

26 CFR 301.7705: Applying for and maintaining certification as a certified professional employer organization.

Rev. Proc. 2023-18

TABLE OF CONTENTS

SECTION 1. BACKGROUND AND DEFINITIONS ..... 3

    .01 Nature of Changes..... 5

    .02 Definitions ..... 7

    .03 Changes and request for comments..... 14

SECTION 2. PROCEDURES FOR APPLYING FOR CERTIFICATION AS A CPEO .... 14

    .01 Method of submission..... 15

    .02 Controlled groups ..... 16

    .03 User fee..... 16

    .04 Surety letter..... 17

    .05 Submission of annual audited financial statements, CPA opinion, and statement of working capital ..... 17

    .06 Submission of quarterly assertions, attestations, and working capital statements22

SECTION 3. SUITABILITY AND TAX-COMPLIANCE CHECK..... 26

SECTION 4. STANDARDS FOR GRANTING CERTIFICATION AS A CPEO ..... 27

    .01 Eligibility for certification must be established in the application ..... 27

    .02 Incomplete or inaccurate application ..... 27

    .03 Even if an application is complete, additional information may be required..... 28

    .04 CPEO applicant must notify IRS of material changes relevant to its application for certification ..... 28

SECTION 5. WITHDRAWAL OF APPLICATION ..... 29

    .01 Application may be withdrawn..... 29

    .02 Information may be used in subsequent examination..... 29

SECTION 6. NOTICE OF CERTIFICATION ..... 29

    .01 Notice of certification ..... 29

.02 Proof of bond .....	30
.03 Effective date of certification .....	31
.04 Disclosure of organizations certified as CPEOs .....	31
SECTION 7. DENIAL OF CERTIFICATION .....	31
.01 Notice of proposed denial.....	31
.02 Circumstances in which denial is final, with no opportunity for review .....	31
.03 Request for review of a notice of proposed denial .....	33
.04 Notice of final denial where no request for review of the proposed denial is submitted .....	34
.05 How the IRS handles a request for review .....	34
.06 Consideration by OPR.....	37
.07 A request for review may be withdrawn .....	39
SECTION 8. PROCEDURES FOR MAINTAINING CERTIFICATION AS A CPEO .....	39
.01 In general .....	39
.02 Annual verification .....	39
.03 Bond requirements .....	41
.04 Submission of annual audited financial statements .....	45
.05 Submission of quarterly assertions, attestations, and working capital statements.....	47
.06 Reporting Requirements.....	49
SECTION 9. SUSPENSION AND REVOCATION OF CPEO CERTIFICATION .....	63
.01 In general .....	63
.02 Specific failures resulting in suspension and proposed revocation .....	64
.03 Notice of suspension and proposed revocation.....	65
.04 Notice of final revocation issued if no request for review of the proposed revocation is submitted .....	69
.05 How the IRS handles a request for review of the proposed revocation .....	69
.06 Consideration by OPR.....	72
.07 A request for review may be withdrawn.....	74
.08 Notice of final revocation .....	74
.09 Consequences of revocation.....	75
.10 Reapplication after revocation.....	76

SECTION 10. VOLUNTARY TERMINATION .....	76
.01 Notice of voluntary termination.....	76
.02 Notice of termination sent to customers by IRS .....	77
.03 Effect of voluntary termination.....	77
.04 Reapplication after voluntary termination .....	78
SECTION 11. EFFECTIVE DATE .....	78
SECTION 12. PAPERWORK REDUCTION ACT .....	78
SECTION 13. DRAFTING INFORMATION.....	79

## SECTION 1. BACKGROUND AND DEFINITIONS

The Stephen Beck, Jr., Achieving a Better Life Experience (ABLE) Act of 2014, enacted on December 19, 2014, as part of the Tax Increase Prevention Act of 2014 (Pub. L. 113-295), added sections 3511 and 7705 to the Internal Revenue Code (Code) relating to the certification requirements for, and the federal employment tax consequences of being, a certified professional employer organization (CPEO). The ABLE Act requires the establishment of a voluntary program for persons to apply to the Internal Revenue Service (IRS) to become certified as a CPEO. On May 6, 2016, the Department of the Treasury (Treasury Department) and the IRS published final and temporary regulations under section 7705 (TD 9768) in the Federal Register (81 FR 27315, as corrected July 12, 2016, at 81 FR 45012) that describe the application process and certification requirements necessary for a person to become and remain a CPEO. On the same date, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-127561-15) in the Federal Register (81 FR 27360) cross-referencing the temporary regulations and proposing additional regulations under

section 3511 that describe the federal employment tax consequences of becoming a CPEO for CPEOs and their customers.

On June 3, 2016, Revenue Procedure 2016-33 (2016-25 I.R.B. 1034) was issued, providing procedures for applying to be certified as a CPEO. To address several comments received in response to the temporary and proposed regulations and Revenue Procedure 2016-33 that required prompt attention, the Treasury Department and the IRS issued Notice 2016-49 (2016-34 I.R.B. 265) on August 5, 2016. The Treasury Department and the IRS also issued Revenue Procedure 2017-14 (2017-3 I.R.B. 426) on December 29, 2016, which addressed the requirements for a CPEO to remain certified and the procedures relating to suspension and revocation of CPEO certification. Final regulations under sections 3511 and 7705 (TD 9860) describing the certification requirements necessary for a person to become and remain a CPEO, and the federal employment tax consequences of being a CPEO, which incorporated changes from Notice 2016-49, were published in the Federal Register (84 FR 24367) on May 28, 2019.

This revenue procedure modifies and supersedes both Rev. Proc. 2016-33 and Rev. Proc. 2017-14. It addresses the procedures for applying to be certified as a CPEO, the requirements for a CPEO to remain certified, and the procedures relating to suspension and revocation of CPEO certification. This revenue procedure consolidates the ongoing requirements articulated in Rev. Proc. 2016-33, as modified by Notice 2016-49, Rev. Proc. 2017-14, and the regulations under sections 3511 and 7705. In addition, it reflects changes in the ongoing operations of the CPEO program, including updates to

the IRS Online Registration System, since Rev. Proc. 2016-33 and Rev. Proc. 2017-14 were issued, and changes in response to comments and questions received from CPEOs and CPEO applicants.

The IRS received several written comments in response to the proposed and temporary regulations, Rev. Proc. 2016-33, Rev. Proc. 2017-14, and Notice 2016-49. While all relevant comments were considered and addressed in the final regulations, some comments were beyond the scope of the regulations. When appropriate, comments not addressed in the final regulations because they were beyond the scope of the regulations were considered in the drafting of this revenue procedure.

.01 Nature of Changes. This revenue procedure provides clarifications and substantive changes to the procedures outlined in Rev. Proc. 2016-33 and Rev. Proc. 2017-14. Specifically, this revenue procedure:

(1) Expands and defines the role of the application submitter in order to make application processing, document and information submission, and other communications with respect to the CPEO applicant or CPEO more efficient. Because of this expanded role, this revenue procedure also further clarifies who can be an application submitter. Rev. Proc 2016-33, section 2.01, provided that the individual submitting the online application for CPEO certification on behalf of the CPEO applicant must be authorized by section 6103(e) to inspect the return of the CPEO applicant. Furthermore, Rev. Proc. 2017-14, section 2.01, provided that the individual submitting information and documents on behalf of the CPEO through the CPEO's online account must be authorized by section 6103(e) to inspect the returns and return information of

the CPEO. Under this revenue procedure, an application submitter must either hold a position specified in section 1.02(1)<sup>1</sup> or have a valid Form 2848, Power of Attorney and Declaration of Representative, for the CPEO applicant or CPEO on file with the IRS.

(2) Provides updates to the procedures for a denial of CPEO certification and for the suspension and proposed revocation of a certification—specifically, procedures concerning what information the IRS CPEO program office will consider when reviewing a CPEO applicant's or CPEO's request for review and when this information should be submitted. Further, additional detail is provided concerning review by the IRS Office of Professional Responsibility (OPR), including rules prohibiting most communications between OPR and the IRS CPEO Program Office and between OPR and the CPEO applicant or CPEO during OPR's review.

(3) Provides information on how CPEOs should submit Form 8973, Certified Professional Employer Organization/Customer Reporting Agreement, unsigned by a client, for CPEOs that occasionally experience difficulty in obtaining a signature on Form 8973 from a client subject to a service agreement described in § 31.3504-2(b)(2).

(4) Provides additional details concerning the CPEO applicant's and CPEO's use of the IRS Online Registration System account, including a requirement that CPEO applicants and CPEOs that are members of a controlled group in which more than one member of the controlled group is a CPEO applicant or CPEO must create a controlled group license within the IRS Online Registration System.

---

<sup>1</sup> Unless otherwise indicated, all references to sections in this document refer to sections of this revenue procedure.

(5) Clarifies that as part of an examination level attestation indicating that the CPEO or CPEO applicant failed to withhold or make deposits in certain immaterial aspects, the CPEO or CPEO applicant may include an explanation not only as to why the failures were immaterial, but also how the failures were addressed, if applicable.

(6) Provides updates to the fingerprint procedures for responsible individuals. Specifically, all responsible individuals are now required to submit fingerprints electronically using Fieldprint. Fingerprint submissions on Form FD-258 will no longer be processed. All current responsible individuals will have until June 1, 2023, to submit new fingerprints electronically.

.02 Definitions. For purposes of this revenue procedure—

(1) Application Submitter. The term “application submitter” means the individual who is submitting an application on behalf of a CPEO applicant and any other individual submitting information and documents to the IRS on behalf of a CPEO. Except as provided in this section 1.02(1), the application submitter must be a partner or limited partner if the CPEO applicant or CPEO is a partnership; the president, vice president, secretary, treasurer, chief accounting officer, any tax officer (including Controller), 1% shareholder (corporation), or shareholder (S-corporation) if the CPEO applicant or CPEO is a corporation or S-corporation; or owner or sole proprietor if the CPEO applicant or CPEO is a sole proprietorship. An individual who does not occupy one of these positions must have a valid Form 2848, Power of Attorney and Declaration of Representative, for the CPEO applicant or CPEO on file with the IRS in order to be the application submitter.

(2) Controlled Group. The term “controlled group” means any group of corporations or trades or businesses under common control within the meaning of section 414(b) and (c), and §§ 1.414(b)-1 and 1.414(c)-1 through 1.414(c)-6 of the Treasury Regulations.

(3) Certified Public Accountant. The term “certified public accountant” (CPA) means a certified public accountant who--

(a) With respect to a CPEO or CPEO applicant, is independent of the CPEO or CPEO applicant (as prescribed by the American Institute of Certified Public Accountants’ Professional Standards, Code of Professional Conduct, and its interpretations and rulings);

(b) Is not currently under suspension or disbarment from practice before the IRS;

(c) Is duly qualified to practice in any state; and

(d) Files with the IRS a written declaration that the CPA is currently qualified as a CPA.

(4) Covered Employee. The term “covered employee” means, with respect to a customer, any individual (other than a self-employed individual, as defined in section 1.02(18)) who performs services for the customer and who is covered by a CPEO contract between the CPEO and the customer.

(5) CPEO. The term “CPEO” means a person that has been certified by the Commissioner as meeting the requirements of § 301.7705-2, this revenue procedure, instructions in the online application, and any applicable subsequent guidance, and whose certification has not been revoked or voluntarily terminated.



(6) CPEO Applicant. The term “CPEO applicant” means a person that submits or has submitted an application to be certified as a CPEO in accordance with § 301.7705-2, this revenue procedure, the instructions in the online application, and any applicable subsequent guidance. A CPEO applicant remains a CPEO applicant until the CPEO applicant is certified (meaning the CPEO applicant receives a notice of certification described in section 6.01 and timely and correctly submits a proof of bond, as described in section 6.02); withdraws its application; or receives a notice of final denial, as described in section 7.04.

(7) CPEO Contract. The term “CPEO contract” means a service contract between a CPEO and a customer that satisfies the requirements in section 7705(e)(2) and § 301.7705-1(b)(3).

(8) Customer. The term “customer” means any person who enters into a CPEO contract with a CPEO, except that a provider of employment-related services that uses its own employer identification number (EIN) for filing federal employment tax returns on behalf of its clients (or that used its own EIN for filing its clients’ returns immediately prior to entering into a CPEO contract with the CPEO) is not a customer, even if it has entered into a CPEO contract with the CPEO.

(9) Federal Employment Taxes. The term “federal employment taxes” means the taxes imposed by subtitle C of the Code.

(10) Guidance. The term “guidance” includes guidance published in the Federal Register or Internal Revenue Bulletin, as well as administrative guidance such as forms, instructions, publications, or other guidance on IRS.gov.

