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DEPARTMENT OF JUSTICE

28 CFR Part 0

Executive Office for Immigration Review

8 CFR Parts 1001, 1003, and 1292

EOIR Docket No. 18-0502; A.G. Order No. 4515-2019

RIN 1125-AA85

Organization of the Executive Office for Immigration Review

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

ACTION: Interim rule; request for comment.

SUMMARY: This interim rule amends the regulations related to the internal organization of the Executive Office for Immigration Review (“EOIR”). This interim rule reflects changes related to the establishment of an Office of Policy within EOIR in 2017, and makes related clarifications or changes to the organizational role of EOIR’s Office of the General Counsel (“OGC”) and Office of Legal Access Programs (“OLAP”). This interim rule further updates the Department of Justice (“Department”) organizational regulations to synchronize them with EOIR’s regulations, makes nomenclature changes to the titles of the members of the Board of Immigration Appeals (“BIA” or “Board”), and provides for a further delegation of authority from the Attorney General to the EOIR Director (“Director”) regarding the efficient disposition of appeals. This interim rule also clarifies the Director’s authority to adjudicate cases following changes to EOIR’s Recognition and Accreditation Program (“R&A Program”) in 2017.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Written or electronic comments must be submitted on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. Written comments postmarked on or before that date will be considered timely. The electronic Federal Docket Management System will accept comments until midnight eastern standard time at the end of that day.

ADDRESSES: Please submit written comments to Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2616, Falls Church, VA 22041, Contact Telephone Number (703) 305-0289 (not a toll-free call). To ensure proper handling, please reference RIN No. 1125-AA85 or EOIR Docket No. 18-0502 on your correspondence. You may submit comments electronically or view an electronic version of this interim rule at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2616, Falls Church, VA 22041, Contact Telephone Number (703) 305-0289 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Background

EOIR is a component of the Department with the primary mission of adjudicating immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation's immigration laws, primarily pursuant to the Immigration and Nationality Act ("INA"). Under delegated authority from the Attorney General, EOIR conducts immigration court proceedings, appellate reviews, and administrative hearings. The Director exercises delegated authority from the Attorney General in managing the operations of EOIR. *See* 8 CFR 1003.0(a), (b). In 2007, the Department finalized regulations delegating certain authorities from the Attorney General to the Director regarding the management of EOIR in an effort to improve "the

workings of the immigration hearing process before the immigration judges and the Board.” 72 FR 53673, 53673 (Sept. 20, 2007).

Prior to 2017, EOIR contained eight components on its official organization chart approved by the Attorney General. Three of the listed components are adjudicatory: the Office of the Chief Immigration Judge, which is responsible for managing the immigration courts where immigration judges adjudicate individual cases; the BIA, which primarily conducts appellate reviews of immigration judge decisions; and the Office of the Chief Administrative Hearing Officer (“OCAHO”), which adjudicates immigration-related employment cases, discrimination cases, and document fraud cases pursuant to 8 U.S.C. 1324a, 1324b, and 1324c. Three of the listed components are non-adjudicatory: OGC; the Office of Administration; and the Office of Information Technology. The remaining two components are the Office of the Director and the Office of the Deputy Director.

EOIR also contains four offices or divisions that are located within the Office of the Director and, thus, do not appear on its official organization chart approved by the Attorney General. *See* <https://www.justice.gov/eoir/eoir-organization-chart/chart>. One of those offices is OLAP, which administers legal orientation programs for aliens in immigration proceedings and for custodians of unaccompanied alien children and helps administer the National Qualified Representative Program as part of EOIR’s Nationwide Policy regarding procedural protections for detained aliens who may have competency issues in immigration proceedings.¹ OLAP, formerly known as the Legal Orientation and Pro Bono Program, was established in 2000 as part of the Office of the Director. In 2002, it was moved from the Office of the Director to OGC,

¹ The other three offices are the Office of the Ombuds, the Equal Employment Opportunity Office, and the Planning, Analysis, and Statistics Division, which exercise responsibilities applicable to all components currently listed on EOIR’s organizational chart.

and, in 2009, it was moved from OGC to the BIA. In 2011, it was moved back to the Office of the Director. As of 2017, OLAP also administers EOIR's R&A Program, which authorizes representatives of non-profit religious, charitable, social service, or similar organizations to represent persons in immigration proceedings before EOIR and in cases with the Department of Homeland Security ("DHS"). *See* 81 FR 92346 (Dec. 19, 2016). Prior to 2017, the R&A Program was administered by the BIA.

