



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

Lauren Alder Reid
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Executive Office for Immigration Review
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Submitted via <http://www.regulations.gov>

Re: Executive Office for Immigration Review, Department of Justice, Notice of Proposed Rulemaking: *Executive Office for Immigration Review Electronic Case Access and Filing*, EOIR Docket No. 18–0203, RIN 1125–AA81 (85 Fed. Reg. 78240, 12/4/20).

Dear Ms. Reid,

The American Immigration Lawyers Association (AILA) submits the following comments in response to the above-referenced Executive Office for Immigration Review (EOIR) proposed rule, EOIR Docket No. 18–0203/RIN 1125–AA81, Executive Office for Immigration Review Electronic Case Access and Filing, 85 Fed. Reg. 78240 (December 4, 2020) (“Proposed Rule”).

Established in 1946, AILA is a voluntary bar association of more than 15,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. AILA’s mission includes the advancement of the law pertaining to immigration and naturalization and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws.

AILA greatly appreciates that EOIR is moving forward with an electronic filing system and agrees that it has the potential to produce significantly increased efficiencies for parties appearing before EOIR and for the agency itself. However, EOIR’s choice to impose a 30-day comment period, combined with the release of several other proposed regulations also requiring review and comment on short notice, has limited AILA’s ability to do an in-depth review of the proposed provisions.¹ In the limited review time, we have found two areas for potential improvements.

¹ Other proposed regulations recent deadlines to comment include: Motions To Reopen and Reconsider; Effect of Departure; Stay of Removal, 85 Fed. Reg. 75942 (November 27, 2020); Good Cause for a Continuance in Immigration Proceedings, 85 Fed. Reg. 75925 (November 27, 2020); Employment Authorization for Certain Classes of Aliens With Final Orders of Removal, 85 Fed. Reg. 74196 (November 19, 2020).

First, we appreciate that the proposed rule takes into account unplanned outages of the system and provides for extended deadlines in such cases.² However, we believe that this accommodation should be expanded to include planned and previously announced outages: if a filing deadline falls during a planned outage, the filer could file the business day following the outage. This policy would allow for situations where planned outages are announced without enough notice for the filer to adjust their preparation and filing or situations where a planned outage is not adequately publicized to external users.

Second, because EOIR does not directly accept fee payments, the proposed rule directs filers to make fee payments to DHS (as is the current practice) and then upload "a scanned copy of the filing fee receipt as part of their electronic submission."³ However, for years DHS has been severely delayed in issuing filing fee receipts. As a result, judges accept alternate proof of payment such as delivery confirmation that the filing fee was received by DHS or proof that DHS cashed the filing fee check. We suggest making it clear in the final rule that filers can also upload other appropriate proof of payment.

We encourage EOIR to consult regularly with stakeholders as electronic filing is rolled out in courts across the country, both so it can understand the impact of the new filing system and so it can incorporate feedback to improve the system for all users.

Sincerely,
The American Immigration Lawyers Association

² 85 Fed. Reg. at 78244-45.

³ 85 Fed. Reg. at 78246.