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DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1001, 1003, 1103, 1212, and 1292

EOIR Docket No. 176; A.G. Order No. 3783-2016

RIN 1125-AA72

Recognition of Organizations and Accreditation of Non-Attorney Representatives

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Final rule.

SUMMARY: This rule amends the regulations governing the requirements and procedures for authorizing representatives of non-profit religious, charitable, social service, or similar organizations to represent persons in proceedings before the Executive Office for Immigration Review (EOIR) and the Department of Homeland Security (DHS). The rule also amends the regulations concerning EOIR's disciplinary procedures.

DATES: This rule is effective on January 18, 2017.

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I. Public Participation

On October 1, 2015, the Department published in the **Federal Register** a rule proposing to amend the regulations governing the requirements and procedures for authorizing representatives of non-profit religious, charitable, social service, or similar organizations to represent persons in proceedings before the Executive Office for Immigration Review (EOIR) and the Department of Homeland Security (DHS). 80 FR 59514 (Oct. 1, 2015). The rule also proposed amendments to the regulations concerning EOIR's disciplinary procedures. *Id.* The Department received 63 comments from various sources, including non-profit organizations, bar associations, government agencies, legal clinics, attorneys, and law students. Both in response to these comments and as a result of further consideration, the Department has decided to revise the proposed rule as discussed below. Except for those revisions, the proposed rule is adopted without change.

II. Regulatory Background

The rule amends 8 CFR part 1292 by removing § 1292.2, revising §§ 1292.1, 1292.3, and 1292.6, and adding §§ 1292.11 through 1292.19. It amends 8 CFR 1001.1 and 8 CFR part 1003 at §§ 1003.0, 1003.1, and 1003.101 through 1003.108, and it adds §§ 1003.110 and 1003.111.

The rule also amends 8 CFR part 1103 at § 1103.3 and 8 CFR part 1212 at § 1212.6. The rule transfers the administration of the Recognition and Accreditation (R&A) program within EOIR from the Board of Immigration Appeals (Board) to the Office of Legal Access Programs (OLAP) (8 CFR 1003.0); amends the qualifications for recognition of organizations and accreditation of their representatives (8 CFR 1292.11 and 1292.12); institutes administrative procedures to enhance the management of the R&A roster (8 CFR 1292.13 through 1292.19); and updates the disciplinary process to make recognized organizations, in addition to accredited representatives, attorneys, and other practitioners, subject to sanctions for conduct that contravenes the public interest (8 CFR 1003.101 *et seq.*).

III. Comments & Responses

As noted above, the Department received sixty-three comments in response to the proposed rule. Twenty-nine comments were from currently-recognized non-profit organizations and other non-profit organizations. Three comments were from bar associations, 11 comments were from private individuals, 19 comments were anonymously submitted, and 1 comment came from a government entity.

In response to the comments, the Department changed a number of provisions. First, the final rule makes a number of changes to the requirements for recognition. The final rule retains the requirement that organizations must have an accredited representative to be recognized or renewed if the organization is seeking recognition for the first time or is a currently recognized organization without an accredited representative on the effective date of the rule. However, once an organization is recognized, the organization will not have its recognition administratively terminated if it no longer has an accredited representative. Such organizations will be placed on inactive status. The final rule details the rules and procedures for inactive

status. (Section III.B.1.a.) The final rule removes the substantial amount standard for recognition and the associated waiver provision set forth in the proposed rule. (Section III.B.1.d.) Instead, the focus in the recognition process is placed on whether organizations are non-profit, federally tax-exempt religious, charitable, social service, or similar organizations and whether they are providing immigration legal services primarily to low-income and indigent clients in the United States. The final rule provides that these requirements will be considered together. (Section III.B.1.e.)

Second, the final rule makes no changes to the character and fitness provision for accreditation. Therefore, immigration status remains a factor in that determination. However, further clarification and guidance regarding why and how immigration status may be used as a factor is provided in the supplementary information. (Section III.B.2.a.)

Third, as mentioned above, the final rule unlinks recognition and accreditation, which allows the validity period for recognition to be increased to six years and to run independent of the three-year period of accreditation for an organization's representatives. Accordingly, organizations and their representatives will seek renewal of recognition and accreditation separately at the conclusion of their respective recognition and accreditation cycles. (Section III.B.5.)

Fourth, the final rule amends the reporting requirement in the proposed rule. The final rule renames the annual report as the "annual summary of immigration legal services provided" to avoid confusion with other annual reports that organizations may prepare. More significantly, the information required to be submitted has shifted to focus on the legal services provided by the organization as a whole, rather than by its accredited representatives individually. (Section III.B.8.)

Fifth and finally, the final rule includes the following additional changes: removes the requirement of renewal for all other organizations recognized at the effective date of the final rule if they seek extension of recognition or accreditation of a new representative (Section III.B.6); adds provisions that give OLAP the ability to permit electronic communications and filings among OLAP, prospective and current organizations, DHS, the EOIR disciplinary counsel, and the anti-fraud officer (Section III.E.); and adds provisions that enable organizations to request reconsideration of OLAP determinations that disapprove requests for recognition or accreditation or that administratively terminate recognition or accreditation and that permit organizations to seek administrative review of denied reconsideration requests before the Director (Section III.F).

Below, the Department summarizes in greater detail the comments received and explains the changes, if any, that the Department has made in response. Note that because some comments overlap and commenters raised multiple subjects, the comments are generally addressed by topic rather than by reference to a specific commenter.

A. Transfer of R&A Program from the Board to OLAP

The Department received nine comments addressing the transfer of the administration of the R&A Program within EOIR from the Board to OLAP. Six comments from non-profit organizations, bar associations, and a government body supported the transfer as “well-placed and appropriate” because of OLAP’s mission to facilitate access to legal representation and counseling and its record in doing so. Two of these commenters expressed concern that the public and DHS staff may be confused by the change in administrator, and another commenter stated that the transfer may cause confusion because advocates have educated the public about “BIA recognized organizations” and “BIA accredited representatives.” However, all three

commenters that had concerns asserted that the confusion may be alleviated through clear public guidance from OLAP on its role and responsibilities and the use of a commonly recognized term, such as “DOJ recognized organization” or “DOJ accredited representative.”

Three commenters opposed the transfer based on concerns about whether OLAP’s current staffing and resources are adequate to enable OLAP to take on the new duties and responsibilities provided by the rule.

The Department has made no change to the proposed rule and accordingly the administration of the R&A Program will be transferred from the Board to OLAP. *See* final rule at 8 CFR 1003.0. The Department is committed to providing OLAP with sufficient resources to successfully administer its new duties and responsibilities under this rule. As suggested by the commenters, the Department will endeavor to engage in significant education and outreach with the public and government stakeholders regarding the R&A program, the changes in this rule, and OLAP’s role. Furthermore, the effective date of the final rule on January 18, 2017, leaves considerable time after the date of publication to provide time for public awareness and outreach and to effectively and efficiently manage the transfer of the program. *See* 80 FR at 59523 n. 70 (“At the effective date of the final rule, a pending application for initial recognition, initial accreditation, or renewal of accreditation before the Board would be transferred to OLAP to review. Organizations with such pending applications would have to meet the new requirements of the final rule to be approved for recognition or accreditation. OLAP will provide organizations with pending applications the opportunity to amend the applications, if necessary, to conform to the new requirements of the final rule. Further guidance will be provided prior to the effective date of the final rule”).

B. Recognition and Accreditation

1. Recognition Qualifications

a. Accredited representative required & inactive status

The Department received 20 comments regarding the requirement that an organization have at least one accredited representative to be recognized, to maintain recognition, and to have its recognition renewed. Of the 20 comments received, one supported the requirement, eight generally supported the requirement, and 11 opposed the requirement. The commenters that opposed the requirement and those that generally supported it were primarily concerned that an organization could have its recognition terminated if it lost its accredited representative at any time during the validity period or if it did not have one on staff at renewal because of the linking of recognition and accreditation in the proposed rule. The commenters suggested that if recognition and accreditation must be linked, the rule should provide a grace period to give recognized organizations time to replace their only accredited representative when the representative leaves the organization or is otherwise terminated. The commenters asserted that the grace period could come through the inactive status provision but asked for clarification regarding whether placement on inactive status was automatic or required an organization to request this status and how long an organization could be permitted to remain on inactive status. Commenters also raised a concern that one year after the effective date of the final rule would not be sufficient time for organizations that are currently recognized without an accredited representative to obtain an accredited representative and come into compliance with the rule.

The final rule retains the accredited representative requirement for organizations to be recognized or renewed if the organization is seeking recognition for the first time or is a currently recognized organization without an accredited representative on the effective date of

the rule. *See* final rule at 8 CFR 1292.11(a)(3). The Department believes that the requirement is a foundational element of the rule because the purpose of recognizing an organization is to allow for the accreditation of non-attorney representatives. The Department believes that currently recognized organizations without an accredited representative on the effective date of the rule will have sufficient time to hire, train, and seek accreditation for a new representative, given that the rule provides such organizations with an additional year beyond the effective date to submit their application for renewal of their recognition under this rule.¹

Based on the comments, however, the Department recognizes that a rigid requirement that an organization have an accredited representative at all times does not account for the practical realities that organizations face with limited budgets, the hiring process, and employee turnover. In this regard, once an organization is recognized, the final rule has unlinked recognition and accreditation so that an organization will not have its recognition administratively terminated if it no longer has an accredited representative. Recognized organizations that lose their only accredited representative will be placed on inactive status, which is clarified in the final rule at 8 CFR 1292.16(i), and they will be allowed a reasonable amount of time to obtain a new accredited representative before risking termination of recognition.

The final rule moves the regulatory text regarding inactive status from proposed § 1292.17(e) to 8 CFR 1292.16(i) and revises it so that organizations are placed on inactive status when they have no currently approved accredited representative on staff and they have

¹ This provision also applies to currently recognized organizations that only have attorneys on staff on the effective date of the rule, January 18, 2017. Such organizations will have one year from January 18, 2017, to seek accreditation for a new representative and submit an application for renewal of recognition.

promptly notified OLAP of that situation as mandated by the reporting requirements.² Inactive status provides the organization with a grace period of two years from the date the organization was placed on inactive status to apply for and have approved at least one accredited representative. The grace period provided by inactive status prevents an organization from having its recognition administratively terminated and gives it sufficient time to obtain a new representative. Under the final rule, the OLAP Director has the discretion to extend an organization's time on inactive status when warranted.

The final rule makes clear that organizations on inactive status must request renewal of recognition if their renewal period occurs while on inactive status. *See* final rule at 8 CFR 1292.16(i). The OLAP Director has the discretion to renew an inactive organization's recognition without a currently approved accredited representative as long as the organization otherwise meets the requirements for renewal and attests that it intends to apply for and have approved a new representative within two years of renewal. *See* final rule at 8 CFR 1292.11(a)(3), 1292.16(a), (i). If the renewal request is granted under such circumstances, the organization will remain on inactive status and have 2 years from the date of renewal to obtain a new accredited representative.

Organizations on inactive status remain subject to administrative termination of recognition under 8 CFR 1292.17. Specifically, their recognition may be administratively terminated when they do not request renewal of recognition while on inactive status or do not have an individual approved for accreditation during the time period specified at 8 CFR 1292.16(i).

² A recognized organization on inactive status would remain on the R&A roster with a designation that it has no accredited representatives.

Finally, an organization on inactive status is not authorized to provide immigration legal services, unless it has at least one attorney on staff. *See* final rule at 8 CFR 1292.16(i).

Organizations on inactive status that continue to provide immigration legal services without an attorney on staff may be subject to disciplinary sanctions for the unauthorized practice of law.

The final rule adds a ground of discipline for organizations at 8 CFR 1003.110(b)(5), if the organization provides immigration legal services without an attorney or accredited representative on staff.

b. Federal tax-exempt status

The Department received 19 comments regarding the proposed requirement that an organization establish that it is federally tax-exempt. The Department asked for comment on this requirement and specifically asked whether the requirement would be too restrictive and whether Federal tax-exempt status should be limited to organizations exempted under 26 U.S.C. 501(c)(3). *See* 80 FR at 59528.

Fourteen commenters supported the requirement, one commenter generally supported the provision, and four commenters did not support the provision. The majority of the fourteen commenters who supported the provision urged that the final rule be as broad as possible to extend to social service or similar organizations that do not fall within the section 501(c)(3) Federal tax-exemption. Commenters asked that a range of documents suffice to prove Federal tax-exempt status. The commenter that expressed general support for the Federal tax-exemption requirement stated that waivers of the requirement should be given sparingly. Three of the commenters against the requirement asserted that the burden of cost and time associated with seeking Federal tax-exempt status would discourage capacity building. The fourth comment in

opposition stated that the requirement was too stringent because it excluded certain institutions from becoming recognized like public schools and libraries.

The final rule retains the requirement that organizations be federally tax-exempt to be recognized,³ while changing the proof required to show Federal tax-exempt status to include a variety of supporting documents. *See* final rule at 8 CFR 1292.11(a)(2), (c). The rule modifies the proof required to include an organization's currently valid Internal Revenue Service tax exemption letter (under 26 U.S.C. 501(c)(3) or some other section of the Federal tax code),⁴ alternative documentation to establish Federal tax-exempt status, or proof that it has applied for Federal tax-exempt status. *See* final rule at 8 CFR 1292.11(d).

As under the proposed rule, if an organization has not yet received an IRS tax-exemption determination letter at the time it applies for recognition, it may satisfy this requirement by submitting proof that it has applied for Federal tax-exempt status. 80 FR at 59517. The final rule, however, clarifies at 8 CFR 1292.11(f) that such organizations will be granted conditional recognition. Conditional recognition allows these organizations to begin providing services while their applications for tax exemptions are pending and gives OLAP the opportunity to evaluate the organizations at an earlier renewal date to ensure that they have become federally tax-exempt and otherwise meet the requirements for recognition. *See generally* 80 FR at 59524.

³ In addition to establishing Federal tax-exempt status, as discussed in section III.B.1.e below, an organization must also establish that it is a non-profit religious, charitable, social service, or similar organization that provides immigration legal services primarily to low-income and indigent clients within the United States in order to qualify for recognition.

⁴ Government entities, such as libraries, schools, or local government offices, may provide a government information letter from the Internal Revenue Service to show that the entity is exempt from Federal taxes. This letter can be requested from the IRS free-of-charge. Government Information Letter, Internal Revenue Service (Jan. 26, 2016), <https://www.irs.gov/Government-Entities/Federal,-State-&-Local-Governments/Governmental-Information-Letter>.

c. Elimination of nominal charges requirement

The Department received 22 comments regarding the elimination of the “nominal charges” requirement. Eighteen comments supported the elimination of the requirement that a recognized organization charge only a nominal fee for its immigration legal services because it tended to impede the ability of organizations to serve greater numbers of individuals in need and discouraged new organizations from seeking recognition. Three commenters were against the elimination of the requirement because they believed that it would place recognized organizations in financial competition with private attorneys and could lead to market-rate fees. The fourth comment against the change opposed it because of concerns that the proposed substantial amount standard would be even more burdensome for organizations than the “nominal charges” requirement. This sentiment was shared by many of the commenters who expressed support for the elimination of the nominal charges requirement and is addressed more fully in the next section.

The final rule eliminates the “nominal charges” requirement, as proposed. The Department believes, as noted by the commenters, that the elimination of the nominal charges requirement for recognition is supported by the rule’s other requirements that ensure that organizations are non-profit, federally tax-exempt religious, charitable, social service, or similar organizations that are primarily serving low-income or indigent clients. These requirements mandate that any “[l]egal fees, membership dues, or donations charged or requested by a recognized organization are expected to be at a rate meaningfully less than the cost of hiring competent private immigration counsel in the same geographic area,” so that low-income and indigent clients are able to access the organization’s immigration legal services. 80 FR at 59519.

d. Substantial amount of budget is not derived from client charges

The Department received 30 comments on the requirement that organizations demonstrate that a substantial amount of its immigration legal services budget is derived from sources other than funds provided by or on behalf of immigration clients themselves, such as legal fees, donations, or membership dues. The Department specifically requested public comment on the substantial amount standard.

Twenty-four commenters opposed the substantial amount requirement. The commenters objected to the standard because it placed an impractical reliance on outside funding sources of revenue that was unreflective of the diversity of ways in which organizations provide immigration legal services or of the availability of outside funding. They stated that many organizations depend on fees to provide legal services and that even when they may have outside funding sources, those funds may only be applied to certain legal services while other services must be supported by fees. The commenters criticized the requirement as being just as burdensome for organizations as the nominal fee restriction because it lacked enough specificity for the organizations to understand or OLAP to implement with ease or consistency. They speculated that regardless of the percentage of outside funding applied the requirement could lead organizations to provide less services and volume of service in order to reduce their fee revenue and meet the standard. Three commenters who supported the requirement even noted that a too-stringent focus on outside sources of funding could lead to organizations being unable to meet the standard or a greater need for waivers of the requirement to the point that the requirement would have no meaning. The commenters in opposition recommended that the Department remove the substantial

amount standard from the final rule and shift the focus to whether organizations are non-profit, federally tax-exempt religious, charitable, social service, or similar organizations that are primarily providing immigration legal services to low-income and indigent clients in the United States.

