

## **MODEL LEGAL EXPENSE FUND TRUST PROVISIONS**

**Note:** *Employee beneficiaries, representatives, and prospective Trustees should review this document before drafting a final Legal Expense Fund Trust Document. Review of this document will ensure compliance with Subpart J of the Standards of Conduct and will ensure that employee beneficiaries, representatives, and trustee receive the required Privacy Act and Public Burden statements. Ethics officials will distribute this document to potential employee beneficiaries as part of initial ethics counseling on establishing a legal expense trust fund.*

The purpose of this Trust is to receive funds and to pay expenses for the sole purpose of defraying the legal costs that have been and will be incurred in connection with the legal representation of the Beneficiary in the [describe the legal matter\*] that arose in connection with the Beneficiary's [(1) employment with [agency name], (2) prior position on the [campaign name or (3) prior position on the [President's name] Transition Team]. The Trust will be established, administered, and terminated in conformity with the Legal Expense Fund Regulation, 5 C.F.R. part 2635, subpart J, and all other applicable gift and ethics laws and regulations governing Federal executive branch employees.

\* A description of the legal matter is not required for whistleblowers.

### Beneficiary

The sole beneficiary of this trust shall be [employee name]. The Beneficiary is prohibited from exercising control over the Trust property and may not receive any tangible or intangible benefit from the Trust other than to pay permissible expenses described in [specific section or article].

### Trust Property

The Grantor hereby transfer to the Trustee the sum of \$10, receipt of which is acknowledged hereby Trustee. This and all other property payable or contributed to the [NAME] Legal Expense Fund Trust shall be held by the Trustee, in trust for the sole and specific purposes and on conditions set forth in [specific section or article].

### Qualifications of the Trustee

The Trustee, or any successor trustee appointed in accordance with this instrument, must not be (1) the Beneficiary of the trust; (2) the spouse, parent, or child of the Beneficiary; (3) an employee of the Federal government; (4) a foreign national; (5) an agent of a foreign government as defined in 5 U.S.C. 7342(a)(2); (6) a lobbyist as defined by 2 U.S.C. 1602(10) who is

currently registered pursuant to 2 U.S.C. 1603(a); or (7) a person who has interests that may be substantially affected by the performance or nonperformance of the Beneficiary's official duties.

### Successor Trustees

In the event that original, named Trustee wants to resign, the Trustee may resign by written notice to the Grantor/Beneficiary. The Grantor/Beneficiary may appoint a successor Trustee with the same qualifications required in [specific section or article], and if the Grantor/Beneficiary is an executive branch employee at that time, they must seek approval of the Trustee from their supervising ethics office. The Grantor/Beneficiary has the same power to appoint a substitute Trustee in the event of the death, incapacity, or failure to act in accordance with this instrument or the Legal Expense Fund Regulation, 5 C.F.R. part 2635, subpart J. In the event the Grantor/Beneficiary is unable to act due to incapacity or other reasonable cause, their legal representative has the right and authority to seek the appointment of a substitute Trustee in any court of competent jurisdiction for such purposes in the [State/Commonwealth of Name].

### Situs

It is the intent and desire of the parties to this instrument that the Trust be considered a [State/Commonwealth] trust, and its terms will be construed and administered in accordance with the laws of the [State/Commonwealth of Name].

### **Model Provisions for the Responsibilities and Duties of Trustee Section**

The items below **are examples of provisions that must be incorporated** into the trust document for it to comply with the requirements of the regulation.

#### Responsibilities of the Trustee

The Trustee, and any successor trustee, warrants and represents to the Grantor that [he/she/they] will at all times while the Beneficiary is a Federal executive branch employee faithfully comply with the Legal Expense Fund Regulation, 5 C.F.R. part 2635, subpart J, and all other applicable gift and ethics laws and regulations governing Federal executive branch employees. The Trustee, and any successor, further warrants, represents, and recognizes that [he/she/they] will be acting in a fiduciary capacity and will be bound by the laws of the [State/Commonwealth of Name] regulating the conduct of such fiduciaries and by the terms of this instrument. It is understood that the powers, duties, and rights of the Trustee, and any successor, are controlled by said laws that the terms of this instrument that are not inconsistent with those laws.

#### Provide Information to the Beneficiary

The Trustee must provide the Beneficiary with information that is necessary to complete:

1. The quarterly and termination reports required by the Legal Expense Fund Regulation at 5 C.F.R. § 2635.1007 and 2635.1008(d); and
2. Any financial disclosure report the Beneficiary is required to file pursuant to the Ethics in Government Act, 5 U.S.C. § 13101 *et. seq.* and the Financial Disclosure Regulation, 5 C.F.R. part 2634.

The Trustee must also provide the Beneficiary with the information necessary to comply with the recusal requirement set forth in the Legal Expense Fund Regulation at 5 C.F.R. § 2635.1002(c) (2) and 5 C.F.R § 2635.502.

