



September 21, 2022

Submitted via Federal Express and via email to 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. 1125-0012, Agency Information Collection; Request for New Recognition, Renewal of Recognition, Extension of Recognition of a Non-Profit Religious, Charitable, Social Service, or Similar Organization (Form EOIR-31)

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-31, Request for New Recognition, Renewal of Recognition, Extension of Recognition of a Non-Profit Religious, Charitable, Social Service, or Similar Organization. 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,¹ 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. 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.

¹ 8 C.F.R. § 1292 (2003).

In addition, EOIR has engaged in 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 Urges EOIR to Revert to the 2017 Versions of Forms EOIR-31 and EOIR-31A

CLINIC strongly opposed the Feb. 2020 editions of the Forms EOIR-31 and EOIR-31A, which were implemented in May 2020 without sufficient notice and comment. We wrote a letter to EOIR on 9/1/2020 explaining our concerns about the faulty procedures to introduce the Feb. 2020 edition as well as its objectionable content, yet EOIR is now proposing almost identical versions of these forms, with very few changes. **In the remainder of these comments, the term “proposed changes” refers not only to the redlined changes in the 2022 version, but also the changes made in the 2020 version which were not properly introduced for notice or comment.**

CLINIC urges EOIR to revert to the 2017 versions of the forms for several reasons. This Information Collection attempts to change regulation through the form revision process, rather than going through the notice and comment process under the Administrative Procedures Act (APA). Several of the proposed changes increase the evidence required in order to qualify for recognition or accreditation in ways that are not supported by the current regulations. These changes are *ultra vires* to the regulations at 8 CFR § 1292. If DOJ wishes to increase the evidence required to qualify for the program, it would need to introduce these changes as a notice of proposed rulemaking under the APA.

Further, this Information Collection creates a significant increase in information and documentation contrary to the goals of the Paperwork Reduction Act (PRA), which seeks to reduce the paperwork burden on individuals and organizations.

As we set forth below, the proposed changes would alter the substantive standards used to evaluate applications. This is contrary to the APA and the PRA. EOIR should revert to the 2017 versions of the forms because the proposed changes do not meet the standards of the PRA or the APA as they are *ultra*

vires to the R&A regulations and would drastically increase time, expense, and paperwork burdens on applicants for the R&A program and on EOIR itself, without the agency stating a sufficient reason or benefit for such change.

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

CLINIC opposes many of the proposed changes to Form EOIR-31. Our evaluation and analysis is based upon a comparison between the initial, January 2017 version of the form; the proposed form provided by EOIR; and the regulations, which set forth the requirements for recognition.

The Estimated Time and Cost for Completion of Form EOIR-31

In the Federal Register Notice for the proposed changes to Form EOIR-31, the estimated time for completion of Form EOIR-31 is two hours per response for initial applications for recognition, and seven hours per response for renewal of recognition.² This is the same amount of time EOIR estimated for the January 2017 version of the EOIR-31, yet the proposed form requires considerably more information and details than the old form. For example, we estimate that each of the following new requirements in the form and instructions would require substantial amounts of time to respond: “detailed description of the scope, nature, and history of [the legal] services, and by whom they have been provided”; the detailed documentation requested for extension of recognition; as well as the additional time to organize and assemble the supporting documentation for the application packet. While not a comprehensive list, these are a few representative examples of requirements that would substantially add to the burden on applicants and organizations. To properly address these burdens, 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.

Type of Recognition Requested (Part 2)

For clarification in Part 2 (p. 1) of the form, we recommend changing the wording as follows: “What organization name(s) has your organization or Authorized Officer previously applied under, *if any?*” This question is not applicable for most applicants, in our experience.

In the Instructions, Part 2 (p. 2), the form states that EOIR recommends applying for renewal of recognition 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.

State Non-Profit Status (Part 3)

The first question in Part 3 of the form is about current non-profit status. The instructions (Part 3, p. 2) state, “Your organization must have currently valid non-profit status granted by the appropriate state agency (usually from the Attorney General or Secretary of State of your state) to qualify for recognition. Submit a printout from this agency’s website or a contemporaneous letter from the agency, confirming that status.”

