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DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1003, 1240, and 1241

[EOIR Docket No. 164P; A.G. Order No. 3565-2015]

RIN 1125–AA62

List of Pro Bono Legal Service Providers for Individuals in Immigration Proceedings

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

ACTION: Final rule.

SUMMARY: This final rule adopts, as amended, the proposed rule entitled "List of Pro Bono Legal Service Providers for Aliens in Immigration Proceedings." The final rule changes the name of the "List of Free Legal Service Providers," maintained by the Executive Office for Immigration Review (EOIR), to the "List of Pro Bono Legal Service Providers" (List). It enhances the eligibility requirements for providers to be included on the List. It authorizes the Director of EOIR, or his or her designee, to place providers on the List and remove them from the List. The rule also allows the public to comment on eligible applicants and requires approved providers to certify their eligibility every 3 years.

DATES: This rule is effective [*INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Jean King, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, telephone (703) 305-0470 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Public Participation

On September 17, 2014, the Department published in the **Federal Register** a rule proposing to amend EOIR's regulations governing the list of organizations, pro bono referral services, and attorneys available to represent individuals in immigration court on a pro bono basis. 79 FR 55662. The comment period ended November 17, 2014. The Department received seven comments. Both in response to these comments and as the result of further consideration, the Department has decided to revise the proposed rule as discussed below. Except for these revisions, the proposed rule is adopted without change.

II. Regulatory Background

This rule amends 8 CFR part 1003 by revising §§ 1003.61 through 1003.66. It also amends 8 CFR parts 1240 and 1241 by revising §§ 1240.10 and 1241.14, respectively. The rule provides the Director of EOIR or his or her designee with the authority to maintain the quarterly List. *See* §§ 1003.61(a)(1), (b). The rule modifies the criteria for organizations,[1] pro bono referral services,[2] and attorneys to be placed on the List, stating in part that attorneys and

[1] The rule, at § 1003.61(a)(3), defines an "organization" as "[a] non-profit religious, charitable, social service, or similar group established in the United States." Organizations can apply to be recognized by EOIR pursuant to 8 CFR part 1292. This rule distinguishes between organizations that have been recognized by EOIR and other, non-recognized, organizations.

[2] The rule, at § 1003.61(a)(4), defines a "pro bono referral service" as "[a] referral service, offered by a non-profit group, association, or similar organization established in the United States that assists persons in locating

organizations must provide at least 50 hours annually of pro bono legal services at each immigration court location where the attorney or organization intends to be on the List.[3] *See* § 1003.62. The rule also specifies that an attorney can appear on the List only under certain circumstances and only if he or she cannot provide pro bono services through or in association with an organization or pro bono referral service. *See* § 1003.62(d). The rule identifies the information that organizations, pro bono referral services, and attorneys must provide to EOIR when applying to be on the List. *See* § 1003.63. Regarding the application process, the rule states, in part, that the names of applicants meeting the regulatory requirements will be posted for public comments. *See* § 1003.63(f). The rule also requires that, every three years, providers on the List must certify that they continue to meet the eligibility requirements. *See* § 1003.64(b)(2). In addition, the rule specifies the procedures for removing providers from, and reinstating them to, the List. *See* § 1003.65.

III. Comments and Responses

As noted above, the Department received seven comments in response to the proposed rule. One comment was from the Executive Director of the Catholic Legal Immigration Network; one was from a professor and director of a law school clinical program; one was from the Director of the Immigration Program of the Legal Aid Society of Rochester, New York; one was from a group of three law students; two were from individual commenters; and one was

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pro bono representation by making case referrals to attorneys or organizations that are available to provide pro bono representation."

[3] As previously noted at 79 FR 55662 n.2, the term "immigration court location" refers both to the immigration courts and to facilities where hearings may be conducted but where no EOIR personnel have a permanent duty station.

from an anonymous commenter. Below, the Department has summarized the comments and explained the changes the Department has made in response. Because some comments overlap and commenters raised multiple subjects, the comments are addressed by topic rather than by reference to a specific commenter.

A. The 50-Hour Requirement

The Department received a number of comments regarding the requirement, at §§ 1003.62(a)(1), (b)(1), and (d)(2), that each attorney and organization provide at least 50 hours per year of pro bono legal services at each immigration court location where the attorney or organization intends to appear on the List. The Department had posed four questions: whether the requirement is too demanding for certain private attorneys; whether the requirement is not demanding enough for organizations; whether the standards for organizations and attorneys should differ from one another in any other way; and whether there are alternative standards, for example relating to the number or type of cases accepted, that would be more appropriate measures of pro bono representation. *See* 79 FR 55665-66.

1. Attorneys

Three commenters addressed the impact of the 50-hour requirement on attorneys, with two supporting the requirement and one questioning it. Of the supporters, one stated that the requirement was "appropriate" for attorneys, and the other noted that the requirement is consistent with the American Bar Association's Model Rule of Professional Conduct (ABA Model Rule) 6.1, which states that "[a] lawyer should aspire to render at least (50) hours of pro

bono publico legal services per year."[4] The commenter who questioned the requirement raised concerns that it would be too burdensome for solo or small-firm practitioners. This commenter offered an example of a solo practitioner in Arkansas representing a detained client before the Oakdale, Louisiana, Immigration Court, then appearing before the Memphis, Tennessee, Immigration Court after the client is released. To be on the List for both the Oakdale and Memphis courts, the attorney would have to perform 100 hours of pro bono representation annually, or 50 before each court. Also, this commenter argued, the paperwork would be burdensome for a solo or small-firm practitioner, and such an attorney's ability to represent clients pro bono in non-immigration proceedings could be impacted.

The final rule keeps the 50-hour requirement with respect to attorneys. The Department agrees with the commenters who supported the requirement. While the Department appreciates the other commenter's concerns, the 50-hour requirement for attorneys is essential to the rule. As noted in the Notice of Proposed Rulemaking, EOIR has consistently received complaints that certain attorneys on the List do not accept significant numbers of pro bono cases. 79 FR 55663-64. The 50-hour requirement will help ensure that attorneys listed as providing pro bono legal services in a specific location are actually available to do so. This rule does not impose any limits on an attorney's pro bono practice, as such, and the 50-hour requirement is applicable only with respect to attorneys who choose to seek inclusion by name on the List.

With respect to the hypothetical Arkansas solo practitioner wishing to appear on the List for both the Oakdale and Memphis courts, if it would be difficult for him or her to perform 50

[4] In the Notice of Proposed Rulemaking at 79 FR 55665 n.8, the Department cited ABA Model Rule 6.1 in support of the 50-hour requirement.

hours of pro bono service annually at each court, then he or she likely lacks the resources to provide pro bono services regularly before both courts, and therefore should not be on the List for both courts. The Department does not believe that the 50-hour requirement imposes an undue paperwork burden, as attorneys regularly track the time they spend on individual cases. It is possible that some attorneys wishing to be on the List would have to reduce the pro bono services they provide in non-immigration proceedings. However, the Department's overriding concern is that attorneys on the List be available to provide pro bono representation before EOIR.