Apart from EOIR's specific regulations in 8 CFR chapter V, the Department maintains organizational regulations for EOIR in 28 CFR part 0, subpart U. Over the years, however, those regulations have not been updated to maintain consistency with EOIR's specific regulations in title 8.

Regarding the BIA, the Attorney General has delegated authority to the BIA to adjudicate specified categories of appeals, primarily from immigration judge decisions in removal proceedings. 8 CFR 1003.1(b).² In both substance and practice, Board members function as appellate immigration judges. In 2000, the Department acknowledged the role of Board members as appellate immigration judges, though it declined to change their titles in 2007 due to possible confusion among the public. *See* 65 FR 81434 (Dec. 26, 2000); 72 FR at 53673-74.

The Attorney General has also required the BIA Chairman to establish a case management system to ensure the efficient adjudication of appeals. 8 CFR 1003.1(e). With limited exceptions, appeals assigned to a single Board member shall be adjudicated within 90 days of the completion of the record, and appeals assigned to a three-member panel shall be completed within 180 days after assignment. 8 CFR 1003.1(e)(8)(i). Appeals that are not

² The BIA also hears appeals from decisions by immigration judges in custody proceedings, among other matters, and from decisions by DHS adjudicators involving certain visa petitions and civil fine matters.

completed within the relevant time limits and that are not subject to an exception shall be assigned by the Chairman to either himself or a Vice Chairman for final decision within 14 days, or the Chairman shall refer them to the Attorney General. 8 CFR 1003.1(e)(8)(ii).

The Director has no authority to adjudicate specific cases under the INA or to direct the adjudication of specific cases under the INA. 8 CFR 1003.0(c). In 2017, however, the Director was given authority under 8 CFR 1292.18 to adjudicate requests for review of three types of reconsideration decisions related to EOIR's R&A Program, but 8 CFR 1003.0(c) was not updated to reflect this authority.

II. Summary of Regulatory Changes

In a 2017 reorganization, the Attorney General approved the addition of the Office of Policy within EOIR. The Department of Justice is now amending EOIR's regulations to reflect the establishment of this new component.

This interim rule with request for comment ("interim rule" or "rule") outlines the functions and roles of the Office of Policy, similar to how the functions of other EOIR components are outlined in the regulations. This rule also delineates and clarifies the functions of the Office of Policy and OGC within EOIR. Finally, because EOIR has determined that there is no need for OLAP to remain in the Office of the Director, this rule transfers OLAP's responsibilities to a division in the Office of Policy and removes references in the regulations to OLAP and the OLAP Director, effectively moving OLAP to the Office of Policy.

In addition, this rule updates the Department's general organizational regulations in 28 CFR part 0, subpart U, to be consistent with EOIR's current organizational structure outlined in 8 CFR part 1003, changes the titles of members of the BIA to better reflect the nature of their adjudicatory responsibilities, and delegates authority from the Attorney General to the Director

in situations in which appeals pending before the BIA have not been timely resolved in order to allow more practical flexibility in efficiently deciding appeals. This rule also resolves tension between the limitation in 8 CFR 1003.0(c) on the Director's authority to adjudicate or to direct the adjudication of specific cases under the INA, and 8 CFR 1292.18 regarding the Director's authority to adjudicate requests for review arising under the regulations in the context of the R&A Program, along with any similar tension that would otherwise arise regarding the Director's new authority to adjudicate appeals that have not been timely resolved by the BIA.

III. Analysis of Interim Rule

A. Office of Policy and Office of the General Counsel

The Office of Policy was established in 2017 to assist in effectuating authorities given to the Director in 8 CFR 1003.0(b)(1), including the authority to, *inter alia*, issue operational instructions and policy, administratively coordinate with other agencies, and provide for training to promote quality and consistency in adjudications. The Office of Policy both improves efficiency by reducing redundant activities performed by multiple components and ensures consistency and coordination of legal and policy activities across multiple components within EOIR. To that end, this rule delineates the various functions that the Office of Policy performs.

