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November 29, 2021

Melody Braswell  
Department Clearance Officer  
United States Department of Justice  
Justice Management Division  
Policy and Planning Staff  
Two Constitution Square  
145 N Street NE, 3E.405B  
Washington, DC 20530

*Via email to [pao.eoir@usdoj.gov](mailto:pao.eoir@usdoj.gov)*

**RE: OMB No. 1125-0016  
Agency Information Collection Activities; Unfair Immigration-Related  
Employment Practices Complaint Form**

Dear Ms. Braswell:

Texas RioGrande Legal Aid, Inc. (TRLA) writes in response to the notice from the Department of Justice (DOJ) soliciting comments and suggestions regarding Form EOIR-58, the Unfair Immigration-Related Employment Practices Complaint Form. *See* 86 Fed. Reg. 53679 (Sept. 28, 2021).

For more than 50 years TRLA has provided free legal services to the indigent, including a substantial practice representing low-wage workers, from more than a dozen offices in a 68-county region of south and west Texas. TRLA also provides free employment-related legal services to Texas-based agricultural workers who work across the country and, through its Southern Migrant Legal Services office in Nashville, Tennessee, to agricultural workers who labor in Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee. TRLA routinely represents low-wage workers in cases involving workplace discrimination, including clients who are presenting claims before the Office of the Chief Administrative Hearing Officer (OCAHO).

Form EOIR-58 presents a substantial burden to low-wage workers hoping to present claims of discrimination before OCAHO, and an enormous investment of time and resources for organizations, including TRLA, that represent those workers. We therefore hope that DOJ and the Office of Management and Budget will take this opportunity to either abolish or, at a minimum, substantially revise the form in the manner discussed below.

As an initial matter, we were unable to obtain a copy of the proposed revisions to Form EOIR-58. No copy of the revised form was posted on [reginfo.gov](http://reginfo.gov). The hyperlinks for this information

collection at the Office of Information and Regulatory Affairs website mistakenly redirect to an ICR regarding the requirement that movie theaters provide notice as to the availability of closed movie captioning and audio description. Furthermore, though we were called back after the third voicemail left at the number posted in the Federal Register notice, we never received the emailed copy of the form that we were told would be forthcoming. Because we could not access the proposed form, our ability to provide meaningful comments has been impeded. We have addressed our comments to the current version of Form EOIR-58. If, however, there are significant changes to the form, we request that the new form be posted on [www.reginfo.gov](http://www.reginfo.gov) and that the commenting period be reopened to allow for a meaningful opportunity to comment.

**1. DOJ wildly underestimates the burden of completing Form EOIR-58 with its stated average of 30 minutes per response.**

As will be discussed in more detail below, everything about Form EOIR-58 is time consuming, detailed, and difficult. DOJ's estimate, which it fails to support with any evidence, that it will take an average of thirty minutes to complete the form is impossibly low. Just the process of making five copies, signing each one, and mailing them could reasonably take more than thirty minutes; the form itself generally takes *hours*.

Form EOIR-58 is 14 pages of landmines. Many questions require the worker to take a position on complex legal issues, like the reason they were threatened or whether they were asked for more documents than are required by e-Verify. The form repeatedly requires specific information that an average person needs to look up (like the date they became eligible for naturalization or their employer's street address). Seven boxes ask for narratives about, for example, the nature of the work and the reasons for the adverse employment action.

We begin our comment with this point to emphasize the need for Form EOIR-58 to be substantially revised—or, as is discussed below, abolished. DOJ should carefully consider the added value of requiring hours of effort from workers filing complaints and take steps to abolish or, at a minimum, cut back this unnecessarily time-consuming form.

