

SUPPORTING STATEMENT

Request for OMB Approval of Revisions to Currently Approved Information Collections in a Proposed Rule:

OMB No. 1125-0012 Request for Recognition of a Non-profit Religious, Charitable, Social Service, or Similar Organization (Form EOIR-31);

OMB No. 1125-0013 Request by Organization for Accreditation of Non-Attorney Representative (Form EOIR-31A), and;

OMB No. 1125-0007 Immigration Practitioner Complaint Form (Form EOIR-44).

Part A. Justification

1. Necessity of Information –

The Executive Office for Immigration Review’s (EOIR) Recognition and Accreditation (“R&A”) program addresses the critical and ongoing shortage of qualified legal representation for underserved populations in immigration cases before federal administrative agencies. Through the R&A program, EOIR permits qualified non-attorneys to represent persons before the Department of Homeland Security (DHS), the immigration courts, and the Board of Immigration Appeals (BIA or Board). The specially qualified non-attorneys, known as accredited representatives, must be associated with and designated by a non-profit organization, known as a recognized organization. The non-profit organization must apply to EOIR for its recognition and for the accreditation of its qualified non-lawyers. Currently, there are approximately 953 recognized organizations and about 1,805 accredited representatives nationwide.¹ The majority of accredited representatives request and receive only partial accreditation from EOIR to appear solely before DHS. Approximately 20 percent of the

¹ The numbers of recognized organizations and accredited representatives are current as of September 7, 2015. Visit the rosters of recognized organizations and accredited representatives for updated data at: http://www.justice.gov/eoir/ra/raroster_orgs_reps.htm and http://www.justice.gov/eoir/ra/raroster_reps.htm. (last visited September 9, 2015).

representatives receive full accreditation from EOIR to appear before DHS, the immigration courts, and the Board.

With the exception of a technical amendment in 1997, the R&A regulations have remained unchanged since 1984.² EOIR has issued a proposed rule seeking to amend the R&A regulations in order to promote the effective and efficient administration of justice before DHS and EOIR by increasing the availability of competent non-lawyer representation for underserved immigrant populations. The proposed rule seeks to accomplish this goal by amending the requirements for recognition and accreditation to increase the availability of qualified representation for primarily low-income and indigent persons, while protecting the public from fraud and abuse by unscrupulous organizations and individuals. In doing so, the proposed rule requires significant substantive changes to the information collections contained in the current rules. Specifically, the rule proposes to transfer administration of the R&A program within EOIR from the Board to the Office of Legal Access Programs (OLAP),³ amend the qualifications for recognition of organizations and accreditation of their representatives, institute administrative procedures to enhance the management of the R&A roster, institute additional record keeping requirements, and update the disciplinary process to make recognized organizations, in addition to accredited representatives and attorneys, subject to sanctions for conduct that contravenes the public interest.

2. Needs and Uses - Based on the proposed rule, three currently approved information collection instruments need to be revised: (1) the form for non-profit religious, charitable, or social service

² Compare 8 CFR 292.2(b) (1985) with 8 CFR 1292.2 (2015).

³ In April 2000, EOIR established the EOIR Pro Bono Program, now known as OLAP, under the Office of the EOIR Director. OLAP's mission is to improve access to legal information and counseling and increase rates of representation for persons appearing before the immigration courts and the Board.

organizations to apply for recognition (Form EOIR-31) (OMB#1125-0012); (2) the form for recognized organizations to apply for accreditation of non-attorney representatives (Form EOIR-31A) (OMB#1125-0013); and (3) the form for filing a complaint against an immigration practitioner (Form EOIR-44) (OMB#1125-0007).

Request for Recognition, Renewal of Recognition, or Extension of Recognition for a Non-Profit Religious, Charitable, or Social Service Organizations (EOIR-31; OMB#1125-0012)

An organization applies for recognition by submitting a Form EOIR-31 to EOIR, and serving a copy of the Form EOIR-31 on the local District Director of the U.S. Citizenship and Immigration Services (USCIS) of DHS and the local Chief Counsel of the U.S. Immigration and Customs Enforcement (ICE) of DHS. 8 C.F.R. 1292.2(b). The Form EOIR-31 collects basic information about the organization, including a description of its funding sources, the immigration law resources and knowledge available to the organization, the resumes and immigration training of its employees, and its organizational structure. This information is necessary to prevent fraud. It also ensures that the organization has available the requisite knowledge and skill to represent individuals in immigration proceedings and does not charge high fees or dues for individuals seeking assistance.

