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DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 17

RIN 2900-AP83

Ecclesiastical Endorsing Organizations

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its medical regulations by establishing in regulation the eligibility requirements that ecclesiastical endorsing organizations must meet in order to provide ecclesiastical endorsements of individuals seeking employment as VA chaplains or of individuals who are seeking to be engaged by VA under contract or appointed as on-facility fee basis VA chaplains under 38 U.S.C. 7405. VA considers the veterans' spiritual care an integral part of the veterans' overall health care. As such, VA is committed to providing qualified VA chaplains to address the veterans' spiritual needs by engaging chaplains that are ecclesiastically endorsed. Ecclesiastical endorsement would certify that the individual is qualified to perform all the religious sacraments, rites, rituals, ceremonies and ordinances needed by members of a particular faith.

DATES: Comments must be received by VA 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: Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. (This is not a toll-free

telephone number.) Comments should indicate that they are submitted in response to “RIN 2900-AP83-Ecclesiastical Endorsing Organizations.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 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 telephone number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT: John Batten, Program Analyst, National Chaplain Center, Veterans Health Administration, Department of Veterans Affairs Medical Center, 100 Emancipation Dr. Hampton VA 23667; (757) 728-7062. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Under 38 CFR 17.33, VA shall make available to each patient the opportunity for religious worship. The VA National Chaplain Service was established on August 1, 1945, to provide veterans the opportunity for such worship and other forms of spiritual care. VA employs chaplains in accordance with 5 CFR 213.3102(a) to provide for the spiritual component of health care in accordance to the spiritual needs of veterans. VA may employ chaplains in temporary appointments, on an on-facility fee basis appointment under 38 U.S.C. 7405, and may engage chaplains under contract. By requiring that chaplains be ecclesiastically endorsed, VA ensures that chaplains are qualified to perform the rites, rituals, or ceremonies that are

unique to each faith. Before the year 2000, VA did not have a process in place to address endorsement of chaplains and relied on criteria established by the Department of Defense's (DoD) Armed Forces Chaplain Board (AFCB) at DoD Instruction 1304.28. Under these criteria, an individual cannot serve as chaplain unless he or she is endorsed by an ecclesiastical endorsing organization. The purpose is to ensure that the chaplain is recognized as an individual who is authorized by that organization to perform pastoral duties. The ecclesiastical endorsing organization must submit a request to VA to designate an ecclesiastical endorser. This request provides VA with the information on the ecclesiastical endorsing organization and identifies the individual whom the organization designates as the official authorized to sign ecclesiastical endorsements. VA reviews the information provided and approves the request.

Before the year 2000, VA accepted endorsements from ecclesiastical endorsing organizations recognized by DoD to perform this function as a means of avoiding duplication of effort on VA's part and because such organizations would be better able to address veterans' needs, having provided for the veterans' spiritual care while on active duty. In 1998, VA determined that it needed to establish its own policy on accepting ecclesiastical endorsements. The rationale was that there might be organizations that would endorse members seeking to work for VA, but would not permit their members to work as military chaplains, either for theological or other reasons. There might also be ecclesiastical endorsing organizations that have members who wish to work as VA chaplains and none who wish to become military chaplains. By accepting endorsements only from ecclesiastical endorsing organizations recognized by

DoD, VA was unnecessarily limiting the pool of ministers who could serve as VA chaplains. We would, however, use similar definitions of terms defined by DoD in order to maintain consistency between government agencies. VA has been successfully implementing since the year 2000, via internal policy, the eligibility requirements that ecclesiastical endorsing organizations must meet to endorse individuals who are seeking employment as VA chaplains or of individuals who are seeking to be engaged by VA under contract or appointed as on-facility fee basis VA chaplains under 38 U.S.C. 7405.¹ However, VA subsequently determined a formal rulemaking would be prudent in order to make the process transparent. VA considers a veteran's spiritual care an integral part of the veteran's health care. By requiring that all VA chaplains be endorsed by an ecclesiastical endorsing organization that meets certain criteria, VA is ensuring that chaplains are providing for the religious needs of veterans. VA does not prefer any religion and respects a veteran's right by only providing religious and spiritual care to those veterans who request it. VA has established in policy a process by which ecclesiastical endorsing organizations designate an individual as authorized to sign ecclesiastical endorsements of its members seeking employment as VA chaplains or be engaged by VA under contract or appointed as on-facility fee basis VA chaplains under 38 U.S.C. 7405. Through this rulemaking, VA would establish this policy in regulation, which would promote transparency in the process as well as safeguard VA from the appearance of favoritism of an ecclesiastical endorsing organization over another. We would establish this process in proposed § 17.655.