(11) IRS Online Registration System. The term “IRS Online Registration System” means the system made available by the IRS on IRS.gov and used by CPEO applicants and CPEOs to apply for and maintain certification, and by responsible individuals of CPEO applicants and CPEOs to create a Responsible Individual Personal Attestation. To apply for certification, CPEO applicants must create an account on the IRS Online Registration System, and CPEO applicants must use this account to provide the IRS with the information and supporting documentation necessary to obtain certification. A CPEO must use its IRS Online Registration System account to annually verify information previously submitted, to provide updates that reflect material changes to previously submitted information, and to comply with annual and quarterly program requirements. Responsible individuals of CPEO applicants and CPEOs must use the IRS Online Registration System to create a Responsible Individual Personal Attestation (RIPA), through which they provide the information necessary for their CPEO applicants and CPEOs to obtain and maintain certification. See section 2.02 for a discussion of controlled group licenses and their use on the IRS Online Registration System.

(12) Online Application. The term “online application” means the electronic submission by a CPEO applicant and its responsible individuals of all information required by the CPEO application for certification on the IRS Online Registration System, as well as the accompanying forms and documentation required by § 301.7705-2, this revenue procedure, and any applicable subsequent guidance.

(13) Precursor Entity. The term “precursor entity” means an entity described in § 301.7705-1(b)(10).

(14) Qualified Surety. The term “qualified surety” means a surety that meets the requirements of § 301.7705-2(g)(6).

(15) Related Entity. The term “related entity” means an entity described in § 301.7705-1(b)(12).

(16) Responsible Individual. The term “responsible individual” means an individual described in § 301.7705-1(b)(13).

(17) Responsible Individual Personal Attestation. The term “Responsible Individual Personal Attestation” (RIPA) means the attestation a responsible individual must submit through the IRS Online Registration System as a prerequisite to the organization submitting a CPEO application via the IRS Online Registration System. The RIPA contains information that will allow the IRS to perform a suitability check on the responsible individual.

(18) Self-Employed Individual. The term “self-employed individual” means an individual with net earnings from self-employment (as defined in section 1402(a) and without regard to the exceptions thereunder) derived from providing services covered by a CPEO contract, whether the net earnings from self-employment are derived from providing services as a non-employee to a customer of the CPEO, from the individual’s own trade or business as a sole proprietor customer of the CPEO, or as an individual who is a partner in a partnership that is a customer of the CPEO, but in each case only with regard to those net earnings.

(19) Work Site. The term “work site” means a physical location at which an individual regularly performs services for a customer of a CPEO or, if there is no

physical location at which an individual regularly performs services for a customer of a CPEO, the location from which the customer assigns work to the individual. A work site may not be the individual's residence or a telework site unless the customer requires the individual to work at that site. For purposes of this section 1.02(19), work sites that are contiguous locations will be treated as a single physical location and thus a single work site, and noncontiguous locations will be treated as separate physical locations and thus separate work sites, except as provided in the next sentence. A CPEO customer may treat noncontiguous locations as a single physical location and thus a single work site if each of the locations is separated by less than 35 miles from every other location in the single work site, and all locations in the single work site operate in the same industry. For purposes of the preceding sentence, the determination of the industry of a work site is based on the nature of the CPEO customer's work at that work site, irrespective of work performed by other entities at the same site. When treating noncontiguous locations as a single physical location and thus a single work site, a noncontiguous location cannot be included in more than one work site.

(20) Work Site Employee. The term "work site employee" means, with respect to a customer, a covered employee who performs services for the customer at a work site where, at any time during a calendar quarter, at least eighty-five percent of the individuals performing services for the customer are covered employees of the customer. To be a work site employee, a covered employee regularly performing services for a customer at a work site during a calendar quarter is not required to be

performing services for the customer at the time the work site coverage requirement is met at that work site.

(a) Solely for purposes of determining whether the eighty-five percent threshold described in this section 1.02(20) is met, a self-employed individual described in section 1.02(18) is treated as a covered employee if the individual is performing services at the work site and would be a covered employee but for the exclusion of self-employed individuals from the definition of a covered employee in section 1.02(4).

(b) In determining whether the eighty-five percent threshold is met, an individual who is an excluded employee described in section 414(q)(5) is not treated as either an individual providing services or covered employee.

(c) A covered employee will be considered a work site employee for the entirety of a calendar quarter with respect to all services performed for a customer at one or more work sites if the employee qualifies as a work site employee with respect to the customer at any work site during that calendar quarter.

(d) The determination of whether a work site meets the eighty-five percent threshold is made separately with respect to each customer of a CPEO and with respect to each work site of a customer. However, a covered employee may be determined to be a work site employee of more than one work site during a calendar quarter.

(e) A CPEO's determination that a covered employee is a work site employee will be respected if the CPEO has made a good faith determination that the covered employee meets the requirements of section 7705(e), § 301.7705-1(b)(17), this section

1.02(20), and any applicable subsequent guidance related to work site employee determinations.

.03 Changes and request for comments. This revenue procedure may be updated periodically to improve CPEO program procedures. The IRS solicits comments on this revenue procedure and the administration of the CPEO program. Comments on whether additional guidance is needed due to ongoing changes in workforce practices that have in part resulted from the COVID-19 pandemic as those changes relate to the definition of work site or work site employee are specifically requested and should be submitted by June 9, 2023. All comments will be available for public inspection and copying. Comments may be submitted in one of two ways:

(1) Mail. Send paper submissions to: CC:PA:LPD:PR (RP-2023-18), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

(2) Electronically. Submit electronic submissions via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (indicate IRS and RP-2023-18) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. Commenters are strongly encouraged to submit public comments electronically. The Treasury Department and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket.

## SECTION 2. PROCEDURES FOR APPLYING FOR CERTIFICATION AS A CPEO

.01 Method of submission. A person seeking certification as a CPEO must electronically submit through its IRS Online Registration System account a properly completed and executed online application for CPEO certification and all accompanying forms and documentation required by § 301.7701-2, this revenue procedure, the instructions in the online application, and any applicable subsequent guidance. Paper submissions will not be accepted and will be treated as an incomplete application as described in section 4.02. Except as otherwise provided in this revenue procedure or the instructions in the online application, documents required to be submitted after the application is submitted must also be submitted electronically through the CPEO applicant's IRS Online Registration System account. Only an application submitter can submit the online application for CPEO certification and all accompanying forms and documentation. In addition, each of the CPEO applicant's responsible individuals must electronically submit a properly completed and executed RIPA at the time and in the manner described in the instructions in the online application.<sup>2</sup> As of June 1, 2022, responsible individuals must also submit fingerprints electronically using Fieldprint, or by another method permitted in the instructions in the online application. Fingerprint submissions on an FD-258, Fingerprint Card, will no longer be processed. All current CPEO responsible individuals will have until June 1, 2023, to submit new fingerprints electronically. For more information on the electronic fingerprinting process, including scheduling an appointment, see Publication 5249, *Fingerprint Card Instructions for*

---

<sup>2</sup> Once the RIPA is submitted, the information contained in the RIPA becomes return information, under section 6103, of the CPEO applicant and may be disclosed to the CPEO applicant if the IRS determines that the disclosure will not seriously impair federal tax administration.

*Voluntary Certification of Professional Employer Organizations.* For more information on how to electronically submit the information and documents required in this revenue procedure, see instructions in the online application or responsible individual's RIPA accessible through the CPEO's IRS Online Registration System account.

.02 Controlled groups. If more than one member of a controlled group seeks to be certified as a CPEO, each such member must submit a separate online application. Members of a controlled group may not apply jointly on one online application. However, CPEOs and CPEO applicants that are members of a controlled group in which more than one member is a CPEO or CPEO applicant must create a controlled group license within the IRS Online Registration System. The controlled group license will formalize the link between members of the controlled group in the system and will allow for certain documents to be submitted only once for all CPEO and CPEO applicant members in the controlled group. See sections 2.04, 2.05(6), and 2.06(5) for details regarding the necessary documentation relating to the bond and financial review requirements that CPEO applicants that are members of a controlled group must submit.

.03 User fee. Consistent with section 7528(b)(4), upon submission of the online application for certification through the IRS Online Registration System, the application submitter will be automatically directed to pay a user fee in the amount of \$1,000. No CPEO application will be processed until the IRS receives the user fee. Once processing of the application has begun, the user fee will not be returned, even if the application is withdrawn or denied.



.04 Surety letter. With its online application, a CPEO applicant must submit through its IRS Online Registration System account a signed letter from a qualified surety confirming that the surety agrees to issue a bond to the CPEO applicant if and when it is certified as a CPEO (a “surety letter”). The surety letter must also state that the surety agrees to issue a bond in the amount required by § 301.7705-2(g)(2) and pursuant to the terms set forth in Form 14751, *Certified Professional Employer Organization Surety Bond*. If a CPEO applicant is a member of a controlled group of which other members are CPEO applicants or CPEOs, the surety letter must also contain the name and EIN of each CPEO applicant and each CPEO that is or will be covered by the bond. All CPEO members of a controlled group are required to be on the same bond in the amount required by § 301.7705-2(g)(2), applied as if all such CPEO members (and any of their precursor entities, if applicable) were one organization.

.05 Submission of annual audited financial statements, CPA opinion, and statement of working capital.

(1) Copy of annual audited financial statements. With its online application, a CPEO applicant must submit through its IRS Online Registration System account a copy of its annual audited financial statements for the most recently completed fiscal year, except as provided in the next sentence. If a CPEO applicant submits its application before the last day of the sixth month following its most recently completed fiscal year, and the audit of the financial statements for that fiscal year has not been completed at the time it submits its application, the CPEO applicant must provide with its application the annual audited financial statements for the fiscal year immediately

preceding the most recently completed fiscal year, and the CPEO applicant must subsequently provide to the IRS the annual audited financial statements for the most recently completed fiscal year by the last day of the sixth month after such fiscal year ends. In addition, for any fiscal year that ends after the CPEO applicant submits its application for certification and on or before the effective date of certification, the CPEO applicant must provide the annual audited financial statements by the last day of the sixth month after such fiscal year ends. The obligations described in this section 2.05(1) continue even if the CPEO applicant is certified as a CPEO before the IRS has received the annual audited financial statements. See section 8.04 for obligations concerning annual audited financial statements that continue after certification.

(2) CPA opinion. With each of these annual audited financial statements, the CPEO applicant must submit an opinion of a CPA that the financial statements are presented fairly and in accordance with generally accepted accounting principles (GAAP). The CPA opinion must be an unmodified opinion (i.e., it cannot be a qualified opinion, an adverse opinion, or a disclaimer of opinion), accompanied by a written and signed declaration that the CPA is currently qualified as a CPA.

(3) Working capital statement. Each of the annual audited financial statements submitted to the IRS must include a statement in the Note to the Financial Statements covered by the CPA opinion that the CPEO applicant's annual audited financial statements reflect positive working capital or, only if the CPEO applicant satisfies the requirements of section 2.05(4) of this section, reflect negative working capital. The

statement must set forth a detailed calculation of the CPEO applicant's working capital as reflected in the annual audited financial statements (a working capital statement).

(4) Exception for negative working capital. A CPA statement described in section 2.05(3) may state that a CPEO applicant's annual audited financial statements reflect negative working capital, but in that case the statement will meet the requirements of section 2.05(3) only if--

(a) The CPEO applicant has negative working capital for no more than two consecutive fiscal quarters of the fiscal year, as demonstrated by the required annual audited financial statements, or the statements described in section 2.06(3), or the submission of quarterly unaudited financial statements;

(b) The CPEO applicant provides with the statement a detailed calculation of its negative working capital and an explanation to the IRS describing the reason for the failure to demonstrate positive working capital; and

(c) The IRS determines, in its sole discretion, that the failure to demonstrate positive working capital does not present a material risk to the IRS's collection of federal employment taxes. The determination of whether the failure to demonstrate positive working capital presents a material risk to the IRS's collection of federal employment taxes may depend, in part, on whether the CPEO applicant has identified facts and circumstances that will result in positive working capital in the near future.

(5) Newly established CPEO applicants. A CPEO applicant that was not operating as a provider of payroll services for all or part of the most recently completed fiscal year as of the date it applies for certification must also provide for the entity or entities listed

in section 2.05(5)(a) and (b) a copy of each entity's audited financial statements for the most recently completed fiscal year, subject to the exception provided in section 2.05(1), accompanied by an unmodified opinion of a CPA that such financial statements are presented fairly and in accordance with GAAP, and including a statement in the Note to the Financial Statements that the annual audited financial statements reflect positive working capital or, only if the requirements of section 2.05(4) are met (as applied to the entity), reflect negative working capital, with the statement in either case setting forth in detail a calculation of the entity's working capital as reflected in the financial statements. The entity or entities for which this information is required are:

(a) Any precursor entity of the CPEO applicant; or

(b) If the CPEO applicant does not have a precursor entity, any related entity described in § 301.7705-1(b)(12)(ii)(B).