In delineating the functions performed by the Office of Policy, this rule also distinguishes those functions from activities performed by OGC, thereby clarifying the scope of OGC's authority. Currently, OGC oversees multiple EOIR programs, including those related to employee discipline, ethics, anti-fraud efforts, practitioner discipline, privacy, Freedom of Information Act requests, litigation support, and regulatory development and review. As these programs have expanded commensurate with the national salience of immigration issues in recent years, this change has challenged OGC's ability to devote sufficient resources to all of the

programs within its purview. Moreover, some of the programs currently under OGC, such as regulatory development and review, involve a substantial policy role. Consequently, the rule transfers some of OGC's current programs to the Office of Policy to ensure sufficient resources for those programs and to more appropriately align those programs with their policymaking character.

The General Counsel, under the supervision of the Director, serves as the chief legal counsel of EOIR, including to the Chairman of the BIA, the Chief Immigration Judge, and the Chief Administrative Hearing Officer on matters of immigration law. 8 CFR 1003.0(e). The current regulation does not exclude advising on issues related to the general adjudication of immigration cases, although it does provide that the General Counsel shall not supervise legal activities related to specific adjudications. *See id.* This delineation of the General Counsel's responsibilities has created confusion as many activities that OGC currently performs—ranging from advice on the discipline of immigration judges to advice regarding litigation positions to advice on policy—may relate directly or indirectly to the adjudication of specific cases, creating tension with the existing regulation. For example, as the chief legal counsel for EOIR, including its adjudicatory components, the General Counsel may take a position on immigration law through the complaint process involving an adjudicator's decision that is arguably neither the best nor only view of the law, leaving EOIR's adjudicators uncertain as to whose view to follow in order to adjudicate cases without risk of potential discipline or corrective action. Accordingly, the rule explains that the General Counsel, subject to the supervision of the Director, remains the chief legal counsel and supervisor of legal activities related to specific categories of issues, but expressly provides that the General Counsel does not have authority to influence the adjudication of specific cases under the INA, including as an advisor on disciplinary matters related to the

adjudication of cases under the INA. It also explains that the General Counsel may continue to advise on matters of immigration law, provided that the advice does not direct or influence specific adjudications under the Act.

B. Office of Legal Access Programs

On October 1, 2015, as part of revisions to its R&A Program, EOIR issued a proposed rule to formalize the structure of OLAP under the supervision of the Director. *See* 80 FR 59514 (Oct. 1, 2015). That rule was finalized on December 19, 2016, and went into effect on January 18, 2017. *See* 81 FR 92346. Although OLAP was established in EOIR's regulations in 8 CFR 1003.0(f), it was not established in the Department of Justice's organizational regulations for EOIR in 28 CFR part 0, subpart U. Additionally, although it was identified in the regulations, it did not appear on any official EOIR organizational chart approved by the Attorney General. *See* <https://www.justice.gov/eoir/eoir-organization-chart/chart>. OLAP has been transferred multiple times among different EOIR components since 2000, and no justification was provided in either the proposed rule or the final rule regarding why OLAP should be codified as an entity within EOIR reporting directly to the Director. Overall, its structural position within EOIR is anomalous.

The interim rule transfers OLAP's responsibilities to a division in the Office of Policy and removes references in the regulations to OLAP and the OLAP Director, effectively moving OLAP to the Office of Policy. EOIR has determined that there is no organizational justification for OLAP to remain in the Office of the Director. Instead, OLAP and its functions most appropriately belong in the Office of Policy, which can help coordinate OLAP's work across adjudicatory components. Further, locating OLAP within EOIR's principal policy component is consistent with OLAP's role in effectuating EOIR's Nationwide Policy regarding procedural

protections for detained aliens who may be deemed incompetent. This move ensures an appropriate chain of command and better management of OLAP's programs, provides for better coordination of OLAP's functions within the broader scope of EOIR's adjudicatory operations, and allows for greater flexibility in the future regarding OLAP's mission, which has expanded significantly in recent years. This rule is not intended to change—and does not have the effect of changing—any of OLAP's current functions.