¹ Ecclesiastical Endorsing Organizations, VA Handbook 1111.1

17.655 Ecclesiastical endorsing organizations

Proposed paragraph (a) would be the purpose paragraph. We would state that proposed § 17.655 “establishes the eligibility requirements that an ecclesiastical endorsing organization must meet in order to provide ecclesiastical endorsements of individuals who are seeking employment as VA chaplains or are seeking to be engaged by VA under contract or appointed as on-facility fee basis VA chaplains under 38 U.S.C. 7405.” VA protects a veteran’s right to exercise his or her religion. However, VA does not imply approval of the theology or practices of the religious organization to which the chaplain belongs. VA is also not obligated to employ or engage under VA contract or to appoint under 38 U.S.C. 7405 an individual who is endorsed by an ecclesiastical endorsing organization for the reasons stated in our discussion of proposed paragraph (c). We would state these caveats in proposed paragraph (a).

Proposed paragraph (b) would provide the definitions of terms used within proposed § 17.655. In order to be considered for and maintain employment as a VA chaplain or be engaged by VA under contract or appointed as on-facility fee basis VA chaplains under 38 U.S.C. 7405, an individual must have ecclesiastical endorsement from an ecclesiastical endorsing organization. This requirement would be needed to make certain that individuals providing ministry to veterans are authorized by their ecclesiastical endorsing organization to provide specific ministries. We would add this requirement to the proposed definition of ecclesiastical endorsement, which would be defined to mean “a written statement addressed to VA and signed by the designated endorsing official of an ecclesiastical endorsing organization certifying that an individual

is in good standing with the faith group or denomination and, in the opinion of the endorsing official, is qualified to perform the full range of ministry, including all sacraments, rites, ordinances, rituals, and liturgies required by members of the faith group.”

Each ecclesiastical endorsing organization designates an ecclesiastical endorsing official or officials, who would endorse individuals as being in good standing within that faith and able to perform the full range of ministries. We propose to define ecclesiastical endorsing official as “an individual who is authorized to provide or withdraw ecclesiastical endorsements on behalf of an ecclesiastical endorsing organization.” This definition would be similar to that of DoD.

An organization that meets the eligibility requirements of proposed paragraph (c) and has also been designated as an endorsing agent in accordance with proposed paragraph (e) would be termed an ecclesiastical endorsing organization. We would define this term in proposed paragraph (b).

Proposed paragraph (c) would state that ecclesiastical endorsing organization must “meet the following requirements before the organization can endorse an applicant for VA chaplaincy.” The first requirement is that the ecclesiastical endorsing organization must “Be organized and function exclusively or substantially to provide religious ministries to a lay constituency and possess authority to both grant and withdraw initial and subsequent ecclesiastical endorsement.” Organizations whose only

