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ONE HUNDRED TWELFTH CONGRESS

U.S. House of Representatives

COMMITTEE ON ETHICS

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MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

FROM: Committee on Ethics
Jo Bonner, Chairman *JB*
Linda T. Sánchez, Ranking Member *AS*

SUBJECT: Revised Legal Expense Fund Regulations

The House gift rule permits the acceptance of “a contribution or other payment to a legal expense fund established for the benefit of a Member, officer, or employee that is otherwise lawfully made in accordance with the restrictions and disclosure requirements of the Committee on Ethics,” as long as the contribution is not from a registered lobbyist or an agent of a foreign principal.¹ On June 10, 1996, the Committee first issued Legal Expense Fund Regulations (1996 LEF Regulations) governing the restrictions and disclosure requirements pursuant to that provision.²

The regulations attached hereto supersede the 1996 LEF Regulations and take effect as of January 1, 2012. The prior regulations remain in effect until that date. Once they take effect, the revised regulations will apply to all existing LEFs and all LEFs approved by the Committee in the future.

Based on the Committee’s experience interpreting and applying the 1996 LEF Regulations, the Committee hereby issues revised LEF regulations. There are a number of changes to the regulations, but the Committee would like to highlight the following substantive changes:

- Clarification of the permissible bases for establishing an LEF Trust (Regulation 1.2);
- Definition of the requirement that trustees have no “family, business, or employment relationship” with the beneficiary (Regulation 2.2);
- Discussion of the duties of the trustee (Chapter 2);
- Attribution of a contribution of a partnership, limited liability company or S corporation to individual owners of the business (Regulation 3.3);

¹ House Rule 25, clause 5(a)(3)(E).

² See Comm. on Standards of Official Conduct, Legal Expense Fund Regulations (June 1996), *reprinted in Appendix to the 2008 House Ethics Manual* at 394.

- Rules for departing Members and employees who have an LEF trust (Regulation 4.8);
- Use of official resources related to a trust (Chapter 5);
- Provisions related to the termination of a trust (Chapter 6); and
- Enforcement provisions (Chapter 7).

Any Member or employee with an existing LEF should be aware of several requirements that apply to existing trusts. First, under Regulation 8.1, any Member who established a trust prior to January 1, 2012, must make any necessary modifications to the trust document to bring it into compliance with the revised regulations and file a copy of the amended trust document with the quarterly report of activity due by January 30, 2012. Proposed amendments are not effective until they receive written approval from the Committee. In addition, pursuant to Regulation 8.2, by January 30, 2012, each trustee for an LEF must provide an affidavit to the Committee, with a copy to the Clerk at the Legislative Resource Center, stating the trustee has read and understands the revised regulations, and consents to administer the trust in conformity with these regulations.

The Committee reviews the regulations on an ongoing basis and welcomes feedback from the House community. If you have any questions or comments about the revised regulations, please contact the Committee's Advice and Education staff at (202) 225-7103.

LEGAL EXPENSE FUND REGULATIONS

Effective January 1, 2012

CHAPTER 1: ESTABLISHMENT OF LEGAL EXPENSE FUND TRUSTS

Regulation 1.1 – A Member, officer, or employee who wishes to solicit and/or receive donations for a Legal Expense Fund, in cash or in kind, to pay legal expenses shall obtain the prior written permission of the Committee on Ethics (Committee).¹

Regulation 1.2 – The Committee shall grant permission to establish a Legal Expense Fund only where the legal expenses arise in connection with:

- A. the individual's candidacy for, or election to, federal office;
- B. the individual's official duties or position in Congress (including legal expenses incurred in connection with (i) an amicus brief filed in a Member's official capacity or (ii) matters before the Office of Congressional Ethics or Committee on Ethics);
- C. a civil action filed in a Member's official capacity challenging the validity of a federal law or regulation;
- D. a criminal prosecution of the Member, officer, or employee; or
- E. a civil matter bearing on the individual's reputation or fitness for office.

