NYIC

September 9, 2020

Submitted via Express Mail

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

Re: Comments on OMB No. 1125-0012, Agency Information Collection; Request for New Recognition, Renewal of Recognition, Extension of Recognition of a Non-Profit Religious, Charitable, Social Service, or Similar Organization (Form EOIR-31); and OMB No. 1125-0013, Agency Information Collection; Request by Organization for Accreditation or Renewal of Accreditation of Non-Attorney Representative (Form EOIR-31A)

Dear Ms. Alder Reid:

The New York Immigration Coalition (NYIC) submits these comments in response and opposition to the Department of Justice's (DOJ) Information Collection published on July 13, 2020, revising Form EOIR-31, Request for New Recognition, Renewal of Recognition, Extension of Recognition of a Non-Profit Religious, Charitable, Social Service, or Similar Organization, and Form EOIR-31A, Request by Organization for Accreditation or Renewal of Accreditation of Non-Attorney Representative.

The New York Immigration Coalition (NYIC) is an umbrella policy and advocacy organization for more than 200 groups in New York State. We envision a New York State that is stronger because all people are welcome, treated fairly, and given the chance to pursue their dreams. Our mission is to unite immigrants, members and allies so all New Yorkers can thrive. We represent the collective interests of New York's diverse immigrant communities and organizations and devise solutions to advance them; advocate for laws, policies and programs that lead to justice and opportunity for all immigrant groups; and build the power of immigrants and the organizations that serve them to ensure their sustainability, to improve people's lives, and to strengthen our state. Founded in 1987, the NYIC has a long history of leading collaborative efforts including in health access, education, immigration advocacy, and civic engagement.

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The NYIC works with New York-based DOJ recognized organizations and their accredited representatives, as well as non-profit organizations and their staff aspiring to secure DOJ recognition and accreditation, in various capacities. Through our Immigrant Services Support department we provide extensive immigration law training to DOJ accredited representatives and those seeking accreditation. We also provide training and technical assistance to NY-based nonprofit organizations on the process of applying for DOJ recognition and accreditation. Finally, we maintain an active listserv of NY-based nonprofit staff through which we provide information on developments and changes in policies, procedures, and adjudication trends with regard to DOJ recognition and accreditation.

The NYIC strongly urges the withdrawal of these proposed revised forms, as they increase barriers to quality immigration legal services for vulnerable New Yorkers, circumvent the policy change process as prescribed by the APA, and may require NY-based employers to engage in unlawful conduct in the course of completing Form EOIR-31A.

The new Forms EOIR-31 and 31A increase barriers to affordable legal services for low-income New Yorkers and are contrary to the stated purpose of the R&A program

The purpose of the R&A program is to increase the capacity of the immigration bar to meet the needs of low-income and indigent immigrants.[1] Immigration law and policy is complex and rapidly changing. Without counsel to guide them through the application of immigration law to their case, many immigrants who cannot afford counsel do not have access to justice or due process. The R&A program was created to help ensure that immigrants and their families understand the immigration process, make informed decisions, and are able to present high-quality applications for immigration benefits.

Currently within the United States there is an overwhelming need for affordable immigration legal services, particularly for vulnerable populations. Indeed in 2016, the DOJ restructured the R&A program in order to "address the critical and ongoing shortage of qualified legal representation for underserved populations in immigration cases before Federal administrative agencies."[2] And yet in New York State the number of DOJ recognized organizations providing immigration legal services fell

[1] *See, e.g.* Recognition of Organizations and Accreditation of Non-Attorney Representatives, 80 Fed. Reg. 59,514, 59,516 ("As outlined below, the proposed rule would make significant changes to the process and qualifications for requesting and renewing recognition and accreditation, with the express purpose of increasing capacity while maintaining adequate standards for recognition and accreditation.").
[2] 8 C.F.R. § 1003 (2016) at 92,358.

by nearly 11% between 2017 and 2019.[3] This is particularly concerning because providing immigration legal services through Accredited Representatives is a more affordable way for smaller non-profit organizations with less finances to meet the vast need for quality immigration legal services.

This Information Collection represents a significant increase in information and documentation, creating a much higher burden for nonprofit organizations and their representatives to access DOJ recognition and accreditation. The DOJ fails to provide justification for why the increase is warranted. This increase without justification violates the Paperwork Reduction Act (PRA), which seeks to reduce the paperwork burden on individuals and organizations. This DOJ Information Collection adds questions that suggest EOIR is concerned about representatives engaging in fraud yet fails to provide evidence that is cause for concern. This would turn a highly successful capacity-building program into a fraud investigation program, which is duplicative of EOIR's current functions to investigate any allegations of fraud in the Recognition and Accreditation (R&A) program. The addition of these questions would have a chilling effect on applications as the process becomes more complex and laborious, contradicting the purpose of the program to increase capacity.

