



Audit of the Executive Office for Immigration Review Recognition and Accreditation Program



AUDIT DIVISION

20-109

SEPTEMBER 2020



Executive Summary

Audit of the Executive Office for Immigration Review Recognition and Accreditation Program

Objectives

Our audit objectives were to determine whether the Executive Office for Immigration Review (EOIR): (1) has effective controls for the selection, vetting, and certification of accredited representatives under the Recognition and Accreditation Program (Program); (2) sufficiently monitors the activities of accredited representatives; and (3) has adequate procedures for investigating and resolving allegations of misconduct against accredited representatives.

Results in Brief

Within EOIR, the Office of Legal Access Programs (OLAP) administers the Program that authorizes eligible non-profit organizations and their qualifying representatives, who are not attorneys, to practice immigration law before the Department of Homeland Security (DHS) and, in some cases, EOIR's immigration courts and Board of Immigration Appeals. Once admitted to the Program, an organization becomes "recognized," while an individual becomes "accredited." We determined that OLAP implements controls for approving or rejecting recognition and accreditation applications, monitors activities of accredited representatives, and investigates allegations of misconduct against accredited representatives. However, we identified varying degrees of weakness in these controls, as well as opportunities for OLAP to improve its Program oversight and administration.

Recommendations

We make six recommendations to EOIR to improve its oversight and administration of the Program. We requested a response to our draft report from EOIR, which can be found in Appendix 2. EOIR agreed with the recommendations.

Audit Results

Part of our audit work consisted of reviewing the applications of 76 recognition and 204 accreditation participants EOIR approved between February 2017 and February 2019. While most of the application files contained sufficient supporting documentation, there were instances of insufficient or missing information in the files we reviewed. Additionally, OLAP's process for monitoring recognition and accreditation participants is essentially the same process it employs to approve or reject initial applications for recognition or accreditation. Moreover, EOIR had no process for performing uniform criminal history checks, and although EOIR had a process for investigating allegations of misconduct by accredited representatives, EOIR did not consistently and promptly initiate inquiries of those allegations.

Controls for Selecting, Vetting, and Certifying Applicants for Recognition and Accreditation – Among the Program requirements for recognition, an organization must adequately demonstrate that it: (1) employs at least one accredited representative or someone who has applied for accreditation; (2) has access to adequate immigration law knowledge, information, and experience; (3) is an eligible non-profit religious, charitable, or similar organization; (4) provides immigration legal services; and (5) has Federal tax-exempt status. Of the 76 recognition files we tested, we found sufficient documentation that each organization employed an accredited representative or someone who had applied for accreditation; had adequate immigration law knowledge, information, and experience; and was an eligible non-profit, religious, charitable or similar organization. However, we found that 28 percent of the recognition files lacked documentation of the organization's Federal tax-exempt status and 13 percent of the files did not contain documentation of the organization's immigration legal services.

Among the requirements for accreditation, organizations must provide, on behalf of each representative, a résumé and documentation showing that each representative: (1) is



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not an attorney; (2) completed training on the fundamentals of immigration law, procedure, and practice, for representatives seeking either partial or full accreditation; and (3) completed formal training, education, or experience pertaining to trial and appellate advocacy, for representatives seeking full accreditation. Full accreditation allows representation of non-citizens before both DHS and EOIR's immigration courts and BIA, while partial accreditation allows representation of non-citizens only before DHS. Of the 204 accreditation files we tested, each contained a résumé and sufficient documentation that the representative was not an attorney. However, we found that only 56 percent of the files tested contained adequate documentation of completed formal training required for both full and partial accreditation, while only 68 percent of the files contained adequate documentation of training required for full accreditation only. Moreover, we found training records for approved accreditation applicants that did not demonstrate the applicant completed the training; received training on a continuous basis as required by 8 C.F.R. § 1292, the Program's governing regulation; or completed training relevant to immigration law or procedure. Without sufficient documentation to support its recognition and accreditation decisions, EOIR is unable to fully demonstrate that approval or denial decisions were made in accordance with regulation or other Program requirements.

U.S. Citizenship and Immigration Services Application

Recommendations – More than one-third of applications for both recognition and accreditation did not contain a recommendation from DHS's U.S. Citizenship and Immigration Services (USCIS). While not required by 8 C.F.R. § 1292, OLAP uses these recommendations to make Program eligibility decisions. In our judgment, when OLAP makes decisions absent a USCIS recommendation it creates risks that ineligible applicants will be admitted into the Program.

Performing Criminal History Checks on Applicants for

Accreditation – Title 8 C.F.R. § 1292 requires accreditation applicants to have suitable character and fitness, and the

regulation lists an examination of an applicant's criminal background and involvement in serious crimes as examples of factors to be considered in connection with the assessment of an applicant's character and fitness. Despite this, EOIR performed no criminal history checks because, according to OLAP officials, it lacked the capability to do so. In our judgment, the examination of an applicant's criminal background is necessary to ensure that accredited representatives possess suitable character and fitness for the performance of their duties.

Monitoring Activities of Accredited Representatives to Ensure

Compliance – OLAP employed essentially the same controls for monitoring Program compliance it uses to approve or reject initial applications for recognition or accreditation. Applications for initial recognition or accreditation are reviewed by OLAP's staff to determine if applicants are eligible under Program rules. OLAP's monitoring process consists of essentially the same review. Consequently, OLAP's monitoring controls contained the same weaknesses we found in its controls for selecting, vetting, and certifying applicants for recognition or accreditation and can be improved.

Process for Investigating and Resolving Allegations of

Misconduct Against Accredited Representatives – We determined that EOIR had a process for investigating allegations of accredited representative misconduct and that EOIR had a practice of prioritizing the review of those complaints over attorney complaints. We reviewed 10 accredited representative complaints EOIR received between January 2017 and February 2019. We determined that EOIR did not initiate an inquiry for seven of the complaints until 101 to 703 days after receiving the complaints. The complaints were not appropriately prioritized because of human oversight that an EOIR official believes could be corrected by enhancing an existing electronic database to filter accredited representative complaints for prioritization. We believe that delays of this length increase the risk that evidence relevant to an investigation may become unavailable or that unqualified representatives will continue to use their accreditation to represent clients.

AUDIT OF THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW RECOGNITION AND ACCREDITATION PROGRAM

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INTRODUCTION

As of fiscal year (FY) 2019, 1,089,696 cases were pending in federal immigration courts nationwide, a 38 percent increase from FY 2017. These cases typically begin when the Department of Homeland Security (DHS) charges a non-citizen with violating federal immigration law and seeks the removal of that non-citizen from the U.S. A case is then filed in one of the Executive Office for Immigration Review's (EOIR) immigration courts. According to Immigration Judges and other stakeholders, the ability of the immigration courts to adjudicate cases fairly and efficiently increases when non-citizens are represented by legal counsel. As a result, representation of non-citizens may enable immigration courts to handle a greater number of cases and thus reduce the backlog of cases pending adjudication. In addition, non-citizens may have legal counsel when they apply for immigration benefits, such as naturalization, permanent residency, or asylum, before DHS's U.S. Citizenship Immigration Services (USCIS) and appear for hearings related to those applications before DHS hearing officers.

In this vein, EOIR authorizes certain non-attorneys called "accredited representatives" to provide immigration-related legal services and advice to low-income and indigent non-citizens.¹ The Recognition and Accreditation Program (Program) grants recognition to organizations that staff representatives and accreditation to representatives.² The Program grants full and partial accreditation. Full accreditation allows representation of non-citizens before EOIR's immigration courts and Board of Immigration Appeals (BIA) and DHS, while partial accreditation only allows representation of non-citizens before DHS. To become accredited, a representative must work or volunteer for an eligible non-profit religious, charitable, social service, or similar organization that has been formally "recognized" by EOIR and meet other requirements described in the rules for Recognition of Organizations and Accreditation of Non-Attorney Representatives (Program Regulation).³ Once accredited, representatives have similar authority as attorneys to represent non-citizens in legal matters, depending on their type of accreditation.⁴ Like attorneys, accredited representatives are subject to EOIR's

¹ Accredited representatives provide immigration legal services that consist of representing non-citizens in EOIR's courts and DHS proceedings, assisting non-citizens in the completion of immigration applications and forms, renewing employment permits, providing translation services, and advising non-citizens of their legal rights.

² An organization's recognition is valid for 6 years, while a representative's accreditation is valid for 3 years.

³ 8 C.F.R. § 1292 (2019).

