Spoken Comment of Citizens for Responsibility and Ethics in Washington in response to *Notice and Request for Comments: Legal Expense Fund Regulation*
U.S. Office of Government Ethics, RIN 3209–AA50, 84 Fed. Reg. 15146
(May 22, 2019)

Director Rounds, thank you for allowing me the opportunity to address you today. My name is Virginia Canter and I am the Chief Ethics Counsel of Citizens for Responsibility and Ethics in Washington. CREW is a nonprofit, nonpartisan organization committed to reducing the impact of money in politics and fostering a government that is ethical and accountable.

Given our unique insight into the corrupting impact of unchecked, unaccountable money in our political system, we strongly support your consideration of a regulation to establish a more active role for OGE in protecting government integrity from the serious ethical risks posed by legal expense funds.

I would like to begin by thanking you for your leadership in launching this regulatory effort. CREW is grateful for your decision to collect input from the public prior to drafting a regulation and to convene this public hearing. We strongly agree with your stated goals of transparency, openness, and accessibility, and we encourage you to add the goals of prevention and oversight as guiding principles for this effort. We hope this discussion will be the beginning of a dialogue with the public that will inform your future draft proposed regulation.

To be very clear: legal expense funds can be used to facilitate unlimited gifts of cash to executive branch employees from a variety of sources outside the government. Legal expense funds can become gift-acceptance vehicles that create the very real risk of outside influence over top government officials. For the reasons we discuss in our written comment, and that I summarize today, the executive branch needs an ethics regulation that establishes strong, uniform standards for legal expense funds that institute adequate safeguards and transparency to protect government integrity.

Most importantly, CREW recommends that OGE require **each legal expense fund be structured as a trust, with only one beneficiary, whose trustee is independent and owes a fiduciary duty to the sole beneficiary**. This recommendation is the most important of the various ones we offer in our written comment. Mandating this structure is critically necessary to prevent the possibility that the operator of a legal expense fund could seek to exert improper influence over an executive branch employee by making or withholding distributions out of loyalty to someone other than the employee. This recommendation prevents conflicts of interest by removing a potential source of outside influence. It restores the ethical norm that had been in place prior to the Trump administration.

Oversight of legal expense funds has always been problematic, but the situation became critical in January 2018 with the creation of the Patriot Legal Expense Fund Trust, LLC. Unlike a

traditional legal expense fund organized as a trust for one beneficiary, the Patriot Fund is a political organization with limitless eligible recipients. This difference creates an unacceptable risk that the fund could be used to influence witnesses by distributing or withholding money based on the content of a witness's testimony or willingness to cooperate with investigators.

The Patriot Fund also accepts donations from prohibited sources, ostensibly for beneficiaries outside the government, but which taints the entire pool of donations that may be distributed to executive branch employees. Donations from prohibited sources are likely to lead to impermissible outside influence on the beneficiary.

This is why we would like to emphasize another of our recommendations: **it is critical that OGE prohibit legal expense funds from accepting donations from a "prohibited source" for the sole beneficiary.** Failure to properly screen donors and segregate funds from prohibited sources is a significant deficiency that places government employees in danger of violating OGE's gift rules and undermines public confidence in our government programs and operations.

Because of the major ethics risks attendant to legal expense funds, we recommend that **OGE require each legal expense fund to be approved by OGE** in advance of an employee's acceptance of distributions, and that **OGE require the legal expense fund to disclose to the government information about the donations received and distributions made** on behalf of the beneficiary. As we explain in more depth in our written comment, these recommendations would advance the goals of oversight and accountability in the new regulatory regime.

I will conclude with one final thought. OGE *must not* issue a regulation permitting future legal expense funds to follow the example of the Patriot Fund. The harmful effects of such a regulation would extend long after the Trump administration ends.

A regulation that institutionalizes the Patriot Fund's dangerous practices would be worse than no regulation at all. This is why it is critical for OGE to develop a strong regulation that restores the single-beneficiary trust structure and establishes new safeguards to reduce the significant ethical risks to our institutions and our public servants posed by legal expense funds.

Thank you for your time and your consideration.