function is to provide social services to the community, health care or education cannot become ecclesiastical endorsing organizations. The organization must designate an individual(s) who can sign an ecclesiastical endorsement of a member of the organization. Maintaining an ecclesiastical endorsement is a requirement to maintain employment as a VA chaplain or be engaged by VA under contract or appointed as on-facility fee basis VA chaplains under 38 U.S.C. 7405. The second requirement is that the organization has “tax-exempt status as a religious organization or church under the Internal Revenue Code, section 501(c)(3).” Generally, section 501(c) of the Internal Revenue Code provides exemption from some federal income taxes for various types of nonprofit organizations. Section 501(c)(3) of the Internal Revenue code addresses religious organizations. In order for a religious organization to be tax-exempt under rules established by the Internal Revenue Service (IRS), the organization must meet the following requirements: be organized and operated exclusively for religious, educational, scientific or other charitable purposes; net earnings may not inure to the benefit of any private individual or shareholder; no substantial part of its activity may be attempting to influence legislation; the organization may not intervene in political campaigns; and the organization’s purposes and activities may not be illegal or violate fundamental public policy. The IRS makes a distinction between tax-exempt status of a religious organization and that of a church. Religious organizations that meet the requirements of section 501(c)(3) of the IRC must apply to the IRS for tax-exempt status, unless their gross receipts do not normally exceed \$5,000.00 annually.

Churches are automatically considered tax-exempt and are not required to apply for and obtain recognition of tax-exempt status from the IRS. However, although there is no requirement to file for tax-exempt status, many churches seek recognition of tax-exempt status from the IRS because this recognition assures the religious leaders, members, and contributors that the church is recognized as exempt and qualifies for related tax benefits. VA would require that an ecclesiastical endorsing organization, that is seeking to endorse an individual for employment as a VA chaplain or an individual seeking to be engaged by VA under contract or appointed as on-facility fee basis VA chaplains under 38 U.S.C. 7405, obtain the recognition of its status as a tax-exempt religious organization or church under section 501(c)(3) of the Internal Revenue Code.

The third requirement is that ecclesiastical endorsing organizations would need to agree to abide by “all Federal and VA laws, regulations, policies, and issuances on the qualification and endorsement of persons for service as VA chaplains.” We would add this requirement as a form of commitment by the ecclesiastical endorsing organization to only endorse individuals for service as VA chaplains who are willing to abide by these rules.

We propose to state that the ecclesiastical endorsing organization must notify VA in writing of any withdrawal of the ecclesiastical endorsement of an endorsed VA chaplain. Such notification must be received by VA within ten days of the withdrawal. VA is committed to provide veterans with spiritual care from the most qualified

individuals. If an individual is no longer endorsed by an ecclesiastical endorsing organization, such individual will cease to meet the requirements of a VA chaplain and may lose his or her VA employment, VA contract, or appointment as on-facility fee basis VA chaplains under 38 U.S.C. 7405. We would also state that the ecclesiastical endorsing organization must provide the documents stated in proposed paragraph (d). If an ecclesiastical endorsing organization changes the individual authorized as its endorsing official, the organization must notify VA of the name and address of the new official. VA would need to maintain contact with the ecclesiastical endorsing organization through the ecclesiastical endorsing official to verify the endorsement status of VA chaplains. The ecclesiastical endorsing official of an ecclesiastical endorsing organization is the key point of contact between VA and the organization and also between an individual who seeks employment as a VA chaplain or an individual who is seeking to be engaged under VA contract or appointed as on-facility fee basis VA chaplains under 38 U.S.C. 7405. The name and address of the current official would be maintained by VA for current and future VA chaplains. VA publishes the names and contact information of the endorsing officials in its website so that individuals of a particular faith who wish to become VA chaplains know whom they must contact within their religious community to seek endorsement. Lastly, all ecclesiastical endorsing officials of an ecclesiastical endorsing organization must be designated by the same official within such an organization. If an ecclesiastical endorsing organization already has a recognized ecclesiastical endorsing official and is, therefore, accepted as an ecclesiastical endorsing organization, a component of that organization cannot designate its own endorsing official and become a separate endorsing organization. VA

would add this requirement to maintain a central point of contact within an organization and to avoid any confusion if, for example, one portion of an ecclesiastical endorsing organization endorses an individual while another portion denies endorsement to that same individual.

