

### Summary of Responses to Information Request

As summarized below, documents are being provided in response to your letter dated April 2, 2018, requesting that the Office of Government Ethics (OGE) produce certain documents regarding the Patriot Legal Expense Fund Trust, LLC (the Fund). Documents are grouped by request number and, to reduce duplication, are only provided once even if responsive to more than one request. The following generally describes the documents OGE has provided in response to each specific document request:

**Request No. 1:**        **all documents and communications between OGE and Wiley Rein, LLP referring or relating to the Patriot Expense Fund Trust;**

Response No. 1:     OGE has provided copies of emails and other documents reflecting communications between OGE and Wiley Rein, LLP concerning the Fund (see Documents Produced in Response to Request No. 1).

**Request No. 2:**        **all documents and communications between OGE and the Trump Campaign referring or relating to the Patriot Expense Fund Trust;**

Response No. 2:     OGE has no responsive documents.

**Request No. 3:**        **all documents and communications between OGE and any White House employee referring or relating to the Patriot Expense Fund Trust;**

Response No. 3:     OGE has provided copies of email communications that included a White House employee (see Documents Produced in Response to Request No. 1).

**Request No. 4:**        **all documents and communications between OGE and the Federal Election Commission regarding the provision in the Fund agreement that allows distributions to the Trump Campaign;**

Response No. 4:     OGE has no responsive documents.

**Request No. 5:**        **all documents and communications referring or relating to OGE's decision either to recommend or not to recommend that Wiley Rein follow OGE guidance or OGE's template for legal trust funds;**

Response No. 5:     OGE has provided copies of emails reflecting conversations between OGE and Wiley Rein, LLP referring them to the OGE template for legal defense trust funds (see Documents Produced in Response to Request No. 5 and Documents Produced in Response to Request No. 1).

**Request No. 6:** all documents and communications referring or relating to any concerns raised by OGE staff or others about differences in the draft agreement and OGE's guidance on legal trust funds or OGE's template for legal trust funds including the treatment of prohibited sources and the failure to clarify that a donation would be prohibited if the donor verbally communicated that a donation would be made because of an official's position;

Response No. 6: OGE has no responsive documents beyond those provided in response to Request No. 1, including the Final Draft of the Fund Agreement.

**Request No. 7:** all documents and communications to show how OGE was able to complete its review of the draft agreement for the Patriot Expense Fund Trust in 31 minutes;

Response No. 7: OGE had ongoing discussions about a potential legal defense fund and reviewed earlier draft documents prior to reviewing a draft agreement for the Patriot Expense Fund Trust on January 29, 2018 (see OGE Agency Information Management System (AIMS) entry provided in Response to Request No. 1).

**Request No. 8:** all documents and communications referring or relating to whether the Manager for the Patriot Expense Fund Trust is required to consult with ethics officials to ensure that any federal employee beneficiaries do not receive funds from a prohibited source;

Response No. 8: OGE provided guidance on the issue of prohibited sources (see OGE Agency Information Management System (AIMS) entry provided in Response to Request No. 1).

**Request No. 9:** documents sufficient to show whether the Patriot Expense Fund Trust is required or was advised to have a deadline for dissolving the Fund and returning its assets to donors or donating them to charities;

Response No. 9: OGE has no responsive documents beyond those provided in response to Request No. 1, including the Final Draft of the Fund Agreement.

**Request No. 10:** all documents and communications referring or relating to protections in place to ensure that distributions from the Patriot Expense Fund Trust are not made based on whether an individual will testify favorably for President Trump or the Administration; and

Response No. 10: OGE has no responsive documents beyond those provided in response to Request No. 1, including the Final Draft of the Fund Agreement.

**Request No. 11:** all documents and communications referring or relating to whether the Patriot Expense Fund Trust is prohibited from making distributions from prohibited sources to federal employees, including White House staff and whether the structure of the fund could allow such a distribution.

Response No. 11: OGE has no responsive documents beyond those provided in response to Request No. 1, including the Final Draft of the Fund Agreement.

## INDEX OF DOCUMENTS PROVIDED

### Description of Document

#### **RESPONSE TO REQUEST NO. 1**

Summary of Communications between OGE and Wiley Rein relating to the Patriot Expense Fund Trust dated December 21, 2017

Email dated December 28, 2017 from Dowell to Walker

Summary of Communications between OGE and Wiley Rein relating to the Patriot Expense Fund Trust dated December 28, 2017

Email dated January 2, 2018 from Jaffe to Walker

Email dated January 2, 2018 from Kistner to Jaffe and others

Summary of Communications between OGE and Wiley Rein relating to the Patriot Expense Fund Trust dated January 3, 2018

Email dated January 5, 2018 from Walker to Jaffe

Summary of Communications between OGE and Wiley Rein relating to the Patriot Expense Fund Trust dated January 5, 2018

Email dated January 10, 2018 from Jaffe to Apol and Dowell

Undated Calendar Appointment from Apol to Dowell

Email dated January 10, 2018 from Walker to Dowell

Email dated January 10, 2018 from Benton to Jaffe

Email dated January 10, 2018 from Jaffe to Dowell and Apol

Email dated January 11, 2018 from Jaffe to Apol and Dowell

Email dated January 11, 2018 from Walker to Apol and others

Email dated January 11, 2018 from Brooks to Toner and others

Summary of Communications between OGE and Wiley Rein relating to the Patriot Expense Fund Trust dated January 11, 2018

Email dated January 23, 2018 from Walker to Jaffe and others



## **Description of Document**

Summary of Communications between OGE and Wiley Rein relating to the Patriot Expense Fund Trust dated January 23, 2018

Email dated January 24, 2018 from Jaffe to Walker

Summary of Communications between OGE and Wiley Rein relating to the Patriot Expense Fund Trust dated January 25, 2018

Summary of Communications between OGE and Wiley Rein relating to the Patriot Expense Fund Trust dated January 26, 2018

Email dated January 29, 2018 from Walker to Jaffe

Email dated January 29, 2018 from Jaffe to Walker, Benton and Toner

Email dated January 29, 2018 from Jaffe to Dowell

Email dated January 29, 2018 from Jaffe to Dowell

Email dated January 29, 2018 from Dowell to Jaffe

Summary of Communications between OGE and Wiley Rein relating to the Patriot Expense Fund Trust dated January 29, 2018

Summary of Communications between OGE and Wiley Rein relating to the Patriot Expense Fund Trust dated February 15-16, 2018

Agency Information Management System (AIMS) Entry

(Draft) Letter dated January 29, 2018 to Robert L. Walker from David Apol, Acting Director and General Counsel, OGE

(Signed) Letter dated January 29, 2018 to Robert L. Walker from David Apol, Acting Director and General Counsel, OGE

Draft of Patriot Legal Expense Fund Trust Agreement, dated January 29, 2018

Email dated January 30, 2018 from Jaffe to Horton

Statement on Legal Defense Fund Trust

Draft – For Verbal Quotes

**Description of Document**

**RESPONSE TO REQUEST NO. 5**

Email dated October 23, 2017, from Jaffe to Walker

Draft Template of Legal Defense Fund Trust

Email dated October 23, 2017 from Walker to Jaffe

RESPONSE TO REQUEST NO.1

**December 21, 2017**

Law firm provided draft screening questions for potential LDF donors for our review. We reviewed the documents and told the law firm that we did not notice anything objectionable or contrary to law. We provided technical assistance to help ensure that any donations made by prohibited sources, lobbyists or lobbying organizations, other government employees, foreign government or agent of a foreign government, etc., would not be directed to government employee eligible recipients. We reiterated that not every question they included would be required. We noted that we could not confirm that implementing the screening questionnaire, absent appropriate verification procedures, would ensure compliance with the ethics rules. This would depend on the LDF terms, which we have not reviewed. We strongly recommended including article 7, #5 and 6, of the Model LDF Trust Agreement to their LDF terms (trustee duty to confer with agency DAEO as needed to seek a determination as to whether the contribution is from a prohibited source, and to confer with OGE where appropriate). We asked them to consider a "don't know" box and/or an explanation box to each answer choice. We noted the importance of transparency as to the donors and the payments, but asked them to consider which pieces of personal information, like private cell phone number and emails, would be disclosed and to provide potential donors notice of disclosure. Provided additional technical assistance. The draft questions and cover letter were returned to law firm upon OGE Records Officer's approval. Law firm also asked about the respective roles of the White House and OGE in determining whether the RNC is a prohibited source. We reminded them of the status, consistent with AIMS entry 13489 and the Acting Director's 10/6/17 email to Stefan Passantino: Although OGE normally defers to agencies on prohibited source determinations, OGE considers the RNC to be a prohibited source for White House employees pursuant to 5 CFR 2635.203(d).



**From:** [Rachel K. Dowell](#)  
**To:** [Walker, Robert](#)  
**Cc:** [Seth Jaffe](#)  
**Subject:** RE: Checking on availability this week  
**Date:** Thursday, December 28, 2017 11:40:28 AM

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Good morning,

I'm also in the office today and will be teleworking tomorrow until noon.

Thank you,  
Rachel

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**From:** Seth Jaffe  
**Sent:** Wednesday, December 27, 2017 2:30 PM  
**To:** Walker, Robert; Rachel K. Dowell  
**Cc:** David J. Apol; Rachel K. Dowell  
**Subject:** Re: Checking on availability this week

Robert,

I will be in the office tomorrow.

Thanks,  
Seth

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

**From:** "Walker, Robert" <[RL.Walker@wileyrein.com](mailto:RL.Walker@wileyrein.com)>  
**Date:** 12/27/17 12:48 PM (GMT-05:00)  
**To:** Seth Jaffe <[sjaffe@oge.gov](mailto:sjaffe@oge.gov)>, "Rachel K. Dowell" <[rkdowell@oge.gov](mailto:rkdowell@oge.gov)>  
**Cc:** "David J. Apol" <[djapol@oge.gov](mailto:djapol@oge.gov)>  
**Subject:** Checking on availability this week

Seth and Rachel –

I know David is out this week, and I believe neither of you is in today, but could you remind me of your availability in the office this week?

Thanks.

Rob Walker

Robert L. Walker | Attorney at Law  
**Wiley Rein LLP**  
1776 K Street NW | Washington, DC 20006

T: 202.719.7585 | M: (b) (6) | [rlwalker@wileyrein.com](mailto:rlwalker@wileyrein.com)  
[www.wileyrein.com](http://www.wileyrein.com) | [Bio](#) | [LinkedIn](#) | [Twitter](#)

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Summary of Communications between OGE and Wiley Rein relating to the Patriot Expense Fund Trust

**December 28, 2017**

Law firm provided the initial draft legal defense fund for our review. We had a brief discussion about the draft concerning the potential manager and members. We did not provide feedback at this time.

**From:** [Seth Jaffe](#)  
**To:** ["Walker, Robert"](#)  
**Cc:** [David J. Apol](#); [Rachel K. Dowell](#)  
**Subject:** RE: Checking in  
**Date:** Tuesday, January 02, 2018 4:12:41 PM

---

Rob,

Thanks – speak with you then.

Seth

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**From:** Walker, Robert [<mailto:RLWalker@wileyrein.com>]  
**Sent:** Tuesday, January 02, 2018 4:05 PM  
**To:** Seth Jaffe  
**Cc:** David J. Apol; Rachel K. Dowell  
**Subject:** RE: Checking in

Seth –

3 PM tomorrow works for us. We will send around call information.

Thanks.

Rob

---

**From:** Seth Jaffe [<mailto:sjaffe@oge.gov>]  
**Sent:** Tuesday, January 2, 2018 3:53 PM  
**To:** Walker, Robert <[RLWalker@wileyrein.com](mailto:RLWalker@wileyrein.com)>  
**Cc:** David J. Apol <[djapol@oge.gov](mailto:djapol@oge.gov)>; Rachel K. Dowell <[rkdowell@oge.gov](mailto:rkdowell@oge.gov)>  
**Subject:** RE: Checking in

Rob,

Would you be available for a call tomorrow (i.e. Wednesday) afternoon at either 1:00pm or 3:00pm?

Thanks,  
Seth

Seth H. Jaffe  
Chief, Ethics Law & Policy Branch  
U.S. Office of Government Ethics  
(202) 482-9303

---



**From:** Walker, Robert [mailto:RLWalker@wileyrein.com]  
**Sent:** Thursday, December 28, 2017 12:31 PM  
**To:** Seth Jaffe; Rachel K. Dowell  
**Subject:** Checking in

Seth and Rachel –

What would be a good time for me to come by this afternoon? I am hoping for just a minute or two to speak with one or both of you.

Rob Walker

Robert L. Walker | Attorney at Law

**Wiley Rein LLP**

1776 K Street NW | Washington, DC 20006

T: 202.719.7585 | M: (b) (6) rlwalker@wileyrein.com

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**From:** [Kistner, Shauna](#)  
**To:** [Seth Jaffe](#); [David J. Apol](#); [Rachel K. Dowell](#)  
**Cc:** [Walker, Robert](#)  
**Subject:** RE: Checking in  
**Date:** Tuesday, January 02, 2018 5:45:52 PM

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Good evening--

For the below mentioned conference call with Wiley Rein LLP, please use the following information:

Conference Line: (b)(6) - conference bridge access code

If you have questions or experience difficulty connecting, please contact me directly so that I can assist you.

Shauna Kistner | Special Assistant  
**Wiley Rein LLP**  
1776 K Street NW | Washington, DC 20006  
T: (b)(6) (b)(6)  
[www.wileyrein.com](http://www.wileyrein.com) | [LinkedIn](#) | [Twitter](#)

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**From:** Walker, Robert  
**Sent:** Tuesday, January 2, 2018 4:04 PM  
**To:** Kistner, Shauna (b)(6)  
**Subject:** FW: Checking in

Shauna --

Could you send out call/dial-in information for the call to the OGE folks in the email below? On our side it will be: me, Robert Benton, Louisa, Tom Antonucci, and Brandi (if she will be back).

Thanks.

Rob

---

**From:** Seth Jaffe [<mailto:sjaffe@oge.gov>]  
**Sent:** Tuesday, January 2, 2018 3:53 PM  
**To:** Walker, Robert <[RLWalker@wileyrein.com](mailto:RLWalker@wileyrein.com)>  
**Cc:** David J. Apol <[djapol@oge.gov](mailto:djapol@oge.gov)>; Rachel K. Dowell <[rkdowell@oge.gov](mailto:rkdowell@oge.gov)>  
**Subject:** RE: Checking in

Rob,

Would you be available for a call tomorrow (i.e. Wednesday) afternoon at either 1:00pm or 3:00pm?

Thanks,  
Seth

Seth H. Jaffe  
Chief, Ethics Law & Policy Branch  
U.S. Office of Government Ethics  
(202) 482-9303

---

**From:** Walker, Robert [<mailto:RLWalker@wileyrein.com>]  
**Sent:** Thursday, December 28, 2017 12:31 PM  
**To:** Seth Jaffe; Rachel K. Dowell  
**Subject:** Checking in

Seth and Rachel –

What would be a good time for me to come by this afternoon? I am hoping for just a minute or two to speak with one or both of you.

Rob Walker

Robert L. Walker | Attorney at Law  
**Wiley Rein LLP**  
1776 K Street NW | Washington, DC 20006  
T: 202.719.7585 | M: (b) (6) [rlwalker@wileyrein.com](mailto:rlwalker@wileyrein.com)  
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## Summary of Communications between OGE and Wiley Rein relating to the Patriot Expense Fund Trust

### **January 3, 2018**

Call to discuss draft legal defense fund. This call focused on our concerns over the potential manager and members relating to appearance concerns about the potential manager and members' independence. During the call we also addressed additional restrictions on who may eligible recipients of the fund. Finally, we indicated that we could provide technical assistance on other ethics provisions of the draft fund after conducting a more complete review of the draft.

**From:** Walker, Robert  
**To:** Seth Jaffe  
**Cc:** David J. Apol; Rachel K. Dowell  
**Subject:** RE: 4 PM call  
**Date:** Friday, January 05, 2018 3:53:59 PM

---

OK. Same numbers as last time.

**From:** Seth Jaffe [mailto:sjaffe@oge.gov]  
**Sent:** Friday, January 5, 2018 3:52 PM  
**To:** Walker, Robert <RLWalker@wileyrein.com>  
**Cc:** David J. Apol <djapol@oge.gov>; Rachel K. Dowell <rkdowell@oge.gov>  
**Subject:** RE: 4 PM call

Yes, we are.

---

**From:** Walker, Robert [mailto:RLWalker@wileyrein.com]  
**Sent:** Friday, January 05, 2018 3:26 PM  
**To:** David J. Apol; Seth Jaffe; Rachel K. Dowell  
**Cc:** Benton, Robert  
**Subject:** 4 PM call

Dave, Seth, and Rachel –

Are we still on for a call at 4PM?

Rob

Robert L. Walker | Attorney at Law  
**Wiley Rein LLP**  
1776 K Street NW | Washington, DC 20006  
T: 202.719.7585 | M: (b) (6) | [rlwalker@wileyrein.com](mailto:rlwalker@wileyrein.com)  
[www.wileyrein.com](http://www.wileyrein.com) | [Bio](#) | [LinkedIn](#) | [Twitter](#)

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Summary of Communications between OGE and Wiley Rein relating to the Patriot Expense Fund Trust

**January 5, 2018**

On this call, we continued discussions about the potential manager and members and shared appearance concerns about the potential manager and members' independence. In addition, we expressed concerns regarding the responsibilities of the manager and members. We also provided other technical assistance, including discussions of the public financial disclosure reporting requirements for government eligible recipients, the disposition of unused funds, limitations on the investment of funds prior to distribution, and additional requirements for screening potential donors. The draft was returned to the law firm, as it was not an OGE record.



**From:** Seth Jaffe  
**To:** David J. Apol; Rachel K. Dowell  
**Subject:** Re: Call tomorrow afternoon?  
**Date:** Wednesday, January 10, 2018 5:20:58 PM

---

Dave,

I can do a call at 3:00pm if that works for you and Rachel. I would just need the call in number again.

Thanks,  
Seth

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

**From:** "David J. Apol" <djapol@oge.gov>  
**Date:** 1/10/18 3:43 PM (GMT-05:00)  
**To:** Seth Jaffe <sjaffe@oge.gov>, "Rachel K. Dowell" <rkdowell@oge.gov>  
**Subject:** FW: Call tomorrow afternoon?

Is there a good time for you to call in tomorrow afternoon Seth?

---

**From:** Walker, Robert [mailto:RLWalker@wileyrein.com]  
**Sent:** Wednesday, January 10, 2018 2:36 PM  
**To:** David J. Apol  
**Cc:** Benton, Robert  
**Subject:** Call tomorrow afternoon?

Dave –

Can you and your team do a conference call tomorrow afternoon at 3 or later with Stefan Passantino and with the Wiley Rein team?

As a much less preferred alternative, we understand that there is a dedicated slot at 11:30 on Friday for a call between you and Stefan, so the conference call could be scheduled then if you are OK with that. However, we would greatly prefer to do the call ASAP, that is, tomorrow afternoon.

Let me know your availability.

Thanks.

Rob

Robert L. Walker | Attorney at Law  
**Wiley Rein LLP**

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**From:** [David J. Apol](#)  
**To:** [Rachel K. Dowell](#)  
**Subject:** Accepted: Call re: gift issues

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**From:** [Walker, Robert](#)  
**To:** [Rachel K. Dowell](#)  
**Cc:** [Benton, Robert](#); [David J. Apol](#); [Seth Jaffe](#)  
**Subject:** RE: Call tomorrow afternoon?  
**Date:** Wednesday, January 10, 2018 5:50:26 PM

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Yes. Same call-in information.

Thanks.

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**From:** Rachel K. Dowell [mailto:[rkdowell@oge.gov](mailto:rkdowell@oge.gov)]  
**Sent:** Wednesday, January 10, 2018 5:47 PM  
**To:** Walker, Robert <[RLWalker@wileyrein.com](mailto:RLWalker@wileyrein.com)>  
**Cc:** Benton, Robert <[RBenton@wileyrein.com](mailto:RBenton@wileyrein.com)>; David J. Apol <[djapol@oge.gov](mailto:djapol@oge.gov)>; Seth Jaffe <[sjaffe@oge.gov](mailto:sjaffe@oge.gov)>  
**Subject:** RE: Call tomorrow afternoon?