It is important that the R&A program and accompanying procedures remain oriented toward meeting the demand for affordable legal services and ensuring that all individuals who are interacting with the immigration system, either at the immigration courts or through filings with USCIS, have access to quality representation. The increased burden will make the recognition and accreditation process significantly more difficult for eligible organizations and their qualified staff and volunteers. They will exacerbate the decline in quality immigration legal services available to low-income New Yorkers and thwart the stated purpose of the R&A program to increase the capacity of the immigration bar to meet the needs of low-income and indigent immigrants.[4]

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[3] New York Immigration Coalition, Immigrant Advocates Response Collaborative, & Brooklyn Law School's Safe Harbor Clinic, *No Safe Harbor: The Landscape of Immigration Legal Services in New York* (February 2020), p. 5, available at: https://pronto-core-cdn.prontomarketing.com/537/wp-content/uploads/sites/2/2020/02/NoSafeHarbor_Final2020.pdf

[4] *See, e.g.* Recognition of Organizations and Accreditation of Non-Attorney Representatives, 80 Fed. Reg. 59,514, 59,516 ("As outlined below, the proposed rule would make significant changes to the process and qualifications for requesting and renewing recognition and accreditation, with the express purpose of increasing capacity while maintaining adequate standards for recognition and accreditation.").

The new Forms EOIR-31 and 31A circumvent the policy change process as prescribed by the APA

This Information Collection attempts to change policy through the form revision process, rather than going through the notice and comment process under the Administrative Procedures Act (APA). Several of the proposed changes (detailed below) increase the evidence required in order to qualify for recognition or accreditation in ways that are not supported by the current regulations.[5] These changes are ultra vires to the regulations at 8 CFR § 1292. If DOJ wishes to increase the evidence required to qualify for the program, it would need to introduce these changes as a notice of proposed rulemaking under the APA.

The new Form EOIR-31A may require NY-based employers to engage in unlawful conduct in the course of completing the form

Finally, completing the new Form EOIR-31A may actually require New York-based employers to engage in conduct prohibited by New York State human rights law. Part 2C of the proposed Form EOIR-31A includes a number of new questions pertaining to the applicant's character and fitness, including the following: "Has the representative ever committed a crime of any kind, even if he or she was not arrested, cited, charged with, or tried for that crime?" For a New York-based employer, completing this portion of the form could actually bring them in conflict with New York State law.

New York State Human Rights Law[6] provides protections to people with prior arrest records that were favorably resolved or resulted in sealed convictions or youthful offender adjudications. Under New York State Human Rights Law §296(16), it is unlawful for an employer to ask an applicant or employee whether he or she has ever been arrested or had a criminal accusation filed against him or her. It is also unlawful to require any individual to divulge information pertaining to any such arrest or criminal accusation. However, the proposed form would require employers to request information specifically about acts for which the employee was not convicted, without limitation of the type or relevance of the offense, and without regard to age or expungement. Employers may end up requiring employees to disclose information that they are expressly prohibited from soliciting under state human rights law. Requiring employers to ask these questions could result in fines and penalties or liability to employee lawsuits for employment discrimination.

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[5] 8 C.F.R. § 1292 (2003).
[6] New York State Executive Law, Article 15, Human Rights Law § 296(16)

Revised Form EOIR-31 should be rescinded

The Changes to Form EOIR-31 Are Unnecessarily Burdensome and Inconsistent with the Regulations

The NYIC opposes many of the proposed changes to Form EOIR-31. Our evaluation and analysis is based upon a comparison between the January 2017 version of the form, the attached draft form provided by EOIR, and the regulations, which set forth the requirements for recognition. Below we describe our analysis of the time and cost for completion of the form, and our objections to the added requirements regarding the description of legal services, fee policies, technical legal support, and extension of recognition to other locations.