Regulation 1.3 – The Committee shall not grant permission to establish a Legal Expense Fund where the legal expenses arise in connection with a matter that is primarily personal in nature (*e.g.*, a matrimonial action, personal injury claim, or personal contract dispute).

Regulation 1.4 – A Member, officer, or employee seeking to establish a trust (Trustor) must make a written request to the Committee that provides the name and contact information for the proposed Trustee, attaches a proposed trust document, and states the following:

- A. the nature of the legal proceeding (or proceedings) which necessitate the establishment of such a trust fund;
- B. that he or she will be bound by these Regulations; and
- C. that although a Trustee will oversee the trust, that he or she bears ultimate responsibility for the proper administration of the trust.

¹ Permission is not required to solicit and/or receive a donation in any amount from a relative or a donation of up to \$250 from a personal friend, as defined by House Rule 25, cls. 5(a)(3)(C) and (D) and 5(a)(5).

Regulation 1.5 – No contribution shall be solicited for, or accepted by, a Legal Expense Fund prior to the Committee’s written approval of the completed trust document (including the name of the Trustee) and its filing with the Legislative Resource Center of the Clerk of the House (B-106 Cannon House Office Building).

Regulation 1.6 – No amendment of the trust document is effective, and no successor or substitute Trustee may be appointed, without the Committee’s written approval and the filing of the amended trust document with the Legislative Resource Center.

Regulation 1.7 – No Member, officer, or employee may establish and/or maintain more than one Legal Expense Fund at any one time.

CHAPTER 2: SELECTION AND DUTIES OF TRUSTEES

Regulation 2.1 – A Legal Expense Fund shall be set up as a trust, administered by an independent Trustee, who shall oversee fundraising for the trust.

Regulation 2.2 – The Trustee shall not have any family, business, or employment relationship with the Trustor within two years prior to the establishment of the trust or at any time while serving as Trustee. For example, any individual or institution serving as an employee of, or a consultant, attorney, or advisor to, a requesting Member’s congressional or campaign offices, or private business may not serve as the Trustee. The Trustee shall not delegate any responsibilities of administering the trust to any person with any family, business, or employment relationship with the Trustor.

Regulation 2.3 – The Trustee shall provide an affidavit to the Committee, with a copy to the Clerk at the Legislative Resource Center, stating that the Trustee has read and understands the provisions of these Regulations governing the establishment, administration, and termination of a Legal Expense Fund, and that the Trustee consents to administer the trust in conformity with these Regulations and House Rules.

Regulation 2.4 – In addition to the duties imposed by any applicable state laws, the Trustee shall be responsible for the receipt of contributions to the trust; authorization of expenditures and disbursements from the trust; providing information to the Trustor so that the Trustor can file the reports required by Chapter 4 of these Regulations; and the performance of other tasks incident to the administration of the trust.

Regulation 2.5 – The Trustee must inform the Committee as soon as practicable of any change in his or her contact information.

CHAPTER 3: CONTRIBUTIONS AND USE OF FUNDS

Regulation 3.1 – Official resources may not be used to assist with fundraising for a Legal Expense Fund. As with any organization that is not a 501(c)(3) nonprofit, any Member, officer, or employee who wants to solicit funds in their personal capacity for the Legal Expense Fund

of another Member, officer, or employee must first seek written permission from the Committee.

Regulation 3.2 – Other than as specifically barred by law or regulation, a Legal Expense Fund may accept contributions from any individual or organization, including a corporation, labor union, or political action committee (PAC).

Regulation 3.3 – If the organization making the contribution is a partnership, limited liability company (LLC) that is not taxed as a corporation, or S corporation the contribution of the partnership, LLC, or S corporation will be attributed to the partnership, LLC, or S Corporation and to each partner, member, or shareholder in direct proportion to the partner, member, or shareholder's share of the organization's profits.