C. The Department's Organizational Regulations

Apart from EOIR's specific regulations in 8 CFR chapter V, the Department of Justice maintains organizational regulations for EOIR in 28 CFR part 0, subpart U. Over the years, those regulations have not been updated to maintain consistency with EOIR's specific regulations in title 8, leading to some inconsistencies. For example, the Department's organizational regulations differ from EOIR's regulation as to the composition of the Board. *Compare* 8 CFR 1003.1(a)(1), (2), *with* 28 CFR 0.116. Moreover, the Department's regulation for OCAHO has not been updated to reflect OCAHO's jurisdiction over cases arising under 8 U.S.C. 1324c. *Compare* 28 CFR 68.1, *with* 28 CFR 0.118. Further, although EOIR's regulations provide for the delegation of authority from the Director to the General Counsel or any other EOIR employee, the Department's regulations do not mention the General Counsel or other EOIR employees at all. *Compare* 8 CFR 1003.0(b)(2), (e), *with* 28 CFR 0.115(b).

This rule eliminates the inconsistencies between the EOIR-related regulations in title 8 and title 28, reduces the likelihood of future inconsistencies by accounting for the possibility of future changes in title 8, updates outdated regulatory citations,³ and harmonizes the two sets of

³ On November 25, 2002, the President signed into law the Homeland Security Act of 2002 ("HSA"), creating the new DHS and transferring the functions of the former Immigration and Naturalization Service ("INS") to DHS. Pub. L. 107-296, tit. IV, subtitles D, E, F, 116 Stat.

regulations related to EOIR's structure, including by adding references to both OGC and the new Office of Policy in title 28.

D. The Board of Immigration Appeals

This rule provides that members of the Board shall also be known as "Appellate Immigration Judges" in order to more accurately reflect their adjudicatory functions. The Department has previously considered changing the title of Board members to "Appellate Immigration Judges" by regulation, but elected not to because of possible confusion by the public with federal appellate judges appointed under Article III of the Constitution. *See* 65 FR at 81434; 72 FR at 53673-74. The Department has now determined, however, that it is appropriate to incorporate this title to better reflect the role of Board members in adjudicating cases that come before them as designated by the Attorney General. The importance of more accurately representing the role of Board members outweighs any potential confusion, which the Department does not anticipate to be significant given the public salience of immigration-related adjudication in recent years.

Additionally, this rule reflects a further delegation of authority from the Attorney General regarding the efficient disposition of BIA cases on appeal. The BIA Chairman has established a case management system to ensure the efficient adjudication of appeals. *See* 8 CFR 1003.1(e).

With limited exceptions, appeals assigned to a single Board member shall be adjudicated within

2135, 2192 (Nov. 25, 2002) (effective March 1, 2003). Under the HAS, the Attorney General retained the functions of EOIR in the Department. HSA sec. 1101, 6 U.S.C. 521; INA sec. 103(g), 8 U.S.C. 1103(g). In order to implement the transfer of the functions of the former INS (now within DHS), the Attorney General reorganized title 8 of the Code of Federal Regulations and divided the regulations into chapters, so that chapter I contains regulations relating to the functions of the former INS and chapter V contains regulations relating to the functions of EOIR. *See* 68 FR 9824 (Feb. 28, 2003); *see also* 68 FR 10349 (March 5, 2003). The regulations governing proceedings before EOIR are now contained in 8 CFR chapter V, beginning with part 1001. Accordingly, outdated references in title 28, CFR, to pre-reorganizational regulations are corrected with this rule.

