November 17, 2015

Jean King, General Counsel
Office of the General Counsel
Executive Office for Immigration Review
Department of Justice
5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

VIA: www.regulations.gov

RE: Comments on the Proposed Rule for Recognition of Organizations and Accreditation of Non-Attorney Representatives [RIN 1125-AA72; EOIR Docket No. 176]

Dear Ms. King:

The Catholic Legal Immigration Network, Inc. (CLINIC) respectfully submits the following comments regarding the proposed rule for recognition of organizations and accreditation of non-attorney representatives.

CLINIC supports a national network of over 275 community-based Catholic and community legal immigration service programs. CLINIC’s affiliated immigration programs, which operate out of more than 400 offices in 46 states, employ approximately 1,600 staff including attorneys, accredited representatives, and paralegals and serve over 300,000 immigrants each year. CLINIC’s network of affiliated programs represent a diversity of program structures, service delivery models, and size. Some programs rely solely on BIA accredited representatives to provide immigration services, others utilize both attorneys and accredited representatives, while other programs are solely comprised of attorneys and paralegal staff. CLINIC and its affiliate agencies serve family-based immigration applicants as well as victims of trafficking and crimes, refugees, asylees, youth and young adults seeking Deferred Action, VAWA petitioners, Special Immigrant Juveniles, persons in removal proceedings, TPS applicants and applicants for naturalization.

I. Introduction and General Comments

Currently within the United States there is an overwhelming need for immigration legal services, particularly for low-income immigrants and vulnerable populations. In addition to the overall

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1 An estimated 11 million undocumented immigrants currently reside in the United States. Currently, there are approximately 14,000 American Immigration Lawyers Association (AILA) members and 1,600 BIA-accredited representatives eligible to provide legal services to this population.
need for immigration services nationally, certain locations, such as the Southeastern part of the United States have seen exponential Hispanic population growth and are particularly underserved. The private bar, alone, cannot meet this growing need for qualified representation. The prospective need for immigration services will grow when legislative or administrative immigration relief occurs.

Understanding the need for legal services and drawing upon its expertise in the area of charitable legal programs, CLINIC has strongly supported recognition and accreditation since its inception. To this end, CLINIC affiliates represent approximately 35 percent of the Board of Immigration Appeal (BIA) recognized agencies and 45 percent of BIA accredited representatives nationally. CLINIC believes that recognition and accreditation is an invaluable tool to increase the availability of competent non-lawyer representation for underserved immigrant populations, in turn, decreasing their reliance on unqualified and unscrupulous actors.

Because of CLINIC’s vested interest in the success of and its familiarity with recognition and accreditation, CLINIC has advocated for significant changes in the recognition and accreditation process and qualifications for over 20 years. Over the past two decades, CLINIC has encouraged Executive Office for Immigration Review (EOIR) to consider amendments to the regulations that would improve the overall program and better enable it to achieve its stated objective of increasing capacity and access to representation. CLINIC has also provided specific recommendations on ways in which EOIR may enhance the recognition and accreditation application process and ensure there is adequate monitoring for potential fraud and unauthorized practice. CLINIC submitted formal comments to EOIR’s 2012 Proposed Changes to Regulations Governing Recognition and Accreditation (EOIR Docket No. 176).

The current proposed rule includes some welcome changes. CLINIC is appreciative of the substantial time and resources that EOIR and Office of Legal Access Programs (OLAP) have put forth to collect public comments. The 2015 proposed rule’s first purpose is to “promote the effective and efficient administration of justice before Department of Homeland Security (DHS) and EOIR by increasing the availability of competent non-lawyer representation for underserved

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2 From 2000-2010, the states with the largest percent growth in Hispanic populations included Alabama, Arkansas, Kentucky, Mississippi, North Carolina, Tennessee and South Carolina. This population growth has not been met by similar growth of immigration legal service providers in the area-as there is one provider for every 11,582 undocumented immigrants. In Georgia, the lack is the most extreme: there is one legal service provider for every 35,698 undocumented individuals See J.Passell, et al., Hispanics Account for More than Half of Nation’s Growth in Past Decade: Census 2010: 50 Million Latinos, Pew Research Center, March 24, 2011 available at http://www.pewhispanic.org/2011/03/24/hispanics-account-for-more-than-half-of-nations-growth-in-past-decade/


immigrant populations.” CLINIC fully supports this objective. Further, CLINIC is pleased that EOIR is amending the rule 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.” CLINIC’s specific comments to each of the provisions of the rule proposed are provided below.

II. Proposed Changes to Recognition Qualifications

A. Accredited Representative Required

EOIR seeks input on “the proposed requirement that, in order to be recognized, each organization must have an accredited representative, including whether an organization with a licensed attorney and no accredited representatives on staff should be able to become a recognized organization.” CLINIC generally supports the requirement for a recognized organization to have an accredited representative, but notes that this may negatively impact organizations that do not have an accredited representative currently on staff. While many programs in CLINIC’s network employ both attorney and accredited representative staff, a handful do not chiefly because of staff turnover. CLINIC affirms the need for time that programs seek to replace an accredited representative without losing recognition. CLINIC suggests that EOIR provide this time to existing organizations by redacting the requirement that currently recognized organizations without an accredited representative must apply for renewal within a year of the Final Rule.

B. Requiring Federal Tax Exempt Status for Recognition

EOIR seeks input on “the proposed requirement that an organization must demonstrate federal tax exempt status, including whether there are any non-profit organizations that are currently recognized that would be precluded from recognition by this requirement; and whether recognition should be restricted to non-profit organizations that have obtained section 501(c)(3) tax-exempt status.” CLINIC generally supports the proposed requirement that organizations seeking recognition must be a non-profit and demonstrate federal tax exempt status as it is broadly presented. All of CLINIC’s affiliates, among which include libraries, affordable housing non-profits, labor unions, refugee service organizations and domestic violence survivor assistance programs, meet this requirement.

CLINIC supports a rule that ensures that the federal tax-exempt status requirement extends beyond organizations that have received designation under 26 U.S.C. 501(c)(3). In an effort to broaden access to quality and competent representation, CLINIC has partnered with unique organizations such as libraries and labor unions to develop innovative models for increasing access to immigration services. Some of these recognized organizations are federally tax exempt under other sections of the tax code, and others are not issued an Internal Revenue Service (IRS) tax designation letter because of their legal status or treatment under the code. CLINIC interprets the requirements under the proposed rule would ensure these organizations’ continued eligibility for recognition provided they would be able to provide alternative documentation to demonstrate their federal tax exempt status. As such, CLINIC supports the proposed regulations as currently written at §1292.11(a)(1), noting that the proposed rule should permit certain organizations that
are not issued designation letters from the IRS to be eligible for recognition. With an eye to future advancements in the provision of immigrant services, CLINIC recommends that EOIR remain flexible and inclusive in its approach to this issue.