**2. Form EOIR-58 should be abolished.**

For workers who are represented by counsel, Form EOIR-58 is useless, simply duplicating what the attorneys already presented to the agency in their IER charge forms and in a potential OCAHO complaint. Meanwhile, for nonlawyers, Form EOIR-58 is a maze of traps and pitfalls, requiring legal conclusions (e.g., whether they exercised their rights under 8 U.S.C. § 1324b) and detailed descriptions of all relevant evidence. To our knowledge, it is also not available in any language other than English. We therefore recommend that Form EOIR-58 be abolished. Injured parties should instead submit a copy of their IER charge form, a copy of their right-to-sue letter, and a simple statement that they wish to file a complaint with OCAHO. After filing that statement, complainants should be presented with the options of (a) if represented by counsel, filing an original OCAHO complaint; (b) completing a much-simplified version of Form EOIR-58 that merely asks for information that has changed since the time the IER charge form was filed; or (c) for those with limited literacy or English proficiency, proceeding via interview with OCAHO staff.

Form EOIR-58 is, in effect, a fourteen-page civil cover sheet that veers dangerously into the substance of the matter. The heart of the claim is well and simply presented by the IER charge form. To the extent the worker was unable to express themselves fully in that form, they should be provided with a simple and straightforward option to supplement the charge form.

Meanwhile, the simple fact that these forms allege immigration-related discrimination raises a substantial possibility that the filer will not be a native English speaker. OCAHO should therefore take steps to make its processes accessible for workers who are not proficient in English and those with low literacy levels.

### **3. A process should be created to allow for electronic submission of Form EOIR-58.**

There is no reason, in 2021, that complainants should be required to mail in (several) hard copies of Form EOIR-58. We therefore suggest OCAHO create an option to submit Form EOIR-58 electronically, for example, to a designated email address.

Electronic submission of legal documents has been the norm for decades. Federal and most state courts have long since moved to electronic filing systems; so have many other federal agencies. For example, the EEOC allows workers to file charges through its public portal. OSHA accepts complaints that are submitted through their online form or via email. IER itself allows the initial charge form to be submitted electronically. OCAHO should join these agencies in the modern era and create a process to submit complaint forms electronically.

Electronic submission will be easier for both OCAHO and complainants. OCAHO could simply create and publish a dedicated email address that receives complaints; complainants would then have the option to email their documents or submit via regular mail as they prefer. Electronic submission of documents is cheaper, faster, and, in many cases, more reliable than regular mail. And to the extent emailed documents are not properly or promptly received, it will be far easier and quicker for OCAHO and a potential complainant to communicate about those errors via email than via mail.

As we discuss further below, we also recommend that OCAHO abolish the requirement to provide five copies of Form EOIR-58 with original signatures. However, to the extent the refusal to allow for electronic submission is animated by a desire to receive original documents, OCAHO can simply communicate with complainants *after* they file Form EOIR-58 and request that particular original documents that are required be mailed in.

Finally, and perhaps most importantly, providing an option to submit Form EOIR-58 will help complainants comply with the 90-day statute of limitations in 8 U.S.C. § 1324b(d)(2). Mailing documents leads to inevitable delays, and the options to minimize those delays (such as sending documents via FedEx or other express mail service) may present a burdensome expense, especially for low-wage workers. Given DOJ's commitment to helping people access justice, the agency should take every reasonable step to abolish requirements that may easily serve to bar the ability to have a complaint heard.

**4. The requirement to provide five copies of Form EOIR-58 with original signatures should be abolished.**

At present, complainants must file five copies of Form EOIR-58, each with an original signature. This requirement is absurd and anachronistic. It presents substantial obstacles to filing OCAHO complaints with relatively minimal benefits to the agency. DOJ has photocopiers and scanners, so it should require only a single copy of Form EOIR-58, either unsigned or with a digital signature or signature from a representative.

For example, in one TRLA case filed before OCAHO, our office represented a group of five workers who lived in two different countries. Our office spent *hundreds* of dollars FedExing forms to and from the clients for signatures. The complete packet, with all those copies, was 135 pages long.

