



September 21, 2022

*Submitted via Federal Express and via email to [PAO.EOIR@usdoj.gov](mailto:PAO.EOIR@usdoj.gov)*

Lauren Alder Reid  
Assistant Director  
Office of Policy  
Executive Office for Immigration Review  
5107 Leesburg Pike, Suite 2500  
Falls Church, Virginia 22041

**Re: Comments on OMB No. 1125-0013, Agency Information Collection; Request by  
Organization for Accreditation or Renewal of Accreditation of Non-Attorney  
Representative (Form EOIR-31A)**

Dear Ms. Alder Reid:

The Catholic Legal Immigration Network, Inc. (CLINIC) submits these comments in response and opposition to the Department of Justice's (DOJ) Information Collection published on August 15, 2022, revising Form EOIR-31A, Request by Organization for Accreditation or Renewal of Accreditation of Non-Attorney Representative. We oppose all changes to the forms after the Jan. 2017 version as they improperly attempt to create regulatory policy change through the form revision process. The Executive Office for Immigration Review (EOIR) should withdraw the proposed changes to these forms and revert the Feb. 2020 changes, reverting back to the Jan. 2017 editions of the forms.

**CLINIC's Background and Expertise with the R&A Program**

Founded in 1988, CLINIC embraces the Gospel value of welcoming the stranger by promoting the dignity and protecting the rights of immigrants in partnership with a dedicated network of Catholic and community legal immigration programs. CLINIC supports the largest nationwide network of its kind with over 450 Catholic and community-based legal immigration service programs. CLINIC's affiliated immigration programs, which operate out of more than 500 offices in 49 states and the District of Columbia, employ approximately 2,000 attorneys and accredited representatives, and serve over 500,000 immigrants each year.

Accredited representatives are the majority of legal representatives in our network. Currently, CLINIC affiliates make up 42% of the roster of DOJ recognized organizations, and 47% of all DOJ accredited representatives. As such, CLINIC is the single largest stakeholder in the DOJ Recognition and Accreditation (R&A) program. Our staff members are recognized as national

experts on the R&A process and offer trainings and resources that are utilized by hundreds of nonprofits every year.

CLINIC has assisted hundreds of organizations to successfully navigate the R&A process and obtain DOJ R&A over the last 34 years. At any given time, our staff is working with affiliates on over 100 pending applications. We use the EOIR-31 and EOIR-31A on a daily basis together with our affiliates. Due to serious concerns about the content of and process used for issuing the Feb. 2020 forms, we have continued to use the Jan. 2017 editions, which are still accepted by the Office of Legal Access Programs (OLAP). Still, the R&A process is very daunting and time-consuming and requires a great deal of documentation. We oppose efforts to make it even harder and require even more documentation, as the proposed forms would do, as this would lead to a longer, more onerous application process that may dissuade applicants and therefore go against the mission of the R&A program to increase access to quality legal representation for vulnerable groups.

CLINIC's founding and growth over its 34 years speak to the fact that there is an overwhelming need for immigration legal services, particularly for low-income immigrants and vulnerable populations. Meeting that need, and thereby achieving individual agency missions, is the purpose of CLINIC's network of affiliates and other immigration legal programs across the country. The limited availability of affordable attorneys, the threat of unauthorized practitioners of immigration law and the dispersion of low-income immigrants to a wider number of communities, especially rural and exurban, is why CLINIC's network and other nonprofits rely on R&A as an invaluable tool to increase the availability of competent non-lawyer representation for underserved immigrant populations. As such, any changes made by EOIR and OLAP regarding R&A are of paramount importance to CLINIC and its network.

CLINIC opposes the changes to these forms made after the Jan. 2017 version, as they attempt to create regulatory policy change through the form revision process, rather than through the regulatory notice and comment process. The amount of information required in the revised forms is burdensome, goes far beyond the requirements in the regulations,<sup>1</sup> and will make the recognition and accreditation process significantly more difficult for eligible organizations.

### **The Form Revision Process for the Two Most Recent Versions Does Not Comply with the PRA or the APA**

EOIR has not engaged in a good-faith, transparent, and accessible effort to solicit public comment and feedback on the proposed changes to the forms during the 2020 and 2022 versions of forms EOIR-31 and EOIR-31A, as required by the PRA. During the comment period for the previous versions of the forms dated Feb. 2020, CLINIC wrote to the DOJ Public Affairs office to request a copy of the proposed revised forms, but we were provided with an incorrect version. We commented on the version that DOJ provided to us, only to find when the final versions of the 2020 forms were published, they included many new questions that were not included in the proposed versions provided to us for comment. Stakeholders did not have an opportunity to comment on these significant changes before they were finalized. CLINIC and other stakeholders complained to EOIR about these changes and lack of notice and comment, and the response was to accept both the 2020 version and the previous 2017 version for filing.

