

United States Senate

WASHINGTON, DC 20510

August 2, 2018

Director Emory Rounds
U.S. Office of Government Ethics
1201 New York Avenue, N.W., Suite 500
Washington, DC 20005

Dear Director Rounds,

Congratulations on your confirmation and thank you for your willingness to serve our country at the Office of Government Ethics (OGE).

We write to you today to ask that you fulfill your commitment to review OGE's guidance from earlier this year on the highly problematic Patriot Legal Expense Fund Trust, LLC ("the Fund"). We share the concerns of ethics experts that this fund could allow secret donations to White House staff and Trump campaign staff and may not comply with a range of ethics, tax and election laws. Given these concerns we believe further review and changes to the OGE guidance are warranted now that you have been confirmed as OGE Director.

As you know, the Patriot Legal Expense Fund Trust, LLC was established to help pay the legal expenses incurred by members of President Trump's administration and campaign staffs who are involved in the ongoing investigations into Russian interference in the 2016 elections. The Fund allows individuals and entities to make unlimited contributions to the pool of money that the fund manager will then distribute to members of President Trump's team.

We have several concerns about this fund's compliance with federal law and ethics guidelines. The Fund lacks transparency: both donors and recipients could potentially be shielded from public disclosure and it is impossible to know which donors supplied money for contributions to which employees, making it impossible to discern whether donations are legal or ethical. The Fund also creates the potential for influencing witness testimony. While the fund manager cannot reward recipients monetarily for favorable testimony after-the-fact, there is no prohibition on pressuring witnesses to provide favorable testimony beforehand or numerous other potential ways of incentivizing such testimony. Finally, the structure of the Fund could allow donations from prohibited sources to reach federal officials. Donors cannot give gifts to federal employees that could influence or appear to influence government actions. But the Fund allows such donors to contribute, with inadequate safeguards in place to ensure that the donations never reach federal officials and influence or appear to influence government actions.

Despite these concerns, in January the acting director of OGE released initial guidance that said that the Fund complies with federal law. At your confirmation hearing, Senators Hassan and Jones asked you to review this guidance and make any necessary changes to ensure that it complies with ethical standards – and we appreciated your commitment to doing so. We write now ask you to follow up on that commitment and conduct a thorough review of the Patriot Legal Expense Fund Trust, LLC. When you have done so, we request that you respond to the following questions in writing:

- 1) Do you agree with OGE’s initial guidance that the structure of the Patriot Legal Expense Fund Trust, LLC is adequate to offer reasonable assurance that all distributions to executive branch employees will comply with federal law and ethics guidelines?

- 2) If you disagree with the initial guidance:
 - a. What elements of the structure do not comply?
 - b. What changes to the structure are needed to bring it into compliance?
 - c. What steps will you take to ensure that these changes are made and to advise us when they have been completed?

- 3) If you agree with the initial guidance:
 - a. What gives you confidence that the concerns outlined above have been adequately addressed?
 - b. Why does your opinion differ from numerous ethics experts outside of OGE who have condemned the agency’s guidance?
 - c. Do you find it acceptable that the Fund can accept money from sources that are prohibited from giving to some potential recipients?
 - i. If so, how do you reconcile the notion of a fund merely keeping a separate ledger for prohibited source donations (i.e., tracking donations from prohibited sources separately from other donations) with the notion that OGE will not allow an employee to retain an investment fund and merely rely on the fund manager to apportion distributions to exclude income from conflicting holdings?
 - ii. If not, why have you concluded that the acting Director’s decision was correct?
 - d. Do you find it acceptable that the public cannot know the true source(s) of donations to an individual executive branch employee from the Patriot Legal Expense Fund Trust, LLC?
 - e. Do you agree with the position that OGE took in a September 28, 2017, legal advisory (OGE Legal Advisory 17-10) to the effect that employees may not establish legal expense funds that distribute funds to them anonymously?
 - i. If so, how do you reconcile that position with the fact that the fund manager of the Patriot Legal Expense Fund Trust, LLC is prohibited from communicating with individual recipients and, therefore, cannot advise them of the true source(s) of distributions?

- ii. If not, are you reverting to OGE's former position in a 1993 opinion (OGE opinion 93 x 21) that employees may rely on the anonymity of legal expense fund distributions to comply with the ethics rules? If not, please explain your answer.
- f. In your view, is there a risk that a rogue campaign official's representations – whether true or false – to an executive branch employee regarding the fund manager might carry enhanced plausibility because the campaign official can communicate with the fund manager, while the employee cannot communicate with the fund manager? If not, what would prevent the rogue campaign official from representing that the fund manager intends to withhold funds from the individual if the individual's testimony is unfavorable to the president?
- g. What risks with regard to witness testimony flow from the decision to allow the Fund's manager to communicate with the Trump campaign and not with individual recipients?
- h. How will the Fund's manager be able to identify all prohibited sources if the fund manager is unable to communicate with an individual recipient to learn the scope of the individual's assignments and whether the source is seeking official action from the employee or the employee's agency?
- i. Do you find it acceptable that prospective donors will self-certify that they are not prohibited sources?
- j. What risks flow from the exclusion of 20 regulatory agencies from the definition of "prohibited source" in the donor questionnaire?
- k. Are you aware that the Patriot Legal Expense Fund Trust, LLC has not filed any IRS Form 8871, Form 8872 or Form 990 other than the initial IRS Form 8871 that it filed on February 27, 2018?
 - i. If so, does this concern you with regard to its tracking of donations and distributions? (Why/why not?)
 - ii. If you are not aware, why has OGE failed to monitor these filings?
- l. What specific steps you will take to monitor, on a case-by-case basis, distributions of the Patriot Legal Expense Fund Trust, LLC, to ensure that no donation received by an individual executive branch employee originates from a prohibited sources, and why do you believe that these steps will be adequate to deter any violation of law or regulation?

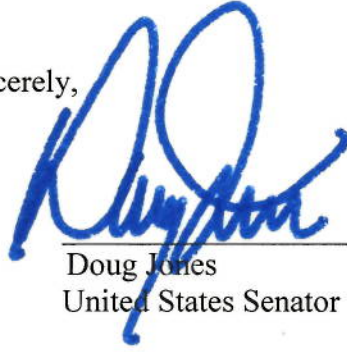
In addition to a written response, we request that OGE provide a briefing for the Senate Committee on Homeland Security and Governmental Affairs about this guidance as soon as you have completed your review.

Thank you for your attention to this important matter and we look forward to your prompt response.

Sincerely,



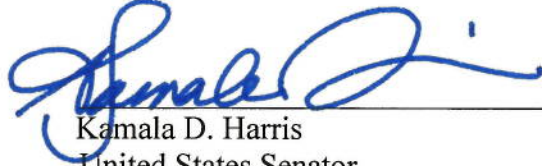
Margaret Wood Hassan
United States Senator



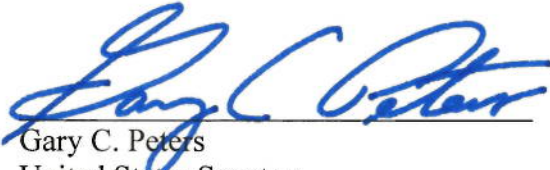
Doug Jones
United States Senator



Thomas R. Carper
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