



*Protecting Immigrant  
Women and Girls  
Fleeing Violence*

September 7, 2020

Delivery by FedEx

Lauren Alder Reid  
Assistant Director, Office of Policy  
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5107 Leesburg Pike, Suite 2500  
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**Re: Comment in Response to the Information Collection at OMB  
Control Number 1125-0012**

Dear Assistant Director Reid,

The Tahirih Justice Center<sup>1</sup> (Tahirih) submits the following comments in response to the Information Collection, OMB Control Number 1125-0012, issued by the Department of Justice on July 13, 2020 pursuant to the Paperwork Reduction Act.

**Introduction**

Tahirih is a national, nonpartisan policy and direct services organization that has answered calls for help from nearly 29,000 immigrant survivors of gender-based violence (GBV) since its inception twenty-three years ago. Our clients are primarily women and girls who endure horrific human rights abuses such as domestic violence, rape and sexual torture, widow rituals, forced marriage, human trafficking, female genital mutilation/cutting (FGM/C), and "honour" crimes.<sup>2</sup> We provide free legal and social services to help our clients find safety and justice as they engage in the daunting, courageous, and rewarding work of rebuilding their lives and contributing to their communities.

Tahirih's Virginia office has been a recognized agency since March 22, 2010, and its Houston office has been recognized since December 7, 2010.<sup>3</sup> On July 10, 2020, Tahirih's agency recognition was renewed and its request to extend its recognition to all of its four branch offices (Houston, TX; Baltimore, MD; San

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<sup>1</sup> <https://www.tahirih.org/>

<sup>2</sup> For background information on these types of gender-based violence, see, e.g., UNHCR, *Guidelines on the Protection of Refugee Women* 17, <https://www.unhcr.org/3d4f915e4.html>; UN Women, *Defining "honour" crimes and "honour" killings*, <https://endvawnow.org/en/articles/731-defining-honourcrimes-and-honour-killings.html>; [https://en.wikipedia.org/wiki/Female\\_genital\\_mutilation](https://en.wikipedia.org/wiki/Female_genital_mutilation); [https://en.wikipedia.org/wiki/Forced\\_marriage](https://en.wikipedia.org/wiki/Forced_marriage).

<sup>3</sup> <https://www.justice.gov/eoir/recognized-organizations-and-accredited-representatives-roster-state-and-city>

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Bruno, CA; and Atlanta, GA) was approved.<sup>4</sup> Tahirih currently has three fully accredited representatives on staff, who provide critical support to expand Tahirih's capacity to provide pro bono immigration legal services to survivors of gender-based violence.<sup>5</sup>

As further explained below, Tahirih objects to the Information Collection's proposed revisions to the Form EOIR-31 Application for New, Renewed, or Extension of Agency recognition because its use: (1) exceeds the requirements set forth in regulations for agencies seeking recognition and representatives seeking accreditation, (2) place undo time and resource burdens on non-profit organizations and (3) disproportionately impacts less well-resourced organizations. On the whole, the proposed revisions to the form are contrary to the purpose of the R&A program, which is to "increase the availability of competent immigration legal representation for low-income and indigent persons, thereby promoting the effective and efficient administration of justice."<sup>6</sup>

**The agency's estimate of the burden of the proposed collection of information is artificially low, and the proposed revisions would unnecessarily further increase the burden on applicant organizations.**

The agency estimates that 129 respondents will complete the revised EOIR-31 form for new recognition in an average of 2 hours per response, and that 131 respondents will complete the form for renewal with an average of 7 hours per response.

These estimates do not comport with Tahirih's recent experience in completing an application for renewal and extension of recognition. As discussed in more detail below, Tahirih used the January 2017 version of the EOIR-31 with fewer documentation and evidentiary requirements than those in the proposed revisions. Even as a well-resourced organization with strong practices and procedures for financial, data and information management, as well as streamlined processes to track services, it took the Director of Legal and Social Services more than 20 hours to prepare the form and accompanying documentation. It took an estimated 5-10 hours collectively of other staff who contributed to the drafting of affidavits, collection of required or recommended documentation, collating and copying, and preparing for filing the form. We expect that less well-resourced organizations would spend even more time to complete the form and relevant documentation as required by the proposed revisions.