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

In the Federal Register Notice for the proposed changes to Form EOIR-31, the estimated time for completion of Form EOIR-31 is two hours per response for initial applications for recognition, and seven hours per response for renewal of recognition.[7] This is the same amount of time EOIR estimated for the January 2017 version of the EOIR-31, yet the proposed form requires considerably more information and details than the old form. For example, each of the following new requirements in the form and instructions would require substantial amounts of time to respond: "detailed description of the scope, nature, and history of [the legal] services, and by whom they have been provided"; the detailed documentation requested for extension of recognition; as well as the additional time to organize and assemble the supporting documentation for the application packet. While not a comprehensive list, these are a few representative examples of requirements that would substantially add to the burden on applicants and organizations. To properly address these burdens, EOIR needs to provide a comprehensive analysis of its estimates for the time that it would take to complete all of the new requirements in its initial Federal Register Notice in order to be transparent and justify the additional burdens.

Legal Services

Part 3 of the proposed form asks about the legal services the organization offers, and the instructions state, "An organization that does not currently offer immigration legal services must include a detailed description of the types of services it intends to provide if recognized. An

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

organization that does currently offer immigration legal services must provide a detailed description of the scope, nature, and history of these services, and by whom they have been provided" (Part 3, p. 3). This level of detail is not consistent with the regulations. The regulations and current form merely require a "description of the immigration legal services."[8] To meet this requirement, our partners currently submit a brief, general statement along with a list of the specific immigration forms they will assist with, usually in the form of a fee schedule. In contrast, the proposed form would require a lengthy essay that would greatly increase the burden on applicants for no apparent reason.[9]

When the final version of the R&A regulations was published, the final rule described changes to the wording of the relevant section: "the information required to be submitted is more concise and has shifted to a focus on the legal services provided by the organization as a whole, rather than by its accredited representatives individually."[10] Despite the stated intentions of the final rule that is currently in effect, this revised form requires information submitted to be more voluminous and shifts the focus of the legal services back to the individuals providing them. These changes are not consistent with the regulations, are not necessary for the proper performance of the agency's duties, and do not minimize the burden of the information collection on the respondents.

Fees

In Part 3 of the proposed form on page 1 there is a question about fees that states, "Attach fee schedule and fee waiver/reduction policy." This is consistent with the regulations and current form. However, the corresponding instructions in the proposed form (p. 3) add the following requirement: "Include a copy of the fee waiver or reduction application your organization uses, if any." There is no need for this additional documentation, which adds unnecessary paperwork to the process. The regulation only requires the "fee schedules and ***organizational policies*** or guidance regarding fee waivers or reduced fees based on financial need,"[11] not the applications or forms used to implement such policies. Requiring this documentation is *ultra vires* to the regulations; if the agency wants to require documentation in addition to that currently required by the regulations, it would need to introduce the change under the APA with notice and comment.

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

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

[10] Recognition of Organizations and Accreditation of Non-Attorney Representatives, 81 Fed. Reg. 92,346, 92,355.

[11] 8 C.F.R. § 1292.11(b) (2003).

Technical Legal Support

In Part 4 of the proposed form on p. 2 the last question is about technical legal support and requires a "Description of other party's qualifications, experience, and breadth of immigration knowledge." The corresponding instructions on p. 4 mention this description as well as another requirement: "If the other party is a private attorney, also attach his or her resume." This additional information is *ultra vires* to the regulations. The regulations state, "The organization must submit... any agreement or proof of a formal arrangement... for consultations or technical legal assistance."[12] The current form in Part 7d states, "Attach all agreements with name(s) of private counsel and bar admission(s)" (p. 2). The detailed description of qualifications and resume are an added documentation burden that is unnecessary.

If the agency wishes to impose a requirement for applicants to document the qualifications, experience, and breadth of immigration knowledge not only for themselves, but for their advisors as well, then the agency would need to go through notice and comment rulemaking under the Administrative Procedures Act. Such a change cannot be made by revising a form under the Paperwork Reduction Act.

Extension of Recognition

Despite being subject to the Paperwork Reduction Act, the proposed changes to Form EOIR-31 include no fewer than five additional documents that would be required with a typical recognition application that includes a request for extension: 1) documentation of state non-profit status; 2) detailed description of legal services; 3) fee waiver or reduction application used by organization; 4) resume of attorney providing technical legal support; and 5) documentation of periodic inspections, joint operations, joint management structure, and joint finances for extension.

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

- Periodic Inspections: How often does the designated office inspect the extension office(s) and how do these inspections take place?

[12] 8 C.F.R. § 1292.11(e) (2003).

- Joint Operations: What types of immigration legal services does each office perform?
- Joint Management Structure: What is the management structure for the organization as a whole and for each office individually?
- Joint Finances: How is the immigration legal services program at each office funded and who oversees the finances at each office?
- Access to Legal Resources: What legal resources does the designated office have access to, and which of those resources can the proposed extension office(s) also access?

