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Department of Veterans Affairs

8320-01

38 CFR Part 14

RIN 2900-AP51

Recognition of Tribal Organizations for Representation of VA Claimants

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its regulations concerning recognition of certain national, State, and regional or local organizations for purposes of VA claims representation. Specifically, this rulemaking would allow the Secretary of Veterans Affairs to recognize tribal organizations in a similar manner as the Secretary recognizes State organizations. The proposed rule would allow a tribal organization that is established and funded by one or more tribal governments to be recognized for the purpose of providing assistance on VA benefit claims. In addition, the proposed rule would allow an employee of a tribal government to become accredited through a recognized State organization in a similar manner as a County Veterans' Service Officer (CVSO) may become accredited through a recognized State organization. The intended effect of this proposed rule is to improve access of Native American veterans to VA-recognized organizations and VA-accredited individuals who may assist them on their benefit claims.

DATES: Written comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Written comments may be submitted through <http://www.regulations.gov>; by mail or hand delivery to the Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to “RIN 2900-AP51, Recognition of Tribal Organizations for Representation of VA Claimants.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System at <http://www.regulations.gov/>.

FOR FURTHER INFORMATION CONTACT: Dana Raffaelli, Staff Attorney, Benefits Law Group, Office of the General Counsel, (022D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 461-7699. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: This proposed rule would amend part 14 of title 38, Code of Federal Regulations, to provide for the recognition of tribal organizations that are established and funded by tribal governments so that representatives of the organizations may assist Native American veterans and their families in the preparation, presentation, and prosecution of their VA benefit claims. The purpose of this proposed

rule is to address the needs of Native American populations who are geographically isolated from existing recognized Veterans Service Organizations (VSOs) or who may not be utilizing other recognized VSOs due to cultural barriers or lack of familiarity with those organizations. Native American veterans face challenges accessing representation in VA claims because many live in remote areas that are far from the nearest accredited representative. In addition, some Native American veterans may prefer to seek assistance from organizations that are associated with their tribal government, rather than using other organizations that are not as familiar to them. This proposed rule would help facilitate the VA recognition of tribal organizations that are established and funded by one or more tribal governments and whose primary purpose is to serve Native American veterans.

Pursuant to 38 U.S.C. 5902, VA recognizes organizations and accredits their representatives for the preparation, presentation, and prosecution of claims under laws administered by VA. VA's regulation regarding the recognition of such organizations is 38 CFR 14.628, which currently does not expressly allow for the recognition of tribal organizations. Under the current regulations, however, any organization, including an organization created by one or more tribal governments, may apply for recognition by VA as either: (1) a national organization, or (2) a regional or local organization. To be recognized as a national organization, the organization must meet the requirements of § 14.628(a) and (d). To be recognized as a regional or local organization, the organization must meet the requirements of § 14.628(c) and (d). VA also accredits State organizations. To be recognized as a State organization, the organization must meet the requirements of § 14.628(b) and (d). Under the current regulations, VA has

received only a few inquiries from tribal governments expressing interest in pursuing any type of VA recognition other than the type of recognition granted to State organizations. Pursuant to 38 CFR 14.627 and 14.629, VA recognition of a State organization is limited to organizations established and funded by a State, possession, territory, or Commonwealth of the United States, and the District of Columbia. This proposed rule would allow tribal governments to establish and fund tribal organizations in a similar manner as the State governments have established and funded State organizations. Allowing organizations that are created and funded by tribal governments to be recognized as “tribal organizations” rather than as national, regional or local organizations would afford VA the opportunity to acknowledge and affirm the long-standing recognition by the Federal government of tribes’ inherent sovereignty and right to self-government.

This proposed rule would amend 38 CFR 14.627 by adding a paragraph (r) that would provide that tribal government means the Federally recognized governing body of any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or Regional or Village Corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. This is consistent with the definition of Indian tribe in 38 CFR 39.2.