Though the 50-hour requirement will remain substantively unchanged, the Department has amended § 1003.62(d)(2) to clarify that "[t]he attorney may count, toward the requirement, both out-of-court preparation time and in-court time." The Department had explained, in the preamble of the Notice of Proposed Rulemaking at 79 FR 55665, that preparation time counts toward the requirement, but corresponding language did not appear in the proposed rule's text.

2. Organizations

Three commenters addressed the impact of the 50-hour requirement on organizations. One supported the requirement, stating that it was appropriate for organizations. The other two recommended that EOIR amend the requirement, noting that organizations often charge nominal fees for representing clients. One of these two recommended dropping the 50-hour requirement for organizations recognized by EOIR under 8 CFR part 1292. This commenter argued that recognized organizations are less likely than private attorneys or other organizations to abuse their placement on the List, as they have already established to the satisfaction of the Board of

Immigration Appeals that they charge only nominal fees.[5] This commenter also stated that many recognized organizations would have difficulty meeting the requirement because, based on community needs, they concentrate on representing clients before the Department of Homeland Security (DHS) instead of the immigration courts. The other of the two recommended dropping the requirement for all organizations or, failing that, for recognized organizations. Alternatively, this commenter recommended lowering the requirement to 25 hours annually. In addition, the first of the two argued that the 50-hour requirement for organizations could "hinder access . . . to emergency pro bono services." As an example, this commenter noted that, following the 2014 influx to the United States of individuals from Central America, organizations and attorneys from around the country provided pro bono legal services to recent entrants detained in Artesia, New Mexico.

The final rule keeps the requirement that both recognized and non-recognized organizations provide 50 hours annually of pro bono legal services at each immigration court location where the organization appears on the List. The Department disagrees with reducing the requirement to 25 hours annually. As indicated in the Notice of Proposed Rulemaking, a number of state bar associations recommend that attorneys perform a minimum of 50 hours of pro bono work annually, and ABA Model Rule 6.1 states that lawyers should aspire to perform at least 50 hours of pro bono legal services annually. *See* 79 FR 55665. In addition, the rule does not require that each of an organization's attorneys and representatives meet the 50-hour requirement, but rather that the organization as a whole perform 50 hours of pro bono legal

[5] Under 8 CFR 1292.2(a), in order to be recognized by EOIR, an organization "must establish to the satisfaction of the [Board of Immigration Appeals] that . . . (1) [i]t makes only nominal charges and assesses no excessive membership dues for persons given assistance . . . ."

services annually in order to be included on the List. The Department further disagrees with exempting recognized organizations from the 50-hour requirement. The fact that a recognized organization is prohibited from charging more than nominal fees does not establish that the organization is available to represent clients pro bono. As the rule makes clear at § 1003.61(a)(2), representation for a fee, even a nominal fee, is not pro bono representation. Though the Department appreciates that some recognized organizations concentrate on representing clients before DHS, the purpose of the List is to inform individuals in immigration court proceedings of providers who perform significant pro bono services before the courts.

Though the final rule keeps the 50-hour requirement for organizations, the Department has, in light of comments that some organizations do not have the resources to represent clients in immigration court proceedings without charging at least a nominal fee, modified the requirement to allow organizations to count pro bono services in some cases where the organization did not actually represent the client. Specifically, the Department has amended §§ 1003.62(a)(1) and (b)(1) to allow organizations to count, toward the requirement, time an organization's attorneys and representatives spent providing pro bono legal services in cases the organization eventually referred to an outside provider for pro bono representation before the immigration court location. In the proposed rule, by contrast, organizations could count only time spent on cases where an attorney or representative of the organization represented the client. In addition, as with the provision addressing attorneys, the Department has amended §§ 1003.62(a)(1) and (b)(1) to clarify that, "[w]hen an attorney or representative of [an] organization represents [an] individual pro bono . . . the organization may count, toward the 50-

hour requirement, the attorney's or representative's out-of-court preparation time and in-court time."

Regarding pro bono legal services offered temporarily following events such as the 2014 influx of individuals from Central America, the Department encourages such services and does not believe they would be hindered by the rule. The rule does not impose limits on an organization's ability to offer pro bono services before any immigration court location, including those at which the organization does not appear on the List. The List, which EOIR anticipates updating quarterly,[6] is not designed to publicize services offered for less than three months at a time. However, the Department encourages organizations to publicize any such short-term services in collaboration with organizations or pro bono referral services already operating in the relevant location. Should the need arise, EOIR may explore how to assist with publicizing such services as well.

3. Alternatives to the 50-Hour Requirement

One commenter responded to the Department's question about alternative ways to measure pro bono services. This commenter was opposed to requiring a provider to accept a specific number of pro bono cases, as some cases require dramatically more work than others. However, this commenter stated that "[a] measurement regarding the types of pro bono cases accepted may . . . be appropriate if it is done correctly," primarily because "such a requirement might encourage each organization to accept a variety of cases, rather than allowing a single attorney or organization to take on every simple case." The Department agrees that, generally speaking, it is beneficial for each organization and attorney on the List to accept a variety of pro

[6] *See* § 1003.61(b) (stating that the List "shall be updated not less than quarterly").

bono cases. However, the Department declines to incorporate, into the final rule, any requirement concerning the types of cases providers accept, as the nature of cases varies between immigration court locations. In addition, it can sometimes be valuable for providers to specialize in particular types of cases, thereby building their expertise.

B. Restrictions on Private Attorneys on the List

One commenter responded to the proposed rule's provision, at § 1003.63(d)(3), that an individual attorney who does not work for a pro bono organization ("private attorney") cannot appear on the List if he or she can provide pro bono legal services through or in association with a nonprofit organization or a pro bono referral service. This commenter "generally support[ed]" the requirement but expressed two concerns. First, this commenter stated that, "especially in rural and isolated immigration courts, the List has traditionally served the beneficial, though unintended, purpose of identifying local attorneys who were willing to represent respondents," and that this "unintended function of the List is actually critical to access to counsel in those immigration courts." This commenter concluded that "[e]liminating all the private attorneys from the List (which will happen in most courts that have at least one nonprofit organization providing pro bono legal services) will result in an overall reduction in access to counsel" in some locations, "unless EOIR takes other reasonable steps to provide information to the respondents regarding how they may locate attorneys willing to represent them before the court." (Emphasis omitted). Second, this commenter argued that "[a]nother consequence of eliminating private attorneys from the List is that the nonprofit organizations remaining on the List will experience a much greater volume of calls to their organizations." This commenter stated that "EOIR has made great progress in supporting pro bono representation," but "must provide more

resources to support the organizations remaining on the List on whom the entire burden of sustaining pro bono representation in immigration court will now fall."

The Department believes that the provision at issue is necessary. To the extent that the List functions to inform individuals in immigration court proceedings of attorneys who will represent them for a fee, this function is, as the commenter noted, unintended. The List's intended function is to inform such individuals of providers who will represent them pro bono. The provision at issue, drafted in light of complaints that certain attorneys on the List do not accept significant numbers of pro bono cases,[7] will help ensure that attorneys who do not accept significant numbers of pro bono cases will not appear on the List.