We strongly urge OCAHO to adopt the simpler and more environmentally friendly approach of scanning documents upon arrival in the agency and emailing them to the involved staff members. To the extent physical copies are needed, OCAHO staff can make those copies themselves, rather than shifting the burden to members of the public whose resources may be extremely limited.

As to the signature requirement, it can be abolished entirely. To the extent OCAHO requires a signature, it should allow for electronic signatures and for representatives to sign on behalf of their clients. Electronic signatures are now the norm on everything from court filings to business contracts. Electronic signatures are as legally binding as original, ink signatures, *see, e.g.*, 15 U.S.C. § 7001(a), and contain their own security measures.

**5. All sections of Form EOIR-58 that duplicate the original IER complaint should be removed.**

Individuals submitting Form EOIR-58 must include copies of the charge document that was originally filed with IER. All questions on Form EOIR-58 that duplicate the IER charge form should therefore be removed.

There is no benefit to either the DOJ or the complainant in answering the same question twice. For example, the “Employer Information” on page six of Form EOIR-58 duplicates the first page of the IER charge form. Almost all of the information about citizenship and immigration status on pages four and five of Form EOIR-58 duplicates the third page of the IER charge form.

**6. Section 1, Question 1: A third option should be added to the question regarding gender.**

Form EOIR-58 begins by requiring applicants to check a box marked “Male” or “Female.” This presents a problem for transgender and nonbinary workers, who may feel pressure to check a box that does not match their gender identity or be unwilling to attest to their gender under penalty of perjury. A third option should be added, marked “Other” or “Other/Prefer Not to Say.”

**7. Section 3b: Questions about current immigration status should be abolished.**

OCAHO does not need current immigration-related information to decide whether there was immigration-related discrimination at an earlier point. Inquiring twice into immigration status (once at the time of the event, and again now) leads to confusion and unnecessarily elongates the form. Inquiring about the worker's current immigration status is likely to chill participation, particularly among workers who lost their work authorization due to employer mistreatment or other legal violations. We therefore suggest that Section 3b be cut from Form EOIR-58.

**8. Section 6, Questions 3 and 4: Rephrase questions requiring complainants to draw complex legal conclusions.**

Form EOIR-58 currently requires complainants to state whether they were “intimidated, threatened, coerced or retaliated against for exercising [their] rights under 8 U.S.C. § 1324b” and whether they were required to show “more or different documents than required for the employment eligibility verification process.” Both questions should be revised so that answering them does not require substantial legal knowledge.

A nonlawyer cannot be expected to understand what it means to exercise their rights under a specific section of the U.S. code, nor can they reasonably be expected to know what documents are permissible for e-Verify. Requiring workers to make these fine distinctions only invites them to accidentally perjure themselves or misstate their legal theory; it is not reasonably designed to understand the nature of what occurred.

**9. Section 9, Question 7: Rephrase the contentious question regarding workplace intimidation and retaliation.**

Question 7 in Section 9 of Form EOIR-58 states, “Please explain in detail what happened and how you were intimidated, threatened, coerced, or retaliated against and why (if more space is needed, you may attach a separate sheet(s) explaining what happened. Please print or type. Please number any additional sheets).” The question should be replaced with the less accusatory, “Please describe what happened and how you were intimidated, threatened, coerced, or retaliated against.”

As currently written, the question is more like an interrogatory from defense counsel than an open invitation to tell the worker's story. The emphasis on explaining the information “in detail” and attaching separate sheets invites the opposing party to use the statement to impeach the worker—anything they left out, however innocently, can be attacked down the line. And asking the worker to explain why they were threatened or intimidated essentially requires them to read their employer's mind, without even having had the benefit of discovery.

\* \* \*

Thank you for allowing us the opportunity to comment on Form EOIR-58. It is a form whose length, if not its very existence, is precisely the evil that the Paperwork Reduction Act of 1995

was designed to eliminate. As discussed above, we hope you will take this opportunity to eliminate or substantially revise this problematic form.

Sincerely,

TEXAS RIOGRANDE LEGAL AID, INC.

By:

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