This proposed rule would amend current § 14.628(b) by redesignating it as paragraph (b)(1), “State organization,” and adding paragraph (b)(2), “Tribal organization.” VA would clarify that a Tribal organization, for the purposes of 38 CFR

14.626 through 14.637, is a legally established organization that is primarily funded and controlled, sanctioned, or chartered by one or more tribal governments and that has a primary purpose of serving the needs of Native American veterans; that only one tribal organization may be recognized for each tribal government; and, that, if a tribal organization is created and funded by more than one tribal government, the approval of each tribal government must be obtained prior to applying for VA recognition and that, if one of the supporting tribal governments withdraws from the tribal organization, the tribal organization must notify VA of the withdrawal and certify that the tribal organization can continue to meet the recognition requirements in § 14.628(d) without the participation of that tribal government. This change is intended to allow tribal organizations to be recognized in a similar manner as State organizations, while still taking into account the unique circumstances of tribal governments being sovereign nations and of varying sizes.

In order to ensure that all claimants for VA benefits receive responsible, qualified representation in the preparation, presentation, and prosecution in their claims for veterans' benefits, VA has established general criteria that apply to all organizations requesting VA recognition as a national, State, regional, or local organization under § 14.628(a) through (c). Therefore, tribal organizations would also need to meet these same general requirements in order to be recognized. Pursuant to § 14.628(d), an organization requesting recognition must: (1) have as a primary purpose serving veterans, (2) demonstrate a substantial service commitment to veterans either by showing a sizable organizational membership or by showing performance of veterans' services to a sizable number of veterans, (3) commit a significant portion of its assets to

veterans' services and have adequate funding to properly perform those services, (4) maintain a policy and capability of providing complete claims service to each claimant requesting representation or give written notice of any limitation in its claims service with advice concerning the availability of alternative sources of claims service, and (5) take affirmative action, including training and monitoring of accredited representatives, to ensure proper handling of claims.

We recognize the varying sizes of tribal governments. We further recognize that, due to the size of certain smaller Indian tribes, a single tribal government may be unable to establish an organization that could demonstrate a substantial service commitment to veterans either by showing a sizable organizational membership or by showing performance of veterans' services to a sizable number of veterans. A single tribal government may also be unable to establish an organization that would be able to adequately fund the necessary services of a tribal organization that provides assistance with VA benefit claims. Therefore, VA would consider applications from a tribal organization that is established and funded by one or more tribal governments to be recognized for the purpose of providing assistance on VA benefit claims. The approval of each tribal government would be necessary for VA to process the request for VA recognition. While VA is sensitive to the fact that some tribal governments may have difficulty meeting the substantial service commitment and funding requirements, VA must ensure that VA accredited organizations can provide long-term, competent representation. Therefore, VA would require that, if one of the supporting tribal governments withdraws from the tribal organization, the tribal organization must notify VA of the withdrawal and certify that the tribal organization continues to meet the

recognition requirements in § 14.628(d) without the participation of that tribal government. We note that 25 U.S.C. 450b(l) recognizes the existence of tribal coalitions in the definition of tribal organization for the purpose of entering into contracts or grants for certain educational benefits. Additionally, in 38 CFR 39.2, VA has recognized the existence of a parallel concept for the purpose of applying for cemetery grants.

Based on our experience in applying § 14.628, we believe the proposed addition to the regulation would facilitate the recognition of Tribal organizations and would improve Native American veterans' access to accredited representatives. Once a tribal organization has been recognized by VA, the certifying official of the organization would be able to file for VA accreditation for the individuals that the organization wishes to become accredited as its representatives. See 38 CFR 14.629.