Good evening,

We are available tomorrow at 3:00pm for a conference call. Is the call-in information the same?

(b)(6) - Conference bridge access code

Thank you,  
Rachel

---

**From:** Seth Jaffe  
**Sent:** Wednesday, January 10, 2018 5:24 PM  
**To:** Walker, Robert; David J. Apol; Rachel K. Dowell  
**Cc:** Benton, Robert  
**Subject:** Re: Call tomorrow afternoon?

Dear folks,

I am out of the office in South Carolina teaching a class, but I can make a call at 3:00pm if that works for everybody. If it does, I guess that I just need to be reminded of the call in number and password.

Thanks,  
Seth

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: "Walker, Robert" <[RLWalker@wileyrein.com](mailto:RLWalker@wileyrein.com)>  
Date: 1/10/18 4:53 PM (GMT-05:00)  
To: "David J. Apol" <[djapol@oge.gov](mailto:djapol@oge.gov)>, Seth Jaffe <[sjaffe@oge.gov](mailto:sjaffe@oge.gov)>, "Rachel K. Dowell"

<[rkdownell@oge.gov](mailto:rkdownell@oge.gov)>  
Cc: "Benton, Robert" <[RBenton@wileyrein.com](mailto:RBenton@wileyrein.com)>  
Subject: RE: Call tomorrow afternoon?

Resending to include Seth and Rachel.

Rob

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**From:** Walker, Robert  
**Sent:** Wednesday, January 10, 2018 2:36 PM  
**To:** David J. Apol ([djapol@oge.gov](mailto:djapol@oge.gov)) <[djapol@oge.gov](mailto:djapol@oge.gov)>  
**Cc:** Benton, Robert <[RBenton@wileyrein.com](mailto:RBenton@wileyrein.com)>  
**Subject:** Call tomorrow afternoon?

Dave –

Can you and your team do a conference call tomorrow afternoon at 3 or later with Stefan Passantino and with the Wiley Rein team?

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Let me know your availability.

Thanks.

Rob

Robert L. Walker | Attorney at Law  
**Wiley Rein LLP**  
1776 K Street NW | Washington, DC 20006  
T: 202.719.7585 | M: (b) (6) [rlwalker@wileyrein.com](mailto:rlwalker@wileyrein.com)  
[www.wileyrein.com](http://www.wileyrein.com) | [Bio](#) | [LinkedIn](#) | [Twitter](#)

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**From:** [Benton, Robert](#)  
**To:** [Seth Jaffe](#)  
**Cc:** [Walker, Robert](#); [David J. Apol](#); [Rachel K. Dowell](#)  
**Subject:** RE: Call tomorrow afternoon?  
**Date:** Wednesday, January 10, 2018 5:58:51 PM

---

Just so we don't get jealous, tell us how bad the weather is.

**From:** Seth Jaffe [mailto:[sjaffe@oge.gov](mailto:sjaffe@oge.gov)]  
**Sent:** Wednesday, January 10, 2018 5:24 PM  
**To:** Walker, Robert <[RLWalker@wileyrein.com](mailto:RLWalker@wileyrein.com)>; David J. Apol <[djapol@oge.gov](mailto:djapol@oge.gov)>; Rachel K. Dowell <[rkdowell@oge.gov](mailto:rkdowell@oge.gov)>  
**Cc:** Benton, Robert <[RBenton@wileyrein.com](mailto:RBenton@wileyrein.com)>  
**Subject:** Re: Call tomorrow afternoon?

Dear folks,

I am out of the office in South Carolina teaching a class, but I can make a call at 3:00pm if that works for everybody. If it does, I guess that I just need to be reminded of the call in number and password.

Thanks,  
Seth

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: "Walker, Robert" <[RLWalker@wileyrein.com](mailto:RLWalker@wileyrein.com)>  
Date: 1/10/18 4:53 PM (GMT-05:00)  
To: "David J. Apol" <[djapol@oge.gov](mailto:djapol@oge.gov)>, Seth Jaffe <[sjaffe@oge.gov](mailto:sjaffe@oge.gov)>, "Rachel K. Dowell" <[rkdowell@oge.gov](mailto:rkdowell@oge.gov)>  
Cc: "Benton, Robert" <[RBenton@wileyrein.com](mailto:RBenton@wileyrein.com)>  
Subject: RE: Call tomorrow afternoon?

Resending to include Seth and Rachel.

Rob

**From:** Walker, Robert  
**Sent:** Wednesday, January 10, 2018 2:36 PM  
**To:** David J. Apol ([djapol@oge.gov](mailto:djapol@oge.gov)) <[djapol@oge.gov](mailto:djapol@oge.gov)>  
**Cc:** Benton, Robert <[RBenton@wileyrein.com](mailto:RBenton@wileyrein.com)>  
**Subject:** Call tomorrow afternoon?

Dave –

Can you and your team do a conference call tomorrow afternoon at 3 or later with Stefan Passantino and with the Wiley Rein team?

As a much less preferred alternative, we understand that there is a dedicated slot at 11:30 on Friday for a call between you and Stefan, so the conference call could be scheduled then if you are OK with that. However, we would greatly prefer to do the call ASAP, that is, tomorrow afternoon.

Let me know your availability.

Thanks.

Rob

Robert L. Walker | Attorney at Law

**Wiley Rein LLP**

1776 K Street NW | Washington, DC 20006

T: 202.719.7585 | M: (b) (6) | [rlwalker@wileyrein.com](mailto:rlwalker@wileyrein.com)

[www.wileyrein.com](http://www.wileyrein.com) | [Bio](#) | [LinkedIn](#) | [Twitter](#)

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**From:** [Seth Jaffe](#)  
**To:** [Rachel K. Dowell](#); [David J. Apol](#)  
**Subject:** Re: Call tomorrow afternoon?  
**Date:** Wednesday, January 10, 2018 7:04:52 PM

---

Rachel & Dave,

At this point am I correct to assume that we do not need to speak prior to the 3:00pm call with Rob Walker?

Thanks,  
Seth

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

**From:** "Rachel K. Dowell" <[rkdowell@oge.gov](mailto:rkdowell@oge.gov)>  
**Date:** 1/10/18 5:47 PM (GMT-05:00)  
**To:** "Walker, Robert" <[RLWalker@wileyrein.com](mailto:RLWalker@wileyrein.com)>  
**Cc:** "Benton, Robert" <[RBenton@wileyrein.com](mailto:RBenton@wileyrein.com)>, "David J. Apol" <[djapol@oge.gov](mailto:djapol@oge.gov)>, Seth Jaffe <[sjaffe@oge.gov](mailto:sjaffe@oge.gov)>  
**Subject:** RE: Call tomorrow afternoon?

Good evening,

We are available tomorrow at 3:00pm for a conference call. Is the call-in information the same?

(b)(6) - Conference bridge access code

Thank you,  
Rachel

---

**From:** Seth Jaffe  
**Sent:** Wednesday, January 10, 2018 5:24 PM  
**To:** Walker, Robert; David J. Apol; Rachel K. Dowell  
**Cc:** Benton, Robert  
**Subject:** Re: Call tomorrow afternoon?

Dear folks,

I am out of the office in South Carolina teaching a class, but I can make a call at 3:00pm if that works for everybody. If it does, I guess that I just need to be reminded of the call in number and password.

Thanks,  
Seth

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: "Walker, Robert" <[RL.Walker@wileyrein.com](mailto:RL.Walker@wileyrein.com)>

Date: 1/10/18 4:53 PM (GMT-05:00)

To: "David J. Apol" <[djapol@oge.gov](mailto:djapol@oge.gov)>, Seth Jaffe <[sjaffe@oge.gov](mailto:sjaffe@oge.gov)>, "Rachel K. Dowell" <[rkdowell@oge.gov](mailto:rkdowell@oge.gov)>

Cc: "Benton, Robert" <[RBenton@wileyrein.com](mailto:RBenton@wileyrein.com)>

Subject: RE: Call tomorrow afternoon?

Resending to include Seth and Rachel.

Rob

**From:** Walker, Robert

**Sent:** Wednesday, January 10, 2018 2:36 PM

**To:** David J. Apol ([djapol@oge.gov](mailto:djapol@oge.gov)) <[djapol@oge.gov](mailto:djapol@oge.gov)>

**Cc:** Benton, Robert <[RBenton@wileyrein.com](mailto:RBenton@wileyrein.com)>

**Subject:** Call tomorrow afternoon?

Dave –

Can you and your team do a conference call tomorrow afternoon at 3 or later with Stefan Passantino and with the Wiley Rein team?

As a much less preferred alternative, we understand that there is a dedicated slot at 11:30 on Friday for a call between you and Stefan, so the conference call could be scheduled then if you are OK with that. However, we would greatly prefer to do the call ASAP, that is, tomorrow afternoon.

Let me know your availability.

Thanks.

Rob

Robert L. Walker | Attorney at Law

**Wiley Rein LLP**

1776 K Street NW | Washington, DC 20006

T: 202.719.7585 | M: (b) (6) | [rlwalker@wileyrein.com](mailto:rlwalker@wileyrein.com)

[www.wileyrein.com](http://www.wileyrein.com) | [Bio](#) | [LinkedIn](#) | [Twitter](#)

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**From:** [Seth Jaffe](#)  
**To:** [David J. Apol](#); [Rachel K. Dowell](#)  
**Subject:** Fwd: Conference Call  
**Date:** Thursday, January 11, 2018 8:54:53 AM

---

Dave and Rachel,

I can do 2:00pm. I can also do 4:30 If needed.

Seth

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

**From:** "Passantino, Stefan C. EOP/WHO" <(b) (6)>  
**Date:** 1/11/18 8:52 AM (GMT-05:00)  
**To:** "Brooks, Louisa" <[LBrooks@wileyrein.com](mailto:LBrooks@wileyrein.com)>, "Toner, Michael" <[MToner@wileyrein.com](mailto:MToner@wileyrein.com)>, "Benton, Robert" <[RBenton@wileyrein.com](mailto:RBenton@wileyrein.com)>, "Walker, Robert" <[RLWalker@wileyrein.com](mailto:RLWalker@wileyrein.com)>, "Antonucci, Thomas" <[TAntonucci@wileyrein.com](mailto:TAntonucci@wileyrein.com)>, "Zehr, Brandis" <[BZehr@wileyrein.com](mailto:BZehr@wileyrein.com)>, "David J. Apol" <[djapol@oge.gov](mailto:djapol@oge.gov)>, Seth Jaffe <[sjaffe@oge.gov](mailto:sjaffe@oge.gov)>, "Rachel K. Dowell" <[rkdowell@oge.gov](mailto:rkdowell@oge.gov)>  
**Subject:** RE: Conference Call

My apologies. Is there a way we can move this call to 2:00 today? I have had a scheduling conflict come up. I could also do after 4:30.

STEFAN C. PASSANTINO  
Deputy Counsel to the President, Compliance & Ethics  
Office of the White House Counsel

-----Original Appointment-----

**From:** Brooks, Louisa [<mailto:LBrooks@wileyrein.com>]  
**Sent:** Wednesday, January 10, 2018 6:32 PM  
**To:** Brooks, Louisa; Toner, Michael; Benton, Robert; Walker, Robert; Antonucci, Thomas; Zehr, Brandis; [djapol@oge.gov](mailto:djapol@oge.gov); [sjaffe@oge.gov](mailto:sjaffe@oge.gov); [rkdowell@oge.gov](mailto:rkdowell@oge.gov); Passantino, Stefan C. EOP/WHO  
**Subject:** [EXTERNAL] Conference Call  
**When:** Thursday, January 11, 2018 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** Dial-in (b) (6) - Conference bridge access code

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**From:** Walker, Robert  
**To:** David J. Apol; Benton, Robert; Passantino, Stefan C. EOP/WHO; Brooks, Louisa; Toner, Michael; Antonucci, Thomas; Zehr, Brandis; Seth Jaffe; Rachel K. Dowell  
**Subject:** RE: Conference Call  
**Date:** Thursday, January 11, 2018 10:18:43 AM

---

4:30 works for me, too. We will send out a revised notice.

---

**From:** David J. Apol [mailto:djapol@oge.gov]  
**Sent:** Thursday, January 11, 2018 10:15 AM  
**To:** Benton, Robert <RBenton@wileyrein.com>; Passantino, Stefan C. EOP/WHO (b) (6); Brooks, Louisa <LBrooks@wileyrein.com>; Toner, Michael <MToner@wileyrein.com>; Walker, Robert <RLWalker@wileyrein.com>; Antonucci, Thomas <TAntonucci@wileyrein.com>; Zehr, Brandis <BZehr@wileyrein.com>; Seth Jaffe <sjaffe@oge.gov>; Rachel K. Dowell <rkdowell@oge.gov>  
**Subject:** RE: Conference Call

I can do either time.

---

**From:** Benton, Robert [mailto:RBenton@wileyrein.com]  
**Sent:** Thursday, January 11, 2018 9:24 AM  
**To:** Passantino, Stefan C. EOP/WHO; Brooks, Louisa; Toner, Michael; Walker, Robert; Antonucci, Thomas; Zehr, Brandis; David J. Apol; Seth Jaffe; Rachel K. Dowell  
**Subject:** RE: Conference Call

I have a call at 2:00 that would be very difficult to move. I would prefer 4:30 if that works for others.

Best,  
Robert

---

**From:** Passantino, Stefan C. EOP/WHO [mailto:(b) (6)]  
**Sent:** Thursday, January 11, 2018 8:53 AM  
**To:** Brooks, Louisa <LBrooks@wileyrein.com>; Toner, Michael <MToner@wileyrein.com>; Benton, Robert <RBenton@wileyrein.com>; Walker, Robert <RLWalker@wileyrein.com>; Antonucci, Thomas <TAntonucci@wileyrein.com>; Zehr, Brandis <BZehr@wileyrein.com>; djapol@oge.gov; sjaffe@oge.gov; rkdowell@oge.gov  
**Subject:** RE: Conference Call

My apologies. Is there a way we can move this call to 2:00 today? I have had a scheduling conflict come up. I could also do after 4:30.

STEFAN C. PASSANTINO  
Deputy Counsel to the President, Compliance & Ethics  
Office of the White House Counsel

-----Original Appointment-----

**From:** Brooks, Louisa [<mailto:LBrooks@wileyrein.com>]

**Sent:** Wednesday, January 10, 2018 6:32 PM

**To:** Brooks, Louisa; Toner, Michael; Benton, Robert; Walker, Robert; Antonucci, Thomas; Zehr, Brandis; [djapol@oge.gov](mailto:djapol@oge.gov); [sjaffe@oge.gov](mailto:sjaffe@oge.gov); [rkdowell@oge.gov](mailto:rkdowell@oge.gov); Passantino, Stefan C. EOP/WHO

**Subject:** [EXTERNAL] Conference Call

**When:** Thursday, January 11, 2018 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).

**Where:** Dial-in: (b)(6) - Conference bridge access code

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**From:** Brooks, Louisa  
**To:** Toner, Michael; Benton, Robert; Walker, Robert; Antonucci, Thomas; Zehr, Brandis; David J. Apol; Seth Jaffe; Rachel K. Dowell; (b)(6) - Stefan Passantino's email address  
**Subject:** Conference Call  
**Start:** Thursday, January 11, 2018 4:30:00 PM  
**End:** Thursday, January 11, 2018 5:30:00 PM  
**Location:** Dial-in: (b)(6) - Conference bridge access code

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## Summary of Communications between OGE and Wiley Rein relating to the Patriot Expense Fund Trust

### **January 11, 2018**

We continued discussions of potential restrictions on the manager, in particular with respect to our guidance that the manager not be a prohibited source for any potential recipients. Stefan Passantino of the White House Counsel's Office was also on this call to provide information relating to who may constitute a prohibited source for the Executive Office of the President. In addition, we discussed the application of the \$20 *de minimis* gift exception at 5 C.F.R. § 2635.204(a) to donations. We also discussed proposed methods to screen potential donors based on the amount of the donation.



**From:** [Walker, Robert](#)  
**To:** [Seth Jaffe](#); [David J. Apol](#); [Rachel K. Dowell](#)  
**Cc:** [Benton, Robert](#)  
**Subject:** RE: Call today  
**Date:** Tuesday, January 23, 2018 4:13:02 PM

---

Will do. Thanks.

**From:** Seth Jaffe [<mailto:sjaffe@oge.gov>]  
**Sent:** Tuesday, January 23, 2018 4:12 PM  
**To:** Walker, Robert <[RLWalker@wileyrein.com](mailto:RLWalker@wileyrein.com)>; David J. Apol <[djapol@oge.gov](mailto:djapol@oge.gov)>; Rachel K. Dowell <[rkdowell@oge.gov](mailto:rkdowell@oge.gov)>  
**Cc:** Benton, Robert <[RBenton@wileyrein.com](mailto:RBenton@wileyrein.com)>  
**Subject:** RE: Call today

Can you call us at: 202-482-9280?

---

**From:** Walker, Robert [<mailto:RLWalker@wileyrein.com>]  
**Sent:** Tuesday, January 23, 2018 4:10 PM  
**To:** Seth Jaffe; David J. Apol; Rachel K. Dowell  
**Cc:** Benton, Robert  
**Subject:** RE: Call today

Let's go for 5:30. Thanks.

**From:** Seth Jaffe [<mailto:sjaffe@oge.gov>]  
**Sent:** Tuesday, January 23, 2018 4:08 PM  
**To:** Walker, Robert <[RLWalker@wileyrein.com](mailto:RLWalker@wileyrein.com)>; David J. Apol <[djapol@oge.gov](mailto:djapol@oge.gov)>; Rachel K. Dowell <[rkdowell@oge.gov](mailto:rkdowell@oge.gov)>  
**Subject:** RE: Call today

Rob,

Dave and I are available at 5:30pm. If our previous call is completed earlier we could call you then.

Thanks,  
Seth

---

**From:** Walker, Robert [<mailto:RLWalker@wileyrein.com>]  
**Sent:** Tuesday, January 23, 2018 3:53 PM  
**To:** David J. Apol; Seth Jaffe; Rachel K. Dowell  
**Subject:** Fwd: Call today

Sent from my iPhone

Begin forwarded message:



**From:** <[RL.Walker@wileyrein.com](mailto:RL.Walker@wileyrein.com)>  
**Date:** January 23, 2018 at 3:20:07 PM EST  
**To:** "David J. Apol" <[djapol@oge.gov](mailto:djapol@oge.gov)>  
**Subject:** Call today

Do you have time for a very quick call at 5 or after this afternoon?

Sent from my iPhone

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## Summary of Communications between OGE and Wiley Rein relating to the Patriot Expense Fund Trust

**January 23, 2018**

On this call, we were informed that the White House Counsel's Office generally does not consider donors who are prohibited sources to independent regulatory agencies only - to be prohibited sources for the Executive Office of the President. As a result, the law firm confirmed that the Fund will contain restrictions on who could run and manage the Fund, consistent with OGE's established legal defense fund template that these parties not be a prohibited source to any government recipient. (It was not anticipated that any of the potential recipients would be an employee of an independent regulatory agency). We also continued discussions about the proposed methods to screen potential donors based on the amount of the donation, the fund's requirement to disclose its donors, and the disposition of unused funds. We concluded the call by indicating that we would send an excerpt from a previous email OGE has sent to other individuals who were contemplating establishing a legal defense fund. That email indicated that adherence to the terms of the trust template should ensure employees who accept distributions from such a fund do not violate ethics laws and rules.

**From:** Seth Jaffe  
**To:** "Walker, Robert"  
**Subject:** LDF Trust Template  
**Date:** Wednesday, January 24, 2018 9:15:55 AM

---

Dear Robert,

FYI: Here is an excerpt from a previous email OGE has sent to others concerning our LDF trust template.