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<sup>1</sup> 8 C.F.R. § 1292 (2003).

We advised our network to continue to use the 2017 version. The current 2022 proposed revisions mark in red only some small changes from the 2020 version to the 2022 version; they do not mark in red the significant changes from the 2017 version to the 2020 version, which were never properly disclosed to the stakeholders during the previous comment period. Many stakeholders may comment only on the changes marked in red and not scrutinize the changes from 2020. If this version of the form is finalized, we will have gone through a second comment period without transparently soliciting stakeholder comments on the new questions added to the forms in 2020. This is not an acceptable process for revising such important forms, which have a major impact on thousands of stakeholders nationwide who rely on them to obtain R&A.

There are also several practices during the form revision process that impede the transparency and accessibility of the comment period. First, the Federal Register announcement did not include a copy of the proposed forms; instead, stakeholders are instructed to contact Lauren Alder Reid for additional information, providing a physical address and a phone number. However, physical mail is not a timely method of contact, and the phone number goes unanswered, likely because staff have been working from home since early 2020 due to the pandemic. We were able to request a copy of the proposed forms only because we knew through our advocacy activities to contact the DOJ Public Affairs office. Other stakeholders may not know where to make that request. Second, there are no provisions to submit comments electronically; instead, we are provided with a mailing address. Third, the announcement with the forms was not posted on regulations.gov, so there is no way for the public to submit comments via the website, where they would be posted for public viewing and full transparency.

Due to the above listed deficiencies in the PRA notice and comment process for forms EOIR-31 and EOIR-31A during this and the previous comment periods, if EOIR wishes to implement these changes, we recommend that EOIR withdraw the 2022 version of the forms, and begin a new comment period, marking in red the changes made both in 2020 and 2022. We do not support these form changes for the reasons described below, but in order to correct deficiencies in basic public notice and transparency, a new comment period for the changes from both 2020 and 2022 would be required. We also recommend that for this and all form revisions in the future, EOIR publish the form changes to regulations.gov along with a redlined version of the form in the docket folder. This would provide a method of electronic submission and access to the actual changes on which stakeholders should comment, without having to go through the extra steps of calling or emailing DOJ to request the proposed revisions. Publishing notice in the Federal Register soliciting public comment is not meaningful transparency without also publishing the revised form about which you are soliciting those comments. Other agencies publish proposed revised forms along with the official notice, and EOIR should do the same in the interests of transparency and efficiency.

### **CLINIC Recommends the Reversal or Amendment of Proposed Changes to Form EOIR-31A**

CLINIC opposes many of the proposed changes to Form EOIR-31A. Our evaluation and analysis is based upon a comparison between the January 2017 version of the form, the proposed form provided by EOIR, and the regulations, which set forth the requirements for accreditation. DOJ has expanded the questions on the Form EOIR-31A to include a great deal of additional information not currently required. The significant increase in information and documentation is

unnecessary and burdensome, as the application process is already thorough and consistent with the regulations. Further reasons for our objections to these additional questions are described below.

### The Estimated Time and Cost for Completion of EOIR-31A

In the Federal Register Notice for the proposed changes to Form EOIR-31A, the estimated time for completion of Form EOIR-31A for initial accreditation is three hours per response.<sup>2</sup> This is only one hour more than the amount of time estimated for the January 2017 version of the form, yet the proposed form has 12 additional questions for initial partial accreditation and is significantly more complex. This estimate does not capture the full-time commitment to complete the form because some of the new questions will require considerable time to research and obtain the answer. For example, the questions on the history of previous accreditation applications will take a significant amount of time to gather information for representatives with a long history of accreditation. In addition, the questions about crimes and prior acts in Part 2C will require considerable time for the preparer to consult with the Human Resources department and potentially legal counsel regarding state/local restrictions on asking employees for this information.

These new requirements would substantially add to the burden on applicants and organizations. EOIR needs to provide a comprehensive analysis of its estimates for the time that it would take to complete all of the new requirements in its initial Federal Register Notice in order to be transparent and justify the additional burdens. Considering that the purpose of the R&A program is to increase capacity to assist underserved immigrant communities, those hours gathering nonessential information would be better spent furthering the mission of the organization through legal services, consultations, and community engagements.