### **Proposed Revisions to and Comments on the Information Collection Instrument – Form EOIR-31**

Part 3 Does your organization have current non-profit status? Attach proof from appropriate state agency

Applicable regulations governing the R&A program do not require a state agency-issued non-profit designation.<sup>7</sup> The regulation requires only organizing documents, including a statement of its mission or purpose. Additional evidence, including a state-

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> <https://www.justice.gov/eoir/recognition-and-accreditation-program>

<sup>7</sup> 8 CFR § 1292.11(b)



agency designation is *permissible* but not *required* by the regulation.<sup>8</sup> The revised form exceeds the requirements of the regulation and increases the burden on applicant organizations. For example, in the Commonwealth of Virginia, a prerequisite to obtaining a Nonprofit Exemption is obtaining a federal nonprofit exemption from the Internal Revenue Service.<sup>9</sup> The proposed form revision forces applicant organizations to secure, at time and monetary cost, additional and duplicative documentation from state authorities, when federal tax-exempt status – or a pending request for federal tax-exempt status – is already required by regulation. Further, the range of documentation permitted by regulation to establish non-profit status – such as funder reports, a description of services or federal tax records – meets the purpose while permitting reasonable flexibility for applicant programs.<sup>10</sup>

### Instructions, Page 3, Part 3, Information About Organization

The proposed revisions to the instructions impose a higher burden of information collection than required by regulation. The applicable regulation requires the applicant organization to submit “[a] description of the immigration legal services that the organization seeks to offer.”<sup>11</sup> The proposed instructions revision exceeds the regulatory requirement and unnecessarily heighten the burden on organizations by requiring a “*detailed description of the types of services it intends to provide if recognized. An organization that does currently offer immigration legal services must provide a detailed description of the scope, nature, and history of these services, and by whom they have been provided.*” (emphasis added). This heightened burden would require applicant organizations to expend additional staff hours on data collection within their own organizations, to identify and document historic practices in which they might not have direct knowledge. The proposed level of detail is unnecessary to meet the purpose of the R&A program, which is to expand access to representation by permitting legitimate non-profit organizations – even those without significant organizational infrastructure or staffing – to provide competent immigration legal services to indigent immigrants.

Tahirih’s Director of Legal & Social Services prepared the organization’s 2020 renewal and extension of recognition application. Even at a well-resourced organization like Tahirih, with significant investments in technology for case management and information storage and management, Tahirih’s Director of Legal & Social Services spent more than 20 hours preparing the form and compiling documentation and statements in support of the application. Other staff, including an administrative assistant, data associate, director of finance, and chief of programs, contributed an estimated additional 5-10 hours of work in support of application preparation. At a smaller organization in which staff preparing the application also provide direct legal services, the increased burden of more detailed descriptions and documentation would serve to take time away from providing pro bono legal services to indigent immigrants. Such an effect runs plainly contrary to the purpose of the R&A program to expand access to legal services.

### Extension of Recognition, Instructions, Page 5, and Form Part 7, Page 3

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<sup>8</sup> *Id.*

<sup>9</sup> <https://www.tax.virginia.gov/nonprofit-organizations#:~:text=Requirements%20for%20Nonprofit%20Churches&text=Apply%20for%20a%20Virginia%20Tax,must%20be%20met%20to%20qualify>.

<sup>10</sup> 8 CFR § 1292.11(b)(2).

