



This document is scheduled to be published in the Federal Register on 01/19/2017 and available online at <https://federalregister.gov/d/2017-00947>, and on [FDsys.gov](https://fdsys.gov)

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: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations concerning recognition of certain national, State, and regional or local organizations for purposes of VA claims representation. Specifically, this rulemaking allows the Secretary to recognize tribal organizations in a similar manner as the Secretary recognizes State organizations. The final rule allows 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 final rule allows 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 effect of this action 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.

DATES: Effective Date: This rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

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: On July 20, 2016, VA issued a proposed rule to 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. 81 FR 47087-47094. VA proposed to 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. Id. In addition, VA proposed to allow an employee of a tribal government to become accredited through a recognized State organization in a similar manner as a CVSO may become accredited through a recognized State organization and to extend office space opportunities already granted to certain employees of State organizations to employees of tribal organizations. Id.

VA received 17 comments on the proposed rule. Overall, the comments were supportive of the proposed rule. A couple of commenters stated that they currently meet or will be able to meet the accreditation requirements for recognition as a tribal

organization. The actual requests for recognition of specific tribal organizations are outside the scope of this rulemaking. However, VA invites all interested organizations or applicants to consider requesting recognition after this rulemaking takes effect. Please see VA's accreditation website for more information on how to request recognition of an organization and how to apply to become accredited as a representative through a recognized organization or as an attorney or agent, <http://www.va.gov/ogc/accreditation.asp>. No change is warranted to this rulemaking based on these comments.

A few commenters misinterpreted the proposed rule 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. VA is not tying VA recognition of a tribal organization to a State. Recognition of a tribal organization will stand on its own. After a tribal organization becomes recognized by VA, that organization will be able to request to have its own representatives accredited under 38 CFR 14.629. Therefore, VA declines to make any changes based on these comments.

One commenter stated that there is no need to restrict a tribal government employee to being accredited by either a tribal organization or State organization. Although in the proposed rule, we focused much of our discussion on how a tribal government employee may be accredited through a tribal organization or a State organization, we do not intend for this rulemaking to limit the availability of other avenues to achieve VA accreditation. 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.

If an individual does not wish to be accredited through a tribal or State organization, the individual may seek accreditation through a National or Regional or Local organization or seek accreditation in his or her 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.

One commenter asked whether a tribal veterans' service representative who worked in multiple states would be required to get approval from all of the States in which they work. If the representative is accredited through the tribal organization and representing claimants on behalf of that organization, then the representative would not need to seek any additional accreditation through a State organization. If the representative is a tribal veterans service officer (TVSO) and the representative's sole accreditation status is through a State organization, the representative should confer with that State organization to see if the State has placed any geographical limits on its accredited representatives. VA does not place any geographical or residency restrictions or limitations on State or tribal organizations as to who may be served by the organization. Therefore, no change is warranted to this rulemaking based on this comment.

A couple of commenters recommended that a tribal organization should have the ability to accredit representatives of State organizations through the tribal organization as well. A VA-recognized tribal organization is welcome to put forth any representatives of its choosing for VA accreditation so long as the organization is able to certify that the potential representative is of good character and reputation, has demonstrated an ability to represent claimants, and is a paid employee working no less than 1,000 hours

annually. A recognized tribal organization may also recommend a potential representative for accreditation through the tribal organization by certifying that the individual is accredited and functioning as a representative of another recognized organization, this is commonly referred to as “cross-accreditation.” See 38 CFR 14.627(j) and 14.629(a). Because we do not view this rulemaking as prohibiting State organization representatives from being accredited through a tribal organization as well, we do not believe that a change is warranted to this rulemaking based on these comments.

One commenter asked if it would be possible for a tribal government to have their employees accredited by a tribal organization and State organization concurrently. VA does not limit an accredited representative to one method of accreditation. Therefore, no change is warranted to this rulemaking based on this comment.

Several commenters appeared to interpret the proposed rule as limiting tribal organizations to representation of only veterans who are Native American and not their dependents or survivors who may not be Native American. It is not VA’s intention to limit the type of claimants for VA benefits that any accredited organization, attorney, or agent may represent. The requirements for accreditation require an applying organization to state the number of veterans, survivors, and dependents that will be served by the organization. 38 CFR 14.628(d)(1)(ii)(D). VA makes no changes based on these comments.

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 requirement of having a primary

purpose of serving veterans, the requirement of a substantial service commitment to veterans as shown either by a sizable organizational membership or by performance of veterans' services to a sizable number of veterans, or requirements concerning funding and training, to include providing the required supporting documentation. As stated in the proposed rule, VA must ensure that VA accredited organizations can provide long-term, competent representation and has found that the § 14.628(d) requirements further that objective. 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. 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.

