

**From:** [Ashley Westby](#)  
**To:** [USOGE](#)  
**Subject:** [External] NELA Comments re: OGE Legal Expense Reporting Forms  
**Date:** Thursday, February 5, 2026 5:30:15 PM  
**Attachments:** [image001.png](#)  
[NELA Comment on OGE Legal Expense Fund Reporting Forms \(2.5.2026\).pdf](#)

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Good afternoon,

Attached, please find the comments of the National Employment Lawyers Association.

Sincerely,  
Ashley Westby

Ashley Westby  
Program Director  
National Employment Lawyers Association  
National Institute For Workers' Rights

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February 5, 2026

*Via Electronic Mail*

Office of Government Ethics  
Suite 750, 250 E Street SW  
Washington, DC 20024  
Attention: McEvan Baum  
Assistant Counsel  
E-mail: usoge@oge.gov

Re: *Notice of Request for Agency and Public Comments, 90 Fed. Reg. 59122-59123  
(December 18, 2025)*

Dear Mr. Baum:

The National Employment Lawyers Association (NELA) respectfully submits the following comments concerning the Office of Government Ethics' (OGE's) Notice of Request for Agency and Public Comments, as published in the Federal Register at 90 Fed. Reg. 59122-59123 (Dec. 18, 2025).

NELA is the largest professional membership organization in the country comprised of lawyers who represent employees in labor, employment, wage and hour, and civil rights disputes. Our mission is to advance workers' rights and serve lawyers who advocate for equality and justice in the American workplace. NELA and its 69 circuit, state, and local affiliates have a membership of over 4,000 attorneys who are committed to working on behalf of those who have faced illegal treatment in the workplace. NELA has filed numerous *amicus curiae* briefs before the United States Supreme Court and other federal appellate courts regarding the proper interpretation of federal civil rights and worker protection laws and comments on relevant proposed rules. NELA also engages in legislative advocacy on behalf of workers throughout the United States. A substantial number of NELA members' clients are federal employees. NELA, therefore, has an interest in regulations affecting both federal employees and the operations of NELA members who provide legal representation to federal employees.

NELA previously commented on June 17, 2022, in response to OGE's Proposed Rule—Legal Expense Fund Regulation, RIN 3209-AA50, 87 Fed. Reg. 23769-23780 (Apr. 21, 2022). In its Final Rule, OGE addressed NELA's concerns:

OGE believes that the required quarterly reporting is necessary for transparency and does not impede on attorney-client privilege or unduly discourage representation of federal employees. The regulation requires that the beneficiary report distributions of \$250 or more from the fund. Section 2635.1007 requires that

the employee beneficiary disclose the payee, date of distribution, amount, and “purpose” of the distribution. *The required purpose can be as broad as “legal services” and the employee beneficiary is in no way compelled to, and in fact should not, report confidential attorney-client information. OGE notes specifically that the beneficiary is not required to report the terms of the representation or the billing rates of the staff involved. Moreover, OGE intends to provide more specific guidance regarding quarterly reporting requirements. Although OGE acknowledges that there may be some strategic disadvantages to any disclosure requirements, OGE is balancing that concern with the need for transparency, which most commenters emphasized was crucial to this process.*

...

Two organizations commented that placing the quarterly reporting information into a searchable, sortable database makes that information available to attorneys of party opponents, and stated that the information is privileged. *OGE reiterates that no privileged information is required to be disclosed under § 2635.1007, and information such as whether the client is on a flat or fixed rate or the numbers of hours worked is not required by the form. Any hypothetical strategic disadvantage to the employee beneficiary is outweighed by the employee beneficiary being able to access funds for legal services.*

88 Fed. Reg. 33799, 33805 (May 25, 2023) (emphasis added).

Despite OGE’s stated commitment in its Final Rule to ensuring employee beneficiaries are informed not to report confidential attorney-client information, the current reporting form—Executive Branch Legal Expense Fund Quarterly Report form, OGE Form 601, OMB Control No. 3209-0012 (the “Form”)—fails to effectuate OGE’s position. Thus, NELA opposes the extension of approval for the Form, stands by its prior comments, and raises similar concerns based on the experience of NELA members in representing federal employees.

The Form, as written, improperly invades the privileged attorney-client relationship by failing to adequately instruct the employee beneficiary not to disclose privileged or confidential information. The instructions for completing the form do not direct the employee not to disclose privileged or confidential information. Indeed, the Form’s only reference to the disclosure of protected information is in very small, red lettering on the final page.

To ensure the Form sufficiently apprises employee beneficiaries not to disclose privileged or confidential information, the Form should include the following phrase in the instructions and on each page of the Form in bold, black lettering in a font size at least as large as the smallest font size in the instructions: “Do not disclose any privileged or confidential information. Consider consulting with legal counsel before filing this Form.” According to the U.S. General Services Administration, the minimum contrast ratio for text that is less than 18-point or 14-point bold font against its background is 4.5:1. *See* Gen. Servs. Admin., *Testing Color Contrast in Non-Web Documents and Images*, <https://www.section508.gov/test/color-contrast-in-nonweb-documents-images/> (last updated Sept. 2024). Regardless, using bold, black text on a white background in a

font size used to communicate instructions will best ensure its visibility for employee beneficiaries. In addition, to “provide more specific guidance regarding quarterly reporting requirements,” OGE should include information in the instructions consistent with its previous position that “[t]he required purpose can be as broad as ‘legal services’ . . . .” 88 Fed. Reg. 33799, 33805 (May 25, 2023).

Thank you for your consideration. If you have questions or wish to discuss these matters, please contact Ashley Westby at [awestby@nelahq.org](mailto:awestby@nelahq.org).

Sincerely yours,

A handwritten signature in black ink that reads "Ashley Westby". The signature is written in a cursive, flowing style.

Ashley Westby  
Program Director  
National Employment Lawyers Association