VA further recognizes that not all tribal governments may want to establish their own Tribal veterans organization and some may have already established working relationships with their respective State organizations to help address the needs of their Native American veteran population. We, therefore, propose to amend 38 CFR 14.629(a)(2) to allow for an employee of a tribal government that is not associated with a tribal organization, to become accredited as a representative of a State organization in a similar manner as a county employee, i.e., a CVSO. In 1990, in order to further ensure the availability of competent representation for VA claimants, VA extended the opportunity for accreditation through State organizations to county veterans' service officers. See 54 FR 50772; 55 FR 38056. In extending this opportunity, VA cited the close association between States and county veterans' service officers, likening the

association to that of a State employee under 54 FR 50772. In a previous rulemaking, VA recognized the fact that State governments do not have direct supervision of, or accountability for, CVSO, and therefore, to ensure adequate training and fitness to serve as a VA accredited representative, VA prescribed criteria that such officers must meet in order to become accredited. The criteria for a CVSO to become accredited through a State organization are outlined in § 14.629(a)(2)(i) through (iii). In order for a CVSO to be recommended for VA accreditation by a VA-recognized State organization, the officer must be a paid employee of the county working for it not less than 1,000 hours annually; have successfully completed a course of training and an examination which have been approved by a Regional Counsel with jurisdiction for the State; and receive either regular supervision and monitoring or annual training to assure continued qualification as a representative in the claims process. We note that the VA Office of the General Counsel (OGC) has recently undergone realignment and under the new structure Regional Counsels are now referred to as Chief Counsels. To avoid unnecessary confusion and because we intend to issue a direct final rule addressing the realignment of OGC and the changing of titles of certain OGC positions in the accreditation regulations in a single rulemaking, we are continuing to use the outdated title of Regional Counsel for this rulemaking.

Although tribal governments are not politically subordinate to State governments like county governments are, tribal governments often do have close, productive relationships with State governments through gaming compacts, cross-deputization, and other cooperative agreements. Therefore, we believe that the collaborative nature of the relationship between tribes and States supports the proposed concept of

recognizing tribal veterans' service officers in a manner similar to county veterans' service officers. As stated above, we believe this additional path to become an accredited representative would further facilitate veterans obtaining representation across county, State, and tribal borders.

For consistency, the proposed rule would also amend 38 CFR 14.635 to extend office space opportunities already granted to certain employees of State organizations to employees of tribal organizations. The proposed rule would allow the Secretary to furnish office space and facilities, when available, to both State and tribal organization employees who are also accredited to national organizations for the purpose of assisting claimants in the preparation, presentation, and prosecution of claims for benefits.

We are also requesting from the Office of Management and Budget (OMB) approval for the provisions of § 14.628(d) that constitute a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521). Therefore, we would remove the current OMB control number parenthetical at the end of § 14.628 and add, in its place, a placeholder parenthetical.

Finally, we would make a technical amendment to § 14.629(a)(2) to correct "county veteran's service officer" to read as "county veterans' service officer". In a prior rulemaking, we misplaced the location of the apostrophe associated with the previously mentioned phrase. See 54 FR 50772 (Dec. 11, 1989); 55 FR 38056 (Sept. 17, 1990). Therefore, we would correct that error in this rulemaking.

#### Paperwork Reduction Act

This proposed rule includes provisions constituting collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) that require approval by OMB. Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Proposed § 14.628 contains a collection of information under the Paperwork Reduction Act of 1995. If OMB does not approve the collection of information as requested, VA will immediately remove the provisions containing a collection of information or take such other action as is directed by OMB.

Comments on the collection of information contained in this proposed rule should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies sent by mail or hand delivery to the Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; fax to (202) 273-9026; e-mail to [www.Regulations.gov](http://www.Regulations.gov). Comments should indicate that they are submitted in response to “RIN 2900-AP51.”

OMB is required to make a decision concerning the collections of information contained in this proposed rule between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of

having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed rule.

The Department considers comments by the public on proposed collections of information in--

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The collection of information contained in 38 CFR 14.628 is described immediately following this paragraph, under its respective title.

Title: Requirements for Recognition as a VA Accredited Organization.

- Summary of collection of information: The collection of information in 38 CFR 14.628 would require organizations seeking VA accreditation under § 14.628 to submit certain documentation to certify that the organization meets the requirements for VA accreditation. Pursuant to § 14.628(d), an organization requesting recognition must have as a primary purpose serving veterans. In

establishing that it meets this requirement, an organization requesting recognition shall submit a statement establishing the purpose of the organization and that veterans would benefit by recognition of the organization.

