberative notes generated by the review of legal expense fund trust documents submitted for approval, quarterly reports, trust termination reports, and employment termination reports.

The data elements contained on these records include, but are not limited to, names, city and state of donor, employment information, information about contribution amounts, information about fund payments to service providers, and information about the purpose for which the legal expense fund was created. None of the records in the system of records shall contain Social Security numbers.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

- a. The beneficiary of the legal expense fund and the legal expense fund's trustee or representative;
- b. Donors who contribute to the legal expense fund for the payment of legal expenses;
- c. Payees who receive payments distributed from a legal expense fund; and
- d. Executive branch employees, such as agency ethics officials and OGE employees, who generate information and documents related to legal expense funds in the system in the course of their official duties.

As stated in the preamble to the proposed rule, OGE will create a form to collect information for the quarterly reports, trust termination reports, and employment termination reports. OGE will provide beneficiaries and trustees with a template for collecting information from donors and payees, as well as guidance on drafting trust documents. Together, this information collection is titled "OGE Legal Expense Fund Information Collection" and is subject to Paperwork Reduction Act approval by the Office of Management and Budget.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and the information contained therein may be used:

- a. To disclose information to authorized officials of OGE or the beneficiary's employing agency in accordance with the Ethics in Government Act of 1978, 5 U.S.C. 13101 et seq., 5 CFR part 2635, subpart J, and other ethics-related laws, Executive orders, and regulations conferring pertinent authority on OGE.
- b. To disclose information to the beneficiary's designated trustee or representative as necessary for the administration of the provisions of 5 CFR part 2635, subpart J.
- c. To disclose on the OGE website legal expense fund trust documents, quarterly reports, and termination reports submitted to an agency pursuant to 5 CFR part 2635, subpart J.
- d. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.
- e. To disclose information to any source when necessary to obtain information relevant to a conflict-of-interest investigation or determination.
- f. To disclose information to the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.
- g. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.
- h. To disclose information when the disclosing agency determines that the records are arguably relevant and necessary to a proceeding before a court,

grand jury, or administrative or adjudicative body; or in a proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant and necessary to the proceeding.

- i. To disclose information to a Member of Congress or a congressional office in response to an inquiry made on behalf of, and at the request of, an individual who is the subject of the record.
- j. To disclose information to contractors, grantees, experts, consultants, detailees, and other non-Government employees performing or working on a contract, service, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.
- k. To disclose information to such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.
- l. To disclose information to appropriate agencies, entities, and persons when:
 - (1) the agency maintaining the records suspects or has confirmed that there has been a breach of the system of records; (2) the agency maintaining the records has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the agency (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the agency's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.
- m. To disclose information to another Federal agency or Federal entity, when the agency maintaining the record determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing,

or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

These records are maintained in electronic form, whenever possible. Records may be maintained in hardcopy form if necessary, as long as they are maintained in secured file cabinets to which only authorized personnel have access.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The data will be retrieved by the names of all of the individuals identified in the “Categories of Individuals Covered by the System” section, as well as by other data points such as agency name, type of document, quarter and year, and/or report type. Beneficiaries, trustees, representatives, donors, and payees will all be provided with notices in accordance with 5 U.S.C. 552a(e)(3).

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

OGE records dispositions are pending. Related records will be maintained as permanent as required by the National Archives and Records Administration (NARA) until NARA has approved the retention and disposition schedule related to records for 5 CFR part 2635, subpart J.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records should be maintained and managed electronically whenever possible. Hardcopy records are maintained in secured file cabinets to which only authorized personnel have access. OGE maintains electronic records on the OGE network, including in OGE internal applications. They are protected from unauthorized access through password identification procedures, multifactor authentication, limited access, firewalls,

and other system-based protection methods. Access to the systems is controlled based on user roles and responsibilities. Other executive branch agencies are responsible for properly safeguarding the records maintained in their systems using equivalent safeguards.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the appropriate office as shown in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Department or agency and component with which employed, if applicable.
- c. Date the legal expense fund was established, if applicable.
- d. A reasonably specific description of the record content being sought.

Individuals requesting access to records maintained at OGE must also follow OGE's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 2606). In addition, individuals seeking access to records filed with the DAEO at the agency where the employee beneficiary is employed must follow that agency's regulations regarding verification of identity and access to records.

CONTESTING RECORD PROCEDURES:

Because the information in these records is updated on a periodic basis, most record corrections can be handled through internal agency procedures for updating the records without the need for a formal request to amend pursuant to the Privacy Act. However, individuals can obtain information on the procedures for contesting the records under the provisions of the Privacy Act by contacting the appropriate office shown in the Notification Procedure section.

Individuals requesting records corrections of records maintained at OGE must

also follow OGE's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 2606). In addition, individuals requesting corrections to records filed with the DAEO at the agency where the employee beneficiary is employed must follow that agency's regulations regarding verification of identity and access to records.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about them should contact, as appropriate:

- a. For records filed directly with OGE, contact the General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW, Washington, DC 20005-3917; and
- b. For records filed with the DAEO where the employee beneficiary is employed, contact the DAEO at the department or agency concerned.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Approved: May 10, 2023.

Emory Rounds,

Director, U.S. Office of Government Ethics.