Proposed paragraph (d) would state the documentation that an ecclesiastical endorsing organization would need to submit in order to be recognized by VA as an ecclesiastical endorsing agent. The Department of Defense requires that endorsing organizations submit certain materials, and VA also proposes to require those same materials.² Further, the ecclesiastical endorsing organization must complete the VA form that requests designation as an ecclesiastical endorsing agent. In order to ensure

² The relevant section of Enclosure 3 of the Department of Defense Instruction states:

E3.1.3. The religious organization shall submit documents verifying the following information with regard to such organization:

E3.1.3.1. That the religious organization is organized as an entity functioning primarily to perform religious ministries to a non-military lay constituency and currently holds a section 501(c)(3) exempt status (Reference (i)) as a church for Federal tax purposes from the Internal Revenue Service (IRS) (note "church" is used by the IRS not to denote a belief system, but to distinguish "churches" from other types of religious organizations; see IRS Instructions for Form 1023 Schedule A). Such rules stipulate that the particular religious beliefs of the organization are truly and sincerely held and that the practices and rituals associated with the organization's religious belief or creed are not illegal or contrary to clearly defined public policy. In order to determine whether a particular religious organization has properly acquired, and currently maintains, an IRS tax exempt status and does not engage in practices that are illegal or contrary to defined public policy, the USD(PR) shall take appropriate steps to verify with the DoD Components and other Federal Agencies compliance with these requirements.

E3.1.3.2. That it possesses ecclesiastical authority to grant and withdraw initial and subsequent ecclesiastical endorsement for ministry in the Armed Forces.

E3.1.3.3. That it verifies the religious organization shall provide chaplains who shall function in a pluralistic environment, as defined in this Instruction, and who shall support directly and indirectly the free exercise of religion by all members of the Military Services, their family members, and other persons authorized to be served by the military chaplaincies.

E3.1.3.4. That it agrees to abide by all DoD Directives, Instructions, and other guidance and with Military Department regulations and policies on the qualification and endorsement of RMPs for service as military chaplains.

that the expressed religious needs of the veteran population would be met, VA also proposes that ecclesiastical endorsing organizations submit documentation that states the organization's structure, including copies of the by-laws, constitution, articles of incorporation; membership requirements of the organization; membership requirements for clergy (education, licensure, experience, ordination, etc.); and the organization's beliefs and practices. VA cannot recognize more than one ecclesiastical endorsing organization from a faith, so this information would also help VA to verify whether the ecclesiastical endorsing organization is part of a larger organization that has already designated an ecclesiastical endorsing official. VA would also request the name of the individual who is seeking employment as a VA chaplain or seeking to be engaged by VA under contract or appointed as on-facility fee basis VA chaplains under 38 U.S.C. 7405. VA would not commence the process of considering the request from an ecclesiastical endorsing organization unless an individual from that organization seeks to be an active member of the VA chaplaincy. VA seeks comment on whether any of these requirements would place an undue burden on ecclesiastical organizations, and, if so, whether there are any alternate, less burdensome ways of ensuring that VA is able to meet the expressed religious needs of its veteran population. VA also seeks comment on whether it would be better to seek some of these materials through sub-regulatory rather than regulatory processes.³

Proposed paragraph (e) would state the notification that VA would provide to an ecclesiastical endorsing organization. If an ecclesiastical endorsing organization meets

³ See Ecclesiastical Endorsing Organizations, VA Handbook 1111.1.

the requirements of proposed paragraph (c) and has submitted the required documentation stated in proposed paragraph (d), VA will notify the ecclesiastical endorsing organization in writing that the organization has been designated as an ecclesiastical endorsing organization. We would state that the designation of an ecclesiastical endorsing organization is for a period of 3 years from the date of notification. VA would continue to accept ecclesiastical endorsements for 3 years from that organization without requiring further documentation unless VA receives evidence that the ecclesiastical endorsing organization no longer meets the requirements of proposed § 17.655. This would relieve the ecclesiastical endorsing organization's burden of supplying VA the required documentation every time that the organization endorses an individual.