² Agency Information Collection Activities; Proposed Collection; Comments Requested; Request for New Recognition, Renewal of Recognition, Extension of Recognition of a Non-Profit Religious, Charitable, Social Service, or Similar Organization (Form EOIR-31), 85 Fed. Reg. 42008, 42008.

This instruction narrows the evidence to demonstrate non-profit status from a pool of documents describing the entity that an organization can choose from, to one single acceptable document. We object to this narrowing of the evidentiary requirements.

The 2016 rule amending the regulations governing the requirements and procedures for R&A included new provisions that require an organization to establish that it is federally tax-exempt in addition to the requirement that the organization be a non-profit religious, charitable, social service, or similar organization. It is important to note that federal tax-exemption, which is granted by the Internal Revenue Service, is related to but different from non-profit status. Non-profit status is generally regulated under state law and often a precursor to applying for federal tax exemption. Further, state law and individual requirements for non-profit organizations vastly differ depending upon the organization's underlying corporate structure and activities concerning the solicitation of funds.³ While some states require incorporated entities to file an annual report with the department of state or commerce, other states require a simple application/registration form or special tax filing. For this reason, the regulation at 1292.11(b) provides a list of evidence that an organization may provide in order to prove its status.

The requirement to submit a valid non-profit status granted by a state agency is too narrow of an evidentiary standard because non-profit status is not always confirmed in this way. For example, where a religious organization gains its tax-exempt status through a group ruling, it may not be required to seek separate, non-profit status from the state where it is located. The United States Conference of Catholic Bishops is the central organization that holds a group tax exemption under section 501(c)(3) of the Internal Revenue Code, which was originally issued by the Internal Revenue Service in 1946. Some states, including Texas for example, do not issue state non-profit status to an organization that is a subordinate of a federal group exemption. An organization applying for recognition that does not have a traditional, state non-profit status may incorrectly believe that it does not qualify for recognition based on this question.

The wording of the question must reflect the breadth and flexibility of the regulatory language. The regulations state, "The organization must submit: A copy of its organizing documents, including a statement of its mission or purpose.... The organization may also submit additional documentation to demonstrate non-profit status and service to primarily low-income and indigent individuals, such as reports prepared for funders or information about other free or low-cost immigration-related services that it provides (e.g., educational or outreach events)."⁴ The regulations do *not* specify which organizing documents are required, beyond the statement of mission or purpose, and the Jan. 2017 form instructions state, "PLEASE NOTE: A mission statement or statement of purpose of the organization *must* be included. Additional proof *may* include... state non-profit status." (Part 5, p. 4). Unlike the proposed new language, the prior edition's wording of this question accurately reflects the regulations.

EOIR has not offered any rationale for adding this requirement. Documentation requests should remain flexible because not all states require non-profit organizations to have this status, and it is not required for federal 501(c)(3) status. State non-profit status is generally required for organizations that wish to receive charitable contributions, but not all organizations wish to do this. A number of CLINIC affiliates do not have state non-profit status, and this requirement (already implemented by adjudicators) has caused significant problems and delays in adjudication of their applications. These affiliates include some Catholic dioceses that operate under the 501(c)(3) status of the United States Conference of Catholic Bishops. There is no need for EOIR to require state non-profit status, since organizations can prove their non-profit status with other organizing documents such as the constitution, charter, by-laws, or articles of incorporation.

³ See, *State Filing Requirement for Nonprofits*, National Council of Nonprofits, (last accessed Sept. 1, 2020), www.councilofnonprofits.org/tools-resources/state-filing-requirements-nonprofits, and *State-By-State Registration and Compliance*, Hurwit & Associates, (last accessed Sept. 19, 2022), www.hurwitassociates.com/states-reporting-requirements.

⁴ 8 C.F.R. § 1292.11(b) (2003).

By requiring evidence of valid state non-profit status, DOJ is excluding from eligibility any organization that does not need to file for state non-profit status under the applicable state law. If DOJ wants to make a substantive change that would impact the eligibility of organizations for recognition, the agency would need to make that change through notice and comment rulemaking under the APA.