⁴ In addition to accredited representatives and attorneys, the Program Regulation allows other "practitioners" to represent non-citizens before EOIR's courts, such as certain law students and graduates and "reputable individuals" as defined in 8 C.F.R. § 1292.1 (2019).

rules of professional conduct. As of May 2020, EOIR reported 2,126 full and partially accredited representatives.⁵

In January 2017, in an effort to increase the availability of competent legal representation for low-income and indigent persons, EOIR issued a new Program Regulation that, among other things, updated the requirements for obtaining recognition and accreditation.⁶ Along with amending recognition and accreditation requirements, the updated regulation transferred administration of the Program from the Board of Immigration Appeals (BIA) to EOIR's Office of Legal Access Programs (OLAP). During our interviews with OLAP officials, they described changes made to the administration of the Program after the transfer, such as updating internal review procedures and requirements. As of May 2020, there were 793 active organizations recognized by EOIR. In FY 2019, 67 percent of non-citizens involved in immigration proceedings had legal representation by accredited representatives, attorneys, and other practitioners.

Office of the Inspector General Audit Approach

Our audit objectives were to determine whether EOIR: (1) has effective controls for the selection, vetting, and certification of accredited representatives under the Program; (2) monitors the activities of accredited representatives; and (3) has adequate procedures for investigating and resolving allegations of misconduct against accredited representatives.

To accomplish our objectives, we interviewed OLAP officials responsible for administering the Program, officials from EOIR's Attorney Discipline and Fraud and Abuse Prevention Programs, Immigration Judges, officials from DHS, and officials from a non-profit immigration services organization that provided guidance and training to accredited representatives and their affiliated organization. We also reviewed EOIR's Program guidance, policies, and procedures for approving or denying requests for accreditation or recognition. Additionally, we reviewed and tested 280 applications from organizations submitted to OLAP requesting recognition or accreditation from February 2017 to February 2019.

⁵ For comparison purposes, 53,107 attorneys were active in EOIR's courts as of November 2019.

⁶ Specifically, the new Program Regulation sought to: (1) increase the number of accredited representatives for underserved populations; (2) clarify Program application processes; (3) establish greater oversight and accountability for recognized organizations and accredited representatives, and (4) update the disciplinary process to ensure that recognized organizations are subject to sanctions for conduct that violates the public interest.

AUDIT RESULTS

We determined that OLAP implements controls for approving or rejecting recognition and accreditation applications, monitors activities of accredited representatives, and investigates allegations of misconduct against accredited representatives. However, we identified varying degrees of weakness in these controls, as well as opportunities for OLAP to improve its Program oversight and administration.

Specifically, we determined that applications for recognition and accreditation we tested were sometimes missing the requisite information to support the application. Furthermore, to the extent that OLAP relies on an assessment of recognition and accreditation renewal applications to monitor Program compliance, the missing or insufficient documentation may compromise its monitoring efforts.

In addition, more than one-third of applications we tested, for both recognition and accreditation, did not contain a recommendation from DHS's USCIS.⁷ While these recommendations are not required, they are important because OLAP's review processes rely on them as a factor in making an approval determination. We also found that OLAP did not perform uniform criminal history checks on representatives seeking accreditation or require organizations to perform background checks of their representatives. We believe these checks are needed to assess an applicant's character and fitness, a critical component under the Program Regulation.

Lastly, we identified 7 of 10 complaints submitted to EOIR involving alleged misconduct by accredited representatives whose investigation was delayed between 101 and 703 days. We believe that the delay in initiating an investigation makes it more difficult to collect evidence relevant to complaint allegations and increases the risk that unqualified representatives continue to practice immigration law.

Opportunities Exist for OLAP to Improve its Controls for Documenting Program Approval or Rejection Decisions

From our testing of OLAP's recognition and accreditation application files, we found that the majority of the files contained sufficient evidence that selected requirements were satisfied. Although most application files contained sufficient support of OLAP's approval or rejection decision, some files did not, and we believe that further efforts are needed for OLAP to improve Program oversight and administration.

⁷ USCIS is a component of DHS and is responsible for overseeing lawful U.S. immigration, including adjudicating requests for immigration benefits.

Program Eligibility Requirements

Recognition

For an organization to obtain recognition, it must submit an application to OLAP demonstrating its eligibility.⁸ Specifically, an organization must show that it:

- is a non-profit religious, charitable, social service, or similar organization;
- provides immigration legal services primarily to low-income and indigent clients within the U.S.;
- possesses valid federal tax-exempt status or has a pending application for federal tax-exempt status;
- has applied simultaneously to have at least one employee or volunteer approved as an accredited representative;
- has access to adequate knowledge, information, and experience in immigration law and procedure; and
- has designated an authorized officer to act on the organization's behalf.

In addition, OLAP requires organizations to submit the following specific documentation as proof of eligibility:

- organizing documents, including a mission or purpose statement;
- a summary of immigration legal services offered to clients;
- a schedule of fees charged;
- a detailed policy for waiving or reducing fees;
- a current and prior year budget;
- proof of tax-exempt status;
- an application for accreditation for at least one proposed representative;
- proof the organization has access to adequate knowledge, information, and experience in all aspects of immigration law including a description of available legal resources, an organization chart, and a description of staff member qualifications, experience, and breadth of immigration knowledge; and
- proof-of-service documentation showing that the organization submitted exact copies of its application and supplemental information to the appropriate USCIS office.⁹

⁸ 8 C.F.R. §§ 1292.11 and 1292.12 (2019).

To request recognition, an organization must submit a *Request for New Recognition, Renewal of Recognition, or Extension, or Extension of Recognition of a Non-Profit Religious, Charitable, Social Service, or Similar Organization* (Form EOIR 31). To request accreditation for a representative, an organization must submit *Request by Organization for Accreditation or Renewal of Accreditation of Non-Attorney Representative* (Form EOIR 31A).

⁹ EOIR Recognition and Accreditation Program Frequently Asked Questions, <https://www.justice.gov/eoir/file/olap-ra-faqs/download>.

Accreditation

To be eligible for accreditation an organization must demonstrate that its representative(s):

- has the character and fitness to represent clients before EOIR and/or DHS;
- is an employee or volunteer of the organization;
- is not an attorney;
- has not resigned while a disciplinary investigation or proceeding is pending and is not the subject of an order restricting the individual in the practice of law or representation before a court or administrative agency;
- has not been found guilty of, or pleaded guilty to, a serious crime;
- has completed and provided documentation of all relevant, formal immigration-related training, including a course on the fundamentals of immigration law;
- possesses broad knowledge and adequate experience in immigration law and procedure; and
- has proof-of-service documentation showing the organization submitted copies of its application and supplemental information to the appropriate USCIS office.

Organizations must provide the representative's résumé describing the representative's education and immigration law experience, a list of the representative's immigration law and procedure training, and at least two letters of recommendation attesting to the representative's knowledge and experience. Regardless of whether partial or full accreditation is sought, the organization must demonstrate that the applicant completed training on fundamentals of immigration law, procedure, and practice. For full accreditation, applicants must also complete and provide documentation of formal training, education, or experience related to trial and appellate advocacy.

OLAP's Process for Reviewing Recognition or Accreditation Applications Needs Improvement

We interviewed members of OLAP's staff responsible for reviewing applications for recognition or accreditation and reviewed OLAP's written guidance, procedures, and materials for processing applications. Once an application arrives at OLAP's intake office it is provided to the review team, which consists of three attorneys and a paralegal. Each application is assigned to a member of the review team to determine if the application is complete. A review team member drafts a letter approving or rejecting the application, and forwards the letter, application, and attachments to the Program Director for review and signature. The Program Director told us that, once OLAP has a complete application, most decisions are

made in fewer than 90 days.¹⁰ If the application is rejected, the organization can request reconsideration of the decision, and the application will be examined by a different reviewer. Under the Program Regulation, if reconsideration is denied, the organization can seek review of that decision by the Director.¹¹

In order to determine whether application files contained the necessary documentation demonstrating applicant Program eligibility, we judgmentally selected for testing the application files of 204 out of the 1,322 accredited representatives who received initial or renewed accreditation from February 2017 to February 2019, and who were still active at the time of our selection.¹² In each of the accreditation application files we selected, we tested the four requirements for accreditation listed in Table 2 below. Of the 204 representatives selected, 155 of the applications were for full accreditation and 49 were for partial accreditation. In addition, we judgmentally selected for testing 76 recognition application files for the organizations that employed a portion of our sampled accredited representatives.¹³ In each of the recognition application files we selected, we tested the five requirements for recognition listed in Table 1 below. The organizations sampled were all recognized or renewed between February 2017 and February 2019. Overall, we found that the majority of the files we tested contained sufficient evidence that selected requirements were satisfied.

