

Congress of the United States
Washington, DC 20515

May 24, 2018

The Honorable Arthur A. Elkins, Jr.
Inspector General (IG)
Office of Inspector General (OIG)
U.S. Environmental Protection Agency (EPA)
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Inspector General Elkins:

We write regarding the newly disclosed legal defense fund of EPA Administrator Scott Pruitt. We believe that creating transparency and establishing the details of his legal defense fund are vital to preventing further ethical mishaps by the Administrator, and request a response to our questions about this fund.

In a May 16 hearing of the Senate Appropriations Subcommittee on the Interior, Environment, and Related Agencies, Administrator Pruitt was asked to verify a report that he had created a legal defense fund.¹ He responded in the affirmative: "It's been done." Upon further questioning, Administrator Pruitt stated that he would refuse to accept donations to his legal defense fund from lobbyists or corporations with business before the EPA. He was unable to say, however, whether his legal defense fund would accept donations from anonymous sources.

We understand why Mr. Pruitt established this fund, given the investigations into his potential misconduct by the House of Representatives, Senate, White House, Office of Management and Budget, and the Government Accountability Office, and the many reviews being conducted by your office.² We have serious misgivings, however, about the potential ethical problems raised by such a fund, given Mr. Pruitt's track record in such matters, and we urge your office to take all possible steps to mitigate any potential for conflicts of interest.

We are particularly concerned about the potential for lobbyists and special interests to curry favor with Administrator Pruitt, or to affect decisions made by him or his subordinates, using donations to his legal defense fund. While we appreciate Mr. Pruitt's pledge not to accept donations from lobbyists who lobby the EPA, he has previously misrepresented details about

¹ Coral Davenport, "Two Top Aides to Scott Pruitt Quit the E.P.A. Unexpectedly," *New York Times*, May 1, 2018 <https://www.nytimes.com/2018/05/01/climate/epa-kelly-perrotta-resignations.html>

² Josh Siegel, "Scott Pruitt Faces a Dozen Investigations With New Probe of Email Accounts," *Washington Examiner*, May 15, 2018 <https://www.washingtonexaminer.com/policy/energy/scott-pruitt-faces-a-dozen-investigations-with-new-probe-of-email-accounts>

financial transactions with lobbyists who had business before the agency.³ There are also unanswered questions about business dealings between Mr. Pruitt and lobbyists with business interests before the Oklahoma legislature while Pruitt was a member of the Oklahoma Senate.⁴⁵⁶ As such we feel that Mr. Pruitt's assurances on this point must be accompanied by independent, official verification of the propriety of donations to his legal defense fund.

In his May 16 testimony to the Senate, Mr. Pruitt said, "I don't accept donations. I don't solicit donations. That's done by attorneys and others." (Reports suggest that this fund will be set up by Cleta Mitchell, of Foley & Lardner⁷⁸). He went on to say that he was working with his attorneys to ensure that his legal defense fund complied with laws and regulations. We again note, however, his poor track record in this area. In the same testimony, Administrator Pruitt admitted to accepting a gift from a subordinate without compensation, a violation of 5 CFR Part 2635, the same section of federal regulations which provides the basis for rules regarding legal defense funds.⁹

We are also concerned about the Administrator's inability to answer questions about anonymous donations to his legal defense fund, as such donations could easily be used to bypass prohibitions on donations from lobbyists and special interests with business before the EPA. We note that, while federal regulations merely require the disclosure of donations above \$390, recent guidance from the Office of Government Ethics (OGE) advises "that the instruments establishing legal defense funds include a clause stating that 'contributions shall not be accepted from anonymous sources.'"¹⁰

We anticipate that Administrator Pruitt or the EPA may be inclined to direct inquiries about his legal defense fund to his attorneys. Congress has a duty, however, to exercise oversight in this area, given the extent to which donations to this fund reflect on regulatory activities by the EPA, and we believe the pertinent authorities at the EPA must make every effort to ensure that this fund in no way impacts EPA decision-making. We therefore address this inquiry to you.

³ Eric Lipton, "Scott Pruitt Met With Lobbyist Whose Wife Rented Him a \$50-a-Night Condo," *New York Times*, April 21, 2018 <https://www.nytimes.com/2018/04/21/climate/pruitt-hart-condo-epa-lobbying.html>

⁴ Letter from Congresswoman Diana DeGette to EPA Administrator Scott Pruitt, May 4, 2018 <https://degette.house.gov/sites/degette.house.gov/files/20180504%20Pruitt%20Oklahoma%20House%20Letter.pdf>

⁵ Steve Eder and Hiroko Tabuchi, "Scott Pruitt Before the E.P.A.: Fancy Homes, a Shell Company and Friends With Money," *New York Times*, April 21, 2018 <https://www.nytimes.com/2018/04/21/us/politics/scott-pruitt-oklahoma-epa.html>