The organization must also demonstrate a substantial service commitment to veterans either by showing a sizable organizational membership or by showing performance of veterans' services to a sizable number of veterans. In establishing that it meets this requirement, an organization requesting recognition shall submit: the number of members and number of posts, chapters, or offices and their addresses; a copy of the articles of incorporation, constitution, charter, and bylaws of the organization, as appropriate; a description of the services performed or to be performed in connection with programs administered by VA, with an approximation of the number of veterans, survivors, and dependents served or to be served by the organization in each type of service designated; and a description of the type of services, if any, performed in connection with other Federal and State programs which are designed to assist former Armed Forces personnel and their dependents, with an approximation of the number of veterans, survivors, and dependents served by the organization under each program designated.

An organization requesting recognition must commit a significant portion of its assets to veterans' services and have adequate funding to properly perform those services. In establishing that it meets this requirement, an organization requesting recognition shall submit: a copy of the last financial statement of the organization indicating the amount of funds allocated for conducting particular

veterans' services (VA may, in cases where it deems necessary, require an audited financial statement); and a statement indicating that use of the organization's funding is not subject to limitations imposed under any Federal grant or law which would prevent it from representing claimants before VA.

An organization requesting recognition must maintain a policy and capability of providing complete claims service to each claimant requesting representation or give written notice of any limitation in its claims service with advice concerning the availability of alternative sources of claims service. In establishing that it meets this requirement, an organization requesting recognition shall submit evidence of its capability to represent claimants before VA regional offices and before the Board of Veterans' Appeals. If an organization does not intend to represent claimants before the Board of Veterans' Appeals, the organization shall submit evidence of an association or agreement with a recognized service organization for the purpose of representation before the Board of Veterans' Appeals, or the proposed method of informing claimants of the limitations in service that can be provided, with advice concerning the availability of alternative sources of claims service. If an organization does not intend to represent each claimant requesting assistance, the organization shall submit a statement of its policy concerning the selection of claimants and the proposed method of informing claimants of this policy, with advice concerning the availability of alternative sources of claims service.

An organization requesting recognition must take affirmative action, including training and monitoring of accredited representatives, to ensure proper

handling of claims. In establishing that it meets this requirement, an organization requesting recognition shall submit: a statement of the skills, training, and other qualifications of current paid or volunteer staff personnel for handling veterans' claims; and a plan for recruiting and training qualified claim representatives, including the number of hours of formal classroom instruction, the subjects to be taught, the period of on-the-job training, a schedule or timetable for training, the projected number of trainees for the first year, and the name(s) and qualifications of the individual(s) primarily responsible for the training.

In addition, the organization requesting recognition shall supply: a statement that neither the organization nor its accredited representatives will charge or accept a fee or gratuity for service to a claimant and that the organization will not represent to the public that VA recognition of the organization is for any purpose other than claimant representation; and the names, titles, and addresses of officers and the official(s) authorized to certify representatives.

- Description of need for information and proposed use of information:  
The information is used by VA in reviewing accreditation applications to determine whether organizations meet the requirements for VA accreditation under § 14.628.
- Description of likely respondents: Organizations seeking VA accreditation under § 14.628.
- Estimated number of respondents: 5 applicants per year.
- Estimated frequency of responses: This is a one-time collection.

- Estimated average burden per response: 5 hours.
- Estimated total annual reporting and recordkeeping burden: 25 hours per year.

### Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. It does not require any action on the part of any entity but merely provides a new opportunity for tribal organizations to become recognized by VA for the purpose of assisting VA claimants in the preparation, presentation, and prosecution of claims for VA benefits. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

### Executive Order 13175

Executive Order 13175 provides that Federal agencies may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs on tribal governments, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or the Federal agency consults with tribal officials early in the process of developing the proposed regulation, develops and publishes in the Federal Register a tribal summary impact statement, and provides to the Director of OMB any written communications submitted to the agency by the tribal officials.