(6) Annual Audited Financial statements for controlled groups. In satisfaction of the requirement in section 2.05(1), if a CPEO applicant is a member of a controlled group of which other members are also CPEO applicants or CPEOs, the CPEO applicant must submit copies of combined or consolidated annual audited financial statements for all CPEO applicants and CPEOs in the controlled group, with an accompanying unmodified opinion of a CPA that such financial statements are presented fairly and in accordance with GAAP. The combined or consolidated annual audited financial statements may, but are not required to, also include all members of the controlled group that are not CPEO applicants or CPEOs. The statements and opinion must contain the name and EIN of each CPEO applicant and CPEO in the controlled group. If the statements and

opinion include members of the controlled group that are not CPEOs or CPEO applicants, the name and EIN of these members must also be included. Although the CPEO applicant is not required to provide a copy of its separate financial statements as part of its application, if the financial position of a CPEO applicant is unclear from the combined or consolidated financial statements of the controlled group of which the CPEO applicant is a member, the IRS may request additional financial information that is needed to evaluate the CPEO applicant's financial position, such as the annual balance sheet, income statement, and statement of cash flow, of the individual CPEO applicant. Notwithstanding the foregoing, and as required by section 2.05(3), the annual audited financial statement submitted by a CPEO applicant that is a member of a controlled group of which other members are also CPEO applicants or CPEOs must include a statement in the Note to the Financial Statements that each individual CPEO applicant's financial statements reflect positive working capital or, if the requirements of section 2.05(4) are met, reflect negative working capital, with each statement in either case setting forth in detail a calculation of the individual CPEO applicant's working capital. For purposes of the requirements of section 2.05(4), if it is unclear whether the CPEO applicant has positive or negative working capital for the last quarter of the fiscal year based on the combined or consolidated financial statements of the controlled group of which the CPEO applicant is a member, the IRS may request additional financial information on an individual CPEO applicant basis. The status of other CPEO applicants and CPEOs in the controlled group is not affected if the CPEO applicant is denied certification because the annual audited financial statements reflect that the

CPEO applicant has negative working capital and the CPEO applicant fails to meet the exception described in section 2.05(4).

(7) Fiscal year. A fiscal year will be considered completed once the last day of that fiscal year has ended, regardless of whether the CPEO applicant was in operation or certified for all 12 months of the fiscal year or the fiscal year consisted of fewer than 12 months.

.06 Submission of quarterly assertions, attestations, and working capital statements. For the most recently completed calendar quarter as of the date of its application for certification, a CPEO applicant must submit through its IRS Online Registration System account an assertion, as described in section 2.06(1), that it has withheld and made deposits of all federal employment taxes for which the CPEO applicant is liable for the quarter; an examination level attestation from a CPA, as described in section 2.06(2), stating that this assertion is fairly stated in all material respects; and a statement verifying that the CPEO applicant has positive working capital, as described in section 2.06(3). The CPEO applicant must continue to provide this documentation for every subsequently completed calendar quarter during which its application for certification is pending for some or all of the quarter. This documentation must be provided by the last day of the second month after the end of each subsequent quarter, even if the CPEO applicant receives its certification before this deadline.

(1) Assertion. The assertion must be signed under penalties of perjury by a responsible individual of the CPEO applicant and state that the CPEO applicant has withheld and made deposits of all federal employment taxes for the calendar quarter as

required by subtitle C of the Code (except that federal employment taxes imposed by chapter 23 are not required to be included in the assertion).

(2) Examination level attestation. The examination level attestation from a CPA must state that the assertion described in section 2.06(1) is fairly stated in all material respects and complies with the requirements of the American Institute of Certified Public Accountants' Statements of Standards for Attestation Engagements, including the specific requirements for Examination Reports. The attestation must be accompanied by a written declaration, signed by the CPA or the accounting firm where the CPA is employed or is an owner, or with which the CPA is otherwise affiliated, that the CPA is currently qualified as a CPA. A CPEO applicant will not fail to meet the requirements of this section 2.06(2) if the examination level attestation indicates that the CPEO applicant has failed to withhold or make deposits in certain immaterial respects, provided that--

(a) The attestation provides a summary of the immaterial failures that were found;

(b) The attestation states that, and explains why, the failures were immaterial and isolated (including how the failures were addressed, if applicable) and do not reflect a meaningful lapse in compliance with federal employment tax withholding and deposit requirements; and

(c) The IRS determines, in its sole discretion, that the isolated and immaterial failures identified by the CPA do not present a material risk to the IRS's collection of federal employment taxes.

(3) Statement of positive working capital. The statement verifying positive working capital must be signed by a responsible individual under penalties of perjury and verify that the CPEO applicant has positive working capital (as defined by GAAP) with respect to the most recently completed fiscal quarter. The statement must include a detailed calculation of the CPEO applicant's working capital and be accompanied by a copy of the CPEO applicant's unaudited financial statements for the most recently completed fiscal quarter, if such statements are available. A CPEO applicant will not fail to meet the requirements of this section 2.06(3) as a result of having negative working capital at the end of the fiscal quarter if--

(a) The CPEO applicant does not have negative working capital at the end of each of the two fiscal quarters immediately preceding such fiscal quarter, as demonstrated by the required annual audited financial statements described in section 2.05 or the statements described in this section 2.06(3), or the submission of quarterly unaudited financial statements;

(b) The CPEO applicant provides a detailed calculation of its negative working capital, unaudited financial statements for the quarter, if available, and an explanation to the IRS describing the reason for negative working capital; and

(c) The IRS determines, in its sole discretion, that the negative working capital does not present a material risk to the IRS's collection of federal employment taxes. The determination of whether the failure presents a material risk to the IRS's collection of federal employment taxes may depend, in part, on whether the CPEO applicant has



identified facts and circumstances that will result in positive working capital in the near future.

(4) CPEO applicant with precursor entity. If a CPEO applicant was not operating as a provider of employment-related services for all or part of the most recently completed calendar quarter as of the date of its application for certification or during any calendar quarter that ends while its application for certification is pending, the CPEO applicant must provide the assertion, examination level attestation, and working capital statement described in this section 2.06 with respect to any precursor entity, if applicable. The information required by this section 2.06(4) must be provided by the last day of the second month after the end of each applicable calendar quarter, beginning with the most recently completed calendar quarter as of the date of the application (or as of the date the entity became a precursor entity while the application was pending) and for all subsequent quarters while the application is pending and the CPEO applicant is not operating as a provider of employment-related services for all or any portion of a quarter.

(5) Quarterly assertions, attestations, and working capital statements for controlled groups. In satisfaction of the requirement in this section 2.06, if a CPEO applicant is a member of a controlled group of which other members are CPEO applicants or CPEOs, the CPEO applicant must submit the quarterly assertions and attestations described in this section 2.06 for all CPEO applicants and CPEOs in the controlled group on a combined or consolidated controlled group basis, rather than for the CPEO applicant individually. The quarterly assertions and attestations must include the name and EIN

of each CPEO and CPEO applicant in the controlled group. However, the quarterly working capital statement described in section 2.06(3) must relate to the CPEO applicant alone and must not be prepared on a combined or consolidated basis with other members of the controlled group. For purposes of the requirements of section 2.06(3), if it is unclear whether the CPEO applicant has positive or negative working capital for the last quarter of the fiscal year based on the combined or consolidated financial statements of the controlled group of which the CPEO applicant is a member, the IRS may request additional financial information about the individual CPEO applicant. The status of other CPEO applicants and CPEOs in the controlled group is not affected if the CPEO applicant is denied certification because the quarterly working capital statement described in section 2.06(3) reflects negative working capital and the CPEO applicant fails to meet the exception described in section 2.06(3).

### SECTION 3. SUITABILITY AND TAX-COMPLIANCE CHECK

A CPEO applicant will be required to identify its related entities, precursor entities, and responsible individuals as part of its online application for certification. The IRS will investigate the accuracy of statements and representations made by a CPEO applicant and its responsible individuals in the CPEO applicant's online application by conducting background checks of the CPEO applicant, any related entities or precursor entities,<sup>3</sup> and responsible individuals. These background checks may include checks on tax

---

<sup>3</sup> In order for the application submitter to discuss a return of a related entity of the CPEO applicant with the IRS, the application submitter must be authorized by section 6103(e) to inspect the return information of the CPEO applicant or have a Form 8821, Tax Information Authorization, for that related entity and that return on file with the IRS.

compliance, criminal background, professional experience, credit history, professional sanctions, and other relevant facts. By submitting an application, a CPEO applicant and its responsible individuals agree to provide the IRS with additional information the IRS may request to facilitate its background checks (see section 4.03). A CPEO applicant and each of its responsible individuals must authorize the IRS to conduct required background checks and to investigate the accuracy of statements and submissions, including waiving confidentiality and privilege in situations in which the IRS is otherwise unable to obtain information or would otherwise be prevented from obtaining or confirming information necessary to evaluate a CPEO applicant's qualification for certification from relevant third parties (such as former employers) because of the existence of confidentiality, non-disclosure, or similar agreements. Failure to provide such information or take such action may result in denial of certification.

#### SECTION 4. STANDARDS FOR GRANTING CERTIFICATION AS A CPEO

.01 Eligibility for certification must be established in the application. A CPEO applicant will be certified as a CPEO only if its application for certification and supporting documentation establish to the satisfaction of the IRS that the CPEO applicant meets the requirements of § 301.7705-2, this revenue procedure, the instructions in the online application, and any applicable subsequent guidance, so as not to present a material risk to the IRS's collection of federal employment taxes.

.02 Incomplete or inaccurate application. All applications for certification must be complete and accurate. An application is not complete and accurate if it does not contain all of the items required by § 301.7705-2, this revenue procedure, the

instructions in the online application, and any applicable subsequent guidance. If an incomplete application is submitted, the IRS generally will request from the CPEO applicant additional information needed for a completed application. However, the IRS may deny an incomplete application without requesting additional information.

.03 Even if an application is complete, additional information may be required. Even if an application is complete, the IRS may request additional information before approving or denying certification. For instance, if the results of a background check as described in section 3, including the result of a tax compliance check, suggest a potential failure to meet a requirement described in § 301.7705-2, the IRS may request that the CPEO applicant provide an explanation of the results. As another example, the IRS may ask a CPEO applicant to support its representations with respect to its experience by providing a written work history or third-party references.

.04 CPEO applicant must notify IRS of material changes relevant to its application for certification. Within 30 days of its occurrence, a CPEO applicant must notify the IRS through its IRS Online Registration System account of any change that materially affects the continuing accuracy of any previously made agreement or other information provided to the IRS as a part of its application for certification. Examples of material changes are provided in section 8.06(3) and include, but are not limited to, any change in the tax compliance, criminal background, or professional license or registration status of the CPEO applicant, or any of its precursor entities, related entities, or responsible individuals; any change to the CPEO applicant's fiscal year; and any change that results in another individual being considered a responsible individual of the CPEO applicant or

another entity being considered a precursor entity or a related entity of the CPEO applicant. For purposes of this section 4.04, a material change also includes the discovery of significant errors in or new facts relevant to any agreement or information provided to the IRS as part of the application for certification.

## SECTION 5. WITHDRAWAL OF APPLICATION

.01 Application may be withdrawn. An application may be withdrawn upon the written request of an application submitter submitted through the CPEO applicant's IRS Online Registration System account.

.02 Information may be used in subsequent examination. When an application is withdrawn, the IRS may retain and use for tax administration, the application, all supporting documents, and the information submitted in connection with the withdrawal request.

## SECTION 6. NOTICE OF CERTIFICATION

.01 Notice of certification. If a CPEO applicant is approved for certification, the IRS will electronically issue a notice of certification to the CPEO applicant through its IRS Online Registration System account. If a CPEO applicant is a member of a controlled group and other members of the controlled group are also applying for certification, the IRS will issue a separate notice of certification to each CPEO applicant member of the controlled group that has been approved for certification. The notice of certification will specify the effective date of certification and indicate that the effective date of

certification is contingent upon timely receipt by the IRS of an acceptable Form 14751 as set forth in section 6.02.

