

November 5, 2019

Hon. Emory A. Rounds
Director
U.S. Office of Government Ethics
1201 New York Avenue, NW, Suite 500
Washington, DC 20005

Re: *Announcement of public meeting: Legal Expense Fund Regulation*, U.S. Office of Government Ethics, RIN 3209–AA50, 84 Fed. Reg. 50791 (Sept. 26, 2019)

Dear Director Rounds:

The undersigned groups jointly file this letter in response to the above-referenced announcement by the U.S. Office of Government Ethics (“OGE”), which offered the public the opportunity to participate in the public meetings that OGE convened in October 2019 and, thereafter, to submit written comments by November 5, 2019.

The signatories to this letter separately submitted written or oral comments in response to your prior advance notice of proposed rulemaking concerning OGE’s development of a legal expense fund regulation, *Notice and Request for Comments: Legal Expense Fund Regulation*, U.S. Office of Government Ethics, RIN 3209–AA50, 84 Fed. Reg. 15146 (Apr. 15, 2019).¹ We respectfully request that you incorporate those previously submitted individual comments in the record of OGE’s October 2019 public meetings and that you carefully consider them.

Fourteen months have passed since you pledged to members of Congress that OGE would issue a legal expense fund regulation.² We appreciate that you made this pledge and urge you to remain focused on accomplishing your stated goal of creating a legal expense fund regulation that is “transparent, open, and accessible to the public.”³ Now is not the time to complicate that task by adding additional issues to the rulemaking process.

During the October 2019 public meetings, OGE staff members raised for the first time the possibility of creating a new exception to the gift rules that would allow federal employees to solicit cash donations broadly from the public through online “crowdfunding” websites. OGE staff posited hypothetical scenarios that involved federal employees facing financial hardship but did not identify ways to offset the risks posed by expanding their ability to accept gifts of cash from outside sources. Though the OGE staffers focused only on financial hardship arising from the need for legal services, financial hardship can arise in a variety of contexts that are unrelated

¹ The written comments that the undersigned groups submitted and the transcript of the public hearing are available on OGE’s website at <https://www.oge.gov/Web/oge.nsf/Resources/Rulemaking> (last viewed Nov. 5, 2019).

² Letter from Emory A. Rounds, Director, Office of Gov’t Ethics, to Senator Margaret Wood Hassan, *et al.*, Sept. 11, 2018, <https://bit.ly/2Q9WX7n>.

³ *Id.*

to legal proceedings.⁴ Therefore, any effort by OGE to develop a new regulatory exception to the gift rules should be handled separately from the planned legal expense fund regulation.

In addition, the two matters are different in nature. Development of a legal expense fund regulation necessarily involves creating procedural safeguards to ensure compliance with existing gift rules. To the extent that any such regulation contains non-procedural provisions, they should serve to reduce the risk of actual or apparent ethics violations and outside influence on government employees. In contrast, a new gift rule exception would create risk.

Before considering whether to create a new exception for gifts of cash beyond those that are already permitted, OGE should study the risk that such an exception would create. Then, OGE should evaluate whether any perceived benefit would outweigh that risk—with properly noticed opportunities for input from the public. Because such a process would take time and likely delay the development of the legal expense fund regulation, we encourage OGE to complete its work on the important issue of legal expense funds before taking up other issues that OGE staff raised during the October meetings.

Finally, it bears reiterating that the question of pro bono legal services is distinct from the question of legal expense funds. The former involves a gift of services from one source and can be adequately handled under the existing current gift rules, while the latter involves gifts of cash from an unlimited number of potential sources.

Again, our priority is addressing the problem of legal expense funds. OGE should address that problem first before addressing other issues. Thank you for your focus on this important issue and the opportunity to submit this comment.

Sincerely,

Citizens for Responsibility and Ethics in Washington (CREW)

Project On Government Oversight (POGO)

Campaign Legal Center (CLC)

Issue One

American Oversight

⁴ Christina Zhao, Furloughed federal workers resort to crowdfunding as government shutdown drags on: 'my mortgage is due', *Newsweek*, Jan. 9, 2019, <https://bit.ly/334TCgl>.