C. Elimination of Nominal Charges Requirement

EOIR proposes to eliminate the “nominal fee” requirement and replace it with a new recognition requirement discussed below. While “Nominal fees” and "nominal charges" are not defined in terms of a specific dollar amount, they have been interpreted by EOIR to mean a very small quantity. In practice, CLINIC has found that this requirement has created financial barriers for otherwise qualified programs in successfully seeking recognition. As previously submitted to EOIR, CLINIC believes that nominal fees impede the growth of recognized agencies and hinder them from serving more indigent and low-income people. For these reasons, CLINIC opposes the nominal fee requirement and appreciates EOIR’s efforts to eliminate the nominal fee requirement. Below, CLINIC has offered reasonable alternatives to the criteria of nominal fees and substantial changes.

D. Requirement that a Substantial Amount of the Budget is Not Derived from Client Charges

1. Substantial Amount Could Be Burdensome on Organizations

EOIR proposes to replace the current “nominal fee” requirement with a new recognition requirement in which an organization must establish that, “A substantial amount of the organization’s immigration legal services budget is derived from sources other than funds provided by or on behalf of the immigration clients themselves (such as legal fees, donations, or membership dues)” (§ 1292.11(a)(3)).

EOIR’s stated rationale for the proposed shift of focus to an organization’s funding sources and budget is to provide organizations with greater flexibility in assessing fees while still requiring that organizations serve the neediest. CLINIC supports this premise. However, it is our position that, when put in to practice, EOIR’s proposed “substantial amount” requirement could become problematic and potentially more burdensome than the current “nominal fee” requirement. As set forth below, our specific concerns with this particular proposal stem from the information and documentary requirements that would be associated with fulfilling the requirement, and OLAP’s ability to efficiently and consistently adjudicate given the vast array of fee levels and funding sources amongst organizations.

In order to demonstrate that it meets the substantial amount requirement, an organization would be required to submit a detailed annual immigration services budget for the current year and, if available, for the prior year so that OLAP can “review the organization’s funding sources” and look at the “totality of the organization’s circumstances.” In addition, “Organizations are required to provide their fee schedules… to OLAP” and “OLAP will scrutinize any fees, membership dues, or donations charged or requested in evaluating the totality of the organization’s funding”. CLINIC does not believe that implementing the substantial amount

5 Municipalities are not issued designation letters.
7 See CLINIC 2012 Comments
requirement as currently written will result in substantive change from the nominal fee requirement for recognition. The proposed language requests a large volume of information of an organization and is still reliant on fee information. CLINIC urges EOIR to move forward with eliminating the current nominal fee requirement but to also remove the proposed substantial amount requirement.

In addition to being administrative burdensome to organizations, CLINIC is concerned that utilizing the substantial amount requirement could incentivize organizations to reduce or limit the immigration services provided. Organizations may feel that in an effort to lower their legal fees, they may offer less types and lower volume of services. This is an unwelcome outcome that undermines the stated goals of increasing the capacity of quality immigration services.

2. Substantial Amount Standard Could Be Difficult to Consistently Implement Given Program Diversity
   a. Fee Income and Fee Levels

CLINIC believes that it will be difficult for OLAP to evaluate the totality of every organization’s circumstances in order to implement the proposed substantial amount requirement consistently. Fee income and fee levels set by non-profit agencies vary greatly. This fluctuation is a reflection of local program realities and challenges in serving the poor. For example, in CLINIC’s network, there are non-profit immigration programs established by large social services agencies such as a Catholic Charities and non-profit immigration programs established by small religious orders of Catholic nuns. The differences in operating funds, unrestricted funds, and access to grants between these two examples can be vast. Moreover, the BIA roster includes non-networked, or “stand alone” non-profits established and staffed by a small number of employees who lack access to, or the capacity to manage, significant philanthropic funding.

In some circumstances, recognized agencies operate in poor, rural communities that lack support from the private bar or philanthropic donors such as foundations and corporations. These agencies often depend on client fee revenue for sustainability. Yet, their fees remain well-below market rate charged by private attorneys. Conversely, recognized agencies in large metropolitan areas with sizeable legal staff earning competitive non-profit salaries in these expensive cities are confronted with serving the communities with the largest numbers of low-income immigrants while competing with many other non-profits for the same philanthropic funds and dealing with the vagaries of philanthropic giving from year to year. These urban organizations also depend on client fee revenue to be sustainable and build capacity to serve more, including those clients needing fee waivers. They, too, can depend greatly on client fees to support a large percent of their budget while charging clients well-below market rate.

   b. Immigration Services Provided

The CLINIC network and BIA roster also includes agencies in communities where there are no, or insufficient, services for the most vulnerable, including survivors of domestic violence, sexual assault, and trafficking. CLINIC’s knowledge of this fact comes from its seven years of providing training and technical assistance to hundreds of domestic violence/sexual assault non-profits funded by the Department of Justice. Serving such vulnerable individuals requires significant time and often such clients are unable to pay fees, resulting in less staff time available
to serve fee-paying clients. When grants are unavailable in these situations, it often becomes necessary to use client fees, when possible, to subsidize services for those who cannot pay.

Additionally, some of our affiliates work on immigration legal services such as withholding of removal, and other elements of deportation defense as well as provisional waivers which are vital services but are not usually services that are funded by outside government grants or funders. Such cases are unique in comparison to other services provided and require different resources to competently perform legal representation. Often non-profits use what limited unrestricted funds they have to represent such cases that lack pre-determined costs in terms of in time and resources. This is why some programs focusing on humanitarian and other complex cases run deficits and must be subsidized by funds outside of the annual budget. While these services are especially crucial to ensuring immigrants have meaningful access to justice within the United States, they are not easily classifiable into the proposed substantial amount framework.

c.  Level of Revenue Related to Providing New Immigration Services

Other circumstances affecting service providers are based on changes in immigration laws and regulations. Legislative and administrative changes in immigration law create significant reverberations in the non-profit immigration legal sector, given the number of low-income immigrants in the United States. A greater demand for services due to a legislative or administrative change results in greater fee revenue, which swiftly changes the balance between fees and other revenue sources in an agency’s budget. Fee revenue may later decline quickly when a deadline for a new benefit has passed. For example, client fee revenue increased significantly, over budget, when Deferred Action for Childhood Arrival (DACA) was introduced in 2012. Subsequently, in the following year, the revenue from DACA dropped significantly as fewer applications were processed, but increased again in 2014 when renewal was available. These circumstances are found throughout CLINIC’s network of affiliates, and we believe, reflect the norm for non-profit immigration legal programs.

d.  Funding Sources-Such as Government Grants

Circumstances related to unrestricted funds and grants create additional challenges and complexities for non-profits. Changes in the economy influence individual donations, philanthropic grants that are based on investment fund returns, and interest rates that determine Interest on Lawyers Trust Accounts (IOLTA) grants. Furthermore, non-profits are subject to swift and sometimes severe changes in funding from government grants and contracts due to economic downturns, policy changes, or political influences. It is not uncommon for a non-profit to lose a sizeable portion of its revenue in government funding with just 30 days’ notice and have no alternatives in place to make up the difference from outside funding. In these circumstances, client fees abruptly become a greater percentage of revenue.