<sup>11</sup> 8 CFR § 1292.11(e)

The proposed revisions to the instructions and form requiring specific types of documentary evidence in support of an extension request exceeds the level of detail and documentation required by regulation. The regulation requires an *attestation* that the organization “periodically conducts inspections of each such office or location, exercises supervision and control over its accredited representatives at those offices and locations, and provides access to adequate legal resources at each such office or location.”<sup>12</sup> The proposed revisions to the form and instructions raise the burden on applicants by requiring specific detail in the attestation about the frequency and nature of the inspections, what types of services each office performs, the management structure, and funding details for each office.

Non-profit organizations must work diligently to manage finite time and limited resources as efficiently as possible to maximize capacity to provide direct legal services to indigent immigrants. The imposition of additional detail requirements on the attestation, beyond regulatory requirements, creates additional time burdens that take away from the provision of direct services. Tahirih’s most recent recognition application took the designated authorized official more than 20 hours to prepare. The preparation of a detailed attestation – even with the benefit of a robust case management and data infrastructure – required at least an hour to prepare, and approximately an hour for review and signature by the relevant executive leader. This was time drawn away from critical legal program management work. Though a large, well-resourced organization like Tahirih can absorb this time burden, such requirements are less manageable by newer, smaller, or less-well-resourced organizations that provide critical services particularly in legal deserts. Tahirih is concerned that the proposed additional detail burden would cost critical time and resources for smaller organizations and could serve to deter smaller organizations from seeking recognition at all, even if they are eligible. This exacerbates the access to representation crisis and is contrary to the stated purpose of the R&A program to expand access to competent representation.

## Conclusion

Use of the revised Form EOIR-31 and corresponding instructions will significantly increase the burden on legitimate non-profit organizations that seek initial, renewed, or extension of agency recognition. Such increased burden exceeds the requirements set forth in governing regulations and would make it more difficult and costly of time and resources for non-profit organizations to participate in the R&A program. The proposed revisions are unnecessarily burdensome and would not improve efficiency or efficacy of the R&A program in furtherance of its purpose to expand access to competent legal services to indigent immigrants.

We appreciate your careful consideration of these comments, look forward to your detailed feedback, and urge the agency to retain the January 2017 version of Form EOIR-31. Please contact me at [kurstenp@tahirih.org](mailto:kurstenp@tahirih.org) or 571-356-9492 for additional information.

Respectfully,



Kursten A. Phelps  
Co-Director of Client Advocacy (Legal)  
Tahirih Justice Center

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<sup>12</sup> 8 CFR § 1292.15



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**Introduction**

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Tahirih’s Virginia office has been a recognized agency since March 22, 2010, and its Houston office has been recognized since December 7, 2010.<sup>3</sup> On July 10, 2020, Tahirih’s agency recognition was renewed and its request to extend its recognition to all of its four branch offices (Houston, TX; Baltimore, MD; San Bruno, CA; and Atlanta, GA) was approved.<sup>4</sup> Tahirih currently has three fully accredited representatives on staff, who provide critical support to expand Tahirih’s capacity to provide pro bono immigration legal services to survivors of

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<sup>4</sup> *Id.*

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gender-based violence.<sup>5</sup> Two of Tahirih's fully accredited representatives were approved in 2020, and their accreditation is valid until 2023. One accredited representative is working on renewing her accreditation prior to expiration in 2020.

As further explained below, Tahirih objects to the Information Collection's proposed revisions to the Form EOIR-31A Application for New, Renewed, or Extension of Agency recognition because its use: (1) exceeds the requirements set forth in regulations for agencies seeking recognition and representatives seeking accreditation, (2) place undo time and resource burdens on non-profit organizations and their staff and (3) disproportionately impacts less well-resourced organizations. On the whole, the proposed revisions to the form are contrary to the purpose of the R&A program, which is to "increase the availability of competent immigration legal representation for low-income and indigent persons, thereby promoting the effective and efficient administration of justice."<sup>6</sup>

**The agency's estimate of the burden of the proposed collection of information is artificially low, and the proposed revisions would unnecessarily further increase the burden on applicant organizations.**