### Permissible Contributions

The Trustee shall not knowingly accept any gift or donation prohibited by or in excess of the limits established by the Legal Expense Fund Regulation, 5 C.F.R. part 2635, subpart J. In particular, the Trustee must not accept contributions totaling more than \$10,000 in a calendar year from a single permissible donor. Permissible donors are limited to the following:

1. An individual who is not:
  - a. An agent of a foreign government as defined in 5 U.S.C. 7342(a)(2);
  - b. A lobbyist as defined by 2 U.S.C. 1602(10) who is currently registered pursuant to 2 U.S.C. 1603(a);
  - c. A foreign national;
  - d. Acting on behalf of, or at the direction of, another individual or entity in making a donation;
  - e. Donating anonymously;
  - f. Seeking official action by the employee beneficiary's agency;
  - g. Doing business or seeking to do business with the employee beneficiary's agency;
  - h. Conducting activities regulated by the employee beneficiary's agency other than regulations or actions affecting the interests of a large and diverse group of persons;
  - i. Substantially affected by the performance or nonperformance of the employee beneficiary's official duties; or
  - j. An officer or director of an entity that is substantially affected by the performance or nonperformance of the employee beneficiary's official duties.
2. A national committee of a political party as defined by 52 U.S.C. 30101(14), (16) or, for former members of a campaign of a candidate for President or Vice President, the campaign, provided that the donation is not otherwise prohibited by law and the entity is not substantially affected by the performance or nonperformance of an employee beneficiary's official duties; or
3. An organization, established for more than two years, that is:
  - a. described in section 501(c)(3) of the Internal Revenue Code and exempt from taxation under section 501(a) of the Internal Revenue Code, and
  - b. not substantially affected by the performance or nonperformance of an employee beneficiary's official duties.

If any prohibited contribution is inadvertently accepted, the Trustee must return the contribution in its entirety to the donor, if from a prohibited source, or return the excess over \$10,000 to the donor, if prohibited because of the amount, as soon as practicable after becoming aware that the contribution is prohibited. If the Trustee is unable to return the contribution due to the donor's death or the Trustee's inability to locate the donor, the impermissible contribution must be donated to a 501(c)(3) organization meeting the requirements in 5 C.F.R § 1008(c).

### Permissible Expenses

The Trustee may pay expenses only from the following three categories:

1. Legal expenses related to the legal matter described in [specific section or article];
2. Expenses incurred in soliciting contributions or administering the fund; and
3. Tax liabilities that result from the creation, operation, or administration of the trust.

### Notification of Donors and Payees

The Trustee must notify donors and payees that if they donate or are paid \$250 or more the following will be disclosed on the website of the U.S. Office of Government Ethics:

1. Donors:
  - a. Name
  - b. City and State of Residence or Location
  - c. For Individuals – Employer
  - d. Date(s) of contribution
  - e. Amount
2. Payees:
  - a. Name
  - b. Date(s)
  - c. Amount
  - d. Purpose of the Payment.

### Filing of Trust Document

Within one week of the trust document's approval by the executive branch agency ethics official, the Trustee or Beneficiary shall provide a copy of the signed trust document to the agency ethics office.

### Excess Funds at Trust Termination

If there are funds remaining in the trust at the time of trust termination, the Trustee may distribute the funds to an organization or organizations described in section 501(c)(3) of the Internal Revenue Code and exempt from taxation under section 501(a) of the Internal Revenue Code, within 90 days of the trust terminating. Neither the Trustee nor Beneficiary may be the founder of an organization to which the funds are donated. In addition, the Trustee, the Beneficiary, the Beneficiary's spouse, or the Beneficiary's child may not be an officer, director, or employee of the organization. The organization may not be one with which the employee has

a covered relationship within the meaning of § 2635.502(b)(1). The trustee has sole discretion to select the 501(c)(3) organization. Alternatively, the Trustee may return the unspent funds to the donors in proportion to the amount they donated.

**NOTE ON PERSONALLY IDENTIFIABLE INFORMATION (PII):**

Please do not include any PII beyond that which is specifically required by the trust template in the document (e.g., do not include social security numbers or home address). If such information is included it will be redacted.

**PRIVACY ACT STATEMENT FOR LEF TRUSTS AND REPORTING INFORMATION**

OGE's Legal Expense Fund Regulation at 5 CFR part 2635 subpart J ("LEF Regulation")

requires the reporting of this information. The information will be reviewed by Government officials to determine compliance with the LEF Regulation and other applicable ethics laws and regulations and provide advice regarding the trust beneficiaries recusal requirements.

This collection of information is estimated to take an average of 20 hours per trust document, given the estimated amount of time deemed necessary to structure a trust arrangement based in part on this model. Pursuant to the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and no person is required to respond to, a collection of information unless it displays a currently valid OMB control number. That number, 3209-000X, is displayed here and in the upper-left-hand corner of the first page of these model trust provisions. Employees of the Executive Branch and result in disciplinary action.

This information will be publically posted to the OGE website at [www.oge.gov](http://www.oge.gov) (subject to certain exceptions set forth in the LEF Regulation) in accordance with [OGE/GOVT-3](#), Legal Expense Fund Trust Documents, Reports, and Other Name-Retrieved Records, routine use "c." Please see [OGE/GOVT-3](#) for more information about the maintenance and disclosure of this information.