However, the Department acknowledges the concern that, once the rule takes effect, individuals in immigration court proceedings in some, particularly rural, locations may be less informed than they currently are of paid legal services, as well as the concern that organizations on the List could receive more inquiries than they have the capacity to handle. EOIR is committed to improving access to legal information and counseling and to increasing representation rates before the immigration courts. In line with the commenter's suggestions, EOIR may explore other ways to inform individuals in proceedings about paid legal services, including providing contact information for bar associations through which they may be referred to local immigration counsel. In addition, organizations are welcome to contact EOIR directly, after the rule takes effect, with observations regarding the rule's effects on organizations' operations and on access to counsel in the immigration courts.

C. Renaming the List

[7] *See* 79 FR 55663-64.

Three commenters addressed the fact that the proposed rule, at § 1003.61(b), renamed the "Free Legal Services Providers List" as the "List of Pro Bono Legal Service Providers." One commenter agreed with the name change, stating that the use of the word "free" "implies that there is no financial responsibility for any client wishing to receive legal services." The second commenter stated that, while the term "pro bono" is understood by attorneys and "may provide clarity to members of the bar," its meaning may not be clear to individuals in immigration court proceedings. In light of this fact, and because many pro bono providers also charge fees to some clients, this commenter suggested that EOIR use a title such as "Free and Low-Cost Legal Service Providers." The third commenter "generally support[ed]" the use of the term "pro bono," but, like the second commenter, cautioned that this term may be unclear to some, and recommended "includ[ing] a sentence explaining the purpose for which the services are provided."

The final rule retains the name "List of Pro Bono Legal Service Providers." As noted in the Notice of Proposed Rulemaking at 79 FR 55663, the use of the term "pro bono" tracks the language in the Immigration and Nationality Act. *See* Immigration and Nationality Act (INA or Act) sections 208(d)(4)(B) (requiring EOIR to provide asylum applicants with a list of providers available "on a pro bono basis"), 239(b)(2) (requiring EOIR to compile lists of providers "who have indicated their availability to represent pro bono aliens in [removal] proceedings"). However, the Department acknowledges that some individuals in immigration court proceedings will not understand this term. Therefore, the Department will consider including, on the List, a short statement clearly explaining the List's nature and purpose.

D. Fees

One commenter suggested that providers be required to certify, under the penalty of perjury, whether they charge fees to the majority of clients, and that the List should include information on the extent to which each provider charges fees. The Department declines to adopt the commenter's suggestion in the final rule. The Department appreciates that there may be benefits to including, on the List, information on fees. However, the percentage of clients to whom a provider charges fees may well fluctuate, and it could prove difficult for EOIR to verify the accuracy of providers' representations. Though the Department declines, at this time, to require providers to submit information on fees, the Department may, in the future, consider whether information on fees should be incorporated into the List.

E. Filings and Communications

One commenter suggested that, instead of requiring paper applications, EOIR should "look for alternative electronic methods through which to make an initial application, submit comments or complaints, and apply for continued participation." The Department agrees that electronic filings and communications would be beneficial. Beginning when the final rule takes effect, EOIR will accept electronic comments and recommendations from the public pertaining to applications to appear on the List. The Department has revised § 1003.63(f) to make clear that such electronic comments and recommendations are permitted. In addition, EOIR is considering, in the future, permitting prospective and current providers to electronically submit a wide range of documents. Such documents could include applications to appear on the List, declarations that a provider remains qualified to appear on the List, requests to be removed from the List, responses to inquiries and notices from EOIR, and notifications of changes in information or status. EOIR is also considering communicating with prospective and current

providers electronically. In the future, EOIR may electronically transmit documents such as decisions to grant or deny applications to appear on the List, inquiries to providers in response to complaints, notices that a provider has automatically been removed from the List or that the Director intends to remove a provider from the List, and decisions to remove a provider from the List. In anticipation of such electronic communications, the Department has revised §§ 1003.64(b) and 1003.65(a)(2), (d)(2), (d)(3), and (d)(4)(ii), pertaining to various written communications from EOIR to providers, to state that they can be sent electronically, in addition to by mail. 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).

In the meantime, to assist prospective and current providers, EOIR has created a form—Optional Form EOIR-56, *Request to be Included on the List of Pro Bono Legal Service Providers for Individuals in Immigration Proceedings*—that organizations, pro bono referral services, and attorneys will be able to use to apply to appear on the List, and to certify their continuing eligibility, once the final rule takes effect. The form will be available in an electronic fillable format. However, unless EOIR begins accepting electronic submissions, the completed form will need to be submitted to EOIR on paper. Although EOIR will not require prospective and current providers to use Optional Form EOIR-56, the Department has deleted from § 1003.63(a) the statement that "[a] form is not required in order to apply to be included on the List." This change will allow EOIR greater flexibility, as it gains experience administering the List under this final rule, to further streamline the application process in the future.

F. Other Comments

One commenter, noting the "language barrier[s]" and "social isolation of indigent aliens," asked whether either "translation services [would] be provided," or whether a "provider [would] be required to work in both English and the language spoken by the indigent alien." This rule setting forth the requirements for inclusion on the List does not require that providers speak particular languages or supply translation services.[8] EOIR provides interpreters at immigration court hearings if the individual in proceedings lacks adequate command of English to fully understand and participate in the proceedings. The Department encourages prospective providers to note, in their applications to appear on the List, information such as their languages spoken or translation services offered.

One commenter, while noting that "the word 'alien' has long been used to describe immigrants" and appears in the Immigration and Nationality Act, "encourage[d] EOIR to refrain from using the term . . . wherever possible." The Department has deleted the term "alien" from the rule's title and, where possible, from the regulatory text, and has avoided using the term in this preamble where possible. The use of the term "alien" is often necessary in the Department's regulations governing immigration proceedings given that, as the commenter acknowledges, the term is used throughout the immigration statutes. However, in this final rule, the Department has refrained from using "alien" as a generic term for a person in immigration court proceedings,

[8] The Department notes, however, that the existing EOIR disciplinary rules, which are applicable to all attorneys and accredited representatives appearing before EOIR on behalf of any client, include a general provision that "[i]t is the obligation of the practitioner to take reasonable steps to communicate with the client in a language that the client understands." 8 CFR 1003.102(r).

given that individuals in immigration court proceedings can assert that they are United States citizens.[9]

One commenter was concerned whether providers' periodic declarations of eligibility under § 1003.64(b)(2) would be available for comment or review by the public, given that they would contain clients' alien registration numbers. The commenter "encourage[d] EOIR to clearly state in the [final rule] that the declaration . . . shall be maintained in a separate file and can only be reviewed by EOIR staff or the applicant." Although EOIR understands the commenter's concern, it is unnecessary to state, in the regulation, that providers' periodic declarations of eligibility can be reviewed only by EOIR staff or the applicant. EOIR appreciates the importance of protecting, from release to the public, alien registration numbers, and other personally identifiable information,[10] pertaining to individuals in EOIR proceedings. Neither § 1003.64(b)(2) nor any other provision in the rule permits EOIR to release providers' periodic declarations of eligibility, or any information contained in them. By contrast, § 1003.63(f)(1) directs EOIR to publicly release the names of applicants meeting the requirements to appear on the List, and to make copies of applications available to the public upon request. Although the declarations could be the subject of requests for release under the Freedom of Information Act

[9] For example, immigration judges conduct claimed status review proceedings, in which individuals who are deemed by DHS to be subject to expedited removal from the United States under INA 235(b)(1) can argue, among other things, that they are United States citizens. *See* 8 CFR 1235.3(b)(5).