Thanks,  
Seth

Seth H. Jaffe  
Chief, Ethics Law & Policy Branch  
U.S. Office of Government Ethics  
(202) 482-9303

"Please find attached a draft trust instrument template that is based on a legal expense fund trust that OGE reviewed in 2011 and 2012. OGE does not approve or disapprove of specific legal expense fund trust instruments. However, if a trust is established and administered in accordance with the terms set out in the attached draft trust instrument template, both the trustees and the employee will be in compliance with 18 U.S.C. § 209. Similarly, adherence to the terms of the trust should ensure the employee does not violate any provision of 5 U.S.C. §§ 7351 and 7353, or of the Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. part 2635, as a result of the planned activities of the trustee on the employee's behalf.

If you decide to change any of the terms of the trust template when drafting your client's trust instrument, you may contact OGE to review those changes to ensure they are consistent with ethics rules."

Summary of Communications between OGE and Wiley Rein relating to the Patriot Expense Fund Trust

**January 25, 2018**

The law firm provided updated draft legal defense fund for our review. We continued providing technical assistance consistent with the terms of OGE's legal defense fund template. In particular, we advised that the \$20 *de minimis* gift exception at 5 C.F.R. § 2635.204(a) is unavailable to donations to the fund and indicated that this exception is inapplicable to Pledge signers under E.O. 13770, sec. 1, para. 5. We also discussed the treatment of prohibited sources to independent regulatory agencies as it relates to the screening questions and due diligence requirements of the fund manager. The draft was returned to the law firm, as it was not an OGE record.

Summary of Communications between OGE and Wiley Rein relating to the Patriot Expense Fund Trust

**January 26, 2018**

We had a brief call discussing the law firm's intention to send over a draft of the legal defense fund for final review.

**From:** [Walker, Robert](#)  
**To:** [Seth Jaffe](#)  
**Cc:** [David J. Apol](#); [Benton, Robert](#); [Toner, Michael](#)  
**Subject:** Patriot Legal Expense Fund Trust, LLC  
**Date:** Monday, January 29, 2018 6:03:33 PM  
**Attachments:** [January 29 - Draft Agreement - Patriot Legal Expense Fund Trust LLC.DOCX](#)

---

Mr. Jaffe –

Consistent with our discussions with the Office of Government Ethics (OGE), attached is the draft agreement of the Patriot Legal Expense Fund Trust, LLC, for review by OGE for federal ethics compliance.

Thank you.

Robert L. Walker  
Robert D. Benton  
Michael E. Toner

Robert L. Walker | Attorney at Law  
**Wiley Rein LLP**  
1776 K Street NW | Washington, DC 20006  
T: 202.719.7585 | M (b) (6) | [rlwalker@wileyrein.com](mailto:rlwalker@wileyrein.com)  
[www.wileyrein.com](http://www.wileyrein.com) | [Bio](#) | [LinkedIn](#) | [Twitter](#)

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**From:** [Seth Jaffe](#)  
**To:** ["Walker, Robert"](#); [Benton, Robert](#); ["mtoner@wileyrein.com"](mailto:mtoner@wileyrein.com)  
**Cc:** [David J. Apol](#)  
**Subject:** Patriot Legal Expense Fund Trust, LLC  
**Date:** Monday, January 29, 2018 6:34:43 PM  
**Attachments:** [January 29 - Draft Agreement - Patriot Legal Expense Fund Trust LLC.DOCX](#)  
[Letter.01.29.18.pdf](#)

---

Dear Mr. Walker,

We have reviewed the draft agreement for the "Patriot Legal Expense Fund Trust, LLC". The Office of Government Ethics does not approve or disapprove of specific legal defense funds. However, if the fund is established and administered in accordance with the terms set out in the attached agreement, both the managers and the employee recipients will be in compliance with 18 U.S.C. § 209. Similarly, adherence to the terms of the agreement should ensure that the employee recipients do not violate any provision of 5 U.S.C. §§ 7351 and 7353, or of the Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. part 2635, as a result of the planned activities of the managers on their behalf.

Please see the attached draft agreement and letter from David J. Apol, OGE's Acting Director and General Counsel.

Thanks,  
Seth H. Jaffe  
Chief, Ethics Law & Policy Branch  
U.S. Office of Government Ethics  
(202) 482-9303

---

**From:** Walker, Robert [<mailto:RLWalker@wileyrein.com>]  
**Sent:** Monday, January 29, 2018 6:03 PM  
**To:** Seth Jaffe  
**Cc:** David J. Apol; Benton, Robert; Toner, Michael  
**Subject:** Patriot Legal Expense Fund Trust, LLC

Mr. Jaffe –

Consistent with our discussions with the Office of Government Ethics (OGE), attached is the draft agreement of the Patriot Legal Expense Fund Trust, LLC, for review by OGE for federal ethics compliance.

Thank you.

Robert L. Walker  
Robert D. Benton

Michael E. Toner

Robert L. Walker | Attorney at Law

**Wiley Rein LLP**

1776 K Street NW | Washington, DC 20006

T: 202.719.7585 | M: (b) (6) | [rlwalker@wileyrein.com](mailto:rlwalker@wileyrein.com)

[www.wileyrein.com](http://www.wileyrein.com) | [Bio](#) | [LinkedIn](#) | [Twitter](#)

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**From:** [Seth Jaffe](#)  
**To:** [Rachel K. Dowell](#)  
**Subject:** FW: Patriot Legal Expense Fund Trust, LLC  
**Date:** Monday, January 29, 2018 6:35:17 PM  
**Attachments:** [January 29 - Draft Agreement - Patriot Legal Expense Fund Trust LLC.DOCX](#)  
[Letter.01.29.18.pdf](#)

---

FYI:

---

**From:** Seth Jaffe  
**Sent:** Monday, January 29, 2018 6:35 PM  
**To:** 'Walker, Robert'; Benton, Robert; 'mtoner@wileyrein.com'  
**Cc:** David J. Apol  
**Subject:** Patriot Legal Expense Fund Trust, LLC

Dear Mr. Walker,

We have reviewed the draft agreement for the "Patriot Legal Expense Fund Trust, LLC". The Office of Government Ethics does not approve or disapprove of specific legal defense funds. However, if the fund is established and administered in accordance with the terms set out in the attached agreement, both the managers and the employee recipients will be in compliance with 18 U.S.C. § 209. Similarly, adherence to the terms of the agreement should ensure that the employee recipients do not violate any provision of 5 U.S.C. §§ 7351 and 7353, or of the Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. part 2635, as a result of the planned activities of the managers on their behalf.

Please see the attached draft agreement and letter from David J. Apol, OGE's Acting Director and General Counsel.

Thanks,  
Seth H. Jaffe  
Chief, Ethics Law & Policy Branch  
U.S. Office of Government Ethics  
(202) 482-9303

---

**From:** Walker, Robert [<mailto:RLWalker@wileyrein.com>]  
**Sent:** Monday, January 29, 2018 6:03 PM  
**To:** Seth Jaffe  
**Cc:** David J. Apol; Benton, Robert; Toner, Michael  
**Subject:** Patriot Legal Expense Fund Trust, LLC

Mr. Jaffe –

Consistent with our discussions with the Office of Government Ethics (OGE), attached is the draft agreement of the Patriot Legal Expense Fund Trust, LLC, for review by OGE for federal ethics

compliance.

Thank you.

Robert L. Walker  
Robert D. Benton  
Michael E. Toner

Robert L. Walker | Attorney at Law

**Wiley Rein LLP**

1776 K Street NW | Washington, DC 20006

T: 202.719.7585 | M: (b) (6) rlwalker@wileyrein.com

[www.wileyrein.com](http://www.wileyrein.com) | [Bio](#) | [LinkedIn](#) | [Twitter](#)

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**From:** [Seth Jaffe](#)  
**To:** [Rachel K. Dowell](#)  
**Subject:** FW: Patriot Legal Expense Fund Trust, LLC  
**Date:** Monday, January 29, 2018 6:35:18 PM  
**Attachments:** [January 29 - Draft Agreement - Patriot Legal Expense Fund Trust LLC.DOCX](#)  
[Letter.01.29.18.pdf](#)

---

FYI:

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**From:** Seth Jaffe  
**Sent:** Monday, January 29, 2018 6:35 PM  
**To:** 'Walker, Robert'; Benton, Robert; 'mtoner@wileyrein.com'  
**Cc:** David J. Apol  
**Subject:** Patriot Legal Expense Fund Trust, LLC

Dear Mr. Walker,

We have reviewed the draft agreement for the "Patriot Legal Expense Fund Trust, LLC". The Office of Government Ethics does not approve or disapprove of specific legal defense funds. However, if the fund is established and administered in accordance with the terms set out in the attached agreement, both the managers and the employee recipients will be in compliance with 18 U.S.C. § 209. Similarly, adherence to the terms of the agreement should ensure that the employee recipients do not violate any provision of 5 U.S.C. §§ 7351 and 7353, or of the Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. part 2635, as a result of the planned activities of the managers on their behalf.

Please see the attached draft agreement and letter from David J. Apol, OGE's Acting Director and General Counsel.

Thanks,  
Seth H. Jaffe  
Chief, Ethics Law & Policy Branch  
U.S. Office of Government Ethics  
(202) 482-9303

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**From:** Walker, Robert [<mailto:RLWalker@wileyrein.com>]  
**Sent:** Monday, January 29, 2018 6:03 PM  
**To:** Seth Jaffe  
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Robert D. Benton  
Michael E. Toner

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**From:** [Rachel K. Dowell](#)  
**To:** [Seth Jaffe](#)  
**Subject:** RE: Patriot Legal Expense Fund Trust, LLC  
**Date:** Monday, January 29, 2018 6:38:23 PM

---

Thanks!

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**From:** Seth Jaffe  
**Sent:** Monday, January 29, 2018 6:35 PM  
**To:** Rachel K. Dowell  
**Subject:** FW: Patriot Legal Expense Fund Trust, LLC

FYI:

---

**From:** Seth Jaffe  
**Sent:** Monday, January 29, 2018 6:35 PM  
**To:** 'Walker, Robert'; Benton, Robert; 'mtoner@wileyrein.com'  
**Cc:** David J. Apol  
**Subject:** Patriot Legal Expense Fund Trust, LLC

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Please see the attached draft agreement and letter from David J. Apol, OGE's Acting Director and General Counsel.

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U.S. Office of Government Ethics  
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**Sent:** Monday, January 29, 2018 6:03 PM  
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Thank you.

Robert L. Walker  
Robert D. Benton  
Michael E. Toner

Robert L. Walker | Attorney at Law

**Wiley Rein LLP**

1776 K Street NW | Washington, DC 20006

T: 202.719.7585 | M: (b) (6) | [rlwalker@wileyrein.com](mailto:rlwalker@wileyrein.com)

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## Summary of Communications between OGE and Wiley Rein relating to the Patriot Expense Fund Trust

**January 29, 2018**

The law firm provided a draft of the legal defense fund for final review. We reviewed the draft agreement and provided a letter from the Acting Director that stated the following: "OGE does not approve or disapprove of specific legal defense funds. However, if the fund is established and administered in accordance with the terms set out in the attached agreement, both the managers and the employee recipients will be in compliance with 18 U.S.C. § 209. Similarly, adherence to the terms of the agreement should ensure that the employee recipients do not violate any provision of 5 U.S.C. §§ 7351 and 7353, or of the Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. part 2635, as a result of the planned activities of the managers on their behalf." We indicated to the law firm that we planned to proactively post the letter and draft legal defense fund on OGE's website within a few days.

Summary of Communications between OGE and Wiley Rein relating to the Patriot Expense Fund Trust

**February 15-16, 2018**

Calls to discuss a question of whether a non-officer, non-employee member of the board of directors of a corporation is an agent of the corporation and thus the same person as the corporation for purposes of 5 CFR 2635.201(k), making the director a prohibited source if the corporation is a prohibited source. (To be considered the same "person" as the corporation for which they are director, the director must be an officer, employee, or agent of the corporation.) We advised that this is a fact-specific question: Directors are not necessarily an agent of the corporation, particularly when they are acting on matters unrelated to the corporation, but they could become an agent of the corporation by agreeing to do something on behalf of the corporation, for example.



# AIMS Agency Information Management System

## Resolved Interaction

<i>Interaction Number: 13761</i>	
<b>Initiation Date*:</b>	2017-10-23
<b>Title*:</b>	Payments for legal expenses
<b>Question*:</b>	Various questions related to employees accepting payments for legal expenses. Because we anticipate additional questions from law firm, we are keeping this interaction open but have responded to each inquiry within 5 days.
<b>Update:</b>	
<b>Categories*:</b>	Gifts from Outside Sources
<b>Origin Of Interaction*:</b>	Phone
<b>Source*:</b>	Non-Agency For-Profit
<b>First Name:</b>	Rob
<b>Last Name:</b>	Walker
<b>Title:</b>	
<b>Position:</b>	Other Attorney
<b>Email:</b>	RLWalker@wileyrein.com
<b>Phone:</b>	202.719.7585
<b>Other Contact Notes:</b>	Wiley Rein
<b>Assignment:</b>	David J. Apol, Rachel K. Dowell, Seth Jaffe
<b>Watching:</b>	
<b>Temporary Notes:</b>	
<i>created by:</i>	<i>Rachel K. Dowell</i>

<b>Resolution Information</b>	
<b>Resolution Date*:</b>	2018-02-14
<b>Resolution Category*:</b>	Resolved
<b>Response*:</b>	<p>10/23/17: Preliminary discussions about legal defense funds, provided a copy of a draft trust instrument template that is based on a legal expense fund trust that OGE reviewed in 2011 and 2012, and agreed that further discussions would be necessary.</p> <p>10/27/17: Continued discussions about legal defense funds.</p> <p>11/2/17: Continued discussions about legal defense funds.</p> <p>11/8/17: Continued discussions about legal defense funds.</p> <p>11/14/17: Continued discussions about legal defense funds.</p> <p>12/21/17: Law firm provided draft screening questions for potential LDF donors for OGE review. We reviewed the documents and told the law firm that we did not notice anything objectionable or contrary to law. We reiterated that not every question they included would be required. We noted that we could not confirm that implementing the screening questionnaire, absent appropriate verification procedures, would ensure compliance with the ethics rules. This would depend on the LDF terms, which we have not reviewed. We strongly recommended including article 7, #5 and 6, of the Model LDF Trust Agreement to their LDF terms (trustee duty to confer with agency DAEO as needed to seek a determination as to whether the contribution is from a prohibited source, and to confer with OGE where appropriate). We asked them to consider a "don't know" box and/or an explanation box to each answer choice. We noted the importance of transparency as to the donors and the payments, but asked them to consider which pieces of personal information, like private cell phone number and emails, would be disclosed and to provide potential donors notice of disclosure. Provided additional technical assistance. The draft questions and cover letter were returned to law firm upon OGE Records Officer's approval. Law firm also asked about the respective roles of the White House and OGE in determining whether the RNC is a prohibited source. We reminded them of the status, consistent with AIMS entry 13489 and the Acting Director's 10/6/17 email to Stefan Passantino.</p> <p>12/28/17: Brief discussion about legal defense fund draft.</p>

	<p>1/3/17: Call to discuss draft legal defense fund.</p> <p>1/5/17: Call to discuss draft legal defense fund.</p> <p>1/11/18: Call to discuss draft legal defense fund.</p> <p>1/23/18: Call to discuss draft legal defense fund.</p> <p>1/25/18: Call to discuss draft legal defense fund.</p> <p>1/29/18: Law firm provided a draft of the Legal Defense Fund. OGE reviewed the draft agreement and provided a letter from the Acting Director that stated the following: "OGE does not approve or disapprove of specific legal defense funds. However, if the fund is established and administered in accordance with the terms set out in the attached agreement, both the managers and the employee recipients will be in compliance with 18 U.S.C. § 209. Similarly, adherence to the terms of the agreement should ensure that the employee recipients do not violate any provision of 5 U.S.C. §§ 7351 and 7353, or of the Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. part 2635, as a result of the planned activities of the managers on their behalf."</p> <p>2/16/18: Call to discuss a question of whether a non-officer, non-employee member of the board of directors of a corporation was the same person as the corporation for purposes of 5 CFR 2635.201(k) and therefore a prohibited source if the corporation was a prohibited source. (More specifically, whether a Director is an "agent" of the corporation). Dave advised that this is a fact-specific question: Directors are not necessarily an agent of the corporation, particularly when they are acting on matters unrelated to the corporation, but they could become an agent of the corporation by agreeing to do something on behalf of the corporation, for example. (Assigned to: David J. Apol; Rachel K. Dowell; Seth Jaffe)</p>
<b>Complexity (level):</b>	5 [Click to view/hide complexity guidelines]
<b>Time Spent (hours):</b>	More than 8 hours
<b>Contributor:</b>	

Reopen Information	
<b>Date:</b>	2018-03-01
<b>Reason:</b>	Update entry with new call

Interaction History Log	
Closed	03/01/2018 10:47:51 AM by Rachel K. Dowell
Reopen	03/01/2018 10:47:33 AM by Rachel K. Dowell
Closed	02/14/2018 02:44:48 PM by Rachel K. Dowell
Update	01/25/2018 04:59:30 PM by Rachel K. Dowell
Update	01/05/2018 06:14:34 PM by Rachel K. Dowell
Update	01/04/2018 09:15:54 AM by Rachel K. Dowell
Update	12/21/2017 12:54:29 PM by Rachel K. Dowell
Update	11/14/2017 02:51:08 PM by Rachel K. Dowell
Update	11/02/2017 03:20:08 PM by Rachel K. Dowell
Create	10/31/2017 01:10:17 PM by Rachel K. Dowell
Now Assigned: Rachel K. Dowell David J. Apol Seth Jaffe	10/31/2017 01:10:17 PM by Rachel K. Dowell

Division(s) assigned: GCLPD



January 29, 2018

Mr. Robert L. Walker  
Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006

Dear Mr. Walker:

We have reviewed the draft agreement for the "Patriot Legal Expense Fund Trust, LLC". The Office of Government Ethics does not approve or disapprove of specific legal defense funds. However, if the fund is established and administered in accordance with the terms set out in the attached agreement, both the managers and the employee recipients will be in compliance with 18 U.S.C. § 209. Similarly, adherence to the terms of the agreement should ensure that the employee recipients do not violate any provision of 5 U.S.C. §§ 7351 and 7353, or of the Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. part 2635, as a result of the planned activities of the managers on their behalf.

Sincerely,

David J. Apol  
Acting Director and General Counsel

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



January 29, 2018

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Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006

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Sincerely,

A handwritten signature in black ink, appearing to read "David J. Apol".

David J. Apol  
Acting Director and General Counsel



**LIMITED LIABILITY COMPANY AGREEMENT  
OF  
PATRIOT LEGAL EXPENSE FUND TRUST, LLC**

**Dated: January [30], 2018**

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Schedule C – Donor Screening Questionnaires and Screening Policies

Schedule D – Members and the Manager

**LIMITED LIABILITY COMPANY AGREEMENT**  
**OF**  
**PATRIOT LEGAL EXPENSE FUND TRUST, LLC**

This LIMITED LIABILITY COMPANY AGREEMENT (this “Agreement”) of Patriot Legal Expense Fund Trust, LLC (the “Fund”) is made as of January [30], 2018, by and among the Fund and the members of the Fund set forth on the signature page(s) hereto (each a “Member,” and together with any Person who subsequently is admitted as a member of the Fund in accordance with the provisions hereof, in each such Person’s capacity as a member of the Fund, the “Members”).

WHEREAS, the Fund was formed pursuant to the Delaware Limited Liability Company Act, 6 Del. C. §18-101, et seq., as amended from time to time (the “Act”) by virtue of the filing of the Fund’s Certificate of Formation (as amended from time to time in accordance with the provisions hereof, the “Certificate of Formation”) with the Delaware Secretary of State on January [30], 2018;

WHEREAS, the Fund was formed to provide assistance paying legal expenses for persons involved in the investigations by special counsel Robert S. Mueller III, the inquiries by the U.S. Senate Select Committee on Intelligence and the U.S. House of Representatives Permanent Select Committee on Intelligence regarding Russian interference in the 2016 U.S. election and related matters, and any inquiries by other Committees of the U.S Senate or House of Representatives; and

WHEREAS, the Fund will be operated as a political organization within the meaning of Section 527 of the Internal Revenue Code of 1986, as amended (the “Code”).