VA proposes to only consider requests from ecclesiastical endorsing organizations to designate an ecclesiastical endorsing official when an individual of the requesting ecclesiastical endorsing organization who meets the education, training and experience requirements for VA chaplains is actively applying for a VA chaplain vacancy, or applying for engagement as a VA chaplain under VA contract or applying for an appointment as on-facility fee basis VA chaplains under 38 U.S.C. 7405. VA has received requests to designate an ecclesiastical endorsing official in the past without receiving an application from an individual who meets VA chaplain qualification requirements. In such cases, VA has instructed the ecclesiastical endorsing organization that we would not take any action on such request, but VA would keep the request on file for a period of 2 years.

Proposed paragraph (f) would state the reporting requirements. Because ecclesiastical endorsement is a condition of VA employment for a VA chaplain, VA must verify the endorsement of each VA chaplain. We would state that an ecclesiastical endorsing organization must provide an alphabetical listing of individuals endorsed for VA chaplaincy by the organization by January 1 of every calendar year. This certification would ensure that veterans receive spiritual care from endorsed individuals. As previously stated, VA would designate an organization as an ecclesiastical endorsing organization for a period of 3 years. In order to remain an ecclesiastical endorsing organization the organization must provide written documentation that the organization continues to meet the requirements of proposed § 17.655 every 3 years.

Proposed paragraph (g) would state the steps VA would take to rescind an organization's status as an ecclesiastical endorsing organization. In most circumstances, a rescission of such status would not be considered permanent. VA would first send the ecclesiastical endorsing organization written notice stating the reasons for the rescission. The ecclesiastical endorsing organization will be given 60 days to provide a written response addressing VA's concerns. Once the ecclesiastical endorsing organization submits the requested evidence or after the 60 day time period has expired, whichever comes first, VA will review the evidence provided and notify, in writing, the organization, and all VA chaplains endorsed by the organization, of its decision. An ecclesiastical endorsing organization must submit all documentation stated in proposed paragraph (d) to be reconsidered as an endorsing organization. As previously stated in this rulemaking, an ecclesiastical endorsing organization must meet

the eligibility requirements of proposed paragraph (c) and submit all of the evidence listed in proposed paragraph (d) in order for such organization to ecclesiastically endorse individuals for employment as VA chaplains or be engaged by VA under contract or appointed as on-facility fee basis VA chaplains under 38 U.S.C. 7405. We would, therefore, state “If an ecclesiastical endorsing organization is no longer able to endorse individuals for VA chaplaincy in accordance with this section, all ecclesiastical endorsements issued by that organization are considered to be withdrawn.”

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as proposed to be revised by this rulemaking, would represent the exclusive legal authority on this subject. No contrary rules or procedures would be authorized. All VA guidance would be read to conform with this proposed rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking.

Paperwork Reduction Act

This proposed rule includes a provision constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) that requires approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking 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 § 17.655

contains a collection of information under the Paperwork Reduction Act of 1995. VA was previously collecting this information under OMB control number 2900-0610, which expired on September 2, 2008. If OMB does not approve the collection of information as requested, VA will immediately remove the provision 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, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1068, Washington, DC 20420; fax to (202) 273-9026; or through www.Regulations.gov. Comments should indicate that they are submitted in response to “RIN 2900-[WP2015-35] Ecclesiastical Endorsing Organizations.”

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.

VA 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 VA, including whether the information will have practical utility;

- Evaluating the accuracy of VA'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 collections of information contained in § 17.655 are described immediately following this paragraph, under their respective titles.

Title: Ecclesiastical Endorsing Organizations.

Summary of collection of information and description of the need for information and proposed use of information:

Proposed paragraph (d) in § 17.655 would read that an ecclesiastical endorsing organization would need to submit documentation in order for VA to accept ecclesiastical endorsements of individuals of such organization. The information is needed to establish the eligibility requirements that an ecclesiastical endorsing organization must meet in order to provide ecclesiastical endorsements of an individual who is seeking employment as a VA chaplain or who is seeking to be engaged by VA under contract or appointed as on-facility fee basis VA chaplains under 38 U.S.C. 7405. VA has collected this information in the past through internal policy and guidance.⁴

Description of likely respondents: Ecclesiastical endorsing organizations wishing to endorse applicants for VA Chaplaincy.