The final rule removes the substantial amount standard for recognition and the associated waiver provision set forth in the proposed rule. The Department agrees with the concerns of commenters who opposed the standard that a requirement that an organization have outside sources of funding would be unduly burdensome and act as a potential deterrent to capacity building. The proper focus in the recognition process is whether organizations are non-profit, federally tax-exempt religious, charitable, social service, or similar organizations that are primarily providing immigration legal services to low-income and indigent clients in the United States. Accordingly, as discussed below, the funding sources of an organization are one of several relevant factors in that assessment.

e. Serving primarily low-income and indigent persons and non-profit status

The Department received 16 comments on the proposed provision requiring that an organization provide immigration legal services primarily to low-income and indigent clients within the United States. The Department specifically requested comment on this provision and the corresponding requirement that, if an organization charges fees, the organization has a written policy for accommodating clients unable to pay for immigration legal services.

Ten commenters generally supported the requirements that recognized organizations primarily serve low-income and indigent clients and have a written policy to accommodate those unable to pay for immigration legal services. However, these commenters and two additional

commenters stated that the proof required to demonstrate that organizations primarily serve low-income and indigent clients was too burdensome. In particular, commenters objected to producing guidelines to determine whether individuals are low-income and indigent because of the difficulty in verifying the income of clients with unconventional work circumstances or inadequate documentation. They asserted that organizations target the low-income and indigent communities as part of their mission without defining the terms low-income and indigent. The commenters recommended, as they did above regarding the substantial amount standard, that the Department focus on an organization's non-profit status, mission, and all of its other charitable reporting duties to the Federal Government or local donors.

Four commenters stated that the final rule should set a standard or provide guidance for what constitutes low-income and indigent. One commenter recommended the Federal poverty standard, whereas another commenter suggested a standard of household assets less than \$10,000, excluding the value of the client's residence and vehicle. A third commenter stated that the rule should require organizations to show that clients who are not low-income or indigent fall within some multiple of the low-income standard. The last commenter stated that an income percentage should be set so that organizations would know who they may serve in order to be recognized.

The final rule retains the requirements that recognized organizations primarily serve low-income and indigent clients and have a written policy to accommodate those unable to pay for immigration legal services and joins it with the requirement that the organization be a non-profit religious, charitable, social service, or similar organization. *See* final rule at 8 CFR 1292.11(a)(1). As discussed in the proposed rule, these requirements are related. *See* 80 FR at 59518 ("In order to avoid recognizing organizations with for-profit motives and to advance the

requirement that organizations have a religious, charitable, social service, or similar purpose, the proposed rule would require an organization to establish that it provides immigration legal services primarily to low-income and indigent clients.”). The Department has determined that they should be considered together in the final rule and, accordingly, has combined and amended the proof required to satisfy these requirements. Under the final rule at 8 CFR 1292.11(b), an organization must submit: a copy of its organizing documents, including a statement of its mission or purpose; a declaration from its authorized officer attesting that it serves primarily low-income and indigent clients; a summary of the legal services to be provided; if it charges fees for legal services, fee schedules and organizational policies or guidance regarding fee waivers or reduced fees based on financial need; and its annual budget. The organization may also submit additional documentation to demonstrate non-profit status and service to primarily low-income and indigent individuals, such as tax filings, reports prepared for funders, or information about other free or low-cost immigration-related services that it provides like educational or outreach events.

These amendments to the proof required address the comments raised and more accurately and simply allow organizations to show whether they are non-profit religious, charitable, social service, or similar organizations that primarily serve low-income and indigent clients. As discussed in the proposed rule, the proof required to make this showing cannot be limited to demonstrating tax-exempt status under 26 U.S.C. 501(c)(3) (concerning entities organized for religious, charitable, social service, or other specified purposes), because such a designation is for tax purposes and more significantly, organizations may be recognized that are tax-exempt under other sections of the Federal tax code. 80 FR at 59517. The rule thus requires

an organization's charter, by-laws, articles of incorporation, or similar documents that show its religious, charitable, social service, or similar mission.

The rule also includes as proof the organization's fee schedules and organizational policies or guidance regarding fee waivers or reduced fees based on financial need, if it charges fees for services. As stated in the proposed rule:

Requiring recognized organizations to serve primarily low-income and indigent clients necessarily affects the magnitude of legal fees, membership dues, or donations, if any, that an organization may charge or request. Charging or requesting excessive fees, membership dues, or donations would not be consistent with the aim of serving primarily low-income and indigent clients. An organization that charges or requests such fees, dues, or donations would be less likely to primarily serve low-income and indigent clients, who have a limited ability to pay fees, and would be more likely to have an impermissible profit-seeking motive and prey upon vulnerable populations. Thus, while fees, dues, and donations for immigration legal services are not defined under the proposed rule, recognized organizations are expected to limit fees, dues, and donations charged or requested so that low-income and indigent clients are able to access the organization's immigration legal services. . . . Legal fees, membership dues, or donations charged or requested by a recognized organization are expected to be at a rate meaningfully less than the cost of hiring competent private immigration counsel in the same geographic area.

80 FR at 59518-19. Thus, while the Department no longer intends to scrutinize these fee schedules under the final rule because the substantial amount requirement has been removed, the

fee schedules may be used to evaluate whether an organization is serving primarily low-income and indigent clients and serve as a baseline when a complaint is received about the fees charged by an organization. With respect to the organizational policies or guidance regarding fee waivers or reduced fees based on financial need, the Department does not require organizations to produce guidelines to determine whether individuals are low-income and indigent but it does expect that an organization's policies or guidance mention the factors or standards used when deciding to provide a fee waiver or reduced fees. Such information informs the Department's understanding of the organization's non-profit purpose to serve primarily low-income and indigent clients and gives the organization's clients some sense of the circumstances that would warrant fee waivers or reduced fees.

Finally, the organization must include its annual budget for immigration legal services. Under the proposed rule, the budget was necessary for an analysis of the organization's funding under the substantial amount standard. Now, the budget will serve as further evidence that the organization is a non-profit that primarily serves low-income and indigent clients. The budget will show sources of revenue apart from fees, like grants and monetary or in-kind donations. To the extent that an organization cannot make such a showing of outside funding sources and is fee-dependent, the factors discussed above in addition to other documentation, such as its tax filing, letters of recommendation from the community, its annual report, or information about other free or low-cost immigration-related services that it provides, will be considered.

f. Knowledge and experience

Fifteen commenters sent the Department comments on the recognition requirement that an organization have "access to adequate knowledge, information, and experience in all aspects of immigration law and procedure," 80 FR at 59538, and the related accreditation requirement

that a proposed representative possess “broad knowledge and adequate experience in immigration law and procedure,” 80 FR at 59539. Both requirements are consistent with the Board’s current decisions regarding the knowledge and experience sufficient to warrant recognition and accreditation. 80 FR at 59519-59520. For the reasons set forth below, the final rule retains the requirements for knowledge and experience for recognition and accreditation as stated in the proposed rule. *See* final rule at 8 CFR 1292.11(a)(4), 1292.12(a)(6).

Four commenters expressed support for the recognition and accreditation requirements regarding knowledge and experience. Three of these commenters further stated that they appreciated that the rule allowed for flexibility in showing education, training, and experience by not mandating a specific number of formal training hours, specific courses, or testing.

Eight commenters objected to the requirements because they lacked specificity regarding the knowledge and experience required for recognition and accreditation. They contended that the rule may fail to properly advise organizations as to the level of knowledge and experience required, or in the alternative, it could permit unqualified individuals to become accredited. Some of these commenters urged the Department to develop and administer a test for accreditation, or to require a minimum number of hours of on-the-job training or supervised practice before seeking accreditation. Others recommended that the Department develop a uniform, standardized training program on its own or in collaboration with DHS or other non-profit organizations, or require a specified number of immigration legal trainings per year. Two commenters stated that the Department should, as discussed in the proposed rule, make known, or even require completion of, recommended education, testing, training courses and hours, or internships that would satisfy the knowledge and experience requirements for accreditation.

Five commenters asserted that the rule should require that organizations have attorney supervision or mentors in order to satisfy the knowledge and experience requirement to be recognized. According to these commenters, an attorney supervision or mentoring requirement would provide much needed oversight to avoid the improper handling of cases while also preventing unscrupulous individuals from attempting to obtain recognition and accreditation. Attorney supervision or mentoring could be achieved through an attorney on staff or a formal arrangement with an attorney or another recognized organization with attorneys on staff. A waiver of the requirement could be provided when it was cost-prohibitive or not feasible due to a lack of attorneys in an area.

While the Department understands the concerns raised regarding the need for attorney supervision or mentoring and more specific testing or training requirements, such requirements would not advance the rule's goal to increase capacity because they would result in increased costs for non-profit organizations. The flexible approach adopted by the rule allows organizations to meet the knowledge and experience requirements in a number of ways, and it is currently used by the Department in the recognition and accreditation process.

Nonetheless, the Department recognizes that the knowledge and experience requirements would benefit from some parameters. As stated in the proposed rule, the Department intends to provide guidance on the knowledge and experience required for accreditation so that organizations are generally aware of the education, testing, training courses and hours, or internships that could satisfy the standard. 80 FR at 59520. Similarly, the Department encourages, but does not require, organizations to have attorney supervision or mentors because attorney supervision or mentorship will likely show that an organization has access to adequate knowledge, information, and experience in order to be recognized. 80 FR at 59519.

Furthermore, to the extent that an organization or representative engages in unscrupulous behavior or unprofessional conduct during the course of representation, the conduct may be remedied through the disciplinary process or the rule's other oversight procedures.

g. Authorized officer

The Department received eight comments regarding the recognition requirement that an organization designate an authorized officer who is empowered to act on its behalf for all matters related to recognition and accreditation. All of the comments supported the requirement, and the only concern raised was that organizations did not want to be unduly penalized because staff turnover leads an organization to lack an authorized officer briefly. The Department acknowledges that organizations and their appointed authorized officer may change over time, and the final rule requires organizations to promptly report such changes pursuant to 8 CFR 1292.14(a). The Department believes that 30 days will generally be sufficient time for organizations to appoint someone to act in the capacity of an authorized officer until a replacement is designated, if they cannot designate a permanent replacement within that time, and to notify the OLAP Director of the change. The final rule without change adopts the requirement for an organization to designate an authorized officer. *See* final rule at 8 CFR 1292.11(a)(5).

2. Accreditation Qualifications

a. Character and fitness

The Department received a number of comments on the replacement of the requirement that an accredited representative be a person of good moral character, with the requirement that a proposed representative possess the "character and fitness" to represent clients before the immigration courts, the Board, or DHS. The Department specifically asked for comments on the

change and what factors may be relevant to the character and fitness assessment. In relation to the factors, the Department asked whether current immigration status should be a factor and to what extent EOIR should consider whether the individual has employment authorization, has been issued a notice of intent to revoke or terminate an immigration status (or other relief), such as asylum or withholding of removal or deportation, or is in pending deportation, exclusion, or removal proceedings.

The Department received 16 comments on the change from good moral character to character and fitness. Eleven of the comments expressed opposition to the change, although two of the comments voiced opposition to the change without any stated reason. One comment in opposition was expressly adopted by five other commenters and reiterated by two other commenters. The commenters objected to the character and fitness requirement because it is the same requirement applied to attorneys in order for them to practice law. The commenters claimed that the requirement is not appropriate for accredited representatives because they differ from attorneys in that they can only provide immigration legal services and can only do so through a recognized organization. Three commenters also raised a concern that the character and fitness requirement may increase administrative burdens for the organization in the accreditation process. In particular, they recommended that the organization's attestation of good moral character and letters of recommendation, rather than background check documentation, should be sufficient to demonstrate good moral character.

Five commenters expressed support for the change to the character and fitness requirement. Two of these commenters stated that the character and fitness requirement was appropriate because it would align the accreditation process with the process for attorneys to be admitted to their State bars to practice law. In contrast, one commenter asserted that while a

general character and fitness standard was appropriate, the standard should not be identical to the standard applied to attorneys.

The final rule retains the character and fitness requirement for accreditation. The Department agrees with the commenters who supported the requirement. Accredited representatives should be held to a similar standard of character and fitness as attorneys for the admission to practice law because accreditation allows an individual to provide immigration legal services. The fact that accredited representatives are limited to providing immigration legal services and are required to work through a recognized organization is immaterial because they are permitted to perform a function that is generally limited to attorneys held to the character and fitness standard.

Additionally, the Department does not believe that the character and fitness requirement will create administrative burdens for organizations because organizations would not have to submit the extensive documentation that attorneys submit to obtain admission to a State bar. In fact, the same documents that may be used under the current regulation to show good moral character may be used to show character and fitness. Board of Immigration Appeals, *Frequently Asked Questions about the Recognition and Accreditation Program* 22 (Sept. 2015), <https://www.justice.gov/eoir/recognition-and-accreditation-faqs/download>. 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. 80 FR at 59520. Additional documentation beyond this would only be necessary if the proposed representative has an issue in the proposed representative's record regarding the proposed representative's honesty, trustworthiness, diligence, professionalism, or reliability. 80 FR at 59520 & n.42.

The Department received 29 comments regarding whether immigration status should be considered as a factor in the character and fitness assessment. Twenty-five commenters objected to the use of immigration status as a factor, and three other commenters expressed general concerns about how immigration status as a factor would negatively affect the ability to provide legal services through immigrants or volunteers. The 25 comments in objection generally rejected the proposition that there was an “inherent conflict in having accredited representatives represent individuals before the same agencies before whom they are actively appearing in their personal capacities.” 80 FR at 59520. Seventeen commenters stressed that a representative’s personal immigration experience enhances the representative’s ability to effectively represent others and guide them through the process. Four of the seventeen commenters further noted that they employed accredited representatives who are immigrants and had not witnessed or dealt with any conflict of interest during these representatives’ representation of other immigrants as a result of their own personal immigration experience. Eight commenters stated that attorneys are not restricted from appearing in a professional capacity before courts in which they may have a personal matter pending and that immigrants are not typically excluded from the legal profession because of their immigration status alone. The commenters concluded that individuals should not be excluded from eligibility for accreditation based on their immigration status alone, regardless of whether they have employment authorization, are in removal proceedings, or are recipients of Deferred Action for Childhood Arrivals, because immigration status does not create an inherent conflict. They argued that immigration status is not related to the character and fitness assessment as it has no bearing on an individual’s honesty, trustworthiness, diligence, or professionalism and that considering it would potentially reduce capacity by excluding a segment of individuals who are likely to become representatives.

Six commenters also rejected the proposition that an individual's immigration status would have any more effect on the continuity of representation than any other factor. They asserted that the same concern could be raised by other circumstances unrelated to immigration status, such as a new job, an illness, or maternity leave. Two commenters noted that the rule's goal of increasing capacity would be best served by allowing willing and capable individuals to become accredited representatives, even if they may be unable to represent a client on occasion or to completion of the client's matter.

Five commenters that opposed immigration status as a factor offered suggestions for dealing with potential conflicts of interest or disruption in representation. One stated that the potential conflicts could be addressed through existing safeguards, such as the Rules of Professional Conduct for Practitioners. Another commenter asserted that potential conflicts should be handled on a case-by-case basis, rather than a categorical rule disqualifying individuals from accreditation. In this same regard, two commenters suggested that if a representative was in active removal proceedings, the representative could withdraw or EOIR could disqualify the representative from cases before the Immigration Judge hearing the representative's case. The fifth commenter suggested that a representative could name another person to continue the representation if the representative is removed from the United States while representing other persons.

One commenter suggested that immigration status could be a factor in the character and fitness determination, acknowledging that an individual's immigration status may present a conflict of interest. The commenter stated that the level of immigration status required to satisfy the character and fitness standard depends on an examination of the individual's employment relationship with the organization, the resources of the organization, and the type of accreditation

sought.

After considering the comments received, the Department has determined that no change will be made to the proposed rule and that immigration status may be considered as a factor in the character and fitness determination for accreditation in certain circumstances. *See* final rule at 8 CFR 1292.12(a)(1). The Department recognizes that individuals who have been through the immigration system can provide valuable insight and assistance to others going through the system. However, as with any applicant for accreditation, not all individuals are fit to be accredited by the Department to provide immigration legal services. The Department has and will continue to consider issues relating to immigration status in determining whether an immigration practitioner is fit to appear before DHS and EOIR.⁵ Thus, the Department will make case-by-case assessments regarding accreditation, but as suggested by some commenters, the Department will likely not accredit individuals who are in active deportation, exclusion, or removal proceedings or who have been issued a notice of intent to revoke or terminate an immigration status (or other relief) until the matter is concluded.⁶ In these circumstances, the Department, through OLAP, will make the case-by-case assessment of whether an individual's immigration status presents an actual or perceived conflict of interest after such information arises that calls into question the individual's fitness to appear as a representative and, as the rule provides, the organization is given the opportunity to respond to the information. Similarly, individuals who are under an order of removal will generally not be eligible for accreditation unless they have received, for example, temporary protected status or Deferred Enforced

⁵ *See, e.g., Matter of Ravindra Singh Kanwal*, D2009-053 (OCIJ July 8, 2009), and *Matter of Noel Peter Mpaka Canute*, D2010-124 (OCIJ Mar. 16, 2011), available at https://www.justice.gov/sites/default/files/eoir/legacy/2014/02/03/CanuteMpakaNoelPeter_FinalOrder.pdf (last visited June 28, 2016).

⁶ For purposes of this rule, individuals whose proceedings have been administratively closed would not be considered to be in active proceedings.

Departure.⁷ The rule, however, does not require an organization to present proof of any immigration status during the application process.⁸

b. Employee or volunteer

The Department received four comments on the requirement that a proposed representative for accreditation be an employee or volunteer of an organization so that the representative would be subject to the direction and supervision of the organization. The four comments all supported the requirement and stressed that the rule's explicit permission for volunteers to become accredited representatives would help increase capacity.⁹ The final rule retains without change the requirement that the proposed representative be an employee or volunteer of an organization to be accredited. *See* final rule at 8 CFR 1292.12(a)(2).

c. No attorneys, no orders restricting practice of law or representation, no serious crimes

The Department received three comments on the provision that precludes attorneys, individuals under an order restricting their practice of law, and individuals convicted of a serious crime from being accredited. The first comment supported the restriction from accreditation of attorneys and those under an order restricting their practice of law. The other comments objected

⁷ This restriction does not apply to individuals who have been granted withholding of removal pursuant to 8 U.S.C. 1231(b)(3) or the Convention Against Torture, although under an order of removal.