Several commenters requested that VA further define or quantify what would constitute adequate funding and a substantial service commitment to veterans either by showing a sizeable organizational membership or by showing performance of veterans' services to a sizeable number of veterans. VA's purpose is to ensure that VA claimants have responsible, qualified representation and the above noted requirements serve as an indicator that the organization is stable. VA makes these determinations on a

case-by-case basis taking into consideration all of the evidence of record. VA's goal is to ensure that VA claimants have access to the representation that they may need, and in order to provide such access, VA needs flexibility to make accreditation determinations based on the totality of the circumstances. Therefore, VA declines to make any changes based on these comments.

Several commenters requested that funding be made available to establish tribal organizations. 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.

Several commenters suggested further outreach and collaboration. On March 3 and 10, 2016, respectively, VA issued letters to tribal leaders and 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. In the proposed rule, VA addressed the comments received from the tribal consultation and provided an additional 60-day comment period. 81 FR 47091-47093, July 20, 2016. Therefore, VA finds that it has complied with the notice and consultation requirements of the governing Executive Orders. See Exec. Order No. 13175, 65 FR 67249-67252, Nov. 9, 2000; Exec. Order 12866 sec. 6(a), 58 FR 51735, Sept. 30, 1993; Exec. Order 13563 sec. 2(b), 76 FR 3821, 3821-22, Jan. 18, 2011.

One commenter asked VA to include the veterans departments within the tribal governments as eligible for VA recognition. A Veterans Affairs office or department that is established and funded by a tribal government is included in the definition of tribal organization and may apply for recognition under the rule. Another commenter requested that tribal government be included in the definition of tribal organization. A tribal government would not fit the definition of a tribal organization because the primary purpose of a tribal government is generally much broader than serving the needs of Native American veterans. However, the definition of tribal organization allows for a tribal government to establish such an organization that will be for that specific purpose. In this same way, VA recognizes State organizations rather than the State governments themselves. Therefore, no change to this rulemaking is warranted based on these comments.

Another commenter stated that, due to the geographic size of their tribal government, it would make sense for it to become its own regional council. If the commenter is asserting its intention to apply to become a VA accredited organization,

VA welcomes all organizations to apply once this rulemaking becomes effective. No change is warranted to this rulemaking based on this comment.

One commenter recommended that, regarding tribal government approval for tribal organization representation, the approval be recognized with a single resolution or other document on behalf of member tribal nations. The commenter stated that obtaining resolutions from each nation would be administratively burdensome. Pursuant to § 14.628, the organization requesting VA accreditation must certify to VA that the organization meets the § 14.628(d) requirements for recognition. As long as VA receives certification from each tribal government approving the tribal organization, VA has no objection to the format of the certification being contained in a single resolution or document. An example may be that the establishment of the tribal organization is contained in one resolution and that resolution is signed, or certified, by all of the appropriate officials. VA makes no changes based on this comment.

One commenter asked that VA provide recognition for urban Indian organizations or urban Indian health programs. 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 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).

The same commenter asked that employees of urban Indian organizations or urban Indian health programs be recognized as accredited representatives. An

individual may apply for accreditation as a representative through a 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). The commenter also asked that the requirement for tribal veterans' service officers to work 1,000 hours annually be eliminated or lowered. The same hour requirements apply to county veterans' service officers being recommended for accreditation by a State and will, under this rule, apply to tribal veterans' service officers being accredited by a State. As explained in the proposed rule, VA prescribed these criteria in order to ensure adequate training and fitness to serve as a VA accredited representative. VA declines to make any changes based on these comments.

One commenter asked VA to require culturally sensitive training for TVSOs. Section 14.628(d)(1)(v)(B) requires that a request for recognition of an organization include a plan for recruiting and training the organization's representatives. In addition, with regard to TVSOs, the organization's certifying official must certify that the TVSO is a paid employee of the tribal government working no less than 1,000 hours annually, has successfully completed a course of training and examination approved by VA, and that the TVSO will receive regular supervision or annual training to assure the TVSO continues to be qualified to represent claimants. 38 CFR 14.629(a)(2)(i)-(iii). The testing or training for TVSOs may include topics such as cultural sensitivity training at the discretion of the organization. VA declines to add a cultural sensitivity training requirement as we believe each organization would be the best judge of the need for cultural sensitivity training for its own representatives. In addition, such an addition

would not be a logical outgrowth of the proposed rule. Therefore, VA makes no changes based on this comment.

One commenter stated that, with regard to the Paperwork Reduction Act (PRA) requirements, VA had underestimated the number of applicants/respondents that would apply to become an accredited tribal organization. However, the commenter did not provide a number of how many applicants/respondents they thought VA would receive. VA notified the Office of Management and Budget (OMB) of the commenter's concern and amended its PRA submission to double the number of applicants/respondents from 5 to 10 per year.