[10] "Personally identifiable information" is "information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc." Office of Management and Budget Memorandum for the Heads of Executive Departments and Agencies, *Safeguarding Against and Responding to the Breach of Personally Identifiable Information*, May 22, 2007, at 1 n. 1, at http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-16.pdf (last visited September 11, 2015).

(FOIA), EOIR's policy, when releasing information pursuant to a FOIA request, is to redact personally identifiable information pertaining to individuals in EOIR proceedings unless the individual in the proceedings has consented in writing to the release of this information.[11]

IV. Other Revisions

In the final rule, the Department has revised § 1003.63(a) to simplify and clarify the application process. Specifically, the Department has deleted the proposed requirement, at § 1003.63(a)(5), that an application be served on the court administrator for each immigration court location where the provider intends to perform pro bono legal services. The Department has concluded that this requirement is unnecessary, as court administrators can be informed of prospective providers through other means. The Department has also deleted, as unnecessary, the proposed requirement, at § 1003.63(a)(4), that an envelope containing an application be marked "Application for List of Pro Bono Legal Service Providers." Finally, the Department has revised § 1006.63(a)(2) to specify that, in an application, a prospective provider must state how the provider's contact information, in addition to the provider's name, should be set forth on the List.

The Department has revised the application requirements at § 1003.63(b) and (d) to reflect EOIR's registration requirements for attorneys and accredited representatives. Beginning December 11, 2013, EOIR has required attorneys and accredited representatives to register electronically with EOIR in order to practice before the immigration courts and the Board of Immigration Appeals. *See* 78 FR 28124 (May 14, 2013); *see also* 8 CFR 1292.1(f) (stating that

[11] *See* 5 U.S.C. 552(b)(6) (exempting from release "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy").

"[t]he [EOIR] Director or his designee is authorized to register, and establish procedures for registering, attorneys and accredited representatives . . . as a condition of practice before immigration judges or the Board of Immigration Appeals"). In light of this requirement, the Department has revised § 1003.63(b)(2) to provide that, in an application to appear on the List, an organization must declare that "every attorney and accredited representative who will represent clients before EOIR on behalf of the organization is registered to practice before EOIR under § 1292.1(f)." This provision replaces the proposed rule's requirement that an organization declare that "every attorney who will provide pro bono legal services before EOIR on behalf of the organization . . . [i]s eligible to practice law in and is a member in good standing of the bar of" a state or other jurisdiction. The deleted requirement is unnecessary given that, to register with EOIR, an attorney must list all the jurisdictions in which he or she is licensed to practice law. *See* 8 CFR 1292.1(f) (stating that "[t]he [EOIR] Director or his designee may administratively suspend from practice before the immigration judges and the Board [of Immigration Appeals] any attorney or accredited representative who fails to provide . . . bar admission information (if applicable)"). For attorneys applying to appear on the List, the Department has revised § 1003.63(d)(5) to provide that, instead of providing the bars in which he or she is a member in good standing, an attorney must provide his or her EOIR registration number.

Under the revised § 1003.63(b)(2), an organization, in its application to appear on the List, is only required to declare "[t]hat every attorney and accredited representative *who will represent clients pro bono before EOIR* on behalf of the organization is registered" with EOIR. (Emphasis added.) By contrast, the Department has revised § 1003.63(b)(3) to state that, in its

application, an organization must declare "[t]hat no attorney or representative who will provide pro bono legal services on behalf of the organization *in cases pending before EOIR*: (i) is under any order suspending, enjoining, restraining, disbarring, or otherwise restricting him or her in the practice of law; or (ii) is the subject of an order of disbarment under § 1003.101(a) or suspension under § 1003.101(a)(2) . . . ."[12] (Emphasis added.) Accordingly, if an organization has an attorney or accredited representative who will not enter appearances with EOIR, but who will perform pro bono legal services in cases pending before EOIR other than representing clients,[13] the organization is not required to declare that the attorney or accredited representative is registered with EOIR. However, the organization must declare that he or she, like an attorney or accredited representative who will represent clients pro bono, meets the requirements of § 1003.63(b)(3).[14]

The Department has made minor revisions to § 1003.63(f), which relates to the notice-and-comment period for applications. The revised provision states that applications shall be publicly posted following "review of the applications" by EOIR, as opposed to their receipt. Before posting an application, EOIR will review it to ensure that the application meets the

[12] The Department has revised the underlying requirements at § 1003.62(a)(3) and (b)(3) (§ 1003.62(a)(3) and (b)(4) of the proposed rule) to state that "[n]o attorney or representative who will provide pro bono legal services on [an] organization's behalf in cases pending before EOIR is the subject of an order of disbarment under § 1003.101(a)(1) or suspension under § 1003.101(a)(2)."

[13] As noted in § 1003.62(a)(1) and (b)(1), as revised, performing other pro bono legal services could include conducting an intake interview or mentoring an attorney or representative to whom a case is referred.

[14] The regulations permit individuals other than attorneys and accredited representatives—for example, law students and law graduates—to represent clients before EOIR in some situations. *See* 8 CFR 1292.1(a). However, only attorneys and accredited representatives must register with EOIR. *See* 8 CFR 1292.1(f). Accordingly, the requirement at § 1003.63(b)(2) applies only to attorneys and accredited representatives. Thus, an organization is not required to declare that any other representatives who will represent clients pro bono on its behalf—for example, law students or graduates – are registered with EOIR. However, the requirement at § 1003.63(b)(3) applies to all representatives, even those who are not accredited.

regulatory requirements. For clarity, the revised provision specifies that "upon request a copy of each application shall be made available for public review," as opposed simply to "for review." The revised provision no longer specifies that the copy made available shall be "date stamped." To simplify the time period for commenting, the revised provision states that comments are due "within 30 days from the first date the name of the applicant is publicly posted," as opposed to "15 days from the last date" of the posting (applications must be posted for 15 days). Finally, the revised provision states that comments must include the commenter's name and address.

The Department has made one revision to § 1003.64(b)(2). The revision relates to the requirement that, in a declaration of continued eligibility, a provider must include alien registration numbers of pro bono clients. The revised provision requires that an organization must provide, for each case, either "the name of the organization's attorneys or representatives who provided representation or other pro bono legal services, or the name of the attorney, representative, or organization the case was referred to for pro bono legal services." This information is necessary for EOIR to verify organizations' compliance with the 50-hour requirement.