⁸ We note that when an accredited representative is an employee of the organization, the organization has an independent obligation to verify that its accredited representative employee is authorized to work in the United States. 8 U.S.C. 1324a; *see also* 80 FR at 59520 n.43. Therefore, the Department will not consider employment authorization in its character and fitness assessment.

⁹ UFW Foundation, although in agreement with the employee/volunteer requirement, suggested that the rule should permit an individual to become an accredited representative even though that individual may not be an employee or volunteer of an organization provided that the individual has adequate supervision and direction from a recognized organization. UFW Foundation posited that this circumstance would likely occur in rural communities where two organizations partner—one provides legal oversight and supervision and the other provides staff and space—in order to create a legal service infrastructure that neither could provide alone. The rule does not directly address such a circumstance, and as a result, contrary to UFW Foundation's assertion, it may be permissible in some form. For instance, a recognized organization may be able to extend its recognition and provide legal services through its own accredited representative at a location of another non-recognized organization.

to the bar to accreditation of an individual convicted of a serious crime because it conflicts with the character and fitness requirement and may prevent otherwise qualified individuals from becoming accredited.

The final rule does not change the restriction against accreditation of attorneys, individuals under an order restricting their practice of law, and individuals convicted of a serious crime. *See* final rule at 8 CFR 1292.12(a)(3)-(5). Regarding those convicted of a serious crime, this prohibition supplements the character and fitness requirement, as the Department has determined that individuals with serious crimes are not qualified to be accredited. Unlike with attorneys permitted to appear before EOIR and DHS, the Department has the authority to decide whether non-lawyers should be accredited and permitted to provide immigration legal services in the first instance and need not be limited to pursuing discipline against them based on a serious crime after they have been accredited.

3. Applying for Recognition and Accreditation

The Department received four comments related to the provisions governing the application process for recognition and accreditation. The four comments conveyed general support for the application process but expressed some concerns. One commenter stated that EOIR should have a formal process for training and communicating with United States Citizenship and Immigration Services (USCIS), Department of Homeland Security, regarding its role in the recommendation process for recognition and accreditation. Relatedly, another commenter stated that the process for service on the USCIS district director in the jurisdictions where the organization offers or intends to offer legal services should be simplified. This commenter asserted that the current EOIR Form-31 only has space to indicate service on one USCIS district director and suggested that service should be limited to the USCIS district

director who is located in the jurisdiction of the proposed representative's primary office. This commenter also requested that a list of contact information for USCIS district directors be made available. Two commenters asserted seemingly opposing concerns about the length of the application process due to the ability of OLAP to request more information from an organization in order to avoid adverse determinations. One commenter worried that the procedure could lead to increased processing times, whereas the other commenter suggested that organizations should have at least 90 days to respond to requests for information.

The final rule adopts the application procedures as proposed, except for changes that allow an organization to request reconsideration of a disapproved request,¹⁰ and that permit OLAP to allow requests, notifications, recommendations, and determinations in the application process to be done electronically.¹¹ *See* final rule at 8 CFR 1292.13(a). As mentioned above, the Department intends upon publication of the final rule to engage in significant education and outreach with government stakeholders like USCIS so that they are aware of its implementation and their role in the process. The Department has not amended the service procedure in the final rule, as recommendations from all USCIS offices where an organization provides or intends to provide services ensures consideration of the greatest possible amount of information about an organization and its proposed representatives. The updated EOIR Form-31 for recognition-related requests and EOIR Form 31-A for accreditation requests should simplify the procedure for service, as they include several lines to indicate service has been made on multiple USCIS

¹⁰ *See infra* section III.F. (“Request for Reconsideration and Administrative Review”) (discussing requests for reconsideration).

¹¹ *See infra* section III.E. (“Recognition and Accreditation for Practice Before DHS”) (regarding electronic requests, notifications, recommendations, and determinations).

offices. The Department will also publicize a list of USCIS offices that is readily available.¹² The Department has not included a specified time period for organizations to respond to a request for information from OLAP, but OLAP will ensure that the response times are reasonable. *See* 80 FR at 59521 n.54 (stating that EOIR intends to regularly make available average processing time for recognition and accreditation applications). Additionally, for timely-filed requests for renewal, the recognition of an organization and the accreditation of representatives remain valid pending OLAP's consideration of the renewal request. *See* final rule at 8 CFR 1292.16(b)(3). Accordingly, the processing times for renewal requests will not prejudice organizations or their representatives.

4. Extending Recognition and Accreditation

The Department received 20 comments regarding the provision that permits OLAP the discretion to extend an organization's recognition and the accreditation of its representatives from a headquarters or other designated office to other offices or locations where the organization provides immigration legal services. Nineteen commenters overwhelmingly supported this provision as a means of increasing capacity and reducing the administrative burden on organizations to file a separate application for recognition and accreditation at each location offering legal services. One commenter opposed the provision, unless an organization had attorney supervision of its accredited representatives.¹³ The final rule adopts the provision as proposed and adds that OLAP may permit requests for extension of recognition and

¹² *See* USCIS Office of Public Engagement, *USCIS District Offices* (Dec. 2011), available at <https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/2011/December%202011/District%20Office%20Mailing%20Addresses.pdf> (last visited Feb. 29, 2016).

¹³ *See supra* section III.B.1.f. ("Knowledge and experience") (stating that attorney supervision is encouraged but not required to be recognized).

accreditation and determinations on the requests to be made electronically. *See* final rule at 8 CFR 1292.15.

5. The Validity Period, Renewal of Recognition and Accreditation

Twenty-one commenters provided input regarding the three-year validity period for both recognition and accreditation and renewal thereof. The commenters generally supported or did not mention the three-year validity period and renewal process for accredited representatives. Instead, the comments were directed in opposition to the three-year validity period for recognition and concurrent renewal of recognition and accreditation. The commenters generally did not oppose a validity period and renewal process for recognized organizations in order to improve oversight, but they contended that the proposed three-year period was too short and recommended a period of up to nine years. They claimed that the three-year period was unnecessarily burdensome in that organizations do not change in substantial ways in a three-year period and because the renewal process would require organizations to shift resources away from providing immigration legal services in order to comply with the renewal requirements, such as the annual report. The commenters noted that the burden would be compounded because organizations and their representatives would have to seek renewal concurrently every three years. The commenters also asserted that concurrent renewal of recognition and accreditation may serve as a disincentive to apply for accreditation if the organization's recognition period was set to expire in a short period of time. The majority of commenters urged the Department to unlink the validity periods for recognition and accreditation and to provide a longer validity period for recognized organizations.

After considering the comments, the Department has decided to retain the three-year validity period for accredited representatives but to modify the validity period for recognized

organizations. *See* final rule at 8 CFR 1292.12(d); 8 CFR 1292.11(f). Under the final rule, recognition will be valid for a period of six years, unless the organization has been granted conditional recognition, which is valid only for two years, or the organization has its recognition administratively terminated or is disciplined (through revocation or termination) prior to the conclusion of its recognition period. *See* final rule at 8 CFR 1292.11(f). An organization's six-year recognition period would run independently of the three-year period of accreditation for its representatives.¹⁴ Therefore, organizations and their representatives will seek renewal of recognition and accreditation separately at the conclusion of their respective recognition and accreditation cycles. *See* final rule at 8 CFR 1292.16(b).

The final rule retains the renewal process for recognized organizations and accredited representatives, except for changes that allow an organization to request reconsideration of a disapproved request,¹⁵ and that authorize OLAP to allow requests, notifications, recommendations, and determinations in the application process to be made electronically.¹⁶ *See* final rule at 8 CFR 1292.16.

6. Organizations and representatives recognized and accredited prior to the effective date of the final rule

The Department received three comments regarding the provision governing when organizations and representatives recognized and accredited prior to the effective date of this final rule would have to seek renewal. The three comments generally opposed the provision that required recognized organizations without an accredited representative on staff at the effective

¹⁴ *See supra* section III.B.1.a. (“Accredited representative required & inactive status”) (addressing accredited representative requirement and inactive status).

¹⁵ *See infra* section III.F. (“Request for Reconsideration and Administrative Review”) (discussing requests for reconsideration).

¹⁶ *See infra* section III.E. (“Filings and Communications”) (regarding electronic requests, notifications, recommendations, and determinations).

date of the final rule to seek renewal and comply with the accredited representative requirement within one year of the effective date of the rule. These commenters also stated that the requirement that an organization would have to seek renewal of its recognition and the accreditation of its representatives if they sought to extend recognition to an additional office or location or to accredit a new representative would cause organizations to refrain from either action and discourage capacity building.

The final rule, as discussed above, retains the requirement that recognized organizations without an accredited representative on staff at the effective date of the final rule request renewal within one year of the effective date of the rule.¹⁷ *See* final rule at 8 CFR 1292.16(h)(2)(i). However, the Department agrees with the commenters and has removed the provision requiring renewal for all other organizations recognized at the effective date of the final rule if they seek extension of recognition or accreditation of a new representative. Consistent with the changes made elsewhere in the final rule, renewal of organizations and representatives recognized and accredited prior to the effective date of the rule has been de-coupled. Such organizations will only be subject to the renewal timelines as proposed and maintained in the final rule. *See* final rule at 8 CFR 1292.16(h)(2)(ii), (iii). Accredited representatives, on the other hand, will have to seek renewal at the expiration of their three-year accreditation period under the current regulation. *See* final rule at 8 CFR 1292.16(h)(3).

7. Conditional Recognition

The Department received 12 comments regarding the proposed rule's provision for conditional recognition of organizations that have not been previously recognized or that are recognized anew after having lost recognition due to an administrative termination or

¹⁷ *See supra* section III.B.1.a. ("Accredited representative required & inactive status") (discussing accredited representative required requirement).

disciplinary sanctions. Conditional recognition provides a probationary period and requires the specified organizations to apply for renewal within two years of the date that OLAP granted conditional recognition. The Department specifically asked for public comment on conditional recognition and whether conditionally recognized organizations would be able to remove the conditional status after one year instead of two.

Eleven commenters generally supported the provision, but the majority of these commenters wanted to exclude established, federally tax-exempt non-profit organizations that were adding immigration legal services to their service portfolio from conditional recognition. They sought to limit conditional recognition to organizations with pending Federal tax-exempt status and organizations reapplying after an administrative termination or disciplinary sanctions. One commenter in support of the provision stated that the public may view the designation of conditional recognition as a sign of mistrust or lack of ability, whereas another suggested that the time period for renewal should be shortened from two years to 18 months. The dissenting comment stated that conditional recognition was an unnecessary administrative burden and that all organizations should be treated equally.

The final rule adopts the conditional recognition provision as proposed and adds as clarification that it also applies to organizations whose Federal tax-exempt status is pending at the time of recognition. *See* final rule at 8 CFR 1292.11(f). While the Department appreciates the thoughtful comments on this issue, it has determined that because the final rule provides a six-year renewal period for established recognized organizations,¹⁸ a two-year initial renewal period is appropriate for organizations that have not been previously recognized, whose Federal tax-exempt status is pending at the time of recognition, or that have been previously

¹⁸ *See supra* section III.B.5 (“The Validity Period, Renewal of Recognition and Accreditation”) (discussing validity period of recognition and accreditation).

administratively terminated or subject to disciplinary sanctions. These organizations, regardless of their history as non-profits, must show within two years of recognition that they can maintain the qualifications for recognition and establish a track record of offering immigration legal services through accredited representatives without issue. Any organization that has been conditionally recognized will not be identified as such on the R&A roster; rather, the roster will show that the organization's renewal date is in two years rather than six.

8. Reporting, Recordkeeping, and Posting Requirements

The Department received 16 comments related to the reporting, recordkeeping, and posting requirements imposed on organizations by the proposed rule. One commenter supported all three requirements. Three other commenters stated their agreement with the posting requirement and none dissented. Seven commenters addressed the reporting requirements and stated general support for the duty to report changes. Six of these commenters, however, requested that the number and type of changes that need to be reported should be limited to changes that affect the R&A roster and that electronic submission of the changes should be permitted. The other commenter stated that changes should be reported in an annual report, unless OLAP requests an update at an earlier date. Fourteen commenters asserted concerns regarding the recordkeeping requirements. All of these commenters voiced concerns regarding the annual report because it would create a new burden in time and money for organizations and shift resources away from the provision of legal services. Some of the commenters stated that they do not currently track the information requested in the proposed rule for the annual report and that recordkeeping should be limited to documents that organizations already maintain, such as fee schedules, tax filings, and annual budgets. One commenter suggested that if the annual report would be required under the final rule, it should concern the immigration legal services of

the organization as a whole. Eight of the commenters urged the Department to consider whether organizations should be required to compile and submit annual reports and fee schedules at the time of renewal. They recommended that organizations should only be required to submit such documentation with cause or while under investigation.

The final rule adopts the posting requirement as proposed, *see* final rule at 8 CFR 1292.14(c), but amends the reporting and recordkeeping requirements. The final rule revises the duty to report to permit electronic notification of changes to be submitted to OLAP. *See* final rule at 8 CFR 1292.14(a). The Department has not otherwise modified the scope or timing of the duty to report because the scope has been appropriately limited to changes in information that would be listed on the R&A roster or that would affect an organization's or representative's eligibility to be recognized or accredited. Due to the nature of these types of changes, they must be reported promptly. 80 FR at 59524. The Department believes that 30 days will generally constitute prompt notification.

The final rule revises but does not remove the recordkeeping requirement. *See* final rule at 8 CFR 1292.14(b). The Department understands the concerns raised by commenters regarding the recordkeeping requirement—in particular the annual report—but has retained the requirement because it provides OLAP with a means to monitor organizations and ensure compliance with the recognition requirements. An organization's annual report on the services provided assists in the evaluation of whether a recognized organization is actually providing immigration legal services and is a non-profit primarily serving low-income and indigent clients.. Nonetheless, based on the comments received, the final rule renames the annual report as the “annual summary of immigration legal services provided” to avoid confusion with other annual reports that organizations may prepare. More significantly, 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. The annual summary of immigration legal services provided must include: the total number of clients served (whether through client intakes, applications prepared and filed with USCIS, cases in which the organization's attorneys or accredited representatives appeared before the Immigration Courts or, if applicable, the Board, or referrals to attorneys or other organizations) and clients to which it provided services at no cost; a general description of the immigration legal services and other immigration-related services (e.g., educational or outreach events) provided; a statement regarding whether services were provided pro bono or clients were charged in accordance with a fee schedule and organizational policies or guidance regarding fee waivers and reduced fees; and a list of the offices or locations where the immigration legal services were provided. The summary may include the total amount of fees, donations, and membership dues, if any, charged or requested of immigration clients. Organizations likely have such information for their own purposes because it tracks the work that they perform and it is information that they likely provide to funders and donors. If organizations do not compile such information presently, it should not be difficult to start because of its general nature. For organizations recognized at the time of the effective date of this rule, information would only be requested from the effective date of the rule (i.e., January 18, 2017).

C. Administrative Termination of Recognition and Accreditation

The Department received nine comments on the provision regarding administrative termination of recognition and accreditation. Six commenters generally supported the administrative termination provision as a means for removing an organization or representative from the R&A roster for administrative, non-disciplinary reasons. However, these commenters

recommended several changes to the provision. They stated that the OLAP Director should request information from an organization, representative, DHS, or EOIR prior to terminating recognition or accreditation. They also expressed concern that termination of recognition would lead to termination of a representative's accreditation and asserted that the representative should be given a limited amount of time to transfer to another recognized organization so that clients would not lose representation. Likewise, the commenters stated that an organization should be placed on inactive status and given time to find a new representative if its only accredited representative is terminated, rather than have its recognition terminated, so that it would not have to go through the process of seeking recognition anew when it found a new individual to be accredited.

One of the three remaining commenters stated that the Board should have authority for administrative termination of recognition and accreditation, instead of OLAP, because of the opportunity for a hearing. The two other commenters asserted that accreditation should only be terminated if there is an adverse determination.

The Department has adopted the administrative termination provision of the proposed rule, except as modified to accommodate the changes made in relation to the request for reconsideration and inactive status provisions added to the rule and discussed above. The Department has not amended the regulatory text to require that the OLAP Director request information from an organization, representative, DHS, or EOIR prior to terminating recognition or accreditation because not all grounds for termination require OLAP to contact anyone. For example, if an organization or representative voluntarily requests termination of their recognition or accreditation, OLAP has no reason to contact the organization for further information. However, the Department notes that the rule specifically requires the OLAP Director to contact

the organization and provide it with the opportunity to respond to certain deficiencies affecting eligibility for recognition or accreditation prior to determining whether to issue a termination notice. 80 FR at 59525; *see also* final rule at 8 CFR 1292.17(b)(5), (6), (c)(6).

The final rule addresses the concern that an organization could be administratively terminated through the inactive status provision added to the final rule and discussed above. The final rule, however, does not make any changes regarding the administrative termination of accreditation where the representative's organization has its recognition terminated.

Accreditation is dependent on the supervision and resources of a recognized organization, and an accredited representative should not be permitted to maintain accreditation, even if time limited, if the representative no longer has a connection to a recognized organization.