Some Applications for Recognition Testing Results Were Missing Documentation

As illustrated in Table 1, of the 76 recognition application files tested, we found that each contained sufficient documentation: (1) that the organization employed an accredited representative or someone who had applied for accreditation; (2) demonstrating that the organization has access to adequate immigration knowledge, information, and experience; and (3) to prove that the organization was a non-profit religious, charitable, social service, or similar organization. In addition, we found that 87 percent of the files contained documentation of the organization's annual summary of legal services and 72 percent of the files had documentation of its Federal tax-exempt status.

¹⁰ If an organization omits required documents or documents with missing signatures, OLAP will often contact the organization to correct the oversight.

DHS occasionally visits recognized organizations to ask questions about a submitted application or perform other activities. The Director stated that OLAP encourages these site visits because it is a way for the Program to verify an organization's recognition application and because OLAP itself lacks the resources to perform site visits of organizations.

¹¹ 8 C.F.R. §§ 1292.13(e) and 1292.18 (2019).

¹² January 17, 2017, was the effective date of EOIR's guidance to organizations completing Form EOIR 31 to renew their recognition. Form EOIR 31 was updated pursuant to the new Program Regulation governing the Recognition of Organizations and Accreditation of Non-Attorney Representatives, which became effective January 18, 2017.

Between February 13, 2017, and February 20, 2019, OLAP terminated the accreditation of 604 representatives.

¹³ Some representatives were employed or volunteered for more than one organization.

Table 1
Required Documentation for Recognition

Requirements	Missing Documentation	Complete Documentation	Percentage of Complete Documentation
Employs an accredited representative or someone who has applied for accreditation	0	76	100%
Has access to adequate immigration knowledge, information, and experience in immigration law and procedure	0	76	100%
Non-profit religious, charitable, social, or similar organization	0	76	100%
Annual summary of legal services	10	66	87%
Proof of Federal tax-exempt status	21	55	72%

Source: OIG analysis of EOIR's application files

Some Applications for Accreditation Testing Results Were Missing Documentation

As illustrated in Table 2, of the 204 accreditation applications tested, we found that 100 percent of the representative application files contained a résumé describing the representative's education and immigration law experience and documentation showing the applicant was not an attorney. However, we determined that only 56 percent of the representative application files contained documentation that the representatives completed the required training on fundamentals of immigration law, procedure, and practice, and only 68 percent of the files for full accreditation contained documentation that the representatives completed the required training pertaining to trial and appellate advocacy.

Table 2
Required Documentation for Accreditation

Requirements	Missing Documentation	Complete Documentation	Percentage of Complete Documentation
Résumé describing the representative's education and immigration law experience	0	204	100%
Documentation that representative is not an attorney	0	204	100%
For both partial and full accreditation, documentation for the completion of training on fundamentals of immigration law, procedure, and practice	90	114	56%
For representatives requesting full accreditation, documentation for the completion of formal training, education, or experience pertaining to trial and appellate advocacy ^a	49	106	68%

^a This requirement was only applicable to 155 of the 204 accredited representative files selected for testing.

Source: OIG analysis of EOIR's application files

Based on our recognition and accreditation testing results we concluded that OLAP's application files did not fully support its decision to approve or reject applications. Therefore, OLAP could not provide assurance that it made all determinations in accordance with the Program Regulation and other requirements. When provided with our testing results, OLAP officials explained that, oftentimes, organizations lose representative training certificates and other records that show the completion of training. OLAP officials also told us that they allow organizations to submit a description of the training received along with a sworn statement by the accredited representative attesting to completing the training.¹⁴ We do not consider training descriptions, which we found in 20 of the 280 files we reviewed, or sworn statements to be adequate support of completed training. Moreover, OLAP's explanations underscore the need for OLAP to improve controls to ensure that it maintains only verifiable records of application approval decisions.

During our conversations with OLAP officials, they told us about their attempt to improve the Program by creating internal review guidelines, holding weekly staff meetings to discuss issues, and requiring online search records to be maintained in the application files. To assess the effect of these actions, we categorized the missing documentation into two time periods: (1) February 2017 through March 2018 and (2) April 2018 through February 2019. The results are reflected in Table 3.

¹⁴ In our testing of application files, we noted the presence of representative statements attesting to the completion of training and training descriptions as support documentation and considered those records in our review.

Table 3
OIG Analysis of Missing Support Documentation
Within Recognition and Accreditation Application Files

Requirements	Percentage of requirements from February 2017 through March 2018 with missing documentation	Percentage of requirements from April 2018 through February 2019 with missing documentation
Recognition		
Annual summary of legal services	33%	7%
Proof of Federal tax-exempt status	44%	22%
Accreditation		
For representatives requesting full accreditation, documentation for the completion of formal training, education, or experience pertaining to trial and appellate advocacy	26%	37%
For both partial and full accreditation, documentation for completion training on fundamentals of immigration law, procedure, and practice	45%	43%

Source: OIG analysis of EOIR’s application files

We found that the percentage of recognition application files with missing documentation decreased between 15 to 25 months after OLAP implemented its process for reviewing application files. Specifically, the percentage of files missing an annual summary of legal fees decreased from 33 percent to 7 percent, while the percentage of files missing federal tax-exempt documentation decreased from 44 percent to 22 percent. However, the percentage of accreditation application files with missing documentation remained similar during this time period. The percentage of applications for full accreditation with missing training documentation increased from 26 percent to 37 percent while the percentage of missing training documentation for all representatives decreased slightly from 45 percent to 43 percent. While our results show a decrease in the amount of missing documentation for some Program requirements, the results also demonstrate opportunities for OLAP to further strengthen its application review and approval process. Consequently, we recommend that EOIR ensure that OLAP’s application files contain sufficient documentation demonstrating that eligibility requirements for admittance into the Program have been satisfied.

OLAP’s Controls for Enforcing Program Training Requirements can be Strengthened

In the application files we reviewed, we found a variety of unverifiable training records that applicants submitted to EOIR. As previously discussed, we found that 20 of 280 files contained only descriptions of training courses completed. We also found some files with training records that did not contain the applicant’s

name, course hours completed, vendor watermark or seal, or signature of the vendor's authorized representative.

Without training certifications or other supportable records, we believe it would be unreasonably difficult to verify that the applicant attended or completed the training course. In our view, OLAP should require that a training certificate of completion be maintained in each applicant's training file.¹⁵ Therefore, we recommend that EOIR require accreditation applicants to submit a certificate of completion, or other similarly verifiable record, for all training courses completed.

In addition to identifying files without adequate documentation of required training, we found that OLAP has been inconsistent about the type and quantity of training expected of applicants for initial accreditation and representatives seeking renewal. In its enforcement of Program training requirements, OLAP relies on a patchwork of unwritten rules and preferences. OLAP does not require that accredited representatives or applicants complete a certain number of training hours during an established time period. The Program Director told us that this is because some of the recognized organizations have limited resources and creating a training-hour requirement would be burdensome. Nevertheless, OLAP has unwritten preferences regarding the number of training hours that are necessary for accreditation within a specified timeframe for accreditation. For representatives seeking new accreditation, the Program Director told us that EOIR would like applicants to provide evidence that they completed at least 18 training hours, but that was not an official requirement.

Program regulations require accredited representatives seeking renewal of their accreditation to receive continuous training through their period of accreditation.¹⁶ The Program Director told us that he expects applicants seeking renewal to provide evidence that they completed training during the 3 years prior to application. For representatives seeking partial accreditation renewal, the Director told us that an applicant's completion of only 2 training hours per year would not be enough for accreditation renewal but the completion of 10 hours per year would be enough. However, as with OLAP's unwritten preferences for applicant's seeking initial accreditation, none of these preferences are official requirements. The Director told us that OLAP decides whether an applicant has satisfied the training requirements by looking at the totality of the circumstances, including their work experience.

In its March 2019 report on reforming the U.S. immigration system, the American Bar Association (ABA) proposed that accredited representatives complete minimum, annual training.¹⁷ The ABA recommended that OLAP develop and require accredited representatives to participate in continuing education relating to

¹⁵ According to OLAP's current Frequently Asked Questions guidance, training certification of completions are not expressly required.

¹⁶ 8 C.F.R. § 1292.16 (2019).

