

SUPPORTING STATEMENT

Evaluation of the justice AmeriCorps Legal Services for Unaccompanied Children Program

Part A. Justification

1. Necessity of Information - On June 6, 2014, the Department of Justice (DOJ) and the Corporation for National and Community Services (CNCS) announced a strategic partnership to create the justice AmeriCorps (jAC) Legal Services for Unaccompanied Children Program (LSUC Program, or the “Program”). Program grantees enroll lawyers and paralegals to serve as AmeriCorps members (“jAC members”) who provide legal services to certain unaccompanied children.¹ The Program anticipates being able to provide services to 3,000 children in the first year, and 5,000 children annually every year thereafter.

The DOJ’s Executive Office for Immigration Review (EOIR), in cooperation with CNCS, has contracted with the Vera Institute’s Center on Immigration and Justice (Vera) to conduct an evaluation of the LSUC Program (the “Evaluation”), including the study design, consent protocols, and benefits and risks to subjects. Vera is a registered Institutional Review Board (IRB) Organization with the Office for Human Research Protections, U.S. Department of Health and Human Services. EOIR is funding Vera to conduct this study to provide performance measurement and evaluation services that will contribute to the efficiency and effectiveness of the LSUC Program. The evaluation of the LSUC Program will meet two primary objectives:

- 1) Implementing a **program performance measurement** process, including developing a performance indicator data collection system, establishing database management procedures and training service providers in data collection and reporting in order to measure accomplishments and needs for improvement during the life of the program; and
- 2) Conducting an **implementation and outcome evaluation** study to document to what extent the LSUC program meets stated goals of efficiency and effectiveness in terms of six program outcomes: a) representation for unaccompanied children; b) efficiencies in the immigration court system; c) improvements in unaccompanied children’s

¹ Specifically, the Program is intended to provide legal services to children under the age of 16 who: (1) are not in the custody of the Office of Refugee Resettlement (ORR) or the Department of Homeland Security (DHS), i.e. have been released to parents or guardians in the community; (2) have received a Notice to Appear in removal proceedings before EOIR; and, (3) have not had their cases consolidated with removal proceedings with a parent or legal guardian.

Legal representation provided under the Program is limited to: immigration or custody proceedings before EOIR Immigration Courts; appellate proceedings before the Board of Immigration Appeals; proceedings before United States Citizenship and Immigration Services (USCIS), including applications for asylum, Special Immigrant Juvenile (SIJ) status, and/or T or U nonimmigrant status; and state court proceedings seeking orders necessary to support applications for SIJ status (collectively, Immigration Proceedings). Immigration Proceedings will not include any claims, litigation, or other proceedings before federal district courts, circuit courts of appeals, or the Supreme Court.

understanding of immigration proceedings and ability to effectively present their legal cases; d) identification and subsequent protection of child victims of trafficking; e) pro bono capacity and representation; and f) satisfaction with service among jAC members.

2. Needs and Uses - The purpose of Vera's performance measurement and evaluation is to improve data collection capacity, to address implementation challenges, to inform and improve program design, to measure effectiveness, to modify program operations and direction and to contribute to greater accountability and transparency.

To measure performance, Vera and federal partners have developed indicators to answer questions about whether, and how much, progress is being made toward specific program objectives. These indicators will be collected throughout the life of the five-year LSUC program, whereas implementation and outcome evaluation activities will be limited to the first two and a half years of the LSUC program. The quantitative and qualitative data needed to answer performance measurement and evaluation questions will be collected from several sources, including online data collection, EOIR data, surveys of jAC members, and in-depth interviews with program stakeholders and child participants.

The jAC evaluation objectives will measure program performance and outcomes along six dimensions, each with associated data sources and research techniques, as follows:

- 1) **Representation for unaccompanied children**, which is expected to increase. To measure growth in representation rates and to document demographic details of the represented children and the nature of their cases, Vera will use program data submitted by LSUC program grantees, supplemented by administrative and interview data.
- 2) **Efficiencies in the immigration court system**, namely those achieved by increasing appearance rates and decreasing the overall length of court proceedings. Efficiencies will be measured by several variables in administrative data.
- 3) **Improvements in unaccompanied children's understanding of immigration proceedings and ability to effectively present their legal cases**. Improvements will be measured based on case-related data, e.g., charges, relief, orders, motions, appeals, dispositions, appointments and accommodations. These data will be analyzed statistically and supported by additional qualitative evidence obtained from observations, interviews during site visits and dialogue with policy makers and service providers. Additional analysis of children's understanding of the system and their case, and their ability to present their cases, will be gained through brief age-appropriate interviews conducted during site visits.
- 4) **Identification and subsequent protection of child victims of trafficking**. This outcome will be measured by the increase in number of legal screenings that occur and that identify trafficking victims, as well as by jAC members' assessment of victim identification protocols and their ability to follow up and refer identified victims to support services.
- 5) **Pro bono capacity and representation**, which is expected to increase. This will be measured by performance indicators reported by the program grantees focusing on pro bono

capacity-building in the immigration court they serve, including the number of children referred and paired with pro bono counsel, and case outcomes (removal or relief), which will be corroborated by administrative data.

6) **Satisfaction with service** among jAC members. This outcome will be measured by a short survey about employment and civic opportunities at the end of the members' service year.

Vera will collect data as follows:

- Administrative data from the federal government will be obtained from EOIR data reports that Vera routinely analyzes for the Legal Orientation Program. These data will be matched with Program participant data from Vera's Caspio performance measurement data base for aggregate data analysis and reporting.
- Survey data from jAC attorney members will be collected at the end of their service using on-line survey software. The questions aim to determine the perceived value of their participation for future education, employment and civic opportunities.
- Interview data will be collected in two ways: In the first year, Vera will conduct telephone interviews with managers at all LSUC sites in order to evaluate program implementation. In the second year, during site visits, Vera will conduct in-person, in-depth, open-ended interviews with jAC attorneys and paralegals, immigration judges, and other court personnel. Vera will also conduct individual interviews with a small sample of children receiving legal representation through the program. An interview guide for children is attached, and data collection and consent procedures are described in more detail below.

3. Use of Technology - Evaluation activities, including telephone interviews and data analyses, will take place primarily at Vera's central offices. In-person interviews will take place during visits to five program sites as yet to be determined.² Vera will transcribe and analyze all field notes and audio recordings of interviews, and analyze administrative and performance data, at its offices.

4. Efforts to Identify Duplication - Currently, there is no information collection or survey being conducted to evaluate the LSUC Program. A review of EOIR's information collections revealed no duplication of effort, and there is no other similar information collection currently available that can be used for this purpose.

² There are currently a total of 25 LSUC Program locations and more are being added. Final selection of locations for site visits will be determined in the first year of the Program.

5. Impact on Small Businesses - This collection does not have an impact on small businesses or other small entities because the questionnaires and interviews are optional and voluntary for the participants. When used, this collection does not impose undue burden on small businesses, as the requested information is necessary for the evaluation of the Program. Based on similar surveys used by Vera to evaluate other programs, EOIR estimates that it will take approximately 30 minutes per jAC member to complete the exit questionnaire; 1 hour per child to complete the interview; and 75 minutes per Program stakeholder to complete the interview.

6. Consequences of Less Frequent Collection - Failure to collect this information would prevent the agency from making informed decisions to: address implementation challenges, improve program design, measure effectiveness, modify program operations and direction and/or increase accountability and transparency.

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 - A 60-day notice covering this collection has been published in the Federal Register at 80 FR 7879 (Feb 12, 2015). A 30-day notice covering this collection has been published in the Federal Register at 80 FR 23289 (April 27, 2015). Copies of these notices are attached. No comments have been received.

9. Payment or Gift to Claimants – No payments or gifts will be provided to individuals in exchange for participation in evaluation of this program.

10. Assurance of Confidentiality – EOIR’s Office of Legal Access Program Director will receive the aggregate anonymized performance measurement and evaluation data provided by Vera. EOIR staff members responsible for reviewing the performance measurement and evaluation results may also have restricted access to aggregate or summary data provided by Vera. EOIR protects the confidentiality of the survey data to the extent permitted by law. Vera will use the information gathered about subjects for evaluation purposes only and will protect the data and individual identity of subjects from public disclosure. Subjects will not be individually identified in any project reports, and their information will not be disclosed in identifiable form to anyone not working on the study, unless one of the following exceptions applies:

- 1) If a subject tells Vera that she/he intends to commit a crime or that she/he knows someone else is going to commit a crime, Vera may report the information to the authorities, including the police.
- 2) If a subject tells Vera that she/he is going to harm herself/himself, Vera may report that information to the authorities, including the police, or call someone to obtain medical help for the subject.