The Department has simplified § 1003.66, relating to when a provider must inform EOIR of changes in information or status. Under the revised provision, providers must contact EOIR in three situations: if the provider's contact information has changed; if any specific limitations to providing pro bono legal services have changed; and if the provider is no longer eligible to be included on the List under § 1003.62. This section previously contained additional provisions, for example requiring organizations to inform EOIR of any change in the professional status of any attorney or representative providing pro bono legal services before EOIR. The simplified

provision is clearer, and less burdensome on providers, than the previous version, while still ensuring that EOIR has adequate information about providers.

Finally, for flexibility, the Department has revised §§ 1003.61, 1003.62, and 1003.63 to refer to recognition of organizations under 8 CFR part 1292, instead of § 1292.2 For precision, § 1003.62(a)(2) has been revised to refer to a "representative accredited under part 1292 of this chapter to practice before the immigration courts and the Board of Immigration Appeals," instead of simply an "accredited representative." The Department has deleted the provision, at § 1003.62(b)(1) of the proposed rule, that, to be included on the List, a non-recognized organization must be "established in the United States." Upon reflection, this provision was unnecessary, as § 1003.61(a)(3) defines an "organization" as "[a] non-profit religious, charitable, social service, or similar group established in the United States." The Department has revised § 1003.62(b)(1) of the final rule (§ 1003.62(b)(2) of the proposed rule) to refer to an "attorney or representative," as opposed simply to an attorney. As noted above, individuals other than attorneys can, in some circumstances, be authorized to provide representation on behalf of an organization. *See* 8 CFR 1292.1(a). For consistency with the rest of the rule, § 1003.65(d)(3) has been revised to refer to "pro bono legal services" instead of simply "pro bono services."

In addition, to accommodate the revisions described above, and to make the regulation more readable, the Department has made a few minor, non-substantive, revisions not referenced here.

V. Notice-and-Comment Requirements

The revisions to the proposed rule do not require a new notice-and-comment period. As noted above, the revisions pertaining to electronic filings and communications, at §§ 1003.63(f),

1003.64(b), and 1003.65(a)(2), (d)(2), (d)(3), and (d)(4)(ii), pertain to "agency organization, procedure, or practice" under 5 U.S.C. 553(b). The other revised provisions are logical outgrowths of those in the proposed rule. *See, e.g.*, *Environmental Defense Center v. U.S. E.P.A.*, 344 F.3d 832, 851-52 (9th Cir. 2003); *American Water Works Ass'n v. E.P.A.*, 40 F.3d 1266, 1274 (D.C. Cir. 1994).

VI. Privacy Act

The Privacy Act of 1974 states that, except in certain circumstances, "[n]o agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains . . . ." 5 U.S.C. 552a(b). A "system of records" is "a group of any records under the control of any agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual." 5 U.S.C. 552a(a)(5). An "individual" is "a citizen of the United States or an alien lawfully admitted for permanent residence." 5 U.S.C. 552a(a)(2). As a policy matter, where a system of records contains records pertaining both to "individuals" and to people or entities not covered by the Privacy Act, EOIR treats all the records as subject to the Privacy Act. Thus, EOIR will extend administrative Privacy Act protections to the records collected under this regulation even though the organizations, pro bono referral services, and attorneys the records pertain to are not all "individuals" under the Privacy Act.[15]

[15] Administrative Privacy Act protections do not include the civil remedies under 5 U.S.C. 552a(g).

One of the circumstances in which an agency can disclose records protected by the Privacy Act is "for a routine use," which is a "use . . . for a purpose which is compatible with the purpose for which [the record] was collected." 5 U.S.C. 552a(a)(7), (b)(3). An agency that maintains a system of records must publish, in the **Federal Register**, a system of records notice that includes, among other things, "each routine use of the records contained in the system, including the categories of users and the purpose of such use." 5 U.S.C. 552a(e)(4)(D). The Department will publish, in the **Federal Register**, a system of records notice that specifies the routine uses, in line with the provisions of this regulation, under which EOIR will disclose the information collected under this regulation.

VII. Regulatory Requirements

A. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), this rule will not have a significant economic impact on a substantial number of small entities. Some small entities, such as non-profit organizations or small law offices, will be affected by this rule. Organizations or private attorneys may be removed from the List of Pro Bono Legal Service Providers if they are no longer qualified to be on the List under this final rule. Likewise, those who wish to have their names included on this List will be affected as they will have to demonstrate their eligibility to have their names listed.

However, this rule has no effect on the ability of organizations or private attorneys to represent pro bono clients, or any other clients, and it applies only with respect to organizations and attorneys who choose to seek to be included on the List. Application for placement on the List is completely voluntary and does not confer any rights or benefits on such organizations or

law offices. Placement on the List does not constitute government endorsement of a particular entity or private attorney; nor is the List to be used for advertising or soliciting. Rather, the purpose of the List is to notify individuals in immigration court proceedings that these entities or private attorneys are available to provide uncompensated legal services without any direct or indirect remuneration (other than filing fees or photocopying and mailing expenses).

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 also 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 (2 U.S.C. 1531–1535).

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804). 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 Department has determined that this rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and, therefore, it

has not been reviewed by the Office of Management and Budget (OMB). Nevertheless, 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 both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Additionally, it calls on each agency to periodically review its existing regulations and determine whether any should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving its regulatory objectives.

This rule affects the function and purpose of the List of Pro Bono Service Legal Service Providers. The benefits of this final rule include addressing long-standing problems of abuse associated with the existing List, updating the term "free" with "pro bono" legal services to reflect the proper statutory language, creating a minimum number of annual pro bono hours to ensure proper compliance with the spirit of the regulation, and creating greater agency flexibility to remove List participants who do not meet the minimum regulatory requirements. Further, the rule is intended to provide individuals in immigration court proceedings with better information regarding the availability of pro bono representation before the immigration courts, thus benefitting individuals who appear in proceedings before the courts.

Burdens to the public are applicable only to attorneys and organizations making a voluntary decision to seek to be included on the List; these include requirements to apply for

inclusion on the List, maintain updated contact information, perform a minimum of 50 annual pro bono hours of service at each immigration court location where the attorney or organization intends to be included on the List, and file a declaration every three years of continuing eligibility to be on the List. The regulations provide for removal from the List of a provider who can no longer meet the requirements of inclusion on the List. The Department examined these burdens to the public and has determined that the benefits outweigh the burdens. The Department believes that this rule will have a minimal economic impact on List participants because it provides List participants with flexible means of complying with the rule's requirements. Further, it will not have a substantial economic impact on Department functions, as the Department is already maintaining and updating such a List quarterly. The Department believes this rule will have a positive economic impact for individuals in proceedings before EOIR who need legal services, as the rule is intended to preserve the integrity of the List and ensure that providers on the List are actually available to provide pro bono legal services.

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, 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 of Justice, Executive Office for Immigration Review (EOIR), has submitted an information collection request to OMB for review and clearance in accordance with review procedures of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320. Some of the comments EOIR received following publication of the proposed rule related to this information collection. Notice of OMB approval for this information collection will be published in a future **Federal Register** document.