90 days of the completion of the record, and appeals assigned to a three-member panel shall be completed within 180 days after assignment. 8 CFR 1003.1(e)(8)(i). For appeals that are not completed within the relevant time limits and that are not subject to an exception, the Chairman shall assign them to either himself or a Vice Chairman for completion within 14 days, or the Chairman shall refer them to the Attorney General. 8 CFR 1003.1(e)(8)(ii). Due to his numerous other responsibilities and obligations, the Attorney General is not in a position to adjudicate any BIA appeal simply because it has exceeded its time limit for adjudication. Further, it is operationally anomalous for the Chairman, who is under the supervision of the Director, to be able to directly refer a case to the Attorney General based solely on a workload management issue, rather than on the underlying merits of the case. As the supervisor of the Chairman and already possessing the authority to ensure that adjudications are conducted in a timely manner, *see* 8 CFR 1003.0(b)(1)(ii), the Director is in a better position to address cases that cannot be completed in a timely fashion by the BIA. The Director is also in a direct position to implement changes to ensure that untimely adjudications remain relatively rare. Accordingly, this rule delegates authority from the Attorney General to the Director to adjudicate BIA cases that have otherwise not been adjudicated in a timely manner under the regulations, based on a referral from the Chairman. The rule retains the ability of EOIR to refer such cases to the Attorney General, but only through the Director, consistent with standard management principles of the elevation of workload and performance issues.

E. The EOIR Director

In 2017, responsibility for the R&A Program within EOIR was transferred from the BIA to OLAP. *See* 81 FR 92346. Following that transfer, the OLAP Director adjudicates initial applications for recognition or accreditation, adjudicates requests for renewal of recognition or

accreditation, makes determinations on administrative termination of recognition or accreditation, and adjudicates requests for reconsideration of any of these decisions. 8 CFR 1292.13, 1292.16, 1292.17. The Director adjudicates requests to review the reconsideration decisions of the OLAP Director. 8 CFR 1292.18.

The Director's authority to adjudicate requests to review certain reconsideration decisions of the OLAP Director under 8 CFR 1292.18 is in tension with the current language of 8 CFR 1003.0(c), which otherwise precludes the Director from adjudicating cases arising under the INA or regulations. The tension between these two regulations was an oversight in the transfer of the R&A Program. Consequently, this rule revises 8 CFR 1003.0(c) to clarify that the Director continues to be precluded from adjudicating cases or directing the results of certain adjudications, unless authorized to do so by another regulation or otherwise designated or delegated authority by the Attorney General to do so. The revision does not alter the Director's existing authority under 8 CFR 1292.18, and will simultaneously avoid any similar tension that would otherwise arise regarding the Director's new authority to adjudicate appeals that have not been timely resolved by the BIA.⁴

IV. Public Comments

The interim rule is an internal delegation of authority and assignment of responsibility, along with a change in nomenclature, and is thus a rule of management or personnel; it further relates to a matter of agency organization, procedure, or practice. *See* 5 U.S.C. 553(a)(2), (b)(A). Accordingly, the interim rule is exempt from the usual requirements of prior notice and comment

⁴ This rule also corrects a regulatory oversight by reiterating that the Director may provide for appropriate administrative coordination with the Department of Health and Human Services ("HHS") in addition to the other entities listed in 8 CFR 1003.0(b)(1)(iii). Such coordination is already provided for by statute, 8 U.S.C. 1232, and the exclusion of HHS from this list was inadvertent.

and a 30-day delay in effective date. An internal delegation of administrative authority does not adversely affect members of the public and involves an agency management decision that is exempt from the notice-and-comment rulemaking procedures of the Administrative Procedure Act (“APA”). See *United States v. Saunders*, 951 F.2d 1065, 1068 (9th Cir. 1991) (delegations of authority have “no legal impact on, or significance for, the general public,” and “simply effect[] a shifting of responsibilities wholly internal to the Treasury Department”); *Lonsdale v. United States*, 919 F.2d 1440, 1446 (10th Cir. 1990) (“APA does not require publication of [rules] which internally delegate authority to enforce the Internal Revenue laws”); *United States v. Goodman*, 605 F.2d 870, 887-88 (5th Cir. 1979) (unpublished delegation of authority from Attorney General to Acting Administrator of the Drug Enforcement Agency did not violate APA); *Hogg v. United States*, 428 F.2d 274, 280 (6th Cir. 1970) (where taxpayer would not be adversely affected by the internal delegations of authority from the Attorney General, APA does not require publication).