### Purpose of Form

In the Instructions, p. 1, second paragraph, we recommend the following change for clarification:

If the proposed representative intends to work *or volunteer* for more than one Recognized Organization, each organization must submit a separate Form EOIR-31A on the representative's behalf.

In the last paragraph, we recommend the following change:

This requirement does not result in the Recognized Organization's need to apply for *recognition* renewal outside of its renewal schedule.

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<sup>2</sup> Agency Information Collection Activities; Proposed Collection; Comments Requested; Request by Organization for Accreditation or Renewal of Accreditation of Non-Attorney Representative (Form EOIR-31A), 85 Fed. Reg. 42009, 42010.

### Representative Information (Part 1)

In the Instructions (p. 2), EOIR recommends that organizations apply for renewal of a representative's accreditation three months prior to expiration. Prior to the current regulations that took effect in 2017, applicants were supposed to file the renewal application 60 days before the expiration date, so this timeframe (60 days or two months) is more familiar to stakeholders. We see no need for an increase in the lead time, especially considering the severe backlogs that have persisted for the last two years, an additional month would make little impact. In addition, this recommendation could cause confusion and lead some readers to believe that the three months is required. We recommend either removing this sentence altogether or at least changing the wording to "two months prior to expiration," which is more reasonable and familiar to applicants.

Additionally, under "Accreditation type requested," one of the options is a change of accreditation from full to partial. In all the years we have assisted hundreds of affiliates, we have never seen anyone request to change from full to partial accreditation. Instead, someone who no longer needed full accreditation would simply allow the status to expire or renew accreditation as a partially accredited representative. In addition, the Instructions on p. 2 state that "a change from full to partial accreditation does not require the submission of Form EOIR-31A." This option on the application may cause confusion and should be removed.

### Representative's Work Location (Part 1)

Part 1 of the proposed form on p. 1 requires the organization address(es) where the non-attorney representative works or intends to work. We see no need to add a separate question for this information, since OLAP does not track or indicate work location on the roster of recognized locations, and all accredited staff are listed under the main office address and are authorized to practice at any other recognized extension office of the organization. We also note that this information is subject to change, as staff may be moved around to work in different extension offices as needed.

### Status with the Organization (Part 2A)

Part 2A of the proposed form has a new question requesting the representative's status with the organization (employee, volunteer, or other) and the corresponding instructions state, "the resume... should reflect how frequently the representative has worked with your organization's immigration legal services program" (p. 3). This additional information is irrelevant to the accreditation adjudication and therefore unnecessarily burdensome. First, the status of the representative does not matter, as both employees and volunteers are eligible for accreditation. Second, this status often changes. It is not uncommon in our experience for volunteers to become employees and employees to become volunteers. Third, often applicants have not worked with the organization's legal services program at all, if the program is not yet recognized. In these (frequent) cases, the applicant has received their hands-on training with an outside, authorized provider such as another recognized organization. Fourth, frequency is not relevant. There is no provision in the regulations that would require the agency to deny accreditation if the frequency of work is below a particular threshold. Requiring submission of information or documentation that would not affect the applicant's eligibility for accreditation is wasteful and burdensome to both the applicant and the agency.

### Previous Applications (Part 2A)

Part 2A of the proposed form also asks about previous applications submitted on the representative's behalf. The corresponding instructions on p. 3 state, "describe any previous applications that have been submitted to the R&A Program on this representative's behalf. Include all applications ever submitted, whether by your organization or any other. For each application, list the date submitted, the name of the applicant organization, and the outcome of the application." This request is burdensome and asks for information that OLAP should already have in its records.

Many of our affiliates do not have this information easily available to them and would struggle to obtain it, especially for staff with many years of experience. For example, we assisted an affiliate staff person with 30 years of experience in immigration law and prior accreditation with three different organizations to renew her accreditation. She would not be able to provide the date for each application submitted in the past. For her and others with a wealth of knowledge and experience, this new requirement would lead to significant delays in completing the application process thereby disincentivizing the best of the accredited representatives from renewing their accreditation.

Submission of information about previous accreditation applications is not required by the regulations. In order to renew accreditation according to the regulations, an applicant need only demonstrate that they meet the same requirements needed for initial accreditation and that they continued to receive training in immigration law and procedure.<sup>3</sup> Requiring that the applicant also submit their accreditation history is not supported by the regulations. Any applicant who is unable to submit their accreditation history may inaccurately believe that they do not qualify to renew their accreditation. This revision would impact the outcome of accreditation applications; such changes should go through notice and comment as a proposed rule under the APA, rather than as a form change under the PRA.