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

> To request extension of recognition, an organization... must submit a Form EOIR-31 that identifies the name and address of the organization's headquarters or designated office and address of each other office or location for which the organization seeks extension of recognition. The organization must also provide a declaration from its authorized officer attesting that it periodically conducts inspections of each such office or location, exercises supervision and control over its accredited representatives at those offices and locations, and provides access to adequate legal resources at each such office or location.[13]

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

As stated in the proposed instructions, "The purpose of extension of recognition is to *simplify* the communication and application processes between EOIR and a qualifying organization with more than one location" (Part 7, p. 5). Requiring extensive, additional documentation for an extension request defeats the purpose for which extension was created. Eligibility for extension **is already**

[13] 8 C.F.R. § 1292.15 (2003).

demonstrated in the standard documents that are submitted for recognition. For example, an extension would be listed in the organizational chart that is submitted for recognition of the primary organization. The NYIC opposes efforts to make the application for extension more burdensome, as it is inconsistent with the purpose of the regulation: to increase the capacity of non-profit organizations to serve immigrant communities. The significant increase in information and documentation required by the proposed form is unnecessary and burdensome, as the application process is already thorough and consistent with the regulations.

Revised Form EOIR-31A should be rescinded

The Changes to Form EOIR-31A Are Unnecessarily Burdensome, Inconsistent with the Regulations and Contrary to New York State Human Rights Law

The NYIC opposes many of the proposed changes to Form EOIR-31A. Our evaluation and analysis is based upon a comparison between the January 2017 version of the form, the attached draft form provided by EOIR, and the regulations, which set forth the requirements for accreditation. DOJ has expanded the questions on the Form EOIR-31A to include a great deal of additional information not currently required and which may actually be unlawful for employers to collect. Similarly to the EOIR-31, the significant increase in information and documentation is unnecessary and burdensome, as the application process is already thorough and consistent with the regulations. These additional questions are noted below.

<u>The Estimated Time and Cost for Completion of EOIR-31A</u>

In the Federal Register Notice for the proposed changes to Form EOIR-31A, the estimated time for completion of Form EOIR-31A is two hours per response.[14] This is the same amount of time estimated for the January 2017 version of the form, yet the proposed form has 15 additional questions and is significantly more complex. This estimate does not capture the full time commitment to complete the form because some of the new questions will require considerable time to research and obtain the answer. For example, the questions on the history of previous accreditation applications and the number of G-28s/E-28s filed will add considerable time to the preparation of the application. In addition, the questions about unauthorized practice and criminal background in Part 2C will require considerable time for the preparer to consult with the Human Resources department and potentially legal counsel regarding state/local restrictions on asking

[14] Agency Information Collection Activities; Proposed Collection; Comments Requested; Request by Organization for Accreditation or Renewal of Accreditation of Non-Attorney Representative (Form EOIR–31A), 85 Fed. Reg. 42009, 42010.

employees for this information. While not a comprehensive list, these are a few representative examples of requirements that would substantially add to the burden on applicants and organizations. To properly address these burdens, EOIR needs to provide a comprehensive analysis of its estimates for the time that it would take to complete all of the new requirements in its initial Federal Register Notice in order to be transparent and justify the additional burdens. Considering that the purpose of the R&A program is to increase capacity to assist underserved immigrant communities, those hours gathering nonessential information would be better spent furthering the mission of the organization through legal services, consultations, and community engagements.

Representative's Work Location

Part 1 of the proposed form on p. 1 requires the organization address(es) where the non-attorney representative works or intends to work. We question the need to add a separate question for this information, since OLAP does not track or indicate work location on the roster of recognized locations, and all accredited staff are listed under the main office address and are authorized to practice at any other recognized extension office of the organization. We also note that this information is subject to change, as staff may be moved around to work in different extension offices as needed.

Status with the Organization

Part 2A of the proposed form has a new question requesting the representative's status with the organization (employee, volunteer, or other) and the corresponding instructions state, "the resume... should reflect how frequently the representative has worked with your organization's immigration legal services program" (p. 3). This additional information is irrelevant to the accreditation adjudication and therefore unnecessarily burdensome. First, the status of the representative does not matter, as both employees and volunteers are eligible for accreditation. Second, this status is not static. It is not uncommon for volunteers to become employees and employees to become volunteers. Third, often applicants have not worked with the organization's legal services program at all, if the program is not yet recognized. In these cases, the applicant has received his/her hands-on training with an outside, authorized provider such as another recognized organization. Fourth, frequency is not relevant. There is no provision in the regulations that would require the agency to deny accreditation if the frequency of work is below a particular threshold. Requiring submission of information or documentation that would not affect the applicant's eligibility for accreditation is wasteful and burdensome to both the applicant and the agency.