⁴ Ecclesiastical Endorsing Organizations, VA Handbook 1111.1.

Estimated number of respondents per year: 50.

Estimated frequency of responses per year: 50 times per year.

Estimated average burden per response: 45 minutes.

Estimated total annual reporting and recordkeeping burden: 37.5 hours.

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. This proposed rule would directly affect only individuals and would not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

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 the Office of Management and Budget (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 of 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 the 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 the 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 numbers and titles for this rule.

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 September 15, 2016, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Health professions, Veterans.

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 September 15, 2016, for publication.

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

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 17 as follows:

PART 17 - MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

Section 17.655 also issued under 38 U.S.C. 501(a), 7304, 7405.

2. Add a center heading immediately after § 17.647 to read as follows:

CHAPLAIN SERVICES

3. Add § 17.655 to read as follows:

§ 17.655 Ecclesiastical endorsing organizations.

(a) Purpose. This section establishes the eligibility requirements that an ecclesiastical endorsing organization must meet in order to provide ecclesiastical endorsements of individuals who are seeking employment as VA chaplains or seeking to be engaged by VA under contract or appointed as on-facility fee basis VA chaplains under 38 U.S.C. 7405. Acceptance of an ecclesiastical endorsement by VA does not imply any approval by VA of the theology or practices of an ecclesiastical endorsing organization, nor does it obligate VA to employ the endorsed individual or any other member of the organization.

- (b) Definitions: The following definitions apply to this section:

(1) Ecclesiastical endorsement means a written statement addressed to VA and signed by the designated endorsing official of an ecclesiastical endorsing organization certifying that an individual is in good standing with the faith group or denomination and, in the opinion of the endorsing official, is qualified to perform the full range of ministry, including all sacraments, rites, ordinances, rituals, and liturgies required by members of the faith group. Ecclesiastical endorsement is a condition of employment as a VA chaplain. An individual must obtain and maintain a full and active ecclesiastical endorsement to be employed as a VA chaplain.

(2) Ecclesiastical endorsing official means an individual who is authorized to provide or withdraw ecclesiastical endorsements on behalf of an ecclesiastical endorsing organization.

(3) Ecclesiastical endorsing organization means an organization that meets the eligibility requirements of paragraph (c) of this section and has been properly designated as an endorsing organization in accordance with paragraph (e) of this section.

(c) Eligibility to Serve as an Ecclesiastical Endorsing Organization. An ecclesiastical endorsing organization must meet the following requirements before such organization can endorse an applicant for VA chaplaincy:

(1) Be organized and function exclusively or substantially to provide religious ministries to a lay constituency and possess authority to both grant and withdraw initial and subsequent ecclesiastical endorsements;

(2) Have tax-exempt status as a religious organization or church under the Internal Revenue Code, section 501(c)(3);

(3) Agree to abide by all Federal and VA laws, regulations, policies, and issuances on the qualification and endorsement of persons for service as VA chaplains;

(4) Agree to notify VA in writing of any withdrawal of an existing ecclesiastical endorsement within ten days after the date of such withdrawal;

(5) Provide VA the documents stated in paragraph (d) of this section;

(6) Notify VA in writing within 30 days of any change of the name, address or contact information of the individual that it designates as its ecclesiastical endorsing official; and

(7) An ecclesiastical endorsing organization that is part of an endorsing organization by which its members can be endorsed cannot become a separate endorsing organization without the written permission of the larger endorsing organization.

