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Legal Defense Fund Rules for Officials of the Congressional and Executive Branches

When members of Congress and officials of the executive branch get in trouble with the law or have alleged ethical violations, they may establish a fund – commonly referred to as a legal defense fund or legal expense trust – to defend themselves. These funds are governed by House and Senate ethics rules and guidelines from the Office of Governmental Ethics (OGE) which impose various requirements.¹ The rules governing congressional legal defense funds generally are more restrictive and much more specific than the rules governing officials of the executive branch.

Since legal defense funds for congressional and executive branch officials have been deemed by the Federal Election Commission (FEC) to fall outside the realm of campaign finance law, donors may contribute the maximum to a candidate's campaign and still make an additional contribution to the same official's legal defense fund. The 2002 federal election law banning corporate and union money to federal officeholders has not been applied by the FEC to ban such contributions to legal defense funds of officeholders, though Senate rules and OGE guidelines prohibit corporate and union contributions to the legal defense funds of Senate members and executive branch officials. House members may receive contributions for their legal defense funds from any source except registered lobbyists and foreign nationals.

Congressional Legal Defense Funds

Here are the main features of a legal defense fund for members of Congress:

- The fund must first be approved by the respective body's ethics committee.
- The individual must appoint a trustee to manage the account.
- All the funds must be used to pay only for investigative, civil, criminal or other legal proceedings relating to an officeholder's election to office, official duties while in office and administrative or fundraising expenses of the trust.
- Contributions to the fund are limited to \$5,000 per year in the House from any single source, and \$10,000 per year in the Senate. House rules prohibit contributions from lobbyists and foreign nationals; Senate rules prohibit contributions from lobbyists, foreign nationals, corporations, unions and any member's principal campaign committee.

- Campaign funds may be transferred by any officeholder into a House member's legal fund.² The use of campaign funds by a legal defense fund, however, must be strictly for legal and administrative expenses associated with the fund and not for personal expenses. Contributions to the fund do not count toward a donor's limits on campaign contributions or gifts to officeholders. An individual and the individual's immediate family may make unlimited contributions to their own fund.
- Quarterly financial reports must be filed with the Legislative Resource Center in the House or the Secretary of the Senate. House and Senate reporting requirements are substantively the same but differ in some technicalities. For example, in the House, the filings shall disclose all contributions and expenditures of \$250 or more per year, including the full name and street address of donors and recipients of expenditures. In the Senate, the reporting threshold is \$25 per year.

While most legal expenses related to election contests for candidates who are not officeholders must be subject to the limits and reporting requirements of federal election law, members of Congress thus far have been permitted to finance their legal expenses with either surplus campaign funds, legal defense funds established under ethics rules, or both. Since passage of the ban on candidates using corporate or union money to finance their election activities, there has been some controversy as to whether congressional officeholders should be allowed to use both sources of funds to finance election-related litigation.³

Executive Branch Legal Defense Funds

The Office of Government Ethics has only addressed the issue of legal defense funds for officeholders in the executive branch through an informal advisory letter. Each executive agency is authorized to develop their own policies regarding such funds, though the agencies usually defer to OGE guidelines.

The issue of legal defense funds has not frequently arisen for executive branch officeholders, with the notable exception of President Bill Clinton. Though officeholders of executive agencies have become increasingly embroiled in legal challenges as of late, most officeholders have chosen to foot the legal bills themselves. So far, it has been fairly uncommon for executive officeholders to establish separate legal defense funds to solicit contributions and pay for legal expenses.

Nevertheless, OGE in 1993 issued guidelines making it easier for executive officeholders to establish legal defense funds to pay for expenses associated with official duties. OGE reversed earlier guidelines that had prohibited officeholders from soliciting or receiving contributions from others to pay for legal expenses as a violation of the law limiting outside income.⁴

Here are the main features of the guidelines for legal defense funds for officeholders of the executive branch:

- The officeholder should appoint a trustee to manage the account, who is charged with all responsibilities of administering the account, including the solicitation of contributions and the making of defense fund expenditures.
- The trustee should be a person with no authority over the employees of the executive agency of the government officeholder for whose benefit the fund is established.
- Contributions should not be received from “prohibited sources,” persons who have a vested interest in official actions by the officeholder or the officeholder’s agency.
- The officeholder of the executive branch should not personally solicit contributions to the account.
- The trustee should not solicit contributions specifically from employees of the officeholder’s agency.
- The government officeholder and the trustee of the account should make all reasonable efforts to keep the identities of the donors anonymous to the officeholder.
- Excess defense funds may not be transferred to any other account of the officeholder.

In addition to these guidelines, OGE has also advised executive agencies to follow the gift rules in setting the requirements for legal defense funds. Under the gift rules for executive officeholders, gifts are to be limited to less than \$50 from each donor per year, but each executive agency may choose to waive this gift limit. The gift rules, and OGE guidelines, do not impose any disclosure requirement of the sources of funds or the nature of expenditures.

Under these guidelines, President Bill Clinton established a presidential legal defense fund to help pay for his legal expenses and those of his wife, Hillary Clinton, associated with charges of lying under oath, Whitewater and the Paula Jones sexual harassment lawsuit. Clinton’s legal defense fund imposed a voluntary contribution limit of \$10,000 per donor per year and opted to disclose the sources of the funds to the public on a biannual basis.⁵ The decision to disclose the names and amounts given by donors followed a letter of approval from OGE recognizing that the value of public disclosure superceded the value of anonymous giving to the fund.

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Endnotes

¹ House Committee on Standards of Official Conduct, Memorandum to All Members, Officers, and Employees, “Legal Expense Fund Regulations,” House Rule 26 (June 10, 1996). The House Rule on Legal Expense Funds has since been renumbered to Rule XXV(5)(c)(3). U.S. Senate Select Committee on Ethics, “Regulations of Trust Funds to Defray legal Expenses Incurred by Members, Officers, and Employers of the United States Senate, Senate Ethics Manual (Aug. 10, 1988). Office of Government Ethics, Letter to an Alternate Designated Agency Ethics Official (Aug. 30, 1993).

² Federal Election Commission, Advisory Opinion 2000-40, 2003-15.

³ Amy Keller, “Legal Defense Funds Face Closer Scrutiny,” *Roll Call* (June 18, 2003).

⁴ 18 U.S.C. §209(a), which reads in part: “Whoever receives any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality; or

“Whoever, whether an individual, partnership, association, corporation, or other organization pays, makes any contribution to, or in any way supplements, the salary of any such officer or employee under circumstances which would make its receipt a violation of this subsection--

“Shall be subject to the penalties set forth in section 216 of this title.”

⁵ Wolf Blitzer, “New Clinton Legal Defense Fund Created,” CNN (Feb. 18, 2005).