The revised Form EOIR-31 will be used to apply for initial recognition and renewal of recognition. The revised form will provide the organization with the option of using a single form to extend recognition to non-headquarter/subordinate locations and the ability to indicate the number of accredited representative applications that are being submitted with the recognition application and the names of the applicants for accreditations. Form EOIR-31 will be generally used every three years in connection with a request to renew recognition, and may

be used on occasion in the intervening time if an organization seeks to extend recognition to a new office or location. The collected information will be used to: (1) evaluate an organization's eligibility for initial recognition or to renew recognition by determining whether the organization is satisfying the requirements for recognition, namely the provision of immigration legal services to primarily low-income and indigent persons; and (2) evaluate the effectiveness of the recognition and accreditation program in providing immigration legal services to primarily low-income and indigent persons.

Form EOIR-31 will be updated to reflect the eligibility requirements for an organization to be recognized, as stated in the proposed rule. The revised form will require an organization to identify the type of federal tax-exempt status, and to provide documentation of such status (e.g. the first page of the last IRS information return, if any). In addition to providing the organization's fee schedule required under the currently approved collection, the revised form asks organizations to answer in the affirmative whether fees are charged for immigration legal services and membership dues, whether legal fees are waived for some clients or if there is a policy for reducing such fees, and if so, to provide documentation of such fees, charges, and policies. The proposed rule would require the revision of the currently approved information collection in that recognized organizations maintain their fee schedules, if any, and the annual reports they must provide with an application for renewal of recognition for a period of six years. The annual report should include information already gathered by the organization such as the number of clients served, the types of services provided, the number of clients who were provided with services at no cost, the total amount of fees charged to and donations or dues

requested from immigration clients for the services provided, and the locations where accredited representatives provided legal services.

The revised form further requires organizations to indicate whether its immigration legal services budget shows that a substantial amount of the budget derives or will derive from sources other than client fees. The organization is instructed to provide copies of the budget for the current year and a request for a waiver of the substantial amount requirement, if applicable. As required under the currently approved collection, the organization must continue to provide the organizational chart, staff resumes, and agreements to consult with other recognized organizations or attorneys. However, organizations must now also indicate whether the attorneys on staff are licensed to practice law in the United States and in good standing. Rather than provide a separate statement describing the immigration legal services offered and a list of library and/or internet resources available to the organization, the organizations are now asked to specify these details on the form itself.

Request by Organization for Accreditation or Renewal of Accreditation of Non-Attorney (Form EOIR-31A)

EOIR maintains the voluntary Form EOIR-31A to elicit, in a uniform manner, all of the required information for EOIR to determine whether a proposed representative meets the eligibility requirements for accreditation. Form EOIR-31A provides detailed instructions regarding the application process for accreditation, 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 accreditation.

Form EOIR-31A will be updated to reflect the eligibility requirements for an individual to become an accredited representative, as stated in the proposed rule. The revisions are non-substantive and are simply intended to clarify what information is required when applying for initial accreditation and renewal of accreditation, as well as the eligibility requirements for becoming an accredited representative.⁴ The revised form will not require the applicant to provide any new or additional information not already provided under the current collection. However, EOIR seeks to make this form mandatory for all requests for accreditation. The Form-31A will continue to be used to apply for initial accreditation and to seek renewal of accreditation. Form EOIR-31A will be generally used every three years in connection with a request to renew accreditation, and may be used on occasion in the intervening time if an organization seeks accreditation for a new representative or seeks to change accreditation from partial to full accreditation.

Immigration Practitioner Complaint Form (Form EOIR-44)

Form EOIR-44 will be updated to reflect that the public may use the form to file a complaint against a recognized organization, in addition to an immigration practitioner. The revised form will not require the applicant to provide any new or additional information not already provided under the current collection. The information on this form will continue to be

⁴ For example, Part 5 (Qualifications for Accreditation) of Form EOIR-31A has been revised to provide a list eligibility requirements, including that the applicant is an employee or volunteer of the organization; the applicant is not be a licensed attorney; the applicant has not resigned while a disciplinary investigation or proceeding is pending; the applicant is not be subject to any order restricting the individual in the practice of law or otherwise providing representation before a court or administrative agency; and the applicant has not been convicted of a serious crime anywhere in the world.

used to determine whether EOIR's Office of General Counsel should conduct a preliminary inquiry, request additional information from the complainant, refer the matter to a law enforcement agency, or take no further action.

3. Use of Technology - The use of these forms will provide the most efficient means for collecting and processing the required data. The forms will be available on EOIR's website for printing. Information can be typed into the online forms, which are then printed for submission to EOIR. In addition, the forms may be printed in their 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 - There are no other EOIR forms for recognition and accreditation requests or for practitioner complaints. 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 has an impact on small businesses or other small entities to the extent they are non-profit organizations applying for recognition or accreditation before EOIR and/or DHS. However, this collection does not impose undue burden on these non-profit organizations; instead, the requested information is necessary for EOIR's determination of the recognition and accreditation requests. The information collections seek photocopies of pre-existing materials, where applicable, and summaries of information

Under the current collection the estimated average time to review the Form EOIR-31, gather necessary materials, complete the form, and assemble the attachments is 2 hours. With the additional requirements in the proposed rule described above, namely the assembly of the annual reports, the Department estimates an average total response time of 3 hours to review the form, gather necessary materials, complete the form, and assemble the attachments for each application for initial recognition or to renew recognition. This estimate includes the additional burdens for document retention and preparation of the annual reports, in addition to the time saved by streamlining the form to allow for a single application for multiple locations and the elimination of a number of separate statements and lists required under the current collection.