### Previous Employment (Part 2A)

Part 2A of the proposed form asks about the representative's previous employment. The corresponding instructions on p. 3 state, "If the representative is no longer affiliated with any of the organizations listed, indicate his or her reason for leaving." The question about the reason for leaving a previous employer is intrusive and unnecessary. Reasons for leaving previous employers are not relevant to accreditation as a non-attorney representative. The only information resulting from this question that might be relevant is if the reason for leaving the organization was related to character and fitness. However, according to the regulations, the character and fitness requirement is satisfied through the attestations of the Authorized Officer and Proposed Representative, along with letters of recommendation OR favorable background checks.<sup>4</sup>

Requesting new points of information from all applicants with no basis in the regulations in order to go fishing for objectionable information is not a justifiable or efficient practice. Furthermore, OLAP now runs a background check on all accreditation applicants (a practice that is itself

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<sup>3</sup> 8 C.F.R. § 1292.16 (c)(2) (2003).

<sup>4</sup> Recognition of Organizations and Accreditation of Non-Attorney Representatives, 81 Fed. Reg. 92,346, 92,351 (Dec. 19, 2016) (codified at 8 CFR pts. 1001, 1003, 1103, 1212, and 1292).

contrary to the regulations as CLINIC has explained in other letters to OLAP), and USCIS has an opportunity to weigh in on applicants' qualifications. Requiring applicants to indicate a reason for leaving previous employment only adds additional burdensome data entry that is redundant and not required by the regulations.

#### Knowledge and Experience (Part 2B)

The Instructions (p. 3) state that the training record should include "whether the training was open to the public." We recommend removing this requirement, which is irrelevant and not supported by the regulations.

In the second paragraph on p. 4, we recommend the following change for clarification:

*While not required*, the same or different letters may also address the representative's character and fitness.

We note that the regulations require letters of recommendation addressing the applicant's knowledge and experience in immigration law, not their character and fitness. In the application (January 2017 edition), character and fitness is demonstrated in the attestations signed by the Authorized Officer and Proposed Representative. Despite our objections, it is now also established by the background checks conducted on all applicants. Requesting additional unnecessary inputs on this topic in letters will only add more time burden to OLAP's case processing.

#### Direct Legal Representation for Renewal (Part 2B)

Part 2B of the proposed form has a new question for those who are renewing accreditation. The question asks how frequently the representative has provided direct legal representation before USCIS or EOIR. The corresponding instructions on p. 5 state, "For renewal of accreditation applications only, indicate approximately how often during the past three years the Accredited Representative has entered an appearance before USCIS and EOIR on Forms G-28, E-28, or E-27." This question is unclear, burdensome, and unnecessary. It should be removed.

The regulations do not require demonstrating prior appearance in cases for renewal of accreditation. They only require that "Each request for renewal of accreditation must establish that the individual remains eligible for accreditation under 8 CFR § 1292.12(a) and has continued to receive formal training in immigration law and procedure commensurate with the services the organization provides and the duration of the representative's accreditation."<sup>5</sup> To establish eligibility, the regulations require "A description of the individual's qualifications, including education and immigration law experience."<sup>6</sup>

While the question should be removed because it is *ultra vires* to the regulations, it is worth noting that the question is also ineffective at its apparent purpose. An individual may practice immigration law without entering an appearance before USCIS or EOIR, such as when screening clients for eligibility for an immigration benefit, answering questions about their cases, or staffing a

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<sup>5</sup> 8 C.F.R. § 1292.16(c)(2) (2003).

<sup>6</sup> 8 C.F.R. § 1292.12(c) (2003).

naturalization clinic. This question does not account for the various models of service that entail practice without filing a G-28/E-28 for every client. Many USCIS immigration applications recognize this reality by giving attorneys and representatives the option to indicate whether they want their representation to extend beyond form completion.

#### Date of Birth (Part 2C)

In Part 2C of the proposed form, there is a new question requiring the applicant's date of birth for the background check. In the instructions for Form EOIR-31A, there is a Privacy Act Notice that states in relevant part, "EOIR may share the information provided with this form with others in accordance with approved routine uses." An applicant's date of birth is personally identifiable information (PII). Because DOJ intends to collect additional PII on this form, more clarification is needed in the privacy notice to indicate what "routine uses" would justify sharing this information.