.02 Proof of bond. A CPEO applicant has 30 days from the date of the notice of certification to submit to the IRS, through the CPEO applicant's IRS Online Registration System account, proof of a bond in the form of a properly completed and executed Form 14751, signed by both a qualified surety and the CPEO (or CPEOs in the case of a controlled group), and in an amount prescribed by § 301.7705-2(g)(2). The CPEO is not obligated to use the same qualified surety company that signed the Surety Letter. If the CPEO applicant fails to provide proof of a bond within 30 days after the date of the notice, its certification will not become effective, and the CPEO applicant will subsequently be sent a final notice of denial (with no opportunity to request review of the denial). If a CPEO applicant in a controlled group receives a notice of certification after other members of its controlled group are already certified by the IRS, the controlled group will be required to post a properly completed and executed Form 14751 that includes the CPEO applicant in its identification of all CPEOs in the controlled group and that reflects the correct bond amount for all CPEOs in the controlled group, including the CPEO applicant. To add the newly certified CPEO to the controlled group's bond and to increase the bond amount, if applicable, a CPEO may amend an existing bond through the use of a rider, or post a superseding or new bond, where applicable, as described in section 8.03(3). If the CPEO applicant fails to submit a properly completed and executed Form 14751 reflecting the addition of the newly certified CPEO within the time period provided in this section 6.02, the CPEO

applicant's certification will not become effective, and it will subsequently be sent a final notice of denial (with no opportunity to request review of the denial). However, the status of the other CPEOs in the controlled group will remain unaffected.

.03 Effective date of certification. The effective date of certification will typically be the first day of the first calendar quarter following the date of the notice of certification.

.04 Disclosure of organizations certified as CPEOs. The IRS will publish a list of all organizations that are certified as CPEOs, and the effective date of their certification, on [IRS.gov](http://IRS.gov), which will be updated to reflect newly certified CPEOs by the 15th day of the first month of every calendar quarter. However, an organization will not appear on this list until the IRS has received the proof of bond on Form 14751, as described in section 6.02.

## SECTION 7. DENIAL OF CERTIFICATION

.01 Notice of proposed denial. If the IRS decides that an application for certification should be denied based on the CPEO applicant's failure to satisfy one or more of the requirements of § 301.7705-2, this revenue procedure, the instructions accompanying the online application, and any applicable subsequent guidance, the IRS will issue a notice of proposed denial (unless the circumstances in section 7.02 apply) to the CPEO applicant's IRS Online Registration System account, which will (i) include the reason(s) for the denial of certification; and (ii) inform the CPEO applicant of its opportunity to request review of the proposed denial.

.02 Circumstances in which denial is final, with no opportunity for review. In situations in which the denial of an application is based on the CPEO applicant's failure

to comply with a requirement in § 301.7705-2, this revenue procedure, the instructions in the online application, or any applicable subsequent guidance, and such failure is not subject to reasonable factual or legal dispute, the IRS will not issue a notice of proposed denial, but will instead issue a notice of final denial, which will include the reason(s) for the denial of certification, but will not provide for an opportunity for review. Denials based on failures that are not subject to reasonable factual or legal dispute include, but are not limited to, denial based on the following:

(1) Incomplete application. The CPEO applicant submits an incomplete application as described in section 4.02 or fails to respond to a request from the IRS for additional information needed for a complete application (as described in section 4.02) by the date required.

(2) Modified opinion. The CPA opinion of annual audited financial statements submitted by the CPEO applicant is a modified opinion (which includes a qualified opinion, an adverse opinion, or a disclaimer of opinion).

(3) Negative working capital. The annual audited financial statements submitted by the CPEO applicant or the quarterly statements submitted by a responsible individual of the CPEO applicant reflect negative working capital, and the CPEO applicant fails to meet the exceptions described in section 2.05(4) or 2.06(3), respectively.

(4) Failure to provide proof of bond. The CPEO applicant fails to provide proof of the bond required in section 6.02 within 30 days after the date of the notice of certification.



.03 Request for review of a notice of proposed denial. A notice of proposed denial, in accordance with section 7.01, will inform the CPEO applicant of its opportunity to request a review by OPR.

(1) How to request a review of a notice of proposed denial. To request a review, the CPEO applicant, using its IRS Online Registration System account, must submit a written statement of the facts, law, and arguments in support of its position within 30 days from the date of the notice of proposed denial. The arguments in support of the CPEO applicant's position should focus on the factual information provided by the CPEO applicant and its responsible individuals, including whether any information provided as part of the application has changed or was incorrect. Arguments concerning the materiality of information provided or whether certain facts present a material risk to the IRS's collection of federal employment taxes are outside the scope of review and will not be considered.

(2) Additional materials. Subject to the exceptions in section 7.05(1) and (3), after a CPEO applicant has submitted a written request for review, the CPEO applicant may not submit any additional or new information as part of its request for review or any additional arguments in support of the CPEO applicant's position. The IRS CPEO program office will not consider any additional or new information or arguments as part of its handling of the request for review under section 7.05, unless new information is provided pursuant to section 7.05(1) or (3). The IRS CPEO program office also will not forward any additional or new information or arguments to OPR under section 7.05(5), unless new information was provided pursuant to section 7.05(1) or (3).

(3) Extension of time to request review. The IRS CPEO program office may extend the deadline for submitting a request for review by an additional 30 days. To request this 30-day extension, a CPEO applicant must submit a written request through its IRS Online Registration System account explaining the need for the extension. A CPEO applicant must submit its request not later than 20 days after the date of the notice of proposed denial. A CPEO applicant may request only one extension.

(a) The IRS CPEO program office will grant the extension if, in its sole discretion and based on a review of the relevant facts and circumstances, it determines that the extension is in the interest of tax administration.

(b) A request for an extension, a denial of an extension, or any other matter related to this section 7.03(3) is not subject to the review described in section 7, including section 7.06.

.04 Notice of final denial where no request for review of the proposed denial is submitted. If the CPEO applicant does not submit a timely request for review of a notice of proposed denial in accordance with section 7.03, including any extension of time under section 7.03(3), a notice of final denial will be issued to the CPEO applicant.

.05 How the IRS handles a request for review. If a CPEO applicant submits a timely request for review, the IRS CPEO program office will first review the request and accompanying written statement of the facts, law, and arguments in support of the CPEO applicant's position.

(1) Request for additional information. In reviewing a CPEO applicant's request for review, the IRS CPEO program office may request additional information from the

CPEO applicant, if it determines that further information is required to sufficiently evaluate the initial request for review.

(a) The CPEO applicant must provide the requested information or materials by the date specified in the request. The IRS CPEO program office will consider any request by the CPEO applicant for an extension of the time by which the requested information or materials must be provided on a case-by-case basis.

(b) In accordance with section 7.03(2), a CPEO applicant should not send any additional information or documentary materials to the IRS CPEO program office unless the information or materials are requested, and the IRS CPEO program office will not consider any unrequested information or materials received from the CPEO applicant.

(c) Similarly, if the IRS CPEO program office requests additional information or materials, the IRS CPEO program office will not consider any additional information or materials not timely provided by the CPEO applicant (by the date specified in the request or any extended date) or that is not responsive to or is outside the scope of the request.

(2) Additional failures. Before referring a proposed denial to OPR for review, the IRS CPEO program office will provide written notice to the CPEO applicant of any additional failures to satisfy one or more of the requirements of § 301.7705-2, this revenue procedure, and any applicable subsequent guidance, that arose or that were discovered after the issuance of the notice of proposed denial and give the CPEO applicant additional time to respond to the notice regarding the failures. The CPEO applicant must provide any response regarding the additional failures by the date

specified by the IRS CPEO program office. The IRS CPEO program office will consider any request by the CPEO applicant for an extension of the time by which the response must be provided on a case-by-case basis. The IRS CPEO program office will not consider any additional information or materials not timely provided by the CPEO applicant by the date specified in the notice of additional failures, or any extended date, or that is not factually responsive to or is outside the scope of, the notice.

(3) IRS CPEO program office review. In conducting its review, the IRS CPEO program office will consider the initial request for review, any additional information provided by the CPEO applicant in response to a request made in accordance with section 7.05(1), any additional failures, as defined in section 7.05(2), that arise or that are discovered after the issuance of the notice of proposed denial, and any timely responses by the CPEO applicant to the notice of additional failures.

(4) Notice of certification. After reviewing the request for review, if the IRS CPEO program office determines that the CPEO applicant qualifies for certification, it will issue the CPEO applicant a notice of certification in accordance with section 6.

(5) Forwarding to OPR. If, upon review, the IRS CPEO program office affirms the proposed denial, it will forward the administrative record to OPR for review. The administrative record will consist of the notice of proposed denial, the CPEO applicant's request for review, the IRS CPEO program office's written analysis of the CPEO applicant's request for review, any other information timely provided by the CPEO applicant in response to a request by the IRS CPEO program office, including information with regard to any additional failures, and all supporting documentation. The

administrative record will include only information that was either: (i) stated in the notice of proposed denial or in a notice described in this section 7.05 and all supporting documentation; or (ii) related to the IRS CPEO program office's determination, upon review of all information subject to consideration under sections 7.03(1) and 7.05(1)-(3), that the CPEO does not qualify for certification. The IRS CPEO program office will notify the CPEO applicant after it forwards the administrative record to OPR for review.

.06 Consideration by OPR.

(1) OPR consideration. OPR will consider only the information provided in the administrative record.

(2) Conducting the review.

(a) During OPR's review, subject to the exception described in section 7.06(2)(b), neither the IRS CPEO program office nor the CPEO applicant may contact OPR with respect to the pending review, and OPR will not contact the IRS CPEO program office or the CPEO applicant or its authorized representative with respect to the pending review. Further, except as provided in section 7.06(2)(b), during OPR's review, a CPEO applicant and its authorized representative may not:

- (i) Submit any information or documentation to OPR;
- (ii) Request or offer to have a telephone conference with OPR;
- (iii) Request the name or contact information of any OPR employee who has been assigned to conduct the review; or
- (iv) Attempt to contact the employee, such as by telephone or email.

(b) Notwithstanding section 7.06(2)(a), the IRS CPEO program office and the CPEO applicant may contact OPR to request the status of a pending review and an estimate of when OPR expects to complete its review. Either OPR or the CPEO program office will provide the CPEO applicant with contact information for these purposes.

(c) All communications between OPR and either the CPEO applicant or the IRS CPEO program office will conform to current IRS security and authentication policies and procedures, as applicable.

(3) OPR will establish procedures to ensure that no additional information is considered. To facilitate an independent review, OPR will establish procedures to ensure that any information from a CPEO applicant or authorized representative that is sent to OPR outside of the administrative record will not be considered.

(4) Standard of review. OPR will apply an abuse of discretion standard to its review, and if OPR concludes that the IRS CPEO program office erred in denying certification, it will issue a letter notifying the CPEO applicant that a notice of certification will be issued by the IRS CPEO program office. Under an abuse of discretion standard, the Director, OPR will not change the decision of the IRS CPEO program office unless the IRS CPEO program office's determination is arbitrary, capricious, clearly unlawful, or without a sound basis in fact or law. See *Ewing v. Commissioner*, 122 T.C. 32, 39 (2004), vacated on other grounds, 439 F.3d 1009 (9th Cir. 2006); see also *Woodral v. Commissioner*, 112 T.C. 19, 23 (1999). If OPR finds no abuse of discretion, it will issue a letter of final denial.

.07 A request for review may be withdrawn. A CPEO applicant may withdraw its request for review of the notice of proposed denial before OPR issues its final determination. A request for review may be withdrawn only upon the written request of an application submitter, submitted through the CPEO applicant's IRS Online Registration System account. Upon receipt of the CPEO applicant's withdrawal request, the IRS will complete the processing of the application in the same manner as if the CPEO applicant was issued a final denial.

## SECTION 8. PROCEDURES FOR MAINTAINING CERTIFICATION AS A CPEO

.01 In general. To maintain certification, a CPEO must meet the applicable requirements described in § 301.7705-2, this revenue procedure, and any applicable subsequent guidance. In addition, any responsible individuals of the CPEO must meet any requirements applicable to them that are described in § 301.7705-2, this revenue procedure, and any applicable subsequent guidance. Except as otherwise provided in this revenue procedure or other guidance, the information and documents required in sections 8.02(1) and (2) and 8.03 through 8.05 must be submitted electronically via the CPEO's IRS Online Registration System account. Only an application submitter can submit the information and documents required in sections 8.02(1) and (2) and 8.03 through 8.05.

### .02 Annual verification.

(1) In general. Consistent with section 7705(b)(5) and § 301.7705-2(j), to maintain its certification, a CPEO must submit through its IRS Online Registration System account a properly completed and executed online annual verification. CPEOs that are

members of a controlled group must each submit a separate annual verification. The due date for submitting the annual verification is 30 days before the anniversary of the date (month and day) on which the CPEO's certification became effective.

(2) User fee. Consistent with section 7528(b)(4), upon submission of the online annual verification, the individual that submits the verification on behalf of the CPEO will be automatically directed to pay a user fee in the amount of \$1,000. No CPEO annual verification will be processed until the IRS receives the user fee. Once processing of the annual verification has begun, the user fee will not be returned.