Regulation 3.4 – A Legal Expense Fund shall not accept any contribution from a lobbyist registered under the Federal Regulation of Lobbying Act or any successor statute, including the Lobbying Disclosure Act of 1995 (2 U.S.C. § 1601 *et seq.*) or an agent of a foreign principal registered under the Foreign Agents Registration Act (22 U.S.C. § 611 *et seq.*).

Regulation 3.5 – A Legal Expense Fund shall not accept more than \$5,000 in a calendar year from any individual or organization.

Regulations 3.6 – The limitations and prohibitions on contributions in this Chapter apply to both contributions of funds and in-kind donations of goods or services. Any in-kind donation will be valued at its fair market value.

Regulation 3.7 – A Member, officer, or employee may accept *pro bono* legal assistance without limit only for the following purposes:

- A. to file an amicus brief in his or her capacity as a Member of Congress;
- B. to bring a civil action challenging the validity of any federal law or regulation; or
- C. to bring a civil action challenging the lawfulness of an action of a federal agency, or an action of a federal official taken in an official capacity, provided that the action concerns a matter of public interest, rather than a matter that is personal in nature.

Regulation 3.8 – *Pro bono* legal assistance for other purposes shall be deemed a contribution, valued at fair market value, subject to the restrictions of these Regulations. For purposes of the annual contribution limit, a law firm and its partners and employees are considered one donor. If a law firm reaches the contribution limit, no partner or employee of the law firm may provide *pro bono* legal assistance individually.

Regulation 3.9 – Trust funds shall be used only for legal expenses (including reimbursement for previously paid legal expenses) related to those legal proceedings for which the Committee has given written permission for payment from the Legal Expense Fund (and expenses

incurred in soliciting for and administering the trust, and for the discharge of federal, state, and local tax liabilities, should any be deemed to exist, which are incurred as a result of the creation, operation, or administration of the trust), except that any excess funds shall be returned to contributors at the time of the trust's termination. Under no circumstances may the beneficiary of a Legal Expense Fund convert the funds to any other purpose.

- A. Examples of common legal expenses include attorney and expert witness fees, copying costs, electronic discovery costs, court costs, costs related to depositions and interviews, and travel costs associated directly with the case.
- B. Examples of common expenses relating to solicitation for the trust include costs for mailings, a Web site, or fundraisers.
- C. Any costs associated with completing the quarterly report required under Chapter 4 of these Regulations are costs payable from the trust.
- D. If the beneficiary is seeking to have an uncommon cost paid, either the beneficiary or the Trustee should seek the guidance of the Committee before payment.

Regulation 3.10 – The Trustor may choose to include present and former House staff as beneficiaries of the trust. The Trustor must seek written Committee permission to add any individual other than the Trustor as a beneficiary. The Trustor must receive written permission before any bill for House staff is paid. If the Committee grants permission, the Trustor must comply with the following guidelines:

- A. Any staff person added as a beneficiary should avoid being represented by any counsel who simultaneously represents the Trustor, or counsel who is employed by the same law firm as any counsel who has been engaged to represent the Trustor. Should any staff member choose to be represented by the same counsel and/or law firm which represents the Trustor, the Committee requires that both parties execute a written agreement consenting to dual representation consistent with the ABA Model Rules.
- B. While the Trustor, or the Trustor's attorney, may recommend a particular counsel to staff, trust funds may only be used to pay staff legal expenses if each staff member is free to engage counsel of the staff's own choosing, regardless of any such recommendation.
- C. While the Trustor is not required to use trust funds to pay the legal expenses of every staff person requesting such reimbursement, to avoid any appearance of impropriety the Trustor should exercise caution and apply uniform standards in determining whose legal expenses to reimburse.
- D. Any staff for whom the trust intends to pay legal expenses should be furnished with a copy of these Regulations by the Trustor and encouraged to contact the Committee with any questions or concerns regarding these Regulations.

Regulation 3.11 – The Committee may grant permission to establish a trust to pay for legal expenses incurred prior to the Member, officer, or employee seeking approval to establish a trust. The Member, officer, or employee should submit a written request to the Committee that details the amount, time period, and matters for which legal expenses are being sought, and an explanation for the delay in seeking permission to establish a trust to pay such expenses. The Committee will review the request and determine whether the use of a Legal Expense Fund to pay the expenses is appropriate.