One commenter suggested electronic filings and submissions. The Department contemplates implementing an electronic/Internet-based system in the future that may facilitate the collection of information. In the meantime, EOIR has created an optional Form EOIR-56, *Request to be Included on the List of Pro Bono Legal Service Providers for Individuals in Immigration Proceedings*, to facilitate this information collection. The form will be made available on EOIR's website, in a fillable .pdf format. This rule implements new eligibility and application requirements in order for an organization, pro bono referral service, or attorney to be included on the List of Pro Bono Legal Service Providers. Organizations and private attorneys that file an application with EOIR to be included on the List must demonstrate that they provide, or plan to provide, a minimum of 50 hours per year of pro bono legal services at each immigration court location where they intend to be included on the List. Entities and individuals must indicate "their availability to represent aliens in asylum proceedings on a pro bono basis" (*see* INA 208(d)(4)(B)) and "their availability to represent pro bono aliens in proceedings under section 240" (*see* INA 239(b)(2)). They must also indicate whether there are any limitations on

the services they plan to provide and in which immigration court locations they plan to provide such services. Private attorneys must demonstrate that they cannot otherwise provide such services through an organization or pro bono referral service. Finally, all providers must file a declaration or a new Form EOIR-56 every three years, certifying that they remain eligible to be on the List. One commenter was concerned with the safeguarding of the client information submitted in compliance with the periodic certification. The declaration certifying continuing eligibility, including the alien registration numbers of clients in whose cases the provider rendered pro bono legal services each year, would not be subject to public review and would be subject to applicable privacy laws.

EOIR currently uses appropriate information technology to reduce burden and improve data quality, agency efficiency, and responsiveness to the public. Under this rule, EOIR will continue to do so to the maximum extent practicable and will explore implementing technology to facilitate information collections. EOIR will collect the information for any person or entity seeking to be included on EOIR's List of Pro Bono Legal Service Providers. Under the current regulation, it is estimated that it takes a total of 17 hours annually to provide the required information (50 applicants per year at 20 minutes per application).

Under the rule, it is estimated that 129 applicants will file applications each year for the first two years (phase-in period) and take an average of 30 minutes for each application, resulting in an estimated total of 65 hours each year. After the first two years, it is estimated that there will be 93 applicants per year, expending an average of 30 minutes for each application, resulting in an estimated total of 47 hours each year. This would be an increase from the current estimated

annual hours by 48 hours annually for the two-year phase-in period and 30 hours annually for the succeeding years.

List of Subjects

8 CFR Part 1003

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

8 CFR Part 1240

Administrative practice and procedure, Aliens.

8 CFR Part 1241

Administrative practice and procedure, Aliens, Immigration.

Accordingly, for the reasons stated in the preamble, parts 1003, 1240, and 1241 of chapter V of title 8 of the Code of Federal Regulations are amended as follows:

PART 1003 - EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. 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.

§ 1003.1 [Amended]

2. Amend § 1003.1 by removing and reserving paragraph (b)(11).

3. Revise the heading for subpart E to read as follows:

Subpart E—List of Pro Bono Legal Service Providers

4. Revise § 1003.61 to read as follows:

§ 1003.61 General provisions.

(a) *Definitions*—(1) *Director*. Director means the Director of the Executive Office for Immigration Review (EOIR), pursuant to 8 CFR 1001.1(o), and shall also include any office or official within EOIR to whom the Director delegates authority with respect to subpart E of this part.

(2) *Pro bono legal services.* Pro bono legal services are those uncompensated legal services performed for indigent individuals or the public good without any expectation of either direct or indirect remuneration, including referral fees (other than filing fees or photocopying and mailing expenses), although a representative may be regularly compensated by the firm, organization, or pro bono referral service with which he or she is associated.

(3) *Organization*. A non-profit religious, charitable, social service, or similar group established in the United States.

(4) *Pro bono referral service*. A referral service, offered by a non-profit group, association, or similar organization established in the United States that assists persons in locating pro bono representation by making case referrals to attorneys or organizations that are available to provide pro bono representation.

(5) *Provider*. Any organization, pro bono referral service, or attorney whose name is included on the List of Pro Bono Legal Service Providers.

(b) *Authority.* The Director shall maintain a list, known as the List of Pro Bono Legal

Service Providers (List), of organizations, pro bono referral services, and attorneys qualified under this subpart to provide pro bono legal services in immigration proceedings. The List, which shall be updated not less than quarterly, shall be provided to individuals in removal and other proceedings before an immigration court.

(c) *Qualification.* An organization, pro bono referral service, or attorney qualifies to be included on the List if the eligibility requirements under § 1003.62 and the application procedures under § 1003.63 are met.

(d) *Organizations.* Approval of an organization's application to be included on the List under this subpart is not equivalent to recognition under part 1292 of this chapter. Recognition under part 1292 of this chapter does not constitute a successful application for purposes of the List.

5. Revise § 1003.62 to read as follows:

§ 1003.62 Eligibility.

(a) *Organizations recognized under part 1292.* An organization that is recognized under part 1292 of this chapter is eligible to apply to have its name included on the List if the organization meets the requirements in paragraphs (a)(1) through (3) of this section.

(1) The organization will provide a minimum of 50 hours per year of pro bono legal services to individuals at each immigration court location where the organization intends to be included on the List, in cases where an attorney or representative of the organization, or an attorney or representative to whom the organization has referred the case for pro bono representation, files a Form EOIR-28 Notice of Entry of Appearance as Attorney or Representative before the Immigration Court (EOIR-28 Notice of Entry of Appearance). When

an attorney or representative of the organization represents the individual pro bono before the immigration court location, the organization may count, toward the 50-hour requirement, the attorney's or representative's out-of-court preparation time and in-court time. When the organization refers the case for pro bono legal services outside the organization, the organization may count, toward the 50-hour requirement, time the organization's attorneys and representatives spent providing pro bono legal services, for example conducting an intake interview or mentoring the attorney or representative to whom the case is referred. However, the organization is not permitted to count the time of the attorney or representative to whom the case was referred.

(2) The organization has on its staff at least one attorney, as defined in § 1292.1(a)(1) of this chapter, or at least one representative accredited under part 1292 of this chapter, to practice before the immigration courts and the Board of Immigration Appeals.

(3) No attorney or representative who will provide pro bono legal services on the organization's behalf in cases pending before EOIR is the subject of an order of disbarment under § 1003.101(a)(1) or suspension under § 1003.101(a)(2).

(b) *Organizations not recognized under part 1292.* An organization that is not recognized under part 1292 of this chapter is eligible to apply to have its name included on the List if the organization meets the requirements in paragraphs (b)(1) through (3) of this section.

(1) The organization will provide a minimum of 50 hours per year of pro bono legal services to individuals at each immigration court location where the organization intends to be included on the List, in cases where an attorney or representative of the organization, or an attorney or representative to whom the organization has referred the case for pro bono

representation, files a Form EOIR-28 Notice of Entry of Appearance. When an attorney or representative of the organization represents the individual pro bono before the immigration court location, the organization may count, toward the 50-hour requirement, the attorney's or representative's out-of-court preparation time and in-court time. When the organization refers the case for pro bono legal services outside the organization, the organization may count, toward the 50-hour requirement, time the organization's attorneys or representatives spent providing pro bono legal services, for example conducting an intake interview or mentoring the attorney or representative to whom the case is referred. However, the organization is not permitted to count the time of the attorney or representative to whom the case was referred.