¹⁷ American Bar Association, *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases* (March 2019). See https://www.americanbar.org/groups/public_interest/immigration/events-and-cle/launch-of-2019-update-report--reforming-the-immigration-system/

immigration law and that accredited representatives participate in at least two legal training courses annually. The ABA reasoned that this rule change would protect against inadequate, even if well-intentioned, non-lawyer guidance and representation.¹⁸

We believe that EOIR should institute a minimum, periodic training requirement for accredited representatives. Requiring minimum, periodic training would strengthen OLAP's enforcement and provide recognized organizations with a clear standard. We also believe that minimum, periodic training would better ensure that accredited representatives receive training on a continuous basis throughout their accreditation period. Consequently, we recommend that EOIR study the feasibility of and, if feasible, implement a minimum, periodic requirement for completing the legal immigration and trial and advocacy training described in the Program Regulation. We acknowledge the possibility that compliance with these training recommendations may create an additional financial burden for organizations and individuals seeking accreditation. However, in our view, this burden is outweighed by establishing rules that provide greater assurance that accredited representatives are adequately and sufficiently trained.

USCIS did not Provide Recommendations on more than One-Third of Recognition and Accreditation Applications

According to the Program Regulation, USCIS may provide OLAP a recommendation for approval or disapproval of an organization's request for recognition or for accreditation of its representatives, including an explanation for the recommendation, within 30 days of receiving a copy of the application.¹⁹ Although the regulations do not mandate a recommendation from USCIS, OLAP relies on the recommendation as a factor in its approval determination and may rely on it to assess the character and fitness of potential representatives. OLAP officials told us that, if USCIS does not respond with a recommendation within 30 days, OLAP sends a reminder and if a USCIS response is not received after the reminder, OLAP makes a determination without the recommendation.

The Program Director estimated that USCIS did not provide a recommendation, either in favor or against recognition or accreditation, for about 50 or 60 percent of all recognition and accreditation applications. We found that 41 percent (31 of 76) of the recognition files we tested and 42 percent (85 of 204) of the accreditation application files we tested did not contain USCIS

¹⁸ We asked EOIR officials for their opinion of the ABA recommendation. During our exit conference, EOIR officials told us that they fully agree with the ABA recommendation. EOIR also noted that OLAP does not require a specific number of hours because some of the recognized organizations have limited resources and creating a training hour requirement would be burdensome. However, we interviewed 11 Immigration Judges about legal immigration training and its importance to the practice of immigration law. One judge told us that accredited representatives need substantive law training and that even lawyers, who already have been extensively trained, can find immigration law challenging. Another judge told us that accredited representatives should receive training annually as state bar associations require of licensed lawyers, because the immigration laws change frequently.

¹⁹ 8 C.F.R. § 1292.13 (2019).

recommendations. For the 164 USCIS recommendations within the recognition and accreditation files we reviewed, 155 recommendations (or 95 percent) were for approving the applicant, while the remaining 9 recommendations (or 5 percent) were for rejecting the applicant. We provided these results to USCIS officials, who told us that our results appeared accurate, and that it is in USCIS's best interest to provide recommendation letters to EOIR on recognition and accreditation applicants. USCIS officials also said that the responsibility for providing a recommendation falls to USCIS's district and field offices, which have distinct procedures for providing recommendations. One official noted that some districts do not provide a recommendation if: (1) negative information is not identified, (2) the applicant could not be identified because of missing application information, or (3) the applicant had a common surname that resulted in too many search results. The officials also told us that they were receptive to USCIS offices using uniform guidance regarding recommendation letters to increase USCIS's rate of response.

USCIS's recommendations for organizations seeking recognition or accreditation are important because those recommendations provide OLAP with USCIS's assessment of an applicant's eligibility under the Program Regulation. The USCIS recommendations we reviewed in OLAP files addressed Program Regulation requirements and the thresholds needed to satisfy the requirements. During our file testing, we reviewed 10 applications that had been denied recognition or accreditation and 6 of those files contained critical information from USCIS cited in OLAP's letter rejecting the application request.²⁰ While USCIS recommendations are not required and missing recommendations do not prevent OLAP from making accreditation or recognition decisions, when OLAP makes decisions absent a USCIS recommendation it increases the risk that ineligible applicants will be recognized or accredited. Therefore, we recommend that EOIR discuss with USCIS the feasibility of requiring USCIS offices to provide EOIR recommendations regarding each recognition or accreditation applicant or provide a statement regarding why a recommendation cannot be provided.

Neither OLAP nor Recognized Organizations Perform Criminal History Checks on all Accreditation Applicants

The Program Regulation requires that accreditation applicants have the character and fitness to represent clients. To assess an applicant's character and fitness, the Program Regulation lists the applicant's criminal background, immigration status, and prior acts that relate to an individual's character as examples of factors to be considered.²¹ However, OLAP did not examine applicants'

²⁰ The remaining four rejected applications did not contain a USCIS recommendation.

²¹ According to the Program Regulation, "to establish eligibility for accreditation, an organization must demonstrate that the individual for whom the organization seeks accreditation has the character and fitness to represent clients.... Character and fitness includes, but is not limited to, an examination of factors such as: Criminal background; prior acts involving dishonesty, fraud, deceit, or misrepresentation; past history of neglecting professional, financial, or legal obligations; and current immigration status that presents an actual or perceived conflict of interest." 8 C.F.R. § 1292.12 (2019).

criminal backgrounds as part of its review process and until November 2019 had no plans to perform criminal background examinations. The Program Director told us that OLAP lacks access to subscription-based commercial databases to perform applicant criminal history checks. Other OLAP staff told us that, while they lack the capability to perform criminal history checks, they use publicly available sources of information such as websites and social media to review applications. We determined that the websites OLAP staff use do not provide comprehensive or reliable criminal history information.

The lack of criminal history checks was a factor in a case where a representative who received full accreditation in November 2011 was terminated from the Program in June 2017 after a news article reported that the representative sold \$200 identification cards under the false claim that the cards offered protection against deportation.²² The news article also reported that the accredited representative, who was a convicted felon, collected fees from multiple clients for immigration-related services that he never performed. When questioned about how he was able to obtain accreditation given his criminal history, the accredited representative explained that EOIR staff never asked about his criminal history. In January 2017, the new Program Regulation required that applicants for accreditation report to EOIR the existence of a serious criminal history.

This termination of a representative in 2017 illustrates how a criminal history check could have identified and prevented approval of an applicant with serious character and fitness concerns. We acknowledge that a requirement to perform criminal history checks may be burdensome to OLAP or some recognized organizations. However, in our judgment, examination of the representatives' criminal background, as suggested by the Program Regulation, is necessary to assure the character and fitness of accredited representatives. In fact, some recognized organizations were completing and submitting criminal history checks to EOIR at the time of our audit, which we believe demonstrates the feasibility of these checks.

In November 2019, 8 months after we initiated our audit, OLAP officials told us that EOIR had begun revising its accreditation application to enable EOIR to perform character and fitness assessments, including criminal history checks, on applicants. The revised application would require that an applicant provide their date of birth, which the previous application did not require, for EOIR to search an applicant's criminal history using a commercial database. In March 2020, EOIR made the revised accreditation application available on its website. Along with requiring a date of birth, the new application requires applicants to answer eight

²² See: <https://www.wnyc.org/story/attorney-general-closes-charity-run-bronx-man-who-sold-immigrant-id-cards/>.

questions about their character and fitness, including criminal background.²³ Despite requiring this information on the revised form, OLAP officials told us that EOIR had no plans to conduct uniform criminal history checks of all applicants or to otherwise verify an applicant's character and fitness responses. The Program Director told us that OLAP staff did not have access to the commercial databases used to obtain criminal history information.²⁴ However, OLAP may request that EOIR's Office of General Counsel, Fraud and Abuse Prevention Program office investigate an applicant's background if OLAP's review results in "red flag" indicators, such as when the applicant is suspected of practicing law without a license or submitting a forged certification record, or when OLAP receives an application signed by an unauthorized official. Without uniform applicant background checks and a process to verify applicant responses, EOIR is unable to ensure accreditation applicants possess suitable character and fitness. Consequently, we recommend that EOIR perform uniform background and criminal history checks to assess each accreditation applicants' character and fitness.

OLAP's Process for Monitoring Program Compliance of Approved Organizations and Representatives Employed the Same Controls Used for Documenting Approval or Rejection Decisions and Should be Strengthened

Monitoring program participants provides assurance that proper oversight is performed to ensure adherence to program policies and procedures and that corrective actions are taken when necessary. We found that OLAP employs essentially the same controls for monitoring as it does for approving and rejecting applications. Consequently, the same control weaknesses we previously identified in our sample testing of applications exist in OLAP's monitoring process.

