

## **SUPPORTING STATEMENT**

**OMB No. 1125-0007**

### **Immigration Practitioner Complaint Form Form EOIR-44**

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#### **Part A. Justification**

1. Necessity of Information Collection – Individuals in immigration proceedings may be represented by counsel. *See* 8 USC § 1362. Any individual may file a complaint against an immigration practitioner authorized to practice before the Board of Immigration Appeals (Board) and the immigration courts of the Executive Office for Immigration Review (EOIR), or the U.S. Citizenship and Immigration Services of the Department of Homeland Security (DHS). *See* 8 CFR § 1003.102. Complaints may be made regarding an immigration practitioner’s criminal, unethical or unprofessional conduct, or frivolous behavior. Complaints are directed to the agency where the alleged misconduct occurred. An individual filing a complaint regarding a practitioner’s behavior in proceedings before EOIR must file the complaint in writing with EOIR’s Office of the General Counsel’s Attorney Discipline Unit (ADU), and use Form EOIR-44. The completed form must state in detail certain information supporting the complaint, including the name and address of both the complainant and the practitioner, the date and nature of the alleged conduct or behavior at issue, the individuals involved, the harm to or damages incurred by the complainant, and any other relevant information. *See* 8 CFR § 1003.104(a)(2).

Following receipt of a completed complaint or on its own initiative, the ADU will conduct a preliminary review to determine whether to launch a preliminary disciplinary

inquiry, request additional information from the complainant, refer the matter to a state bar disciplinary authority or other law enforcement agency, or take no further action. *See* 8 CFR § 1003.104(b).

EOIR has not made any changes to the currently approved Form EOIR-44.

2. Needs and Uses - The form is filed and considered in the context of a disciplinary complaint against an immigration practitioner pursuant to 8 CFR § 1003.104.

Accordingly, the ADU considers the information contained in the form to the extent necessary to process the disciplinary complaint and determine appropriate future action.

Use of the Form EOIR-44 ensures complete collection of necessary information, allowing EOIR to more effectively evaluate the merits of new disciplinary complaints and to timely process them. Moreover, the form provides a helpful, clear, and concise summary of the regulations that govern the practitioner disciplinary program.

3. Use of Technology - The use of this form provides the most efficient means for collecting and processing the required data. The Form EOIR-44 is available on EOIR's website for printing in both the English and Spanish language. An applicant may type the requested information into the online form and then print it for submission to EOIR. In addition, an applicant may print the blank form in its entirety and complete it 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 - The only form for filing a complaint against an immigration practitioner authorized to practice before the Board or the immigration courts is the Form EOIR-44. A review of EOIR's existing forms revealed no duplication of effort, and there is no similar information currently being collected which 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.

6. Consequences of Less Frequent Collection - Failure to collect this information would 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 this federal attorney discipline program.

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 was published in the Federal Register at 84 FR 46759 (Sept. 5, 2019). A 30-

day notice covering this collection published in the Federal Register at 84 FR 62554 (Nov. 15, 2019). Copies of these notices are attached. If 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 individuals in exchange for the information provided in Form EOIR-44.

10. Assurance of Confidentiality – EOIR’s Office of the General Counsel maintains the original complaint. EOIR staff members who process the complaint may access the Form EOIR-44. To the extent permitted by law, EOIR protects the confidentiality of the contents of the Form EOIR-44 and its attachments. EOIR would release information in accordance with the Privacy Act and the Freedom of Information Act.

Notably, under 8 CFR § 1003.108(a), except as otherwise provided by law or regulation, information concerning disciplinary complaints or preliminary inquiries is confidential. Under the regulation, exceptions to the confidentiality rule include, but are not limited to, disclosures that are necessary to conduct a preliminary inquiry (e.g., disclosures to the practitioner in the course of a disciplinary investigation), to protect the public (e.g., where the practitioner has caused, or is likely to cause, harm to the public, clients, or the administration of justice), and to refer factual allegations and supporting documentation to third parties (e.g., law enforcement and state attorney discipline authorities). *See* 8 CFR § 1003.108. To the extent that EOIR requests that otherwise confidential information may be disclosed to third parties as permitted by law or regulation, the Form

EOIR-44 explains the confidentiality limitations and, by their signature on the Form EOIR-44, complainants expressly waive confidentiality during the preliminary inquiry phase of a disciplinary proceeding.

11. Justification for Sensitive Questions - As explained above, to the extent that the Form EOIR-44 requests information of a sensitive nature, including information normally held inviolate under the attorney-client privilege and other applicable law, the Form EOIR-44 provides a signature clause allowing complainants to expressly waive any such confidentiality limitations. Questions of a sensitive nature, including, for example, those that elicit information relating to an immigration practitioner's handling of a respondent's asylum case, are necessary to evaluate the merits of the disciplinary complaint (e.g., whether the practitioner misled the complainant or charged a grossly excessive fee, both of which are grounds for seeking imposition of disciplinary sanctions).

12. Estimate of Hour Burden

a. Number of Respondents	200
b. Number of Responses per Respondent	1
c. Total Annual responses	200
d. Hours per response	2 hours
e. Total annual hourly reporting burden	400

The total annual reporting burden is derived by multiplying the number of respondents (200) by the frequency of response (1) by the number of hours per response (2 hours):

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

Respondents may incur a cost if they hire a private practitioner to assist them with completing the Form EOIR-44. The Bureau of Labor Statistics reports that the median hourly wage for lawyers is \$58.13. 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 the Form EOIR-44.

14. Estimated Cost to Federal Government - It is estimated that the annual government cost for printing, distributing, stocking, processing and maintaining the Form EOIR-44 is \$2,433.

15. Reason for Change in Burden - EOIR did not see a change in submissions during the past three years. Accordingly, the hour burden did not change.

16. Plans for Publication - EOIR does not intend to employ the use of statistics or the publication thereof for this collection of information.

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

**Section B. Collection of Information Employing Statistical Methods**

This collection does not employ statistical methods.

## **PAPERWORK CERTIFICATION**

In submitting this request for 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 CFR § 1320.

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Executive Office for Immigration Review

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