D. Sanctioning Recognized Organizations and Accredited Representatives

The Department received four comments regarding the rule's updates and additions to the disciplinary process, from three non-profit organizations and one bar association. Three of the commenters stated their general support for the provisions. The fourth commenter also expressed general agreement with the provisions but inquired into some aspects. In particular, the commenter stated that the rule adds a ground for organizational discipline for failure to adequately supervise its accredited representative but was unclear as to whether the EOIR disciplinary counsel or OLAP would be required to share complaints, warning letters, admonitions, or agreements in lieu of discipline in order to put the organization on notice of a representative's conduct and give it the opportunity to remedy the conduct. The commenter also inquired into the standards that would be applied to determining the appropriate sanction for organizations and suggested that the rule should impose a time period during which an

adjudicating official would have to render a decision on a petition for an interim suspension due to the urgency of the possible situation.

The Department has adopted the changes to the disciplinary provisions set forth in the proposed rule, except for the modifications discussed above regarding inactive status and below regarding a drafting error about reinstatement in the proposed rule. The Department acknowledges that the rule does not require the EOIR disciplinary counsel or OLAP to share information about accredited representatives with their organizations but clarifies that the EOIR disciplinary counsel will provide an organization with notice prior to taking disciplinary action against an organization for failure to supervise. 80 FR at 59526; *see also* final rule at 8 CFR 1003.108(b). The rule also does not prescribe standards for the application of sanctions to organizations but would apply the same flexible framework that is applied to immigration practitioners when determining the level of sanction. Generally, adjudicators examine the type of misconduct that occurred, whether it was done intentionally, knowingly, or inadvertently, the harm caused, and any aggravating or mitigating factors.¹⁹ Finally, although the rule also does not impose a time period for an adjudicator's decision on a petition for interim suspension so as to not interfere with the adjudicator's discretion, it would be expected that a decision would be issued within a reasonable period of time based on the nature of the petition.

E. Filings and Communications

Six commenters recommended that the Department facilitate the duty to report changes by permitting electronic submissions. The Department agrees that electronic filings and communications would be beneficial. EOIR is considering, in the future, permitting the

¹⁹ *See* ABA, *Standards for Imposing Lawyer Sanctions* (1992); *see, e.g., Matter of Ramos*, 23 I&N Dec. 843 (BIA 2005) (finding that expulsion was an appropriate sanction based on his disbarment from a state bar due to extensive unethical conduct).

electronic submission of a wide range of documents related to the R&A program. Such documents could include: requests for recognition and accreditation, renewal, and extension of recognition and accreditation; responses to inquiries and notices from EOIR; recommendations from DHS and the EOIR disciplinary counsel and anti-fraud officer, and responses thereto; reports and notifications of changes in organization information or status; and complaints against recognized organizations and accredited representatives. EOIR is also considering communicating electronically with prospective and current organizations, DHS, and the EOIR disciplinary counsel and anti-fraud officer. EOIR may electronically transmit documents such as: decisions to approve or disapprove requests for recognition and accreditation, renewals, extensions of recognition and accreditation, extension of time requests; inquiries to organizations for additional information or disclosing unfavorable information; and determinations regarding inactive status and administrative termination of recognition and accreditation. In anticipation of such electronic filings and communications, the Department has revised §§ 1292.13(a), 1292.14(a), 1292.15, 1292.16(e), 1292.17(a), (d), (e), and (f), and 1292.18(a). No notice-and-comment period is required for the revisions described in this paragraph, as they pertain to “agency organization, procedure, or practice” under 5 U.S.C. 553(b).

F. Request for Reconsideration and Administrative Review

The proposed rule solicited comments on whether an opportunity for administrative review should be provided for adverse OLAP determinations regarding recognition and accreditation, given that the prior regulation also had no such procedures. The solicitation further inquired as to the extent to and contexts in which such review should be provided, if it was deemed necessary. The Department received 10 comments, which all stated general support for an additional review process.

Five commenters supported an appeal process for denied recognition and accreditation applications but provided no further explanation. One commenter suggested an appeal process for disapproved recognition and accreditation requests in order to provide additional information to overcome the disapproval or to identify information overlooked in requests that should have been approved. The commenter asserted that organizations should have 45 days to submit an appeal and that the process should be a prompt review, rather than the three or four months that it would take to reach a determination on a re-filed request. Similarly, a commenter stated that an appeal process for disapproved applications should only be established if it can avoid re-filing of requests for issues that can be fixed easily and it is less burdensome than the initial process for requests for recognition and accreditation. Another commenter suggested that the administrative review or appeal process should be completed within 60 days.

Two commenters requested an administrative review process before the Board in the administrative termination context. Both commenters were concerned about terminations that may occur as organizations adjust to the new requirements of this rule or due to errors in eligibility determinations. One of these commenters recommended that organizations retain recognition during the review process.

The final rule adopts the provisions of the proposed rule that afford an applicant an opportunity to be heard before the issuance of a determination on an initial or renewal application for recognition and accreditation or a determination on administrative termination based on deficiencies regarding the requirements for recognition or accreditation or reporting, recordkeeping, and posting. *See* final rule at 8 CFR 1292.13(a); 8 CFR 1292.16(e); 8 CFR 1292.17(b)(5), (b)(6), (c)(6). In keeping with the spirit and purpose of this rule to maintain and increase capacity, OLAP will take these opportunities to engage with organizations in order to

limit adverse determinations so the concerns about adverse determinations arising from organizations being unable to adjust to the new requirements are unlikely. Nevertheless, the Department realizes that adverse determinations are likely to occur and that organizations may have the ability to correct any deficiencies that led to the adverse determination or otherwise point to an error in the determination. For these situations, the final rule adds further review in the form of a 30-day request for reconsideration of the OLAP Director's final determinations at 8 CFR 1292.13(e), 1292.16(f), and 1292.17(d). The filing of a request for reconsideration automatically stays the OLAP Director's determination until a decision issues on the reconsideration request and allows recognized organizations and its accredited representatives to continue to provide immigration legal services during the reconsideration process. The reconsideration process should provide for a faster decision-making process and avoid the need for organizations to go through the potentially lengthy request process anew to correct the types of simple errors or issues raised by the commenters.

Additionally, the final rule provides that organizations whose requests for reconsideration are denied may seek administrative review by the Director of EOIR. *See* final rule at 8 CFR 1292.18. This provision responds to concerns that OLAP would be the sole decision-maker regarding recognition and accreditation and that another entity should be able to review OLAP's decisions. Like with requests for reconsideration, a request for administrative review stays the OLAP Director's determination until a decision issues on the review request and allows recognized organizations and their accredited representatives to continue to provide immigration legal services during the review process. *See id.* at 1292.18(a)(3).

G. Recognition and Accreditation for Practice Before DHS

As the Department stated in the proposed rule, as of the effective date of this final rule, EOIR will apply the standards and procedures for recognition and accreditation set forth in this rule governing EOIR's activities, not the DHS regulations set forth in 8 CFR part 292. In addition, DHS has informed the Department that it plans to publish a rule relating to the same subject matter. Until DHS revises 8 CFR part 292 to conform its recognition and accreditation provisions with this final rule, the regulations codified in this rule will govern to the extent that they are inconsistent with those DHS regulations.

IV. Other Revisions

The final rule adds paragraph (b)(3) to 8 CFR 1003.107. This paragraph explains the decisions the Board may make in the early reinstatement context and was inadvertently omitted in the proposed rule. It is substantially similar to paragraph (b)(2) in the same section of the current regulation at 8 CFR 1003.107.

V. Notice and Comment

The revisions to the proposed rule do not require a new notice-and-comment period. The revisions pertaining to electronic filings and communications, at §§ 1292.13(a), 1292.14(a), 1292.15, 1292.16(e), and 1292.17(a), (d), (e), and (f), pertain to “agency organization, procedure, or practice” under 5 U.S.C. 553(b). The Department has “good cause” under 5 U.S.C. 553(b)(B) to add paragraph (b)(3) to 8 CFR 1003.107 because it is substantially similar to paragraph (b)(2) in the same section of the current regulation. The other provisions are logical outgrowths of those in the proposed rule. *See, e.g., Env'tl. Def. Ctr., Inc. v. EPA*, 344 F.3d 832, 851–52 (9th Cir. 2003); *Am. Water Works Ass'n v. EPA*, 40 F.3d 1266, 1274 (D.C. Cir. 1994).

VI. Regulatory Requirements

A. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

Currently, there are almost 1,000 recognized organizations and more than 1,900 accredited representatives. This rule seeks to increase the number of recognized organizations and accredited representatives that are competent and qualified to provide immigration legal services primarily to low-income and indigent persons. The Department, however, cannot estimate with certainty the actual increase in the number of recognized organizations and accredited individuals that may result from the rule. That figure is subject to multiple external factors, including changes in immigration law and policy and fluctuating needs for representation and immigration legal services.

While EOIR does not keep statistics on the size of recognized organizations, many of these organizations and their accredited representatives may be classified as, or employed by, “small entities” as defined under 5 U.S.C. 601. In particular, recognized organizations, which are by definition non-profit entities, may also be classified as “small organizations” and thus, as “small entities” under section 601.

Although the exact number of recognized organizations that may be classified as “small entities” is not known, the Department certifies that this rule will not have a significant economic impact on a substantial number of these entities. The rule, like the prior regulations, does not assess any fees on an organization to apply for initial recognition or accreditation, to renew recognition or accreditation, or to extend recognition.

The Department, however, acknowledges that organizations may incur some costs to apply for recognition or accreditation, renew recognition or accreditation, or extend recognition. Based on the most recent Bureau of Labor Statistics reports that state the median hourly wage for lawyers is \$64.17, and the average burden hours to apply for recognition or accreditation, renew recognition or accreditation, or extend recognition, discussed below in the Paperwork Reduction Act section, *see infra* section VI.G, and in the proposed rule, the Department estimates the costs as follows. If an organization hires a lawyer to assist with the application process, the organization would incur costs of approximately \$128.34 to apply for initial recognition (\$64.21 hour x 2 hours); \$449.16 to renew recognition (\$64.17 hour x 7 hours), and \$128.34 to apply for or to renew accreditation (\$64.21 hour x 2 hours). For organizations that prepare their applications without a practitioner, there is an estimated cost of \$10 per hour for completing the form (the individual's time and supplies) in lieu of the attorney cost such that those organizations would incur costs of approximately \$20.00 to apply for initial recognition (\$10.00/hour x 2 hours), \$70.00 to renew recognition (\$10.00/hour x 7 hours), and \$20.00 to apply for or to renew accreditation (\$10.00/hour x 2 hours).

The Department also recognizes that the rule imposes a new recordkeeping requirement on recognized organizations to compile and maintain fee schedules, if the organization charges any fees, and annual summaries of immigration legal services for a period of six years. However, the Department does not believe that the recordkeeping requirement will have a significant economic impact on recognized organizations. The annual summaries, as modified by this final rule, would be compiled from information already in the possession of recognized organizations, and based on the estimates from the Paperwork Reduction Act section below, the Department estimates that it would cost an organization approximately \$64.21 per year to have a

lawyer compile the annual summary, and \$10.00 per year for a non-lawyer to do so.²⁰

Maintaining the fee schedules and annual summaries after their creation for six years should not impose a significant economic impact on recognized organizations because such records may be retained in the normal course of business like other records, such as client files, that organizations are obligated to retain for State or Federal purposes.

Despite the costs mentioned above, the Department notes that the rule may economically benefit recognized organizations. The rule eliminates the requirement that recognized organizations assess only “nominal charges” for their immigration legal services. The final rule shifts the primary focus of eligibility for recognition from the fees an organization charges its clients to an examination of whether it is a non-profit religious, charitable, social service, or similar organization that primarily serves low-income and indigent clients. This change is intended to provide organizations with flexibility in assessing fees, which should improve their financial sustainability and their ability to serve more persons.

B. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 804. As discussed in the certification under the Regulatory Flexibility Act, organizations and representatives will not be assessed a fee to either

²⁰ Note that the total average burden (and cost) for renewing recognition includes the burden (and cost) of compiling six annual summaries of immigration legal services provided.

apply for or seek renewal of recognition and accreditation, and the burden of seeking renewal of recognition has been reasonably mitigated. The Department recognizes, however, that the rule's elimination of the "nominal charges" restriction may affect competition and employment in the market for legal services because a recognized organization could charge higher fees (but less than market rates) to clients. The rule balances the elimination of the "nominal charges" restriction by also requiring that non-profit organizations primarily serve low-income and indigent persons. Legal fees charged by a non-profit organization are expected to be at a rate meaningfully less than the cost of hiring competent private immigration counsel in the same geographic area. Accordingly, this rule will not result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

D. Executive Order 12866 and Executive Order 13563 (Regulatory Planning and Review)

The rule is considered by the Department to be a "significant regulatory action" under section 3(f)(4) of Executive Order 12866. Accordingly, the regulation has been submitted to the Office of Management and Budget (OMB) for review.

The Department certifies that this regulation has been drafted in accordance with the principles of Executive Order 12866, section 1(b), and Executive Order 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects,

distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The rule seeks to address the critical and ongoing shortage of qualified legal representation for underserved populations in immigration cases before Federal administrative agencies. Specifically, the rule would revise the eligibility requirements and procedures for recognizing organizations and accrediting their representatives to provide immigration legal services to underserved populations. To expand the availability of such legal services, the rule permits recognized organizations to extend their recognition and the accreditation of their representatives to multiple offices or locations and to have flexibility in charging fees for services. The rule also imposes greater oversight over recognized organizations and their representatives in order to protect against potential abuse of vulnerable immigrant populations by unscrupulous organizations and individuals.

The rule will greatly benefit organizations, DHS, EOIR, and most importantly, persons who need legal representation in immigration matters. The rule is expected to increase the availability of competent and qualified legal representation in underserved areas and particularly for indigent and low-income persons for whom there is an ongoing and critical shortage of such representation. For example, the elimination of the nominal fee restriction will allow organizations the flexibility to assess fees so that organizations will be able to sustain their operations and potentially expand them to serve more persons. In addition, the extension of recognition and accreditation to multiple offices or locations will permit organizations and their representatives, through mobile or technological means, to reach underserved persons who may currently have difficulty finding legal representation in remote or rural locations. These two

provisions will greatly increase legal representation for persons in administrative cases before EOIR and DHS, and in turn, will substantially aid the administration of justice.

The rule will provide EOIR with greater tools to manage and oversee the recognition and accreditation program. The rule requires organizations to renew their recognition every six years and the accreditation of their representatives every three years, and it imposes limited reporting, recordkeeping, and posting requirements on the organizations. The Department acknowledges that the new oversight provisions impose some burdens on organizations. However, the burdens on the organizations are necessary to protect vulnerable immigrant populations from unscrupulous organizations and individuals and to legitimize reputable organizations and representatives.

Although the renewal requirement adds a new burden on recognized organizations, the Department has reasonably mitigated this burden. The rule maintains the same three-year renewal period for accredited representatives as under the current regulations and only requires organizations to seek renewal of recognition every six years. Also, at renewal, organizations would not be required to submit documentation previously submitted at initial recognition or accreditation, unless there have been changes that affect eligibility for recognition or accreditation. Organizations would only have to submit documentation that would support renewal of recognition and accreditation. The information and documentation required to renew recognition and accreditation should be in the possession of the organization in the normal course of its operations.

The reporting requirement expands the reporting obligation of organizations under the current regulations, which only require organizations to report changes in the organization's name, address, or public telephone number, or in the employment status of an accredited

representative. This final rule expands the current requirement so as to include any changes that would affect the organization's recognition (such as a merger), or a representative's accreditation (such as a change in the representative's name). The reporting requirement should not impose a significant cost to organizations because organizations may comply with the requirement by simply contacting EOIR to report such changes.

The recordkeeping requirement will primarily aid EOIR in evaluating an organization's request to renew recognition. The recordkeeping requirement requires an organization to compile fee schedules, if it charges any fees, and annual summaries of immigration legal activities, and maintain them for a period of six years. The recordkeeping requirement is not unduly burdensome, as modified by the final rule, because organizations should have such information in their possession, and the six-year record retention requirement is consistent with the organization's obligation to retain records, such as client files, for State or Federal purposes.

The posting requirement will require organizations to post public notices about the approval period of an organization's recognition and the accreditation of its representatives, the requirements for recognition and accreditation, and the process for filing a complaint against a recognized organization or accredited representative. EOIR will provide the notices to the organizations, and the organizations should not incur any tangible costs for the minimal burden of posting the notices. In fact, the public notices should greatly benefit organizations because the notices will legitimize organizations and notify the public that they are qualified to provide immigration legal services.

As detailed above in section VI.A ("Regulatory Flexibility Act"), and below in section VI.G ("Paperwork Reduction Act"), EOIR anticipates that if an organization hires a lawyer to assist with the application process, the organization will incur costs of approximately \$128.34 to

apply for initial recognition, \$449.16 to renew recognition, and \$128.34 to apply for or to renew accreditation. If an organization prepares its applications on its own, the organization will incur costs of approximately \$20.00 to apply for initial recognition, \$70.00 to renew recognition, and \$20.00 to apply for or to renew accreditation.

E. Executive Order 13132: Federalism

This rule may have federalism implications but, as detailed below, will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

The rule, like the current regulations it would replace, permits non-lawyer accredited representatives to provide immigration legal services in administrative cases before EOIR and DHS. The provision of immigration legal services by non-lawyers may constitute the unauthorized practice of law under some State laws and rules prohibiting the unauthorized practice of law. However, the Supreme Court's decision in *Sperry v. Florida ex rel. Florida Bar*, 373 U.S. 379 (1963), provides that Federal agency laws and regulations authorizing the practice of law in administrative cases before Federal agencies preempt conflicting State laws that would otherwise prohibit authorized representatives from participating in those Federal administrative cases.²¹ This principle has long been applicable with respect to accredited representatives providing representative services in administrative cases before EOIR and DHS.