Legal Services (Part 3)

Part 3 of the proposed form asks about the legal services the organization offers, and the instructions state, “An organization that does not currently offer immigration legal services must include a detailed description of the types of services it intends to provide if recognized. An organization that does currently offer immigration legal services must provide a detailed description of the scope, nature, and history of these services, and by whom they have been provided” (Part 3, p. 3).

This level of detail (scope, nature, and history) is not consistent with the regulations. The regulations and current form merely require a “description of the immigration legal services.”⁵ To meet this requirement, our affiliates currently submit a brief, general statement in the box provided in Part 7e of the Jan. 2017 edition, along with a list of the specific immigration forms they will assist with, typically in the form of a fee schedule. They have been doing this with great success since Jan. 2017 when the new regulations were implemented. We note that the box provided is small, indicating an expectation by OLAP that the description of legal services will be brief. In contrast, the proposed form would change current practice by requiring a lengthy essay that would greatly increase the burden on applicants without support from the regulations and for no apparent reason.⁶

Fees (Part 3)

In Part 3 of the proposed form on page 1 there is a question about fees that states, “Attach fee schedule and fee waiver/reduction policy.” These two documents are consistent with the regulations and Jan. 2017 form. However, the corresponding instructions in the proposed form (p. 3) add a third paperwork requirement: “Include a copy of the fee waiver or reduction *application* your organization uses, if any.” This inconsistency between the form and the instructions appears to be a typo that can easily be corrected.

If this is not a typo, we argue that there is no need for this additional documentation, which adds unnecessary paperwork to the process. The regulation only requires the “fee schedules and **organizational policies** or guidance regarding fee waivers or reduced fees based on financial need,”⁷ not the applications or forms used to implement such policies. Requiring this documentation is *ultra vires* to the regulations; if the agency wants to require documentation in addition to that currently required by the regulations, it needs to introduce the regulatory change under the APA with notice and comment.

⁵ See 8 C.F.R. § 1292.11(e) (2003); and U.S. Department of Justice, *Request for New Recognition, Renewal of Recognition, Extension of Recognition of a Non-Profit Religious, Charitable, Social Service, or Similar Organization*, Form EOIR-31, Part 7, p. 5 (Edition: Jan. 2017).

⁶ See *supra* section titled Estimated Time for Completion of EOIR-31 for a description of the burden caused by the time to complete the revised version of the form.

⁷ 8 C.F.R. § 1292.11(b) (2003).

Information About Organization's Immigration Law Practice (Part 4)

For clarification in Part 4 of the form (p. 2), we recommend changing the wording as follows:

- ☐ Immigration budget for current year and prior year, *or proposed immigration budget for upcoming year*
- ☐ List of legal resources to which your organization has access
- ☐ Does your organization have on staff any attorney(s) licensed in the United States in good standing, or any individual(s) who is a fully-accredited representative or will become one through a simultaneously filed application?
 - ☐ Yes *Attach resume(s)*
 - ☐ No *Does your organization have any formal agreement(s) to consult with and/or receive technical legal support from...*
 - ☐ No
 - ☐ Yes *Attach...*

An organization that has one or more licensed attorneys or fully accredited representatives in good standing on staff is not required to show access to technical legal support, so there is no need to supply additional documentation about technical support in such an instance.⁸ The question on the proposed application about technical legal support could cause confusion about this requirement, as written.

Renewal of Recognition (Part 5)

In Part 5 of the form (p. 2), the instructions for the attachments are confusing and could lead users to believe that evidence of Federal Tax-Exempt Status is required for a renewal application. Instead of a check box for Federal Tax-Exempt Status, we recommend the following:

Is your tax-exempt status based on a larger entity's group ruling? ☐ No ☐ Yes *Attach evidence of current tax-exempt status*

Extension of Recognition (Part 7)

Part 7 of the proposed form requires extensive documentation in order to obtain recognition for an extension office. The instructions on p. 5 state, "Attach detailed documentation that addresses the relationship between the designated office and the proposed extension office(s) in each of the following areas:

- Periodic Inspections: How often does the designated office inspect the extension office(s) and how do these inspections take place?
- Joint Operations: What types of immigration legal services does each office perform?
- Joint Management Structure: What is the management structure for the organization as a whole and for each office individually?
- Joint Finances: How is the immigration legal services program at each office funded and who oversees the finances at each office?