NOW, THEREFORE, in consideration of the mutual covenants contained herein and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE 1**  
**DEFINITIONS**

1.1 Definitions. In this Agreement, unless otherwise specifically stated, the capitalized terms used herein have the respective meanings specified or referred to: (i) on Schedule A, or (ii) in the text of this Agreement.

1.2 Rules of Construction. The rules of construction set forth on Schedule A for interpreting the provisions of this Agreement shall apply.

**ARTICLE 2**  
**ORGANIZATION**



2.1 Formation. Each Member hereby acknowledges the formation of the Fund as a limited liability company pursuant to the Certificate of Formation and agrees to its status as a Member of the Fund. The term “Member” shall also have the meaning ascribed to “member” in the Act.

2.2 Authorized Persons. The designation of Robert Benton as an “authorized person” within the meaning of the Act is hereby confirmed and ratified for the purpose of filing, and such person has executed, delivered and filed, the Certificate of Formation with the Secretary of State of the State of Delaware. Upon the filing of the Certificate of Formation with the Secretary of State of the State of Delaware, his powers as an “authorized person” ceased.

2.3 Name. The name of the Fund is “Patriot Legal Expense Fund Trust, LLC”. The activities of the Fund shall be conducted under the name “Patriot Legal Expense Fund Trust, LLC” or such other name or names as the Manager shall determine.

2.4 Principal Office. The principal office of the Fund shall be at [ ] or such other place as the Manager shall determine. The Fund may maintain such other office or offices at such other locations as the Manager may deem advisable.

2.5 Registered Agent and Registered Office. The initial registered agent of the Fund in the State of Delaware is Cogency Global, Inc., and may be changed to such other agent as the Manager designates from time to time in the manner provided under the Act. The registered office of the Fund in the State of Delaware is c/o Cogency Global, Inc., 850 New Burton Road, Suite 201, Dover, Delaware 19904, and may be changed to such other office (which need not be a place from which the Fund conducts its activities) as the Manager may designate from time to time in the manner provided under the Act.

2.6 Purpose. The purposes for which the Fund is organized are: (1) to serve as a legal expense fund to raise money and pay for or help defray legal expenses, which can include attorneys’ fees, court filing fees, litigation costs, or other related fees and costs incurred by an Eligible Recipient in connection with the Investigations; and (2) in doing so, to engage in any lawful act or activity permitted under the Act, or permitted for an entity organized and operated as a political organization within the meaning of Section 527 of the Code.

2.7 Term. The term of the Fund commenced upon filing of the Fund’s Certificate of Formation with the Delaware Secretary of State and shall continue until dissolution of the Fund as provided herein and pursuant to the Act.

2.8 Powers. In furtherance of the foregoing purposes, subject to the provisions of this Agreement, the Fund shall have the power to take any action or incur any obligation in connection with, or to facilitate and support the purposes of, the Fund, so long as said actions and obligations may be lawfully engaged in or performed by a limited liability company under the Act and in compliance with Section 527 of the Code and the regulations promulgated thereunder.

2.9 Limitation on Liability. In accordance with the Act, the debts, obligations and liabilities of the Fund, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Fund, and none of the Members, the Manager or other Covered Persons shall be obligated personally for any such debt, obligation or liability of the Fund or

have any obligation or be required to make any capital contribution or loan or otherwise advance any funds to the Fund solely by reason of being a Member, Manager or other Covered Person.

2.10 Independent Activities. The Members and the Manager understand that each Member and the Manager may be interested, directly or indirectly, in various other activities and undertakings, some of which may be similar in nature to, or competitive with, the activities of the Fund and/or any of its Subsidiaries. The Members and the Manager agree that any Member, the Manager or any of their Affiliates may engage in or possess an interest, direct or indirect, in any business venture or entity of any nature or description for its own account, independently or with others, and may do so without any accountability or any obligation to report the same to the Fund (or any of its Subsidiaries) or any Member or to afford the Fund (or any of its Subsidiaries) or any Member any opportunity to participate therein. None of the Fund, any Subsidiary or any other Member shall have any right in or to any such independent venture or investment or the revenues or profits derived therefrom. With respect to the Manager, to the extent there is any conflict between this Section 2.10 and Section 3.5.1 or Schedule B, Section 3.5.1 and Schedule B shall control. With respect to a Member, to the extent there is any conflict between this Section 2.10 and Section 3.1.2, Section 3.1.2 shall control.

2.11 Tax Classification. The Members intend for the Fund to be classified as an exempt political organization under Section 527 of the Code for federal and, to the maximum extent possible, state Tax purposes. The Members acknowledge the Fund's status as a limited liability company formed under the Act and as an organization described in Section 527 of the Code, and no Member or Manager shall take any action inconsistent with the express intent of the parties to this Agreement.

2.12 Maintenance of Separate Existence. The Fund shall do all things necessary to maintain its limited liability company existence separate and apart from each Member, the Manager, and any Affiliate of either, including maintaining its books and records on a current basis separate from that of any Affiliate of the Fund or any other Person, and shall not commingle the Fund's assets with those of any Affiliate of the Fund or any other Person. In furtherance, and not in limitation, of the foregoing, the Fund shall not:

- (i) fail to (A) maintain or cause to be maintained by an agent under the Fund's control physical possession of the records required to be kept under the Act and the Code, (B) account for and manage all of its liabilities separately from those of any other Person, including payment by it of Fund Expenses from its own assets or (C) identify or cause to be identified separately all of its assets from those of any other Person; or
- (ii) commingle, or permit the commingling of, the Fund Property with the funds of the Manager, any Member, any Affiliate of either or any other Person or use Fund Property for uses other than the Fund's uses.

2.13 Compliance with Laws. The Fund will use reasonable efforts to comply in all material respects with all Applicable Law governing the conduct of the activities of the Fund.



**ARTICLE 3**  
**MEMBERS AND THE MANAGER**

3.1 Members and the Manager.

3.1.1 Management. All Members hereby agree that the powers of the Fund shall be exercised by or under the authority of, and the business affairs of the Fund shall be managed under the direction of, the Manager. Except as expressly provided herein or as otherwise required by Applicable Law, the Manager shall have complete and exclusive control of the management of the Fund's affairs. The Members, in their capacity as Members, shall have no right to participate in the management or the conduct of the Fund's business and affairs nor have any power or authority to act for or on behalf of the Fund in any respect whatsoever, except as set forth in Sections 3.5.1, 3.5.2, 3.5.4, and 9.1. For the avoidance of doubt, a Member may also serve as the Manager. Except as otherwise specifically provided in this Agreement, the Manager shall have the right, power and authority on behalf of the Fund and in its name to execute documents or other instruments and exercise all of the rights, power and authority of the Fund under the Act, subject only to any express limitations set forth in this Agreement. The Members agree that all determinations, decisions and actions made or taken by the Manager in accordance with this Agreement shall be binding on the Fund, the Members and their respective successors, assigns and personal representatives. Persons dealing with the Fund are entitled to rely conclusively upon the power and authority of the Manager as set forth herein. The present mailing address, designated electronic mail address and facsimile number of the Manager are set forth on Schedule D, and may be changed from time to time by written notice provided by the Manager to the Fund as set forth in Section 10.2.

3.1.2 Members. The name and present mailing address, designated electronic mail address and facsimile number of each Member are set forth on Schedule D, and may be changed from time to time by written notice of the relevant Member to the Fund as set forth in Section 10.2. Neither of the Members is, and no Member shall be, a prohibited source (as defined by 5 C.F.R. § 2635.203(d)) with respect to any potential Government Eligible Recipient of which the Fund is aware at the time such Person becomes a Member. Neither of the Members is, and no Member shall be, employed by the Trump Campaign or The Trump Organization.

3.2 Membership Interests. The ownership of the Fund shall be represented by limited liability company interests; provided that such membership interests shall not entitle a Member to any Fund Property or distributions from the Fund and shall carry only the rights and responsibilities set forth in this Agreement or that are required by the Act notwithstanding the terms of this Agreement.

3.3 Member Voting.

3.3.1 Member Majority. On any matter requiring a vote of the Members, each Member shall have one vote. Any act of the Members shall require the affirmative vote of a majority of the Members.

3.3.2 Action by Written Consent of Members. Any action that may be taken at a meeting of the Members may be taken without a meeting by a consent in writing, setting forth



the action to be taken, which is signed, dated and approved by the Members necessary to take such action at a meeting of the Members. Each Member consent adopted pursuant to this Agreement shall be filed with the minutes of the Fund and, if not unanimous, sent to each Member that did not execute it or consent thereto by electronic mail message pursuant to the terms of this Agreement.

3.3.3 Quorum and Proxies. The presence of Members representing a majority of the Members shall constitute a quorum for any meeting of the Members. Members may vote at any Member meeting either in person or by proxy executed in writing. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

3.4 Member Authority. No Member acting individually in the capacity of a Member (other than a Member so authorized by the Manager) shall be the agent of the Fund or shall have authority to bind the Fund, contract a debt or incur a liability by or on behalf of the Fund.

3.5 Manager. The initial Manager shall be [ \_\_\_\_\_ ] and shall serve as the Manager until such Manager's death, resignation, or removal. The Manager meets the criteria set forth in Schedule B. In the event the then-current Manager becomes a Prohibited Source with respect to any Government Eligible Recipient, such Manager shall not make any decisions regarding Distributions to such Government Eligible Recipient and a Special Manager shall be appointed as set forth below.

3.5.1 Successor Manager. In the event of a Manager's death, resignation, or removal, the Members shall appoint a successor Manager, which shall be an individual (i) of high moral character experienced in public service, (ii) who is not a Prohibited Source with respect to any Government Eligible Recipient and meets the additional criteria set forth on Schedule B, and (iii) who executes a counterpart to this Agreement and agrees to be bound by the terms hereof. The Fund shall have, at all times, at least one Manager serving prior to conducting any business or taking any action. Upon being appointed by the Members, the successor Manager so designated shall become the Manager hereunder as though originally named herein. A successor Manager shall be authorized to exercise all powers, authority, and discretions granted to the initial Manager. A successor Manager shall not be liable for any act or omission of a predecessor Manager.

3.5.2 Special Additional Manager. In the event the then-current Manager becomes a Prohibited Source with respect to any Government Eligible Recipient, the Members shall appoint an additional Manager (a "Special Manager"), which Special Manager shall be treated as a successor Manager for any decisions regarding Distributions made to any Government Eligible Recipient with respect to whom the initial or then-current Manager is a Prohibited Source, and those decisions of the Special Manager shall not be subject to review, change or amendment by the then-current Manager. Such Special Manager shall meet the criteria set forth in Section 3.5.1 for a successor Manager, shall be entitled to reasonable compensation, reimbursement of expenses and other rights necessary to perform such Special Manager's obligations hereunder, but shall have only the authority set forth in this Section 3.5.2 as minimally necessary to perform the duties set forth in this Section 3.5.2.



3.5.3 Resignation. A Manager or Special Manager may resign by giving sixty (60) days' prior written notice thereof to the Members. Such resignation shall become effective on the earlier of the day specified in such notice or upon the appointment of a successor Manager as provided in Section 3.5.1 and the acceptance by such successor of such appointment.

3.5.4 Removal. A Manager or Special Manager may be removed by the Members only if one or more of the following occurs: (a) the Manager is found to be mentally incompetent; (b) the Manager breaches the terms of this Agreement and fails to cure such breach within thirty (30) days of notice thereof from the Members; (c) the Manager breaches the terms of this Agreement three (3) or more times during any 12-month period, even if cured; (d) the Manager engages in actual fraud or willful misconduct; (e) the Manager intentionally breaches his or her fiduciary duty by deriving an improper personal benefit. Such removal shall become effective on the earlier of the day specified by the Members or upon the appointment of a successor Manager as provided in Section 3.5.1 and the acceptance by such successor of such appointment.

3.5.5 Relationship to Eligible Recipients. In addition to meeting the other criteria set forth on Schedule B, a Manager or Special Manager shall not be an Affiliate of any Eligible Recipient and shall not be a Prohibited Source with respect to any Government Eligible Recipient for which it is making decisions regarding Distributions.

3.6 Powers of Manager. Among the other powers stated herein, in connection with the administration of the Fund, subject to the terms of this Agreement and in addition to all other powers and authority conferred by this Agreement or by law, the Manager may exercise the following powers, authority, and discretion:

- (i) to enter into any agreement necessary, suitable, or convenient to carry out the purposes of the Fund and any other agreement incidental thereto or connected therewith;
- (ii) to establish, maintain, and administer one or more accounts and sub-accounts or Subsidiaries of the Fund with one or more accounts or sub-accounts, if desirable;
- (iii) to make Distributions of the Fund Property on behalf of Eligible Recipients, or to Eligible Recipients, pursuant to the terms and conditions of this Agreement;
- (iv) to protect and enforce the rights vested in the Fund and the Manager by this Agreement by any method deemed appropriate, including without limitation by judicial proceedings;
- (v) to take any steps necessary to establish the Fund's clear title to any Fund Property;
- (vi) to employ legal counsel, accountants, advisors, custodians, and other agents in connection with the administration or termination of this Fund; to delegate to such legal counsel, accountants, advisors, custodians, and other agents any powers of the

Manager except for determining to whom and how Distributions are made; and to pay out of the Fund Property to such legal counsel, accountants, advisors, custodians, and other agents reasonable compensation for services rendered;

(vii) to file, if necessary, any and all Tax Returns in connection with the Fund created hereby and to pay any taxes properly payable by the Fund, if any, out of the Fund Property;

(viii) to amend any schedule with respect to the timing of any proposed Distribution, as the Manager determines to be necessary, appropriate, or desirable, and to make Distributions in accordance with such amended schedule and this Agreement;

(ix) to compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the Fund as the Manager shall determine;

(x) to the extent that Fund Property is comprised of money, to invest in, purchase, retain, or sell Permitted Investments;

(xi) in general, except as otherwise provided by this Agreement, to exercise any and all rights and powers in the management of the Fund or the Fund Property that any entity could exercise in the management of property owned in its own right, upon such terms and conditions as the Manager may deem best, and to execute and deliver all instruments and to do all acts that the Manager may deem necessary or advisable to carry out the purposes of this Agreement;

(xii) subject to compliance with the screening procedures set forth in Section 5.1.8 and Schedule C, to solicit and accept donations to the Fund, which may be accomplished by retaining the services of a professional fundraiser; and

(xiii) to provide information to Eligible Recipients as necessary to comply with the Ethics in Government Act, 5 U.S.C. app. § 102(a)(2).

3.7 Actions of the Manager. The Fund shall in all cases act through the vote or authorization of the Manager. Any action approved by the Manager (and the Members, if required by the Act or this Agreement) may be effected by the Manager or any agent of the Manager without the need for additional signatures.

3.8 Reliance on the Manager. Persons dealing with the Fund are entitled to rely conclusively upon the power and authority of the Manager as set forth herein. A resolution, written consent or other action of the Manager, evidencing the approval or consent of the Manager, shall be conclusive evidence of the act of the Manager (and any necessary approval of the Members if required by this Agreement or the Act) as set forth therein.

3.9 Compensation. Fees paid by the Fund, if any, for professional services rendered by the Manager shall be (i) paid from the Fund Property, (ii) calculated either per hour in accordance with the Manager's usual hourly rate for professional services, if any, or otherwise at fair market value, and (iii) shall be fixed from time to time as may be reasonably determined by



the Manager.

3.10 Costs of Establishment and Administration; Expense Reimbursement. All reasonable Fund Expenses, including costs, expenses, and obligations incurred by the Manager in establishing and administering the Fund, carrying out its other responsibilities under this Agreement, or in any manner connected, incidental, or related thereto (including legal fees, or the cost of professionals that may, in accordance with this Agreement, be employed by the Manager) shall be paid from the Fund Property. The Manager shall be entitled to reimbursement out of the Fund Property against and from any and all loss, liability, expense, or Damage that the Manager may sustain in good faith and without willful misconduct, gross negligence, or fraud in the exercise and performance of any of the powers and duties of the Manager under this Agreement.

3.11 Agents and Professionals. The Manager may consult with independent legal counsel to be selected by it; provided, that such legal counsel may not be legal counsel for an Eligible Recipient that receives one or more Distributions from the Fund. The Manager shall be protected in relying on any resolution, statement, opinion, instrument or report of such independent legal counsel reasonably believed by the Manager to be genuine and signed or presented by such independent legal counsel.

3.12 Officers and Agents. Subject to the terms of this Agreement and the Manager's discretion and direction, the Manager may appoint officers and agents of the Fund. Such individuals shall have, to the extent set forth in the resolution or other writing appointing such individual as officer or agent, full power to execute and deliver, for and on behalf of the Fund, any and all documents and instruments, or take other actions on behalf of the Manager except for determining to whom and how Distributions are made, which may be necessary or desirable to carry on the activities of the Fund including, without limitation, executing any filings, contracts, leases, promissory notes, security agreements, and financing statements pertaining to the Fund's assets or obligations.

3.12.1 Authority of Officers and Agents. Actions by an officer or agent appointed by the Manager pursuant to a contract or budget approved by the Manager shall not require additional approval by the Manager, unless otherwise set forth in this Agreement or in any instrument appointing or governing the activities of such officer or agent. Any such officers or agents shall at all times be subject to the supervision and control of the Manager and shall conform to the policies and programs established by the Manager, and the scope of the officer's or agents' authority shall be limited to such policies and programs. Any such officers or agents shall keep the Manager informed as to all matters of concern to the Fund.

## ARTICLE 4 FUND PROPERTY

4.1 Title to Fund Property. All real and personal property acquired by, or donated to, the Fund (the "Fund Property") shall be acquired and held by the Fund or its agents expressly on the Fund's behalf, and shall not be held by or in the name of any Member, the Manager or any Affiliate of either (other than the Fund itself).

4.2 Disposition of Fund Property. The Manager is not authorized to sell, assign, transfer, exchange, pledge, set-off, or otherwise dispose of any of the Fund Property or interest therein, including to any Eligible Recipient, and shall not vary the investments of the Fund except as described in this Agreement.

4.3 Management of Fund Property; Permitted Investments. The Manager may invest and reinvest the Fund Property and any accumulated interest on the Fund Property, if any, only in the following: (i) obligations of the United States; or (ii) bank deposits maintained at a depository institution or trust company organized under the laws of the United States or any of the States thereof or the District of Columbia.

4.4 Fund Property Accounts. The Manager may, but need not, physically divide or segregate any assets held under this Agreement, but shall maintain such records as will enable the Manager to render an accounting, if necessary, including records of amounts distributed to each Eligible Recipient.

## **ARTICLE 5 DISTRIBUTIONS**

5.1 Distributions. The Manager shall only distribute payments from the Fund Property (each, a “Distribution”), other than payments for services rendered and all expenses of the Fund incurred in the Manager’s discretion, as set forth in this section.

5.1.1 Distributions to Eligible Recipients. The Manager shall have the ability, but not the obligation, to make a Distribution for (i) payment of legal counsel fees and expenses incurred by an Eligible Recipient in connection with or connected to the Investigations, which may include attorneys’ fees, court filing fees, litigation costs, or other related fees and costs incurred by an Eligible Recipient; and (ii) any out-of-pocket expenses incurred in connection with or connected to the Investigations, including taxes payable by an Eligible Recipient as a result of a Distribution and travel costs incidental to the voluntary or subpoenaed testimony of such Recipient as part of any of the Investigations.

5.1.2 Distributions to Another Fund Entity. The Manager shall have the ability to make a Distribution to another limited liability company or trust that serves the purpose of making distributions to Eligible Recipients in connection with the Investigations; provided that such other entity meets the same qualifications and standards as the Fund and is governed by documents substantially similar to this Agreement (except such other entity may have a different tax classification under the Code than the Fund).

