

December 22, 2020

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

**RE: Request to Rescind New Versions of Forms EOIR-31 and EOIR-31A for DOJ Recognition and Accreditation (62555, 62556) due to noncompliance with PRA and APA requirements**

Dear Acting Administrator Ray and Assistant Director Alder Reid:

The undersigned members of the DOJ Recognition and Accreditation (R&A) Working Group respectfully write to request the Executive Office for Immigration Review (EOIR) rescind the new versions of Forms EOIR-31 and EOIR-31A for the Department of Justice (DOJ) Recognition and Accreditation Program, which are dated 2/2020 and were posted on the Recognition and Accreditation page of the EOIR website<sup>1</sup> on May 4, 2020. EOIR's website was recently updated to indicate that use of these forms will be mandatory beginning December 14, 2020. We urge EOIR to refrain from implementing the use of these new forms, as the public has not had the appropriate opportunity to review and comment as set forth in the Paperwork Reduction Act (PRA) and the Administrative Procedure Act (APA).

The R&A Working Group is comprised of national, state, and local organizations that support immigration legal service providers and assist them with R&A applications. Its goal is to ensure common understanding of R&A procedures and best practices, and to engage in outreach to OLAP to exchange information helpful to program administrators and stakeholders. The group, led by Catholic Legal Immigration Network, Inc. (CLINIC) has been in existence for more than seven years and worked with the BIA when it administered the R&A program prior to OLAP. Its members have decades of experience providing training and technical assistance to those we serve on how to build capacity to respond to the demand for immigration legal services for low-income and indigent clients. It is based on this depth of experience and expertise in R&A that we write to object to the implementation of the 2/2020 versions of Forms EOIR-31 and EOIR-31A.

The new versions of the Forms EOIR-31 and EOIR-31A that were posted in May differ significantly from the draft forms that were provided by EOIR for review during the public comment period last year. The public was not given the opportunity to comment on the new version of these forms, as required by the PRA. In addition, some of the new information and documentation requests in the forms contradict or exceed the regulatory requirements<sup>2</sup> for Recognition and Accreditation. These requirements would need to be promulgated through the rulemaking process under the APA, rather than included in a

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<sup>1</sup> See [www.justice.gov/eoir/recognition-and-accreditation-program](http://www.justice.gov/eoir/recognition-and-accreditation-program).

<sup>2</sup> 8 C.F.R. § 1292.11-16.

new version of a form under the PRA. For these reasons, we request that the new versions of Forms EOIR-31 and EOIR-31A be rescinded.

We note that after we raised these concerns with EOIR in May 2020, your office decided to begin a new notice and comment process under the PRA. However, that process was also riddled with errors. On July 13, 2020, the Department of Justice published two Notices of Information Collection in the Federal Register, opening for public comment revised versions of forms EOIR-31 and EOIR-31A. Public comments were due by September 11, 2020. EOIR failed to include the proposed forms in the docket, so stakeholders were required to contact EOIR to request them. CLINIC received the draft forms on July 17, 2020 and shared with R&A Working Group members.

The forms were published again for the 30-day comment period on October 20, 2020 with comments due on November 19, 2020. Again, EOIR failed to include the forms in the docket and stakeholders were required to request them via e-mail. In addition, the link that EOIR provided to electronically submit comments did not work; it led to a page that did not list the R&A forms among the forms open for comment. When CLINIC representatives contacted EOIR regarding these issues, EOIR responded by providing the forms on October 23, 2020. CLINIC continued to follow-up regarding the inability to submit a comment and EOIR advised it was aware of the technical issue and was trying to resolve. When the issue did not resolve, CLINIC and other stakeholders requested EOIR extend the comment period to allow a full, consecutive 30-day comment period.

On November 5, 2020, EOIR responded to the requests for an extension of the comment period, indicating that it had not finished reviewing the comments from the earlier, 60-day comment period and that the notice was being withdrawn. EOIR's failure to address these ongoing problems with the notice and comment process provides further evidence of the need to rescind the 2/2020 versions of the forms.

Some of the changes to the forms request information or documentation that contradicts or exceeds the scope of the Recognition and Accreditation regulations. Accordingly, those changes should go through notice and comment rulemaking under the Administrative Procedure Act as opposed to information collection under the PRA.<sup>3</sup>

The new version of the form requires that the name of the organization applying for recognition be on file with the Secretary of State or other state agency. This requirement does not appear in the recognition regulation.<sup>4</sup> The names under which organizations operate are not a basis to disapprove an application for recognition. If EOIR wishes to make this a basis for disapproval, it would need to propose this change with notice and comment under the APA.

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<sup>3</sup> Todd Garvey, A Brief Overview of Rulemaking and Judicial Review, Congressional Research Service (March 27, 2017), <https://fas.org/sgp/crs/misc/R41546.pdf>.

<sup>4</sup> See 8 C.F.R. § 1292.11.

The 2/2020 version of the form sets a new and more burdensome standard for non-profit status and requires documentation of non-profit status that is not required evidence under the regulations. The regulation requires a copy of its organizing documents.<sup>5</sup>

Organizing documents from the foundation of the organization are required evidence and serve as proof of non-profit status. However, requiring new and additional documentation of “currently valid” non-profit status exceeds the scope of the regulations, and would require EOIR to use the notice and comment procedures under the APA to change these requirements.

The 2/2020 version of EOIR Form 31 also places new and burdensome requirements on agencies seeking extension of recognition and accreditation to multiple offices or locations pursuant to 8 C.F.R. 1292.15. The new requirements in the 2/2020 form version vastly differ from the draft form and exceed the enumerated requirements of the regulation and shift the standard from attestation or declaration to making burdensome documentation and evidence mandatory.

Finally, the questions related to character and fitness on page 2 of Form EOIR-31A well exceed the scope of the regulations. The Final Rule for the recognition and accreditation regulations states that it would not create administrative burdens for organizations, because the character and fitness requirement could be satisfied through:

attestations of the authorized officer of the organization and the proposed representative and letters of recommendation or favorable background checks. 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.

Expanding the character and fitness criterion to require in an initial filing that organizations to conduct a legal analysis of the individual’s past to determine if he or she “ever practiced law, as defined in 8 C.F.R. §1001.1(i), without authorization” or “committed a crime of any kind, even if he or she was not arrested, cited, charged with, or tried for that crime,” is certainly creating an administrative burden for the organization before any issue has been raised in the individual’s record as established by attestations and background checks.

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.

For the reasons listed above, we call on EOIR to rescind the 2/2020 versions of Forms EOIR-31 and EOIR-31A immediately as they differ significantly from the draft forms provided during the 2019 ICRs, contradicting or exceeding the scope of the Recognition and Accreditation regulation, and were not issued under the proper legal framework under the PRA and APA. If you have any questions regarding this request, please contact Jill

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<sup>5</sup> See *id.*

Marie Bussey, CLINIC's Advocacy Director, at [jbussey@cliniclegal.org](mailto:jbussey@cliniclegal.org) or Sarah Bankard, World Relief's Capacity Building Manager, Immigration Programs at [SBankard@wr.org](mailto:SBankard@wr.org).

Respectfully submitted,

Catholic Legal Immigration Network, Inc.

Coalition for Humane Immigrant Rights (CHIRLA)

DePaul Asylum and Immigration Law Clinic (affiliation listed for identification purposes only)

Immigrant Justice Corps

Immigrant Legal Resource Center

International Rescue Committee

New York Immigration Coalition

UFW Foundation

World Relief

cc: James McHenry, EOIR Director  
Paul Ray, Acting Administrator, Office of Information and Regulatory Affairs