- 3) If a member of the Vera research team has reasonable cause to suspect that a child is an abused or maltreated child, Vera may have to report that information to the State Central Registry.

Data collected during the course of this evaluation will be safely stored by Vera staff. Hard copies of all data will be kept in locked cabinets in a secure area of Vera's offices. Electronic databases and interview information will be stored on a secure, web-based server under password protection. All data will be accessible only to specifically designated staff on this study who are trained to maintain the confidentiality of data. Personal identifiers will be stripped after matching of administrative and program data and before semi-annual and evaluation reporting. To ensure that staff understands the confidentiality protocol, all research staff will receive a copy of the policy and sign a statement of understanding before handling research data. jAC member organizations submitting performance measurement data to Vera will also adhere to strict confidentiality rules, as outlined in EOIR communications and regulations, legal professional codes of ethics, state bar regulations and the business rules for the Vera-designed performance measure database.

11. Justification for Sensitive Questions - Although the evaluation questions are not designed to elicit personal information from the unaccompanied children, but rather to assess their understanding of immigration proceedings, there is some risk that information they volunteer during interviews could potentially have adverse effects (e.g. admission of involvement in forced drug or sex trafficking); however, it is unlikely that such information would be revealed, given the child's relationship with his or her attorney. That attorney is expected to be attentive to the child's wishes, and to help ensure voluntary participation by the child and protection for the child from adverse legal or emotional impacts.

Moreover, children invited to participate in interviews will be recruited with the knowledge of their attorneys. The attorneys are bound by professional ethics to respect the children's wishes, which, in turn, will minimize the possibility that children will agree to an interview or divulge information against their own interests. Because they will be familiar with the children, the attorneys are unlikely to recommend for interviews any children deemed too vulnerable to participate. If the children who agree to an interview wish, they can be interviewed in the presence of their attorney and/or guardians. Although children under 16 will receive legal representation as part of the LSUC program, Vera will interview only children who are 12-16 years of age and not younger, because they are more likely to understand the purpose of the interview and the questions asked, and are less likely to be vulnerable than children under the age of 12. Because their developmental stage is more advanced, older children are typically better able to make decisions because their developmental stage is more advanced. They would be expected to have a greater understanding of their immigration status, the immigration court process, and the purpose of the survey and, therefore, would generally be viewed as less vulnerable by contrast, younger children are more vulnerable both because they are at earlier stages of development and because they are even more dependent than older children on adults for a sense of security and well-being and can only cope well with stress by taking cues from parents and other supportive adults, who in this case, are not available. Younger children who

are unaccompanied and lack adult support are therefore at greater risk of distress.³ Regardless of age, any children considered by their attorneys to be especially vulnerable due to prior traumatic experiences will not be invited to participate in interviews.

12. Estimate of Hour Burden - The estimated public burden associated with this collection is 350 hours.⁴ It is estimated that 100 jAC members will take 30 minutes to complete the survey; 50 children will take 1 hour to complete the interview; and 200 jAC stakeholders 75 minutes to complete the interview. The burden hours for collecting respondent data total 350 hours: ((100 jAC members × 30 minutes = 50 hours) + (50 children × 1 hour = 50 hours) + (200 jAC stakeholders × 75 minutes = 250 hours)).

I. Hour Burden for jAC Members

a. Number of jAC Members	100
b. Number of Responses per jAC Member	1 each
c. Total Annual Responses	100
d. Hours per Response	30 minutes
e. Total Annual Hourly Reporting Burden	50 hours

II. Hour Burden for Children-Interviewees

a. Number of Children-Interviewees	50
b. Number of Responses per Child	1 each
c. Total Annual Responses	50
d. Hours per Response	1 hour
e. Total Annual Hourly Reporting Burden	50 hours

III. Hour Burden for jAC Stakeholders

a. Number of jAC Stakeholders	200
b. Number of Responses per jAC Stakeholder	1 each
c. Total Annual Responses	200
d. Hours per Response	75 minutes
e. Total Annual Hourly Reporting Burden	250 hours

³ See Heumer, J., Karnik, N.S., Voelkl-Kernstock, S. et al. (2009), Mental health issues in unaccompanied refugee minors, *Child and Adolescent Psychiatry and Mental Health*, 3, 13; Rousseau, C., Mekki-Berrada, A., Moreau, S. (2001), Trauma and extended separation for family among Latin American and African refugees in Montreal, *Psychiatry: Interpersonal and Biological Processes*, 64, 1.