The Department is nonetheless promulgating this rule as an interim rule, providing the public with opportunity for post-promulgation comment before the Department issues a final rule on these matters. Written comments must be received on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

V. Regulatory Requirements

A. Administrative Procedure Act

As noted in section IV of this preamble, this interim rule is a rule of management or personnel as well as a rule of agency organization, procedure, or practice, and is exempt from the requirements for notice-and-comment rulemaking and a 30-day delay in effective date. See 5 U.S.C. 553(a)(2), (b)(A).

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (“RFA”), “[w]henver an agency is required by section 553 of [the APA], or any other law, to publish general notice of proposed rulemaking for any proposed rule, . . . the agency shall prepare and make available for public comment an initial regulatory flexibility analysis.” 5 U.S.C. 603(a); *see also* 5 U.S.C. 604(a). Such analysis is not required when a rule is exempt from notice-and-comment rulemaking under 5 U.S.C. 553(b). Because this is a rule of internal agency organization and therefore is exempt from notice-and-comment rulemaking, no RFA analysis under 5 U.S.C. 603 or 604 is required for this rule.

C. 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.

D. Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 13771 (Reducing Regulation and Controlling Regulatory Costs)

This rule is limited to agency organization, management, or personnel matters and is therefore not subject to review by the Office of Management and Budget pursuant to section 3(d)(3) of Executive Order 12866. Further, because this rule is one of internal organization, management, or personnel, it is not subject to the requirements of Executive Orders 13563 or 13771.

E. Executive Order 13132 (Federalism)

This rule 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. Therefore, in accordance with section 6 of Executive Order 13132, 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 provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because there are no new or revised recordkeeping or reporting requirements.

H. Congressional Review Act

This is not a major rule as defined by 5 U.S.C. 804(2). This action pertains to agency management or personnel and is a rule of agency organization that does not substantially affect the rights or obligations of non-agency parties. Accordingly, it is not a “rule” as that term is used in 5 U.S.C. 804(3). Therefore, the reports to Congress and the Government Accountability Office specified by 5 U.S.C. 801 are not required.

List of Subjects

8 CFR part 1001

Administrative practice and procedure, Immigration.

8 CFR part 1003

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

8 CFR part 1292

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

28 CFR part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements, Whistleblowing.

Accordingly, for the reasons set forth in the preamble, the Attorney General is amending parts 1001, 1003, and 1292 of title 8 of the Code of Federal Regulations and part 0 of title 28 of the Code of Federal Regulations as follows:

Title 8 of the Code of Federal Regulations

PART 1001 – DEFINITIONS

1. The authority citation for part 1001 continues 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.

§ 1001.1 [Amended]

2. Section 1001.1 is amended by removing and reserving paragraphs (x) and (y).

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. Section 1003.0 is amended by:

- a. Revising paragraphs (a), (b)(1) introductory text, (b)(1)(iii), (b)(2), and (c);
- b. Revising the first sentence of paragraph (d);
- c. Removing paragraph (f);
- d. Redesignating paragraph (e) as paragraph (f);
- e. Adding a new paragraph (e); and

f. Revising newly redesignated paragraphs (f) introductory text and (f)(1).

The revisions and addition 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 the heads of EOIR's other components, who shall report to the Director and Deputy Director. 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 Policy, the Office of the General Counsel, and such other components and staff as the Attorney General or the Director may provide.

(b) * * *

(1) *In general.* The Director shall manage EOIR and its employees and shall be responsible for the direction and supervision of each EOIR component in the execution of its respective duties pursuant to the Act and the provisions of this chapter. Unless otherwise provided by the Attorney General, the Director shall report to the Deputy Attorney General and the Attorney General. The Director shall have the authority to:

* * * * *

(iii) Provide for appropriate administrative coordination with the other components of the Department of Justice, with the Department of Homeland Security, with the Department of Health and Human Services, and with the Department of State;

* * * * *

(2) *Delegations.* The Director may delegate the authority given to him by this part or otherwise by the Attorney General to the Deputy Director, the Chairman of the Board of

Immigration Appeals, the Chief Immigration Judge, the Chief Administrative Hearing Officer, the Assistant Director for Policy, the General Counsel, or any other EOIR employee.

