



September 12, 2018
LA-18-11

LEGAL ADVISORY

TO: Designated Agency Ethics Officials

FROM: Emory A. Rounds, III
Director

SUBJECT: Reminder of Agency Ethics Officials' Responsibility to Counsel Employees
Regarding Gifts to Pay for Legal Expenses

The U.S. Office of Government Ethics (OGE) is issuing this Legal Advisory to remind agency ethics officials of their responsibility to help ensure that an employee's acceptance of a gift to pay for legal expenses is done in accordance with the limitations of the gift rules. Given the heightened appearance concerns unique to an employee's acceptance of this type of gift, agency ethics officials should take special care when counseling employees on whether the gift is from a prohibited source as defined in 5 C.F.R. § 2635.203(d).

An employee may accept contributions to pay for his or her legal expenses if the contributions are made consistent with the ethics rules, including the rules regarding the acceptance of gifts from outside sources found in the Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. Part 2635, Subpart B. As OGE recently noted, "solicitation and acceptance of contributions [for legal expenses] from prohibited sources are barred under the gift rules at 5 C.F.R. Part 2635, Subpart B, unless an exception applies." OGE Legal Advisory LA-17-10 (2017).

Agency ethics officials have a responsibility to provide advice and counseling to current employees regarding government ethics laws and regulations. 5 C.F.R. § 2638.104(c)(4). Agency ethics officials need to remind employees that they may not accept gifts from prohibited sources to pay for legal expenses,¹ and that they should seek ethics advice before accepting a gift to pay for legal expenses. In addition, agency ethics officials must review any gifts reported on a financial disclosure report, as well as any list required to supplement those disclosures,² to determine if any of the gifts appear to be from prohibited sources. If the ethics official has any

¹ Although OGE neither approves nor disapproves of any specific legal defense fund, each legal defense fund that has been reviewed by OGE bars the trustee from accepting any donations for government employees from a prohibited source. To ensure that any funds distributed to an Executive branch employee are not provided by a prohibited source, agency ethics officials should review any information regarding the contributors to any such fund.

² *FAQs: Gifts and Travel Reimbursements*, U.S. OFF. GOV'T ETHICS: PUB. FIN. DISCLOSURE GUIDE, <https://www.oge.gov/Web/278eGuide.nsf/Content/FAQs~FAQs:+Gifts+and+Travel+Reimbursements> (last visited Sept. 11, 2018).



concerns, the official should consult with the employee, the legal defense fund trustee or manager, or OGE. Exercising this due diligence will help ensure that employees who accept gifts to pay for legal expenses do so consistent with the gift rules and do not inadvertently accept a prohibited gift.

If you have questions about this guidance, please contact your OGE Desk Officer.