⁴ In the 60-day Federal Register Notice, EOIR had previously estimated 1825 burden hours for this collection. See 80 FR 29, 7879-80. That estimate was based on 1,000 children being interviewed. However, after further discussions with Vera, it is estimated that only 50 children will be interviewed annually as part of this collection, reducing the estimated burden hours to 350.

An estimated 100 jAC members will take part in the survey annually. Based on similar surveys used by Vera to evaluate other programs, an average of 30 minutes per respondent is needed to complete the exit survey. The estimated range of burden for jAC members is expected to be between 15 minutes to 45 minutes for completion. An estimated 50 children will take part in an interview annually. The interview for assessing the child's understanding of immigration proceedings is estimated to take one hour per respondent to complete. The estimated range of burden for interviewed children is expected to be between 30 minutes and 1.5 hours for completion. The factors considered when creating the burden estimate were the young age of the children (between the ages of 12 and 16) and the fact that the interview would be conducted via an in-person interview. An estimated 200 LSUC Program stakeholders will take part in the interview annually. Based on similar interviews conducted by Vera to evaluate other programs, an average of 75 minutes per respondent is needed to complete the interview. The estimated range of burden for LSUC Program stakeholders is expected to be between 45 minutes to 1.5 hours for completion.

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

14. Estimated Cost to the Federal Government – EOIR's annual contract with Vera for the Evaluation is \$216,000. It is further estimated that the annual government cost for processing and maintaining the aggregate anonymized Evaluation data by EOIR will be \$570, bringing the total annual estimated cost to the federal government to \$216,570.

15. Plans for Publication - The information from this collection will be used internally to evaluate the LSUC Program. Vera will prepare a report for EOIR and CNCS, which EOIR and CNCS will use in program planning and analysis, and an external report which may, at EOIR's and CNCS's discretion, be shared with others. Information and data collected may not be released in any fashion without the explicit approval of EOIR, in consultation with CNCS.

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 Qualitative and Statistical Methods

This is a five-year contract for performance measurement data collection (for which statistical data will be collected and analyzed), which includes the two-year and half-year evaluation (for which both qualitative and statistical information will be collected and analyzed).

1. Respondent Universe and Sampling Method for Qualitative Data Collection⁵ - Subject selection for in-person, in depth, interviews with jAC stakeholders and children in the years 1

⁵ The quantitative data collection for performance measurement and administrative data analysis will aggregate all anonymized individual legal case information in the LSUC program. The size of the dataset of cases is expected to

and 2 will be purposive. The interview sample will be as representative as possible of the profile of Program stakeholders and children receiving legal services through the Program.

For the implementation evaluation, Vera will interview by phone one project director at each of the seven primary contracting organizations that deliver the legal services program. During these interviews, Vera will discuss and confirm the feasibility of interviewing attorneys and paralegals, judges and children during subsequent site visits. Vera will visit five sites for observation during the second year of the Program. Vera will try to arrange all in-person interviews in advance of the site visits and conduct interviews with children and other stakeholders at the program site over a one- or two-day period.

For the child interviews, Vera will aim for a sample that reflects the composition of the recently arrived unaccompanied child population in the U.S. according to countries of origin and gender (e.g. 25% female). Vera will ask that program sites generate anonymized lists of children's cases organized by types of legal relief identified, by stage in the court process, and by attorney assigned to the case. From these lists, Vera will select a randomized group of children to invite for interviews.⁶

2. Procedures for the Collection of Quantitative Information – Quantitative information about the program's performance will be collected and stored in a database from all member agencies throughout the anticipated five-year life of the program. Quantitative information will also be collected from the jAC members' exit survey.