(3) Background check and tax compliance check. As part of a CPEO's annual verification, the IRS may investigate the accuracy of statements and representations made by a CPEO and its responsible individuals by conducting background checks, including checks on tax compliance, criminal background, professional experience, credit history, professional sanctions, and other relevant facts. By submitting an annual verification, a CPEO and its responsible individuals agree to provide the IRS with such additional information as the IRS may request to facilitate its background investigations. A CPEO and each of its responsible individuals must take such actions as are necessary to authorize the IRS to conduct background checks and to investigate the accuracy of statements and submissions. This may include waiving confidentiality and privilege in situations in which the IRS would otherwise be prevented from obtaining or confirming information necessary to evaluate a CPEO's continued qualification for certification from relevant third parties (such as former employers) because of the



existence of confidentiality, non-disclosure, or similar agreements. Failure to provide such information or take such action may result in revocation of certification.

.03 Bond requirements.

(1) In general. After the initial posting of a bond as provided in section 7705(c), § 301.7705-2(g), and section 6.02, a CPEO must continue to post a bond (or bonds, as described in section 8.03(3)) from a qualified surety for the payment of federal employment taxes, using Form 14751 through its IRS Online Registration System account, in the amount described in § 301.7705-2(g)(2) and this section 8.03, for each period beginning on April 1st of any calendar year and ending on March 31st of the following calendar year (the bond period). As prescribed by § 301.7705-2(g)(2)(i), the amount of the bond (or bonds, as described in section 8.03(3)) with respect to the bond period must be at least equal to the greater of five percent of the CPEO's liability under section 3511 during the preceding calendar year (up to \$1,000,000) or \$50,000. See § 301.7705-2(g)(2)(ii) for special rules applying to a CPEO in its first or second year of certification. The bond, any riders thereto, and any strengthening bonds posted to satisfy the requirements of section 8.03(3), are considered one continuous obligation of the surety for unpaid tax liabilities accrued by the CPEO under subtitle C from the effective date of the bond until the bond is superseded, as described in section 8.03(3), or cancelled, as described in section 8.03(4) (the term of the bond).

(2) Controlled groups. In the case of a controlled group in which more than one member of the controlled group is a CPEO, all CPEO members of the controlled group are required to be covered by the same bond in the amount required by § 301.7705-

2(g)(2), applied as if all such CPEO members were one organization. CPEOs in a controlled group should submit Form 14751 once for all CPEOs in the controlled group through their controlled group's IRS Online Registration System controlled group license.

(3) Increase in bond amount. By March 1st in any calendar year, a CPEO must determine if an increase in bond amount for the new bond period beginning on April 1st of that calendar year is necessary and, if so, increase the amount of the bond covering the new bond period. That is, if five percent of a CPEO's liability under section 3511 (or other applicable federal employment tax liability pursuant to § 301.7705-2(g)(2)(ii)) for the preceding calendar year (up to the \$1,000,000 maximum liability) exceeds the current amount of the bond, the CPEO must increase the amount of its bond with respect to the new bond period beginning on April 1st. To increase the amount of the bond, the CPEO must submit through its IRS Online Registration System account a properly completed and executed Form 14751, or such other form or document required by the IRS in the instructions for Form 14751 or further guidance, by March 1st of the calendar year in which the new bond period begins. The CPEO must also increase the amount of its bond if, at a later point in the bond period, the CPEO or the IRS determines that the CPEO's liability under section 3511 (or other applicable federal employment tax liability pursuant to § 301.7705-2(g)(2)(ii)) for the preceding calendar year was higher than the amount reported and paid and on which the bond amount for the bond period was based and makes an adjustment or assessment reflecting such determination. To increase the amount of its bond due to an adjustment or assessment,

the CPEO must submit through its IRS Online Registration System account a properly completed and executed Form 14751, or such other form or document required by the IRS in the instructions for Form 14751 or further guidance, within 30 days of the date of the adjustment or assessment. To increase the bond amount, a CPEO may amend an existing bond through the use of a rider, or post a strengthening, superseding, or new bond, as applicable.

(a) A rider is an amendment to an existing bond that increases the bond amount. The rider must apply to liabilities that arise on or after the effective date of the bond that the rider amends. The surety remains liable under the existing bond, as amended by the rider, for the assessment and collection periods applicable to the CPEO under sections 6501 and 6502, respectively, for any taxable period that occurs during the term of the bond unless and until the bond is superseded.

(b) A strengthening bond is an additional bond posted in the incremental amount of the increase so that the strengthening bond together with the existing bond equal the total required bond amount. The strengthening bond must apply to liabilities that arise on or after the effective date of the bond it strengthens. Both the strengthening bond and the bond it strengthens must remain in effect, and the surety remains liable under both bonds for the assessment and collection periods applicable to the CPEO under sections 6501 and 6502, respectively, for any taxable period that occurs during the term of the bonds, unless and until the bonds are superseded.

(c) A superseding bond is a bond posted for the total required bond amount, not just the incremental increase. Upon execution of the superseding bond, the superseded

bond is no longer in effect, and the surety that provided the superseded bond is no longer liable under the superseded bond. The superseding bond must apply to liabilities that arise on or after the effective date of the superseded bond.

(d) A new bond is a bond posted for the total required bond amount and may only be posted upon the CPEO's initial certification or immediately following cancellation of an existing bond. In the case of a cancellation of an existing bond, the effective date of the new bond must be no later than the effective date of the cancellation of the existing bond, and the surety providing the existing (now cancelled) bond remains liable for liabilities that accrued during the term of the cancelled bond for the assessment and collection periods applicable to the CPEO under sections 6501 and 6502, respectively, with respect to any taxable period that occurred during the term of that bond.

(4) Cancellation of bond. Consistent with § 301.7705-2(g)(4), a bond may be cancelled by the surety only after the surety gives written notice of cancellation to the IRS and the CPEO in the manner provided in the instructions for Form 14751 or any applicable subsequent guidance. Similarly, a bond may be cancelled by the CPEO only after the CPEO gives written notice of cancellation to the IRS in the manner provided in the instructions for Form 14751 or any applicable subsequent guidance. If a CPEO either receives a notice of cancellation from the surety provider of its bond, or gives written notice to the IRS of the CPEO's intent to cancel the bond, the CPEO must also submit to the IRS through its IRS Online Registration System account a "Notification of Cancelled Bond," which can be any scanned document or memo providing the name of the surety for the cancelled bond, the cancelled bond number, and the effective date of

cancellation. The CPEO must also post a new or superseding bond for the required amount by submitting Form 14751 no later than 30 days prior to the effective date of the cancellation of the previous bond. If a new bond is provided, it must be effective no later than the effective date of the cancellation of the previous bond. If a superseding bond is provided, it must be effective as of the effective date of the previous bond.

(5) Changing surety companies. When changing surety companies, a CPEO must cancel the existing bond with its current surety company in accordance with the requirements in Form 14751. Additionally, a CPEO must provide notice of the cancellation to the IRS through its IRS Online Registration System account and post a new or superseding bond in accordance with the requirements in section 8.03(4).

(6) Loss of qualified surety. If the surety provider of a CPEO's bond no longer meets the requirements for a qualified surety, the CPEO must post a new or superseding bond with a qualified surety for the required amount by submitting Form 14751 via the IRS Online Registration System no later than 30 days after notification that the previous surety no longer meets the requirements of a qualified surety.

.04 Submission of annual audited financial statements.

(1) Copy of financial statements, CPA opinion, and working capital statement. By the last day of the sixth month after the end of each fiscal year of the CPEO (the audit date as defined in section 7705(c)(6)) and beginning with the first fiscal year that ends after the CPEO's effective date of certification, a CPEO must submit through its IRS Online Registration System account a copy of its annual audited financial statements for the fiscal year. With its annual audited financial statements, a CPEO must submit a

CPA opinion described in section 2.05(2) (as applied to a CPEO rather than a CPEO applicant) and a working capital statement described in section 2.05(3) and (4) (as applied to a CPEO rather than a CPEO applicant).

(2) Annual audited financial statements for controlled groups. In the case of a controlled group in which more than one member of the controlled group is a CPEO, all CPEOs in the controlled group must submit through the controlled group's IRS Online Registration System controlled group license the annual audited financial statements described in section 8.04(1), with an accompanying CPA opinion described in section 2.05(2) (as applied to a CPEO rather than a CPEO applicant), on a combined or consolidated basis for all CPEOs in the controlled group, rather than for the CPEO individually. Although a CPEO is not required to provide a copy of its separate financial statements as part of its submission, if the financial position of a CPEO is unclear from the combined or consolidated financial statements of the controlled group of which the CPEO is a member, the IRS may request additional financial information that is needed to evaluate the CPEO's position, such as the annual balance sheet, income statement, and statement of cash flow of the individual CPEO.

(a) The combined or consolidated annual audited financial statements provided pursuant to this section 8.04(2) may, but are not required to, also include all members of the controlled group that are not CPEOs. The name and EIN of each member of the controlled group that is included within the consolidated audited financial statements of the controlled group submitted (including each member that is not a CPEO) must be listed in the CPA opinion, a Note to the Financial Statements covered by the CPA

opinion, or in a separate attachment signed under penalties of perjury by a responsible individual of any one of the CPEOs in the controlled group.

(b) A CPEO that is a member of a controlled group of which other members are CPEOs must provide, in the Note to the Financial Statements covered by the CPA opinion, a statement that the individual CPEO's financial statements reflect positive working capital or, if the requirements of section 2.05(4) are met, reflect negative working capital, with the statement in either case setting forth in detail a calculation of the individual CPEO's working capital. If it is unclear whether the CPEO has positive or negative working capital for the last quarter of the fiscal year based on the combined or consolidated financial statements of the controlled group of which the CPEO is a member, the IRS may request additional financial information on an individual CPEO basis. The status of other CPEOs in the controlled group is not affected if the CPEO's certification is suspended or revoked if the reason for the suspension or revocation is due to the CPEO's working capital statement described in section 2.05(4) reflecting negative working capital and the CPEO failing to meet the exception described in section 2.05(4).

.05 Submission of quarterly assertions, attestations, and working capital statements.

(1) Quarterly assertions, attestations, and working capital statements. By the last day of the second month after the end of each calendar quarter, a CPEO must submit through its IRS Online Registration System account an assertion, as described in section 2.06(1) (applied to a CPEO rather than a CPEO applicant), that it has withheld and made deposits of all federal employment taxes for which the CPEO is liable for the

quarter; an examination level attestation from a CPA, as described in section 2.06(2) (as applied to a CPEO rather than a CPEO applicant), stating that this assertion is fairly stated in all material respects; and a working capital statement, as described in section 2.06(3) (as applied to a CPEO rather than a CPEO applicant).

(2) Quarterly assertions, attestations, and working capital statements for controlled groups. In the case of a controlled group in which more than one member of the controlled group is a CPEO, each CPEO in the controlled group must submit for each calendar quarter the assertion described in section 2.06(1) (as applied to a CPEO rather than a CPEO applicant) and the examination level attestation described in section 2.06(2) (as applied to a CPEO rather than a CPEO applicant) on a combined or consolidated basis for all CPEOs in the controlled group, rather than for the CPEO individually. The assertion must contain the name and EIN of each CPEO in the controlled group. However, the working capital statement described in section 2.06(3) (as applied to a CPEO rather than a CPEO applicant) must relate to the CPEO alone and must not be prepared on a combined or consolidated basis with other members of the controlled group. For purposes of the requirements of section 2.06(3), if it is unclear whether the CPEO has positive or negative working capital for the last quarter of the fiscal year based on the combined or consolidated annual audited financial statements of the controlled group of which the CPEO is a member, the IRS may request additional financial information about the individual CPEO. The status of other CPEOs in the controlled group is not affected if the CPEO's certification is suspended or revoked if the reason for the suspension or revocation is due to the working capital statement



described in section 2.06(3) reflecting negative working capital and the CPEO failing to meet the exception described in section 2.06(3).

.06 Reporting Requirements.

(1) Commencement and termination of contracts. A CPEO must report the commencement or termination of any CPEO contract between the CPEO and a customer, or any service agreement described in § 31.3504-2(b)(2) between the CPEO and a client, and the name and EIN of such customer or client, using Form 8973, *Certified Professional Employer Organization/Customer Reporting Agreement*.

(a) Except as provided in section 8.06(1)(b), a CPEO must submit a Form 8973 within 30 days of the commencement of any CPEO contract or service agreement described in § 31.3504-2(b)(2) (including the conversion of an existing service agreement described in § 31.3504-2(b)(2) to a CPEO contract and vice versa). For more information on where to send the Form 8973, see the Instructions for Form 8973.

