

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



September 11, 2018

The Honorable Margaret Wood Hassan  
United States Senate  
330 Hart Senate Office Building  
Washington, DC 20510

The Honorable Doug Jones  
United States Senate  
326 Russell Senate Office Building  
Washington, DC 20510

The Honorable Thomas R. Carper  
United States Senate  
513 Hart Senate Office Building  
Washington, DC 20510

The Honorable Kamala D. Harris  
United States Senate  
112 Hart Senate Office Building  
Washington, DC 20510

The Honorable Gary C. Peters  
United States Senate  
724 Hart Senate Office Building  
Washington, DC 20510

Dear Senators Hassan, Carper, Peters, Jones, and Harris:

This responds to your letter dated August 2, 2018, which raises issues regarding U.S. Office of Government Ethics (OGE) guidance on the Patriot Legal Expense Fund Trust, LLC (the Patriot Fund). I appreciate your concerns and have reviewed OGE's role with respect to legal defense funds generally as well as the guidance OGE provided regarding the Patriot Fund specifically.

With respect to legal defense funds generally, it is important to note that there is no statutory or regulatory framework for establishing such a fund and that OGE has not approved or disapproved any specific legal defense funds. However, any such fund which provides benefits to executive branch employees must be operated consistent with the ethics rules that OGE oversees.<sup>1</sup> Therefore, OGE's role has been limited to providing guidance to help ensure that executive branch employees who may receive distributions from a legal defense fund will be in compliance with the ethics laws and rules if they accept such a distribution.<sup>2</sup> Consistent with its role, OGE has provided a template for the establishment of legal defense funds.<sup>3</sup>

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<sup>1</sup> See OGE Legal Advisory LA-17-10 (2017).

<sup>2</sup> *Id.* at 1 (“This includes rules regarding the acceptance of gifts from outside sources and from other employees found in the Standards of Conduct for Employees of the Executive Branch at 5 C.F.R. Part 2635, Subparts B and C; the criminal conflict of interest statutes at 18 U.S.C. §§ 201-209; the public financial disclosure requirements in the Ethics in Government Act of 1978, 5 U.S.C. app. § 101 *et seq.*; and the lobbyist gift ban in Executive Order 13770, sec. 1, para. 5.”).

<sup>3</sup> *Legal Expense Trust Fund Template*, U.S. OFF. GOV'T ETHICS (Aug. 15, 2017), <https://www.oge.gov/Web/OGE.nsf/Resources/Legal+Expense+Trust+Fund+Template>.



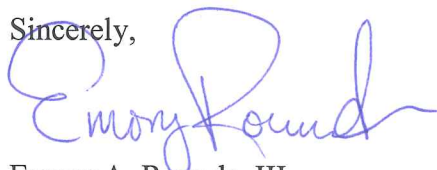
Concerning the Patriot Fund specifically, I have reviewed and agree with OGE's past guidance that the terms of the Patriot Fund, if followed, should ensure that executive branch employees who receive distributions from the Patriot Fund do not violate the Standards of Conduct or other ethics rules. I do acknowledge, however, that OGE's longstanding limited approach to legal defense funds does not fully address legitimate concerns that have been raised.

Accordingly, I have tasked OGE staff to begin the process of drafting a regulation regarding legal defense funds. This will provide the opportunity to receive valuable stakeholder input through the notice and comment rulemaking process as it will, in part, involve publishing a proposed regulation in the Federal Register and soliciting comments from the public on the proposal. It will also include considering public feedback, making changes as appropriate, and publishing a final rule in the Federal Register where OGE will describe and respond to the public comments it received. This notice and comment rulemaking process will allow the creation of a regulation that will ensure that legal defense funds with executive branch employee recipients will be transparent, open, and accessible to the public. I have also tasked OGE staff to prepare additional guidance reminding Designated Agency Ethics Officials of their responsibilities with regard to employees who accept gifts of legal expenses from a legal defense fund.

Your letter also requests that OGE provide a briefing for the Senate Committee on Homeland Security and Governmental Affairs. OGE welcomes the opportunity to provide the requested briefing and hear your preliminary thoughts. OGE also stands ready to share with the Committee documents regarding the Patriot Fund that were provided to members of the House earlier this year.

If you have questions about this letter, the documents, or the briefing, please do not hesitate to contact Shelley K. Finlayson, OGE's Chief of Staff and Program Counsel, at (202) 483-9314.

Sincerely,



Emory A. Rounds, III  
Director