5.1.3 Distributions to Donors or Charities. Once the Manager has determined in the Manager’s reasonable discretion, prior to any Dissolution Event under Article 9, that no additional Distributions will be made pursuant to Sections 5.1.1 or 5.1.2, the Manager shall have the ability to make a Distribution (i) to return contributions to donors based on the account into which such donor’s contribution was placed (i.e. the Non-Government Eligible Recipient Account or the Government Eligible Recipient Account) or (ii) to one or more nonprofit organizations exempt from tax under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code; provided, that in the case of part (ii), such organization is not an

Affiliate of the Manager, a Member or any Eligible Recipient.

5.1.4 Distribution Considerations. Subject to Section 5.1.5, in determining whether or not to make a distribution under Section 5.1.1, the Manager shall avoid payments arising from the defense of any charge or indictment for dishonest, fraudulent or criminal activity unless the Manager determines, in the Manager's sole and absolute discretion, that the acts forming the basis of such charge or indictment were undertaken by the Recipient on behalf of, or directly in support of, the Campaign, the Transition or the Administration in good faith and without knowledge that such acts were prohibited by law.

5.1.5 Restrictions on Distributions. Notwithstanding any other provision of this Agreement to the contrary, no Distributions shall be made:

(i) for the avoidance of doubt, to reimburse or pay for legal services rendered to a federal candidate or officeholder or federal political committee if such legal services are for the purpose of complying with the Federal Election Campaign Act of 1971, as amended ("FECA"), or Federal Election Commission ("FEC") regulations, or are related to a violation or alleged violation of FECA or FEC regulations;

(ii) based on whether or not the substance of an Eligible Recipient's involvement in the Investigations was beneficial to President Donald J. Trump, the Administration, the Campaign or the Transition;

(iii) in any way intended to: influence the substance of an Eligible Recipient's involvement in the Investigations; interfere with the process of the Investigations, especially by influencing, threatening, harming, or impeding an Eligible Recipient or any other witness, potential witness, juror, or judicial or legal officer; or otherwise impede or obstruct an Investigation or legal process;

(iv) that would result in a Government Eligible Recipient receiving funds donated by any Person the Fund knows is a Prohibited Source with respect to such Government Eligible Recipient, based on the screening procedures described in Section 5.1.8; or

(v) to the extent that at the time of the Distribution, after giving effect to the Distribution, all liabilities of the Fund exceed the fair market value of the assets of the Fund or if such Distribution would otherwise violate Applicable Law.

5.1.6 Manner of Distribution. The timing and manner of Distributions shall be determined by the Manager in the Manager's sole discretion and governed by the policies and procedures adopted by the Manager from time to time. Except as otherwise directed by the Manager, Distributions shall be paid in cash in United States currency by checks drawn on, or by wire transfer from, the applicable Fund account.

5.1.7 Eligible Recipients. Distributions under Section 5.1.1 shall only be made to or on behalf of (i) a natural Person (whether such individual was an employee, consultant, fundraiser or volunteer to the Donald J. Trump for President, Inc. committee (the "Campaign"), the Trump Administration Transition (the "Transition"), the Administration of President Donald



J. Trump (the “Administration”) or otherwise) who has incurred legal expenses in connection with an Investigation, except for President Donald J. Trump and his immediate family members (i.e., any spouse, former spouse, child, or sibling or any parent, spouse, child or sibling of any of the foregoing), and (ii) the Campaign (each, an “Eligible Recipient” and together, the “Eligible Recipients”). In the event of any Eligible Recipient’s death, Distributions that would otherwise have been made on behalf of such Eligible Recipient may be made to or on behalf of the executor or administrator of the Eligible Recipient’s estate, or if none, to or on behalf of the Eligible Recipient’s surviving spouse, or if none, to or on behalf of the Eligible Recipient’s surviving descendants, as necessary.

(i) Communications with Eligible Recipients. The Manager may use any reasonable means to identify Eligible Recipients and notify them or their counsel that Distributions may be available; provided, that the Manager shall avoid any direct contact with any Eligible Recipient to the extent practical and shall not discuss with them any potential Distributions to them, including whether or not the Manager intends to make Distributions to such Eligible Recipient’s counsel or the parameters the Manager will or may use in making such determination. To the extent possible, all communications to an Eligible Recipient from the Fund shall (i) not be handled by the Manager directly, (ii) be to and through such Eligible Recipient’s counsel and (iii) shall be from the Fund’s counsel or paying agents. Subject to the restrictions in Section 5.1.5, nothing in the foregoing paragraph shall prohibit the Manager from communications with a person affiliated with the Campaign, even though the Campaign is an Eligible Recipient.

5.1.8 Prohibited Donors and Prohibited Sources. The Fund will make Distributions to two distinct classes of Eligible Recipients: (a) Eligible Recipients who are, at the time of such Distribution, employees of the Executive Branch (“Government Eligible Recipients”), and (b) Eligible Recipients who are, at the time of such Distribution, not employees of the Executive Branch (“Non-Government Eligible Recipients”) as set forth on Schedule C.

(i) Separate Accounts. The Fund will establish one or more accounts for Government Eligible Recipients (each, a “Government Eligible Recipient Account”) and a separate account for Non-Government Eligible Recipients (the “Non-Government Eligible Recipient Account”). If the Manager deems it prudent or necessary in order to comply with the requirements of the United States Office of Government Ethics (“OGE”), the Fund may establish separate individual accounts for each or any Government Eligible Recipient. Contributions shall be placed in, and Distributions made out of, such accounts as set forth on Schedule C. A Government Eligible Recipient that does not work for the Executive Office of the President or a Federal Executive Agency shall not receive funds from a Government Eligible Recipient Account unless and until the Manager determines through additional due diligence that such funds were contributed by a donor who is not a prohibited source (as defined by 5 C.F.R. § 2635.203(d)) with respect to such Government Eligible Recipient’s employing agency (i.e. an agency other than the Executive Office of the President or a Federal Executive Agency).

(ii) Prohibited Donors. Notwithstanding anything in this Agreement to the contrary, in no event may contributions to the Fund be earmarked for any Eligible

Recipient or separate account, or be accepted from any of the following (each, a “Prohibited Donor”):

- (A) A foreign principal or agent of a foreign principal (as defined by 22 U.S.C. § 611),
- (B) An anonymous source, or
- (C) A source that has been solicited by any Eligible Recipient.

(iii) Screening Procedures. The Fund has established the “Screening Questionnaires” set forth on Schedule C that a potential donor must complete. The purpose of the Screening Questionnaires is to allow the Manager to categorize every donor as a Prohibited Donor, a Prohibited Source or a non-Prohibited Source, using the procedures set forth on Schedule C. The Screening Questionnaires and the procedures may be amended by the Manager at any time in order to best carry out, in the sole determination of the Manager, the purposes of the Fund in compliance with applicable law and OGE regulations. OGE has reviewed and provided advice on the Screening Questionnaires and policies set forth on Schedule C, and the Manager will request that OGE review and provide advice on any material amendments to such Screening Questionnaires or policies.

5.2 No Third-Party Beneficiaries. The provisions of this Article 5 are intended solely to benefit the Fund, the Members and the Manager and, to the fullest extent permitted by Applicable Law, shall not confer any benefit upon any creditor of the Fund or any Eligible Recipient (and no such creditor or Eligible Recipient shall be a third-party beneficiary of this Agreement, have any entitlement to any Distribution or otherwise control any Fund Property).

## ARTICLE 6 EXCULPATION AND INDEMNIFICATION

6.1 Exculpation. To the fullest extent permitted by Applicable Law, (x) no Member, the Manager, or any of their respective Affiliates and its and their respective partners, members, stockholders, officers, directors, managers, employees, or agents and (y) no agent of the Fund (each, a “Covered Person”), shall be liable to the Fund or to any other Covered Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Fund and in a manner reasonably believed to be within the scope of authority conferred on such Covered Person by this Agreement, excluding any such loss, damage, or claim incurred by reason of such Covered Person’s actual fraud or willful misconduct, and including any such loss, damage, or claim incurred by reason of such Covered Person’s breach of a fiduciary duty. Furthermore, to the fullest extent permitted by Applicable Law, the Manager shall not be liable to the Fund or to any Member or Eligible Recipient for monetary damages for breach of any duty (including, without limitation, fiduciary duty) as a Manager, except (i) for acts or omissions of such Manager that involve actual fraud or willful misconduct or (ii) for any transaction from which such Manager intentionally derived improper personal benefit. Neither the amendment or repeal of this paragraph, nor the adoption or amendment of any other provision of this Agreement inconsistent with this paragraph, shall



apply to or affect in any respect the applicability of this Section 6.1 with respect to any act or failure to act that occurred prior to such amendment, repeal, or adoption.

6.2 Indemnification. To the fullest extent permitted by Applicable Law, a Covered Person shall be indemnified and held harmless by the Fund for any losses, damages, liabilities, deficiencies, claims, interest, awards, judgments, penalties, costs and expenses (including reasonable attorneys' fees, costs and other out-of-pocket expenses incurred in investigating, preparing or defending the foregoing) (collectively, "Damages") incurred by such Covered Person by reason of (i) any claim or demand made by any Person arising out of or resulting from any act or omission on the part of the Fund, including the breach or failure to perform any agreement or covenant made by the Fund or any fiduciary duty to the Fund and (ii) any act or omission performed or omitted by such Covered Person in good faith on behalf of the Fund and in a manner reasonably believed to be within the scope of authority conferred on such Covered Person by this Agreement, except that no Covered Person shall be entitled to be indemnified in respect of any Damages incurred by such Covered Person by reason of such Covered Person's gross negligence or willful misconduct with respect to such acts or omissions; provided, however, that any indemnity under this Section 6.2 shall be provided out of and to the extent of Fund assets only, and no Covered Person shall have any personal liability on account thereof. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that a Covered Person did or did not act in any particular manner, or, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful. The indemnification provided for herein shall continue as to a Person who has ceased to be Covered Person and shall inure to the benefit of the heirs, executors and administrators of a Covered Person.

6.3 Expenses. Expenses (including legal fees) incurred by a Covered Person in defending any demand, action, suit or proceeding may, from time to time, be advanced by the Fund prior to the final disposition of such claim, demand, action, suit or proceeding as authorized by the Manager and upon receipt by the Fund of a written undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in Section 6.2 hereof or that such indemnification is unlawful.

6.4 Insurance. The Fund may obtain directors and officers liability insurance on behalf of Covered Persons against any liability that may be asserted against or expenses that may be incurred by any such Person in connection with the activities of the Fund or such indemnities, regardless of whether the Fund would have the power to indemnify such Person against such liability under the provisions of this Agreement or the Act. The amount, terms, and conditions of such insurance shall be determined by the Manager from time to time, and the Fund shall use commercially reasonable efforts to cause such insurance to be maintained until such time as it is discontinued by the Manager.

6.5 Notice of Claims. In the event that any claim, demand, action, suit, or proceeding shall be instituted or asserted or any Damages shall arise in respect of which indemnity may be sought by a Covered Person pursuant to Section 6.2, such Covered Person shall promptly notify



the Fund thereof in writing. Failure to provide notice shall not affect the Fund's obligations hereunder except to the extent the Fund is actually and materially prejudiced thereby.

6.6 Control of Claims. The Fund shall have the right, exercisable subject to the approval of the Manager, to participate in and control the defense of any such claim, demand, action, suit, or proceeding, and in connection therewith, to retain counsel reasonably satisfactory to each Covered Person, at the Fund's expense, to represent the Covered Persons and any others the Fund may designate with respect to such claim, demand, action, suit, or proceeding. The Fund shall keep the Covered Person advised of the status of such claim, demand, action, suit or proceeding and the defense thereof and shall consider in good faith recommendations made by the Covered Person with respect thereto. The Covered Person shall not settle or compromise any such claim without the prior written consent of the Fund, not to be unreasonably withheld, except that the Covered Person may settle such claim if the settlement involves no monetary payment either from the Fund or recoverable by the Covered Person under indemnification from the Fund. The Fund shall not settle or compromise any such claim unless the settlement involves no monetary payment or other obligation on the part of the Covered Person and includes an unconditional release in favor of the Covered Person from all liability and claims that are the subject matter of such claim. To the extent that any Covered Person is entitled to indemnification, and/or is covered by insurance obtained, by a Member, Manager, or any Affiliates of either (other than the Fund and its Subsidiaries), the Fund shall not be relieved of its indemnification obligations hereunder. The provisions of this Article 6 shall survive termination of this Agreement until the expiration of the applicable statute of limitations for the claim for which indemnification is sought, and no amendment or repeal of any of the provisions of this Agreement shall limit or eliminate the benefits provided to Covered Persons under this Article 6 before such amendment, repeal or termination.

6.7 Non-Exclusivity of Rights. The rights conferred on any Covered Person by this Article 6 shall not be exclusive of any other rights which such Covered Person may have or hereafter acquire under any statute, provision of the Certificate, this Agreement, other agreement, action of the Manager, or otherwise.

6.8 Limitation of Liability. NO COVERED PERSON SHALL BE LIABLE TO THE COMPANY, MANAGER OR ANY MEMBER FOR PUNITIVE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, REGARDLESS OF WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, VIOLATION OF ANY APPLICABLE DECEPTIVE TRADE PRACTICES ACT OR SIMILAR LAW OR ANY OTHER LEGAL OR EQUITABLE PRINCIPLE EXCLUDING ANY SUCH DAMAGES INCURRED AS A RESULT OF SUCH COVERED PERSON'S ACTUAL FRAUD OR WILLFUL MISCONDUCT, INCLUDING ANY SUCH DAMAGES INCURRED BY REASON OF SUCH COVERED PERSON'S BREACH OF A DUTY OF CARE OR DUTY OF LOYALTY (INCLUDING IN SUCH COVERED PERSON'S CAPACITY AS THE MANAGER); AND EACH MEMBER AND THE MANAGER AGREES NOT TO MAKE ANY CLAIM AGAINST ANY COVERED PERSON FOR LIABILITY FOR ANY SUCH DAMAGES.



**ARTICLE 7**  
**BOOKS, RECORDS AND ACCOUNTING**

7.1 Bank Accounts. All of the Fund Property shall be deposited into a bank account or accounts opened in the Fund's name or assumed name(s). The Manager shall determine the institution or institutions at which the accounts shall be opened and maintained, the types of accounts, and the Persons who shall have authority with respect to the accounts and the funds therein.

7.2 Books and Records. The Manager shall cause to be kept complete and accurate books and records of the Fund and its Subsidiaries and supporting documentation of the transactions with respect to the conduct of the Fund's activities. The records shall include, without limitation, complete and accurate information regarding the state of the activities and financial condition of the Fund, a copy of the Certificate of Formation, this Agreement and all amendments thereto, and a current list of the names and last known mailing addresses, designated electronic mail addresses and facsimile numbers of all Members.

7.2.1 Maintenance. The books and records shall be maintained in accordance with sound accounting practices and shall be available at the Fund's principal place of activities for examination by any Member or the Member's duly authorized representative at any and all reasonable times during normal business hours. The Fund shall maintain reasonable internal controls to safeguard its assets.

7.3 Annual Accounting Period and Taxable Year. The annual accounting period and "Taxable Year" of the Fund shall be the calendar year, unless determined otherwise by the Manager, subject to applicable requirements and limitations of the Code and the regulations promulgated thereunder.

7.4 Taxes and Tax Returns. The Manager shall timely file all tax returns required to be filed by the Fund on the basis that the Fund is a political organization under Section 527 of the Code, including IRS Forms 8871, 8872 and 990, and the Manager shall cause the Fund to pay out of the Fund Property any taxes required to be paid.

7.5 Disclosure. The Manager may disclose all information regarding the Fund that the Manager deems necessary or appropriate in compliance with Applicable Law. The Manager shall make publicly available on a regular basis the information required by Internal Revenue Service ("IRS") Form 8872, including for each donor of \$200 or more: the name of each donor; the donor's mailing address, employer and occupation; the amount of each contribution and the aggregate year to date contributions of the donor. For the avoidance of doubt, timely filing of IRS Form 8872 with the IRS shall be sufficient disclosure for the requirements of this Section 7.5.

7.6 Reports. The Fund shall file any reports required by the Act, the Delaware Secretary of State or relevant federal or state law or regulatory agency, including of any state in which the Fund is authorized to conduct activities.

**ARTICLE 8  
TRANSFERS**

8.1 Restrictions on Transfer. No Member may Transfer all or any part of such Member's interest in the Fund without the prior written consent of the Manager, which may be granted or withheld in the reasonable discretion of the Manager.

**ARTICLE 9  
DISSOLUTION, WITHDRAWAL AND DEFAULT**

9.1 Dissolution. The Fund shall be dissolved and its affairs wound up as soon as any of the following occur:

- (i) the Manager approves the dissolution of the Fund;
- (ii) the Members vote to dissolve the Fund, after consultation with the Manager, if any;
- (iii) there is an entry of a decree of dissolution under Section 18-802 the Act;  
or
- (iv) there are no Members of the Fund, unless the Fund is continued in accordance with the Act (each, a "Dissolution Event").

To the fullest extent permitted by law, no other event, including the death, disability, retirement, expulsion or insolvency of a Member, shall in and of itself cause the Fund to dissolve.

9.2 Winding up; Distributions of Proceeds. Upon dissolution of the Fund, the Manager (or any liquidator appointed thereby) shall wind up the affairs and liquidate the assets of the Fund in accordance with the provisions of this Article 9 and the Act. The proceeds from liquidation of the Fund when and as received by the Fund shall be utilized, paid, and distributed in the following order: (i) first, to pay expenses of liquidation, to pay debts of the Fund to third parties, and to establish cash reserves determined by the Manager, in its sole and absolute discretion, to be necessary or advisable for conditional, contingent, and unmatured Fund Expenses and liabilities, and (ii) thereafter, to donors as a partial return of contributions or to a 501(c)(3) organization as set forth in Section 5.1.3.

9.3 Termination. Upon completion of winding up, liquidation and Distribution of assets, the Fund shall be terminated by the filing of a Certificate of Cancellation of the Certificate of Formation with the Secretary of State of the State of Delaware.

9.4 No Right to Resign. No Member shall have the right to resign from the Fund without the written consent of the Manager, except pursuant to the permitted transfer of all of such Member's interests in the Fund, the assumption of such transferring Member's obligations under this Agreement by the transferee, and the admission of such transferee as a Member.



**ARTICLE 10  
MISCELLANEOUS**

10.1 Assurances. Each Member shall execute all certificates and other documents and shall do all such filing, recording, publishing, and other acts as the Manager deems appropriate to comply with the requirements of law for the formation and operation of the Fund and to comply with any laws, rules and regulations relating to the acquisition, operation or holding of the property of the Fund.

10.2 Notifications. All notices, demands, consents, approvals, requests and other communications required or permitted hereby shall be in writing and shall be deemed to have been duly and sufficiently given only if (a) personally delivered with proof of delivery thereof (any notice or other communication so delivered being deemed to have been received at the time so delivered), (b) sent by overnight courier (any notice or communication so delivered being deemed to have been received only when delivered), (c) sent by facsimile machine (any notice or other communication so delivered being deemed to have been received on the Business Day so sent), or (d) sent by electronic mail (any notice or other communication so delivered being deemed to have been received on the Business Day so sent), in any such case addressed to the respective parties as follows:

if to the Fund:

Patriot Legal Expense Fund Trust, LLC

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

if to a Member or Manager: to the respective address of such Member or Manager as set forth on Schedule D or to such other address or party as such Member or Manager may have furnished to the Fund in writing in accordance herewith, except that notices of change of address or addresses shall only be effective upon receipt.

10.3 Complete Agreement. This Agreement constitutes the complete and exclusive statement of the agreement among the Members, the Manager and the Fund, and there are no other side letters between the Fund and any of the Members or the Manager. This Agreement supersedes all prior written and oral statements, including any prior representation, statement, condition or warranty.

