

SUPPORTING STATEMENT

List of Pro Bono Legal Service Providers for Individuals in Immigration Proceedings (Form EOIR-56)

Part A. Justification

1. Necessity of Information - Aliens who are placed in removal proceedings pursuant to section 240 of the Immigration and Nationality Act (Act or INA), or who seek asylum under section 208 of the Act (whether or not in removal proceedings), must be provided with a list of persons who have indicated their availability to represent aliens on a pro bono basis. *See* INA § 208(d)(4)(B) (relating to asylum proceedings), and INA § 239(a)(1)(E), (b)(2) (relating to removal proceedings). In order to meet this statutory obligation, the Executive Office for Immigration Review (EOIR) publishes the Free Legal Services Providers List (List). The regulations governing the List were first promulgated on February 28, 1997, at 62 FR 9071, and are found at 8 CFR 1003.61-1003.65. On September 17, 2014, EOIR published a Notice of Proposed Rulemaking (NPRM) at 79 FR 55662, seeking to amend 8 CFR parts 1003, 1240, and 1241, to enhance the eligibility requirements for organizations, private attorneys, and referral services to be included on the List.¹

The List is organized by immigration court location; for each location, the List provides the names of private attorneys and non-profit organizations that aliens in proceedings may contact for free legal services. At each immigration court location, aliens are given the portion of the List with the providers for that location. The complete

¹ EOIR has also proposed to change the name of the “List of Free Legal Services Providers” to the “List of Pro Bono Legal Service Providers” to better reflect the relevant statutory language at INA §§ 208(d)(4)(B), 239(a)(1)(E), 239(b)(2), and describe more accurately the nature of the services to be provided for the public good (e.g. to help ensure qualified representation for indigent aliens).

List is posted on the EOIR Web site. See www.usdoj.gov/eoir/probono/states.htm.

The List is central to EOIR's efforts to improve the amount and quality of representation before its adjudicators, and it is an essential tool to inform aliens in proceedings before EOIR of available pro bono legal services. However, concerns have been expressed to EOIR by government sources and the public that private attorneys may be using the List to advertise or solicit for paying clients, and do not provide legal representation to a significant number of aliens on a pro bono basis for any particular amount of time. Therefore, the Department of Justice (Department) is amending the regulations governing the List in five significant ways—(1) requiring that attorneys and accredited representatives on the List not be subject to an order of disbarment under § 1003.101(a)(1) or suspension under § 1003.101(a)(2), or other order restricting him or her in the practice of law, and that attorneys and fully accredited representatives on the List be registered with EOIR; (2) attorneys must seek to provide pro bono legal services through or in association with an organization or pro bono referral service, if possible; (3) every organization or individual on the List must provide a minimum of 50 pro bono hours a year in each immigration court location where the provider intends to be included on the List; (4) EOIR will publicly post for 15 days the names of the applicants meeting the regulatory requirements, to ensure that the public has an opportunity to send comments to EOIR and the applicant; and (5) the provider must declare under penalty of perjury every three years pursuant to an application for renewal that the provider is qualified to remain on the List and include the alien registration numbers for the individuals to whom pro bono legal services were provided during the preceding 3-year period and the name of the representative who provided the pro bono services.

Currently, there is no EOIR form for organizations, private attorneys, and referral services to be included on the List. The NPRM indicated that there was no specific form or information collection instrument associated with this rule. *See* 79 FR 55669. However, pursuant to public comments suggesting that EOIR look for alternative electronic methods through which to make an initial application and apply for continued participation, EOIR has created a fillable pdf. form (Form EOIR-56) for this purpose. Form EOIR-56 is voluntary, and may be used to elicit, in a uniform manner, all of the required information for EOIR to determine whether an applicant meets the eligibility requirements for inclusion on the List. Form EOIR-56 provides detailed instructions regarding the application process for inclusion on the List, including the documentation necessary to establish eligibility, the appropriate organization official to verify the contents of the application, and the location where copies of the application and documentation should be submitted. The form also provides a link to EOIR's website for further information about how to apply for inclusion on the List.

2. Needs and Uses - The application form for a request to be included on the List of Pro Bono Legal Service Providers for Individuals in Immigration Proceedings (Form EOIR-56) is optional and voluntary. If an applicant elects to make a request to be included on the List using the Form EOIR-56, the form will be filed with and adjudicated by EOIR. Specifically, EOIR receives and processes requests for inclusion on the List. The request is considered by EOIR, after the public has had an opportunity to provide comments on the applicant's request. EOIR intends to post for 15 days the names of the applicants on its website and may post the names at each immigration court location where the

applicant intends to practice, to allow the public an opportunity to send comments to EOIR and the applicant. Careful review of the application materials is necessary to prevent misuse of the List and ensure that only those who genuinely intend to provide pro bono services are included on the List.

Placement on the List is completely voluntary and does not confer any rights or benefits on entities or individuals who are included on the List. Placement on the List in no way constitutes government endorsement of a particular entity or private attorney, nor is the List to be used for advertising or soliciting. Rather, the purpose of the List is to provide aliens notification that these entities or private attorneys are available to provide legal services without any direct or indirect remuneration (other than filing fees or photocopying and mailing expenses).