(2) The organization has on its staff at least one attorney, as defined in §1292.1(a)(1) of this chapter.

(3) No attorney or representative who will provide pro bono legal services on the organization's behalf in cases pending before EOIR is the subject of an order of disbarment under § 1003.101(a)(1) or suspension under § 1003.101(a)(2).

(c) *Pro bono referral services.* A referral service is eligible to apply to have its name included on the List at each immigration court location where the referral service either refers or plans to refer cases to attorneys or organizations that will provide pro bono legal services to individuals in proceedings before an immigration judge.

(d) *Attorneys.* An attorney, as defined in §1292.1(a)(1) of this chapter, is eligible to apply to have his or her name included on the List if the attorney meets the requirements in paragraphs (d)(1) through (3) of this section.

(1) The attorney is not the subject of an order of disbarment under § 1003.101(a)(1) or

suspension under § 1003.101(a)(2);

(2) The attorney will provide a minimum of 50 hours per year of pro bono legal services to individuals at each immigration court location where the attorney intends to be included on the List, in cases where he or she files a Form EOIR-28 Notice of Entry of Appearance. The attorney may count, toward the requirement, both out-of-court preparation time and in-court time.

(3) The attorney cannot provide pro bono legal services through or in association with an organization or pro bono referral service described in paragraph (a), (b), or (c) of this section because:

(i) Such an organization or referral service is unavailable; or

(ii) The range of services provided by an available organization(s) or referral service(s) is insufficient to address the needs of the community.

6. Revise § 1003.63 to read as follows:

§ 1003.63 Applications.

(a) *Generally.* To be included on the List, any organization, pro bono referral service, or attorney that is eligible under § 1003.62 to apply to be included on the List must file an application with the Director. Applications must be received by the Director at least 60 days in advance of the quarterly update in order to be considered. The application must:

(1) Establish by clear and convincing evidence that the applicant qualifies to be on the List pursuant to § 1003.61(c);

(2) Specify how the organization, pro bono referral service, or attorney wants its name and contact information to be set forth on the List; and

(3) Identify each immigration court location where the organization, pro bono referral service, or attorney provides, or plans to provide, pro bono legal services.

(b) *Organizations.* An organization, whether recognized or not under part 1292, must submit with its application a declaration signed by an authorized officer of the organization that states under penalty of perjury:

(1) That it will provide annually at least 50 hours of pro bono legal services to individuals in removal or other proceedings before each immigration court location identified in its application;

(2) That every attorney and accredited representative who will represent clients pro bono before EOIR on behalf of the organization is registered to practice before EOIR under § 1292.1(f);

(3) That no attorney or representative who will provide pro bono legal services on behalf of the organization in cases pending before EOIR:

(i) Is under any order suspending, enjoining, restraining, disbarring, or otherwise restricting him or her in the practice of law; or

(ii) Is the subject of an order of disbarment under § 1003.101(a)(1) or suspension under § 1003.101(a)(2); and

(4) Any specific limitations it has in providing pro bono legal services (e.g., not available to assist detained individuals or those with criminal convictions, or available for asylum cases only).

(c) *Pro bono referral services.* A pro bono referral service must submit with its application a declaration signed by an authorized officer of the referral service that states under

penalty of perjury:

(1) That it will offer its referral services to individuals in removal or other proceedings before each immigration court location identified in its application; and

(2) Any specific limitations it has in providing its pro bono referral services (e.g., not available to assist detained individuals or those with criminal convictions, or available only for asylum cases).

(d) *Attorneys.* An attorney must submit with his or her application a declaration that states under penalty of perjury:

(1) That he or she will provide annually at least 50 hours of pro bono legal services to individuals in removal or other proceedings before each immigration court location identified in his or her application;

(2) Any specific limitations the attorney has in providing pro bono legal services (e.g., not available to assist detained individuals or those with criminal convictions, or available for asylum cases only);

(3) A description of the good-faith efforts he or she made to provide pro bono legal services through an organization or pro bono referral service described in § 1003.62(a), (b), or (c) to individuals appearing before each immigration court location listed in the application;

(4) An explanation that any such organization or referral service is unavailable or that the range of services provided by available organization(s) or referral service(s) is insufficient to address the needs of the community;

(5) His or her EOIR registration number;

(6) That he or she is not under any order suspending, enjoining, restraining, disbarring, or

otherwise restricting him or her in the practice of law; and

(7) That he or she is not the subject of an order of disbarment under § 1003.101(a)(1) or suspension under § 1003.101(a)(2).

(e) *Applications approved before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*. Providers whose applications to be included on the List were approved before [*INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*] must file an application under this section as follows: organizations and pro bono referral services, within one year of [*INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*]; attorneys, within six months of [*INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*]. The names of providers who do not file an application as required by this paragraph shall be removed from the List following expiration of the application time period, the removal of which will be reflected no later than in the next quarterly update.

(f) *Notice and comments*—(1) *Public notice and comment*. The names of the applicants, whether organizations, pro bono referral services, or individuals, meeting the regulatory requirements to be included on the List shall be publicly posted for 15 days after review of the applications by the Director, and upon request a copy of each application shall be made available for public review. Any individual may forward to the Director comments or a recommendation for approval or disapproval of an application within 30 days from the first date the name of the applicant is publicly posted. The commenting party shall include his or her name and address. A comment or recommendation may be sent to the Director electronically, in which case the Director shall transmit the comment or recommendation to the applicant. A comment or

recommendation not sent to the Director electronically must include proof of service on the applicant, in accordance with the definition of "service" set forth in § 1003.13.

(2) *Response.* The applicant has 15 days to respond from the date the applicant was served with, or notified by the Director of, the comment. All responses must be filed with the Director and include proof of service of a copy of such response on the commenting party, in accordance with the definition of "service" set forth in § 1003.13.

7. Revise § 1003.64 to read as follows:

§ 1003.64 Approval and denial of applications.

(a) *Authority.* The Director in his discretion shall have the authority to approve or deny an application to be included on the List of Pro Bono Legal Service Providers. The Director may request additional information from the applicant to determine whether the applicant qualifies to be included on the List.

(b) *Decision.* The applicant shall be notified of the decision in writing. The written notice shall be served in accordance with the definition of "service" set forth in § 1003.13, at the address provided on the application unless the applicant subsequently provides a change of address pursuant to § 1003.66, or shall be transmitted to the applicant electronically.

(1) *Denials.* If the application is denied, the applicant shall be given a written explanation of the grounds for such denial, and the decision shall be final. Such denial shall be without prejudice to file another application at any time after the next quarterly publication of the List.