Regulation 3.12 – All contributions to a Legal Expense Fund must be kept in a separate bank account established for that purpose. The funds must be segregated from, and may not be commingled with, the personal, political, or official funds of the Trustor, or the funds of any other individual or legal entity.

Regulation 3.13 – Contributions to a Legal Expense Fund are gifts under House Rule 25, clause 5. As such, any contribution (or group of contributions) in a calendar year totaling more than the minimal value as established by Foreign Gifts and Decorations Act, 5 U.S.C. § 7342(a)(5), must be disclosed in the Trustor’s annual Financial Disclosure Statement. The dollar amount of the minimum value is provided on the Committee Web Site, in the Financial Disclosure Instruction Manual, and on the annual Financial Disclosure form, or may be obtained by contacting the Committee.

CHAPTER 4: DISCLOSURE AND REPORTING REQUIREMENTS

Regulation 4.1 – Within one week of the Committee’s approval of the trust document, the Trustor shall file a copy of the trust document with the Legislative Resource Center, B-106 CHOB, for public disclosure.

Regulation 4.2 – The Trustor of a Legal Expense Fund shall also report the following information to the Committee on a quarterly basis:

- A. any contribution from a corporation, partnership, LLC, or labor union;
- B. any contribution (or group of contributions) exceeding \$250 in a calendar year from any other single source;
- C. any expenditure (or group of expenditures) from the Legal Expense Fund exceeding \$250 in a calendar year to any single payee, directly or indirectly; and
- D. The names of any staff members whose legal expenses are paid by the Legal Expense Fund.

Regulation 4.3 – Any Member, officer, or employee accepting *pro bono* legal services pursuant to Regulation 3.6 must report the fair market value of the services provided on the quarterly report.

Regulation 4.4 – The quarterly reports shall state the full name and street address of each donor, contributor, or recipient required to be disclosed. For donations from partnerships, LLCs, and S corporations, the report shall state the full name and address of the partnership, LLC, or S corporation and the full names and addresses of the partners, members, or shareholders of the partnership, LLC, or S corporation and the amount of the contribution attributed to each partner, member, or shareholder. For pro bono services, the report must identify both the names of the individual attorneys who provide the services and the name of the law firm. For recipients, the report shall also state the purpose of the payment.

Regulation 4.5 – The original signed copy of each quarterly report must be filed with the Committee and a copy shall be filed for public disclosure at the Legislative Resource Center.

Regulation 4.6 – The quarterly reports shall be due as follows:

<u>Reporting Period</u>	<u>Due Date</u>
January 1 to March 31	April 30
April 1 to June 30	July 30
July 1 to September 30	October 30
October 1 to December 31	January 30

Should the filing date fall on a Saturday, Sunday, or holiday, the next succeeding business day shall be deemed the due date.

Regulation 4.7 – The Trustor must file quarterly reports until the trust has been terminated, as described in Chapter 5, or the Trustor files a final departing Trustor report under these Regulations, whichever occurs first.

Regulation 4.8 – If the Trustor is departing office or leaving House employment, the Trustor must file a final departing Trustor report no later than the first due date following the end of the Trustor’s congressional service which contains the following:

- A. a report of contributions received and expenditures made pursuant to these Regulations covering the period between the last-filed quarterly report and the date the Trustor departed office or left House employment; and
- B. a statement as to whether the trust will be terminated or remain in force upon the Trustor departing office or left House employment.

Regulation 4.9 – All documents filed pursuant to these Regulations shall be available at the Legislative Resource Center for public inspection and copying. Any person requesting such documents shall be required to pay a reasonable fee to cover the cost of reproduction.