10.4 Governing Law; Arbitration. All questions concerning the construction, validity, and interpretation of this Agreement and the performance of the obligations imposed by this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware, without regard to its conflicts of law provisions that would result in the operation of the laws of any other jurisdiction. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in New York, New York before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures



and in accordance with the Expedited Procedures in those Rules (the “Rules”). The selection of the arbitrator shall be done in accordance with the Rules, provided, however, that such arbitrator shall have no fewer than [ten (10)] years of experience in the nonprofit industry. In any arbitration arising out of or related to this Agreement, the arbitrator is not empowered to award indirect, incidental, special, punitive, exemplary or consequential damages, and the parties waive any right to recover any such damages. Furthermore, in any arbitration arising out of or related to this Agreement, the arbitrator shall award to the prevailing party, if any, the costs and attorneys’ fees reasonably incurred by the prevailing party in connection with the arbitration. If the arbitrator determines a party to be the prevailing party under circumstances where the prevailing party won on some but not all of the claims and counterclaims, the arbitrator may award the prevailing party an appropriate percentage of the costs and attorneys’ fees reasonably incurred by the prevailing party in connection with the arbitration. Judgment on the arbitrator’s award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The parties shall maintain the confidential nature of the arbitration proceedings, all discovery associated with the proceedings, including but not limited to documents productions, interrogatory responses and depositions, and the arbitration award, including the arbitration hearing, except as may be reasonably necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be reasonably necessary in connection with a court application for a preliminary remedy, a judicial challenge to an arbitration award or its enforcement, or unless otherwise required by law or judicial decision. The arbitration shall be conducted on an individualized basis only, solely between the parties to this Agreement, and shall not be consolidated with any other arbitration or conducted on any type of class-wide, class-action, collective or other representative basis.

10.5 Section Titles. The headings herein are inserted as a matter of convenience only and do not define, limit, or describe the scope of this Agreement or the intent of the provisions hereof.

10.6 Binding Provisions. This Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal and legal representatives, successors and permitted assigns.

10.7 Confidentiality. A Member’s rights to access or receive any information about the Fund are conditioned on such Member’s willingness and ability to assure that the Fund information shall be used solely by such Member for purposes reasonably related to such Member’s interest as a Member (or as otherwise permitted by the Manager), and that such Fund information shall not become publicly available as a result of such Member’s rights to access or receive such Fund information. Each Member hereby acknowledges that the Fund creates and shall be in possession of confidential information, the improper use or disclosure of which could have a material adverse effect upon the Fund, Members, the Manager and their respective Affiliates. Each Member agrees to maintain any confidential Fund information provided to it in the strictest confidence. Accordingly, without limiting the generality of the foregoing:

10.7.1 The Manager shall have the right to keep confidential from the Members (and their respective agents and attorneys) for such period of time as the Manager deems reasonable, any information (i) that the Manager believes to be in the nature of trade secrets, (ii)

other information, the disclosure of which the Manager believes is not in the best interest of the Fund or could damage the Fund or its deliberations, (iii) which the Fund (or its Affiliates, employees, officers, directors, members, partners or personnel) is required by law or by agreement with a third party to keep confidential; provided that, the Manager shall make available to a Member, upon reasonable request, information required by such Member to comply with Applicable Law, rules and regulations, as well as any requests from any Governmental Authority having jurisdiction over such Member.

10.7.2 Except as required by Applicable Law, each Member agrees that the provisions of this Agreement; all of the information, documents, and reports received by such Member, and all understandings, agreements, and other arrangements between and among the parties (or any of them) related to this Agreement or the activities of the Fund; and all other information received from, or otherwise relating to, the Fund, any Member, the Manager, and each of their respective Affiliates shall be confidential, and no Member shall disclose or otherwise release to any other Person (other than a party hereto) such information, without the written consent of the Fund.

10.7.3 The Fund shall be entitled to enforce the obligations of each Member under this Section 10.7 to maintain the confidentiality of the information described herein. The remedies provided for in this Section 10.7 are in addition to and not in limitation of any other right or remedy of the Fund provided by law or equity, this Agreement, or any other agreement entered into by or among one or more of the Members and/or the Fund. The confidentiality obligations of the parties under this Section 10.7 shall survive termination of this Agreement or termination of a Person's status as a Member of the Fund for a period of three (3) years. Upon termination of a Person's status as a Member of the Fund, except in connection with a dissolution of the Fund, such Person shall not retain and shall return to the Fund, destroy or transfer to the transferee of any of its interests in the Fund that is admitted as a Member all confidential Fund information subject to the confidentiality obligations of this Section 10.7.

10.8 Fees and Expenses. Except as otherwise provided herein, all fees and expenses incurred in connection with or related to this Agreement and the transactions contemplated hereby shall be paid by the party incurring such fees or expenses.

10.9 Public Announcements. Except as required by law, none of the Members shall make any public announcement or filing with respect to the transactions provided for herein without the prior written consent of the Manager. In the event an announcement or filing is required by law, the Member obligated to make such announcement or filing shall provide the Manager and other Members (as applicable) with prompt notice of such requirement, including the proposed content of such announcement or filing, prior to such announcement or filing.

10.10 Severability of Provisions. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any Applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or portion of any provision in such jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision or portion

of any provision had never been contained herein. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner so that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

10.11 Counterparts. This Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original and all of which, when taken together, constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

10.12 Amendment. The Manager, in its discretion, but with the advice of counsel and consent of the Members, may from time to time and at any time make or execute a document amending this Agreement only for the purposes of (i) curing any ambiguity or correcting or supplementing any provision contained herein or in any amendment to this Agreement that may be defective or inconsistent with any other provision contained herein, in any amendment to this Agreement, including pursuant to Section 10.10, or that may be inconsistent with the Act or Section 527 of the Code (ii) satisfying any requirement, condition, or guideline contained in any opinion, directive, order, or ruling of any federal, state, or local court or governing agency, or (iii) fulfilling any court order required or contemplated by this Fund. Notwithstanding the foregoing, no such amendment shall change the purpose of the Fund or change or be in any way inconsistent with the Fund's status as a political organization under Section 527 of the Code.

10.13 Consents and Waivers. Unless otherwise explicitly provided in this Agreement, any and all consents, waivers, or approvals required or permitted by this Agreement shall be in writing and signed by each Member or the Manager as required by this Agreement or against whom such consent, waiver, or approval would be enforced. A signed copy thereof shall be filed and kept with the books of the Fund. No waivers of or exceptions to any term, condition, or provision of this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such term, condition, or provision.

10.14 Termination. This Agreement shall terminate upon the filing described in Section 9.3; provided, that the rights and obligations of the Members and the Fund under this Article 10 shall survive any such termination of this Agreement; provided, further, that any such termination shall not affect the rights and obligations of the Members and the Fund arising prior to the date thereof under Article 6.

10.15 Schedules. All schedules referenced in, and attached to, this Agreement are incorporated into this Agreement by this reference.

[SIGNATURE PAGE FOLLOWS]

**SIGNATURE PAGE TO  
LIMITED LIABILITY COMPANY AGREEMENT OF  
PATRIOT LEGAL EXPENSE FUND TRUST, LLC**

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date set forth above.

COMPANY:

PATRIOT LEGAL EXPENSE FUND  
TRUST, LLC

By: \_\_\_\_\_

Name: [TBD]

Title: [TBD]

MEMBERS:

[TBD]

\_\_\_\_\_

[TBD]

\_\_\_\_\_

MANAGER,  
for the purpose of accepting  
appointment as Manager

[\_\_\_\_\_]

\_\_\_\_\_



## SCHEDULE A

### Definitions and Rules of Construction

A. **Definitions.** In this Agreement the following capitalized terms have the respective meanings specified:

“Act” shall have the meaning set forth in the Recitals.

“Affiliate” means (i) with respect to any Person that is an entity, any individual, corporation, partnership, firm, joint venture, investment fund, association, trust, unincorporated association, organization, Governmental Authority or other entity, which controls, is controlled by or is under common control with, such Person and (ii) with respect to any Person that is a natural person, such Person’s spouse, children, parents, lineal descendants or heirs or a trust set up for the benefit of any such Person.

“Agreement” shall have the meaning set forth in the Recitals.

“Applicable Law” means all laws and other rules, regulations or written policies of a Governmental Authority promulgated thereunder, applicable to any particular instance, as each may be amended or supplemented from time to time.

“Business Day” means any day of the week other than Saturday, Sunday or any other day on which banks in the State of New York are authorized or required by law to be closed.

“Certificate of Formation” shall have the meaning set forth in the Recitals.

“Code” shall have the meaning set forth in the Recitals.

“Covered Person” shall have the meaning set forth in Section 6.1.

“Damages” shall have the meaning set forth in Section 6.2.

“Dissolution Event” shall have the meaning set forth in Section 9.1(iii).

“Distribution” shall have the meaning set forth in Section 5.1.

“Eligible Recipient” shall have the meaning set forth in Section 5.1.7.

“FEC” shall have the meaning set forth in Section 5.1.5.

“FECA” shall have the meaning set forth in Section 5.1.5.

“Federal Executive Agency” means any department, sub-agency, bureau, board, commission or committee of the executive branch of the United States Government except for the following independent regulatory agencies: Consumer Product Safety Commission; Commodity Futures Trading Commission; Equal Employment Opportunity Commission; Federal Communications Commission; Federal Deposit Insurance Corporation; Federal Election Commission; Federal Energy Regulatory Commission; Federal Housing Finance Agency;



Federal Maritime Commission; Federal Mine Safety and Health Review Commission; Federal Reserve Board; Federal Trade Commission; U.S. International Trade Commission; Merit Systems Protection Board; National Labor Relations Board; Nuclear Regulatory Commission; Occupational Safety and Health Review Commission; Postal Regulatory Commission; Securities and Exchange Commission; and Surface Transportation Board.

“Fund” shall have the meaning set forth in the Recitals.

“Fund Expenses” means all costs and expenses associated with the formation, dissolution, winding-up or termination of the Fund, and operation of its business including, without limitation: (i) all fees, costs and expenses incurred in connection with the organization and operation of the Fund, (ii) legal, accounting, audit, custodial and other professional fees as well as consulting fees relating to services rendered to the Fund, (iii) all federal, state and local Taxes of any kind payable by the Fund, (iv) insurance premiums, indemnification payments and costs of investigation, prosecution or defense of any claims by or against the Fund, and (v) costs of preparing and filing all Tax Returns of the Fund and other governmental returns and reports.

“Fund Property” shall have the meaning set forth in Section 4.1.

“Governmental Authority” means any United States or non-United States federal, national, supranational, state, provincial, local or similar government, governmental, regulatory or administrative authority, branch, agency or commission or any court, tribunal, or arbitral or judicial body.

“Government Eligible Recipient” shall have the meaning set forth in Section 5.1.8.

“Government Eligible Recipient Account” shall have the meaning set forth in Section 5.1.8.

“IRS” shall have the meaning set forth in Section 7.5.

“Investigations” means (1) the investigation led by special counsel Robert S. Mueller III, pursuant to Order No. 3915-2017 of the Acting Attorney General, to investigate Russian interference with the 2016 Presidential election and related matters; and (2) the inquiries being conducted by Committees of the U.S. Senate and House of Representatives, including but not limited to (A) the U.S. Senate Select Committee on Intelligence and (B) the U.S. House of Representatives Permanent Select Committee on Intelligence, in each case related to (i) a review of the intelligence that informed the Intelligence Community Assessment “Russian Activities and Intentions in Recent US Elections,” (ii) counterintelligence concerns related to Russia and the 2016 U.S. election, including any intelligence regarding links between Russia and individuals associated with political campaigns, and (iii) Russian cyber activity and other “active measures” directed against the US, both as it regards the 2016 U.S. election and more broadly. The term shall also include any expansion of these investigations and inquiries by the relevant investigating authority or judicial proceeding related to such investigations and inquiries.

“Manager” means, as of the date hereof, the Person listed on Schedule D, as updated from time to time, in accordance with this Agreement.

“Member(s)” shall have the meaning set forth in the Recitals.

“Non-Government Eligible Recipient” shall have the meaning set forth in Section 5.1.8.

“Non-Government Eligible Recipient Account” shall have the meaning set forth in Section 5.1.8.

“OGE” shall have the meaning set forth in Section 5.1.8.

“Permitted Investments” shall have the meaning set forth in Section 4.3.

“Person” means and includes an individual, corporation, partnership, association, limited liability company, trust, estate or other entity.

“Prohibited Donor” shall have the meaning set forth in Section 5.1.8.

“Prohibited Source” shall have the meaning set forth on Schedule C.

“Screening Questionnaires” shall have the meaning set forth in Section 5.1.8.

“Special Manager” shall have the meaning set forth in Section 3.5.2.

“Subsidiary” means, with respect to any Person, an entity in which such Person holds equity interests, directly or indirectly, such that either (a) such Person holds at least a majority, by voting power to elect the board of directors, board of managers or similar governing body, of the equity interests of such entity, or (b) such Person has the right to at least a majority of all proceeds that the equity holders of such entity would be entitled to if the entity were liquidated for Fair Market Value.

“Tax” means any federal, state, local or foreign income, gross receipts, ad valorem, sales, use, employment, social security, disability, occupation, property, severance, value added, goods and services, documentary, stamp duty, transfer, conveyance, capital stock, excise, withholding or other Taxes imposed by or on behalf of any Governmental Authority, including any interest, penalty or addition thereto.

“Tax Return” means any declaration, report, statement, form, return or other document or information required to be supplied to a Taxing Authority in connection with Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Taxable Year” means the calendar year, unless determined otherwise by the Manager, subject to applicable requirements and limitations of the Code and the regulations promulgated thereunder.

“Taxing Authority” means, with respect to any Tax, the Governmental Authority that imposes the Tax, and the agency (if any) charged with collection of the Tax for the Governmental Authority.



“Transfer” means, when used as a noun, any sale, hypothecation, pledge, assignment, attachment, disposition or other transfer, and, when used as a verb, means voluntarily to sell, hypothecate, pledge, assign, consent to the attachment, dispose of or otherwise transfer, in both cases either directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise.

**B. Rules of Construction.** In this Agreement, unless the context otherwise requires:

(i) references in this Agreement to “writing” or comparable expressions include references to facsimile transmission or comparable means of communication (including electronic mail); provided, that the sender complies with Section 10.2;

(ii) the phrases “delivered” or “made available”, when used in this Agreement, shall mean that the information referred to has been physically or electronically delivered to the relevant parties on or prior to the applicable date, except as may be required by Section 10.2;

(iii) words expressed in the singular number shall include the plural and vice versa; words expressed in the masculine shall include the feminine and neuter genders and vice versa;

(iv) references to Articles, Sections and Schedules are references to articles, sections and schedules of this Agreement;

(v) the headings of the several Articles and Sections of this Agreement are inserted for convenience only, do not constitute a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement;

(vi) references to “day” or “days” are to calendar days and whenever any action must be taken under this Agreement on or by a day that is not a Business Day, then that action may be validly taken on or by the next day that is a Business Day;

(vii) references to “the date hereof” shall mean as of the date of this Agreement;

(viii) the words “hereof”, “herein”, “hereto” and “hereunder”, and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any provision of this Agreement;

(ix) this “Agreement” or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document as the same may have been, or may from time to time in accordance with its terms be, amended, varied, novated, supplemented and in effect;

(x) “include”, “includes”, and “including” are deemed to be followed by “without limitation” whether or not they are in fact followed by such words or words of similar import;

(xi) “or” is deemed to be used in the inclusive sense of “and/or”;

(xii) “extent” in the phrase “to the extent” is deemed to refer to the degree to which a subject or other item extends and shall not simply mean “if”;

(xiii) references to the “ordinary course of business” are to refer to the ordinary course of business consistent with past practice;

(xiv) references to “Dollars”, “dollars” or “\$” without more are to the lawful currency of the United States of America; and

(xv) notwithstanding anything herein to the contrary, except where this Agreement expressly states otherwise: (i) each representation and warranty made by any Member in this Agreement is made on a several, and not a joint or joint and several, basis; and (ii) any covenant or obligation of any Member under this Agreement is a covenant or obligation only of such Member and not a covenant or obligation of any other Member, whether jointly, jointly and severally, or otherwise.



## SCHEDULE B

### Manager Qualification Requirements

A Manager shall meet all of the following criteria:

- Not an individual lobbyist (individuals who are listed on current LD-2)
- Not an employee of a lobbying organization as defined in Executive Order No. 13770 (2017).
- Not a foreign agent (FARA definition)
- Not a foreign national (FARA definition)
- Not employed by the Trump Campaign or The Trump Organization;
- Not a relative, as defined in 5 C.F.R. § 2634.105(o), of a Government Eligible Recipient, treating the Manager as a “reporting individual”;
- Not an employee of a Government Eligible Recipient; or of the United States Government;
- Not a partner, associate or employee of any law firm that is representing a Government Eligible Recipient in connection with the Investigations, which may be entitled to payment of attorney fees from this Fund;
- Not an employee of any organization that is an Affiliate of a Government Eligible Recipient;
- Not a partner of, or involved in any joint venture or other investment with a Government Eligible Recipient;
- Not an individual with any business that would be affected by the official duties of a Government Eligible Recipient;
- Not a Prohibited Source with respect to any potential Government Eligible Recipient of which the Fund is aware at the time of the appointment of such Manager.

## SCHEDULE C

### Donor Screening Questionnaires and Screening Policies

In no event may contributions to the Fund be placed in the Government Eligible Recipient Account if received from any of the following (collectively, “Prohibited Sources”):

- (i) A federal employee (as defined by 5 C.F.R. § 2635.102(h)),
- (ii) A registered lobbyist or lobbying organization (as defined by 2 U.S.C. § 1602),
- (iii) A prohibited source (as defined by 5 C.F.R. § 2635.203 (d)) with respect to the Government Eligible Recipient(s) included in such account(s), or
- (iv) A source that indicates in writing that the contribution is being given because of an Eligible Recipient’s official position or performance of duties.

Contributions received from a Prohibited Source (i.e., identified in (i), (ii), (iii) or (iv) immediately above using the Screening Questionnaires) that is not a Prohibited Donor or contributions from any Person that certifies that such Person is not a Prohibited Donor but does not complete the entire applicable Screening Questionnaire may be placed in the Non-Government Eligible Recipient Account. Donors contributing \$1,000 or less (aggregating all donations from a single donor) may complete abbreviated forms of the Screening Questionnaires attached below as indicated therein.

#### Screening Process

Based on the responses that each donor provides to the applicable Screening Questionnaire below, the Manager shall do one of the following:

1. Deposit the contribution into either the Government Eligible Recipient Account or the Non-Government Eligible Recipient Account, if the Manager determines that the donor is not a Prohibited Source,
2. Deposit the contribution into the Non-Government Eligible Recipient Account, if the Manager determines that (i) the donor is a Prohibited Source or (ii) the Manager lacks sufficient information to determine that the donor is not a Prohibited Source,
3. Reject or return the contribution to the donor, if the Manager determines that the contribution is from a Prohibited Donor or lacks sufficient information to determine that the donor is not a Prohibited Donor, or
4. Conduct additional due diligence, as deemed necessary or prudent by the Manager, in order to determine which of options (1), (2) or (3) is appropriate (and then take the appropriate action after such determination has been made). Such due diligence may include, at the discretion of the Manager:

- (i) conferring with the designated ethics official within any relevant agency of the Executive Branch to determine if a donor is a “prohibited source” under 5 C.F.R. § 2635.203(d) for the Government Eligible Recipient employed by such agency; or
- (ii) conferring with OGE, as appropriate.

For the avoidance of doubt, if the donor certifies that such donor is not a Prohibited Donor but otherwise fails to complete the applicable Screening Questionnaire in its entirety, the Manager must either place such donor’s contribution in the Non-Government Eligible Recipient Account (i.e. treat such donor as a Prohibited Source) or conduct additional due diligence to obtain the necessary information.

Distributions and Transfers

Distributions to a Government Eligible Recipient shall only be made from a Government Eligible Recipient Account which contains no funds from a Prohibited Source with respect to such Government Eligible Recipient.

At the discretion of the Manager, funds may be transferred between accounts as follows:

1. Any time and in any amount from the Government Eligible Recipient Account (including any individual account) to the Non-Government Eligible Recipient Account; and
2. From the Non-Government Eligible Recipient Account to the Government Eligible Recipient Account (or any individual account) only if, and to the extent that, the Manager has determined that such funds being transferred were not contributed by a Prohibited Source with respect to any Government Eligible Recipient that can receive Distributions from such account(s).