On March 3 and 10, 2016, respectively, VA issued letters to tribal leaders as well as a Federal Register notice, 81 FR 12626, seeking comment on VA's consideration of issuing a proposed rule that would amend part 14 of title 38, Code of Federal Regulations, to expressly provide for the recognition of tribal organizations so that representatives of the organizations may assist Native American claimants in the preparation, presentation, and prosecution of their VA benefit claims. Those interested in providing comment were given 30-days to respond. Based on requests from commenters, VA expanded the comment period an additional 15 days to April 26, 2016. VA received comments from 36 commenters. A few commenters submitted more than one comment. Overall, the comments were supportive of issuing such a proposed rule.

One commenter wrote that, currently, their tribal representatives are being accredited through their State as well as other national organizations and was curious as to the "road blocks" other tribal organizations were facing. This commenter did not provide any suggestions, and therefore, no change to this rulemaking is warranted.

Several commenters noted that currently Native American veterans face many roadblocks to obtaining representation. One commenter noted that geography, economic, and culture barriers prevent Native American veterans from utilizing currently available representation. These comments were offered in support of the proposed rule, and therefore, no change to this rulemaking is warranted.

A few commenters misinterpreted the language provided in the consultation and notice as meaning that VA intended to propose that VA's recognition of a tribal organization would be tied to VA's recognition of the corresponding State organization. One commenter stated that VA should recognize a tribal organization as "equal to" a

State organization. VA is not tying VA recognition of a tribal organization to a State and is choosing not to make value judgements as to the importance of the recognition granted to State organizations and Tribal organizations. Recognition of a tribal organization would stand on its own. VA has chosen to use the term similar rather than the term equal in this proposed rule because we are proposing some differences in the requirements for VA recognition of a tribal organization and the requirements for State organizations. Specifically, the proposed rule would allow a single tribal government, or multiple tribal governments to join together to establish and fund a tribal organization, but such allowance is not permitted for State governments.

A few commenters misinterpreted the language provided in the consultation and notice as limiting recognition of a tribal veterans' service officer through a State. One commenter asked for clarification on what type of employees would be eligible to become accredited by VA. The commenter stated that employees of a tribal nation as well as a tribal organization should be eligible. We agree, and the proposed rule would allow for both avenues to attain VA accreditation depending on the tribal government's size, relationships with other tribal governments, relationships with States, and the needs of Native American veterans in their area. After a tribal organization becomes recognized by VA, that organization would be able to request to have its own representatives accredited under 38 CFR 14.629. In addition to proposing to recognize tribal organizations and accredit their representatives, VA would provide an additional means by which VA may recognize an employee of a tribal government as a tribal veterans' service officer through a State organization. This accreditation would be akin to accreditation given to county veterans' service officers through State organizations

and is only meant to provide an additional path to VA accreditation. We propose that the requirements for a tribal veterans' service officer to become accredited as a representative through a State organization be the same as the requirements for a county veterans' service officer. Therefore, VA makes no changes based on these comments.

One commenter asked what happens to the accreditation of a tribal organization if the Director is relinquished. It seems this comment stems from the misinterpretation previously discussed regarding the accreditation of a tribal organization and the corresponding State organization. The commenter also asked what happens if the State refuses to sponsor the replacement officer. As discussed above, once a tribal organization becomes recognized by VA, that organization would be able to request to have its own representatives accredited under § 14.629. The tribal organization can file with VA to have a replacement officer accredited. Therefore, VA makes no changes based on this comment.

