



October 19, 2026

Submitted via www.reginfo.gov

Makisha Brown
Acting Deputy Associate Director
Strategic Workforce Planning
Office of Personnel Management
1900 E Street NW
Washington, DC 20415

Re: *30-Day Notice and Request for Comments , 91 Fed.Reg. 58921 (September 17, 2026)*

Dear Ms. Brown:

The National Employment Lawyers Association (NELA) respectfully submits the following comments concerning the Office of Personnel Management (OPM)'s 30-Day Notice and Request for Comments, as published in the Federal Register at 91 Fed.Reg. 58921 (October 19, 2026).

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 in both the public and private sector. 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 regularly on relevant proposed rules. NELA also engages in legislative advocacy on behalf of workers throughout the United States. Many NELA members represent federal employees in workplace claims. NELA, therefore, has an interest in these regulations.

The revisions to the Federal Employee Viewpoint Survey (FEVS) survey forms are designed to implement changes proposed by OPM in a recent Proposed Rule, which was published in the Federal Register at 91 Fed.Reg. 40435-40444 (July 2, 2026). NELA had opposed¹ the Proposed Rule's proposed revisions to 5 C.F.R. § 250.302(a)(2), as inconsistent with statute and unsound public policy—and thus also opposes the present proposed revisions to the FEVS survey form itself. Congress's purpose in mandating the annual viewpoint survey in Pub.L. 108-138 was to solicit information from employees to rate the quality of their supervision by their relevant

¹ NELA's comments on the Proposed Rule were filed on August 3, 2026, and appear in the electronic docket as Comment OPM-2026-0368-0007. *Available at* <https://www.regulations.gov/comment/OPM-2026-0368-0007>. NELA restates and incorporates those comments herein by reference.

agency management. *See* 5 U.S.C. 7101 note (codifying Pub.L. 108-136, Div. A, Title XI, § 1128). OPM’s proposed revisions eliminate all questions on several of the statutorily-mandated topics, including “work environment,” “rewards and recognition for professional accomplishment and personal contributions to achieving organizational mission,” and “opportunity for professional development and growth.” As Congress has commanded in statute since 2003 that OPM survey employees on these issues, OPM is not free to exclude them from the survey by regulation. Indeed, Congress stated in the legislative history for present 5 U.S.C. 7101 note that the OPM’s survey questions were required to be survey questions to address the exact issues regarding which Congress wanted federal employees to be queried. *See* H.R.Rep. 108-106 (May 16, 2003), Part I, at 367 (discussing then-Section 1110). More generally, the purpose of the mandatory employment survey was to conduct, at a high-level, a workplace climate survey so that Congress and the public can monitor the work environment (including general quality of workplace, workload, job satisfaction and morale, and perceived prospects for upward mobility and professional development) within the executive branch agencies—a goal well served by the present question set. The revised version appears instead to repurpose the survey away from what the statute mandated, and instead to convert it into a tool to verify that employees have received their employment instructions—and to help higher agency management identify work units where the supervisors are not pressuring employees strongly enough regarding employee performance standards. Any desire to try and avoid possible adverse publicity of recent attempts to deliberately place federal employees ‘in trauma’ is not a valid reason to disobey the Congress. While OPM is theoretically free to ask additional questions on topics beyond those listed in 5 U.S.C. 7101 note, subject to other statutory constraints (*see, e.g.,* 5 U.S.C. § 552a(e)(7)), OPM cannot refuse to query federal employees on the issues that Congress commanded OPM and the agencies to survey in Pub.L. 108-136. As the present questions adequately implement the statutory requirements for the viewpoint survey and the proposed revised questions manifestly do not, present 5 C.F.R. § 250.302 should be retained unmodified. Accordingly, NELA had opposed the Proposed Rule, and for similar reasons now opposes the revisions to the FEVS survey form.

NELA further notes that the Proposed Rule has not been finalized as of the date of this submission, and so it would be further inappropriate for OPM to revise the FEVS survey form in a manner inconsistent with the present FEVS regulations.

In the 30-Day Notice OPM had indicated that the Office of Management and Budget had specifically sought comment on four issues concerning the FEVS survey form revisions. NELA comments on two of those issues as follows:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

NELA’s Response: For the reasons stated above (restated and incorporated by reference here for brevity), the revisions to the information collection are not necessary for the proper performance of OPM’s functions in implementing Pub.L. 108-138, and to the contrary deviate from statutory requirements for the FEVS survey.

3. Enhance the quality, utility, and clarity of the information to be collected;

NELA’s Response: For the reasons stated above (restated and incorporated by reference here for brevity), the revisions to the information collection will degrade the quality, utility

and clarity of the information to be collected through omission of information collection on a number of material topics regarding which OPM is required to collect information pursuant to Pub.L. 108-138, such as “work environment,” “rewards and recognition for professional accomplishment and personal contributions to achieving organizational mission,” and “opportunity for professional development and growth.”

Thank you for your consideration. If you have questions or wish to discuss these matters, please contact Ashley Westby at 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