The revised Program Regulation created a requirement for organizations to renew their recognition every 6 years.²⁵ The Director told us that this requirement

²³ The revised application requires applicants to answer the following questions: (1) Has the representative ever practiced law without authorization? (2) Has the representative ever committed a crime of any kind, even if he or she was not arrested, cited, charged with, or tried for that crime? (3) Has the representative ever been found guilty or nolo contendere to, a serious crime, as defined in any court anywhere in the world? (4) Has the representative ever committed prior acts involving dishonesty, fraud, deceit, or misrepresentation? (5) Does the representative have a history of neglecting professional, financial, or legal obligations? (6) Does the representative have a current immigration status that presents an actual or perceived conflict of interest? (7) Has the representative ever resigned while a disciplinary investigation or proceeding was pending? (8) Is the representative subject to any order disbaring, suspending, enjoining, restraining, or otherwise restricting the individual in the practice of law or representation before a court or any administrative agency?

²⁴ The Director told us that it was not necessary for OLAP's staff to have commercial database access to obtain criminal history information because staff can request that information from other EOIR officials, such as an Office of General Counsel Fraud Investigator. He also told us that obtaining commercial databases licenses for the staff represented a significant cost.

Moreover, we asked the Director if EOIR could arrange to have the Federal Bureau of Investigation (FBI) conduct criminal history checks for all accreditation applicants. The Director told us that EOIR had not engaged with the FBI for that purpose.

²⁵ The revised Program Regulation did not alter the preexisting requirement for accredited representatives to renew their accreditation every 3 years.

provided OLAP with an opportunity to determine if organizations comply with program requirements. He added that EOIR's process for resolving complaints helps OLAP assess compliance and allows the Program to pursue any concerns identified in complaints.

We assessed OLAP's monitoring activities during our sample testing of application files. We found that OLAP's monitoring process is essentially the same process it employs to approve or reject initial applications for recognition or accreditation. The applications that program participants submit to renew their recognition or accreditation are reviewed by a member of OLAP's review team to determine if the organization or representative remains eligible under Program rules. We found that most of the renewal applications within our sample contained sufficient support of OLAP's approval or rejection decisions; however, some files did not. As previously discussed, we found application files with missing or inconsistent training documentation, missing USCIS recommendations, and none of the applications contained evidence that EOIR performed a criminal history or background examination.²⁶ Given the problems we identified in our review of recognition and accreditation files, we are concerned that the monitoring process is not sufficient to ensure compliance with Program requirements because the same controls used to approve or reject applications for recognition or accreditation are also used to monitor compliance. The action proposed in Recommendation 1, which is to ensure that OLAP's application files contain sufficient documentation for eligibility requirements, will improve the value of the monitoring process.

EOIR Had a Process for Investigating Allegations of Misconduct Involving Recognized Organizations and Accredited Representatives but Allegations were not Always Investigated Promptly

Accredited representatives and recognized organizations must comply with DOJ's professional rules of conduct for immigration practitioners, which prohibit a wide range of behavior, some of which is included in Figure 1.²⁷ Although EOIR has a process for investigating allegations of accredited representative misconduct and a practice of prioritizing the review of such allegations over allegations not involving accredited representatives, such as allegations against attorneys, we found that 7 of 10 representative complaints that we tested took approximately 101 to 703 days for EOIR to initiate an inquiry.

Immigrants are especially vulnerable to fraud involving immigration legal services because of communication barriers, an unfamiliarity with complex U.S. immigration laws, and a fear that they will be deported if they report their victimization to authorities.

²⁶ Tables 2 and 3 combine the test results of initial and renewal applications. We found no material difference between the two categories.

²⁷ 8. C.F.R. §§ 1003.101-1003.111 (2019).

DHS has programs and processes similar to the DOJ for ensuring compliance with Federal professional conduct rules.

Figure 1

Types of Behavior Prohibited by DOJ Professional Conduct Rules for Immigration Practitioners

- Examples of practitioner behavior that can lead to an Attorney Discipline Program inquiry include:**
- charging grossly excessive fees;
 - engaging in conduct lacking competence or diligence;
 - knowingly or recklessly making a false statement of material fact or otherwise misleading and/or misinforming any person, including knowingly or recklessly offering evidence known to be false;
 - making false or misleading communications about qualifications or services;
 - providing ineffective assistance of counsel as found by the Board of Immigration Appeals or an Immigration Judge;
 - repeatedly failing to appear for scheduled hearings in a timely manner without good cause;
 - failing to maintain communication with a client;
 - failing to abide by a client's decision in a case;
 - failing to adequately supervise an accredited representative; or
 - employing, receiving services from, or affiliating with an individual who performs an activity that constitutes the unauthorized practice of law or immigration fraud.

Source: EOIR *Immigration Practitioner/Organization Complaint Form* and U.S. Attorney's Office Bulletin

We interviewed EOIR's Disciplinary Counsel and reviewed EOIR's guidance to determine its process for investigating accredited representative misconduct allegations.

EOIR's Process for Receiving, Reviewing, and Investigating Complaints

The Disciplinary Counsel told us that complaints involving EOIR practitioners, including attorneys and fully accredited representatives, are handled by the Attorney Discipline Program (Discipline Program).²⁸ The Discipline Program is a component of EOIR's Office of the General Counsel. Along with the Disciplinary Counsel who oversees the Discipline Program, the program is staffed by another attorney, an investigator, and a program analyst, who collectively process the complaints. The majority of practitioner complaints are made against attorneys. The Disciplinary Counsel estimated that his office receives about 600 attorney

²⁸ DHS is responsible for investigating allegations involving partially accredited representatives and fully accredited representatives practicing before DHS. Although the Discipline Program also handles complaints against recognized organizations, we did not review how complaints against recognized organizations were resolved.

complaints each year and that only 5 to 10 complaints involve accredited representatives.

According to the Disciplinary Counsel, most complainants allege conduct lacking competence, which can include failing to appear for hearings or following court orders, misstating facts or the law, or engaging in frivolous behavior on the part of the practitioner. Complaints can be made by Immigration Judges or the Board of Immigration Appeals, which are collectively referred to as “internal” complaints. Complaints can also be made by non-citizens, attorneys, DHS officials, or state bar associations, which are collectively referred to as “external” complaints.

Once the complaint is received by the Discipline Program, it is reviewed to determine if the complaint warrants further investigation. The Disciplinary Counsel told us that upon receiving the complaint his office will review the complaint, input the complaint into an electronic database, and request from the immigration court the Record of Proceedings, which constitutes the record of any application, petition, hearing, or other proceeding.

If the complaint does not allege misconduct on the part of the practitioner or organization that violates rules of professional conduct, then no further action is taken, and the complaint is dismissed. However, if the complaint has merit, a case is prepared, and a preliminary inquiry is conducted. The Discipline Program will prepare and send an inquiry letter to the subject of the complaint, who will have an opportunity to respond. The complainant is also notified of the inquiry. The complainant is notified of the final disposition by letter. A Discipline Program decision can be appealed to the BIA. A BIA decision can be challenged in U.S. District Court.

If upon completion of the inquiry it is determined that the practitioner or organization has engaged in a violation of the rules of professional conduct, the Disciplinary Counsel has discretion to issue an informal admonition or warning letter in lieu of initiating formal proceedings before BIA. Warning letters remain confidential but may become public record under certain circumstances. In the complaints we reviewed, EOIR issued warning letters to accredited representatives for failing to provide competent legal representation, acting negligently, and for knowingly, or with reckless disregard, making false or misleading communications about the accredited representative’s qualifications.²⁹

The Disciplinary Counsel may also initiate formal disciplinary proceedings, which are public, if the Counsel determines that sufficient evidence exists to warrant charging an accredited representative with professional misconduct. The Counsel told us that he was aware of one such case during the 3-year period we reviewed. In that case, the accredited representative was found to have engaged in the unauthorized practice of law and was removed from the Program.