(d) Request to Designate Ecclesiastical Endorser. In order for an ecclesiastical endorsing organization to be recognized by VA such organization must submit the following:

(1) A complete VA form that requests the designation of an ecclesiastical endorsing official;

(2) A copy of an Internal Revenue Service document verifying that the organization currently holds a section 501(c)(3) exempt status (Reference (i)) as a church for Federal tax purposes from the Internal Revenue Service (IRS) (note “church” is used by the IRS not to denote a belief system, but to distinguish “churches” from other types of religious organizations; see IRS Instructions for Form 1023 Schedule A). Such rules stipulate that the particular religious beliefs of the organization are truly and

sincerely held and that the practices and rituals associated with the organization's religious belief or creed are not illegal or contrary to clearly defined public policy. In order to determine whether a particular religious organization has properly acquired, and currently maintains, an IRS tax exempt status and does not engage in practices that are illegal or contrary to defined public policy, VA shall take appropriate steps to verify compliance with these requirements.

(3) A document verifying that the organization shall provide chaplains who shall function in a pluralistic environment, and who shall support directly and indirectly the free exercise of religion by all veterans, their family members, and other persons authorized to be served by VA.

(4) That it agrees to abide by all VA Directives, Instructions, and other guidance, regulations and policies on the qualification and endorsement of ministers for service as VA chaplains.

(5) Documentation that states the structure of the organization, including copies of the articles of incorporation, by-laws and constitution, membership requirements of the organization, if any, the religious beliefs and practices of the organization, and the organization's requirements to become clergy; and

(6) The name and address of the individual who is applying to become a VA chaplain. (The Office of Management and Budget has approved the information collection requirements in this section under control number XXXX-XXXX.)

(e) Approval of Request to Designate an Ecclesiastical Endorsing Official. If an ecclesiastical endorsing organization meets the requirements of paragraph (c) of this

section and has submitted the documents stated in paragraph (d) of this section, VA will notify the organization in writing that such organization has been designated as an ecclesiastical endorsing organization. The designation will be for a period of 3 years from the date of notification. Once an organization is designated as an ecclesiastical endorsing organization, VA will accept ecclesiastical endorsements from that organization without requiring any further documentation from the organization during the 3 year period, unless VA receives evidence that an organization no longer meets the requirements of this section. VA will only take action on an initial request to designate an ecclesiastical endorsing official when VA receives an application from an individual who is seeking employment as a VA chaplain or is seeking to be engaged under VA contract or appointed as on-facility fee basis VA chaplains under 38 U.S.C. 7405.

(f) Reporting requirement. (1) To certify that VA chaplains continue to be endorsed by an ecclesiastical endorsing organization, such organization must provide VA an alphabetical listing of individuals who are endorsed by that endorsing organization and are employed as VA chaplains or are engaged by VA under contract or appointed as on-facility fee basis VA chaplains under 38 U.S.C. 7405 by January 1 of every calendar year.

(2) In order for VA to continue to recognize an ecclesiastical endorsing organization, such organization must provide written documentation that it continues to meet the requirements of this section every 3 years.

(g) Rescission of ecclesiastical endorsing organization. VA may rescind an organization's status as an ecclesiastical endorsing organization and refuse to accept

ecclesiastical endorsements from such organization if it no longer meets the requirements of paragraph (c) of this section. VA will take the following steps before it rescinds the organization's status:

(1) VA will give the ecclesiastical endorsing organization written notice stating the reasons for the rescission and give the organization 60 days to provide a written reply addressing VA's concerns.

(2) VA will notify the ecclesiastical endorsing organization and all VA chaplains endorsed by the organization in writing of its decision after VA reviews the evidence provided by the organization or after the 60 day time period has expired, whichever comes first.

(3) Ecclesiastical endorsing organizations that are notified that they may no longer endorse individuals for VA chaplaincy because they do not meet the requirements of paragraph (c) of this section must resubmit all of the evidence stated in paragraph (d) of this section in order to be reconsidered as an endorsing organization.

(4) If an ecclesiastical endorsing organization is no longer able to endorse individuals for VA chaplaincy in accordance with this section, all ecclesiastical endorsements issued by that organization are considered to be withdrawn.

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