3.  CLINIC Proposes Using IRS Documentation In Lieu of the Substantial Amount Requirement

As an alternative to the proposed substantial amount requirement, CLINIC suggests that organizations be required to establish to EOIR that they are: (1) non-profit, federal tax-exempt religious, charitable, social service, or similar organizations; and (2) that they provide immigration legal services primarily to low-income and indigent clients within the United States.
As the IRS is the arbiter of federal tax-exempt status, it is best positioned to determine the merit of organizations seeking tax-exempt status. To this end, each organization seeking to qualify for recognition would be able to provide EOIR with documents that have already been collected and prepared for the IRS, such as articles of incorporation; mission statement; IRS annual form 990, “Return of Organization Exempt from Income Tax;” and an organizational chart reflecting layers of governance and oversight. In particular, IRS Form 990 provides ample information about the program revenues and expenses and is vetted and scrutinized by the IRS. All of CLINIC’s affiliates have a duty to file Form 990. CLINIC believes that collection of these IRS documents for federal tax exempt status should be sufficient for recognition. In addition to the submission of the IRS Form 990 and in lieu of the fee schedule, CLINIC suggests providing the organization’s fee waiver policy in the application as well as letters of recommendation could also provide means for EOIR to determine eligibility for recognition.

CLINIC welcomes the shift away from the nominal fee requirement and hopes that EOIR will take into consideration CLINIC’s concerns about the substantial amount requirement. We believe that our alternative meets EOIR’s stated goal of ensuring that organizations are in fact charitable and serving low-income and indigent clients and may shift the adjudicatory focus back to examining the mission of the organization and the people it serves. Further, a reliance on the federal tax documentation leverages reporting requirements that are already in place for most organizations, lessening administrative costs to the organization and may make compliance easier. We would like the opportunity to further dialogue with EOIR on this issue as it is so vital to the recognition and accreditation process and we feel we can meaningfully contribute detailed feedback given the strength and diversity of our network.

E. Requirement to Provide Immigration Legal Services Primarily to Low-Income and Indigent Clients

CLINIC generally supports the proposed requirement that “an organization must demonstrate that its immigration legal services are directed primarily to low-income and indigent clients within the United States and that, if an organization charges fees, the organization has a written policy for “ensuring low-income individuals do not go un-served due to an inability to pay.” This policy encompasses pro-bono and sliding scale representation referrals. CLINIC strongly agrees that each organization should have flexibility to determine which clients are low-income and indigent and eligible for such services.

However, we have concerns about the proposed requirement that organizations establish guidelines for determining whether clients are “low-income and indigent.” As it has done in the past, CLINIC urges EOIR to shift focus from clients’ income level to instead focus on an organization’s non-profit status and mission. CLINIC has found that the clients’ income level can be extremely difficult to determine, particularly for individuals who are compensated for

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8 IRS Form 990 is available for public inspection for all charitable organizations required to file. It has several relevant sections that may be examined by adjudicators when reviewing the qualifications of an organization, such as the Statement of Program Service Accomplishments, which requires the organization to report on program achievements, expenses, grants and allocations to others. Program revenues and expenses are a direct line item that may be of interest to an adjudicator. A program that consistently achieves a substantial margin between program revenues and expenses may merit additional investigation by OLAP.

9 See CLINIC’s 2012 Comments.
work outside of traditional payroll systems or are members of mixed immigration status families or families with different income levels and shared household expenses. Since the proposed rule will require organizations to demonstrate that they are federally tax exempt, we believe that this threshold issue has been addressed by the IRS tax exempt requirement.

To this end and keeping in mind EOIR’s goal to ensure unscrupulous organizations do not seek recognition in order to profit, we note that non-profits organized for charitable purposes under the IRS code must not be organized or operated for the benefit of private interests. For example, in the case 501(c)(3) organizations, the net earnings may not inure to the benefit of any private shareholder or individual. If such organizations engage in an excess benefit transaction with a person having substantial influence over the organization or otherwise engage in activities that are not deemed consistent with their charitable mission, the organization will risk losing its tax exempt status and may face significant penalties by the IRS. An organization’s Form 990 should provide adequate information about the revenues of the organization.

F. Adequate Knowledge, Information and Experience Requirement

The rule proposes to maintain the requirement that recognized organizations and accredited representatives have at their disposal adequate knowledge, information and experience and adds the provision that the organization identify the proof necessary to satisfy the requirement in accordance with Matter of EAC, Inc., 24 I&N Dec. 556 (BIA 2008), and Matter of Lutheran Ministries of Florida, 20 I&N Dec. 185 (BIA 1990). CLINIC believes that the current guidelines for adequate knowledge, information, and experience are sufficient, are consistently implemented, and thus, do not need to be amended.

G. Authorized Officer

The proposed rule would require an organization to designate an authorized officer, who is empowered to act on its behalf for all matters related to recognition and accreditation. The president, secretary, executive director or other designated individual of the organization may serve as the authorized officer of the organization. CLINIC supports this development, as it is consistent with the requirements of a federally tax-exempt organization’s organizational structure. Further, we appreciate that EOIR has provided the organization flexibility in choosing its designated officer.

III. Proposed Changes to Accreditation Qualifications

A. Character and Fitness Requirement for Accreditation

1. Character and Fitness

EOIR proposes to replace the good moral character requirement with a “character and fitness” requirement for accreditation. The reason provided for the proposed change is that EOIR seeks to establish a more comprehensive examination of the individual’s suitability to represent clients, which would be similar to the standards and principles of fitness that state bars apply to applicants for admission. EOIR posits that this requirement would provide for a more extensive examination of the applicant’s “honesty, trustworthiness, diligence, professionalism, and reliability to execute his or her fiduciary duties and professional responsibilities.” Under the proposed rule, OLAP would have the opportunity to conduct such an examination by reviewing
several factors such as criminal background; prior acts involving dishonesty, fraud, deceit, or misrepresentation; and past history of neglecting professional, financial or legal obligations.

CLINIC objects to the replacement of good moral character with a new character and fitness requirement for accreditation and believes the existing good moral character standard should remain. Character and fitness is one of the requirements attorneys must prove to be licensed, but this requirement is not appropriate in the accredited representative context as accredited representatives are different from attorneys in several key ways below outlined.