When formal disciplinary proceedings are complete, EOIR will issue a final order. If discipline by termination is imposed, EOIR will notify the public that the

²⁹ 8 C.F.R. §§ 1003.101-1003.111 (2019).

representative is no longer authorized to represent clients before the immigration court, BIA, and DHS. This is done by removing the name of the representative from OLAP's online roster of recognized organizations and accredited representatives and placing documentation of the representative's discipline proceeding on a website of currently disciplined practitioners.³⁰

Sample Testing of Complaints Involving Accredited Representatives Identified Significant Delays between Receipt of Complaints and Initiation of Inquiries

From January 2017 to February 2019 EOIR received 10 complaints involving accredited representatives. We obtained and reviewed these complaints as well as documentation of EOIR's investigation and resolution of the complaints, which are summarized in Table 4 below.

Table 4
Allegations of Misconduct Involving Accredited Representatives Reported to EOIR from January 2017 to February 2019

	Complaint Description	Date EOIR Received Complaint	Date EOIR Initiated an Inquiry	Days Between Receipt and Inquiry	Resolution Action
1	Representative failed to provide competent legal representation.	1/10/2017	4/21/2017	101	Representative was terminated from the Program.
2	Representative failed to provide competent legal representation and acted negligently.	5/2/2017	4/5/2019	703	Representative was issued a warning letter.
3	Representative failed to provide competent legal representation.	6/7/2017	4/5/2019	667	Representative was issued a warning letter.
4	Representative failed to provide competent legal representation and acted negligently.	8/14/2017	4/3/2019	597	Representative was issued a warning letter.
5	Representative failed to provide competent legal representation.	8/14/2017	4/5/2019	599	Representative was issued a warning letter.
6	Representative failed to provide competent legal representation.	9/14/2017	4/5/2019	568	Representative was issued a warning letter.
7	Representative misled the public by allowing an internet social media posting to identify them as an attorney.	9/18/2017	7/9/2018	294	Representative was terminated from the Program.
8	Representative misled the public by allowing an internet social media posting to identify them as an attorney.	2/5/2018	3/1/2018	24	Representative was issued a warning letter.
9	Representative misled the public by allowing an internet social media posting to identify them as an attorney.	6/18/2018	7/3/2018	15	Representative was issued a warning letter.
10	Representative falsified client's asylum claim.	2/1/2019	2/4/2019	3	Representative voluntarily terminated their accreditation.

Source: OIG analysis of EOIR's complaint files

³⁰ Currently disciplined practitioners: <https://www.justice.gov/eoir/list-of-currently-disciplined-practitioners>; Recognition and accreditation rosters: <https://www.justice.gov/eoir/recognition-accreditation-roster-reports>

As shown in the table, 6 of the 10 complaints involved allegations that the accredited representative provided incompetent or negligent legal representation. Of the remaining four complaints: (1) three alleged that the accredited representative misled the public regarding their legal credentials and (2) one alleged that the accredited representative falsified an asylum claim. Additionally, we found that EOIR did not initiate an inquiry into 7 of the 10 complaints until anywhere from 101 to 703 days (504 days average) after the complaint was received.

According to the Disciplinary Counsel, since OLAP took over administration of the program in January 2017, the Discipline Program has prioritized complaints involving accredited representatives over attorney or other practitioner complaints. The Counsel explained that this prioritization is manually performed when a staff member recognizes that an incoming complaint involves an accredited representative and initiates the inquiry.

Although EOIR uses an electronic database to track its complaints, the database does not allow for the identification and separation of accredited representative complaints from non-accredited representative complaints so that accredited representative complaints can be prioritized for investigation. The Disciplinary Counsel believed enhancements to EOIR's electronic database would enable the Discipline Program to automatically filter accredited representative complaints for prioritization. In addition, EOIR does not have an established time requirement for opening an inquiry. In our judgment, delays that approach or exceed 1 year before initiating an inquiry increase the risk that documentary, testimonial, or other types of evidence pertaining to misconduct allegations will be lost, forgotten, or become otherwise unavailable. Also, the delay allows potentially unqualified accredited representatives to continue using their accreditation to represent clients. Consequently, we recommend that EOIR establish written policies and procedures to ensure that accredited representative complaints are appropriately prioritized and initiated in a timely manner, to include but not limited to, a study of the feasibility of enhancing EOIR information technology systems used to track the days between the receipt of the accredited representative complaint and the complaint's investigation and resolution.

CONCLUSION AND RECOMMENDATIONS

OLAP established controls for approving or rejecting applications for recognition or accreditation, monitoring activities of accredited representatives, and resolving allegations of misconduct involving accredited representatives, but opportunities exist to strengthen these controls. From our sample testing of 76 applications for recognition and 204 applications for accreditation, we found that most applications contained sufficient documentation to support OLAP's decisions. We also found that OLAP was inconsistent in its enforcement of Program training requirements. Further, we found that more than one-third of applications for both recognition and accreditation did not contain a USCIS recommendation permitted by the Program Regulation and that OLAP does not perform uniform criminal history examinations to assess an applicant's character and fitness. Moreover, OLAP employs a process to assess compliance with Program rules by requiring organizations and representatives to periodically renew their recognition or accreditation. We determined that this monitoring process has the same weaknesses we identified in the process EOIR employs to approve or reject applications. Lastly, we found seven accredited representative complaints that were not investigated promptly.

We recommend that EOIR:

1. Ensure that OLAP's application files contain sufficient documentation demonstrating that eligibility requirements for admittance into the Program have been satisfied.
2. Require accreditation applicants to submit a certificate of completion, or other similarly verifiable record, for all training courses completed.
3. Study the feasibility of and, if feasible, implement a minimum, periodic requirement for completing the legal immigration and trial and advocacy training described in the Program Regulation.
4. Discuss with USCIS the feasibility of requiring USCIS offices to provide EOIR recommendations regarding each recognition or accreditation applicant or provide a statement regarding why a recommendation cannot be provided.
5. Perform uniform background and criminal history checks to assess each accreditation applicants' character and fitness.
6. Establish written policies and procedures to ensure that accredited representative complaints are appropriately prioritized and initiated in a timely manner, to include but not limited to, a study of the feasibility of enhancing EOIR information technology systems used to track the days between the receipt of the accredited representative complaint and the complaint's investigation and resolution.

OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

Our audit objectives were to determine whether the Executive Office for Immigration Review (EOIR): (1) has effective controls for the selection, vetting, and certification of accredited representatives under the Recognition and Accreditation Program (Program); (2) monitors the activities of accredited representatives; and (3) has adequate procedures for investigating and resolving allegations of misconduct against accredited representatives.

Scope and Methodology

Our audit generally covered, but was not limited to, January 2017 through September 2019. To accomplish our objectives, we interviewed officials within EOIR's Office of Legal Assistance Programs (OLAP) responsible for administering the Program. We interviewed officials within EOIR's Attorney Discipline and Fraud and Abuse Prevention Programs, 11 Immigration Judges, officials from a non-profit immigration services organization that provided guidance and training to accredited representatives and their affiliated organization, and four Department of Homeland Security U.S. Citizenship and Immigration Services' officials. We reviewed EOIR's Program guidance, policies, and procedures for approving or denying requests for accreditation or recognition. Additionally, we reviewed and tested 280 applications from organizations submitted to OLAP requesting recognition (76 applications) or accreditation (204 applications) from February 2017 to February 2019. This non-statistical sample design does not allow projection of the test results to all applications. Further, we reviewed procedures for investigating and resolving allegation of misconduct made against accredited representatives.

Statement on Compliance with Generally Accepted Government Auditing Standards

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In conducting our audit, we tested compliance with what we consider to be the most important conditions of the Program. Unless otherwise stated in this report, the criteria we used to evaluate compliance are contained in the EOIR's Recognition and Accreditation Program Rules and Regulations (Final Rule) published on December 19, 2016. We also used OLAP's guidance, policies, and procedures for approving or denying requests for accreditation or recognition, including OLAP's internal written guidelines (*Recognition and Accreditation Program Internal Review Guidelines*), which reviewers refer to during their review process.

Internal Controls

We performed testing of internal controls significant within the context of our audit objectives. We did not evaluate the internal controls of EOIR to provide assurance on its internal control structure as a whole. EOIR's management is responsible for the establishment and maintenance of internal controls in accordance with the rules for Recognition of Organizations and Accreditation of Non-Attorney Representatives, 8 C.F.R. § 1292 and DOJ Professional Rules of Conduct for Immigration Practitioners, 8 C.F.R. § 1003. Because we do not express an opinion on EOIR's internal control structure as a whole, we offer this statement solely for the information and use of EOIR.

As noted in the Audit Results section of this report, we identified deficiencies in EOIR's internal controls that are significant within the context of the audit objectives and based upon the audit work performed that we believe adversely affect EOIR's ability to administer the Program.