The agency estimates that 818 respondents will complete the form annually with an average of 2 hours per response. This estimate does not comport with Tahirih's recent experience submitting both an application for a partially accredited representative to acquire full accreditation, and an application for initial full accreditation for a staff member who was not previously accredited. Tahirih's full accredited representatives report that they spent approximately 20-25 hours each to prepare the EOIR-31A form and compile supporting documentation and letters of recommendation, excluding time spent on substantive training and learning about the accreditation process and requirements. Other staff spent multiple hours drafting or coordinating letters of recommendation for the applicants. It is estimated that Tahirih staff spent at least 30 hours on the EOIR-31A form and corresponding documentation. The agency's estimate of an average of 2 hours to complete the form is significantly underestimated.

We expect that staff in organizations that are less well-resourced or have less experience in the R&A program would spend even more time to complete the form and relevant documentation as required by the proposed revisions.

### **Proposed Revisions to and Comments on the Information Collection Instrument – Form EOIR-31A**

#### Part 1 - Representative's Information – Work Location

The proposed revisions require an applicant to list the address(es) of any of the organization's office locations where the representative works or intends to work. This revision creates unnecessary, duplicative data collection for an applicant. The regulations governing recognition and accreditation already permit the organization's accredited representatives to provide immigration legal services out of extension offices or locations upon the OLAP Director's determination to extend recognition to those locations identified on Form EOIR-31.<sup>7</sup> In requiring that applicants list locations where the prospective

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<sup>5</sup> *Id.*

<sup>6</sup> <https://www.justice.gov/eoir/recognition-and-accreditation-program>

<sup>7</sup> 8 CFR 1292.15

representative works or intends to work, it creates unnecessary data collection and inhibits the flexibility nonprofit organizations need, particularly in a global pandemic and increased virtual work environments, to work in multiple extension offices should they fail to list them on Form EOIR-31A. Furthermore, the extension office locations would be indicated on the applicant's résumé and/or organizational chart, which is already collected under the January 2017 version of the EOIR-31A.

#### Instructions, Page 3, Form Part 2A

The proposed revisions require the applicant to indicate the representative's status with the organization and "how frequently the representative has worked with your organization's legal services program." The requirement to indicate frequency of work with the organization's legal services program is unsupported by the applicable regulation, which requires only that the organization must demonstrate the person seeking accreditation "is employed by or is a volunteer of the organization."<sup>8</sup> We are concerned that this proposed revision would create a chilling effect on otherwise qualified employees or volunteers of an organization who, for a variety of reasons, may not already work extensively with the organization's legal services program. For example, there may be a staff member in an administrative or other function within the organization that obtains the necessary training and is otherwise qualified, but who does not yet work significantly with the legal services program. This could deter qualified, diverse staff members from pursuing professional growth opportunities within organizations to seek accreditation, reducing the pool of individuals accredited and contributing to the expansion of access to competent legal services for indigent immigrants.

#### Qualifications – Previous Applications & Employment

We oppose the proposed revision requiring applicants to describe any previously applications submitted on the representative's behalf, whether by the applicant organization or any other, including the date submitted, the name of the organization, and the outcome of the application, and the reason for leaving if the representative is no longer affiliated with any of the organizations listed. This is not required by the applicable regulations, and expands unnecessarily upon the information collected in the January 2017 version of Form EOIR-31A, wherein individuals seeking accreditation must list the names of prior organizations for which they served as an accredited representative and the date of last approval of accreditation. Requiring the reasons for departure from an agency prys unnecessarily into the personal employment or volunteer service of an applicant for accreditation. Such information exceeds the regulatory requirement that the applicant establish by attestation of prospective representative and authorized designated official they are not subject to disciplinary orders nor have resigned while a disciplinary investigation or proceeding is pending.<sup>9</sup>

#### Renewal, Instructions Page 5, Form Part 2B

We object to the proposed revision that would require an indication of how frequently applicants for renewal entered Forms G-28, EOIR-28, or EOIR-27 during the prior three years. This information is not required by the governing regulation, which requires only that they remain eligible, continue to receive formal training, and provide a

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<sup>8</sup> 8 CFR § 1292.12(a)(2)

<sup>9</sup> 8 CFR §1292.12(a)(4), 8 CFR §1292.12(b)

description of the individual's qualifications, including education and immigration law experience.