CHAPTER 5: USE OF OFFICIAL RESOURCES

Regulation 5.1 – Members and employees may not use official resources for any work related to a Legal Expense Fund if the Legal Expense Fund was created for the purpose stated in Regulation 1.2 (A) (an individual’s candidacy or election to office, including redistricting) or (E) (a civil matter bearing on the individual’s reputation and fitness for office).

Regulation 5.2 – Members should consult with the Committee before using any official resources for work related to the Member’s Legal Expense Fund if the Legal Expense Fund was created for purpose stated in Regulation 1.2 (D) (a criminal prosecution of the Trustor).

Regulation 5.3 – Members may use official resources for any work related to a Legal Expense Fund if the Legal Expense Fund was created for the purpose stated in Regulation 1.2 (B) (the Trustor’s official position in office) or (C) (a civil matter filed in the Member’s official capacity challenging a federal law or regulation).

CHAPTER 6: TERMINATION OF TRUSTS

Regulation 6.1 – A trust may only be terminated by the Trustee according to the terms of the trust at the earlier of: (A) the end of the time period for which the trust was established; (B) the purpose of the trust is fulfilled or no longer exists; (C) at the direction of the Trustor; or (D) at the direction the Committee for noncompliance with these Regulations.

Regulation 6.2 – Within 90 days of the termination of the trust, the Trustee must distribute any remaining funds or assets to contributors of the trust on a *pro rata* basis as determined by the Trustee or donated to one or more organizations described in § 501(c)(3) of the Internal Revenue Code of 1954 and exempt from taxation under § 501(a) thereof. The Trustor must receive written approval from the Committee of the 501(c)(3) organization(s) to which the Trustor wishes to donate the excess funds prior to making any such donations. Funds from a Legal Expense Fund may not be donated to an organization that was established or is controlled by the Trustor.

Regulation 6.3 – After a trust has been terminated, the Trustor must file a final quarterly report of contributions received and expenditures made pursuant to these Regulations covering the period between the last filed quarterly report and the date the trust was terminated. In addition, the final report must contain a statement certifying that any remaining funds were distributed to contributors pursuant to these Regulations.

CHAPTER 7: COMMITTEE ENFORCEMENT

Regulation 7.1 – The Committee shall monitor the activities of any Legal Expense Fund established pursuant to these Regulations, and may direct specific remedial actions, or that an audit be made of such trust when, in the judgment of the Committee or Chairman and Ranking Member there is reason to believe that the trust is being improperly administered, or for other good cause.

Regulation 7.2 – Upon a determination by the Committee or Chairman and Ranking Member that an audit of a trust should be made, the Committee shall select a qualified auditor to examine the records of such a trust. The expense of an audit performed at the direction of the Committee shall be borne by the Committee.

Regulation 7.3 – Upon a finding by the Committee or Chairman and Ranking Member that the trust is being improperly administered, if the Trustor and/or the Trustee fail to comply with these Regulations or the trust agreement, or for other good cause, the Committee or Chairman and Ranking Member may direct that the trust be terminated and that the funds be distributed in accordance with the provisions in Chapter 5. The Committee shall notify the Trustor in writing and a copy shall be provided to the Legislative Resource Center for public disclosure.

Regulation 7.4 – Upon a finding by the Committee that a trust has been improperly administered, or that these Regulations have been otherwise violated, the Committee may recommend disciplinary action to be taken in accordance with House Rules and the Rules of the Committee.

CHAPTER 8: CONFORMING EXISTING TRUSTS

Regulation 8.1 – Any Member, officer, or employee who established a Legal Expense Fund prior to January 1, 2012, shall make any necessary modifications to the trust document to bring it in compliance with these Regulations and shall disclose the amended trust document with his or her quarterly report due on January 30, 2012.

Regulation 8.2 – No later than January 30, 2012, the Trustee for an existing trust shall provide an affidavit to the Committee, with a copy to the Clerk at the Legislative Resource Center, stating that the Trustee has read and understands the provisions of these Regulations governing the establishment, administration, and termination of a Legal Expense Fund, and that the Trustee consents to administer the trust in conformity with these Regulations and House Rules by January 30, 2012.