(c) *Limit on the authority of the Director.* Except as provided by statute, regulation, or delegation of authority from the Attorney General, or when acting as a designee of the Attorney General, the Director shall have no authority to adjudicate cases arising under the Act or regulations or to direct the result of an adjudication assigned to the Board, an immigration judge, the Chief Administrative Hearing Officer, or an Administrative Law Judge. Nothing in this part, however, shall be construed to limit the authority of the Director under paragraphs (a) or (b) of this section.

(d) *Deputy Director.* The Deputy Director shall advise and assist the Director in the supervision and management of EOIR and the formulation of policy and guidelines. * * *

(e) *Office of Policy.* Within EOIR, there shall be an Office of Policy consisting of an Assistant Director for Policy and other such staff as the Director deems necessary. Subject to the supervision of the Director, the Office of Policy shall provide assistance to the Director and heads of the other components within EOIR.

(1) *In general.* In coordination with the Director and subject to the Director's supervision, the Assistant Director for Policy shall supervise all policy activities of EOIR. Subject to the supervision of the Director and in coordination with other components as appropriate, the Assistant Director for Policy shall also oversee EOIR's regulatory development and implementation process, shall supervise and coordinate EOIR's internal development, dissemination, and implementation of policy guidance, shall supervise and administer EOIR's *pro bono* and legal orientation program activities, shall supervise the provision of legal and

policy training to all components within EOIR on all relevant matters under its supervision, and shall perform other such duties or exercise other such authorities as the Director may provide.

(2) *Limit on the Authority of the Assistant Director for Policy.* The Assistant Director for Policy shall have no authority to adjudicate cases arising under the Act or regulations, except under paragraph (e)(3) of this section, and shall not direct the result of an adjudication assigned to the Board, an immigration judge, the Chief Administrative Hearing Officer, or an Administrative Law Judge; provided, however, that nothing in this part shall be construed to limit the authority of the Assistant Director for Policy under paragraph (e)(1) of this section.

(3) *Recognition and accreditation.* The Assistant Director for Policy, in consultation with the Director, shall maintain a division within the Office of Policy to 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 Assistant Director for Policy shall determine whether an organization and its representatives meet the eligibility requirements for recognition and accreditation in accordance with this chapter. The Assistant Director for Policy 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. The Assistant Director for Policy, in consultation with the Director, may also delegate authority established in 8 CFR 1292.6 and 8 CFR 1292.11 through 1292.20 within the Office of Policy.

(f) *General Counsel.* Subject to the supervision of the Director, the General Counsel shall serve as the chief legal counsel of EOIR on matters of ethics, records management, release of information pursuant to the Freedom of Information Act, employee performance and discipline (except in matters related to the discipline of adjudicators for decisions made in the

adjudication of cases under the Act), practitioner discipline, and other related areas not inconsistent with the law. Subject to the supervision of the Director, the General Counsel shall supervise all legal activities and provide legal advice and assistance to the Director, Deputy Director, and other component heads in accordance with this section. In consultation with other EOIR components as appropriate, the General Counsel may also advise the Director or Deputy Director on other legal matters, including matters related to immigration law or policy and related to adjudicator discipline, provided that the General Counsel shall have no authority, directly or indirectly, to direct or influence the adjudication of any cases under the Act.

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

* * * * *

5. Section 1003.1 is amended by adding a sentence to the end of paragraphs (a)(1), (a)(2) introductory text, and (a)(4) and revising paragraph (e)(8)(ii) to read as follows:

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

(a)(1) * * * The Board members shall also be known as Appellate Immigration Judges.

(2) * * * The Chairman of the Board of Immigration Appeals shall also be known as the Chief Appellate Immigration Judge, and a Vice Chairman of the Board of Immigration Appeals shall also be known as a Deputy Chief Appellate Immigration Judge.

* * * * *

(4) * * * Temporary Board members shall also be known as temporary Appellate Immigration Judges.

* * * * *

(e) * * *

(8) * * *

(ii) In exigent circumstances, the Chairman may grant an extension in particular cases of up to 60 days as a matter of discretion. Except as provided in paragraph (e)(8)(iii) or (iv) of this section, in those cases where the panel is unable to issue a decision within the established time limits, as extended, the Chairman shall either assign the case to himself or a Vice Chairman for final decision within 14 days or shall refer the case to the Director for decision. If a dissenting or concurring panel member fails to complete his or her opinion by the end of the extension period, the decision of the majority will be issued without the separate opinion. For a case referred to the Director under this paragraph, the Director shall exercise delegated authority from the Attorney General identical to that of the Board as described in this section, including the authority to issue a precedent decision and the authority to refer the case to the Attorney General for review, either on his own or at the direction of the Attorney General.