Despite the preemptive effects of this rule, the federalism implications are minimal. The rule merely updates the current, well-established regulations permitting non-lawyer accredited

²¹ *Sperry* held that a statute and implementing regulation authorizing non-lawyers to practice before the Patent Office preempted a contrary state law prohibition on the unauthorized practice of law to the extent that the state law prohibition was incompatible with the Federal rules. *See* 373 U.S. at 385.

representatives to provide immigration legal services in administrative cases before EOIR and DHS. The rule does not alter or extend the scope of the limited authorization to provide immigration legal services before Federal administrative agencies provided under the current regulations. In addition, following *Sperry*, States have expressly determined that non-lawyers providing immigration legal services before EOIR and DHS does not constitute the unauthorized practice of law under their State laws and rules.²²

Under these circumstances, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act

The Department received two comments in relation to its requests under the Paperwork Reduction Act (PRA) of 1995 to revise the currently approved information collections contained in this rule: (1) the form for non-profit religious, charitable, or social service organizations to apply for recognition (Form EOIR-31); (2) the form for recognized organizations to apply for accreditation of non-attorney representatives (Form EOIR-31A); and (3) the form for filing a complaint against an immigration practitioner (Form EOIR-44). These information collections were previously approved by OMB under the provisions of the PRA, and the information

²² See ARIZ. REV. STAT. ANN. § 12-2702(A)(4) (stating that an accredited representative is not engaging in the unauthorized practice of immigration law by providing immigration legal services); N.M. STAT. ANN. § 36-3-4(A)(4) (same); N.J. STAT. ANN. § 2C:21-31(d) (similar); VA. UNAUTHORIZED PRACTICE R. 9-103 (similar); North Carolina State Bar, *Preventing Unlicensed Legal Practice*, <http://www.ncbar.gov/public/upl.asp> (last visited Sept. 15, 2015) (similar).

collections were assigned OMB Control Numbers 1125-0012 (EOIR-31), 1125-0013 (EOIR-31A), and 1125-0007 (EOIR-44). The Department requested revisions to these information collections based on the proposed rule regarding the R&A program.

The two commenters addressed the estimated average time to apply for recognition and accreditation using the Form EOIR-31 and Form EOIR-31A. One commenter asserted that under the prior regulations it took an organization about 10 hours to prepare a Form EOIR-31. The other commenter stated that under the prior regulations, organizations needed three to four hours to prepare and complete a Form EOIR-31 or a Form EOIR-31A. The commenter acknowledged that most of the additional documentation required under the rule was standard non-profit documentation but that renewal of recognition under the proposed rule would require an additional amount of time because the annual report (in the final rule now called the summary of immigration legal services provided) was not routinely prepared by all organizations. The commenter estimated that the proposed annual report would take three to four hours to prepare each year. Based on the Department's amendments to the final rule as discussed in section III above and the two comments discussed here, the Department has made changes to the final Form EOIR-31 and Form EOIR-31A.

1. Request for Recognition, Renewal of Recognition, or Extension of Recognition for a Non-Profit, Federal Tax-Exempt Religious, Charitable, Social Service, or Similar Organization (Form EOIR-31)

The Department has modified the final Form EOIR-31 and the instructions thereto for consistency with the changes in the final rule regarding the requirements for recognition and renewal of recognition. First, the final form does not require organizations to provide

information regarding whether a substantial amount of their immigration legal services budget is from outside funding sources. Second, the instructions have been modified to say that the form will generally be used every six years (rather than three years) in connection with a request to renew recognition, and that the request need not be accompanied by a request for accreditation of a representative. Third and finally, the final form has been amended to reflect the changes to the annual reports required to be submitted at renewal. In the final rule, the annual report has been renamed the summary of immigration legal services provided. More significantly, the substance of the summary has been modified to include information already gathered for other purposes like funder reports or otherwise readily accessible to the organization, such as: the total number of clients served (whether through client intakes, applications prepared and filed with USCIS, cases in which the organization's attorneys or accredited representatives appeared before the Immigration Courts or, if applicable, the Board, or referrals to attorneys or other organizations) and clients to which it provided services at no cost; a general description of the immigration legal services and other immigration-related services (e.g., educational or outreach events) provided; a statement regarding whether services were provided pro bono or clients were charged in accordance with a fee schedule and organizational policies or guidance regarding fee waivers and reduced fees; and a list of the offices or locations where the immigration legal services were provided.

The Department has determined that the estimated average time to review the form, gather necessary materials, complete the form, and assemble the attachments is 2 hours for initial recognition, which is the same as the current information collection. The current Form EOIR-31 has been in use for several years, and the Department has not received any comments regarding the accuracy of this estimate. The Department has now received two comments in response to

the proposed rule's revisions to the form suggesting that the time estimate may not be accurate. However, the commenters did not specifically address the revised form, as no individual requested it during the comment period. Notwithstanding the comments received, the Department has kept the estimated average total response time of 2 hours for initial recognition because initial recognition requires the same materials as the current information collection and the revised form provides much improved detail and specificity that will assist organizations in preparing and completing the form in a timely manner.

For renewal of recognition, the Department clarifies that an organization will not be required to submit the information previously submitted at initial recognition, unless such information has changed since the initial recognition and it affects the organization's recognition. Instead, an organization will only be required to complete the form and submit fee schedules and six annual summaries of immigration legal services provided (formerly called the annual report in the proposed rule). The Department understands that these summaries, though simplified under the final rule, will place some additional burdens on organizations. Therefore, the Department has adjusted the estimated time to account for the burdens associated with preparation and retention of the summaries of immigration legal services provided. The Department estimates that the average time to review the form, gather necessary materials, complete the form, and assemble the attachments for each application to renew recognition will be 7 hours in total. The estimate includes 1 hour for review and completion of the form, and an additional 6 hours divided over 6 years to prepare the annual summaries of immigration legal services provided. This estimate and the one for initial recognition are minimized by the time saved from streamlining the recognition process to allow an organization to file a single application for multiple locations.

2. Request by Organization for Accreditation or Renewal of Accreditation of Non-Attorney (Form EOIR-31A)

Based on changes in the final rule, the instructions to the final Form EOIR-31A have been modified to reflect that requests for renewal of accreditation must be requested every three years, and that requests for accreditation do not need to be submitted with requests for renewal of recognition, unless the renewal dates for both are the same.

The Department finds no reason to adjust the estimated average time to complete Form EOIR-31A, despite the comments received about the time burden to request recognition and accreditation. The comments did not directly address the use of the revised form, as no individual requested the form. The comments generally concerned requests for accreditation, which may have related to the period in which there was no form to request accreditation. Even if the comments concerned the current information collection, the final form is improved in clarity and specificity such that organizations should be able to prepare and complete the form in an expeditious manner.

3. Immigration Practitioner Complaint Form (Form EOIR-44)

The two comments received did not concern the revisions to the Form EOIR-44, which was updated to reflect that the public may use the form to file a complaint against a recognized organization in addition to an immigration practitioner. Therefore, the final rule adopts the revisions to the EOIR-44 as proposed.

List of Subjects

8 CFR Part 1001

Administrative practice and procedure, Aliens, Immigration, Organizations and functions (Government agencies).

8 CFR Part 1003

Administrative practice and procedure, Aliens, Immigration, Legal services, Organizations and functions (Government agencies).

8 CFR Part 1103

Administrative practice and procedure, Authority delegations (Government agencies), Reporting and recordkeeping requirements.

8 CFR Part 1212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 1292

Administrative practice and procedure, Immigration, Lawyers, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, 8 CFR parts 1001, 1003, 1103, 1212, and 1292 are amended as follows:

PART 1001 – DEFINITIONS

1. The authority citation for part 1001 is revised to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1101, 1103; Pub. L. 107-296, 116 Stat. 2135; Title VII of Pub. L. 110-229.

2. In § 1001.1, add paragraphs (x) and (y) to read as follows:

§ 1001.1 Definitions.

* * * * *

(x) The term *OLAP* means the Office of Legal Access Programs.

(y) The term *OLAP Director* means the Program Director of the Office of Legal Access Programs.

* * * * *

PART 1003 – EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

3. The authority citation for part 1003 continues to read as follows:

Authority: 5 U.S.C. 301; 6 U.S.C. 521; 8 U.S.C. 1101, 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b, 1229c, 1231, 1254a, 1255, 1324d, 1330, 1361, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949-1953 Comp., p. 1002; section 203 of Pub. L. 105-100, 111 Stat. 2196-200; sections 1506 and 1510 of Pub. L. 106-386, 114 Stat. 1527-29, 1531-32; section 1505 of Pub. L. 106-554, 114 Stat. 2763A-326 to -328.

4. In § 1003.0, revise paragraphs (a) and (e)(1), redesignate paragraph (f) as paragraph (g), and add new paragraph (f), to read as follows:

§ 1003.0 Executive Office for Immigration Review.

(a) *Organization.* Within the Department of Justice, there shall be an Executive Office for Immigration Review (EOIR), headed by a Director who is appointed by the Attorney General. The Director shall be assisted by a Deputy Director and by a General Counsel. EOIR shall include the Board of Immigration Appeals, the Office of the Chief Immigration Judge, the Office of the Chief Administrative Hearing Officer, the Office of Legal Access Programs, and such other staff as the Attorney General or the Director may provide.

* * * * *

(e) * * *

(1) *Professional standards.* The General Counsel shall administer programs to protect the integrity of immigration proceedings before EOIR, including administering the disciplinary program for practitioners and recognized organizations under subpart G of this part.

* * * * *

(f) *Office of Legal Access Programs and authorities of the Program Director.* Within EOIR, there shall be an Office of Legal Access Programs (OLAP), consisting of a Program Director and such other staff as the Director deems necessary. Subject to the supervision of the Director, the Program Director of OLAP (the OLAP Director), or the OLAP Director's designee, shall have the authority to:

(1) Develop and administer a system of legal orientation programs to provide education regarding administrative procedures and legal rights under immigration law;

(2) Develop and administer a program to recognize organizations and accredit representatives to provide representation before the Immigration Courts, the Board, and DHS, or DHS alone. The OLAP Director shall determine whether an organization and its representatives meet the eligibility requirements for recognition and accreditation in accordance with this chapter. The OLAP Director shall also have the authority to administratively terminate the recognition of an organization and the accreditation of a representative and to maintain the roster of recognized organizations and their accredited representatives;

(3) Issue guidance and policies regarding the implementation of OLAP's statutory and regulatory authorities; and

(4) Exercise such other authorities as the Director may provide.

* * * * *

5. In § 1003.1, revise paragraph (b)(13), the first sentence of paragraph (d)(2)(iii), and paragraph (d)(5) to read as follows:

§ 1003.1 Organization, jurisdiction, and powers of the Board of Immigration Appeals.

* * * * *

(b) * * *

(13) Decisions of adjudicating officials in disciplinary proceedings involving practitioners or recognized organizations as provided in subpart G of this part.

* * * * *

(d) * * *

(2) * * *

(iii) *Disciplinary consequences.* The filing by a practitioner, as defined in § 1003.101(b), of an appeal that is summarily dismissed under paragraph (d)(2)(i) of this section, may constitute frivolous behavior under § 1003.102(j). * * *

* * * * *

(5) *Discipline of practitioners and recognized organizations.* The Board shall have the authority pursuant to § 1003.101 *et seq.* to impose sanctions upon practitioners who appear in a representative capacity before the Board, the Immigration Courts, or DHS, and upon recognized organizations. The Board shall also have the authority pursuant to § 1003.107 to reinstate disciplined practitioners to appear in a representative capacity before the Board and the Immigration Courts, or DHS, or all three authorities.

* * * * *

6. In § 1003.101, add paragraph (c) to read as follows:

§ 1003.101 General provisions.

* * * * *

(c) The administrative termination of a representative’s accreditation under 8 CFR 1292.17 after the issuance of a Notice of Intent to Discipline pursuant to § 1003.105(a)(1) shall not preclude the continuation of disciplinary proceedings and the imposition of sanctions, unless counsel for the government moves to withdraw the Notice of Intent to Discipline and the adjudicating official or the Board grants the motion.

7. In § 1003.102, revise paragraph (f)(2), remove the word “or” from the end of paragraph (t)(2), remove the period and add “; or” in its place at the end of paragraph (u), and add paragraph (v).

The revision and addition read as follows:

§ 1003.102 Grounds.

* * * * *

(f) * * *

(2) Contains an assertion about the practitioner or the practitioner’s qualifications or services that cannot be substantiated. A practitioner shall not state or imply that the practitioner has been recognized or certified as a specialist in immigration or nationality law unless such certification is granted by the appropriate State regulatory authority or by an organization that has been approved by the appropriate State regulatory authority to grant such certification. An accredited representative shall not state or imply that the accredited representative:

(i) Is approved to practice before the Immigration Courts or the Board, if the representative is only approved as an accredited representative before DHS;

(ii) Is an accredited representative for an organization other than a recognized organization through which the representative acquired accreditation; or

(iii) Is an attorney.

* * * * *

(v) Acts outside the scope of the representative's approved authority as an accredited representative.

8. In § 1003.103, revise paragraph (c) to read as follows:

§ 1003.103 Immediate suspension and summary disciplinary proceedings; duty of practitioner or recognized organization to notify EOIR of conviction or discipline.

* * * * *

(c) *Duty of practitioner and recognized organizations to notify EOIR of conviction or discipline.* A practitioner and if applicable, the authorized officer of each recognized organization with which a practitioner is affiliated must notify the EOIR disciplinary counsel within 30 days of the issuance of the initial order, even if an appeal of the conviction or discipline is pending, when the practitioner has been found guilty of, or pleaded guilty or nolo contendere to, a serious crime, as defined in § 1003.102(h), or has been disbarred or suspended by, or while a disciplinary investigation or proceeding is pending has resigned from, the highest court of any State, possession, territory or Commonwealth of the United States, or the District of Columbia, or any Federal court. A practitioner's failure to do so may result in an immediate suspension as set forth in paragraph (a) of this section and other final discipline. An organization's failure to do so may result in the administrative termination of its recognition for violating the reporting requirement under 8 CFR 1292.14. This duty to notify applies only to convictions for serious crimes and to orders imposing discipline for professional misconduct entered on or after August 28, 2000.

9. In § 1003.104, revise paragraph (b) to read as follows:

§ 1003.104 Filing of Complaints; preliminary inquiries; resolutions; referrals of complaints.

* * * * *

(b) *Preliminary inquiry.* Upon receipt of a disciplinary complaint or on its own initiative, the EOIR disciplinary counsel will initiate a preliminary inquiry. If a complaint is filed by a client or former client, the complainant thereby waives the attorney-client privilege and any other privilege relating to the representation to the extent necessary to conduct a preliminary inquiry and any subsequent proceedings based thereon. If the EOIR disciplinary counsel determines that a complaint is without merit, no further action will be taken. The EOIR disciplinary counsel may, in the disciplinary counsel's discretion, close a preliminary inquiry if the complainant fails to comply with reasonable requests for assistance, information, or documentation. The complainant and the practitioner shall be notified of any such determination in writing.

* * * * *

10. In § 1003.105, revise the paragraph (a) subject heading and paragraph (a)(1), the first sentence of paragraph (c)(1), the last sentence of paragraph (c)(2), and paragraphs (c)(3), (d)(2) introductory text, and (d)(2)(ii) to read as follows:

§ 1003.105 Notice of Intent to Discipline.

(a) *Issuance of Notice.* (1) If, upon completion of the preliminary inquiry, the EOIR disciplinary counsel determines that sufficient prima facie evidence exists to warrant charging a practitioner with professional misconduct as set forth in § 1003.102 or a recognized organization with misconduct as set forth in § 1003.110, the EOIR disciplinary counsel will file with the Board and issue to the practitioner or organization that was the subject of the preliminary inquiry a Notice of Intent to Discipline. In cases involving practitioners, service of the notice will be

made upon the practitioner either by certified mail to the practitioner's last known address, as defined in paragraph (a)(2) of this section, or by personal delivery. In cases involving recognized organizations, service of the notice will be made upon the authorized officer of the organization either by certified mail at the address of the organization or by personal delivery. The notice shall contain a statement of the charge(s), a copy of the preliminary inquiry report, the proposed disciplinary sanctions to be imposed, the procedure for filing an answer or requesting a hearing, and the mailing address and telephone number of the Board. In summary disciplinary proceedings brought pursuant to § 1003.103(b), a preliminary inquiry report is not required to be filed with the Notice of Intent to Discipline. If a Notice of Intent to Discipline is filed against an accredited representative, the EOIR disciplinary counsel shall send a copy of the notice to the authorized officer of the recognized organization through which the representative is accredited at the address of the organization.

* * * * *

(c) *Answer*—(1) *Filing*. The practitioner or, in cases involving a recognized organization, the organization, shall file a written answer to the Notice of Intent to Discipline with the Board within 30 days of the date of service of the Notice of Intent to Discipline unless, on motion to the Board, an extension of time to answer is granted for good cause. * * *

(2) * * * The practitioner or, in cases involving a recognized organization, the organization, may also state affirmatively special matters of defense and may submit supporting documents, including affidavits or statements, along with the answer.

(3) *Request for hearing*. The practitioner or, in cases involving a recognized organization, the organization, shall also state in the answer whether a hearing on the matter is requested. If no such request is made, the opportunity for a hearing will be deemed waived.