Several commenters also expressed concern over the requirements for recognition in § 14.628(d). Specifically, the commenters expressed concern that many tribal organizations may not be able to satisfy the primary purpose, size, funding, and training requirements, to include providing the required, supporting documentation. One commenter suggested that VA provide the funding for tribes "to engage in this work." Another commenter suggested including Indian Health Services for funding assistance. A few commenters expressed concern about the requirement that the organization must maintain a policy of either providing complete claims representation or provide "written notice of any limitation in its claims service with advice concerning the availability of

alternative sources of claims service.” 38 CFR 14.628(d)(1)(iv). One commenter seemed to believe VA was questioning the level of competence of tribal representatives. VA must ensure that VA accredited organizations can provide long-term, competent representation and has found that the § 14.628(d) requirements are protective of that mission. These requirements apply to all organizations seeking VA recognition. Exempting tribal organizations from meeting the § 14.628(d) requirements would not be consistent with the purpose of VA recognition to ensure that veterans are receiving qualified, competent representation on their VA benefit claims. As previously discussed, VA has provided additional means to achieve VA recognition or accreditation for those tribal governments that may have difficulty establishing a tribal organization capable of meeting the § 14.628(d) requirements, to include the ability for one or more tribal governments to establish and fund a tribal organization and the ability of an employee of a tribal government to become accredited as a tribal veterans’ service officer through a recognized State organization. Therefore, VA makes no changes based on these comments.

One commenter suggested that VA grant accreditation to tribes through a Memorandum of Understanding and included their tribe’s Memorandum of Understanding with their State. The commenter also questioned the role of VA in the accreditation and monitoring process. The laws governing VA accreditation are set out at 38 U.S.C. 5902 and 5904 and 38 CFR 14.626-14.637. These laws apply to all organizations, agents, and attorneys seeking VA accreditation. Pursuant to § 14.628, the organization requesting VA accreditation must certify to VA that the organization meets the § 14.628(d) requirements for recognition. Therefore, a Memorandum of

Understanding between VA and a tribe is not sufficient for applying for VA accreditation. Furthermore, VA does monitor its accredited organizations, agents, and attorneys and handles disciplinary matters as they arise. Therefore, VA makes no changes based on this comment.

One commenter suggested that VA engage in additional consultation with Tribes that would be “interested in becoming recognized veterans['] service organizations, but are unable to meet the requirements.” In the proposed rule, VA offers alternative avenues for VA recognition and accreditation for tribal governments that may not be capable of establishing an organization that can meet the VA recognition requirements in the proposed rule on their own. VA further welcomes additional comments as to the suitability of those alternative avenues through comments on this proposed rule. VA declines to make any changes based on this comment.

One commenter also recommended that “VA enter into Memorandums of Understanding with [F]ederally-recognized tribes and tribal organizations for [v]eterans’ [s]ervice [o]fficer training and service reimbursement, on individual bases.” Another commenter objected to the fact that there was “no mention of funding to train and maintain such a position.” Section 5902, of title 38, United State Code, which is the law that authorizes VA to recognize organizations for the purpose of providing assistance on VA benefit claims, does not provide for the funding of such organizations to train and maintain representatives. Pursuant to § 14.628(d)(iii)(B), organizations are not precluded from seeking and receiving other sources of State and Federal grant funding so long as the organization’s funding is not subject to limitations imposed under any

Federal grant or law which would prevent it from representing claimants before VA.

Therefore, VA declines to make any changes based on these comments.

One commenter wrote that VA "...should include [F]ederally-recognized tribes, not just tribal organizations funded by tribal governments, as an entity from which applications will be considered to be recognized for..." VA accreditation. Another commenter suggested adding "[F]ederally recognized tribes" or "[F]ederally recognized tribal governments" as part of the definition for tribal organizations. Another commenter suggested adding tribal communities. For the purposes of the regulations pertaining to the representation of VA claimants, VA proposes to define a tribal government to mean "the Federally recognized governing body of any Indian tribe, band, nation, or other organized group or community. . .". VA finds this definition to be inclusive of the comments, and therefore, no change is warranted.

One commenter suggested a legislative amendment to the definition of State in 38 U.S.C. 101(20) to include "[F]ederally recognized tribal governments." Amending the statutory language is something that only Congress can accomplish. Since VA is defining the term "tribal government" in regulation and providing an avenue for VA recognition of a tribal organization separate from a State organization, VA does not find such a legislative amendment necessary. Therefore, no change is warranted based on this comment.