Details of Reporting: Vera's base-year contract with EOIR began on Sept. 29, 2014 (Base Year 1). Development and presentation of the Vera-designed on-line performance measurement database occurred in November and December 2014. Vera will submit a technical report on the performance measurement data collection methods, challenges and sustainability of data collection by Dec. 31, 2015, as well as regular semi-annual performance measurement reports throughout the project. Vera will also submit an implementation evaluation report at the end of Base Year 1 (Sept-Oct 2015) and an outcome evaluation report at the end of Option Year 1 (Sept-Oct 2016). Performance measurement data collection and reporting will continue during Option Years 2, 3 and 4. All technical reports will be submitted to the federal funders EOIR and CNCS, who will determine the extent to which performance measurement and evaluation findings will be shared with Program sites.

Vera will use the following data collection methods:

be 1200-2000 per year, but is difficult to determine definitely now, as docket sizes at each immigration court will vary, coverage of the eligible population, and varying caseloads (approximately 50 per attorney) in each site. The cases also will accumulate at an unknown pace.

⁶ As noted above, although children under 16 will receive legal representation as part of the LSUC program, Vera will interview only children who are 12-16 years of age, because they are more likely to understand the purpose of the interview and the questions asked, and are less likely to be vulnerable. Any children considered by their attorneys to be especially vulnerable due to prior traumatic experiences will not be invited to participate; therefore, there may be some selection bias, but for reasons of subject protection.

- 1) Performance measurement data entered by jAC member organizations in a secure on-line, Vera-designed Caspio database for the purpose of semi-annual reporting to the federal funder;
- 2) Qualitative interviews of jAC stakeholders (program managers and selected DOJ employees, e.g. immigration judges) conducted by telephone and in person during site visits for the purpose of implementation evaluation;
- 3) Qualitative interviews with a small sample of unaccompanied children who receive legal representation through the LSUC program to document their level of understanding of immigration proceedings as a result of participation in the Program⁷; and
- 4) A brief online survey of jAC members (staff attorneys and paralegals) at the end of their terms of service to determine their satisfaction with participation in the Program.

Consent and/or Assent Protocol

Vera will follow informed consent procedures with all interview subjects, including jAC managers, staff attorneys, immigration judges and unaccompanied children, and provide plain language consent forms in English (and Spanish) for the children and their parents or guardians. Vera will aim to interview the children alone; however, if the child prefers to have a parent or guardian with him/her, this will be allowed. Children may also have their attorney present, though Vera would prefer to conduct interviews without the attorney whose presence might introduce response bias. As most of the children represented by attorneys in this program will have been reunified with parents or guardians living in the community, it may be possible to obtain adult consent as well as child assent. Although parental consent may not always be possible with unaccompanied children, informed consent will always be sought from the children themselves. However, a waiver of the requirement for written consent for both children and parents or guardians will be permitted, since either or both may have precarious immigration status at the time of the interview and may not feel comfortable signing a form.

All consent/assent forms will describe the research plan, funding sources and purposes of the study in a manner that is understandable to the subjects. The consent form will also describe any potential risks, benefits and/or compensation to the subjects. The consent form will make clear that participation is entirely voluntary, that refusal to participate or withdraw from the study will involve no penalty or loss of benefits to which the subjects would otherwise be entitled, and that subjects may decline to answer questions and/or stop participating at any time. Subjects will be given the opportunity to ask questions or raise concerns related to participation. They will also be given the name and number of a Vera staff member to whom they can direct questions that arise in the future.

⁷ Only this data collection method, qualitative interviews with unaccompanied children, is subject to Vera IRB review. While the purpose of these interviews is to collect information for program evaluation, not to conduct research intended to contribute to general knowledge, the child population is potentially vulnerable.

Criteria for IRB Approval and Recommended Findings

Federal regulations governing human subject research require that certain findings be made before IRB approval can be granted. Below is a list of the criteria listed in the regulations and a description, based on the information in this memorandum, of how Vera will meet them.

1. Are the risks to subjects minimized by using procedures that are consistent with sound research design and that do not expose subjects to risk?

Yes.

Individual case level information (including alien numbers, relief eligibility, applications filed, etc.) will only be seen by Vera research staff who are bound to strict confidentiality. EOIR and CNCS will only receive aggregate evaluation data. jAC attorneys representing the children and entering case level data are bound by attorney-client privilege. This means that no parties involved in a child's case will have access to information that could harm a child's case. The Caspio platform being used by Vera to collect the performance measurement data utilizes rigorous data security features.