(d) * * *

(2) Upon such a default by the practitioner or, in cases involving a recognized organization, the organization, the counsel for the government shall submit to the Board proof of service of the Notice of Intent to Discipline. The practitioner or the organization shall be precluded thereafter from requesting a hearing on the matter. The Board shall issue a final order adopting the proposed disciplinary sanctions in the Notice of Intent to Discipline unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted or not in the interests of justice. With the exception of cases in which the Board has already imposed an immediate suspension pursuant to §1003.103 or that otherwise involve an accredited representative or recognized organization, any final order imposing discipline shall not become effective sooner than 15 days from the date of the order to provide the practitioner opportunity to comply with the terms of such order, including, but not limited to, withdrawing from any pending immigration matters and notifying immigration clients of the imposition of any sanction. Any final order imposing discipline against an accredited representative or recognized organization shall become effective immediately. A practitioner or a recognized organization may file a motion to set aside a final order of discipline issued pursuant to this paragraph, with service of such motion on counsel for the government, provided:

* * * * *

(ii) The practitioner's or the recognized organization's failure to file an answer was due to exceptional circumstances (such as serious illness of the practitioner or death of an immediate relative of the practitioner, but not including less compelling circumstances) beyond the control of the practitioner or the recognized organization.

11. In § 1003.106, revise paragraph (a)(2) introductory text, paragraphs (a)(2)(i) through (iii), paragraph (a)(3) introductory text, and paragraphs (a)(3)(ii), (b), and (c) to read as follows:

§ 1003.106 Right to be heard and disposition.

(a) * * *

(2) The procedures set forth in paragraphs (b) through (d) of this section apply to cases in which the practitioner or recognized organization files a timely answer to the Notice of Intent to Discipline, with the exception of cases in which the Board issues a final order pursuant to § 1003.105(d)(2) or § 1003.106(a)(1).

(i) The Chief Immigration Judge shall, upon the filing of an answer, appoint an Immigration Judge as an adjudicating official. At the request of the Chief Immigration Judge, the Chief Administrative Hearing Officer may appoint an Administrative Law Judge as an adjudicating official. The Director may appoint either an Immigration Judge or Administrative Law Judge as an adjudicating official if the Chief Immigration Judge or the Chief Administrative Hearing Officer does not appoint an adjudicating official or if the Director determines it is in the interest of efficiency to do so. An Immigration Judge or Administrative Law Judge shall not serve as the adjudicating official in any case in which the Judge is the complainant, in any case involving a practitioner who regularly appears before the Judge, or in any case involving a recognized organization whose representatives regularly appear before the Judge.

(ii) Upon the practitioner's or, in cases involving a recognized organization, the organization's, request for a hearing, the adjudicating official may designate the time and place of the hearing with due regard to the location of the practitioner's practice or residence or of the recognized organization, the convenience of witnesses, and any other relevant factors. When designating the time and place of a hearing, the adjudicating official shall provide for the service

of a notice of hearing, as the term “service” is defined in § 1003.13, on the practitioner or the authorized officer of the recognized organization and the counsel for the government. The practitioner or the recognized organization shall be afforded adequate time to prepare a case in advance of the hearing. Pre-hearing conferences may be scheduled at the discretion of the adjudicating official in order to narrow issues, to obtain stipulations between the parties, to exchange information voluntarily, and otherwise to simplify and organize the proceeding. Settlement agreements reached after the issuance of a Notice of Intent to Discipline are subject to final approval by the adjudicating official or, if the practitioner or organization has not filed an answer, subject to final approval by the Board.

(iii) The practitioner or, in cases involving a recognized organization, the organization, may be represented by counsel at no expense to the government. Counsel for the practitioner or the organization shall file the appropriate Notice of Entry of Appearance (Form EOIR-27 or EOIR-28) in accordance with the procedures set forth in this part. Each party shall have a reasonable opportunity to examine and object to evidence presented by the other party, to present evidence, and to cross-examine witnesses presented by the other party. If the practitioner or the recognized organization files an answer but does not request a hearing, then the adjudicating official shall provide the parties an opportunity to submit briefs and evidence to support or refute any of the charges or affirmative defenses.

* * * * *

(3) *Failure to appear in proceedings.* If the practitioner or, in cases involving a recognized organization, the organization, requests a hearing as provided in § 1003.105(c)(3) but fails to appear, the adjudicating official shall then proceed and decide the case in the absence of the practitioner or the recognized organization in accordance with paragraph (b) of this section,

based on the available record, including any additional evidence or arguments presented by the counsel for the government at the hearing. In such a proceeding the counsel for the government shall submit to the adjudicating official proof of service of the Notice of Intent to Discipline as well as the Notice of the Hearing. The practitioner or the recognized organization shall be precluded thereafter from participating further in the proceedings. A final order imposing discipline issued pursuant to this paragraph shall not be subject to further review, except that the practitioner or the recognized organization may file a motion to set aside the order, with service of such motion on counsel for the government, provided:

* * * * *

(ii) The practitioner's or the recognized organization's failure to appear was due to exceptional circumstances (such as serious illness of the practitioner or death of an immediate relative of the practitioner, but not including less compelling circumstances) beyond the control of the practitioner or the recognized organization.

(b) *Decision.* The adjudicating official shall consider the entire record and, as soon as practicable, render a decision. If the adjudicating official finds that one or more grounds for disciplinary sanctions enumerated in the Notice of Intent to Discipline have been established by clear and convincing evidence, the official shall rule that the disciplinary sanctions set forth in the Notice of Intent to Discipline be adopted, modified, or otherwise amended. If the adjudicating official determines that the practitioner should be suspended, the time period for such suspension shall be specified. If the adjudicating official determines that the organization's recognition should be revoked, the official may also identify the persons affiliated with the organization who were directly involved in the conduct that constituted the grounds for revocation. If the adjudicating official determines that the organization's recognition should be

terminated, the official shall specify the time restriction, if any, before the organization may submit a new request for recognition. Any grounds for disciplinary sanctions enumerated in the Notice of Intent to Discipline that have not been established by clear and convincing evidence shall be dismissed. The adjudicating official shall provide for service of a written decision or memorandum summarizing an oral decision, as the term “service” is defined in § 1003.13, on the practitioner or, in cases involving a recognized organization, on the authorized officer of the organization and on the counsel for the government. Except as provided in paragraph (a)(2) of this section, the adjudicating official’s decision becomes final only upon waiver of appeal or expiration of the time for appeal to the Board, whichever comes first, and does not take effect during the pendency of an appeal to the Board as provided in § 1003.6. A final order imposing discipline against an accredited representative or recognized organization shall take effect immediately.

(c) *Appeal.* Upon issuance of a decision by the adjudicating official, either party or both parties may appeal to the Board to conduct a review pursuant to § 1003.1(d)(3). Parties must comply with all pertinent provisions for appeals to the Board, including provisions relating to forms and fees, as set forth in Part 1003, and must use Form EOIR-45. The decision of the Board is the final administrative order as provided in § 1003.1(d)(7), and shall be served upon the practitioner or, in cases involving a recognized organization, the organization, as provided in § 1003.1(f). With the exception of cases in which the Board has already imposed an immediate suspension pursuant to § 1003.103 or cases involving accredited representatives or recognized organizations, any final order imposing discipline shall not become effective sooner than 15 days from the date of the order to provide the practitioner opportunity to comply with the terms of such order, including, but not limited to, withdrawing from any pending immigration matters and

notifying immigration clients of the imposition of any sanction. A final order imposing discipline against an accredited representative or recognized organization shall take effect immediately. A copy of the final administrative order of the Board shall be served upon the counsel for the government. If disciplinary sanctions are imposed against a practitioner or a recognized organization (other than a private censure), the Board may require that notice of such sanctions be posted at the Board, the Immigration Courts, or DHS for the period of time during which the sanctions are in effect, or for any other period of time as determined by the Board.

* * * * *

12. In § 1003.107, revise paragraphs (a) and (b), redesignate paragraph (c) as paragraph (d), and add new paragraph (c) to read as follows:

§ 1003.107 Reinstatement after disbarment or suspension.

(a) *Reinstatement upon expiration of suspension.* (1) Except as provided in paragraph (c)(1) of this section, after the period of suspension has expired, a practitioner who has been suspended and wishes to be reinstated must file a motion to the Board requesting reinstatement to practice before the Board and the Immigration Courts, or DHS, or before all three authorities. The practitioner must demonstrate by clear and convincing evidence that notwithstanding the suspension, the practitioner otherwise meets the definition of attorney or representative as set forth in § 1001.1(f) and (j), respectively, of this chapter. The practitioner must serve a copy of such motion on the EOIR disciplinary counsel. In matters in which the practitioner was ordered suspended from practice before DHS, the practitioner must serve a copy of such motion on the DHS disciplinary counsel.

(2) The EOIR disciplinary counsel and, in matters in which the practitioner was ordered suspended from practice before DHS, the DHS disciplinary counsel, may reply within 13 days of

service of the motion in the form of a written response objecting to the reinstatement on the ground that the practitioner failed to comply with the terms of the suspension. The response must include supporting documentation or evidence of the petitioner's failure to comply with the terms of the suspension. The Board, in its discretion, may afford the parties additional time to file briefs or hold a hearing to determine if the practitioner meets all the requirements for reinstatement.

(3) If a practitioner does not meet the definition of attorney or representative, the Board shall deny the motion for reinstatement without further consideration. If the practitioner failed to comply with the terms of the suspension, the Board shall deny the motion and indicate the circumstances under which the practitioner may apply for reinstatement. If the practitioner meets the definition of attorney or representative and the practitioner otherwise has complied with the terms of the suspension, the Board shall grant the motion and reinstate the practitioner.

(b) *Early reinstatement.* (1) Except as provided in paragraph (c) of this section, a practitioner who has been disbarred or who has been suspended for one year or more may file a petition for reinstatement directly with the Board after one-half of the suspension period has expired or one year has passed, whichever is greater, provided that notwithstanding the suspension, the practitioner otherwise meets the definition of attorney or representative as set forth in § 1001.1(f) and (j), respectively, of this chapter. A copy of such a petition shall be served on the EOIR disciplinary counsel. In matters in which the practitioner was ordered disbarred or suspended from practice before DHS, a copy of such petition shall be served on the DHS disciplinary counsel.

(2) A practitioner seeking early reinstatement must demonstrate by clear and convincing evidence that the practitioner possesses the moral and professional qualifications required to

appear before the Board, the Immigration Courts, or DHS, and that the practitioner's reinstatement will not be detrimental to the administration of justice. The EOIR disciplinary counsel and, in matters in which the practitioner was ordered disbarred or suspended from practice before DHS, the DHS disciplinary counsel, may reply within 30 days of service of the petition in the form of a written response to the Board, which may include, but is not limited to, documentation or evidence of the practitioner's failure to comply with the terms of the disbarment or suspension or of any complaints filed against the disbarred or suspended practitioner subsequent to the practitioner's disbarment or suspension.

(3) If a practitioner cannot meet the definition of attorney or representative, the Board shall deny the petition for reinstatement without further consideration. If the petition for reinstatement is found to be otherwise inappropriate or unwarranted, the petition shall be denied. Any subsequent petitions for reinstatement may not be filed before the end of one year from the date of the Board's previous denial of reinstatement, unless the practitioner is otherwise eligible for reinstatement under paragraph (a). If the petition for reinstatement is determined to be timely, the practitioner meets the definition of attorney or representative, and the petitioner has otherwise established by the requisite standard of proof that the practitioner possesses the qualifications set forth herein, and that reinstatement will not be detrimental to the administration of justice, the Board shall grant the petition and reinstate the practitioner. The Board, in its discretion, may hold a hearing to determine if the practitioner meets all of the requirements for reinstatement.

(c) *Accredited representatives.* (1) An accredited representative who has been suspended for a period of time greater than the remaining period of validity of the representative's accreditation at the time of the suspension is not eligible to be reinstated under § 1003.107(a) or

(b). In such circumstances, after the period of suspension has expired, an organization may submit a new request for accreditation pursuant to 8 CFR 1292.13 on behalf of such an individual.

(2) *Disbarment.* An accredited representative who has been disbarred is permanently barred from appearing before the Board, the Immigration Courts, or DHS as an accredited representative and cannot seek reinstatement.

* * * * *

13. In § 1003.108, revise paragraph (a) introductory text, paragraphs (a)(1)(i) through (iv), and paragraph (a)(2)(v), add paragraph (a)(3), and revise paragraph (b) to read as follows:

§ 1003.108 Confidentiality.

(a) *Complaints and preliminary inquiries.* Except as otherwise provided by law or regulation, information concerning complaints or preliminary inquiries is confidential. A practitioner or recognized organization whose conduct is the subject of a complaint or preliminary inquiry, however, may waive confidentiality, except that the EOIR disciplinary counsel may decline to permit a waiver of confidentiality if it is determined that an ongoing preliminary inquiry may be substantially prejudiced by public disclosure before the filing of a Notice of Intent to Discipline.

(1) * * *

(i) A practitioner or recognized organization has caused, or is likely to cause, harm to client(s), the public, or the administration of justice, such that the public or specific individuals should be advised of the nature of the allegations. If disclosure of information is made pursuant to this paragraph, the EOIR disciplinary counsel may define the scope of information disseminated and may limit the disclosure of information to specified individuals and entities;

(ii) A practitioner or recognized organization has committed criminal acts or is under investigation by law enforcement authorities;

(iii) A practitioner or recognized organization is under investigation by a disciplinary or regulatory authority, or has committed acts or made omissions that may reasonably result in investigation by such authorities;

(iv) A practitioner or recognized organization is the subject of multiple disciplinary complaints and the EOIR disciplinary counsel has determined not to pursue all of the complaints. The EOIR disciplinary counsel may inform complainants whose allegations have not been pursued of the status of any other preliminary inquiries or the manner in which any other complaint(s) against the practitioner or recognized organization have been resolved.

(2) * * *

(v) To the practitioner or recognized organization who is the subject of the complaint or preliminary inquiry or the practitioner's or recognized organization's counsel of record.

* * * * *

(3) *Disclosure of information for the purpose of recognition of organizations and accreditation of representatives.* The EOIR disciplinary counsel, in the exercise of discretion, may disclose information concerning complaints or preliminary inquiries regarding applicants for recognition and accreditation, recognized organizations or their authorized officers, or accredited representatives to the OLAP Director for any purpose related to the recognition of organizations and accreditation of representatives.

(b) *Resolutions reached prior to the issuance of a Notice of Intent to Discipline.* Resolutions reached prior to the issuance of a Notice of Intent to Discipline, such as warning letters, admonitions, and agreements in lieu of discipline are confidential, except that resolutions

that pertain to an accredited representative may be disclosed to the accredited representative's organization and the OLAP Director. However, all such resolutions may become part of the public record if the practitioner becomes subject to a subsequent Notice of Intent to Discipline.

* * * * *

14. Add §§ 1003.110 and 1003.111 to read as follows:

§ 1003.110 Sanction of recognized organizations.

(a) *Authority to sanction.* (1) An adjudicating official or the Board may impose disciplinary sanctions against a recognized organization if it is in the public interest to do so. It will be in the public interest to impose disciplinary sanctions if a recognized organization has engaged in the conduct described in paragraph (b) of this section. In accordance with the disciplinary proceedings set forth in this subpart, an adjudicating official or the Board may impose the following sanctions:

(i) Revocation, which removes the organization and its accredited representatives from the recognition and accreditation roster and permanently bars the organization from future recognition;

(ii) Termination, which removes the organization and its accredited representatives from the recognition and accreditation roster but does not bar the organization from future recognition. In terminating recognition under this section, the adjudicating official or the Board may preclude the organization from submitting a new request for recognition under 8 CFR 1292.13 before a specified date; or

(iii) Such other disciplinary sanctions, except a suspension, as the adjudicating official or the Board deems appropriate.

(2) The administrative termination of an organization's recognition under 8 CFR 1292.17 after the issuance of Notice of Intent to Discipline pursuant to § 1003.105(a)(1) shall not preclude the continuation of disciplinary proceedings and the imposition of sanctions, unless counsel for the government moves to dismiss the Notice of Intent to Discipline and the adjudicating official or the Board grants the motion.

(3) The imposition of disciplinary sanctions against a recognized organization does not result in disciplinary sanctions against that organization's accredited representatives; disciplinary sanctions, if any, against an organization's accredited representatives must be imposed separately from disciplinary sanctions against the organization. Termination or revocation of an organization's recognition has the effect of terminating the accreditation of representatives of that organization, but such individuals may retain or seek accreditation through another recognized organization.

(b) *Grounds.* It shall be deemed to be in the public interest for an adjudicating official or the Board to impose disciplinary sanctions against any recognized organization that violates one or more of the grounds specified in this paragraph, except that these grounds do not constitute the exclusive grounds for which disciplinary sanctions may be imposed in the public interest. A recognized organization may be subject to disciplinary sanctions if it:

(1) Knowingly or with reckless disregard provides a false statement or misleading information in applying for recognition or accreditation of its representatives;

(2) Knowingly or with reckless disregard provides false or misleading information to clients or prospective clients regarding the scope of authority of, or the services provided by, the organization or its accredited representatives;

(3) Fails to adequately supervise accredited representatives;

(4) Employs, receives services from, or affiliates with an individual who performs an activity that constitutes the unauthorized practice of law or immigration fraud; or

(5) Engages in the practice of law through staff when it does not have an attorney or accredited representative.

(c) *Joint disciplinary proceedings.* The EOIR disciplinary counsel or DHS disciplinary counsel may file a Notice of Intent to Discipline against a recognized organization and one or more of its accredited representatives pursuant to § 1003.101 *et seq.* Disciplinary proceedings conducted on such notices, if they are filed jointly with the Board, shall be joined and referred to the same adjudicating official pursuant to § 1003.106. An adjudicating official may join related disciplinary proceedings after the filing of a Notice of Intent to Discipline.