Internal Control Components & Principles Significant to the Audit Objectives	
Control Environment Principles	
	The oversight body should oversee the entity's internal control system.
	Management should demonstrate a commitment to recruit, develop, and retain competent individuals.
Risk Assessment Principles	
	Management should consider the potential for fraud when identifying, analyzing, and responding to risks.
Control Activity Principles	
	Management should design control activities to achieve objectives and respond to risks.
	Management should design the entity's information system and related control activities to achieve objectives and respond to risks.
	Management should implement control activities through policies.
Information & Communication Principles	
	Management should use quality information to achieve the entity's objectives.
Monitoring Principles	
	Management should establish and operate monitoring activities to monitor the internal control system and evaluate the results.
	Management should remediate identified internal control deficiencies on a timely basis.

We assessed implementation and operational effectiveness of these internal controls and did not identify any deficiencies that we believe could affect EOIR's

ability to administer the Program. The internal control deficiencies we found are discussed in the Audit Results section of this report. However, because our review was limited to these internal control components and underlying principles, it may not have disclosed all internal control deficiencies that may have existed at the time of this audit.

Compliance with Laws and Regulations

In this audit we also tested, as appropriate given our audit objectives and scope, selected transactions, records, procedures, and practices, to obtain reasonable assurance that EOIR's management complied with federal laws and regulations for which non-compliance, in our judgment, could have a material effect on the results of our audit. Our audit included examining, on a test basis, EOIR's compliance with the following laws and regulations that could have a material effect on EOIR's operations:

- Recognition of Organizations and Accreditation of Non-Attorney Representatives, 8 C.F.R. § 1292 (2019).
- DOJ Professional Rules of Conduct for Immigration Practitioners, 8 C.F.R. § 1003 (2019).

This testing included interviewing EOIR officials, analyzing data of recognized organizations and accredited representatives, assessing OLAP's internal control procedures, and examining EOIR's procedural practices. However, nothing came to our attention that caused us to believe that EOIR was not in compliance with the aforementioned laws and regulations.

Sample-Based Testing

To accomplish our audit objectives, we performed sample-based testing of EOIR's application files for recognition and accreditation. We judgmentally selected for testing the application files for 204 of 1,322 accredited representatives who received initial or renewed accreditation from February 2017 to February 2019, and who were still active at the time of our selection. Of the 204 representatives selected, 155 of the applications were for full accreditation and 49 were for partial accreditation. In addition, we judgmentally selected for testing 76 recognition application files for the organizations that employed a portion of our sampled accredited representatives. The organizations sampled were all recognized or renewed during or after February 2017. We reviewed each application file for documentation demonstrating that the applicant satisfied Program eligibility requirements. We also reviewed 10 complaints received from January 2017 through February 2019.

Computer-Processed Data

During our audit, we obtained recognized organizations and accredited representative data from EOIR, secondary systems. We did not test the reliability of those systems as a whole, therefore any findings identified involving information from those systems were verified with documentation from other sources.

We assessed the reliability of EOIR's data by: (1) performing electronic testing of required data elements, (2) reviewing existing information about the data and the system that produced it, and (3) interviewing EOIR officials knowledgeable about the data. We determined that the data was sufficiently reliable for the purpose of selecting a sample of EOIR's recognition and accreditation application files.

**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
RESPONSE TO THE DRAFT AUDIT REPORT**



U.S. Department of Justice
Executive Office for Immigration Review
Office of the Director

*5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041*

September 11, 2020

Jason R. Malmstrom
Assistant Inspector General for Audit
U.S. Department of Justice
Office of the Inspector General
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Malmstrom:

This is in response to your letter dated August 28, 2020 providing an official copy for review and comment on the draft report of the Office of the Inspector General (OIG), "Audit of the Executive Office for Immigration Review Recognition and Accreditation Program." Thank you for the opportunity to review the draft report and provide our agency views prior to its issuance.

The Executive Office for Immigration Review (EOIR) appreciates the OIG's efforts throughout the audit process to comprehensively assess the Recognition and Accreditation (R&A) Program and to offer recommendations for programmatic improvements. In 2015 EOIR proposed transferring oversight of the R&A Program from the Board of Immigration Appeals to the Office of Legal Access Programs (OLAP). That transfer was finalized in December 2016 and became effective the following month. Based on the deficiencies identified by the OIG audit, including alleged disregard for certain regulatory requirements, EOIR is disappointed in the oversight of the R&A Program by OLAP since that transfer. In particular, OLAP's "patchwork of unwritten rules and preferences" regarding applicant training requirements and its failure to "examine applicants' criminal backgrounds as part of its review process," neither of which are countenanced by applicable regulations, are simply unacceptable, nor are they indicative of EOIR's commitment to ensuring the R&A Program is conducted in accordance with the applicable law. EOIR strongly agrees with each of the OIG audit recommendations and provides the following responses specific to each recommendation:

Recommendation 1 — Ensure that OLAP's application files contain sufficient documentation demonstrating that eligibility requirements for admittance into the Program have been satisfied.

Response: Prior to the report's publication, EOIR's Office of Policy initiated an effort to move the R&A application process to an electronic workflow for approvals with the ultimate goal of requiring applicants for recognition and accreditation to submit applications online. That automated process will ensure that each application is supported by all required documentation. EOIR expects to be able to complete the automation of the application process by the end of FY 2022. In the interim, EOIR has directed OLAP to immediately begin ensuring that every application file contains sufficient documentation demonstrating that eligibility requirements for the R&A Program have been satisfied. Beginning in Q1 of FY 2021, EOIR will take additional steps to ensure that all applications contain sufficient documentation to justify approval by the R&A Program in accordance with the applicable regulations, including standardizing intake procedures and periodic internal file audits. EOIR will also create an online resource for applicants to reference while completing their applications. Doing so will systematize the guidance provided to applicants regarding how to prepare a complete application package. EOIR expects to complete the online resource in Q2 of FY 2021.

Recommendation 2 — Require accreditation applicants to submit a certificate of completion, or other similarly verifiable record, for all training courses completed.

Response: The applicable regulation, 8 C.F.R. § 1292.12(c), already requires the submission of "documentation of all relevant, formal immigration-related training, including a course on the fundamentals of immigration law, procedure, and practice" for partial accreditation and the additional submission of documentation of "formal training, education, or experience related to trial and appellate advocacy" for full accreditation. To the extent that OLAP has not previously required appropriate and verifiable documentation of those requirements for all applications, including proof that training was completed, EOIR has directed OLAP to immediately begin adhering to the regulatory requirements for accreditation applications in all cases, including the submission of proof of the completion of appropriate training. Further, EOIR anticipates additional training and the implementation of quality control measures in Q1 of FY 2021, including periodic internal audits, to ensure compliance with regulatory requirements for training by applicants to the R&A Program.

Recommendation 3 — Study the feasibility of and, if feasible, implement a minimum, periodic requirement for completing the legal immigration and trial and advocacy training described in the Program Regulation.

Response: EOIR agrees with the recommendation of both the OIG audit and the American Bar Association that accredited representatives should participate in annual continuing training related to immigration law. EOIR believes that such a requirement, which would be similar to continuing legal education requirements applicable to attorneys in most states, is both feasible and reasonable. In Q1 of FY 2021, EOIR will determine the best way to implement an annual continuing training requirement and will then initiate the implementation process to add such a requirement.

Recommendation 4 — Discuss with USCIS the feasibility of requiring USCIS offices to provide EOIR recommendations regarding each recognition or accreditation applicant or provide a statement regarding why a recommendation cannot be provided.

Response: EOIR engages in a continuing dialogue with USCIS regarding the R&A Program and believes that statements or recommendations from USCIS are helpful to the process. EOIR will discuss with USCIS the feasibility of requiring such recommendations or statements in Q1 of FY 2021.

Recommendation 5 — Perform uniform background and criminal history checks to assess each accreditation applicants' character and fitness.

Response: Consistent with 8 C.F.R. § 1292.12(a)(1) and (5), EOIR will take steps to ensure that the character and fitness of each accreditation applicant is appropriately assessed, including an examination of the applicant's criminal background through background or criminal history checks. EOIR has recently revised its accreditation application form to more readily ascertain an applicant's criminal history and is evaluating further possible revisions related to that issue. Although EOIR lacks the resources to perform a full-field background investigation on every accreditation applicant, it is feasible for OLAP, or potentially another EOIR component, to perform commercial database checks of criminal histories of applicants in conjunction with information provided by the applicants. EOIR anticipates developing a set of internal procedures in Q1 of FY 2021 regarding the performance of uniform background and criminal history checks to assess each applicant's character and fitness and to ensure that OLAP is appropriately adhering to the requirements of 8 C.F.R. § 1292.12(a)(1) and (5) in considering applicants for the R&A Program.