Moreover, the children invited to participate in interviews for the Evaluation will be recruited with the knowledge of their attorneys, who are bound by professional ethics to respect the children's wishes, which will minimize the possibility that children will agree to an interview or divulge information against their own interests. As the attorneys will be familiar with the children, they are unlikely to recommend for interviews any children deemed too vulnerable to participate. If the children who agree to an interview wish, they can be interviewed in the presence of their attorney and/or guardian(s).

2. Are risks to subjects reasonable in relation to anticipated benefits, if any, and the importance of the knowledge that may be expected to result?

Yes.

The risks of the research to the subjects are minimal as protocols are in place to reduce those risks, namely the ample confidentiality assurances associated with federal data collection and the professional legal ethical obligations of the participating attorneys. The benefits, however, are great as the Evaluation could support LSUC program improvements and continuation, which would allow greater numbers of unaccompanied children to obtain legal representation.

3. Is the selection of subjects equitable?

Yes.

The jAC member organizations, all of which by their federal contracts are required to participate in performance measurement and evaluation activities, will be asked to make all program participants who are eligible aware of the opportunity to participate in the study voluntarily, which will reduce selection bias and increase the chances of equitable subject selection.

4. **Will the project seek and document informed consent? If not, is waiver of consent appropriate?**

Yes.

Informed consent will be obtained from all interview subjects. However, a waiver of written consent for the child-interviewees is appropriate because unaccompanied children and their guardians may not have legal status at the time of the evaluation and may be uncomfortable signing a form.

5. **Will the project protect the privacy of subjects and maintain the confidentiality of data?**

Yes.

Vera will employ its confidentiality protocol to ensure that participants' privacy is not violated. Confidentiality protocols will also be reinforced with the jAC members, and by EOIR, the federal funder and manager of the Program.

Additional Criteria for IRB Approval of Research Involving Children

Federal regulations give the IRB additional duties when reviewing research that involves children as subjects. Below is a list of the criteria listed in the regulations and a description, based on the information in this memorandum, of how Vera will meet them.

1. ***Does the research present no greater than minimal risks to children?***

Yes.

Although the Evaluation questions are not designed to elicit personal information from the unaccompanied children, but rather to assess their understanding of immigration proceedings, there is some risk that information they volunteer during interviews could potentially have adverse effects (e.g. admission of involvement in forced drug or sex trafficking); however, it is unlikely that such information would be revealed, given the child's relationship with his or her attorney. That attorney is expected to be attentive to the child's wishes, and to help ensure voluntary participation by the child and protection for the child from adverse legal or emotional impacts.

2. ***Have adequate provisions been made for soliciting the assent of the children and the permission of their parents or guardians?***

Yes.

Prior to conducting interviews, Vera will ask jAC program managers and attorneys representing children to contact parents or guardians to obtain informed consent and to gain oral assent from children who would like to be interviewed.

In terms of parental consent, Vera may not always be able to obtain such consent given the particular circumstances of unaccompanied children. Nevertheless, Vera will seek informed consent in several ways from the adults with the children, where available, and from the children themselves. In this context, there are several means for obtaining informed consent and several layers of protection. First, in the setting in which the child is interviewed, “gatekeepers” or caregivers who have to be informed and agree to introducing the study to the children. In this evaluation, those roles would be filled by the attorneys and their managers. Second, any adult accompanying the child, parent or guardian, will also be clearly informed about the study and need to agree that the child can participate. Third, the children, who are deemed to have the capacity to understand and consent, will be fully informed and make the final decision. If no parent or adult other than staff at the organization is available to the child, these procedures will be separately followed with the available adult(s) and the child.

Children are usually considered competent to participate in research after being fully informed and indicating understanding and willingness. In response to a request from a jAC grantee, the New York State Bar Association, Committee on Professional Ethics, recently issued an opinion regarding consent by unaccompanied minor clients in immigration proceedings.⁸ The opinion provides that “a minor can consent to disclosure of confidential information if the minor is capable of understanding the risks of disclosure.” *See id.*, at point 11-12. While the opinion provides that very young children will be incapable of giving consent, it notes that there is a rebuttable presumption that verbal children age 12 and older are competent to consent. *See id.*, at point 14. The opinion acknowledges that the information sought by this study is “of relatively limited sensitivity and it will be redacted and/or anonymized before transmission to the granting