- Attorneys have independence to practice and job portability; they may practice immigration law in any state and with any law firm or in solo practice, provided they comply with local bar requirements. In contrast, accredited representatives can only practice under the auspices of their recognized agency and their accreditation terminates when they leave the agency.
- Attorneys are independent agents who obtain bar admissions on an individual basis, while accredited representatives must be sponsored and supervised by a recognized agency.
- Licensed attorneys can choose to practice in any area of law, whereas accredited representatives are limited to immigration law.
- Attorneys testify to their own character and fitness when they are applying for admission to the bar, in contrast, for accredited representatives, it is the recognized agency that must request accreditation for the proposed representative and testify to the representative’s good moral character.

These factors delineate the differences between an attorney and an accredited representative, and highlight the intermediary role that the recognized agency plays in the accreditation process. Because a recognized agency is highly involved in the accreditation process, requiring more stringent character and fitness requirements will create additional administrative burdens for the recognized agency. Additionally, it could create potentially difficult privacy and human resources issues for agencies as they look to screen potential employees and volunteers for character and fitness issues.

CLINIC notes that the proposed rule suggests that an applicant may submit a “favorable background check” to support the character and fitness requirement for accreditation. CLINIC believes that the background check documentation should remain optional. EOIR should not require this documentation in the revised EOIR-31A or the Frequently Asked Questions, as this would be an added burden in the application documentation requirements. CLINIC thinks that the organization’s attestation and letters of recommendation are sufficient documentation for demonstrating good moral character.

In summary, CLINIC recommends EOIR continue to use the good moral character standard as set forth in 8 C.F.R. § 1292.2(d) as a means of evaluating an individual’s qualifications as an accredited representative. We believe the current practice sufficiently facilitates the review of applications for accreditation while also allowing investigation and further query if there is cause to review an individual’s background more closely. Finally, since the rules require the recognized organization to evaluate, train, supervise and attest to the accredited representative’s
qualifications, the organization will be best situated to vet such individuals and determine who they are willing to present before OLAP.

2. Immigration Status as a Factor for Fitness

EOIR seeks input on how current immigration status should be a factor in the fitness determination, specifically, “to what extent should the agency consider whether the individual has employment authorization, has been issued a notice of intent to revoke or terminate an immigration status (or other relief), such as asylum or withholding of removal or deportation, or is in pending deportation, exclusion, or removal proceedings”. EOIR presents two issues of concern with respect to considering this factor: (1) a perceived “inherent conflict” in having an immigrant represent an individual before the same agencies they may also have to appear before in their own case; and (2) the impact of a potential disruption in service to a client.

a. Inherent Conflict

CLINIC does not see an inherent conflict of interest in this exact issue and notes the underlying questions of ethics and professionalism that may already be addressed through the good moral character or general character and fitness standard of review. Immigrants possess cultural and linguistic skills that are invaluable in building trust with clients and may assist them in more efficiently processing cases. Their direct experience with agencies enhances their knowledge of the process and requirements, which may assist them in educating and instructing their clients. An immigrant’s unique insights on and ties to their local community and networks may aid in efficiently disseminating information about new immigration benefits (such as DACA) and in warning the community about the scams and fraudulent activity targeted toward immigrants. Many of the accredited representatives in CLINIC’s network are themselves immigrants who may be in the process of naturalizing or sponsoring relatives, but this does not impede their ability to effectively represent clients; in fact, it may make them even more effective, as it gives a shared perspective with their clients. These tremendous benefits overwhelmingly outweigh any probative value of singling out immigration status as a factor for evaluating applicants for accreditation.

CLINIC strongly believes that individuals who have employment authorization, even if they are in removal proceedings and DACA recipients should remain eligible for accreditation, and should be excluded from proving their character and fitness, for accreditation on the basis of immigration status alone. Allowing such individuals to serve as representatives would advance the goal of the proposed rule, which is to promote the "effective and efficient administration of justice" in immigration proceedings.

b. Potential Disruption

In addition, EOIR states that “an individual’s immigration status may affect whether immigration practitioners can continue their representation of clients throughout the pendency of their clients’ immigration matters.” This same concern could be raised in many other situations not related to

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10 However, we note that the same perceived conflict might exist for an accredited representative who was previously in removal proceedings, or who has a family member currently in removal proceedings, or in other, similar situations.
the representative’s immigration status, such as when a representative (including an attorney) leaves the organization to take a new job, leaves due to illness, or goes on maternity leave. In this sense, immigration status is no different than other circumstances affecting the ability of representatives to continue their representation. As such, we do not see immigration status as a valid reason to bar an individual in removal proceedings from obtaining accreditation, provided the individual has employment authorization.

B. Employee or Volunteer Supervision and Attestation Requirement

The proposed rule would explicitly require that a candidate for accreditation be subject to the direction and supervision of the organization as either its employee or its volunteer. In order to demonstrate that this requirement is satisfied, the organization and its proposed representative must sign Form EOIR-31A attesting to the employment or volunteer relationship CLINIC supports formalizing the supervision requirement and the attestation, which we understand would make Form EOIR-31A a requirement in all applications (new and renewal) for accreditation under the Final Rule.

Volunteers are a vital part of many non-profit immigration legal service organizations. A recent survey of CLINIC affiliated program offices indicates that our affiliates have an average of 4.2 full-time and 1.8 part-time employees. Immigration legal services program volunteers are critical to ensuing access as they bring diverse skills and talents, cultural awareness, linguistic capabilities that may be unattainable through the labor market. Volunteers augment programs when there are cyclical or other volume surges, such as Temporary Protected Status. CLINIC strongly believes in encouraging volunteer participation and appreciates that EOIR also recognizes the enormous importance and value of volunteer, accredited representatives. As a final note, CLINIC believes that organizations are in the best position to develop and resource their programs, based upon their responsibility to the clients they serve and the community’s needs. We strongly encourage EOIR to continue to allow organizations the flexibility they need to build their programs in the best way possible to meet the needs of their community.

C. Broad Knowledge and Adequate Experience Requirement

The proposed rule would require an organization to show that a proposed representative possesses “broad knowledge and adequate experience in immigration law and procedure” and that a proposed representative for whom the organization seeks full accreditation has “skills essential for effective litigation.”

For nearly thirty years, CLINIC has helped prepare charitable immigration programs to expand service delivery and strengthen the necessary infrastructure to provide professional, competent, and efficient legal services.11 As such, CLINIC welcomes EOIR’s efforts to ensure that

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11 CLINIC’s Center for Citizenship and Immigrant Communities strengthens the immigrant rights community by preparing charitable immigration programs to expand their service-delivery capacity and establishing a coordinated service-delivery and legal support architecture. CLINIC meets the growing needs of new and existing charitable legal programs for low-income immigrants by training and advising local programs on good management practices through the Immigration Management Project. Annually, CLINIC trains more than 7,500 legal professionals on a variety of immigration law topics.
accredited representatives maintain sufficient knowledge of immigration law and procedure. CLINIC believes that maintaining accurate knowledge of immigration law and procedure is essential for competent and ethical practice. Additionally, requiring continued training ensures that representatives are up-to-date on quickly-changing immigration law and policy.