§ 1003.111 Interim suspension.

(a) *Petition for interim suspension—(1) EOIR Petition.* In conjunction with the filing of a Notice of Intent to Discipline or at any time thereafter during disciplinary proceedings before an adjudicating official, the EOIR disciplinary counsel may file a petition for an interim suspension of an accredited representative. Such suspension, if issued, precludes the representative from practicing before the Board and the Immigration Courts during the pendency of disciplinary proceedings and continues until the issuance of a final order in the disciplinary proceedings.

(2) *DHS Petition.* In conjunction with the filing of a Notice of Intent to Discipline or at any time thereafter during disciplinary proceedings before an adjudicating official, the DHS disciplinary counsel may file a petition for an interim suspension of an accredited representative. Such suspension, if issued, precludes the representative from practicing before DHS during the pendency of disciplinary proceedings and continues until the issuance of a final order in the disciplinary proceedings.

(3) *Contents of the petition.* In the petition, counsel for the government must demonstrate by a preponderance of the evidence that the accredited representative poses a substantial threat of irreparable harm to clients or prospective clients. An accredited representative poses a substantial threat of irreparable harm to clients or prospective clients if the representative committed three or more acts in violation of the grounds of discipline described at § 1003.102, when actual harm or threatened harm is demonstrated, or engages in any other conduct that, if continued, will likely cause irreparable harm to clients or prospective clients. Counsel for the government must serve the petition on the accredited representative, as provided in § 1003.105, and send a copy of the petition to the authorized officer of the recognized organization at the address of the organization through which the representative is accredited.

(4) *Requests to broaden scope.* The EOIR disciplinary counsel or DHS disciplinary counsel may submit a request to broaden the scope of any interim suspension order such that an accredited representative would be precluded from practice before the Board, the Immigration Courts, and DHS.

(b) *Response.* The accredited representative may file a written response to the petition for interim suspension within 30 days of service of the petition.

(c) *Adjudication.* Upon the expiration of the time to respond to the petition for an interim suspension, the adjudicating official will consider the petition for an interim suspension, the accredited representative's response, if any, and any other evidence presented by the parties before determining whether to issue an interim suspension. If the adjudicating official imposes an interim suspension on the representative, the adjudicating official may require that notice of the interim suspension be posted at the Board and the Immigration Courts, or DHS, or all three authorities. Upon good cause shown, the adjudicating official may set aside an order of interim

suspension when it appears in the interest of justice to do so. If a final order in the disciplinary proceedings includes the imposition of a period of suspension against an accredited representative, time spent by the representative under an interim suspension pursuant to this section may be credited toward the period of suspension imposed under the final order.

PART 1103 – APPEALS, RECORDS, AND FEES

15. The authority citation for part 1103 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; 28 U.S.C. 509, 510.

16. In § 1103.3, revise paragraph (a), remove and reserve paragraph (b), and revise paragraph (c).

The revisions read as follows:

§ 1103.3 Denials, appeals, and precedent decisions.

(a) *DHS regulations.* The regulations pertaining to denials, appeals, and precedent decisions of the Department of Homeland Security are contained in 8 CFR Chapter I.

* * * * *

(c) *DHS precedent decisions.* The Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, may file with the Attorney General decisions relating to the administration of the immigration laws of the United States for publication as precedent in future proceedings, and upon approval of the Attorney General as to the lawfulness of such decision, the Director of the Executive Office for Immigration Review shall cause such decisions to be published in the same manner as decisions of the Board and the Attorney General.

PART 1212 – DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

17. The authority citation for part 1212 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227, 1255; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108-458); Title VII of Public Law 110-229.

18. Revise § 1212.6 to read as follows:

§ 1212.6 Border crossing identification cards.

The regulations of the Department of Homeland Security pertaining to border crossing identification cards can be found at 8 CFR 212.6.

PART 1292 – REPRESENTATION AND APPEARANCES

19. Revise the authority citation for part 1292 to read as follows:

Authority: 8 U.S.C. 1103, 1362.

20. In part 1292, before § 1292.1, add an undesignated center heading to read “In General”.

21. In § 1292.1, revise paragraph (a)(4) to read as follows:

§ 1292.1 Representation of others.

(a) * * *

(4) *Accredited representative.* An individual whom EOIR has authorized to represent immigration clients on behalf of a recognized organization, and whose period of accreditation is current and has not expired. A partially accredited representative is authorized to practice solely before DHS. A fully accredited representative is authorized to practice before DHS, and upon registration, to practice before the Immigration Courts and the Board.

* * * * *

§ 1292.2 [Removed and Reserved]

22. Remove and reserve § 1292.2.

23. Revise § 1292.3 to read as follows:

§ 1292.3 Conduct for practitioners and recognized organizations – rules and procedures.

Practitioners, as defined in § 1003.101(b) of this chapter, and recognized organizations are subject to the imposition of sanctions as provided in 8 CFR part 1003, subpart G, § 1003.101 *et seq.*, and 8 CFR 292.3 (pertaining to practice before DHS).

24. Revise § 1292.6 to read as follows:

§ 1292.6 Interpretation.

Interpretations of §§ 1292.1 through 1292.6 will be made by the Board, subject to the provisions of part 1003 of this chapter. Interpretations of §§ 1292.11 through 1292.20 will be made by the OLAP Director.

25. Add §§ 1292.11 through 1292.20, with an undesignated center heading preceding § 1292.11, to read as follows:

Sec.

* * * * *

Recognition of organizations and accreditation of non-attorney representatives

Sec.

- 1292.11 Recognition of an organization.
- 1292.12 Accreditation of representatives.
- 1292.13 Applying for recognition of organizations or accreditation of representatives.
- 1292.14 Reporting, recordkeeping, and posting requirements for recognized organizations.
- 1292.15 Extension of recognition and accreditation to multiple offices or locations of an organization.
- 1292.16 Renewal of recognition and accreditation.
- 1292.17 Administrative termination of recognition and accreditation.
- 1292.18 Administrative review of denied requests for reconsideration.
- 1292.19 Complaints against recognized organizations and accredited representatives.
- 1292.20 Roster of recognized organizations and accredited representatives.

* * * * *

Recognition of organizations and accreditation of non-attorney representatives

§ 1292.11 Recognition of an organization.

(a) *In general.* The OLAP Director, in the exercise of discretion, may recognize an eligible organization to provide representation through accredited representatives who appear on behalf of clients before the Immigration Courts, the Board, and DHS, or DHS alone. The OLAP Director will determine whether an organization is eligible for recognition. To be eligible for recognition, the organization must establish that:

(1) The organization is a non-profit religious, charitable, social service, or similar organization that provides immigration legal services primarily to low-income and indigent clients within the United States, and, if the organization charges fees, has a written policy for accommodating clients unable to pay fees for immigration legal services;

(2) The organization is a Federal tax-exempt organization established in the United States;

(3) The organization is simultaneously applying to have at least one employee or volunteer of the organization approved as an accredited representative by the OLAP Director and at least one application for accreditation is concurrently approved, unless the organization is seeking renewal of recognition and has an accredited representative or is seeking renewal of recognition on inactive status as described in § 1292.16(i);

(4) The organization has access to adequate knowledge, information, and experience in all aspects of immigration law and procedure; and

(5) The organization has designated an authorized officer to act on behalf of the organization.

(b) *Proof of status as non-profit religious, charitable, social service, or similar organization established in the United States and service to low-income and indigent clients.* The organization must submit: a copy of its organizing documents, including a statement of its mission or purpose; a declaration from its authorized officer attesting that it serves primarily low-income and indigent clients; a summary of the legal services to be provided; if it charges fees for legal services, fee schedules and organizational policies or guidance regarding fee waivers or reduced fees based on financial need; and its annual budget. The organization may also submit additional documentation to demonstrate non-profit status and service to primarily low-income and indigent individuals, such as reports prepared for funders or information about other free or low-cost immigration-related services that it provides (e.g., educational or outreach events).

(c) *Annual budget.* The organization must submit its annual budget for providing immigration legal services for the current year and, if available, its annual budget for providing immigration legal services for the prior year. If the annual budgets for both the current and prior years are unavailable, the organization must submit its projected annual budget for the upcoming year. The annual budget should describe how the organization is funded and include information about the organization's operating expenses and sources of revenue for providing immigration legal services. Sources of revenue may include, but are not limited to, grants, fees, donations, or dues.

(d) *Proof of tax-exempt status.* The organization must submit a copy of its currently valid IRS tax-exemption determination letter, alternative documentation to establish Federal tax-exempt status, or proof that it has applied for Federal tax-exempt status.

(e) *Proof of knowledge, information, and experience.* The organization must submit: a description of the immigration legal services that the organization seeks to offer; a description of the legal resources to which the organization has access; an organizational chart showing names, titles, and supervisors of immigration legal staff members; a description of the qualifications, experience, and breadth of immigration knowledge of these staff members, including, but not limited to resumes, letters of recommendation, certifications, and a list of all relevant, formal immigration-related trainings attended by staff members; and any agreement or proof of a formal arrangement entered into with non-staff immigration practitioners and recognized organizations for consultations or technical legal assistance.

(f) *Validity period of recognition.* Recognition is valid for a period of six years from the date of the OLAP Director's approval of recognition, unless the organization has been granted conditional recognition. Conditional recognition is granted to an organization that has not been recognized previously, that has Federal tax-exempt status pending, or that has been approved for recognition after recognition was previously terminated pursuant to § 1292.17 or 8 CFR 1003.101 *et seq.* Conditional recognition is valid for two years from the date of the OLAP Director's approval of conditional recognition. Any organization's recognition is subject to being terminated pursuant to § 1292.17 or upon the issuance of disciplinary sanctions (termination or revocation) under 8 CFR 1003.101 *et seq.*

§ 1292.12 Accreditation of representatives.

(a) *In general.* Only recognized organizations, or organizations simultaneously applying for recognition, may request accreditation of individuals. The OLAP Director, in the exercise of discretion, may approve accreditation of an eligible individual as a representative of a recognized organization for either full or partial accreditation. An individual who receives full accreditation

may represent clients before the Immigration Courts, the Board, and DHS. An individual who receives partial accreditation may represent clients only before DHS. In the request for accreditation, the organization must specify whether it seeks full or partial accreditation and establish eligibility for accreditation for the individual. To establish eligibility for accreditation, an organization must demonstrate that the individual for whom the organization seeks accreditation:

(1) Has the character and fitness to represent clients before the Immigration Courts and the Board, or DHS, or before all three authorities. Character and fitness includes, but is not limited to, an examination of factors such as: criminal background; prior acts involving dishonesty, fraud, deceit, or misrepresentation; past history of neglecting professional, financial, or legal obligations; and current immigration status that presents an actual or perceived conflict of interest;

(2) Is employed by or is a volunteer of the organization;

(3) Is not an attorney as defined in 8 CFR 1001.1(f);

(4) Has not resigned while a disciplinary investigation or proceeding is pending and is not subject to any order disbaring, suspending, enjoining, restraining, or otherwise restricting the individual in the practice of law or representation before a court or any administrative agency;

(5) Has not been found guilty of, or pleaded guilty or nolo contendere to, a serious crime, as defined in 8 CFR 1003.102(h), in any court of the United States, or of any State, possession, territory, commonwealth, or the District of Columbia, or of a jurisdiction outside of the United States; and

(6) Possesses broad knowledge and adequate experience in immigration law and procedure. If an organization seeks full accreditation for an individual, it must establish that the individual also possesses skills essential for effective litigation.

(b) *Request for accreditation.* To establish that an individual satisfies the requirements of paragraph (a) of this section, the organization must submit a request for accreditation (Form EOIR-31A and supporting documents). 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.

(c) *Proof of knowledge and experience.* To establish that the individual satisfies the requirement in paragraph (a)(6) of this section, the organization must submit with its request for accreditation, at minimum: a description of the individual's qualifications, including education and immigration law experience; letters of recommendation from at least two persons familiar with the individual's qualifications; and documentation of all relevant, formal immigration-related training, including a course on the fundamentals of immigration law, procedure, and practice. An organization must also submit documentation that an individual for whom the organization seeks full accreditation has formal training, education, or experience related to trial and appellate advocacy.

(d) *Validity period of accreditation.* Accreditation is valid for a period of three years from the date of the OLAP Director's approval of accreditation, unless the organization's recognition or the representative's accreditation is terminated pursuant to § 1292.17 or the organization or the representative is subject to disciplinary sanctions (termination, revocation, suspension, or disbarment) under 8 CFR 1003.101 *et seq.*

(e) *Change in accreditation.* An organization may request to change the accreditation of a representative from partial to full accreditation at any time during the validity period of accreditation or at renewal. Such a request will be treated as a new, initial request for full accreditation and must comply with this section.

§ 1292.13 Applying for recognition of organizations or accreditation of representatives.

(a) *In general.* An organization applying for recognition or accreditation of a representative must submit a request for recognition (Form EOIR-31) or a request for accreditation (Form EOIR-31A) to the OLAP Director with proof of service of a copy of the request on the appropriate USCIS office(s) in the jurisdictions where the organization offers or intends to offer immigration legal services. An organization must submit a separate request for accreditation (Form EOIR-31A) for each individual for whom it seeks accreditation. To determine whether an organization has established eligibility for recognition or accreditation of a representative, the OLAP Director shall review all information contained in the request for recognition or accreditation and may review any publicly available information or any other information that OLAP may obtain or possess about the organization, its authorized officer, or the proposed representative or may have received pursuant to paragraphs (b), (c), and (d) of this section. Unfavorable information obtained by the OLAP Director that may be relied upon to disapprove a recognition or accreditation request, if not previously served on the organization, shall be disclosed to the organization, and the organization shall be given a reasonable opportunity to respond. Prior to determining whether to approve or disapprove a request for recognition or accreditation, the OLAP Director may request additional information from the organization pertaining to the eligibility requirements for recognition or accreditation. The OLAP Director, in writing, shall inform the organization and each USCIS office in the

jurisdictions where the organization offers or intends to offer immigration legal services of the determination approving or disapproving the organization's request for recognition or accreditation of a representative. The OLAP Director may, in the exercise of discretion, extend the deadlines provided in this section. The OLAP Director is authorized to allow requests, notifications, recommendations, and determinations described in this section to be made electronically.

(b) *USCIS recommendation and investigation.* Within 30 days from the date of service of the request for recognition or accreditation, the USCIS office served with the request may submit to the OLAP Director a recommendation for approval or disapproval of the request for recognition or accreditation, including an explanation for the recommendation, or may request from the OLAP Director a specified period of additional time, generally no more than 30 days, in which to conduct an investigation or otherwise obtain relevant information regarding the organization, its authorized officer, or any individual for whom the organization seeks accreditation. The OLAP Director shall inform the organization if the OLAP Director grants a request from USCIS for additional time to conduct an investigation, or if, in the exercise of discretion, the OLAP Director has requested that USCIS conduct an investigation of the organization, its authorized officer, or any individual for whom the organization seeks accreditation. USCIS must submit any recommendation with proof of service of a copy of the recommendation on the organization. Within 30 days of service of an unfavorable recommendation, the organization may file with the OLAP Director a response to the unfavorable recommendation, along with proof of service of a copy of such response on the USCIS office that provided the recommendation.

(c) *ICE recommendation.* Upon receipt of a request for recognition or accreditation, the OLAP Director may request a recommendation or information from ICE in the jurisdictions where the organization offers or intends to offer immigration legal services regarding the organization, its authorized officer, or any individual for whom the organization seeks accreditation. Within 30 days from the date of receipt of the OLAP Director's request, ICE may make a recommendation or disclose information regarding the organization, its authorized officer, or individuals for whom the organization seeks accreditation. ICE must submit any recommendation with proof of service of a copy of the recommendation on the organization. Within 30 days of service of an unfavorable recommendation, the organization may file with the OLAP Director a response to the unfavorable recommendation, along with proof of service of a copy of such response on the ICE office that provided the recommendation. The OLAP Director, in writing, shall inform ICE of the determination approving or disapproving the organization's request for recognition or accreditation of a representative.

(d) *EOIR investigation.* Upon receipt of a request for recognition or accreditation, the OLAP Director may request that the EOIR disciplinary counsel or anti-fraud officer conduct an investigation into the organization, its authorized officer, or any individual for whom the organization seeks accreditation. Within 30 days from the date of receipt of the OLAP Director's request, the EOIR disciplinary counsel or anti-fraud officer may disclose to the OLAP Director information, including complaints, preliminary inquiries, warning letters, and admonitions, relating to the organization, its authorized officer, or any individual for whom the organization seeks accreditation.

(e) *Finality of decision.* The OLAP Director's determination to approve a request for recognition or accreditation is final. An organization whose request for recognition or

accreditation was disapproved may make one request for reconsideration of the disapproval within 30 days of the determination. An organization whose request for recognition or accreditation was disapproved, or whose request for reconsideration after disapproval and, if applicable, request for administrative review pursuant to § 1292.18 was denied, may submit a new request for recognition or accreditation at any time unless otherwise prohibited.

§ 1292.14 Reporting, recordkeeping, and posting requirements for recognized organizations.

(a) *Duty to report changes.* A recognized organization has a duty to promptly notify the OLAP Director in writing or electronically of changes in the organization's contact information, changes to any material information the organization provided in Form EOIR-31, Form EOIR-31A, or the documents submitted in support thereof, or changes that otherwise materially relate to the organization's eligibility for recognition or the eligibility for accreditation of any of the organization's accredited representatives. These changes may include alterations to: the organization's name, address, telephone number, website address, email address, or the designation of the authorized officer of the organization; an accredited representative's name or employment or volunteer status with the organization; and the organization's structure, including a merger of organizations that have already been individually accorded recognition, or a change in non-profit or Federal tax-exempt status.