* * * * *

§ 1003.108 [Amended]

6. Section 1003.108 is amended in paragraphs (a)(3) and (b) by removing the phrase “OLAP Director” and adding in its place “Assistant Director for Policy (or the Assistant Director for Policy’s delegate)”.

PART 1292 – REPRESENTATION AND APPEARANCES

7. The authority citation for part 1292 continues to read as follows:

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

§§ 1292.6, 1292.11, 1292.12, 1292.13, 1292.14, 1292.15, 1292.16, 1292.17, 1292.18, 1292.19, 1292.20 [Amended]

8. Sections 1292.6, 1292.11, 1292.12, 1292.13, 1292.14, 1292.15, 1292.16, 1292.17, 1292.18, 1292.19, and 1292.20 are each amended by removing the words “OLAP Director” each place that they appear and adding in their place the words “Assistant Director for Policy (or the Assistant Director for Policy’s delegate)”.

§§ 1292.11, 1292.12, 1292.13, 1292.15, 1292.16, 1292.17 [Amended]

9. Sections 1292.11, 1292.12, 1292.13, 1292.15, 1292.16, and 1292.17 are each amended by removing the words “OLAP Director’s” each place that they appear and adding in their place the words “Assistant Director for Policy’s (or the Assistant Director for Policy’s delegate’s)”.

§§ 1292.13, 1292.14, 1292.15, 1292.16, 1292.17, 1292.18 [Amended]

10. Sections 1292.13, 1292.14, 1292.15, 1292.16, 1292.17, and 1292.18 are each amended by removing the term “OLAP” each place that it appears and adding in its place the words “the Office of Policy”.

Title 28 of the Code of Federal Regulations

PART 0 – ORGANIZATION OF THE DEPARTMENT OF JUSTICE

11. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515-519.

12. Sections 0.115 through 0.118 are revised to read as follows:

Sec.

* * * * *

0.115 General functions.

0.116 Board of Immigration Appeals.

0.117 Office of the Chief Immigration Judge.

0.118 Office of the Chief Administrative Hearing Officer.

* * * * *

§ 0.115 General functions.

(a) The Executive Office for Immigration Review shall be headed by a Director who is appointed by the Attorney General. The Director shall be assisted by a Deputy Director and the heads of EOIR's other components, who shall report to the Director and Deputy Director. 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 Policy, the Office of the General Counsel, and such other components and staff as the Attorney General or the Director may provide.

(b) The Director may redelegate the authority delegated to him by the Attorney General, subject to the provisions of 8 CFR 1003.0, to the Deputy Director, the Chairman of the Board of Immigration Appeals, the Chief Immigration Judge, the Chief Administrative Hearing Officer, the Assistant Director for Policy, the General Counsel, or any other EOIR employee.

§ 0.116 Board of Immigration Appeals.

The membership of the Board of Immigration Appeals shall be established in accordance with 8 CFR 1003.1. The Chairman of the Board of Immigration Appeals, who shall also be known as the Chief Appellate Immigration Judge, shall be responsible for providing supervision and establishing internal operating procedures of the Board in the exercise of its authorities and responsibilities as delineated in 8 CFR 1003.1 through 1003.8.

§ 0.117 Office of the Chief Immigration Judge.

The Chief Immigration Judge shall provide general supervision to the immigration judges in performance of their duties in accordance with the Immigration and Nationality Act and 8 CFR 1003.9.

§ 0.118 Office of the Chief Administrative Hearing Officer.

The Chief Administrative Hearing Officer shall provide general supervision to the Administrative Law Judges in performance of their duties in accordance with 8 U.S.C. 1324a, 1324b, and 1324c, and carry out any other responsibilities as provided by law, including the authority to review decisions as provided in 28 CFR part 68.

Dated: August 19, 2019.

William P. Barr
Attorney General

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