#### Representative's Background - Character and Fitness (Part 2C)

The Instructions (p. 5) for Part 2C state that the date of birth data now required of applicants "will be used to conduct criminal background checks." While the regulations recognize that a background check on an accreditation applicant *may* be conducted in some cases, they do not contemplate uniform background checks on all applicants as has been implemented by OLAP. Collecting a date of birth from all applicants in order to perform uniform background checks on all applicants is contrary to the language and intent of the regulations. The final rule implementing the regulations states that the drafters did not believe that the character and fitness requirement would create additional administrative burdens on applicants because "the same documents that may be used under the current [now previous] regulation to show good moral character may be used to show character and fitness" under the 2016 regulation, and that "additional documentation beyond this would only be necessary if the proposed representative has an issue in the proposed representative's record regarding the proposed representative's honesty, trustworthiness, diligence, professionalism, or reliability."<sup>7</sup> Instituting uniform background checks by adding a question to the form requesting a date of birth is clearly not within the scope of the regulations as drafted, and would need to go through regulatory notice and comment under the APA.

In Part 2C, the proposed form has a series of five questions pertaining to the applicant's character and fitness. These questions should be removed, and OLAP should revert to the method used in the 2017 version of the form, which aligns with the regulations' reliance on the authorized officer's attestation based on what an authorized officer can reasonably be expected to know about its volunteers and employees. It is unreasonably burdensome to require a signing authorized officer on behalf of an organization to conduct a legal analysis of an individual's past to determine if he or she "ever committed prior acts involving dishonesty, fraud, deceit or misrepresentation," or has "ever been found guilty of, or pleaded guilty or nolo contendere to, a serious crime...in any court anywhere in the world." These questions are beyond the scope of the regulations, are vague and intrusive, and will discourage the applicants from going forward with seeking accreditation. Furthermore, depending on state laws, an employer asking such questions of their employees can

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<sup>7</sup> Recognition of Organizations and Accreditation of Non-Attorney Representatives, 81 Fed. Reg. 92,346 (Dec. 19, 2016) at 92,351.



expose the employer to litigation liability or Equal Employment Opportunity Commission (EEOC) complaints.

The regulations outline the requirements for character and fitness in 8 CFR § 1292.12 (a) (1-5). They only require an attestation from the authorized officer and the proposed representative: “The request for accreditation must be signed by the authorized officer and the individual to be accredited, both attesting that the individual satisfies these requirements.”<sup>8</sup> The regulations also state, “The character and fitness requirement may be satisfied through attestations of the authorized officer of the organization and the proposed representative and letters of recommendation or favorable background checks” (Part III, B, 2 (a)).

The use of “or” in the regulations clearly indicates that background checks are not required. If EOIR wishes to expand the scope of the character and fitness requirement, it would need to use the notice and comment procedures under the APA to make that change.

#### Declaration of Representative (Part 4)

The second bullet should be modified for accuracy as follows:

I meet all of the criteria.... to represent others before DHS, *or before DHS and EOIR*; and

#### Proof of Service (Part 5)

Since email submission is now a more common and preferred option, we recommend clarifying the Instructions (p. 6) with the following change:

The organization must send (*mail or email*) an exact copy of the form and its attachments to the U.S. Citizenship and Immigration Services (USCIS) District Director...

#### Where to Submit

On p. 6 of the Instructions, OLAP’s mailing address is listed. We recommend adding OLAP’s email address since this is OLAP’s preferred method of receiving applications. In addition, there is a typo in the line with the street address.

#### **Conclusion**

All told, the changes to the EOIR-31A add many new requirements that are not supported by the regulations. While some of these changes may seem small, the cumulative effect of these changes is to require a significant amount of new information, none of which is necessary for the approval of recognition or accreditation. These questions would be an unnecessary burden to individual applicants, their employers, and the agency that would need to evaluate this complex and sensitive information. These proposed changes would make the R&A process unnecessarily burdensome and would use the information collection process to make changes to regulatory requirements, rather than going through the notice-and-comment rulemaking process under the APA.

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<sup>8</sup> 8 C.F.R. § 1292.12(b) (2003).

Furthermore, the form changes have not been properly presented to the public for notice and comment, as the 2020 form revision was improperly performed, and those changes are not properly highlighted in this proposed version.

EOIR should not publish the proposed 2022 version of the EOIR-31A. The January 2017 edition of the EOIR-31A should continue in use until the agency engages in proper rulemaking if it wishes to change the eligibility standards for accreditation.

Thank you for the opportunity to submit comments on the proposed form changes. Please contact Michelle Sardone, Deputy Director of Programs, at [msardone@cliniclegal.org](mailto:msardone@cliniclegal.org) for further information.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anna Marie Gallagher". The signature is fluid and cursive, with the first name "Anna" being more prominent.

Anna Marie Gallagher  
Executive Director