(b) *Recordkeeping.* A recognized organization must compile each of the following records in a timely manner, and retain them for a period of six years from the date the record is created, as long as the organization remains recognized:

(1) The organization's immigration legal services fee schedule, if the organization charges any fees for immigration legal services, for each office or location where such services are provided; and

(2) An annual summary of immigration legal services provided by the organization, which includes: the total number of clients served (whether through client intakes, applications prepared and filed with DHS, cases in which its attorneys or accredited representatives appeared before the Immigration Courts or, if applicable, the Board, or referrals to attorneys or other organizations) and clients to whom it provided services at no cost; a general description of the immigration legal services and other immigration-related services (e.g., educational or outreach events) provided; a statement regarding whether services were provided pro bono or clients were charged in accordance with a fee schedule and organizational policies or guidance regarding fee waivers and reduced fees; and a list of the offices or locations where the immigration legal services were provided. The summary should not include any client-specific or client-identifying information. OLAP may require the organization to submit such records to it or DHS upon request.

(c) *Posting.* The OLAP Director shall have the authority to issue public notices regarding recognition and accreditation and to require recognized organizations and accredited representatives to post such public notices. Information contained in the public notices shall be limited to: the names and validity periods of a recognized organization and its accredited representatives, the requirements for recognition and accreditation, and the means to complain about a recognized organization or accredited representative.

§ 1292.15 Extension of recognition and accreditation to multiple offices or locations of an organization.

Upon approving an initial request for recognition or a request for renewal of recognition, or at any other time, the OLAP Director, in the OLAP Director's discretion, may extend the recognition of an organization to any office or location where the organization offers services. To request extension of recognition, an organization that is seeking or has received recognition must submit a Form EOIR-31 that identifies the name and address of the organization's headquarters or designated office and the name 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. OLAP may require an organization to seek separate recognition for an office or location of the organization, for example, when a subordinate office or location has distinct operations, management structure, or funding sources from the organization's headquarters. The OLAP Director's determination to extend recognition to the offices or locations identified in Form EOIR-31 permits the organization's accredited representatives to provide immigration legal services out of those offices or locations. OLAP will post the address of each office or location to which recognition has been extended on the roster of recognized organizations and accredited representatives. The OLAP Director is authorized to allow requests and determinations described in this section to be made electronically.

§ 1292.16 Renewal of recognition and accreditation.

(a) *In general.* To retain its recognition and the accreditation of its representatives after the conclusion of the validity period specified in § 1292.11(f) or § 1292.12(d), an organization must submit a request for renewal of its recognition or the accreditation of its representatives

(Form EOIR-31, Form EOIR 31A, and supporting documents). In the exercise of discretion, as provided in paragraph (i) of this section, the OLAP Director may approve an organization's request for renewal of recognition without a currently approved accredited representative.

(b) *Timing of renewal*—(1) *Recognition*. An organization requesting renewal of recognition must submit the request on or before the sixth anniversary date of the organization's last approval or renewal of recognition or, for a conditionally recognized organization, on or before the second anniversary of the approval date of the conditional recognition. Any request must include proof of service of a copy of the request on the appropriate USCIS office(s) in the jurisdictions where the organization offers or intends to offer immigration legal services.

(2) *Accreditation*. An organization requesting renewal of accreditation of its representative must submit the request on or before the third anniversary date of the representative's last approval or renewal of accreditation, with proof of service of a copy of the request on the appropriate USCIS office(s) in the jurisdictions where the organization offers or intends to offer immigration legal services.

(3) The OLAP Director, in the OLAP Director's discretion, may grant additional time to submit a request for renewal or accept a request for renewal filed out of time. The recognition of the organization and the accreditation of any representatives for whom the organization timely requests renewal shall remain valid pending the OLAP Director's consideration of the renewal requests, except in the case of an interim suspension pursuant to 8 CFR 1003.111.

(c) *Renewal requirements*—(1) *Recognition*. The request for renewal of recognition must establish that the organization remains eligible for recognition under § 1292.11(a), include the records specified in § 1292.14(b) regarding fee schedules and the summary of immigration legal services provided that the organization compiled since the last approval of recognition, and

describe any unreported changes that impact eligibility for recognition from the date of the last approval of recognition.

(2) *Accreditation.* Each request for renewal of accreditation must establish that the individual remains eligible for accreditation under § 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.

(d) *Recommendations and investigations.* Each USCIS office served with a request for renewal of recognition or a request for renewal of accreditation may submit to the OLAP Director a recommendation for approval or disapproval of that request pursuant to § 1292.13(b). The OLAP Director may request a recommendation from ICE or an investigation from the EOIR disciplinary counsel or anti-fraud officer, pursuant to § 1292.13(c) and (d).

(e) *Renewal process.* The OLAP Director shall review all information contained in the requests and may review any publicly available information or any other information that OLAP may possess about the organization, its authorized officer, or any individual for whom the organization seeks accreditation or renewal of accreditation or that OLAP may have received pursuant to § 1292.13(b) through (d). Unfavorable information obtained by the OLAP Director that may be relied upon to disapprove a recognition or accreditation request, if not previously served on the organization, shall be disclosed to the organization, and the organization shall be given a reasonable opportunity to respond. Prior to determining whether to approve or disapprove a request for renewal of recognition or accreditation, the OLAP Director may request additional information from the organization pertaining to the eligibility requirements for recognition or accreditation. The OLAP Director, in writing, shall inform the organization and the appropriate DHS office(s) in the jurisdictions where the organization offers or intends to

offer immigration legal services of the determination to approve or disapprove a request for renewal of recognition. If the OLAP Director renews recognition, the OLAP Director shall issue a written determination approving or disapproving each request for accreditation or renewal of accreditation. The OLAP Director is authorized to allow requests, notifications, recommendations, and determinations described in this section to be made electronically.

(f) *Finality of decision.* The OLAP Director's determination to approve a request to renew recognition or accreditation is final. An organization whose request for renewal of recognition or accreditation of its representatives has been disapproved may make one request for reconsideration of the disapproval within 30 days of the determination. The recognition of the organization and the accreditation of any representatives for whom the organization timely requests reconsideration shall remain valid pending the OLAP Director's consideration of the reconsideration request, except in the case of an interim suspension pursuant to 8 CFR 1003.111. An organization whose recognition or accreditation of its representatives is terminated because the organization's request to renew recognition or accreditation is disapproved or whose request for reconsideration after disapproval and, if applicable, request for administrative review pursuant to § 1292.18 was denied, may submit a new request for recognition and accreditation at any time unless otherwise prohibited.

(g) *Validity period of recognition and accreditation after renewal.* After renewal of recognition, the recognition of the organization is valid for a period of six years from the date of the OLAP Director's determination to renew recognition, unless the organization's recognition is terminated pursuant to § 1292.17 or the organization is subject to disciplinary sanctions (i.e., termination or revocation) under 8 CFR 1003.101 *et seq.* After renewal of accreditation, the accreditation of a representative is valid for a period of three years from the date of the OLAP

Director's determination to renew accreditation, unless the organization's recognition or the representative's accreditation is terminated pursuant to § 1292.17 or the organization or the representative is subject to disciplinary sanctions (termination, revocation, suspension, or disbarment) under 8 CFR 1003.101 *et seq.*

(h) *Organizations and representatives recognized and accredited prior to January 18, 2017—(1) Applicability.* An organization or representative that received recognition or accreditation prior to January 18, 2017, through the Board under former § 1292.2 is subject to the provisions of this part. Such an organization or representative shall continue to be recognized or accredited until the organization is required to request renewal of its recognition and accreditation of its representatives as required by paragraphs (h)(2) and (3) of this section and pending the OLAP Director's determination on the organization's request for renewal if such a request is timely made, unless the organization's recognition or the representative's accreditation is terminated pursuant to § 1292.17 or the organization or the representative is subject to disciplinary sanctions (termination, revocation, suspension, or disbarment) under 8 CFR 1003.101 *et seq.*

(2) *Renewal of recognition.* To retain its recognition, an organization that received recognition prior to January 18, 2017, must request renewal of its recognition pursuant to this section on or before the following dates:

(i) Within 1 year of January 18, 2017, if the organization does not have an accredited representative on the effective date of this regulation;

(ii) Within 2 years of January 18, 2017, if the organization is not required to submit a request for renewal at an earlier date under paragraph (h)(2)(i) of this section, and the

organization has been recognized for more than 10 years as of the effective date of this regulation; or

(iii) Within 3 years of January 18, 2017, if the organization is not required to submit a request for renewal at an earlier date under paragraph (h)(2)(i) or (ii) of this section.

(3) *Renewal of accreditation.* To retain the accreditation of its representatives who were accredited prior to January 18, 2017, an organization must request renewal of accreditation of its representatives on or before the date that the representative's accreditation would have expired under the prior rule.

(i) *Inactive status.* An organization shall be placed on inactive status if it has no currently approved accredited representative, and it promptly notified OLAP that it no longer has an accredited representative, as required by § 1292.14(a). An organization on inactive status is precluded from providing immigration legal services unless it has an attorney on staff. An organization shall be on inactive status for two years from the date the organization is placed on inactive status in order for the organization to apply for and have approved the accreditation of one or more representatives. If an organization on inactive status is subject to renewal while on inactive status, the organization must request renewal of recognition at the time required for renewal. The OLAP Director, in the OLAP Director's discretion, may approve a request to renew an organization's recognition without a currently approved accredited representative, provided that the organization satisfies the renewal requirements under § 1292.16(c)(1) and attests that it intends to apply for and have approved the accreditation of one or more representatives within two years from the date of renewal. An organization renewed under such circumstances shall be on inactive status for two years from the date of renewal in order for the organization to apply for and have approved the accreditation of one or more representatives.

The OLAP Director, in the OLAP Director's discretion, may grant an organization additional time on inactive status beyond the time limits provided in this paragraph.

§ 1292.17 Administrative termination of recognition and accreditation.

(a) *In general.* The OLAP Director may administratively terminate an organization's recognition or a representative's accreditation and remove the organization or representative from the recognition and accreditation roster. Prior to issuing a determination to administratively terminate recognition or accreditation, the OLAP Director may request, in writing or electronically, information from the organization, representative, DHS, or EOIR, regarding the bases for termination. The OLAP Director, in writing or electronically, shall inform the organization or the representative, as applicable, of the determination to terminate the organization's recognition or the representative's accreditation, and the reasons for the determination.

(b) *Bases for administrative termination of recognition.* The bases for termination of recognition under this section are:

(1) An organization did not submit a request to renew its recognition at the time required for renewal;

(2) An organization's request for renewal of recognition is disapproved or request for reconsideration after disapproval and if applicable, request for administrative review pursuant to § 1292.18 is denied;

(3) All of the organization's accredited representatives have been terminated pursuant to this section or suspended or disbarred pursuant to 8 CFR 1003.101 *et seq.*, and the organization is not on inactive status as described in § 1292.16(i);

(4) An organization submits a written request to the OLAP Director for termination of its recognition;

(5) An organization fails to comply with its reporting, recordkeeping, or posting requirements under § 1292.14, after being notified of the deficiencies and having an opportunity to respond;

(6) An organization fails to maintain eligibility for recognition under § 1292.11, after being notified of the deficiencies and having an opportunity to respond; or

(7) An organization on inactive status fails to have an individual approved as an accredited representative within the time provided under § 1292.16(i).

(c) *Bases for administrative termination of accreditation.* The bases for termination of accreditation under this section are:

(1) An individual's organization has had its recognition terminated pursuant to this section or terminated or revoked pursuant to 8 CFR 1003.101 *et seq.*;

(2) An organization does not submit a request for renewal of the individual's accreditation at the time required for renewal;

(3) An organization's request for renewal of an individual's accreditation is disapproved or request for reconsideration after disapproval and, if applicable, request for administrative review pursuant to § 1292.18, is denied;

(4) An accredited representative submits a written request to the OLAP Director for termination of the representative's accreditation;

(5) An organization submits a written request to the OLAP Director for termination of the accreditation of one or more of its representatives; or

(6) An individual fails to maintain eligibility for accreditation under § 1292.12, after the individual's organization has been notified of the deficiencies and has had an opportunity to respond.

(d) *Request for reconsideration.* An organization whose recognition is terminated pursuant to paragraph (b)(5) or (6) of this section or the accreditation of its representative(s) is terminated pursuant to paragraph (c)(6) of this section may make one request for reconsideration of the disapproval within 30 days of the determination. The recognition of the organization and the accreditation of any representatives for whom the organization timely requests reconsideration shall remain valid pending the OLAP Director's consideration of the reconsideration request. The OLAP Director is authorized to allow requests and determinations described in this paragraph to be made electronically.

(e) *Effect of administrative termination of recognition.* The OLAP Director's determination to terminate recognition is final as of the date of service of the administrative termination notice. Upon service or electronic delivery of an administrative termination of recognition notice to the organization's accredited representatives by OLAP, the organization's representatives shall no longer be authorized to represent clients before the Immigration Courts, the Board, or DHS on behalf of that organization, but the notice shall not affect an individual's accreditation through another recognized organization unless otherwise specified. An organization whose recognition is terminated may submit a new request for recognition at any time after its termination unless otherwise prohibited.

(f) *Effect of administrative termination of accreditation.* The OLAP Director's determination to terminate accreditation is final as of the date of service of the administrative termination notice. Upon service or electronic delivery of an administrative termination of

accreditation notice to an accredited representative by OLAP, the individual shall no longer be authorized to represent clients before the Immigration Courts, the Board, or DHS on behalf of that organization, but the notice does not affect the individual's accreditation through another organization unless specified in the determination. An organization may submit a request for accreditation on behalf of any individual whose accreditation has been terminated unless otherwise prohibited.

§ 1292.18 Administrative review of denied requests for reconsideration.

(a) *Authority of the Director.* The Director has the discretionary authority to review a request for reconsideration pursuant to § 1292.13(e), § 1292.16(f), or § 1292.17(d) that has been denied. The Director may delegate this authority to any officer within EOIR, except the OLAP Director.

(1) An organization whose request for reconsideration pursuant to § 1292.13(e), § 1292.16(f), or § 1292.17(d) has been denied may request administrative review from the Director within ten (10) days of the denial, identifying the alleged factual or legal errors in the underlying determination. The request for administrative review shall be submitted to the OLAP Director, who will forward the request to the Director.

(2) The Director may review a request for reconsideration pursuant to § 1292.13(e), § 1292.16(f), or § 1292.17(d) that has been denied on the Director's own initiative by issuing a notification of administrative review within ten (10) days of the denial. This notification shall state the issues to be reviewed.

(3) The recognition of the organization and the accreditation of any representatives that are subject to administrative review as described in this section shall remain valid pending the

Director's consideration of the request, except in the case of an interim suspension pursuant to 8 CFR 1003.111.

(b) *Review.* The Director shall review the record before OLAP and the organization's request for administrative review, and, in the Director's discretion, may request additional filings from the organization. The Director may affirm the denial of the request for reconsideration or vacate the denial and return the matter to the OLAP Director for further action consistent with the Director's determination. The Director may not approve a request for recognition or accreditation or renewal thereof.

§ 1292.19 Complaints against recognized organizations and accredited representatives.

(a) *Filing complaints.* Any individual may submit a complaint to EOIR or DHS that a recognized organization or accredited representative has engaged in behavior that is a ground of termination or otherwise contrary to the public interest. Complaints must be submitted in writing or on Form EOIR-44 to the EOIR disciplinary counsel or DHS disciplinary counsel and must state in detail the information that supports the basis for the complaint, including, but not limited to: the name and address of each complainant; the name and address of each recognized organization and accredited representative that is a subject of the complaint; the nature of the conduct or behavior; the individuals involved; and any other relevant information. EOIR disciplinary counsel and DHS disciplinary counsel shall notify each other of any complaint that pertains, in whole or in part, to a matter involving the other agency. EOIR may authorize that complaints submitted to the EOIR disciplinary counsel may be made electronically.

(b) *Preliminary inquiry.* Upon receipt of the complaint, the EOIR disciplinary counsel shall initiate a preliminary inquiry. If a complaint is filed by a client or former client of a recognized organization or any of its accredited representatives, the complainant waives the

attorney-client privilege and any other privilege relating to the representation to the extent necessary to conduct a preliminary inquiry and any subsequent proceedings based thereon. If the EOIR disciplinary counsel determines that a complaint is without merit, no further action will be taken. The EOIR disciplinary counsel may also, in the disciplinary counsel's discretion, dismiss a complaint if the complainant fails to comply with reasonable requests for information or documentation. If the EOIR disciplinary counsel determines that a complaint has merit, the EOIR disciplinary counsel may disclose information concerning the complaint or the preliminary inquiry to the OLAP Director pursuant to 8 CFR 1003.108(a)(3) or initiate disciplinary proceedings through the filing of a Notice of Intent to Discipline pursuant to 8 CFR 1003.105. If a complaint involves allegations that a recognized organization or accredited representative engaged in criminal conduct, the EOIR disciplinary counsel shall refer the matter to DHS or the appropriate United States Attorney, and if appropriate, to the Inspector General, the Federal Bureau of Investigation, or other law enforcement agency.

§ 1292.20 Roster of recognized organizations and accredited representatives.

The OLAP Director shall maintain a roster of recognized organizations and their accredited representatives. An electronic copy of the roster shall be made available to the public and updated periodically.

Dated: December 6, 2016.

Loretta E. Lynch
Attorney General

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