



September 8, 2020

**BOARD OF
DIRECTORS**

Submitted via Federal Express

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President

Ms. Lauren Alder Reid

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Farm Workers*

Assistant Director

Office of Policy, Executive Office for Immigration Review

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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)

Lupe Martinez
Member

*Center for Race,
Poverty and the
Environment*

Dear Ms. Alder Reid:

Ramon Ramirez
Member

The UFW Foundation 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.

*Pineros y
Campesinos
Unidos del
Noroeste, PCUN*

Teresa Romero
Member

*United Farm
Workers*

The UFW Foundation is a dynamic nonprofit organization established in 2006. The UFW Foundation's core purpose is to empower communities to ensure human dignity. We serve over 100,000 immigrants annually through a holistic approach; we provide critical services and engage our constituents in systemic change to break the cycle of poverty. Our regional offices are safe havens that provide resources and services which include credible immigration legal advice—and act as hubs for education, outreach, and organizing. In addition, our organization civically engages farmworkers and Latinos nationally in the democratic process by telling their story, voting, and advocating for policies that recognize the essential role of immigrant farmworker families in feeding the nation and provides them with the safeguards and benefits that they need to protect themselves and their communities.

The UFW Foundation has been a recognized organization since February 11, 2009, under the Board of Immigration Appeals, and as of January 18, 2017 under the Office of Legal Access Programs (OLAP). The UFW Foundation currently has six recognized offices located in Los Angeles, CA, serving as our headquarters/principal office, and extension sites in Bakersfield, Fresno, Salinas, Oxnard, California and Phoenix, Arizona. By expanding our Recognition



and Accreditation, we have been able to successfully bring immigration legal resources to some of the most isolated and remote communities in California. The UFW Foundation is committed to continuing its work with farm workers and other low-income immigrants, just as it is committed to continuing its training in the ever-changing contours of immigration law. The UFW Foundation currently has twenty-eight active DOJ Accredited Representatives and seven staff attorneys.

Our core purpose is to empower communities to ensure human dignity. We serve farmworkers who live in rural communities; these communities lack legal resources and are victimized by monetary fraud. The UFW Foundation is committed to providing quality and affordable immigration services. At our offices, no one is denied services based on inability to pay.

UFW Foundation urges the withdrawal of revised forms EOIR-31 and EOIR-31A

The UFW Foundation urges the withdrawal of these proposed revised forms, as they attempt to create policy change through the form revision process. The amount of information required in the revised forms is burdensome, goes far beyond the requirements in the regulations,¹ and will make the recognition and accreditation process significantly more difficult for eligible organizations such as ourselves.

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).² Several of the proposed changes increase the evidence required in order to qualify for recognition or accreditation in ways that are not supported by the current regulations. 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.

Further, this information collection creates a significant increase in information and documentation in violation of the Paperwork Reduction Act (PRA), which seeks to reduce the paperwork burden on individuals and organizations. This DOJ Information Collection adds questions that suggest fraud and 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 R&A program.

As we set forth below, the proposed changes would alter the substantive standards used to evaluate applications. This is contrary to the APA and the PRA. The proposed forms should be withdrawn in their entirety because they do not meet the standards of the APA and would

¹ 8 C.F.R. § 1292 (2003).

² 5 U.S.C. § 553 (b).



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 or benefit for such change.

Comments on EOIR-31

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 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.”³ To meet this requirement, we currently submit a brief, general statement along with a list of the specific immigration forms we will assist with, 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.⁴

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.”⁵ 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

³ 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).

⁴ 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.

⁵ Recognition of Organizations and Accreditation of Non-Attorney Representatives, 81 Fed. Reg. 92,346, 92,355.



guidance regarding fee waivers or reduced fees based on financial need,”⁶ 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 with a notice and comment period, as required by the APA.

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.”⁷ 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, consistent with the APA. 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:

⁶ 8 C.F.R. § 1292.11(b) (2003).

⁷ 8 C.F.R. § 1292.11(e) (2003).



- Periodic Inspections: How often does the designated office inspect the extension office(s) and how do these inspections take place?
- 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.⁸

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 additional documentation from 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** 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. UFW Foundation opposes efforts to

⁸ 8 C.F.R. § 1292.15 (2003).



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.

Changes to Form EOIR-31A Are Inconsistent with the Regulations

Representative's Work Location

Part 1 of the proposed form on p. 1 requires the organization to address where the non-attorney representative works or intends to work. We oppose the addition of this question. There is no 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. We oppose the inclusion of this question.

First, the status of the representative does not matter, as both employees and volunteers are eligible for accreditation. Also, this status is not static. It is not uncommon in our experience for volunteers to become employees and employees to become volunteers. Second, often applicants have not worked with the organization's legal services program at all, if the program is not yet recognized. In these (frequent) cases, the applicant has received his/her hands-on training with an outside, authorized provider such as another recognized organization. Third, 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.

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.⁹ 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 consistent with APA requirements, 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. Any relevant information would be revealed in a background check. 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 no reason to ask a question as broad as this that would require applicants to provide mostly irrelevant information, when the agency could ask a more specific question that would target the information that would actually impact on the eligibility criteria for accreditation.

Practice for Renewal

Part 2B of the proposed form has a new question for those who are renewing accreditation. The question addresses the frequency that 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.”¹⁰ To establish eligibility, the regulations require “A description of the individual’s qualifications, including education and immigration law experience.”¹¹

⁹ 8 C.F.R. § 1292.16 (c)(2) (2003).

¹⁰ 8 C.F.R. § 1292.16(c)(2) (2003).

¹¹ 8 C.F.R. § 1292.12(c) (2003).



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 questions about their cases, or staffing a naturalization clinic. Accordingly, we oppose the inclusion of the request to demonstrate prior appearances before USCIS or EOIR as unnecessarily burdensome and beyond the scope of what is required by the regulations.

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.

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."¹² 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 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?

¹² 8 C.F.R. § 1292.12(b) (2003).



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. These questions are far too broad, requiring individuals and organizations to make legal judgments about matters that have not been before any court. The regulation only requires that both applicants and authorized officers attest to the character and fitness of the applicant for accreditation.

Moreover, responding to this question on the new form EOIR-31A would require the organization seeking accreditation for one of their employees to engage in action in violation of California state law. Under California Code of Regulations §11017.1(c), "[e]mployers in California are prohibited from inquiring into, considering, distributing, or disseminating information" regarding certain types of criminal history. Moreover, the regulation provides protections to people with "[a] conviction that has been judicially dismissed or ordered sealed, expunged or statutorily eradicated pursuant to law" among other restrictions.¹³ The regulations require the organization's authorized officer to review and sign the request for accreditation, which in the new form would include information pertaining to an applicant's prior arrests, even when those arrests did not result in conviction or has since been judicially dismissed, sealed, expunged or statutorily eradicated.

Conclusion

In summary, the proposed Form EOIR-31A has 15 additional questions not on the current form. Most of these are unnecessary and/or increase the burden on the organization and its proposed representative. Moreover, many of these question exceed the process created under the current regulations. The UFW Foundation opposes efforts to make the R&A process unnecessarily burdensome, and to use the information collection process to make changes to regulatory requirements, rather than going through the notice-and-comment rulemaking process required by the APA.

Thank you for the opportunity to submit comments on the proposed form changes. Please contact Fatima Hernandez, Programs Director, at fhernandez@ufwfoundation.org for further information.

Sincerely,

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¹³ 2CCR §11017.1(c)