CLINIC believes that EOIR’s current adjudication of the broad knowledge and adequate experience requirement is meaningful and sufficient. CLINIC does not believe that EOIR should mandate a rigid curriculum but education efforts should be substantial in adding to the knowledge base of the representative. The training received should demonstrate a representative’s acquisition of broad knowledge in immigration law and specific knowledge in areas related to his or her organization’s caseload. CLINIC appreciates that the proposed rule does not require a number of formal training hours, specific courses, or testing. CLINIC’s updated opinion on keeping broad knowledge and adequate experience requirements flexible reflects the growing number of online and innovative media education tools that have emerged in the area of immigration law since 2012. The widespread availability of immigration law apps, podcasts, and e-learning courses have broadened educational access and made learning opportunities much more available and diverse.

In an effort to be mindful of cost and administrative burdens facing immigration service organizations, EOIR should minimize restrictions on when, where, and in what format training is received within the three year period. Finally, EOIR should share its Professional Conduct for Practitioners – Rules and Procedures widely – both in its initial letters to representatives informing them of their accreditation, and in regular communications. The agency should also consider conducting an annual webinar on the rules of professional conduct.

D. Accreditation limited to non-attorneys and individuals who have not been convicted of a serious crime and are not subject to an order restricting their practice of law

The proposed rule would restrict accreditation to non-attorneys who have not been convicted of a serious crime and are not subject to an order restricting their practice of law. CLINIC supports this proposal as an important initiative to prevent individuals who have been subject to disbarment, suspension, or other restrictive court orders under local laws from reentering the practice of immigration law under the auspices of accreditation. We believe this is an important protection in furtherance of the goal to protect the public from fraud and abuse by unscrupulous organizations and individuals.

The proposed rule also bars attorneys licensed in the United States from accreditation because accreditation is not necessary for attorneys to represent clients before EOIR or DHS, and thus granting them accreditation would serve no meaningful purpose. CLINIC supports this proposed rule.

IV. Applying for Recognition and Accreditation

A. Permitting an Organization to Extend Recognition & Accreditation by Location
EOIR seeks input on “the proposed provision permitting an organization to extend its recognition and the accreditation of its representatives to any office or location where it offers immigration legal services.” CLINIC fully supports this provision. The ability to extend recognition to additional office locations without a separate, lengthy application process would be helpful to our affiliates, and is in line with the goal of increasing the capacity of quality immigration services.

B. Proposed Service on United States Citizenship and Immigration Services (USCIS)

The proposed rule at §1292.13(a) requires service on the USCIS district offices in the jurisdictions where the organization and its representatives offer or intend to offer services. We urge EOIR to institute a formal process of training and communicating with USCIS offices so that USCIS staff members can better understand their role in the recognition and accreditation process. A joint effort by EOIR and USCIS to work through the new proposed service requirements will help troubleshoot potential issues and ensure fewer problems with service process.

C. OLAP Requesting More Information Prior to Issuing A Determination

The proposed rule also states, “in order to minimize adverse determinations, OLAP may request additional information from an organization prior to issuing a determination on a request for recognition or accreditation.” CLINIC appreciates the government’s intention to eliminate adverse determinations. However, we note concern that this effort could increase the time needed to process recognition and accreditation applications. Given the large caseload of application and a learning curve for new adjudicators, CLINIC urges OLAP to institute good oversight and quality control measures to minimize discrepancies in how applications are treated. We also urge robust education and training mechanisms to ensure adjudicators are well informed and that applications are being processed uniformly.

V. Validity Period, Renewal of Recognition and Accreditation

A. Validity Period for Recognition

Under the current recognition and accreditation regulations, recognized organizations are recognized indefinitely, unless their recognition is withdrawn. Under the proposed rule, recognition would be valid for a period of three years, unless the organization has been granted conditional recognition, which is valid only for two years, or the organization has its recognition administratively terminated or is disciplined prior to the conclusion of the recognition period.

The stated rationale for this proposed change is to enhance the oversight of the program and to ensure adequate monitoring for potential fraud and unauthorized practice. CLINIC appreciates the purpose of the proposed change but believes that these goals may still be achieved through a longer term for accredited organizations. Thus, while we generally agree with a limited term for recognition, we oppose the proposed three-year term for organizations that are not subject to conditional recognition. Given the time and resources it takes for many of our affiliates, often with CLINIC’s assistance, to prepare and submit an application, the three-year term and renewal requirement would be unduly burdensome for organizations.
Additionally, the three-year renewal requirement may, potentially, create a very large number of applications for OLAP to timely process and this may create administrative burden and delay. An example that illustrates this from our network is Catholic Charities of East Tennessee. Catholic Charities of East Tennessee has three recognized locations several hours apart with four accredited staff. Under the proposed change, it would require Catholic Charities of East Tennessee to submit seven applications simultaneously every three years. Noting below the actual time involved in finalizing such applications the proposed simultaneous process would create an intense workload, distracting staff from core services.

EOIR estimates the amount of time needed to “review the form, gather necessary materials, complete the form, and assemble the attachments.” EOIR estimates it would take two hours for an initial recognition application. In our extensive experience working to assist and troubleshoot with our affiliates it takes much longer to prepare a recognition application. We find that as the documentation requirements are substantial, staff members often have questions about the application requirements itself and frequently need to discuss the materials, such as the budget, with other staff. We also see in our work assisting our network in this process that gathering letters of support and revising resumes also take time. Under the current regulations, CLINIC estimates that, based on our network affiliates, 10 hours is a consistent estimate of the time needed to prepare one recognition application. With the additional requirements included in the proposed regulations, we expect the time needed to prepare a recognition application to significantly increase. For this reason, we believe that undertaking the renewal process every 2.5 years to meet the three-year deadline, while simultaneously preparing (1) any additional applications for accredited representatives and/or (2) applications for the transfer of accreditation from partial to full, could be overwhelming for an organization, and as a result, could undermine the organization’s ability to provide services to those in need. We recommend a longer validity period of recognition for the organization. The proposed rule could have a potential chilling impact on organizations that wish to support an application for accreditation, but are also nearing or in their last year of a three-year recognition term. We believe that the proposed structure would have the unintended consequence of organizations postponing applications to add accredited representatives who may receive less than a year of accreditation.