3. Use of Technology - The voluntary use of this form will provide the most efficient means for collecting and processing the required data. The Form EOIR-56 will be available on EOIR's website for printing. Information can be typed into the online form, which is then printed for submission to EOIR. In addition, the form may be printed in its entirety and completed by typing or printing legibly. Currently, EOIR only has limited automated capabilities in place to accept the electronic submission of certain forms. However, EOIR is exploring a number of electronic document initiatives, including electronic submission of additional EOIR forms.

4. Efforts to Identify Duplication - Currently, there is no EOIR form for organizations, private attorneys, and referral services to be included on the List. The only method for an

applicant to request inclusion on the List is to make such a request on organizational letterhead, supported by the necessary documentary evidence. A review of EOIR's forms revealed no duplication of effort, and there is no other similar information currently available that can be used for this purpose.

5. Impact on Small Businesses - This collection does not have an impact on small businesses or other small entities because the form is optional and voluntary, and may be used at the discretion of the organizations, private attorneys, or referral services seeking to be included on the List. When used, this collection does not impose undue burden on these entities, as the requested information is necessary for the agency's determination of the request. The information collection seeks summaries of information. EOIR estimates that it will take approximately 30 minutes to complete the form.

6. Consequences of Less Frequent Collection - Failure to collect this information would deprive the applicant of establishing eligibility for inclusion on the List if not otherwise provided on the applicant's letterhead.

7. Special Circumstances Influencing Collection - None of the eight special circumstances identified in OMB instruction number 7 apply to this collection.

8. Federal Register Publication and Consultation – EOIR has published a Notice of Proposed Rulemaking covering this collection in the Federal Register. *See* 79 FR 55662, 55669-70. A copy of this notice is attached. EOIR received one substantive comment in

response to this information collection suggesting that the agency look for alternative electronic methods through which to make an initial application, submit comments or complaints, and apply for continued participation. This public comment has prompted the agency to develop the electronically fillable Form EOIR-56, and to further explore the development of an electronic based system to facilitate the collection of this information. If any additional comments are received, they will be considered and incorporated where appropriate.

A draft Form EOIR-56 was previously provided to OMB for review. Subsequent non-substantive changes have been made to the Form text and format using plain language intended to improve the applicant's understanding of the regulatory requirements and to increase efficiency in completing the form. For example, changes were made to the font size to make the form easier to read; explanatory language was added in each section to provide greater clarity; and word choice and word order revisions were made for greater precision and consistency, and to conform to the text in the final rule. These changes should reduce the need for the public to seek clarification from the agency, and reduce the need to solicit this information in the future during the adjudication of the application.

9. Payment or Gift to Claimants - EOIR does not provide any payment or gifts to parties in immigration proceedings or their attorneys or representatives, including recognized organizations and their accredited representatives.

10. Assurance of Confidentiality – EOIR's Pro Bono Coordinator will maintain the

original application. Those EOIR staff members processing the application may access the Form EOIR-56. EOIR protects the confidentiality of the contents of the Form EOIR-56, to the extent permitted by law, including the Privacy Act and the Freedom of Information Act.

11. Justification for Sensitive Questions - There are no questions of a sensitive nature.

12. Estimate of Hour Burden

a. Number of Respondents	129
b. Number of Responses per Respondent	1 each
c. Total Annual Responses	108
d. Hours per Response	.5 hours
e. Total Annual Hourly Reporting Burden	64.5 hours

129 respondents x 1 response per respondent x 30 minutes per response = 64.5 burden hours.

13. Estimate of Cost Burden - There are no capital or start-up costs associated with this information collection. The estimated public cost is zero.

For informational purposes only, there may be additional costs to respondents should they elect to use this optional form. Respondents may incur a cost if they hire a private practitioner to assist them with completing the Form EOIR-56. The Bureau of Labor Statistics reports that the median hourly wage for lawyers is \$54.95. For those respondents who proceed without a practitioner, there is an estimated cost of \$10 per

hour for completing the form (the individuals' time and supplies) in lieu of the practitioner cost. There are also no fees associated with filing the Form EOIR-56.

14. Estimated Cost to the Federal Government – It is estimated that the annual government cost for printing, distributing, stocking, processing and maintaining the Form EOIR-56 will be \$3,092.52.

15. Plans for Publication - The information from this collection will be used internally to process the applications for accreditation.

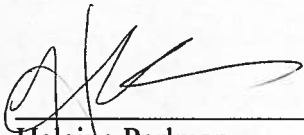
16. Exceptions to the Certification Statement - EOIR does not request an exception to the certification of this information collection.

Part B. Collection of Information Employing Statistical Methods

This collection does not employ statistical methods.

PAPERWORK CERTIFICATION

In submitting this request for Office of Management and Budget (OMB) approval, I certify that the requirements of the Privacy Act and OMB directives have been complied with, including paperwork regulations, any applicable statistical standards or directives, and any other information policy directives promulgated under 5 C.F.R. § 1320.



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9/16/15
Date