**DONATION SCREENING QUESTIONS FOR INDIVIDUALS DONATING \$1,000 OR  
LESS**

**Step One: Donation and Donor Information**

**Donation Information**

- Amount
- Credit Card Payment Information

**Donor Information**

- Name
- Address
- Email
- Mobile
- Occupation/Employer (Note: you may also include a “check here if retired” box.)
- By clicking “CONTINUE,” I certify that the following statements are true and correct:
  1. I am a U.S. citizen or lawful permanent resident (i.e., green card holder).
  2. I am not currently registered under the Foreign Agents Registration Act.
  3. I am making this donation from my personal funds, I am not making this donation in the name of any other person, and I will not be reimbursed by any individual or entity for this donation.
  4. I understand that my name, address, occupation, employer, and amount of donation will be publicly disclosed.

**CONTINUE**

**Step Two: Federal Ethics Screening Questions**

The Patriot Legal Expense Fund Trust, LLC was formed to help pay legal expenses incurred because of the special counsel and congressional investigations. In accordance with federal ethics laws and rules, only certain donations may be used to pay legal expenses on behalf of federal government employees.

Please assist us in determining how best to use your donation by reviewing the statements below. If all the statements below are true and correct, please check “yes.” If any of the statements below are not correct, do not check “yes.” Please be assured that your donation will be put to good use regardless of your answer. (Important instructions about the terms “federal executive agency” and “covered entities” follow the statements.)

**Yes, I certify that all the statements below are true and correct to the best of my knowledge.**

1. I am not currently a federal government employee in the executive branch.
2. I am not currently registered as a lobbyist under the Lobbying Disclosure Act.
3. None of my covered entities are currently registered under the Lobbying Disclosure Act.



4. I am not currently seeking official action by or involved in a proceeding with a federal executive agency.
5. None of my covered entities are currently seeking official action by or involved in a proceeding with a federal executive agency.
6. I am not currently doing business with or seeking to do business with a federal executive agency.
7. None of my covered entities are currently doing business with or seeking to do business with a federal executive agency.
8. I do not engage in any trade, business, or profession that is regulated by a federal executive agency.
9. None of my covered entities engage in any trade, business, or profession that is regulated by a federal executive agency.
10. I do not have financial interests that may be substantially affected by the performance or nonperformance of official duties by an identifiable employee in the Executive Office of the President or the Department of Justice.
11. None of my covered entities have financial interests that may be substantially affected by the performance or nonperformance of official duties by an identifiable employee in the Executive Office of the President or the Department of Justice.
12. I am not an employee, officer, or agent of a membership organization or association with a majority of members that fall into any of the following categories:
  - a. Currently seeking official action by or involved in a proceeding with a federal executive agency;
  - b. Currently doing business with or seeking to do business with a federal executive agency;
  - c. Engage in any trade, business, or profession that is regulated by a federal executive agency; or
  - d. Have financial interests that may be substantially affected by the performance or nonperformance of official duties by an identifiable employee in the Executive Office of the President or the Department of Justice.
13. I am not donating to the Patriot Legal Expense Fund Trust, LLC because of any federal government employee recipient's official position or performance of duties.

The term “**federal executive agency**” does not include the following independent regulatory agencies: Consumer Product Safety Commission; Commodity Futures Trading Commission; Equal Employment Opportunity Commission; Federal Communications Commission; Federal Deposit Insurance Corporation; Federal Election Commission; Federal Energy Regulatory Commission; Federal Housing Finance Agency; Federal Maritime Commission; Federal Mine Safety and Health Review Commission; Federal Reserve Board; Federal Trade Commission; U.S. International Trade Commission; Merit Systems Protection Board; National Labor Relations Board; Nuclear Regulatory Commission; Occupational Safety and Health Review Commission; Postal Regulatory Commission; Securities and Exchange Commission; and Surface Transportation Board.

Some of the statements above appear twice to help clarify how these statements would apply to your employer or an entity for which you are an agent or officer, or any entity they majority own or control.

We refer above to your employer and these other entities as “**covered entities.**” Answer as best you can as to the “covered entities.” We understand that you may not know everything about them.

**DONATE**

**DONATION SCREENING QUESTIONS FOR  
INDIVIDUALS DONATING MORE THAN \$1,000**

**Step One: Donation and Donor Information**

**Donation Information**

- Amount
- Credit Card Payment Information

**Donor Information**

- Name
- Address
- Email
- Mobile
- Occupation/Employer (Note: you may also include a “check here if retired” box.)
- By clicking “CONTINUE,” I certify that the following statements are true and correct:
  1. I am a U.S. citizen or lawful permanent resident (i.e., green card holder).
  2. I am not currently registered under the Foreign Agents Registration Act.
  3. I am making this donation from my personal funds, I am not making this donation in the name of any other person, and I will not be reimbursed by any individual or entity for this donation.
  4. I understand that my name, address, occupation, employer, and amount of donation will be publicly disclosed.

**CONTINUE**

**Step Two: Federal Ethics Screening Questions**

The Patriot Legal Expense Fund Trust, LLC was formed to help pay legal expenses incurred because of the special counsel and congressional investigations. In accordance with federal ethics laws and rules, only certain donations may be used to pay legal expenses on behalf of federal government employees.

Please assist us in determining how best to use your donation by answering the following questions. Some of the questions below are stated twice to help clarify how these questions would apply to your employer or an entity for which you are an agent or officer, or any entity they majority own or control. We refer below to your employer and these other entities as “covered entities.” Answer as best you can as to the “covered entities.” We understand that you may not know everything about them.

As used below, the term “federal executive agency” does not include the following independent regulatory agencies: Consumer Product Safety Commission; Commodity Futures Trading Commission; Equal Employment Opportunity Commission; Federal Communications Commission; Federal Deposit Insurance Corporation; Federal Election Commission; Federal Energy Regulatory Commission; Federal Housing Finance Agency; Federal Maritime Commission; Federal Mine Safety and Health Review



Commission; Federal Reserve Board; Federal Trade Commission; U.S. International Trade Commission; Merit Systems Protection Board; National Labor Relations Board; Nuclear Regulatory Commission; Occupational Safety and Health Review Commission; Postal Regulatory Commission; Securities and Exchange Commission; and Surface Transportation Board.

1. Are you currently a federal government employee in the executive branch?  YES  NO

2a. Are you currently registered as a lobbyist under the Lobbying Disclosure Act?  YES  NO

2b. Are any of your covered entities currently registered under the Lobbying Disclosure Act?  YES  NO

3a. Are you currently seeking official action by or involved in a proceeding with a federal executive agency?  YES  NO

- For example, check “yes” if you are currently seeking employment with a federal executive agency or have some other request for action before a federal executive agency.

*If yes, please specify which federal agency or agencies:* \_\_\_\_\_

(Your response will be used to determine whether your donation may be used to assist federal employees of a specific agency.)

3b. Are any of your covered entities currently seeking official action by or involved in a proceeding with a federal executive agency?  YES  NO

- For example, check “yes” if your employer is currently seeking regulatory action by a federal executive agency.

*If yes, please specify which federal agency or agencies:* \_\_\_\_\_

(Your response will be used to determine whether your donation may be used to assist federal employees of a specific agency.)

4a. Are you currently doing business with or seeking to do business with a federal executive agency?  YES  NO

- For example, check “yes” if you are seeking a federal government grant in your personal capacity.



*If yes, please specify which federal agency or agencies:* \_\_\_\_\_

(Your response will be used to determine whether your donation may be used to assist federal employees of a specific agency.)

**4b. Are any of your covered entities currently doing business with or seeking to do business with a federal executive agency?**  YES  NO

- For example, check “yes” if your employer is a federal government contractor.

*If yes, please specify which federal agency or agencies:* \_\_\_\_\_

(Your response will be used to determine whether your donation may be used to assist federal employees of a specific agency.)

**5a. Do you engage in any trade, business, or profession that is regulated by a federal executive agency?**  YES  NO

- For example, check “yes” if you are a commercial truck driver directly regulated by the Federal Motor Carrier Safety Administration. On the other hand, for example, you do not need to check “yes” simply because you pay taxes and file tax returns with the Internal Revenue Service.

**5b. Do any of your covered entities engage in any trade, business, or profession that is regulated by a federal executive agency?**  YES  NO

- For example, check “yes” if your employer is part of a regulated industry, such as a pharmaceutical company (directly regulated by the Food and Drug Administration) or airline (directly regulated by the Federal Aviation Administration). On the other hand, for example, you do not need to check “yes” simply because your employer is generally regulated as a result of hiring employees, paying taxes, or engaging in interstate commerce.

**6a. Do you have financial interests that may be substantially affected by the performance or nonperformance of official duties by an identifiable federal executive agency employee?**  YES  NO

- For example, check “yes” if you have a pending application for disaster assistance before the Federal Emergency Management Agency (“FEMA”) because your financial interests may be substantially affected by the decisions of the FEMA employees considering your application.

*If yes, please list the federal executive agency employee’s employing agency:*

---

(Your response will be used to determine whether your donation may be used to assist federal employees of a specific agency.)

- 6b. Do any of your covered entities have financial interests that may be substantially affected by the performance or nonperformance of official duties by an identifiable federal executive agency employee?  YES  NO

- For example, check “yes” if your employer is currently involved in a lawsuit or enforcement matter with a federal executive agency.

*If yes, please list the federal executive agency employee’s employing agency.*

---

(Your response will be used to determine whether your donation may be used to assist federal employees of a specific agency.)

7. Are you an employee, officer, or agent of a membership organization or association that has members?  YES  NO

*If yes, do a majority of the members in the organization or association fall into any of these categories?*  YES  NO

- *Currently seeking official action by or involved in a proceeding with a federal executive agency;*
- *Currently doing business with or seeking to do business with a federal executive agency;*
- *Engage in any trade, business, or profession that is regulated by a federal executive agency; or*
- *Have financial interests that may be substantially affected by the performance or nonperformance of official duties by an identifiable federal executive agency employee.*

Please answer this question to the best of your ability. For example, check “yes” if your employer is a national trade association and a majority of your employer’s members are federal government contractors because a majority of your employer’s members are doing business with federal executive agencies.

8. Please confirm that you are not donating to the Patriot Legal Expense Fund Trust, LLC because of any potential federal government employee recipient's official position or performance of duties.  CONFIRM

- For example, you may check "confirm" if your motivation for donating is unrelated to any potential federal government employee recipient's status, authority, or duties associated with their official position, but instead is a goodwill gesture and based on all recipients' need to retain legal counsel arising out of the investigations related to the 2016 election.

*By clicking "DONATE," I certify that my answers to the questions above are true and correct to the best of my knowledge.*

**DONATE**



**DONATION SCREENING QUESTIONS**  
**FOR ENTITIES DONATING \$1,000 OR LESS**

**Step One: Donation and Donor Information**

**Donation Information**

- Amount
- Check or Credit Card
- If Credit Card, Payment Information

**Donor Information**

- Entity Name
- Entity Address
- Contact Person's Name
- Contact Person's Email
- Contact Person's Phone
- I certify that the following statements are true and correct:
  1. The entity is not a foreign national (i.e., the entity is organized under United States law and has its principal place of business in the United States).
  2. The entity is not currently registered under the Foreign Agents Registration Act.
  3. The source of this donation is the entity whose information is provided above, and this donation is not being made through an organization established for the purpose of donating to the Patriot Legal Expense Fund Trust, LLC.
  4. I understand that the entity's name, address, and amount of donation will be publicly disclosed.

**Step Two: Federal Ethics Screening Questions**

The Patriot Legal Expense Fund Trust, LLC was formed to help pay legal expenses incurred because of the special counsel and congressional investigations. In accordance with federal ethics laws and rules, only certain donations may be used to pay legal expenses on behalf of federal government employees.

Please assist us in determining how best to use your donation by reviewing the statements below. If the donating entity is a corporation, please also answer the following questions about any controlled subsidiaries. A subsidiary is a "controlled subsidiary" if the donating entity owns 50% or more of the subsidiary's voting securities.

If all the statements below are true and correct, please check "yes." If any of the statements below are not correct, do not check "yes." Please be assured that your donation will be put to good use regardless of your answer. (Important instructions about the term "federal executive agency" follows the statements.)

**Yes, I certify that all the statements below are true and correct to the best of my knowledge.**

1. The donating entity and its controlled subsidiaries (if any) are not currently registered under the Lobbying Disclosure Act.



2. The donating entity and its controlled subsidiaries (if any) are not currently seeking official action by or involved in a proceeding with a federal executive agency.
3. The donating entity and its controlled subsidiaries (if any) are not currently doing business with or seeking to do business with a federal executive agency.
4. The donating entity and its controlled subsidiaries (if any) do not engage in any trade, business, or profession that is regulated by a federal executive agency.
5. The donating entity and its controlled subsidiaries (if any) do not have financial interests that may be substantially affected by the performance or nonperformance of official duties by an identifiable employee in the Executive Office of the President or the Department of Justice.
6. The donating entity and its controlled subsidiaries (if any) are not a membership organization or association with a majority of members that fall into any of the following categories:
  - a. Currently seeking official action by or involved in a proceeding with a federal executive agency;
  - b. Currently doing business with or seeking to do business with a federal executive agency;
  - c. Engage in any trade, business, or profession that is regulated by a federal executive agency; or
  - d. Have financial interests that may be substantially affected by the performance or nonperformance of official duties by an identifiable employee in the Executive Office of the President or the Department of Justice.
7. The donating entity is not donating to the Patriot Legal Expense Fund Trust, LLC because of any federal government employee recipient's official position or performance of duties.

The term "federal executive agency" does not include the following independent regulatory agencies: Consumer Product Safety Commission; Commodity Futures Trading Commission; Equal Employment Opportunity Commission; Federal Communications Commission; Federal Deposit Insurance Corporation; Federal Election Commission; Federal Energy Regulatory Commission; Federal Housing Finance Agency; Federal Maritime Commission; Federal Mine Safety and Health Review Commission; Federal Reserve Board; Federal Trade Commission; U.S. International Trade Commission; Merit Systems Protection Board; National Labor Relations Board; Nuclear Regulatory Commission; Occupational Safety and Health Review Commission; Postal Regulatory Commission; Securities and Exchange Commission; and Surface Transportation Board.

### **Certification**

*By signing below, I certify that my answers to the questions above are true and correct to the best of my knowledge.*

**DONATION SCREENING QUESTIONS FOR  
ENTITIES DONATING MORE THAN \$1,000**

**Step One: Donation and Donor Information**

**Donation Information**

- Amount
- Check or Credit Card
- If Credit Card, Payment Information

**Donor Information**

- Entity Name
- Entity Address
- Contact Person's Name
- Contact Person's Email
- Contact Person's Phone
- I certify that the following statements are true and correct:
  1. The entity is not a foreign national (i.e., the entity is organized under United States law and has its principal place of business in the United States).
  2. The entity is not currently registered under the Foreign Agents Registration Act.
  3. The source of this donation is the entity whose information is provided above, and this donation is not being made through an organization established for the purpose of donating to the Patriot Legal Expense Fund Trust, LLC.
  4. I understand that the entity's name, address, and amount of donation will be publicly disclosed.

**Step Two: Federal Ethics Screening Questions**

The Patriot Legal Expense Fund Trust, LLC was formed to help pay legal expenses incurred because of the special counsel and congressional investigations. In accordance with federal ethics laws and rules, only certain donations may be used to pay legal expenses on behalf of federal government employees.

Please assist us in determining how best to use your donation by answering the following questions. If the donating entity is a corporation, please also answer the following questions about any controlled subsidiaries. A subsidiary is a "controlled subsidiary" if the donating entity owns 50% or more of the subsidiary's voting securities.

As used below, the term "federal executive agency" does not include the following independent regulatory agencies: Consumer Product Safety Commission; Commodity Futures Trading Commission; Equal Employment Opportunity Commission; Federal Communications Commission; Federal Deposit Insurance Corporation; Federal Election Commission; Federal Energy Regulatory Commission; Federal Housing Finance Agency; Federal Maritime Commission; Federal Mine Safety and Health Review Commission; Federal Reserve Board; Federal Trade Commission; U.S. International Trade Commission; Merit Systems Protection Board; National Labor Relations Board; Nuclear Regulatory Commission;

Occupational Safety and Health Review Commission; Postal Regulatory Commission; Securities and Exchange Commission; and Surface Transportation Board.

1. Is the donating entity or any controlled subsidiary currently registered under the Lobbying Disclosure Act?  YES  NO
2. Is the donating entity or any controlled subsidiary currently seeking official action by or involved in a proceeding with a federal executive agency?  YES  NO
- For example, check “yes” if the donating entity is currently seeking regulatory action by a federal executive agency.

*If yes, please specify which federal agency or agencies: \_\_\_\_\_*

(Your response will be used to determine whether your donation may be used to assist federal employees of a specific agency.)

3. Is the donating entity or any controlled subsidiary currently doing business with or seeking to do business with a federal executive agency?  YES  NO
- For example, check “yes” if the donating entity or any controlled subsidiary is a federal government contractor.

*If yes, please specify which federal agency or agencies: \_\_\_\_\_*

(Your response will be used to determine whether your donation may be used to assist federal employees of a specific agency.)

4. Does the donating entity or any controlled subsidiary engage in any trade, business, or profession that is regulated by a federal executive agency?  YES  NO
- For example, check “yes” if the donating entity or any controlled subsidiary is part of a regulated industry, such as a pharmaceutical company (directly regulated by the Food and Drug Administration) or airline (directly regulated by the Federal Aviation Administration). On the other hand, for example, you do not need to check “yes” simply because the donating entity or a controlled subsidiary is generally regulated as a result of hiring employees, paying taxes, or engaging in interstate commerce.

5. Does the donating entity or any controlled subsidiary have financial interests that may be substantially affected by the performance or nonperformance of official duties by an identifiable federal executive agency employee?  YES  NO



- For example, check “yes” if the donating entity or any controlled subsidiary is currently involved in a lawsuit or enforcement matter with a federal executive agency.

*If yes, please list the federal executive agency employee’s employing agency.*

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(Your response will be used to determine whether your donation may be used to assist federal employees of a specific agency.)

6. **Is the donating entity or any controlled subsidiary a membership organization or association that has members?**  YES  NO

*If yes, do a majority of the members fall into any of these categories?*

- *Currently seeking official action by or involved in a proceeding with a federal executive agency;*  YES  NO
- *Currently doing business with or seeking to do business with a federal executive agency;*
- *Engage in any trade, business, or profession that is regulated by a federal executive agency; or*
- *Have financial interests that may be substantially affected by the performance or nonperformance of official duties by an identifiable federal executive agency employee.*

Please answer this question to the best of your ability. For example, check “yes” if the donating entity is a national trade association and a majority of the entity’s members are federal government contractors because a majority of the entity’s members are doing business with federal executive agencies.

7. **Please confirm that the donating entity is not donating to the Patriot Legal Expense Fund Trust, LLC because of any potential federal government employee recipient’s official position or performance of duties.**  CONFIRM

- For example, you may check “confirm” if your motivation for donating is unrelated to any potential federal government employee recipient’s status, authority, or duties associated with their official position, but instead is a goodwill gesture and based on all recipients’ need to retain legal counsel arising out of the investigations related to the 2016 election.

