

Supporting Statement
Internal Revenue Service
OMB Control Number 1545-2266
Certified Professional Employer Organization (CPEO)

1. Circumstances necessitating collection of information

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 new 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 become certified as a CPEO. Temporary and final regulations under section 7705 of the Code (TD 9768, published May 6, 2016, at 81 FR 27315, as corrected July 12, 2016, at 81 FR 45012) describe the certification requirements necessary for a person to become and remain a CPEO, and proposed regulations under section 3511 of the Code (REG–127561–15, published May 6, 2016, at 81 FR 27360) describe the federal employment tax consequences of becoming a CPEO.

Revenue Procedure 2016–33, 2016–25 I.R.B. 1034, sets forth the detailed procedures for applying to be certified as a CPEO. Notice 2016–49, 2016–34 I.R.B. 265, provides interim guidance and describes modifications to certain certification requirements that the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) intend to make when publishing final regulations and updating Rev. Proc. 2016–33. Revenue Procedure 2017-14, addressing the requirements for a CPEO to remain certified and the procedures relating to suspension and revocation, was published in the Internal Revenue Bulletin on December 29, 2016 (2017-3 IRB 733).

Information is being collected as a result of this new legislation and the related regulations and revenue procedures. This new information collection consists of creation of new forms: Form 14737, Request for Voluntary IRS Certification of a Professional Employer Organization (“certification application”), Form 14737-A, CPEO Responsible Individual Personal Attestation (“RIPA”), Form 14751 Certified Professional Employer Organization Surety Bond, Form 8973, Certified Professional Employer Organization/Customer Reporting Agreement. The forms will only be used by program applicants and related responsible individuals. Forms 14737 and 14737-A do not exist in paper form. Rather, these forms, which are called the certification application and the Responsible Individual Personal Attestation or RIPA, respectively, are completed using interactive online software called the Online Registration System.

Section 7705 of the Code requires that, to become and remain certified as a CPEO, CPEO applicants must meet certain tax status, background, experience, business location, financial reporting, and bonding requirements. Temporary regulations under section

7705 require that a CPEO applicant must submit a properly completed and executed application for certification as a CPEO, providing such information as required by the regulations and other guidance. In addition, the applicant's responsible individuals must also separately submit information required in the regulations and other guidance. The regulations also require that a CPEO periodically verify that it continues to meet the statutory and regulatory requirements for certification and notify the IRS of any material changes in the information it has provided.

In keeping with these requirements, the IRS developed the certification application and the RIPA, both of which are accessed and completed through the Online Registration System developed by the IRS. All the information and supporting documentation that a CPEO applicant and its responsible individuals must provide the IRS to complete the certification application and the RIPA are submitted through the Online Registration System. In addition, periodic verification and updating of CPEO information on the certification application and RIPA is also completed using the Online Registration System.

Section 7705(c)(2) of the Code and related temporary regulations require that a CPEO post a bond in an amount that is based on the organization's employment tax liability. To facilitate CPEOs in meeting this requirement, the IRS developed Form 14751, Certified Professional Employer Organization Surety Bond. Form 14751 is used to post the bond required by section 7705(c)(2) and to amend the bond if necessary.

In establishing this CPEO program, section 3511(g) of the Code provides that the IRS "develop such reporting and recordkeeping rules" concerning CPEOs that the IRS "determines necessary or appropriate to ensure compliance" with the CPEO statutes and regulations. More specifically, section 3511(g)(1) provides that such reporting and recordingkeeping rules include "notification of the Secretary in such manner as the Secretary shall prescribe in the case of the commencement or termination of a service contract described in section 7705(e)(2) between such a person and a customer, and the employer identification number of such customer." Proposed regulations under section 3511 provide that a CPEO must report the "commencement or termination of any CPEO contract ... with a customer, or any service agreement described in §31.3504-2(b)(2) with a client, and the name and employer identification number (EIN) of such customer or client."