(2) *Approval and continuing qualification.* If the application is approved, the applicant's name will be included on the List at the next quarterly update. Every three years from the date of

approval, a provider must file with the Director a declaration, under penalty of perjury, stating that the provider remains qualified to be included on the List under § 1003.62(a), (b), (c), or (d). For organizations and attorneys, the declaration must include alien registration numbers of clients in whose cases the provider rendered pro bono legal services under § 1003.62(a)(1), (b)(1), or (d)(2), representing at least 50 hours of pro bono legal services each year since the provider's most recent such declaration, or since the provider was included on the List, whichever was more recent. Organizations must provide, for each case listed, the name of the organization's attorneys or representatives who provided representation or other pro bono legal services, or the name of the attorney, representative, or organization the case was referred to for pro bono legal services. If a provider fails to timely file the declaration or declares that it is no longer qualified to be included on the List, the provider's name will be removed from the List at the next quarterly update. Failure to file a declaration within the applicable time period does not prohibit the filing of a new application to be included on the List.

8. Revise § 1003.65 to read as follows:

§ 1003.65 Removal of a provider from the List.

(a) *Automatic removal.* If the Director determines that an attorney on the List is the subject of a final order of disbarment under § 1003.101(a)(1), or an order of suspension under § 1003.101(a)(2), then the Director shall:

(1) Remove the name of the attorney from the List no later than at the next quarterly update; and

(2) Notify the attorney of such removal in writing, at the last known address given by the provider or electronically.

(b) *Requests for removal.* (1) Any provider may, at any time, submit a written request to have the provider's name removed from the List. The written request may include an explanation for the voluntary removal. Upon such written request, the name of the provider shall be removed from the List, and such removal will be reflected no later than in the next quarterly update.

(2) Any provider removed from the List at the provider's request may seek reinstatement to the List upon written notice to the Director. Any request for reinstatement must include a new declaration of eligibility, as set forth under § 1003.63(b), (c), or (d). Reinstatement to the List is at the sole discretion of the Director. Upon the Director's approval of reinstatement, the provider's name shall be included on the List no later than in the next quarterly update. Reinstatement to the List does not affect the requirement under § 1003.64(b)(2) that a provider submit a new declaration of eligibility every three years from the date of the approval of the original application to be included on the List.

(c) *EOIR inquiry in response to complaints*. If EOIR receives complaints that a particular provider on the List may no longer be accepting new pro bono clients, the Director may send a written inquiry to the provider noting that EOIR has received complaints with regard to the provider's acceptance of pro bono clients and allowing an opportunity for the provider to state whether the provider is continuing to comply with the regulations in this subpart or, if appropriate, whether the provider wishes to request voluntary removal from the List as provided in paragraph (b) of this section. The Director may remove a provider from the List for failure to respond to a written inquiry issued under this paragraph within 30 days or such additional time period stated by the Director in the written inquiry.

(d) *Procedures for removing providers from the List*. The following provisions apply in cases not covered by paragraphs (a), (b), or (c) of this section.

(1) *Grounds*. A provider shall be removed from the List if it, he, or she:

(i) Fails to comply with § 1003.66;

(ii) Has filed a false declaration in connection with an application filed pursuant to § 1003.63;

(iii) Improperly uses the List primarily to advertise or solicit clients for compensated legal services; or

(iv) Fails to comply with any and all other requirements of this subpart.

(2) *Notice*. If the Director determines that a provider falls within one or more of the enumerated grounds under paragraph (d)(1) of this section, the Director shall promptly notify the provider in writing, at the address last provided to the Director by the provider or electronically, of the Director's intention to remove the name of the provider from the List.

(3) *Response*. The provider may submit a written answer within 30 days from the date the notice is served, as described in § 1003.13, or is sent to the provider electronically. The provider must establish by clear and convincing evidence that the provider continues to meet the qualifications for inclusion on the List, by declaration under penalty of perjury as to the provider's continued compliance with eligibility requirements under this subchapter, which must include alien registration numbers of clients in whose cases the provider rendered pro bono legal services under § 1003.62(a)(1), (b)(2), or (d)(2), representing at least 50 hours of pro bono legal services each year since the provider's most recent declaration under § 1003.64(b)(2), or since the provider was included on the List, whichever was more recent.

(4) *Decision.* If, after consideration of any response submitted by the provider, the Director determines that the provider is no longer qualified to remain on the List, the Director shall:

(i) Remove the name of the provider from the List no later than in the next quarterly update; and

(ii) Notify the provider of such removal in writing, at the address last provided to the Director by the provider or electronically.

(5) *Disciplinary Action.* Removal from the List pursuant to § 1003.65(a), (b), (c), or (d) shall be without prejudice to the authority to discipline a practitioner under EOIR's rules and procedures for professional conduct for practitioners listed in 8 CFR part 1003, subpart G.

9. Add § 1003.66 to read as follows:

§ 1003.66 Changes in information or status.

All providers with a pending application or currently on the List must notify the Director in writing within ten business days if:

(a) The provider's contact information has changed;

(b) Any specific limitations in providing pro bono legal services under § 1003.63(b)(4), (c)(2), or (d)(2) have changed; or

(c) The provider is no longer eligible under § 1003.62.

PART 1240 – PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

10. The authority citation for part 1240 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b,

1362; secs. 202 and 203, Pub. L. 105-100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105-277, (112 Stat. 2681).

11. In § 1240.10, revise paragraphs (a)(2) and (3) to read as follows:

§ 1240.10 Hearing.

(a) * * *

(2) Advise the respondent of the availability of pro bono legal services for the immigration court location at which the hearing will take place, and ascertain that the respondent has received a list of such pro bono legal service providers.

(3) Ascertain that the respondent has received a copy of appeal rights.

*** * * * ***

§ 1240.32 [Amended]

12. In § 1240.32, amend paragraph (a) by removing the words "Government, and of the availability of free legal services programs qualified under 8 CFR part 1003 and organizations recognized pursuant to § 1292.2 of this chapter located in the district where his or her exclusion hearing is to be held; and shall ascertain that the applicant has received a list of such programs" and adding, in their place, the words "Government; advise him or her of the availability of pro bono legal services for the immigration court location at which the hearing will take place, and ascertain that he or she has received a list of such pro bono legal service providers".

§ 1240.48 [Amended]

13. In § 1240.48, amend paragraph (a) by removing the words "free legal services programs qualified under 8 CFR part 1003 and organizations recognized pursuant to § 1292.2 of this chapter, located in the district where the deportation hearing is being held; ascertain that the

respondent has received a list of such programs" and adding, in their place, the words "pro bono legal services for the immigration court location at which the hearing will take place; ascertain that the respondent has received a list of such pro bono legal service providers".

PART 1241 – APPREHENSION AND DETENTION OF ALIENS ORDERED REMOVED

14. The authority citation for part 1241 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1223, 1224, 1225, 1226, 1227, 1231, 1251, 1253, 1255, 1330, 1362; 18 U.S.C. 4002, 4013(c)(4).

§ 1241.14 [Amended]

15. In§ 1241.14, amend paragraph (g)(3)(i) by removing the words "a list of free legal service providers," and adding, in their place, the words "the List of Pro Bono Legal Service Providers for the immigration court at which the hearing is being held".

Dated: September 15, 2015.

Sally Quillian Yates ,
Deputy Attorney General .
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