(b) To provide a newly certified CPEO with sufficient time to complete Forms 8973 for clients with whom it has had service agreements prior to certification as a CPEO (existing clients), a CPEO has six months from the date of its notice of certification to submit Forms 8973 with respect to the commencement of any CPEO contracts with existing clients (including the conversion of a service agreement described in § 31.3504-2(b)(2) with an existing client to a CPEO contract) or the commencement of any service agreements described in § 31.3504-2(b)(2) with existing clients (including the continuation by a newly certified CPEO of a service agreement described in § 31.3504-2(b)(2) with an existing client).

(c) CPEOs are required to secure the signature of all clients subject to a service agreement described in § 31.3504-2(b)(2) prior to submission of the form to the IRS to report the commencement of the service agreement. The IRS recognizes, however, that a CPEO might occasionally experience difficulty in obtaining a signature from a client subject to a service agreement described in § 31.3504-2(b)(2). In these limited situations, the CPEO must still submit Form 8973, even though it is unsigned by the client, with the CPEO's signature, by the applicable deadline. Because the CPEO did not obtain its client's signature on the form, the CPEO must attach a written statement to the Form 8973 with the following information:

(i) The CPEO's name, federal taxpayer identification number, mailing address, contact name, phone number, and e-mail address;

(ii) The name and federal taxpayer identification number of the client for which the associated Form 8973 is being submitted;

(iii) A detailed statement which provides the steps the CPEO has taken to meet its requirement to secure the client's signature in a timely manner, and why the steps were unsuccessful; and

(iv) A statement (signed by an individual who has the authority to execute Form 8973 for the CPEO), with the following language: *Under penalties of perjury, I declare that the information contained in this statement is true, correct and complete to the best of my knowledge and belief.*

(d) The occasional submission by a CPEO of an unsigned Form 8973 with the attachment described above for a service agreement described in § 31.3504-2(b)(2)

should not, absent other factors, result in suspension or revocation of the CPEO's certification. However, the prevalence of unsigned Forms 8973 for a particular CPEO may reach a level of significance that poses a material risk to the IRS's collection of federal employment taxes. If the IRS determines, in its sole discretion, that the prevalence or number of unsigned Forms 8973 for a particular CPEO does pose a material risk to the collection of federal employment taxes, the IRS will issue a notice of suspension and proposed revocation to the CPEO.

(e) Information relating to a client subject to a service agreement described in § 31.3504-2(b)(2) must be properly reported on Schedule R of Forms 940 and 941 (or Form 943, if applicable), even if the client does not sign Form 8973.

(f) CPEOs are required to secure the signature of all customers subject to a CPEO contract (as described in section 7705(e)(2)) on Form 8973 prior to submission of the form to the IRS to report the commencement of the CPEO contract. The IRS recognizes, however, that a CPEO might occasionally experience difficulty in obtaining a signature from a customer subject to a CPEO contract. If a customer subject to a CPEO contract does not sign Form 8973, section 3511 does not apply to the customer. Consequently, the CPEO must report this customer as a client covered by a service agreement described in § 31.3504-2(b)(2), rather than as a customer covered by section 3511, on Form 8973 and on Schedule R of Forms 940, 941, and 943 (if applicable). The CPEO should submit Form 8973 (reporting the customer as a client covered by a service agreement described in § 31.3504-2(b)(2)), even though it is

unsigned by the customer, with the CPEO's signature, following the procedures set forth in section 8.06(1)(c), by the applicable deadline.

(g) A CPEO must submit Form 8973 to the IRS within 30 days of the termination of any CPEO contract or service agreement described in § 31.3504-2(b)(2). Only the CPEO's signature is required on the form to notify the IRS that a CPEO contract or service agreement has ended. In addition, though not required, the customer may also separately file its own Form 8973 to notify the IRS that its CPEO contract or service agreement with the CPEO has ended. If a customer separately files its own Form 8973 to notify the IRS that its CPEO contract or service agreement with the CPEO has ended, only the customer's signature is required on that Form 8973.

(h) Form 8973 includes a CPEO Consent to Disclosure of Tax Information, on which the CPEO consents to the IRS disclosing to the customer or client identified on the Form 8973 information from the CPEO's employment tax returns (for example, Forms 940 and 941) filed with respect to the customer or client identified on the Form 8973 and information about the CPEO's certification. The CPEO consents to this disclosure only to the extent necessary to carry out the purposes of the CPEO program and will list on the CPEO Consent to Disclosure of Tax Information the specific year(s) or period(s) for which consent to disclosure of employment tax return information is provided. The CPEO must file a new CPEO Consent to Disclosure of Tax Information before the end of the last year or period listed on the most recent prior consent for the customer or client, unless and until the CPEO submits a Form 8973 to report the

termination of the applicable CPEO contract or service agreement. For more information, see Form 8973 and its instructions.

(2) Employment tax reporting.

(a) A CPEO that is treated as an employer of a covered employee under section 3511 must meet all reporting and recordkeeping requirements described in subtitle F that are applicable to employers, in a manner consistent with that treatment.

Specifically, with any Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*, Form 941, *Employer's QUARTERLY Federal Tax Return*, and Form 943, *Employer's Annual Federal Tax Return for Agricultural Employees*, that it files, a CPEO must file Schedule R (Form 940), *Allocation Schedule for Aggregate Form 940 Filers*, Schedule R (Form 941), *Allocation Schedule for Aggregate Form 941 Filers*, and Schedule R (Form 943), *Allocation Schedule for Aggregate Form 943 Filers*, respectively, providing all the information required by the form and its instructions. In addition, Form 940, Form 943, and, except with respect to the first calendar quarter for which the CPEO is certified, Form 941, along with all required schedules, including Schedule R, must be electronically filed. A CPEO may file the Form 941, along with all required schedules, including Schedule R, on paper with respect to the calendar quarter that begins on the effective date of its certification. See the instructions for Form 940, Form 941, Form 943, Schedule R (Form 940), Schedule R (Form 941), and Schedule R (Form 943) for additional information on filing these forms.

(b) The IRS may waive the electronic filing requirements of this section 8.06(2) in case of undue economic hardship. The principal factor in determining undue economic

hardship will be the amount, if any, by which the cost of electronically filing Form 940, Form 941, and Form 943 (and all applicable schedules) exceeds the cost of paper filing. The IRS will also consider temporary software and technological issues that prevent the CPEO from electronically filing. Temporary generally means the problem is expected to affect the filing of only one return. Waiver requests claiming technological issues as the explanation for continual paper filing will be denied. In addition, the waiver will be subject to such terms and conditions regarding the method of filing as may be prescribed by the IRS. To request a waiver from electronic filing requirements, a CPEO must submit a written request specifying the type of filing (that is, the name of the form or schedule), as well as the period to which it applies. The request must also include a detailed statement explaining:

- (i) the steps the CPEO has taken in an attempt to meet its requirement to timely file its return electronically.
- (ii) why the steps were unsuccessful.
- (iii) a description of the undue hardship – economic, technological, or otherwise – that would result from complying with the electronic filing requirement.

(A) If the hardship is economic, then the CPEO must include the amount by which the cost of electronically filing employment tax returns and all applicable schedules exceeds the cost of paper filing. These incremental costs must be supported by a detailed computation. The detailed computation must include a

schedule detailing the costs to file on paper and the costs to file electronically.

- (iv) what steps the CPEO will take to ensure its ability to file future returns electronically and the date this is expected to be achieved.
- (v) a statement signed by an individual authorized to sign the CPEO's return, with the following language: *Under penalties of perjury, I declare that the information contained in this waiver request is true, correct and complete to the best of my knowledge and belief.*

Electronic filing waiver requests must be filed at least 45 days before the due date of the return for which the CPEO is unable to electronically file. Additionally, a waiver request may be made only for the current taxable period, and waiver requests for taxable periods other than the current tax period will not be considered. The waiver request should be submitted through the CPEO's IRS Online Registration System account. For additional information on waivers from electronic filing requirements, see the information provided on [IRS.gov](https://www.irs.gov).

(c) A CPEO claiming and reporting employment tax credits on behalf of a customer must collect from the customer any information necessary to accurately claim the credits on the customer's behalf.

(i) Either the CPEO or the customer may maintain the records to substantiate the customer's eligibility for a credit. However, if the customer maintains the records, upon request by the IRS, the CPEO must obtain from the customer and provide to the IRS the records to substantiate the customer's eligibility for the credit.

(ii) The CPEO will be liable for employment taxes that are due as a result of any improper claim of employment tax credits. For non-worksite employees, the customer may also be liable for employment taxes due as a result of improperly claimed employment tax credits.

(3) Reporting of material changes. A CPEO must notify the IRS of any change that materially affects the continuing accuracy of any previously made agreement or other information provided to the IRS (material change), including a modification or update to previously provided information, as well as new information (for example, a new responsible individual). A CPEO must notify the IRS of a material change no later than 30 days (45 days in the case of a new responsible individual) after the date of the material change. Notification must be provided through the CPEO's IRS Online Registration System account. Material changes that must be reported as prescribed in this section 8.06(3) include, but are not limited to, the following items:

(a) Any change to the information previously provided by the CPEO as part of its initial application for certification or as part of a prior material change notification or annual verification that relates to business name or organization, address, fiscal year, licensing information, precursor entities, related entities, controlled group information, responsible individuals, or background information.

(b) Any change to the tax compliance information previously provided by the CPEO as part of its initial application for certification or as part of a prior material change notification or annual verification. When reporting material changes to the CPEO's tax compliance information, the CPEO must specifically report both:



(i) The discovery of any failure (other than immaterial and isolated failures that do not reflect a meaningful lapse in compliance with federal employment tax withholding and deposit requirements) by the CPEO or any of its precursor or related entities within the last six years to timely and accurately file federal, state, or local tax or information returns (including federal employment tax returns) or pay any applicable federal, state, or local tax (including federal employment taxes), except that with respect to precursor entities that are no longer related entities, the CPEO must report only those failures of which it becomes aware and that relate to the precursor entity's tax and reporting responsibilities connected with any assets that were transferred to the CPEO from the precursor entity; and

(ii) The assessment of fraud penalties by the IRS or a state or local tax authority against the CPEO or any of its precursor or related entities for any year, including for years before the CPEO was certified, except that with respect to precursor entities that are no longer related entities, the CPEO must report only those assessments of fraud penalties of which it becomes aware and that relate to the precursor entity's tax and reporting responsibilities connected with any assets that were transferred to the CPEO from the precursor entity.

(c) Any change to any annual audited financial statements or annual working capital statements previously submitted to the IRS in accordance with section 2.05 or 8.04, and § 301.7705-2(e), that would require a restatement of previously submitted annual audited financial statements.

(d) Any change to the quarterly working capital statements previously submitted to the IRS in accordance with section 2.06 or 8.05, and § 301.7705-2(f), that causes working capital to no longer be positive or that causes a CPEO with negative working capital that met the requirements of section 2.06(3) (as applied to a CPEO rather than a CPEO applicant) to no longer meet those requirements.

(e) The discovery by the CPEO of tax fraud or criminal activity in violation of federal, state, or local laws by a responsible individual.

(f) The CPEO, a related entity of the CPEO, or a responsible individual of the CPEO is charged with or convicted of any criminal offense under the laws of the United States or of a state or political subdivision thereof.

(g) The commencement of an active IRS criminal investigation of the CPEO, or the discovery by the CPEO of an active IRS criminal investigation of a related entity or a responsible individual.

(h) The occurrence of a transaction by which a person or group of persons gain control or effective control, directly or indirectly (including through control of the owner of the CPEO), of fifty percent or more of the stock or other ownership interests in a CPEO (determined by vote or value).

(i) The sale, transfer, or disposition of all or substantially all of the CPEO's business, or the reorganization, spin-off or similar division, liquidation, dissolution, or closure of the CPEO business entity, directly or indirectly (including through sale, transfer, disposition, reorganization, **spinoff**, or division of the owner of the CPEO) regardless of whether the event is taxable or tax free.

(4) Reporting of material changes by responsible individuals. Responsible individuals of a CPEO must notify the IRS of any material changes to the information they submitted on the RIPA pursuant to sections 8.01 and 8.06(4), within 30 days of the change, by submitting an update through the online account of the responsible individual who submitted the previous RIPA. This reporting requirement is in addition to the requirement that the CPEO report material changes relating to responsible individuals, as provided in sections 8.06(3)(a), (e), (f), and (g). Material changes that must be reported as prescribed in this section 8.06(4) include—

(a) Any change to the responsible individual's basic information, address, business information, related entities, and other attestations (such as attestations related to the denial, suspension, or revocation of licenses, registrations, or accreditations);

(b) Disbarments;

(c) Charges or convictions for any federal, state, or local criminal offense;

(d) IRS criminal investigations;

(e) Any failures to file any required federal, state, or local tax or information returns, or to pay any required federal, state, or local taxes, in a timely or accurate manner;

(f) Initiation of a bankruptcy proceeding by the responsible individual; and

(g) Any assessments of the Trust Fund Recovery Penalty under section 6672 against the responsible individual.