To comply with the requirements of section 3511(g)(1) and the proposed regulations thereunder, the IRS developed Form 8973, Certified Professional Employer Organization/Customer Reporting Agreement. The purpose of this form is so that a CPEO can report to the IRS the commencement or termination of a CPEO contract (as described in section 7705(e)(2)) or a service agreement described in §31.3504-2(b)(2). In addition, a CPEO uses Form 8973 to provide consent for the IRS to disclose to the customer or client identified on the form 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. In general, CPEOs are required to secure the signature of all clients subject to a service agreement described in § 31.3504-2(b)(2) on Form 8973 prior

to submission of the form to the IRS to report the commencement of the service agreement. However, if a CPEO is unable to obtain a signature from a client subject to a service agreement described in § 31.3504-2(b)(2), the CPEO must still submit Form 8973, as well as a written statement attached to the Form 8973 demonstrating that the CPEO attempted to obtain the client's signature. This additional documentation is included in the paperwork burden estimates for the form.

2. Use of data

The information from the certification application and the RIPA will be used by the IRS to determine whether CPEO applicants and CPEOs meet the requirements for certification as a CPEO under section 7705 of the Code and the temporary regulations thereunder. Form 14751 is used as documentation showing that the CPEO has complied with the bonding requirements of section 7705(c)(2) of the Code and is used in the event that the IRS must call the bond to cover an unpaid employment tax liability. The information from Form 8973 is used to notify the IRS of the commencement and termination of CPEO contracts and service agreements between the CPEO and its customers and clients so that the IRS is knows which entity has the relevant employment tax obligations.

3. Use of improved information technology to reduce burden

All of the required information and supporting documentation for the certification application and RIPA are submitted electronically via the Online Registration System to minimize the paperwork burden on taxpayers. In addition, Form 14751 is submitted electronically via the Online Registration System, Application and annual fees are collected via www.pay.gov to reduce paperwork and time. The anticipated volume of applicants for this program is very small, approximately 350 applicants over the initial 3 years.

4. Efforts to identify duplication

The information obtained through this collection is unique and is not already available for use or adaptation from another source.

5. Methods to minimize burden on small businesses or other small entities

We have attempted to minimize burden on small businesses. However, all applicants are subject to the same requirements to obtain certification. Small businesses should not be disadvantaged as the form has been structured to request the least amount of information and still satisfy the requirements of the statute and the needs of the Service.

6. Consequences of less frequent collection on federal programs or policy activities

Less frequent collection will compromise the Agency's ability to adequately determine the suitability of the CPEO applicant to meet their responsibilities for the program including tax compliance. Tax compliance is a vital part of the government's ability to meet its' mission and serve the public.

7. **Special circumstances requiring data collection to be inconsistent with guidelines in 5 CFR 1320.5(0) (2)**

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

8. **Consultation with individuals outside of the agency on availability of data, frequency of collection, clarity of instructions and forms, and data elements**

We received no comments during the comment period in response to the **Federal Register** notice (82 FR 39156), dated August 17, 2017.

9. **Explanation of decision to provide any payment or gift to respondents**

No payment or gifts are being provided to respondents.

10. **Assurance of confidentiality of responses**

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. **Justification of sensitive questions**

As part of the background and suitability check, responsible individuals must provide fingerprints for a FBI background check.

Title 26 USC 6109 requires inclusion of identifying numbers in returns, statements, or other documents for securing proper identification of persons required to make such returns, statements, or documents and is the authority for social security numbers (SSNs) in IRS systems.

A Privacy & Civil Liberties Impact Assessment (PCLIA) is approved for information collected under this request as part of the "Treasury/IRS 10.008 - Certified Professional Employer Organizations & 501 (c)(4), Treasury/IRS 50.222 – Tax Exempt and Government Entities Case Management Records and a Privacy Act System of Records notice (SORN) has been issued for this system under IRS PCLIA ID Number 1699 dated May 27, 2016.