Several commenters wrote that "[s]pecial attention must be paid to what specifically is meant by a '[t]ribal [o]rganization'" and that VA should offer a clear definition of the term. The commenters did not offer any suggestions for such definition.

As previously discussed, VA is defining this term for the purposes of this rulemaking. Therefore, VA does not make any changes based on this comment.

Several commenters asked VA to clarify whether tribal governments, including veterans departments within these governments, would be eligible for VA recognition. A Department of Veterans Affairs or a Veterans Affairs office that is established and funded by a tribal government would be included in the definition of tribal organization. Therefore, no change to this rulemaking is warranted based on these comments.

One commenter asked that VA provide recognition for urban Indian organizations. The comment is unclear on whether such an organization would be able to apply for VA recognition as a tribal organization. VA declines to add an additional organization category at this time. In addition to the proposed amendments discussed in this rulemaking, an organization may still utilize other avenues to apply for VA recognition such as requesting VA recognition as a regional or local organization. To be recognized as a regional or local organization, an organization must meet the requirements of § 14.628(c) and (d).

Further, there are several ways that individuals, including tribal members, tribal government employees, and others who work within and serve tribal or Native American communities, may be accredited by VA to represent claimants. An individual may apply for accreditation as a representative through an existing VA-recognized organization under standards set forth in § 14.629(a). Alternatively, an individual may also seek accreditation in an individual capacity as either an agent or an attorney under the standards set forth in § 14.629(b). Therefore, VA declines to make any changes based on this comment.

A couple of commenters submitted statements certifying that their organization would meet the requirements for accreditation for a tribal organization. Applications for accreditation are outside the scope of this rulemaking. Therefore, no change is warranted based on these comments.

One commenter asked whether accredited tribal representatives would be granted access to software programs containing a veteran's claims file information and whether that access would be on tribal grounds. This issue is outside the scope of this rulemaking. Therefore, no change is warranted based on this comment.

One commenter expressed support for VA recognizing tribal organizations in an equal manner as VA recognizes State organizations but suggested that VA authorize a field office close to tribal administration locations and fund one or two veterans service officer positions. The tribal consultation and this proposed rulemaking are limited in scope to recognition for purposes of VA claims representation. The commenter's suggestion of adding a field office is beyond the scope, and therefore, VA declines to make any changes based on this comment. VA also declines to make any changes to the commenter's suggestion of funding job positions for veterans service officers. Part of the § 14.628(d) requirements is that an organization seeking accreditation must commit a significant portion of its assets to veterans' services and have adequate funding to properly perform those services. 38 CFR 14.628(d)(1)(iii).

A few commenters expressed concern that the proposed rulemaking is limiting VA recognition for the preparation, presentation, and prosecution of claims for VA benefits. One commenter seemed to think VA is depriving veterans from other title 38 benefits. The commenters did not specify what other accreditation they are seeking.

As previously discussed, 38 CFR part 14 is limited in jurisdiction to recognizing organizations and accrediting individuals to assist in the preparation, presentation, and prosecution of VA benefit claims. Pursuant to section 5902, VA accreditation may not be granted for any other purpose. This rulemaking in no way deprives any veteran of any title 38 benefits. Therefore, no change is warranted based on these comments.

One commenter suggested that office space opportunities should be available to tribal governments and organizations in the same manner as they are available to State organizations. As previously discussed, this proposed rule would, under § 14.635, allow the Secretary to furnish office space and facilities, when available, to both State and tribal organization employees who are also accredited to national organizations for the purpose of assisting claimants in the preparation, presentation, and prosecution of claims for benefits. VA would be furnishing office space to tribal organizations in the same manner as it furnishes such space to State organizations. Therefore, no change is warranted based on this comment.

One commenter noted that VA should allow a tribal government employee to become accredited through an accredited body of their choice. VA in no way is limiting how a particular individual may apply to become an accredited VA representative. As previously discussed, VA is merely providing additional paths to VA accreditation than currently exist. Therefore, VA declines to make any changes to this rulemaking based on this comment.