B. Validity Period for Accreditation

Under the proposed rule, the accreditation period would run concurrently with the organization’s recognition period, for a maximum period of three years. CLINIC supports a three-year term for accreditation. To this end, we support an expedited process by which an already accredited representative, who is in good standing, may be added to or move to another recognized organization with minimal application requirements. The example below further illustrates our concern.

**Example:** Sister Mary is an accredited representative with a Catholic Charities A, a recognized organization located in State 1 a tri-state area. There is a large population of individuals who become eligible for a new immigration benefit and the demand for services increases in State 2. Catholic Charities B, which is also a recognized organization located in State 2 would like her to work there two days a week to help meet the demand for services. Catholic Charities A and B are not related organizations but they served by the same USCIS District Office. Under the current and proposed rules, Sister Mary would need to apply and wait for the approval of her
accreditation through Catholic Charities B before providing services to clients for that organization.

We recommend a change to this process that would permit the accredited representative to commence providing services within minimal delay. We believe that such a proposal would be consistent with the stated goals of increasing the rates of legal representation as well as consistent with the Paperwork Reduction Act.

C. CLINIC’s Proposed Alternative to Concurrent Validity

The rule proposes that the accreditation period of a representative would run concurrently with the organization’s recognition period or, if approved separately from the organization’s recognition, the representative’s accreditation would expire on the same date the organization’s period of recognition ends.

CLINIC suggests decoupling the proposed recognition and accreditation terms. As indicated above CLINIC supports the proposed three year accreditation term but we recommend a nine-year validity period for recognition of organizations. Nine years provides the appropriate level of oversight, while not creating tremendous administrative burdens on organizations that already have to prepare annual IRS and other financial reporting requirements as well as continuously engage in funding proposals and reports. CLINIC proposes that the nine year term would follow the first renewal of recognition in the 2 to 3 year period after the new rules take effect. This timeframe represents a needed shift away from indefinite recognition of organizations, but also provides time for organizations to apply and grow their immigration service programs and increase capacity for quality services nationally. Utilizing a nine year term for an organization’s recognition term provides a new organization with three accreditation validity cycles (using the proposed three-year time frame for accreditation) before it must renew its recognition. This framework reflects the reality that programs change at a slower pace than employees and allows for more oversight than previously in place, without administratively overburdening the organization.

D. Renewal of Recognition and Accreditation

1. Renewal Requirement Generally

The proposed rule at §1292.16(b) provides that requests for renewal of recognition should occur every three years, or two years after a grant of conditional recognition. As stated above, CLINIC recommends a longer, nine-year validity period for recognized organizations. Under the proposed rule, a condition of renewing recognition is that the organization have at least one representative simultaneously approved for accreditation. Thus, an organization applying for renewal must: (1) renew accreditation of at least one current representative; (2) request accreditation for a new proposed representative; or (3) both. We see this as a documentation burden.

2. Agency Recognition Renewal

For agency recognition, CLINIC believes the renewal process should be simpler than an initial application process, and the renewal should not require the same amount of documentation as an application because the agency has previously received recognition. It appears in the proposed
rule that a renewal application would only require completion of the EOIR-31 and submission of fee schedules, annual reports, and any unreported changes affecting eligibility. With the exception of fee schedules as explained above under “substantial amount”, CLINIC feels that these requirements are reasonable. We urge EOIR to not increase the documentation requirements when it finalizes the regulations. Additionally, we support the presumption that organizations seeking renewal of their status remain eligible to provide immigration legal services during the pendency of a renewal request. CLINIC believes that this is vital in continuing to build and maintain capacity for immigration services.

3. Proposed Annual Report Documentation Requirements

CLINC’s concerns regarding the proposed renewal process are mainly related to the documentary requirements. For renewal, the proposed rule states, “an organization should also show, through its annual reports, the types and numbers of immigration applications and cases handled by the accredited representative during the accreditation period.” We note that it is information would not be reported on through a traditional annual report, which is typically geared toward board of directors and funders. Most annual reports would not contain this level of detail (information may be aggregated for all staff or absent all together), and some organizations deliberately choose not to include it especially if they exist in a predominately anti-immigrant community and wish to not display their immigration legal services in a highly visible and enduring document. Additionally, we point out that such a requirement could be difficult for a small organization that does not issue extensive annual reports to collect such data.

EOIR has asserted that “the new documentary requirements should not be unduly burdensome because organizations likely already prepare the required documents in the normal course of their operations.” CLINIC supports this effort EOIR’s but notes that certain data contemplated by the annual report in EOIR’s proposed rule is not required under the normal course of non-profit operations. There are many variations in how an immigration services program is featured in an annual report and it frequently may not be featured at all. Given these factors, CLINIC feels that this type of information and documentation requests could overwhelm agencies and take away from the provision of legal services.

The proposed regulations request even more details in the annual report: “An annual report compiled by the organization regarding, for each accredited representative, the types and numbers of immigration cases and applications for which it provided immigration legal services, the nature of the services provided, the number of clients to which it provided services at no cost, the amount of fees, donations, and membership dues, if any, charged or requested of immigration clients, and the offices or locations where the immigration legal services were provided” (§ 1292.14(b)(2)). Most of these details are rarely found in an annual report. Additionally CLINIC does not support providing specific details on “the number of clients to which it provided services at no cost” and “the amount of fees, donations, and membership dues, if any, charged or requested of immigration clients.” This information should be removed from the regulation, as the organization renewing its recognition already attests to its ongoing, charitable function in the EOIR-31 and provides its fee schedule as evidence.

We note that not all service models are identical. Some accredited representatives are specialized in the types of cases they work on; some take on only a few complex cases rather
than a larger number of more straightforward cases; and some take on fewer cases because their time is split between immigration and another program. For example, some organizations may focus their efforts on naturalization using the workshop model only while another may serve only survivors of domestic violence and sexual assault with VAWA, T and U visas or occasionally asylum. While certain refugee resettlement programs are recognized in order to assist formerly resettled clients with I-730s, I-485s, I-90s, N-400s and the occasional Temporary Protected Status application. Due to such service variables, it is difficult to make comparisons.

For these reasons, CLINIC recommends that EOIR enumerate other ways to provide the required information. We suggest that an organization might include types of cases or specific applications the applicant is skilled in, absent number of applications, on their resume or in the application cover letter rather than in a public document if the data is meaningful for the adjudication and can be ascertained with good judgment.

E. Change in Accreditation and Proposed Timeframes

The proposed rule permits a recognized organization to request, at any time during the validity period of accreditation or at renewal, that a representative’s status be changed from partial to full accreditation. CLINIC supports this provision, as it allows such requests to be made ostensibly at any time. Further, in the event that there is a denial of full accreditation, the partial accreditation may be renewed.