There is no new or additional information collected under the revised Forms EOIR-31A and EOIR-44. As such, the Department estimates that the average response time of 2 hours to complete a Form EOIR-31A for each application for initial accreditation or to renew accreditation will remain the same as the currently approved collection. The Department also estimates that the average response time of 2 hours to complete Form EOIR-44 will remain the same as the currently approved collection.

6. Consequences of Less Frequent Collection - Failure to collect this information in the Forms EOIR-31 and EOIR-31A would deprive the organization of establishing eligibility for recognition and accreditation under the proposed rule. Failure to collect the information in the Form EOIR-44 would also inhibit an individual's ability to file a complaint regarding an immigration practitioner's criminal, unethical, or unprofessional conduct, or frivolous behavior.

It would also substantially hinder EOIR's ability to effectively administer the policy objectives of EOIR's federal attorney discipline program.

7. Special Circumstances Influencing Collection - Under the proposed rule, organizations are required to retain records of their fee schedules, if any, and the annual reports they must provide with an initial application for recognition and application for renewal of recognition for a period of six years. The Department does not believe that the recordkeeping requirement will impose a significant economic impact on recognized organizations. The annual reports would be compiled from information already in the possession of recognized organizations, and based on the estimates below, the Department estimates that it would cost an organization approximately \$55.27 per hour to have a lawyer compile the annual reports, and \$10.00 per hour for a non-lawyer to do so.⁵ Maintaining the fee schedules and annual reports after their creation for six years should not impose any significant economic impact on recognized organizations because such records may be retained in the normal course of business like other records, such as client files and tax documents, that organizations are obligated to retain for state or federal purposes. None of the other eight special circumstances identified in OMB instruction number 7 apply to this collection.

8. Federal Register Publication and Consultation - EOIR has submitted a Notice of Proposed Rulemaking (NPRM) covering this collection to the Federal Register for publication. A copy of that submission is attached. EOIR has received substantive comments during the development of

⁵ Note that the burden (and cost) of compiling three annual reports for renewal of recognition was included in the total average burden (and cost) for renewing recognition.

this rule, which are discussed at length in the NPRM. If any additional comments are received, they will be considered and incorporated where appropriate.

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 Office of Legal Access Program Director will maintain the original applications for recognition and accreditation. Those EOIR staff members processing the applications may access the Forms EOIR-31 and EOIR-31A. EOIR’s Office of the General Counsel maintains the original complaint Form EOIR-44. EOIR staff members who process the complaint may access the Form EOIR-44. EOIR protects the confidentiality of the contents of these forms, 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

EOIR-31

a. Number of Respondents	421
b. Number of Responses per Respondent	1 each
c. Total Annual Responses	421
d. Hours per Response	3 hours

e. Total Annual Hourly Reporting Burden 1,263 hours

421 organizations⁶ (128 new organizations and 293 recognized organizations seeking renewal) x 1 response per respondent x 3 hours per response = 1,263 burden hours.

EOIR-31A

a. Number of Respondents 615
b. Number of Responses per Respondent 1 each
c. Total Annual Responses 615
d. Hours per Response 2 hours
e. Total Annual Hourly Reporting Burden 1,230 hours

615 respondents x 1 response per respondent x 2 hours per response = 1,230 burden hours.

EOIR-44

a. Number of Respondents 200
b. Number of Responses per Respondent 1 each
c. Total Annual Responses 200
d. Hours per Response 2 hours
e. Total Annual Hourly Reporting Burden 400 hours

200 respondents x 1 response per respondent x 2 hours per response = 400 burden hours.

⁶ Under the proposed rule, the 880 currently recognized organizations are expected to seek renewal of recognition over the next three-years. As such, the Department estimates that at least one third (293) of the 880 currently approved organizations will seek renewal of recognition each year for the next three years.

13. Estimate of Cost Burden - There are no capital or start-up costs associated with these information collections. The estimated public cost is zero. For informational purposes only, there may be additional costs to respondents. Respondents may incur a cost if they hire a private practitioner to assist them with completing these forms. The Bureau of Labor Statistics reports that the median hourly wage for lawyers is \$55.27. For those respondents who proceed without a practitioner, there is an estimated cost of \$10 per hour for completing the form (the individual's time and supplies) in lieu of the practitioner cost. There are also no fees associated with filing these forms.

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-31 will be \$6,300; for the Form EOIR-31A the cost will be \$12,272; and for the Form EOIR-44 the costs will be \$2,433.

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

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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Date