Recommendation 6 — Establish written policies and procedures to ensure that accredited representative complaints are appropriately prioritized and initiated in a timely manner, to include but not limited to, a study of the feasibility of enhancing EOIR information technology systems used to track the days between the receipt of the accredited representative complaint and the complaint's investigation and resolution.

Response: The Attorney Discipline Program (AD Program) has established standard operating procedures (SOPs) to govern the program's operations that have been in effect since January 1, 2020. The SOPs formalize the AD Program's policy to prioritize complaints against accredited representatives so that all team members are aware of the importance of such complaints. The AD Program agrees that better tracking of accredited representative complaints within its information technology system would aid in effectuating the formal policy. Within one year of the date of the release of the report, the AD Program, through the Office of the General Counsel, will study the feasibility of enhancing the tracking mechanisms.

Jason R. Malmstrom

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EOIR is committed to maintaining an effective R&A Program consistent with the applicable law. We appreciate your efforts to assist EOIR in determining best practices to strengthen that Program. Should you or your staff require further information, please do not hesitate to contact us.

Sincerely,

**JAMES
MCHENRY**  Digitally signed by JAMES
MCHENRY
Date: 2020.09.11
08:04:54 -04'00'

James R. McHenry III
Director

OFFICE OF THE INSPECTOR GENERAL ANALYSIS AND SUMMARY OF ACTIONS NECESSARY TO CLOSE THE REPORT

The Office of the Inspector General (OIG) provided a draft of this audit report to the Executive Office for Immigration Review (EOIR). EOIR's response is incorporated in Appendix 2 of this final report. In response to our audit report, EOIR agreed with our recommendations and discussed the actions it will implement in response to our findings. As a result, the status of the audit report is resolved. The following provides the OIG analysis of the response and summary of actions necessary to close the report.

Recommendations for EOIR:

- 1. Ensure that the Office of Legal Access Program's (OLAP) application files contain sufficient documentation demonstrating that eligibility requirements for admittance into the Recognition and Accreditation Program (Program) have been satisfied.**

Resolved. EOIR agreed with the recommendation. In its response, EOIR stated that prior to the audit report's publication, its Office of Policy initiated an effort to move the Program application process to an electronic workflow for approvals, with the ultimate goal of requiring applicants for recognition and accreditation to submit applications online. EOIR stated that the automated process will ensure that each application is supported by all required documentation. EOIR expects to complete the automation of the application process by the end of fiscal year (FY) 2022 and stated that, in the interim, it has directed OLAP to immediately begin ensuring that every application file contains sufficient documentation demonstrating that eligibility requirements for the Program have been satisfied. Moreover, EOIR stated that beginning in the first quarter of FY 2021, it will take additional steps to ensure that all applications contain sufficient documentation to justify approval by the Program in accordance with the applicable regulations, including standardizing intake procedures and periodic internal file audits. EOIR also stated that it will create an online resource for applicants to reference while completing their applications and that doing so will systematize the guidance provided to applicants on how to prepare a complete application package. EOIR stated that it expects to complete the online resource in the second quarter of FY 2021.

This recommendation can be closed when we receive documentation that shows EOIR's application files contain sufficient documentation demonstrating that eligibility requirements for admittance in the Program have been satisfied.

2. Require accreditation applicants to submit a certificate of completion, or other similarly verifiable record, for all training courses completed.

Resolved. EOIR agreed with the recommendation, and in its response stated that the applicable regulation, 8 C.F.R. § 1292.12(c), already requires the submission of “documentation of all relevant, formal immigration-related training, including a course on the fundamentals of immigration law, procedure, and practice” for partial accreditation and the additional submission of documentation of “formal training, education, or experience related to trial and appellate advocacy” for full accreditation. EOIR also stated that to the extent that OLAP has not previously required appropriate and verifiable documentation of those requirements for all applications, including proof that training was completed, EOIR has directed OLAP to immediately begin adhering to the regulatory requirements for accreditation applications in all cases, including the submission of proof of the completion of appropriate training. Further, EOIR stated that it anticipates additional training and the implementation of quality control measures in the first quarter of FY 2021, including periodic internal audits, to ensure compliance with regulatory requirements for training by applicants to the Program.

This recommendation can be closed when we receive documentation showing that EOIR requires accreditation applicants to submit a certificate of completion, or other similarly verifiable record, for all training courses completed.

3. Study the feasibility of and, if feasible, implement a minimum, periodic requirement for completing the legal immigration and trial and advocacy training described in the rules for Recognition of Organizations and Accreditation of Non-Attorney Representatives (Program Regulation).

Resolved. EOIR agreed with the recommendation. In its response EOIR also stated that it agreed with the American Bar Association that accredited representatives should participate in annual continuing training related to immigration law. EOIR stated that it believes such a requirement, which would be similar to continuing legal education requirements applicable to attorneys in most states, is both feasible and reasonable. Moreover, EOIR stated that in the first quarter of FY 2021, it will determine the best way to implement an annual continuing training requirement and will then initiate the implementation process to add such a requirement.

This recommendation can be closed when we receive documentation showing that EOIR has implemented an annual continuing training requirement.

4. **Discuss with the U.S. Citizenship and Immigration Services (USCIS) the feasibility of requiring USCIS offices to provide EOIR recommendations regarding each recognition or accreditation applicant or provide a statement regarding why a recommendation cannot be provided.**

Resolved. EOIR agreed with the recommendation, and in its response stated that it engages in a continuing dialogue with USCIS regarding the Program and believes that statements or recommendations from USCIS are helpful to the process. EOIR stated that it will discuss with USCIS the feasibility of requiring such recommendations or statements in the first quarter of FY 2021.

This recommendation can be closed when we receive documentation from EOIR reflecting discussions with USCIS on the feasibility of requiring USCIS offices to provide EOIR recommendations regarding each recognition or accreditation applicant or a statement regarding why a recommendation cannot be provided.

5. **Perform uniform background and criminal history checks to assess each accreditation applicants' character and fitness.**

Resolved. EOIR agreed with the recommendation and stated that consistent with 8 C.F.R. § 1292.12(a)(1) and (5), EOIR will take steps to ensure that the character and fitness of each accreditation applicant is appropriately assessed, including an examination of the applicant's criminal background through background or criminal history checks. EOIR stated that it has recently revised its accreditation application form to ascertain more readily an applicant's criminal history and is evaluating further possible revisions related to that issue. EOIR also stated that although it lacks the resources to perform a full-field background investigation on every accreditation applicant, it is feasible for OLAP, or potentially another EOIR component, to perform commercial database checks of criminal histories of applicants in conjunction with information provided by the applicants. EOIR stated that it anticipates developing a set of internal procedures in the first quarter of FY 2021 regarding the performance of uniform background and criminal history checks to assess each applicant's character and fitness and to ensure OLAP is appropriately adhering to the requirements of 8 C.F.R. § 1292.12(a)(1) and (5) in considering applicants for the Program.

This recommendation can be closed when we receive documentation showing that EOIR performs uniform background and criminal history checks to assess each accreditation applicants' character and fitness.

6. **Establish written policies and procedures to ensure that accredited representative complaints are appropriately prioritized and initiated in a timely manner, to include but not limited to, a study of the feasibility of enhancing EOIR information technology systems used to track the days between the receipt of the accredited representative complaint and the complaint's investigation and resolution.**

Resolved. EOIR agreed with the recommendation and stated that the Attorney Discipline Program (AD Program) has established standard operating procedures (SOPs) to govern the program's operations that have been in effect since January 1, 2020. EOIR stated that the SOPs formalize the AD Program's policy to prioritize complaints against accredited representatives so that all team members are aware of the importance of such complaints. EOIR also stated that the AD Program agrees that better tracking of accredited representative complaints within its information technology system would aid in effectuating the formal policy. Lastly, EOIR stated that within 1 year of the date of the release of the report, the AD Program, through the Office of the General Counsel, will study the feasibility of enhancing the tracking mechanisms.

This recommendation can be closed when we receive documentation of EOIR's written policies and procedures to ensure that accredited representative complaints are appropriately prioritized and initiated in a timely manner including a study of the feasibility of enhancing EOIR information technology systems used to track the days between the receipt of the accredited representative complaint and the complaint's investigation and resolution.