The PRA statement from the Online Registration System site can be found at the following link:

<https://www.irs.gov/tax-professionals/certification-of-professional-employer-organization-application-privacy-act-and-paperwork-reduction-act-notice>

An IRS website for the CPEO program is available. As of November 8, 2017, a formal change request has been entered to display the OMB number on the electronic certification and attestation. The change will be implemented on the next renewal and an updated file to walk through the electronic screens will be submitted at that time. The following statement is posted on the Online Registration System and the website (Forms 14737 and 14737-A):

Certification of Professional Employer Organization Application and Responsible Individual Personal Attestation Privacy Act and Paperwork Reduction Act Notice

We are requesting this information to certify Professional Employer Organizations. Our legal authority to collect this information is Sections 6109 and 7705 of the Internal Revenue Code. Providing the information is voluntary, but if you provide incomplete or no information it may delay or prevent processing of this application; providing false or fraudulent information may subject you to penalties. Although we do not anticipate it at this time, we may disclose the information to a contractor who is bound to follow applicable confidentiality provisions as required by law and the contract if necessary for efficiency and improving our service to you.

The estimated average time to complete the Certification of Professional Employer Organization Application is 200 hours and the estimated average time to complete the Responsible Individual Personal Attestation is 40 hours. If you have comments concerning the accuracy of this time estimate or suggestions for making this form simpler, we will be happy to hear from you. You can write to the Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, Washington, DC 20224. Do not send your application to this address.

The following statement is included on Form 14751, Certified Professional Employer Organization Surety Bond:

Paperwork Reduction Act Notice

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax. You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103. The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping 55 min

Learning about the law or the form 20 min

Preparing, copying, assembling, and sending the form to the IRS 45 min

The following is included in the Instructions for Form 8973:

Privacy Act and Paperwork Reduction Act Notice.

We ask for the information on Form 8973 to carry out the Internal Revenue laws of the United States. Our authority to request the information is Internal Revenue Code sections 3511 and 7705 and the regulations thereunder. We use this information to record the start or end of a service contract between a CPEO and the customer. A customer isn't required to enter into a service agreement with a CPEO. However, if a customer chooses to enter into a service contract with a CPEO, both the customer and the CPEO are required to provide the information requested. Section 6109 requires the customer and the CPEO to provide their identification numbers. If the customer or CPEO fail to provide the information in a timely manner, or provide false or fraudulent information, the customer and the CPEO may be subject to penalties. Additionally, if the CPEO fails to provide this information in a timely manner, or provides false or fraudulent information, the IRS may revoke or suspend its certification.

Neither the CPEO nor the customer is required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law.

Generally, tax returns and return information are confidential, as required by section 6103. However, section 6103 allows or requires us to disclose this information to others as described in the Code. We may disclose your tax information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. commonwealths and possessions to administer their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

The time needed to complete and file Form 8973 will vary depending on individual circumstances. The estimated average time is:

Recordkeeping 15 min.

Learning about the law or the form 1 hr.

Preparing and sending the form to the IRS 15 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making Form 8973 simpler, we would be happy to hear from you. You can send us comments from IRS.gov/FormComments. Or you can write to the Internal Revenue Service, Tax Forms and Publications Division, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Don't send Form 8973 to this address. Instead, see *Where To File*, earlier.

12. **Estimated burden of information collection**

Estimated Taxpayer Burden for Year 2017

	Respondents	Time Per Respondent	Total Hours
Form 14737	250	200 hrs.	50,000
Form 14737-A	1,000	40 hrs.	40,000
Form 14751	235	2 hrs.	470
Form 8973	240	1.5 hrs.	360
Total	1,725	243.5 hrs.	90,830

13. Estimated total annual cost burden to respondents

The annual cost burden to respondents is \$1,000 annually. This estimate is associated with the application fee and annual verification fee when using the Online Registration System. The program decided to charge the full user fee amount, because the costs to administer the program would exceed the \$1,000 user fee per applicant.

14. Estimated annualized cost to the federal government

To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

15. Reasons for change in burden

The burden has not changed since the previous submission.

16. Plans for tabulation, statistical analysis, and publication

There are no plans for tabulation, statistical analysis and publication.

17. Reasons why displaying the OMB expiration date is inappropriate

Displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulation sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of OMB approval and obtain a new expiration date, before the old one expires.

18. Exceptions to the certification statement

There are no exceptions to the certification statement.

Note: The following paragraph applies to all collections of information in this submission:

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 or 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 26 U.S.C. § 6103.