**Certification**



*By signing below, I certify that my answers to the questions above are true and correct to the best of my knowledge.*

**SCHEDULE D**

**Members and the Manager**

January [30], 2018

**MEMBERS:**

<b><u>Member</u></b>	<b><u>Address</u></b>
	<b><u>Fax Number/ E-mail</u></b>

**MANAGER:**

<b><u>Manager</u></b>	<b><u>Address</u></b>
	<b><u>Fax Number/ E-mail</u></b>



**From:** [Seth Jaffe](#)  
**To:** [Elizabeth D. Horton](#)  
**Subject:** FW: Patriot Legal Expense Fund Trust, LLC  
**Date:** Tuesday, January 30, 2018 9:36:01 AM  
**Attachments:** [January 29 - Draft Agreement - Patriot Legal Expense Fund Trust LLC.DOCX](#)  
[Letter.01.29.18.pdf](#)

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FYI:

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**From:** Seth Jaffe  
**Sent:** Monday, January 29, 2018 6:35 PM  
**To:** 'Walker, Robert'; Benton, Robert; 'mtoner@wileyrein.com'  
**Cc:** David J. Apol  
**Subject:** Patriot Legal Expense Fund Trust, LLC

Dear Mr. Walker,

We have reviewed the draft agreement for the "Patriot Legal Expense Fund Trust, LLC". The Office of Government Ethics does not approve or disapprove of specific legal defense funds. However, if the fund is established and administered in accordance with the terms set out in the attached agreement, both the managers and the employee recipients will be in compliance with 18 U.S.C. § 209. Similarly, adherence to the terms of the agreement should ensure that the employee recipients do not violate any provision of 5 U.S.C. §§ 7351 and 7353, or of the Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. part 2635, as a result of the planned activities of the managers on their behalf.

Please see the attached draft agreement and letter from David J. Apol, OGE's Acting Director and General Counsel.

Thanks,  
Seth H. Jaffe  
Chief, Ethics Law & Policy Branch  
U.S. Office of Government Ethics  
(202) 482-9303

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**From:** Walker, Robert [<mailto:RLWalker@wileyrein.com>]  
**Sent:** Monday, January 29, 2018 6:03 PM  
**To:** Seth Jaffe  
**Cc:** David J. Apol; Benton, Robert; Toner, Michael  
**Subject:** Patriot Legal Expense Fund Trust, LLC

Mr. Jaffe –

Consistent with our discussions with the Office of Government Ethics (OGE), attached is the draft agreement of the Patriot Legal Expense Fund Trust, LLC, for review by OGE for federal ethics



compliance.

Thank you.

Robert L. Walker  
Robert D. Benton  
Michael E. Toner

Robert L. Walker | Attorney at Law

**Wiley Rein LLP**

1776 K Street NW | Washington, DC 20006

T: 202.719.7585 | M: (b) (6) [rlwalker@wileyrein.com](mailto:rlwalker@wileyrein.com)

[www.wileyrein.com](http://www.wileyrein.com) | [Bio](#) | [LinkedIn](#) | [Twitter](#)

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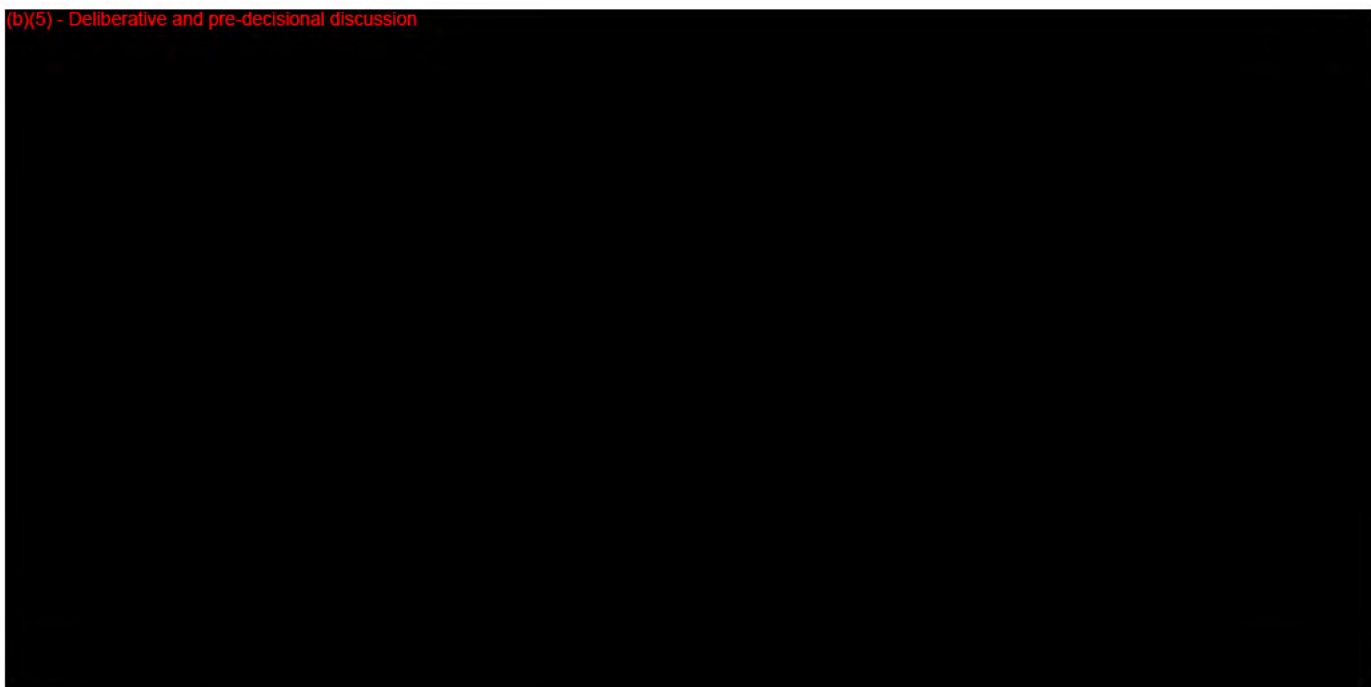
## STATEMENT ON Legal Defense Fund Trust

The U.S. Office of Government Ethics (“OGE”) provides a template and guidance regarding the establishment of legal defense funds. A legal defense fund consistent with OGE’s template and guidance should enable employees to receive distributions without violating the Standards of Conduct for Employees of the Executive Branch. Consistent with this practice, OGE recently reviewed a draft agreement for the Patriot Legal Expense Fund Trust, LLC (the “Fund”) and provided guidance consistent with the terms of the template. Although OGE does not approve or disapprove of specific legal defense funds, the terms of this Fund as OGE understands them, should ensure that employees who receive distributions from the Fund do not violate the Standards of Conduct.

For example:

- The Fund has established procedures to ensure that government employees receiving distributions will not accept any monies donated by “prohibited sources,” lobbyists or lobbying organizations.
- The Fund will not accept donations from anonymous donors.
- The Fund will publicly disclose the identity of donors and the amounts of their donations for all donations aggregating to at least \$200 in a calendar year. Employees receiving distributions from the Fund must comply with the gift reporting requirements contained in the Ethics in Government Act.

(b)(5) - Deliberative and pre-decisional discussion



RESPONSE TO REQUEST NO.5



**From:** Seth Jaffe  
**To:** "[rwalker@wileyrein.com](mailto:rwalker@wileyrein.com)"  
**Cc:** David J. Apol; Rachel K. Dowell  
**Subject:** Draft Legal Defense Fund Trust  
**Date:** Monday, October 23, 2017 5:43:28 PM  
**Attachments:** [Draft legal defense trust \(2012\) \(Version 8.15.17\).docx](#)

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Dear Rob,

It was a pleasure speaking with you earlier today concerning guidance on what ethics rules apply to the formation and implementation of a legal expense trust. During that call you indicated that it would be helpful to you if we provided you with the template trust document we have previously provided to others addressing a legal expense trust set up for the potential benefit of a named federal government employee.

Please find attached a draft trust instrument template that is based on a legal expense fund trust that OGE reviewed in 2011 and 2012. OGE does not approve or disapprove of specific legal expense fund trust instruments. However, if a trust is established and administered in accordance with the terms set out in the attached draft trust instrument template, both the trustees and the employee will be in compliance with 18 U.S.C. § 209. Similarly, adherence to the terms of the trust should ensure the employee does not violate any provision of 5 U.S.C. §§ 7351 and 7353, or of the Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. part 2635, as a result of the planned activities of the trustee on the employee's behalf.

If you decide to change any of the terms of the trust template when drafting your client's trust instrument, you may contact OGE to review those changes to ensure they are consistent with ethics rules.

Sincerely,  
Seth Jaffe

Seth H. Jaffe  
Chief, Ethics Law & Policy Branch  
U.S. Office of Government Ethics  
(202) 482-9303

THE [EMPLOYEE]

LEGAL EXPENSE TRUST FUND

THIS AGREEMENT, dated the last dated executed below, shall constitute a Trust Agreement between [name of grantor] hereinafter called the Grantor, and [name of trustee] hereinafter called the Trustee.

This agreement established the [employee] Legal Expense Trust Fund (the "Trust").

ARTICLE I

Trust Property

The Grantor, desiring to create a trust for the purpose of accepting funds and making expenditures in connection with legal expenses incurred by the Beneficiary relating to or arising by virtue of the Beneficiary's service to the [agency] and any other legal expenses that have arisen or may arise in any judicial, civil, criminal, administrative, state, Federal, or Congressional inquiries or proceedings arising from the same operative facts and circumstances, does hereby assign to the Trustee the sum of \$10.00 and such other property, monies, and assets payable to or contributed to the Trust which shall hereinafter come into his possession. Negotiable instruments made payable "[employee] Legal Expense Fund" shall be considered as being donated to the Trust.

## ARTICLE II

### Trust Purposes

The sole purpose of this Trust is to receive funds and to pay all expenses reasonably related to the legal representation of the Beneficiary in connection with the matter described in Article I, relating to or arising by virtue of the Beneficiary's employment by or service to the [agency], and to pay all taxes which arise from the existence of this Trust or for which the Beneficiary may become liable as a result of the establishment of this Trust. This Trust will be established, administered, and terminated in conformity with all applicable gift and ethics rules, including but not limited to 5 C.F.R. § 2635 and 5 U.S.C. §§ 7351 and 7353, and all applicable rules governing Federal Executive Branch employees.

## ARTICLE III

### Beneficiary

The beneficiary of this trust shall be [employee], but he/she shall exercise absolutely no control over the Trust property and shall receive no tangible or intangible benefit from the Trust other than such benefit that is incidental to or may have arisen from legal representation related to the purposes stated in Articles I and II.

## ARTICLE IV

### Grantor

The Grantor shall not be a prohibited source as defined in 5 C.F.R. §2635.203(d), and desires to create a trust for the purposes stated in Articles I and II.

## ARTICLE V

### Trustee

The Trustee shall not be: a relative of the Beneficiary; an employee of the Beneficiary; an employee of any organization affiliated with Beneficiary; an employee of the United States Government; a partner of, or involved in any joint venture or other investment with the Beneficiary; an entity or individual with any business that would be affected by the official duties of the Beneficiary; a law firm or a partner, associate or employee of any law firm that is representing the Beneficiary in connection with any matter of investigation, which may be entitled to payment of attorney fees from this Trust; a prohibited source as defined in 5 C.F.R. §2635.203(d); a registered lobbyist or lobbyist organization as those terms are defined by 2 U.S.C. §1602 and the Presidential Executive Order 13770; or an agent of a foreign government.

## ARTICLE VI

### Trustee's Powers

In the administration of the Trust, the Trustee shall have the following powers, which, subject to the restrictions contained elsewhere herein, may be exercised in the sole and absolute discretion of the Trustee without resort to any person or court for further authority and which shall be in addition to the powers conferred upon the Trustee by law or by other provisions of this instrument:

1. to invest and reinvest the principal and any accumulated interest of the Trust, if any, in only the following: (a) obligations of the United States; or (b) bank deposits maintained at a depository institution or trust company organized under



the laws of the United States or any of the States thereof or the District of Columbia;

2. to incur reasonable expenses on behalf of the Trust where necessary to make the Trust productive;
3. to hold cash uninvested for such length of time as the Trustee shall determine is advisable;
4. to sell, exchange or otherwise dispose of any of the Trust property as the Trustee may deem expedient;
5. to employ such agents, custodians, investment counsel and attorneys which the Trustee deems expedient and to pay them reasonable compensation for their services out of either principal or income of the Trust property, pursuant to the terms and conditions of a services agreement with the Trust;
6. to allocate to income or principal any receipt, gain, loss, or expenditure as he/she deems just and equitable under the circumstances of each case as it arises;
7. to compound, compromise, settle, and adjust all claims and demands in favor of or against the Trust estate on such terms as the Trustee shall deem just; and
8. to set up reserves from principal or income for the purpose of making provision for any liability or obligation of the Trust including reserves for the payment of any and all taxes referred to in Article II.

## ARTICLE VII

### Duties of the Trustee

In addition to the duties stated elsewhere in this Agreement, the Trustee shall have the authority to:

1. solicit and accept contributions to the trust, which may be accomplished by retaining the services of a professional fundraiser, under the following restrictions:
  - a. contributions shall not be solicited from: a subordinate federal employee; a foreign government or agent of a foreign government; a federal employee earning a federal salary that is less than the Beneficiary; or, if the Beneficiary is an appointee subject to Executive Order 13770, a registered lobbyist or lobbying organization (as defined by 2 U.S.C. §1602 and the Presidential Executive Order 13770),
  - b. contributions shall not be accepted from: a subordinate federal employee; a foreign government or agent of a foreign government; a federal employee earning a federal salary that is less than the Beneficiary; from any donor that indicates verbally or in writing that such contribution is given because of the Beneficiary's official position or because of the performance of [his/her] duties or from a prohibited source (as defined in 5 C.F.R. § 2635.203(d)), unless a specific exception under 5 C.F.R. §2635.204 applies; or, if the Beneficiary is an appointee subject to Executive Order 13770, a registered lobbyist or lobbying organization (as defined by 2 U.S.C. §1602 and the Presidential Executive Order 13770),
  - c. Contributions shall not be accepted unless the donor certifies in writing that the donor is not a prohibited source (as defined in 5 C.F.R. § 2635.203(d)) and that

the donor is not giving the gift because of the Beneficiary's official position or because of the performance of his duties,

- d. contributions shall not be accepted from anonymous sources, and
  - e. contributions solicited by the Beneficiary shall not be accepted;
2. make expenditures for the purpose described in Article II;
  3. enter into any legal agreements with legal counsel selected by the Beneficiary, including agreements relating to compensation, as may be necessary to effectuate the purposes of this Agreement;
  4. transfer to the Trust property all property, monies, and assets payable or contributed to the Trust which the Trustee may hereafter come to possess, from or through Grantor or any other source, unless the Trustee in his/her discretion determines that such property, monies, and assets shall be returned to their source;
  5. confer with the designated Ethics Official within the [agency] as needed within 30 days of the receipt of any contribution or notification by a potential donor of the intent to make a contribution, whichever is earlier, to seek a determination as to whether the contribution is from a prohibited source;
  6. confer with the Office of Government Ethics, where appropriate;
  7. distribute cash to the Beneficiary for tax purposes as related to the Trust;
  8. retain professional services on behalf of the Trust;
  9. keep Trust property separate from any of the Trustee's personal funds or any other funds;
  10. operate as a fiduciary in relation to the Trust property and the Trust purpose as stated in this Agreement;

11. provide information to the Beneficiary as necessary to comply with the Ethics in Government Act, 5 U.S.C. app. § 102(a)(2).
12. return any previously accepted contribution not in conformity with the limitations found herein or not otherwise a permissible contribution within 30 days of learning the contribution is not permissible, or, when Trustee is not reasonably able to return the impermissible contribution to the donor, to donate such contribution to one or more organizations described in Section 501(c)(3) of the Internal Revenue Code of 1986 and made exempt from taxation under Section 501(a) thereof as selected by the Grantor in his/her sole discretion, without advice or input from the Beneficiary.

#### ARTICLE VIII

##### Liability of Trustee

The Trustee shall not be liable for any act, in his/her capacity as Trustee, undertaken in good faith and with the purpose of advancing the best interests of the Trust. No bond or other security shall be exacted or required of the Trustee in any jurisdiction.

#### ARTICLE IX

##### Compensation of Trustee

The Trustee, if an individual, shall be compensated from either income or principal of the Trust per hour spent in administration of this Trust in accordance with his or her usual hourly rate for professional services. In the event that the Trustee shall be the trust department of a national banking institution, the Trustee shall be compensated in accordance with the usual,



customary, and published Trustee's rates of said institution for a trust of this type and size. The Trustee may waive any or all compensation.

The Trustee shall keep a log of the time spend and a record of services performed, which log shall be available for inspection by the Grantor or his agents at reasonable times and places.

The Trustee shall further maintain documentation and an itemization of all expenses incurred in the administration of this Trust. The Grantor reserves the right to inspect such documentation at reasonable times and places.

The Trustee shall be reimbursed for all reasonable expenses incurred in the administration of this Trust.

Fees incurred by the Trustee and all expenses incurred by the Trustee shall be submitted and paid monthly, and said Trustee's fees and expenses shall have priority over other payments to accomplish the purpose of this Trust.

#### ARTICLE X

##### A. The Term and Disposition of Residual Funds

The Trust established by this Agreement may be terminated at any time by the Trustee upon the direction of the Grantor. The Trust shall terminate, in any event, no later than six months following the completion of the legal proceedings, as determined by the Grantor, involving the Beneficiary as a result of the matter described in Article I for which the Trust was created.

Upon termination of the Trust, no further contributions shall be accepted, and no further expenditures shall be made.

##### B. Distribution of Unexpended Funds Upon Termination

Funds remaining upon the termination of the Trust shall, within thirty days thereafter, be returned to contributors to the Trust on a pro rata basis or donated and distributed to one or more organizations described in Section 501(c)(3) of the Internal Revenue Code of 1986 and made exempt from taxation under Section 501(a) thereof as selected by the Grantor in his/her sole discretion.

#### ARTICLE XI

The Trust shall be executed and delivered in [STATE / DC] and shall be construed and administered according to the laws of [STATE / DC].

#### ARTICLE XII

The Trustee herein named may, at any time following thirty (30) days' notice to the Grantor, resign as Trustee. In such event, or in the event of the death, malfeasance or incapacitation of the Trustee, the Grantor shall appoint a substitute Trustee without the need of Court approval and without consulting the Beneficiary.

IN WITNESS WHEREOF, said Grantor has hereunto set his hand and said Trustee has signed this instrument, all parties intending to be legally bound hereby on the day, month and year written below.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 201\_.

Witness:

\_\_\_\_\_

\_\_\_\_\_

Grantor

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 201\_.

Witness:

\_\_\_\_\_

\_\_\_\_\_

Trustee

**From:** [Walker, Robert](#)  
**To:** [Seth Jaffe](#)  
**Cc:** [David J. Apol](#); [Rachel K. Dowell](#)  
**Subject:** RE: Draft Legal Defense Fund Trust  
**Date:** Monday, October 23, 2017 6:14:58 PM

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Thanks, Seth.

Rob

Robert L. Walker | Attorney at Law

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**From:** Seth Jaffe [<mailto:sjaffe@oge.gov>]  
**Sent:** Monday, October 23, 2017 5:43 PM  
**To:** Walker, Robert <[RLWalker@wileyrein.com](mailto:RLWalker@wileyrein.com)>  
**Cc:** David J. Apol <[djapol@oge.gov](mailto:djapol@oge.gov)>; Rachel K. Dowell <[rkdownell@oge.gov](mailto:rkdownell@oge.gov)>  
**Subject:** Draft Legal Defense Fund Trust

Dear Rob,

It was a pleasure speaking with you earlier today concerning guidance on what ethics rules apply to the formation and implementation of a legal expense trust. During that call you indicated that it would be helpful to you if we provided you with the template trust document we have previously provided to others addressing a legal expense trust set up for the potential benefit of a named federal government employee.

Please find attached a draft trust instrument template that is based on a legal expense fund trust that OGE reviewed in 2011 and 2012. OGE does not approve or disapprove of specific legal expense fund trust instruments. However, if a trust is established and administered in accordance with the terms set out in the attached draft trust instrument template, both the trustees and the employee will be in compliance with 18 U.S.C. § 209. Similarly, adherence to the terms of the trust should ensure the employee does not violate any provision of 5 U.S.C. §§ 7351 and 7353, or of the Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. part 2635, as a result of the planned activities of the trustee on the employee's behalf.

If you decide to change any of the terms of the trust template when drafting your client's trust instrument, you may contact OGE to review those changes to ensure they are consistent with ethics rules.

Sincerely,  
Seth Jaffe



Seth H. Jaffe  
Chief, Ethics Law & Policy Branch  
U.S. Office of Government Ethics  
(202) 482-9303

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