⁸ See Matter of EAC, Inc., 24 I&N Dec. 556 (BIA 2008) ("Obviously, the adequate knowledge requirement may be met by the submission of resumes of an attorney or attorneys who are on staff at the local office. [...] Where an organization does not have an attorney on staff at the local office, a pro bono attorney who volunteers locally or other arrangements with a local attorney, or an individual who will become a fully accredited representative in the office, it may meet the adequate knowledge requirement by showing that it is simultaneously applying for partial accreditation of at least one individual who has the credentials to warrant a grant of partial accreditation in certain circumstances. For example, an organization seeking recognition and partial accreditation of a qualified representative may satisfy the adequate knowledge requirement by showing that another recognized organization with an attorney or fully accredited representative has agreed to provide consultation or assistance, as needed.")

- Access to Legal Resources: What legal resources does the designated office have access to, and which of those resources can the proposed extension office(s) also access?

This level of detailed documentation is *ultra vires* to the regulations. The regulations state,

To request extension of recognition, an organization... must submit a Form EOIR-31 that identifies the name and address of the organization's headquarters or designated office and address of each other office or location for which the organization seeks extension of recognition. The organization must also provide a declaration from its authorized officer attesting that it periodically conducts inspections of each such office or location, exercises supervision and control over its accredited representatives at those offices and locations and provides access to adequate legal resources at each such office or location.⁹

The Jan. 2017 form requires limited additional information *only* if there are differences between the main office and extension sites: "Check this box if you have additional relevant information regarding this office or location, such as other contact information, or a fee schedule or supervisory structure different than the organization's headquarters or designated office (attach additional sheets of paper to describe)" (Part 4, p. 1). The regulations state at 8 CFR § 1292.15 that declarations on the form and in the authorized officer's declaration are sufficient to demonstrate eligibility for recognition. Requiring documentation from all organizations in addition to the declarations is unnecessary and burdensome to both the applicant and to the agency that would have to process this paperwork.

As stated in the instructions of the Feb. 2020 Form EOIR-31, "The purpose of extension of recognition is to *simplify* the communication and application processes between EOIR and a qualifying organization with more than one location" (Part 7, p. 5). (We note that OLAP has *removed* this sentence from the proposed version.) Requiring extensive, additional documentation for an extension request defeats the very purpose for which extension was created.

Eligibility for extension **is already** demonstrated in the standard documents that are submitted for recognition. CLINIC strongly opposes efforts to make the application for extension more burdensome, as it is inconsistent with the purpose of the regulation: to increase the capacity of non-profit organizations to serve immigrant communities. The significant increase in information and documentation required by the proposed form is unnecessary, as the Jan. 2017 application is already sufficiently thorough and consistent with the intent of the regulations.

Rather than proposing this new list of extensive documentation for extension, we recommend that OLAP indicate that the four documents below that are already submitted with an application for recognition include information about the proposed extension office(s):

1. An organizational chart that includes the extension office(s).
2. An immigration budget that includes the extension office(s).
3. A fee schedule that is used by both the principal office and the extension office(s).
4. A print and electronic legal resources list that specifies the resources available for the extension office(s).

Additionally, the Instructions for Part 7 (p. 5) state, "Provide the name and contact information for each extension office." This could be understood as the contact information for an individual person. To avoid confusion, we recommend the following change:

Provide the *office* name and contact information for each extension office.

⁹ 8 C.F.R. § 1292.15 (2003).

Proof of Service (Part 9)

Since email submission is now a more common and preferred option, we recommend clarifying the Instructions (p. 5) 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.

Conclusion

All told, the changes to the EOIR-31 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. 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-31. The January 2017 edition of the EOIR-31 should continue in use until the agency engages in proper rulemaking if it wishes to change the eligibility standards for recognition.

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 for further information.

Sincerely,



Anna Marie Gallagher
Executive Director