Previous Applications

Part 2A of the proposed form also asks about previous applications submitted on the representative's behalf. The corresponding instructions on p. 3 state, "describe any previous applications that have been submitted to the R&A Program on this representative's behalf. Include all applications ever submitted, whether by your organization or any other. For each application, list the date submitted, the name of the applicant organization, and the outcome of the application." This request is burdensome and includes information that OLAP should already have in its records. Many applicants will not have this information easily available to them and would struggle to obtain it. For applicants with years of experience with various recognized organizations, this new requirement would lead to significant delays in completing the application process, thereby disincentivizing the best of the accredited representatives from renewing their accreditation.

Submission of information about previous accreditation applications is not required by the regulations. In order to renew accreditation according to the regulations, an applicant need only demonstrate that they meet the same requirements as initial accreditation and that they continued to receive training in immigration law and procedure.[15] Requiring that the applicant also submit their accreditation history is not supported by the regulations. Any applicant who is unable to submit their accreditation history may inaccurately believe that they do not qualify to renew their accreditation. This revision would impact the outcome of accreditation applications; such changes should go through notice and comment as a proposed rule under the APA, rather than as a form change under the PRA.

Previous Employment

Part 2A of the proposed form asks about the representative's previous employment. The corresponding instructions on p. 3 state, "If the representative is no longer affiliated with any of the organizations listed, indicate his or her reason for leaving." The question about the reason for leaving a previous employer is not necessary. Reasons for leaving previous employers are not relevant to accreditation as a non-attorney representative. The only information resulting from this question that might be relevant is if the reason for leaving the organization had anything to do with moral character. There is a separate section of the form that asks all relevant questions about any past wrongdoing that would elicit any information that would impact on the eligibility criteria for

[15] 8 C.F.R. § 1292.16 (c)(2) (2003).

accreditation. Requiring applicants to indicate a reason for leaving previous employment only adds additional burdensome data entry that is not required by the regulations.

Practice for Renewal

Part 2B of the proposed form has a new question for those who are renewing accreditation. The question is about how frequently the representative has provided direct legal representation before USCIS or EOIR. The corresponding instructions on p. 5 state, "For renewal of accreditation applications only, indicate approximately how often during the past three years the Accredited Representative has entered an appearance before USCIS and EOIR on Forms G-28, E-28, or E-27." The regulations do not require demonstrating prior appearance in cases for renewal of accreditation. They only require that "Each request for renewal of accreditation must establish that the individual remains eligible for accreditation under 8 CFR § 1292.12(a) and has continued to receive formal training in immigration law and procedure commensurate with the services the organization provides and the duration of the representative's accreditation."[16] To establish eligibility, the regulations require "A description of the individual's qualifications, including education and immigration law experience."[17] Furthermore, we note that an individual may practice immigration law without entering an appearance before USCIS or EOIR, such as when screening clients for eligibility for an immigration benefit, answering client questions about their cases, supervising other accredited representatives or attorneys, or staffing a naturalization clinic.

Date of Birth

In Part 2C of the proposed form, there is a new question requiring the applicant's date of birth. The corresponding instructions on p. 5 state, "The representative's date of birth may be used to conduct a criminal background check." In the instructions for Form EOIR-31A, there is a Privacy Act Notice that states in relevant part, "EOIR may share the information provided with this form with others in accordance with approved routine uses." An applicant's date of birth is personally identifiable information (PII). Because DOJ intends to collect additional PII on this form, more clarification is needed in the privacy notice to indicate what "routine uses" would justify sharing this information.

[16] 8 C.F.R. § 1292.16(c)(2) (2003).
[17] 8 C.F.R. § 1292.12(c) (2003).

While revising this Privacy Act Notice, DOJ should also change the wording of the privacy notice on the EOIR-31A, as it applies only to organizations and recognition, and not to individuals and accreditation.

Representative's Background - Character and Fitness

In Part 2C, the proposed form has a series of eight new questions pertaining to the applicant's character and fitness. The regulations outline the requirements for character and fitness in 8 CFR § 1292.12 (a) (1-5). They only require an attestation from the authorized officer and the proposed representative: "The request for accreditation must be signed by the authorized officer and the individual to be accredited, both attesting that the individual satisfies these requirements."[18] The regulations also state, "The character and fitness requirement may be satisfied through attestations of the authorized officer of the organization and the proposed representative and letters of recommendation or favorable background checks" (Part III, B, 2 (a)).