(5) Reporting of new responsible individuals. Each individual who, after the CPEO's effective date of certification, becomes a responsible individual of the CPEO must, within 30 days of becoming a responsible individual, either, (i) submit an update through the individual's online account adding the CPEO as a CPEO with which the responsible individual is associated (if the responsible individual had previously completed a RIPA for any CPEO); or, (ii) electronically submit a properly completed and executed online RIPA and submit fingerprints using Fieldprint, or by such other method of fingerprint submission provided for in applicable subsequent guidance, obtain an individual (INDV) number from the IRS, and provide this INDV number to the CPEO in the manner described on [IRS.gov](https://www.irs.gov) (if the responsible individual had not previously completed a RIPA). All requirements in section 8.06(5)(ii) must occur before the CPEO can update its responsible individual information.

(6) Reporting to customers. A CPEO must meet the following reporting requirements with respect to its customers:

(a) A CPEO must notify a customer in writing if its CPEO contract has been transferred to another person (or if another person will report, withhold, or pay, under such other person's EIN, any applicable federal employment taxes with respect to the remuneration of any individuals covered by its CPEO contract with the customer) and provide the customer with the name and EIN of such other person no later than 10 days after the transfer or other applicable event.

(b) A CPEO must provide its customers with the information necessary to claim the credits specified in section 3511(d)(2) and any other credits specified in further

guidance, and the information necessary to properly report employee tips, as provided in section 6053(c)(8).

(c) If a CPEO's certification is suspended or revoked, as described in section 9, the CPEO must provide written notice to each of its customers within 10 days of the date of such suspension or revocation, as provided in sections 9.03(1) and 9.09.

(d) If any covered employees are not, or cease to be, work site employees because they perform services at a location at which the eighty-five percent threshold described in section 7705(e)(3) is not met, the CPEO must notify the customer in writing within 30 days following the end of the applicable calendar quarter that the customer may also be liable for the federal employment taxes imposed on remuneration remitted by the CPEO to those covered employees.

(7) Information required in an agreement or contract between a CPEO and a client or customer.

(a) In the case of a service agreement described in § 31.3504-2(b)(2) that is not a CPEO contract (as a result of which the individuals covered by that service agreement are not covered employees), or if section 3511 does not apply to a CPEO contract in accordance with section 8.06(7)(b), the agreement or contract must notify, or be accompanied by a notification to, the client or customer that the service agreement or contract is not covered by section 3511 and does not alter the client or customer's liability for federal employment taxes on remuneration remitted by the CPEO to the employees covered by the service agreement or contract.

(b) In the case of a CPEO contract, the contract must notify, or be accompanied by a notification to, the customer that section 3511 does not apply to a CPEO contract under the following circumstances--

(i) The customer has a relationship to a CPEO described in section 267(b) (including, by cross-reference to section 267(f)) or section 707(b), except that “10 percent” shall be substituted for “50 percent” wherever it appears in the applicable sections;

(ii) The customer has commenced a CPEO contract with the CPEO but commencement has not been reported to the IRS in accordance with section 8.06(1);

(iii) The CPEO contract has been entered into by the CPEO while its certification has been suspended by the IRS; or

(iv) The certification of a CPEO has been revoked or voluntarily terminated but only for the period following the effective date of the revocation or voluntary termination, and in which case the notification required by section 8.06(6)(a) should be sent as required by sections 9.09 and 10.01.

(c) In situations in which a CPEO contract with a customer covers remuneration remitted by a CPEO to self-employed individuals, the CPEO contract must notify, or be accompanied by notification to, the customer that the remuneration remitted by the CPEO to any self-employed individuals is not covered by section 3511.

(8) Penalties and additions to tax. A CPEO is subject to the penalty under section 6652(n) for failure to make any report required by sections 3511 and 7705, and by § 31.3511-1(g), as well as the reporting requirements described in this section 8.06, and

any applicable subsequent guidance. In addition, a CPEO is subject to the same penalties and additions to tax as any employer that fails to meet the applicable employment tax reporting requirements discussed in section 8.06(2), including but not limited to penalties and additions to tax under sections 6651, 6656, 6662, 6672, 6721, 6722, and 6723. However, the failure to file Forms 940, 941, or 943, as applicable, along with all required schedules, electronically, as provided in section 8.06(2), does not constitute a failure to file for purposes of the section 6651(a)(1) addition to tax or a failure to make a report for purposes of the section 6652(n) penalty. The consequence of any failure to file these forms and associated schedules electronically is the potential suspension or revocation of certification as a CPEO, addressed in section 9.

## SECTION 9. SUSPENSION AND REVOCATION OF CPEO CERTIFICATION

.01 In general. The IRS may suspend and revoke the certification of any CPEO as a result of one or more failures to comply with any of the requirements for CPEOs described in sections 3511 and 7705, §§ 31.3511-1, 301.7705-1, and 301.7705-2, this revenue procedure, and any applicable subsequent guidance, and will do so if the IRS determines, in its sole discretion and based on a review of the relevant facts and circumstances, that one or more such failures present a material risk to the IRS's collection of federal employment taxes. In determining whether one or more failures present a material risk, the IRS generally will consider all relevant facts and circumstances, including the size, scope, nature, significance, recurrence, and timing of and reason for the failure and, in the case of a CPEO, any prior failures of the CPEO to meet the requirements of sections 3511 and 7705, §§ 31.3511-1, 301.7705-1, and

301.7705-2, this revenue procedure, and any applicable subsequent guidance. In examining the facts and circumstances concerning one or more failures to comply with CPEO program requirements, the IRS has sole discretion in determining which facts and circumstances are relevant and should be considered, and how those relevant facts and circumstances affect the determination as to whether the failures present a material risk. Section 9.02 provides examples of specific failures that may result in the issuance of a notice of suspension and proposed revocation, the consequences of which are described in section 9.03(1). A CPEO may request review of the proposed revocation, in the manner described in section 9.03(2), which may result in the lifting of the suspension or the issuance of a notice of final revocation. Consequences of revocation of certification are described in section 9.09.

.02 Specific failures resulting in suspension and proposed revocation. Specific circumstances that may result in suspension and proposed revocation of certification include, but are not limited to--

(1) Failure to complete annual and quarterly requirements. A failure to timely complete an annual verification, timely submit annual audited financial statements and an accompanying CPA opinion, or timely submit a quarterly assertion, attestation, or working capital statement, as provided in sections 8.02, 8.04, and 8.05;

(2) Failure to maintain bond. A failure to maintain a bond or bonds in the required bond amount, as provided in section 8.03;

(3) Failure to satisfy reporting requirements or report a material change. A failure to satisfy the reporting requirements provided in section 8.06, including a failure of the



CPEO or a responsible individual of the CPEO to notify the IRS of a material change (as provided in sections 8.06(3) and 8.06(4));

(4) Criminal Offenses. The charging or conviction of the CPEO, or a related entity or a responsible individual of the CPEO, with or for any criminal offense under the laws of the United States or a state or political subdivision;

(5) IRS Criminal Investigation. The CPEO, or a related entity or a responsible individual of the CPEO, being the subject of an active IRS criminal investigation;

(6) Failure to pay or report taxes. A failure (other than an immaterial and isolated failure that does not reflect a meaningful lapse in compliance with federal employment tax withholding and deposit requirements) by the CPEO or any responsible individual to pay any applicable federal, state, or local taxes or file any required federal, state, or local tax or information returns in a timely and accurate manner, unless the failure is determined to be due to reasonable cause and not due to willful neglect;

(7) Tax Fraud. The assessment of fraud penalties against the CPEO or any of its responsible individuals or related entities by the IRS or another tax authority; and

(8) Errors or omissions. The discovery of any errors or omissions in any annual audited financial statements, working capital statements, or CPEO application previously submitted to the IRS in accordance with sections 2.05, 2.06, 8.04 and 8.05, and § 301.7705-2(e) and (f), that would require a restatement of previously submitted statements.

.03 Notice of suspension and proposed revocation. If the IRS CPEO program office determines that suspension and proposed revocation of certification is appropriate, the

IRS will issue a notice of suspension and proposed revocation to the CPEO through the CPEO's IRS Online Registrations System account that will explain the reason(s) for and consequences of the suspension and proposed revocation, as described in section 9.03(1), and advise the CPEO of its opportunity to request review of the proposed revocation, as described in section 9.03(2). The CPEO's suspension is effective as of the date on the notice. For questions concerning the specific reasons for suspension and proposed revocation, the consequences of suspension and proposed revocation, or questions concerning the review process, the CPEO may contact the individual listed at the top of the notice of suspension and proposed revocation.<sup>4</sup>

(1) Consequences of suspension of certification. Within 10 days of the date of the notice of suspension and proposed revocation, the CPEO must provide written notice to its customers of its suspended status and upload a copy of this notice to its IRS Online Registration System account. Moreover, the IRS will include the suspended CPEO in the published list of suspended CPEOs, available on [IRS.gov](https://www.irs.gov), and may also individually notify the CPEO's customers of the suspension. A CPEO that has received a notice of suspension and proposed revocation is still responsible for meeting all applicable certification requirements in the regulations, this revenue procedure, and any applicable subsequent guidance. However, section 3511 will not apply to any new CPEO contract (not including modifications to, or extensions of, existing contracts) that the CPEO

---

<sup>4</sup> In order for the individual requesting further information to discuss a return of the CPEO or a related entity of the CPEO with the IRS, the individual must be authorized by section 6103(e) to inspect the return of the CPEO or related entity or have a Form 8821, Tax Information Authorization, for that CPEO or related entity and that return on file with the IRS.

enters into while its certification is suspended. Notwithstanding the foregoing, any new CPEO contract entered into while the CPEO's certification is suspended is still subject to the applicable provisions of § 31.3511-1(g) and sections 8.06(1), (2), and (6), assuming the contract otherwise constitutes a service agreement described in § 31.3504-2(b)(2).

(2) Request for review of proposed revocation. A notice of suspension and proposed revocation will advise the CPEO of its opportunity to request review of the proposed revocation. To request a review, the CPEO, using its IRS Online Registration account, must submit, within 30 days of the date of the notice, a written request for review that contains a statement of the facts, law, and arguments in support of the CPEO's position, including a description of the actions it has taken, is taking, or intends to take to cure the failure(s) identified in the notice (if possible) and to prevent the failure(s) from reoccurring. The arguments in support of the CPEO's position should focus on the factual information being provided by the CPEO concerning its failure(s) to comply with the requirements for CPEOs and on the factual information being provided as evidence disputing any underlying facts on which the IRS based its conclusion, as well as on the actions it has taken or intends to take to cure the failure(s) (if possible) and to prevent the failure(s) from reoccurring. Although arguments concerning whether the actions the CPEO has taken or intends to take have cured or will cure the failure(s) (if possible) and will prevent the failure(s) from reoccurring are appropriate for the CPEO to make in its request for review, arguments concerning whether the failure(s)

presented or continue to present a material risk to the IRS's collection of federal employment taxes are outside the scope of review and will not be considered.

(3) Administrative Record. Subject to the exceptions in sections 9.05(1) and (3), after a CPEO has submitted a written request for review, the CPEO may not submit any additional information as part of its request for review or any additional arguments in support of the CPEO's position. The IRS CPEO program office will not consider any information or arguments described in the preceding sentence as part of the IRS CPEO program office's handling of the request for review under section 9.05, unless new information is provided pursuant to section 9.05(1) or (3). The IRS CPEO program office also will not forward any such information or arguments to OPR under section 9.05(5), unless new information is provided pursuant to section 9.05(1) or (3).

(4) Extension of time to request review. The IRS CPEO program office may extend the deadline for submitting a request for review by an additional 30 days. To request this 30-day extension, a CPEO must submit a written request through its IRS Online Registration System account and include an explanation of the need for the extension. A CPEO must submit its request not later than 20 days after the date of the notice of suspension and proposed revocation. A CPEO may request only one extension.

(a) The IRS CPEO program office will grant the extension if, in its sole discretion and based on a review of the relevant facts and circumstances, it determines that the extension is in the interest of sound tax administration.

(b) A request for an extension, a denial of an extension, or any other matter related to this section 9.03(4) is not subject to the review described in section 9, including section 9.06.

.04 Notice of final revocation issued if no request for review of the proposed revocation is submitted. If the CPEO does not timely submit a request for review of the proposed revocation in accordance with section 9.03(2), including any extension of time under section 9.03(4), a notice of final revocation will be issued to the CPEO by the IRS CPEO program office.

.05 How the IRS handles a request for review of the proposed revocation. The IRS CPEO program office will first review the request to determine if the CPEO's actions have cured or will cure the failure(s) (if possible) and will prevent the failure(s) from reoccurring, so that the suspension can be lifted.