Several commenters suggested further outreach and collaboration. One commenter suggested that VA form a tribal workgroup to allow representatives from tribal organizations to collaborate on implementing the new program. One commenter

provided VA with their tribal consultation policy. Other commenters suggested that VA engage in additional consultation with experts in Indian law and hold an all-tribes call to gather additional input for this rulemaking. VA appreciates this information. As previously noted, VA extended the comment period for an additional 15 days to ensure that all interested parties had an appropriate time to provide input. Therefore, VA finds that it has complied with the requirements of Executive Order 13175. VA notes that an additional 60-day comment period is provided for this proposed rule and invites any additional comment to this rulemaking to be provided during that time.

One commenter asked for the projected implementation date of this rulemaking. VA will publish a final rule to this proposed rule which will contain the effective date of the rulemaking.

#### Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action” requiring review by OMB, unless OMB waives such review, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or

adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of this rulemaking and its impact analysis are available on VA's Web site at <http://www.va.gov/orpm/>, by following the link for “VA Regulations Published From FY 2004 Through Fiscal Year to Date.”

### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

### Catalog of Federal Domestic Assistance

There are no Catalog of Federal Domestic Assistance programs numbers and titles associated with this proposed rule.

### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized Gina S. Farrisee, Deputy Chief of Staff, to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on July 14, 2016 for publication.

List of Subjects in 38 CFR Part 14

Administrative practice and procedure, Claims, Courts, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Surety bonds, Trusts and trustees, Veterans.

Dated: July 14, 2016.

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Janet J. Coleman  
Chief  
Office of Regulation Policy & Management,  
Office of the Secretary,  
Department of Veterans Affairs.

For the reasons set out in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 14 as follows:

**PART 14—LEGAL SERVICES, GENERAL COUNSEL, AND MISCELLANEOUS CLAIMS**

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

AUTHORITY: 5 U.S.C. 301; 28 U.S.C. 2671–2680; 38 U.S.C. 501(a), 512, 515, 5502, 5901–5905; 28 CFR part 14, appendix to part 14, unless otherwise noted.

2. Amend § 14.627 by adding paragraph (r) to read as follows:

**§ 14.627 Definitions.**

\* \* \* \* \*

(r) Tribal government means the Federally recognized governing body of any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or Regional or Village Corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

\* \* \* \* \*

3. Amend § 14.628 by:

a. Redesignating paragraph (b) as paragraph (b)(1) and adding paragraph (b)(2); and

b. In the parenthetical at the end of the section, removing “2900–0439” and adding, in its place, 2900–XXXX”.

The addition reads as follows:

**§ 14.628 Recognition of organizations.**

\* \* \* \* \*

(b)(1) State organization. \* \* \*

(2) Tribal organization. For the purposes of 38 CFR 14.626 through 14.637, an organization that is a legally established organization that is primarily funded and controlled, sanctioned, or chartered by one or more tribal governments and that has a primary purpose of serving the needs of Native American veterans. Only one tribal organization may be recognized for each tribal government. If a tribal organization is created and funded by more than one tgovernment, the approval of each tribal government must be obtained prior to applying for VA recognition. If one of the supporting tribal governments withdraws from the tribal organization, the tribal organization must notify VA of the withdrawal and certify that the tribal organization continues to meet the recognition requirements in paragraph (d) of this section.

\* \* \* \* \*

**§ 14.629 [Amended]**

4. Amend § 14.629 by:

a. In paragraph (a)(2) introductory text, removing “county veteran’s service officer” and adding in its place “county veterans’ service officer”;

b. In paragraph (a)(2) introductory text, adding “or tribal veterans’ service officer” immediately following “county veterans’ service officer”; and

c. In paragraph (a)(2)(i), adding “or tribal government” immediately following “county”.

**§ 14.635 [Amended]**

5. Amend § 14.635 by adding, in the introductory paragraph, “or tribal” immediately following “State”.

[FR Doc. 2016-17052 Filed: 7/19/2016 8:45 am; Publication Date: 7/20/2016]