⁶ Steve Eder and Hiroko Tabuchi, "Pruitt's Coziness With Lobbyists Includes Secretly Buying a House With One," *New York Times*, May 3, 2018 <https://www.nytimes.com/2018/05/03/us/scott-pruitt-lobbyist-house.html?smid=tw-share>

⁷ Brady Dennis and Juliet Eilperin, "Scott Pruitt Admits Top Aide Helped Him Search For Housing But 'On Personal Time,'" *Washington Post*, May 16, 2018 https://www.washingtonpost.com/news/energy-environment/wp/2018/05/16/at-senate-hearing-scott-pruitts-spending-and-ethics-once-again-take-center-stage/?utm_term=.69d44b7509be

⁸ Andrew Restuccia and Emily Holden, "Pruitt Taps Outside Attorney For Help Amid Investigations," *Politico*, May 16, 2018 <https://www.politico.com/story/2018/05/16/pruitt-epa-investigations-defense-lawyer-paul-rauser-594488>

⁹ Code of Federal Regulations, Chapter 5, Part 2635: Standards of Ethical Conduct for Employees of the Executive Branch <https://www.law.cornell.edu/cfr/text/5/part-2635>

¹⁰ Acting Director David J. Apol, Office of Government Ethics Legal Advisory, September 28, 2017 [https://www.oge.gov/web/oge.nsf/0/DACCD72B29936DB8852581A900497C51/\\$FILE/LA-17-10.pdf](https://www.oge.gov/web/oge.nsf/0/DACCD72B29936DB8852581A900497C51/$FILE/LA-17-10.pdf)

Based on the information above, we seek answers to the following questions:

1. Will EPA ethics officials pre-screen all donations to Administrator Pruitt's legal defense fund to ensure that no donors are federal employees? If so, how? If not, why not?
2. Will EPA ethics officials pre-screen all donations to determine whether the donors are prohibited sources, as defined in 5 C.F.R. 2634.203? If so, how? If not, why not?
3. How will prohibited sources be identified?
4. Will prohibited sources include those holding a position with an entity regulated by the EPA, or representing or acting on behalf of a regulated entity? If not, why not?
5. Will EPA ethics officials pre-screen all donations to ensure that none of the donors are foreign governments? If so, how? If not, why not?
6. Will EPA ethics officials monitor to ensure that the Administrator recuses from matters involving specific parties in which donors are parties or represent parties, pursuant to 5 C.F.R. 2635.502 or any other applicable authority? If so, how? If not, why not?
7. Following the receipt of a donation, will the EPA ethics officials ensure that the Administrator declines to meet with the donor in his official capacity to avoid any appearance of violating 5 C.F.R. 2635.702? If so, for how long? If not, why not?
8. Has the Administrator established, or will he establish, a mechanism for EPA ethics officials to audit records of donations to his legal defense fund, to ensure his compliance with the duty to disclose all donations in his financial disclosure report?
9. Has the Administrator or his legal defense fund received any donations yet?
10. Has the Administrator complied fully with his obligation to disclose the source of donations in his 2018 annual financial disclosure report?
11. Did the Administrator consult EPA ethics officials before establishing his defense fund?
12. Has the Administrator provided EPA ethics officials with a copy of the trust agreement or other documentation establishing his legal defense fund?
13. Can you confirm that no government funds, staff time, or official resources will be used in soliciting funds, facilitating soliciting funds or transportation to solicit funds, including such work done on personal time? Are there mechanisms in place at the agency to prevent any such activities in future?

We also are aware that Administrator Pruitt may be permitted, under OGE guidance, to avoid making public disclosures of donations to his legal defense fund until May of 2019. We strongly urge both the EPA and the Administrator against any such delay in transparency, as lax disclosure would considerably worsen already-severe concerns about Administrator Pruitt's ethics record by Congress and the public.

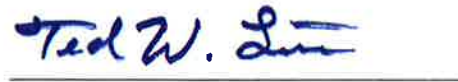
We would welcome your timely responses to these questions, and as much information as you are able to provide on Administrator Pruitt's legal defense fund. Your assistance in this matter is greatly appreciated.

Sincerely,


Donald S. Beyer, Jr.
Member of Congress


Ferrol Nadler
Member of Congress


Gerald E. Connolly
Member of Congress


Ted W. Lieu
Member of Congress


Jamie Raskin
Member of Congress

cc:

David J. Apol, Acting Director, Office of Government Ethics, 1201 New York Avenue, N.W.
Suite 500, Washington, D.C. 20005;

Gene Dodaro, Comptroller General, U.S. Government Accountability Office, 441 G St, N.W.,
Washington, D.C., 20548