One commenter asked to what extent OMB was involved in the formulation of this rule. Executive Order 12866, 58 FR 51735, requires that OMB, specifically the Office of Information and Regulatory Affairs, review regulations before they are submitted for publication in the Federal Register. VA submitted the proposed rule and required supporting documents prior to the publication of the proposed rule and will comply with the requirements of the Executive Order in issuing this final rule. No change to this rulemaking is warranted based on this comment.

One commenter asked to what extent VA believes that all States would support this rulemaking. VA has not received any adverse comments from States on this rulemaking. As previously stated, recognition of a tribal organization is not tied to a State organization. No change to this rulemaking is warranted based on this comment.

One commenter asked what support VA could provide to tribes that do not have enough veterans per capita to participate in the process outlined to coordinate their activities with States or county veterans' service organizations while respecting a tribe's

sovereign authority. It is unclear whether the commenter is requesting that VA waive certain accreditation requirements. As previously discussed, VA cannot waive the requirements for accreditation for any organization. A tribe that is unable to establish an organization that is capable of meeting the requirements to be recognized as a tribal organization may be able to have its members apply to become accredited in their individual capacity as claims agents or attorneys or as representatives through another VA-recognized organization. VA makes no changes based on this comment.

One commenter said that educational benefits should be allowed to be used at tribal colleges and universities. This comment is outside the scope of this rulemaking. Therefore, no change is warranted based on this comment.

Finally, VA is correcting a grammatical error in proposed § 14.628(b)(2). In the third sentence, VA mistakenly referred to “tgovernment” when the correct reference should have been to “tribal government.” VA is correcting this error in this rulemaking.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. See also 5 CFR 1320.8(b)(3)(vi).

This final rule will impose the following new information collection requirements. The collection of information in 38 CFR 14.628 requires 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.

As required by the Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507(d)), VA has submitted this information collection to OMB for its review. OMB approved these new information collection requirements associated with the final rule and assigned OMB control number 2900-0850.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will 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 final regulatory flexibility analysis requirements of section 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 and 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 a total of 37 commenters. VA addressed 36 of those comments in the proposed rule. 81 FR 47087, 47091-47093. During the drafting of the final rule, VA discovered one additional comment submitted in response to the tribal consultation. Therefore, VA is addressing the additional comment and republishing VA's responses to the other comments in this final rule.

One commenter asked if tribal organizations, since they are sovereign nations, would work with their local VA regional offices to include submitting claims through their respective regional offices. VA-recognized tribal organizations will be responsible for providing representation on behalf of their clients in the same manner as all other VA-recognized organizations, which often includes filing claims and evidence in support of their client's claims with the appropriate regional office. For TVSO's whose sole accreditation is through a State organization, VA defers to the State organization on their procedures for submitting claims and evidence to VA. No change is warranted to this rulemaking based on this comment.

The same commenter asked if tribal organizations will "commit to annual/routine training [for their] veterans service officers." Part of the § 14.628(d) requirements is that an organization seeking accreditation must "[t]ake affirmative action, including training and monitoring of accredited representatives, to ensure proper handling of claims." 38 CFR 14.628(d)(1)(v). When an organization applies for VA accreditation, the organization must include a plan for recruiting and training the organization's representatives. 38 CFR 14.628(d)(1)(v)(B). No change is warranted to this rulemaking based on this comment.

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 rulemaking, and therefore, no change is warranted.

A few commenters misinterpreted the language provided in the consultation and notice as meaning that VA intended 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 will stand on its own. VA has chosen to use the term similar rather than the term equal in this rule because there are some differences in the requirements for VA recognition of a tribal organization and the requirements for State organizations. Specifically, the rule will 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 final rule allows 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 will be able to request to have its own representatives accredited under 38 CFR 14.629. In addition to recognizing tribal organizations and accredit their representatives, VA provides 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 is akin to accreditation given to county veterans' service officers through State organizations and is only meant to provide an additional path to VA accreditation. 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 can 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 is not 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 this 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 rule on their own. 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 defines 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 is 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 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 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 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, the relevant regulations in 38 CFR part 14 are 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 rule will, 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 will 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 also provided an additional 60-day comment period for the proposed rule.

One commenter asked for the projected implementation date of this rulemaking. The dates section of this final rule contains 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 final rule will 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 final rule.

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.

For the reasons set out in the preamble, the Department of Veterans Affairs amends 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. Designating paragraph (b) as paragraph (b)(1) and adding paragraph (b)(2);
and

b. In the OMB approval parenthetical at the end of the section, removing “2900–0439” and adding, in its place, “2900–0850”.

The addition reads as follows:

§ 14.628 Recognition of organizations.

* * * * *

(b) * * *

(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 tribal government, 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”.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned 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 January 11, 2017, for publication.

Dated: January 11, 2017.

Jeffrey Martin
Office Program Manager
Office of Regulation Policy & Management
Office of the Secretary
Department of Veterans Affairs
[FR Doc. 2017-00947 Filed: 1/18/2017 8:45 am; Publication Date: 1/19/2017]