The purpose of the R&A program is to enable non-profit organizations to utilize qualified non-lawyers to expand access to competent immigration legal services, thereby increasing access to critically needed services for indigent immigrants. Tahiri's accredited representatives support legal services in many ways in addition to entering their appearance before USCIS, EOIR, or the BIA. Accredited representatives assist with legal screenings, legal intakes, the provision of limited advice and counsel, and mentorship and technical assistance to volunteer attorneys. All of these activities are critical to Tahiri's ability to maximize its services to indigent immigrants, though none of them involve the filing of a G-28, EOIR-28, or EOIR-27. The proposed requirement to specify frequency of these filings infers that OLAP will assess suitability for renewal based, in part, upon frequency of formal entries of appearance. OLAP should not consider frequency of appearance in renewal applications because it is not supported by regulation and is an overreach into the programmatic and human resources decision making of non-profit organizations to utilize their accredited representatives as most appropriate to meet community needs.

#### Form Page 2, Part 2(C), Representative's Background – Crimes

The proposed revision would require applicants to indicate on the form whether the representative has ever committed a crime of any kind, even if he or she was not arrested, cited, charged with, or tried for the crime. This question is vague and unsupported by the governing regulation, which requires the prospective representative and authorized officer to sign an attestation that the individual satisfies the requirements set forth in 8 CFR § 1292.12(a).<sup>10</sup> Those requirements, as related to criminal history, require only that the individual has not been found guilty of, or pleaded guilty or nolo contendere to a serious crime.<sup>11</sup> There is no requirement that an applicant never have committed *any* crime. Revising the form to include the proposed question collects information not required for the proper administration of the R&A program. Furthermore, it introduces unnecessary ambiguity. For example, an applicant who at any time drives a vehicle in Virginia at an excessive speed in may have committed the crime of reckless driving, but only a trier of fact is suited to determine whether the individual has engaged in acts that constitute commission of the crime of reckless driving.<sup>12</sup> The revised question seeks information not required for a determination of accreditation, it forces applicants to either check "no" and risk the allegation that their application was not accurate and truthful, or to check "yes" and concede commission of a crime when, by definition, they are not attorneys licensed in the applicable jurisdiction to assess whether their actions constitute commission of a crime.

The governing regulation require only an attestation by the applicant and the authorized officer that the applicant has not been convicted of or plead guilty or nolo contendere to a serious crime. The Form EOIR-31A should continue to require only such attestation, and not introduce unnecessary and overly intrusive questions such as this. The introduction of such a question will serve to deter otherwise qualified, competent

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<sup>10</sup> 8 CFR § 1292.12(b)

<sup>11</sup> 8 CFR § 1292.12(a)(5)

<sup>12</sup> Va. Code Ann. § 46.2-862



applicants from seeking accreditation, thereby reducing the availability of critical legal services to indigent immigrants.

## **Conclusion**

Use of the revised Form EOIR-31A and corresponding instructions will significantly increase the burden on legitimate non-profit organizations and applicants for renewed or initial accreditation. Such increased burden exceeds the requirements set forth in governing regulations and would make it more difficult and costly of time and resources for non-profit organizations to participate in the R&A program. The proposed revisions are unnecessarily burdensome and would not improve efficiency or efficacy of the R&A program in furtherance of its purpose to expand access to competent legal services to indigent immigrants.

We appreciate your careful consideration of these comments, look forward to your detailed feedback, and urge the agency to retain the January 2017 version of Form EOIR-31A. Please contact me at [kurstenp@tahirih.org](mailto:kurstenp@tahirih.org) or 571-356-9492 for additional information.

Respectfully,



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