(1) Request for additional Information. In reviewing a CPEO's request for review, the IRS CPEO program office may request additional information from the CPEO, if it determines that further materials are required to sufficiently evaluate the initial request for review.

(a) The CPEO must provide the requested information or materials by the date specified in the request. The IRS CPEO program office will consider any request by the CPEO for an extension of the time by which the requested information or materials must be provided on a case-by-case basis.

(b) In accordance with section 9.03(3), a CPEO should not send any additional information or documentary materials to the IRS CPEO program office, unless the

information or materials are requested, and the IRS CPEO program office will not consider any unrequested information or materials received from the CPEO.

(c) Similarly, if the IRS CPEO program office requests additional information or materials, the IRS CPEO program office will also not consider any additional information or materials not timely provided by the CPEO (by the date specified in the request or any extended date) or that is not factually responsive to or is outside the scope of the request.

(2) IRS CPEO Program Office Review. In conducting its review, the IRS CPEO program office will consider the initial request for review, any additional information and documentation requested by the IRS CPEO program office and provided by the CPEO as part of the review process, any additional failures, as defined in section 9.05(3), to comply with any of the requirements for CPEOs that arise after the issuance of the notice of suspension and proposed revocation, and any timely responses by the CPEO to the additional failures.

(3) Additional Failures. Before referring a suspension and proposed revocation to OPR for review, the IRS CPEO program office will provide written notice to the CPEO of, and give the CPEO additional time to respond to, any failures to comply with any of the requirements for CPEOs that have arisen or were discovered since the notice of suspension and proposed revocation was issued. The CPEO must provide any response to the additional failures by the date specified by the IRS CPEO program office. The IRS CPEO program office will consider any request by the CPEO for an extension of the time by which the response must be provided on a case-by-case basis.

The IRS CPEO program office will not consider any additional information or materials not timely provided by the CPEO by the date specified in the request or any extended date or that is not factually responsive to or is outside the scope of the request.

(4) Lifting the suspension. If the IRS CPEO program office finds that the CPEO's actions have cured or will cure the failure(s) (if possible) and will prevent the failure(s) from reoccurring, the suspension will be lifted. The IRS CPEO program office will provide to the CPEO written notice of this finding that will include the date the suspension is lifted. Section 3511 will apply to any new CPEO contract that the CPEO enters into on or after the date the suspension is lifted. However, section 3511 does not apply to any CPEO contract that the CPEO entered into while it was suspended. The IRS will remove the listed CPEO from the published list of suspended CPEOs as soon as practicable, but no later than the next update of the list that occurs after the suspension is lifted.

(5) Forwarding to OPR. If, upon review of the CPEO's request for review of the proposed revocation, the IRS CPEO program office determines that the CPEO's actions have not cured or will not cure the failure(s) and will not prevent the failure(s) from reoccurring, it will forward the administrative record to OPR for review. The administrative record will consist of the notice of suspension and proposed revocation, the CPEO's request for review, the IRS CPEO program office's written analysis in response to the CPEO's request for review, any other information timely provided by the CPEO in response to a request by the IRS CPEO program office, including with regard to any additional failures, and all accompanying supporting documentation, to OPR.

The administrative record will include only information about (i) failures that were stated in the notice of suspension and proposed revocation or in a notice described in section 9.05 and all supporting documentation; and (ii) failures related to the IRS CPEO program office's determination, upon review of all information subject to consideration under sections 9.03(2) and 9.05(1)-(3), that the CPEO's actions have not cured or will not cure the failure(s) and will not prevent the failure(s) from reoccurring. The IRS CPEO program office will notify the CPEO when it forwards the administrative record to OPR for review, including the forwarding date.

.06 Consideration by OPR.

(1) OPR Consideration. OPR will consider only the information provided in the administrative record.

(2) Conducting the review.

(a) During OPR's review, subject to the exception described in section 9.06(2)(b), neither the IRS CPEO program office, nor the CPEO may contact OPR with respect to the pending review, except as provided below, and OPR will not contact the IRS CPEO program office or the CPEO or its authorized representative with respect to the pending review. Further, except as provided below, during OPR's review, a CPEO and its authorized representative may not:

(i) Submit any information or documentation to OPR;

(ii) Request or offer to have a telephone conference with OPR;

(iii) Request the name or contact information of any OPR employee who has been assigned to conduct the review; or



(iv) Attempt to contact the OPR employee, such as by telephone or email.

(b) Notwithstanding 9.06(2)(a), the IRS CPEO program office and the CPEO may contact OPR to request the status of a pending review and an estimate of when OPR expects to complete its review. Either OPR or the CPEO program office will provide the CPEO applicant with contact information for these purposes.

(c) All communications between OPR and either the CPEO applicant or the IRS CPEO program office will conform to current IRS security and authentication policies and procedures, as applicable.

(3) OPR will establish procedures to ensure that no additional information is considered. To facilitate an independent review, OPR will establish procedures to ensure that any information from a CPEO or authorized representative that is sent to OPR outside of the administrative record, will not be considered.

(4) Standard of review. OPR will apply an abuse of discretion standard to its review, and if, applying this standard, OPR finds that the IRS CPEO program office erred (i) in proposing revocation; or (ii) in determining that the CPEO's actions have not cured or will not cure the failure(s) (if possible) and will not prevent the failure(s) from reoccurring, the CPEO's certification will not be revoked, and its suspension will be lifted. Under an abuse of discretion standard, the Director, OPR will not set aside the IRS CPEO program office's determination unless the determination is arbitrary, capricious, clearly unlawful, or without a sound basis in fact or law. See Ewing, 122 T.C. at 39, see also Woodral, 112 T.C. at 23 (1999).

(5) Written Notice. If OPR finds no abuse of discretion, OPR will provide written notice of its finding to both the CPEO and the IRS CPEO program office and will issue a notice of final revocation to the CPEO, which is described in section 9.08. If OPR concludes that the IRS CPEO program office's determination constituted an abuse of discretion, OPR will provide written notice of its finding to both the CPEO and the IRS CPEO program office, which will include the date the suspension is lifted. As of the date the suspension is lifted, the CPEO will be restored to full status as a CPEO, section 3511 will once again apply to any new CPEO contract that the CPEO enters into. However, section 3511 does not apply to any CPEO contracts that the CPEO entered into while it was suspended. The IRS will remove the listed CPEO from the list of suspended CPEOs as soon as practicable, but no later than the next update of the list that occurs after the suspension is lifted.

.07 A request for review may be withdrawn. A CPEO may withdraw its request for review of the notice of proposed revocation before OPR provides written notice of its finding to the CPEO. A request for review may be withdrawn only upon the written request of an application submitter, submitted through the CPEO's IRS Online Registration System account. Upon receipt of the CPEO's withdrawal request, the IRS will issue a notice of final revocation.

.08 Notice of final revocation. The notice of final revocation will incorporate by reference the notice of suspension and proposed revocation (including an explanation of the reason(s) for the suspension and proposed revocation) and explain the consequences of revocation of certification, as described in section 9.09. If the CPEO

requested review of the proposed revocation (and did not withdraw its request for review), the notice of final revocation will also include additional discussion of the IRS's rationale for revocation of certification in response to arguments made in the CPEO's request for review. The notice of final revocation will state the effective date of the revocation, which will ordinarily be the first day of the first quarter following the date of the notice of final revocation.

.09 Consequences of revocation. A CPEO is no longer a CPEO as of the effective date of revocation stated in the notice of final revocation, and the provisions of section 3511 no longer apply to the organization as of that date. Unless otherwise stated in the notice of final revocation, within 10 days after the date of the notice of final revocation, the former CPEO must provide written notice to each of its customers that its CPEO certification has been revoked, that the provisions of section 3511 no longer apply to the customer's relationship with the former CPEO, and that the customers may also be liable (as of the effective date of revocation) for federal employment taxes imposed on remuneration remitted by the former CPEO to all employees covered by the customer's contract with the former CPEO. The former CPEO will also be removed from the list of CPEOs that the IRS publishes on [IRS.gov](https://www.irs.gov), which is updated by the 15th day of the first month of every calendar quarter. Moreover, the IRS will include the former CPEO in the published list of revoked CPEOs, available on [IRS.gov](https://www.irs.gov), as soon as practicable, but no later than the next update of the list that occurs after the effective date of revocation, and may also individually notify the former CPEO's customers of the revocation.

.10 Reapplication after revocation. A former CPEO whose certification has been revoked may not reapply to be certified as a CPEO until one year has passed after the effective date of its revocation. In seeking re-certification, the former CPEO must submit a completely new application, complying with the applicable procedures set forth in sections 2 thru 8 concerning application for and maintenance of certification. As part of the re-application process, the former CPEO must disclose that it has previously been certified and that its CPEO certification was revoked, provide the reasons for the revocation and explain what procedures the former CPEO has taken in the time since the revocation to ensure that it no longer poses a material risk to the IRS's collection of federal employment taxes. Specifically, the former CPEO should explain procedures that were instituted in order to correct its past failures and should describe how those procedures will prevent any new failures to comply with the requirements of a CPEO, were it to be certified again. The former CPEO must also submit to the IRS CPEO program office a copy of the written notice sent to the clients informing them of the former CPEO's revocation, and a list of the clients that were notified of the former CPEO's revocation.

## SECTION 10. VOLUNTARY TERMINATION

.01 Notice of voluntary termination. A CPEO may voluntarily terminate its certification at any time other than while its certification is suspended. To voluntarily terminate its certification, the CPEO must submit to the IRS through its IRS Online Registration System account a written notice of voluntary termination at least 30 days prior to the date on which the CPEO intends for the termination to take effect. A certification may be

voluntarily terminated upon the written request of an application submitter, submitted through the CPEO's IRS Online Registration System account. The effective date chosen by the CPEO must coincide with the first day of a calendar quarter. Prior to sending the IRS the notice of voluntary termination, the CPEO must notify each of its customers in writing of the CPEO's intention to terminate its certification and of the proposed effective date of termination and provide an explanation of the employment tax consequences of termination, including a statement that the customer may also be liable (as of the effective date of termination) for federal employment taxes imposed on remuneration remitted by the CPEO to all employees covered by the customer's contract with the CPEO.

.02 Notice of termination sent to customers by IRS. Upon receipt of a CPEO's notice of voluntary termination, the IRS may also send notification of the CPEO's intent to terminate certification to the CPEO's customers.

.03 Effect of voluntary termination. A CPEO that voluntarily terminates its certification is, as of the effective date stated in the notice of voluntary termination, no longer a CPEO and the provisions of section 3511 will no longer apply to the organization. The former CPEO will also be removed from the list of CPEOs that the IRS publishes on IRS.gov. Moreover, the IRS will include the former CPEO in the published list of voluntarily terminated CPEOs, available on IRS.gov, as soon as practicable, but no later than the next update of the list that occurs after the effective date of voluntary termination, and may also individually notify the former CPEO's customers of the voluntary termination.

.04 Reapplication after voluntary termination. A former CPEO whose certification as a CPEO was voluntarily terminated may reapply to be certified as a CPEO. There is no waiting period for reapplication after voluntary termination. In seeking re-certification, the former CPEO must submit a completely new application, complying with the applicable procedures set forth in sections 2 thru 8 concerning application for and maintenance of certification. As part of the re-application process, the former CPEO must disclose its previous voluntary termination. Furthermore, a sample of the notification of intention to terminate sent to customers as required in section 10.01 must be attached to the new application.

#### SECTION 11. EFFECTIVE DATE

This revenue procedure is effective March 10, 2023.

#### SECTION 12. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545-2266.

The collection of this information in this revenue procedure relates to the information a person must submit to the IRS to apply for and maintain certification as a CPEO for purposes of sections 3511 and 7705 and to the information a CPEO must report to the IRS and to its customers and clients to ensure the accurate, efficient, and transparent payment and reporting of employment taxes. Generally, the collection of information burden associated with this revenue procedure is reflected in the burden estimates for

Form 14737, *Request for Voluntary IRS Certification of a Professional Employer Organization*; Form 14737-A, *Responsible Individual Personal Attestation*; Form 14751, *Certified Professional Employer Organization Surety Bond*; and § 301.7705-2 and § 31.3511-1, all of which are under the same control number. The collection of information burden associated with sections 8.06(1) and 8.06(2), in particular, will be reflected in the burden estimates for new Form 8973, *Certified Professional Employer Organization/Customer Reporting Agreement*, and for the amendments made to the applicable Schedules R of Forms 940, 941, and 943.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books and records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103.

## SECTION 13. DRAFTING INFORMATION

The principal author of this revenue procedure is Nina Huson of the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this revenue procedure, please contact Nina Huson at (202) 317-4774 (not a toll-free number).