Based upon roster numbers and the proposed timeframes for currently recognized organizations to seek renewal under the proposed rule, CLINIC contemplates a high volume of applications and workload in OLAP’s first three to four years processing recognition and accreditation applications. With the mission of building capacity in mind, CLINIC recommends that OLAP consider establishing a target timeframe for processing such requests. Establishing a target timeframe and publishing such information to interested stakeholders will help organizations plan renewals. CLINIC also proposes that OLAP work to update such a target timeframe as processing times improve or are delayed as a means to allow organizations to better gauge their own organizational requirements.

F. Organizations and Representatives Recognized and Accredited Prior to the Effective Date of the Final Rule

The proposed rule for addressing organizations and representatives recognized and accredited prior to the effective date of the final rule states: “Organizations submitting a request for accreditation of a new representative or a request for extension of recognition and accreditation to an additional office or location would be required to renew recognition and accreditation of all representatives at that time.” CLINIC believes that this will have a chilling effect on applications to expand services. CLINIC is concerned that in response to the proposed rule, many service organizations will choose to wait an additional two or three years, (when they are required to renew recognition), and simply add new accredited staff or recognized offices at that time, in an effort to avoid paperwork for as long as possible. This practice would be contrary to expanding representation capacity, the stated purpose of the proposed rule. CLINIC suggests that EOIR could, when approving new applications, apply the two or three year rule and give the new accredited representative or recognized office the same expiration date as the agency. This
method will ensure that the new representative or office will be on a synchronized renewal cycle, with the organization still able to can renew its recognition later instead of sooner. In keeping with this recommendation, we recommend deleting part (ii) in the regulations at § 1292.16(h)(2). We have provided an example below to illustrate this recommendation.

**Example:** The final rule takes effect on January 1, 2016. Organization X has been recognized for less than 10 years, so it is required to renew its recognition in three years, by January 1, 2019. In June 2016, Organization X applies for accreditation of an additional staff person. EOIR approves the accreditation with an expiration date of January 1, 2019 (the same as the agency’s expiration date). The organization is able to add a new and much needed accredited representative, but can wait until January 1, 2019 to apply for renewal of recognition and accreditation for all of its office locations and representatives.

Based on CLINIC’s observations of the BIA Roster of Recognized Organizations and Accredited Representatives, the Board grants recognition and accreditation to approximately 25-75 programs annually. The number of agencies seeking and receiving recognition and accreditation has increased in the last few years and it is likely the agency adjudicating these requests would see 75-125 successful applications for initial recognition and accreditation in the coming years due to administrative relief or comprehensive immigration reform. While CLINIC is excited to see an increase in recognition and accreditation, we note from our extensive work on this issue that the unprecedented increase in applications has taxed the BIA’s capacity.

With the recent increases in mind, CLINIC is concerned that under the proposed rule, the adjudicatory body would still likely have the workload mentioned above and would be receive approximately 300 renewal applications per year. That amounts to an increase of roughly 300 percent. We also note that the proposed criteria and processes would require more adjudicatory time to evaluate all applications. We have thoughtfully developed many of our suggestions above from the perspective of our affiliates and new organizations that may seeks status, but also with this projected volume in mind. We hope that our suggestions, like eliminating the one-year renewal requirement for organizations without an accredited representative and increasing the proposed term of a recognized organization to nine years would create a scenario where the volume of applications is more manageable.

**VI. Conditional Recognition**

EOIR seeks input on conditional recognition. The proposed rule provides for conditional recognition of organizations that have not been previously recognized or that are recognized anew after having lost recognition. CLINIC supports conditional recognition for organizations that have lost recognition due to an administrative termination or disciplinary sanctions. This is an appropriate measure to monitor such organizations to ensure that they have addressed issues of concern.

CLINIC opposes conditional recognition for organizations that have not been previously recognized, unless the organization does not yet have its federal tax exempt status. EOIR states that conditional recognition for a new organization “should provide sufficient time for new organizations to submit relevant tax documents, develop their client base, and establish a track
record of offering immigration legal services to the community.” However, in our experience, many organizations applying for recognition are not new; they are well-established. Instead, we see that it is only the immigration legal program that is new. The organization already has an existing client base (for social services or refugee resettlement), a track record in the community, and tax exempt status. In some first-time recognition cases, the organization has an immigration attorney on staff to supervise the proposed representative. Accordingly, in this instance, there is no need for a two year period of conditional recognition. In these cases and in general, it would be less burdensome and less confusing to grant first-time recognition for nine years. We believe that conditional recognition is warranted, however, in cases where the organization has not yet obtained federal tax exempt status, or when an organization was subject to administrative termination or disciplinary sanctions.

VII. Reporting, Recordkeeping, and Posting Requirements

CLINIC sees EOIR wishing to increase its monitoring and oversight of recognized organizations. However, organizations that will have presented a successful new or renewal application to OLAP have already undertaken substantial effort to prepare the application and to meet eligibility requirements. Further, as tax exempt and, many times, grant-funded organizations, the organization’s reporting and recordkeeping requirements are significant. As organizational budgets and revenues increase, the requirements exponentially increase. Organizations that reach certain revenue thresholds are required to undergo independent financial audits. Regardless of revenues, some organizations are required to undergo significant audits by their funders. These requirements reach a tipping point when organizations are required to fundraise in order to support the administrative burdens they face and, in many times, such requirements can stymie growth.

CLINIC encourages EOIR to consider the many external reporting requirements that organizations, particularly those receiving multiple sources of outside funding and have the corresponding financial restrictions, face, as it evaluates whether the proposed requirements under this section meet the stated objectives of the program. CLINIC respectfully suggests a shift in the presumption that all organizations should be subjected to the requirements proposed. Rather, we recommend a presumption that organizations that have proven that they are in compliance with their federal tax exempt status should not undergo additional scrutiny without cause. Further, while we do not recommend that EOIR make it a requirement of organizations, EOIR may think to consider independent established rankings and standards such as BBB as additional evidence when evaluating organizations.

A. Duty to report changes

Under the proposed rule at §1292.12(a), a recognized organization has a duty to promptly notify the OLAP Director in writing of changes in the organization’s contact information, changes to any material information the organization provided on EOIR-31, Form EOIR-31A or the supporting documents. CLINIC generally supports the proposition of a duty to report substantial changes. However, reviewing the list of items that may trigger the in-writing reporting requirement, we note the reporting requirement could be burdensome. We understand through communications during stakeholder events that OLAP envisions permitting such a report to be sent via email. CLINIC welcomes this idea. Further, we also understand that OLAP is in the
process of developing a secure, electronic portal to facilitate reporting. We support this development and with that in mind, encourage EOIR to make the reporting requirement simple and easy for organizations to comply.