⁸ See New York State Bar, Committee on Professional Ethics, Disclosure of Confidential Information, *Consent by Minor Clients*, Opinion 1059 (June 12, 2015) available at: <https://www.nysba.org/CustomTemplates/Content.aspx?id=57386>; see also Somers, M. Aryah, *Children in Immigration Proceedings: Concepts of Capacity and Mental Competency* (November 2014) (children are assumed to have capacity and are able to express their points of view and wishes, and the favored position is to view the child as having the capacity to consent) available at: http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_uac_docs_vera_institute_somers_concepts_of_capacity_competency_11_2014.authcheckdam.pdf.

agencies. To the extent the information qualifies as ‘confidential information’ at all, a lawyer could in most cases reasonably conclude that the risk of harm is very small or nonexistent, so the inquirers would be free to seek consent to disclosure.” *See id.*, at point 13. Moreover, any children considered by their attorneys to be especially vulnerable due to prior traumatic experiences will not be invited to participate in interviews.

3. Methods to Maximize Response Rates and Deal with Nonresponse. – The study aims to maximize response rates by allowing a waiver of the requirement for written consent for children and parents or legal guardians, since any or all of these individuals may have precarious immigration status at the time of the interview and may not feel comfortable signing a form. Vera will also rely on Program attorneys to identify any children deemed too vulnerable to participate in an interview as a mechanism for minimizing nonresponse from the list of eligible respondents selected to participate. Interviews with the children will be conducted in person in the language the subject is most comfortable speaking to reduce language barriers. Vera will try to arrange all in-person interviews in advance of the site visits and conduct interviews with children and other stakeholders at the program site over a one- or two-day period in an effort to minimize nonresponses. EOIR plans to evaluate potential nonresponse bias if the response rates fall below the expected levels, and to take response rates into account for improving cooperation and assessing potential nonresponse bias.

For example, for the jAC member surveys, Vera expects to receive a 33-53% response rate, which is in line with the response rates historically attained by member surveys in similar programs. Partial/incomplete surveys will not be used as the number of questions on the survey is small (5 in total). A nonresponse bias analysis will be conducted if the overall response rate is below 80 percent. The nonresponse bias analysis will include a statistical analysis examining whether nonresponse is significantly associated with age, experience (number of years as well as whether the respondent is a lawyer or paralegal), organization where member served, whether a valid email address was available at the time of surveying (which relates to both contact mode for the survey and the likely extent of connection with jAC) and the respondents’ state of residence at the time of service.

4. The Program Grantee has consulted with and received approval for the Evaluation from Vera’s Institutional Review Board – The LSUC Program, including the study design, consent protocols, and benefits and risks to subjects, has been reviewed and approved by Vera’s IRB. As indicated above, Vera is a registered IRB Organization with the Office for Human Research Protections, U.S. Department of Health and Human Services. An IRB is a group of people that monitors research designed to obtain information from or about human subjects. Members of an IRB come from multiple research disciplines from the communities in which the research is conducted. Many institutions that conduct research regularly, such as Vera, have established their own IRBs. Working with an IRB helps ensure that the evaluation process protects the participants.

DOJ regulations (28 CFR Part 46) protect the human subjects of federally funded research. In brief, 28 CFR Part 46 requires that most research involving human subjects that is conducted

or supported by a federal department or agency be reviewed and approved by an IRB, in accordance with the regulations, before federal funds are expended for that research. As a rule, persons who participate in federally funded research must provide their informed consent and must be permitted to terminate their participation at any time. For DOJ grantees, research does not include program evaluations and assessments used only for quality improvements to a program or service or quality assurance purposes. 28 C.F. R § 46.102(d).

Vera's IRB approved the program on February 3, 2015 (see attached). In approving the program, Vera's IRB also approved a waiver of consent for identifiable administrative data; a waiver of parental consent for the child interviews; and a waiver of documentation of child assent. The IRB approval is valid for one year from the date of approval; the program will be submitted to Vera's IRB for review and approval annually.

PAPERWORK CERTIFICATION

In submitting this request for Office of Management and Budget (OMB) approval, I certify that the requirements of the 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.

Helaine Perlman
Senior Counsel for Immigration
Office of the General Counsel
Executive Office for Immigration Review

Date