Six of the eight new questions match the language in the regulations, but we are especially troubled by the first two questions that are not found in the R&A regulations:

-Has the representative ever practiced law, as defined in 8 CFR 1001.1(i), without authorization?

-Has the representative ever committed a crime of any kind, even if he or she was not arrested, cited, charged with, or tried for that crime?

With these questions, the revised form requires organizations to ask about and report on applicants' past actions such as unauthorized practice of law and possible criminal activity even if they were not arrested or charged with any crime. The regulation only requires that both applicants and authorized officers attest to the character and fitness of the applicant for accreditation. These questions are far too broad, and therefore are *ultra vires* to the regulations. The new questions would expose applicants to the risk of self-incrimination for matters that have not been before any court. Individuals may be unsure whether actions in their past amounted to a crime or not. They would need to seek legal advice to determine if a set of facts could be considered a crime or practicing law without authorization.

[18] 8 C.F.R. § 1292.12(b) (2003).

These new questions on the form set a higher standard for accredited representatives than what is required of attorneys by state bars, which normally only evaluate incidents that have resulted in conviction or other formal procedures in the justice system.[19]

Further, the addition of the question, "Has the representative ever committed a crime of any kind, even if he or she was not arrested, cited, charged with, or tried for that crime?" may actually bring a New York based employer in conflict with State human rights laws, as noted above.

All told, the changes to the EOIR-31A add requirements for work location, employment status, previous R&A applications, previous employment, use of accreditation for renewal, and many additional questions about character and fitness. One question could actually require employers to engage in unlawful conduct under New York State human rights law. While some of these changes may seem small, the cumulative effect of these changes is to require a significant amount of new information, none of which is necessary for the approval of accreditation. These questions would be an unnecessary burden to individual applicants, their employers, and the agency that would need to evaluate this complex and sensitive information.

Conclusion

As set forth above, the proposed changes to forms EOIR-31 and 31A would increase barriers to affordable legal services for low-income New Yorkers, in contravention of the stated purpose of the R&A program. Further, the form revisions seek to alter the substantive standards used to evaluate applications for DOJ recognition and accreditation, in contravention of the APA and the PRA. Finally, one particular question on the new Form EOIR-31A actually comes into conflict with New York State

[19] For example, the three states with the highest number of registered attorneys each ask questions about convictions, but do not include any questions in the bar application about the possible commission of a crime for which no arrest was made. New York state's application asks, "Have you ever, either as an adult or a juvenile, been cited, ticketed, arrested, taken into custody, charged with, indicted, convicted or tried for, or pleaded guilty to, the commission of any felony or misdemeanor or the violation of any law, or been the subject of any juvenile delinquency or youthful offender proceeding?" Unified Court System, State of New York, *Application for Admission to Practice as an Attorney and Counselor-at-Law in the State of New York*, www.nybarexam.org/Admission/Part%20I_ApplicationQuestionnaire_3.4.2020.pdf (Mar. 2020). California's bar admission also inquires into "moral character" for bar admission including criminal convictions, but does not include any questions concerning the commission of crimes for which the applicant was not arrested. The State Bar of California, *Factors and Conduct Relevant to a Moral Character Determination*, http://www.calbar.ca.gov/Admissions/Moral-Character/Factors-and-Conduct#criminal%20history (last visited Sept. 1, 2020). And Texas precludes those with felony convictions or deferred adjudication of felonies from demonstrating good moral character and fitness, but also does not ask any questions about potential criminal conduct for which the applicant was not arrested. Texas Board of Law Examiners, *Rules Governing Admission to the Bar of Texas*, https://ble.texas.gov/rule04 (last visited Sept. 2, 2020).

Human Rights Law. The proposed forms should be withdrawn in their entirety because they do not meet the standards of the APA and would drastically increase time, expense, and paperwork burdens on applicants for the R&A program and on EOIR itself, without the agency stating a sufficient reason for or benefit of such change.

Thank you for considering these comments in response and opposition to this NPRM, and please contact Anu Joshi, the Vice President of Policy at the New York Immigration Coalition, at ajoshi@nyic.org to provide any additional information you might need. We look forward to your response.

Sincerely,

Steven Choi
Executive Director
New York Immigration Coalition (NYIC)