B. Recordkeeping requirements

Under the proposed rule at §1292.12(a), a recognized organization must compile each of the following records in a timely manner and retain them for a period of six years from the date the record is created, as long as the organization remains recognized: fee schedule and annual report. CLINIC is not opposed to the requirement that an organization develop and maintain a fee schedule. However, we are opposed to organizations having to provide the fee schedule as a pro forma requirement for renewal.

The proposed rule states that the fee schedules and annual reports submitted with the application to renew recognition will be used to “evaluate the effectiveness of the recognition and accreditation program in providing immigration legal services to primarily low-income and indigent persons.” CLINIC understands that OLAP’s role is to determine if the organizations applying for recognition meet the requirements for offering quality, low-cost services to low-income and indigent persons. We recommend deleting this statement and believe this may be accomplished by many of the other sound provisions in this proposed rule.

C. Posting requirements

The proposed rule seeks “to promote accountability from recognized organizations and serve as deterrents against fraud and abuse by individuals seeking to exploit the recognition and accreditation process.” CLINIC supports these very important goals. Posting notices supplied by OLAP could improve consumer knowledge about authorized practice within the sector. Additionally CLINIC believes that EOIR and other federal departments can meaningfully contribute in preventing fraud in recognition and accreditation in other ways beyond public education as well.

VIII. Administrative Termination of Recognition and Accreditation

A. General

The rule proposes to replace the current withdrawal-of-recognition process with an administrative termination process. The stated objective for this change is to “provide a clear and more effective mechanism for OLAP to regulate the R&A roster for administrative, non-disciplinary reason.” CLINIC acknowledges that the current withdrawal-of-recognition process is rarely used and is an inefficient means for DHS to remove a recognized organization from the roster for administrative reasons.

CLINIC recommends changing the following language at §1292.17(a) from “Prior to issuing a determination to administratively terminate recognition or accreditation, the OLAP Director may request information from the organization, representative, USCIS or EOIR” to “Prior to issuing a determination to administratively terminate recognition or accreditation, the OLAP Director shall request information from the organization, representative, USCIS or EOIR.” This would
require the Director to communicate with the organization and representative and, as necessary, conduct an investigation into the issues leading to the proposed termination.

**B. Bases for administrative termination of recognition**

At §1292.17(b), the proposed rule provides several bases for termination of recognition, including by the request of the organization, failure to timely file a renewal request, termination of all of the organization’s accredited representatives, failure to comply with the report, recordkeeping and posting requirements, and failure to maintain eligibility under §1292.14.

Per §1292.17(b)(1) of the proposed rule, OLAP may administratively terminate for failure to timely file a request to renew recognition or to renew accreditation of a representative or to obtain initial accreditation for a proposed representative. CLINIC is not opposed to this change, noting that the proposed rule permits OLAP to grant additional time for an organization to renew its recognition or to accept late-filed renewal requests from organizations. We believe this allows an appropriate amount of protection for organizations that may be undergoing transition and may require additional time to submit renewal requests.

Noting CLINIC’s comments to the recordkeeping and reporting requirements above, CLINIC is not opposed to §1292.17(b)(5), the section that would allow OLAP to administratively terminate an organization’s recognition for failure to comply with reporting, recordkeeping, and posting requirements because the provision requires OLAP to notify the organization of the deficiencies and providing the organization with an opportunity to respond. Our hope is that OLAP would be generous in the time allotment for organizations that are making a good faith effort to comply but require additional time to gain any necessary clarity on the requirements and to respond.

**C. Bases for administrative termination of accreditation**

Per §1292.17(c) of the proposed rule, OLAP would be allowed to terminate an individual’s accreditation if that individual’s organization has its recognition terminated. CLINIC has concerns about the impact of automatic terminations that may leave represented individuals with active cases unrepresented or in dire circumstances. CLINIC proposes a limited-time portability provision that may allow an accredited representative to find a different recognized organization to transfer to in order to extend representation of open cases.

**D. Effect of administrative termination of recognition**

Under the proposed rule at §1292.17(d), the OLAP Director’s determination to terminate recognition is final as of the date of service of the administrative termination notice. The proposed rule indicates that an organization whose recognition is terminated may submit a new request for recognition at any time after its termination unless otherwise prohibited. CLINIC believes that conditional recognition as EOIR proposes for other purposes might be appropriate for organizations seeking recognition again after being administratively terminated.
E. Effect of administrative termination of accreditation

Under the proposed rule at §1292.17(e), the OLAP Director’s determination to terminate accreditation is final as of the date of service of the administrative termination notice. Since the proposed rule requires an organization to have at least one accredited representative, the termination of an organization’s only accredited representative may also result in the termination of the organizations recognition. CLINIC is not opposed to this provision in full, but strongly recommends EOIR allow the organization with sufficient time to replace the staff member. Automatic administrative termination of recognition that results from the administrative termination of a single accredited representative would be unfair and unduly burdensome on the organization and inefficient for OLAP to manage. Rather than automatic termination of recognition, CLINIC recommends placing the organization in inactive status.

IX. Administrative Review or Appeal

In its request for public comments, EOIR notes “the absence, under the current R&A regulations, of any opportunity for administrative review or appeal of adverse OLAP determinations” and seeks input on whether it would “be appropriate to provide some opportunity for administrative review of adverse OLAP determinations, and if so, to what extent and in what contexts.” We support EOIR’s creation of an appeal process for denied R&A applications. Currently, those whose applications are denied must re-apply and wait another 3-4 months (on average) for a new decision to be made. In our experience, the BIA had occasionally overlooked application information and denied applications that should have be approved; an appeal process would allow applicants in these cases to have a prompt review and more quickly gain R&A instead of having to start the process over. In cases where an application is denied, the applicant should have 45 days to submit an appeal with additional information to overcome the reasons for the denial.

X. Sanctioning Recognized Organizations and Accredited Representatives

In addition to the proposed administrative termination of recognition and accreditation procedures, EOIR proposes to extend sanctions to recognized organizations that commit misconduct or act against the public interest. EOIR proposes extending sanctions to recognized organizations, which CLINIC generally supports. EOIR also proposes two changes to the current grounds for discipline that are applicable to accredited representatives. CLINIC supports the new grounds for discipline and process for the interim suspension of certain accredited representatives in disciplinary proceedings. We note that there are fellowship and other programs that, through funding and other structures, embed staff in related or partner organizations. In such instances, a practitioner may be employed by one organization while providing services at a separate organization. These innovative service delivery models should be contemplated when considering grounds for sanctioning an accredited representative under §1003.102(f)(2)(ii).
In conclusion, CLINIC appreciates EOIR’s efforts to improve the regulation and implementation of recognition and accreditation. The subject is of great importance to CLINIC due to its mission and its role as the largest network of recognized organizations employing accredited representatives. We welcome continued CLINIC looks forward to continued dialogue on the proposals as they progress to becoming final.

Sincerely,

Jeanne M. Atkinson, Esq.
Executive Director