

26 CFR 301.7705: Maintaining certification as a certified professional employer organization.

Rev. Proc. 2017-14

## 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 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.

This revenue procedure addresses the requirements for a CPEO to remain certified and the procedures relating to suspension and revocation of CPEO certification, and consolidates in one place the ongoing requirements articulated in the regulations (both proposed and temporary) under sections 3511 and 7705 of the Code as well as certain applicable requirements of Rev. Proc. 2016-33, as modified by Notice 2016-49. In addition, this revenue procedure provides guidance, including certain transition relief, to CPEOs with an effective date of certification of January 1, 2017, that receive notice of certification after that date.

.01 Definitions. For purposes of this revenue procedure--

(1) The term “application” means the electronic submission by a CPEO applicant and its responsible individuals of all information required by the online application form for CPEO certification (made available by the IRS on [www.irs.gov](http://www.irs.gov)), as well as all accompanying forms and documentation required by §301.7705-2T, Rev. Proc. 2016-33, Notice 2016-49, and instructions accompanying the application.

(2) The term “controlled group” means any controlled group of corporations or trades or businesses under common control within the meaning of sections 414(b) and (c) of the Code, and the regulations thereunder.

(3) The term “certified public accountant” (CPA) means a certified public accountant who--

(a) With respect to a CPEO, is independent of the CPEO (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 he or she is currently qualified as a CPA.

(4) The term “covered employee” means, with respect to a customer, any individual (other than a self-employed individual, as defined in section 1.01(14) of this revenue procedure) who performs services for the customer and who is covered by a CPEO contract between the CPEO and the customer.

(5) The term “CPEO” means a person that has been certified by the Commissioner as meeting the requirements of §301.7705-2T, Rev. Proc. 2016-33, Notice 2016-49, the instructions accompanying the application, and any applicable subsequent guidance and whose certification has not been revoked or voluntarily terminated.

(6) The term “CPEO contract” means a service contract between a CPEO and a customer that satisfies the requirements in section 7705(e)(2) of the Code.

(7) 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 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.

(8) The term “federal employment taxes” means the taxes imposed by subtitle C of the Code.

(9) 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 the irs.gov Web site.

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

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

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

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

(14) The term “self-employed individual” means an individual with net earnings from self-employment (as defined in section 1402(a) of the Code and without regard to the exceptions thereunder) derived from providing services covered by a CPEO contract, whether such 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 only with regard to such net earnings.

(15) 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 such location, 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 1.01(15), work sites that are contiguous

locations will be treated as a single physical location and thus a single work site, and noncontiguous locations that are not reasonably proximate will be treated as separate physical locations and thus separate work sites. A CPEO may treat noncontiguous locations that are reasonably proximate as a single physical location and thus a single work site. Any two work sites that are separated by 35 or more miles or that operate in a different industry or industries will not be treated as reasonably proximate for purposes of this section 1.01(15).

(16) The term “work site employee” means, with respect to a customer, a covered employee who performs services for such customer at a work site where, at any time during a calendar quarter, at least 85 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 85 percent threshold described in this section 1.01(16) is met, a self-employed individual described in section 1.01(14) of this revenue procedure is treated as a covered employee if such 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 covered employee in section 1.01(4) of this revenue procedure.

(b) In determining whether the 85 percent threshold described in this section 1.01(16) is met, an individual who is an excluded employee described in section

414(q)(5) of the Code is not treated either as an individual providing services or a covered employee.

(c) Notwithstanding the first sentence of this section 1.10(16), 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 such customer at any work site during that calendar quarter.

(d) The determination of whether a work site meets the 85 percent threshold described in this section 1.01(16) is made separately with respect to each customer of a CPEO and with respect to each work site of a customer. In making this determination, a covered employee is taken into account at each work site of a customer at which the employee regularly performs services for such customer.

.02 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. All comments will be available for public inspection and copying. Comments may be submitted in one of three ways:

(1) By mail to CC:PA:LPD:PR (Rev. Proc. 2016-XX), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

(2) Electronically to [Notice.Comments@irs.counsel.treas.gov](mailto:Notice.Comments@irs.counsel.treas.gov). Please include "Rev. Proc. 2016-XX" in the subject line of any electronic communications.

(3) By hand-delivery Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Rev. Proc. 2016-XX), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC 20224.

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

.01 In general. To maintain certification, a CPEO must meet the applicable requirements described in §301.7705-2T, this revenue procedure, and other guidance. In addition, any responsible individuals of the CPEO must meet any requirements applicable to them that are described in §301.7705-2T, this revenue procedure, and other guidance. Except as otherwise provided in this revenue procedure or other guidance, the information and documents required in sections 2.02 through 2.05, 2.06(3), and 2.06(4) of this revenue procedure must be submitted electronically via the online account created by the CPEO or responsible individual, as applicable. The individual submitting information and documents on behalf of the CPEO through the CPEO's online account must be authorized by section 6103(e) of the Code to inspect the returns and return information of the CPEO. For more information on how to electronically submit the information and documents required in this revenue procedure, see instructions accompanying the CPEO's or responsible individual's online account (accessible on [www.irs.gov](http://www.irs.gov)).

### .02 Annual verification.

(1) In general. Consistent with §301.7705-2T(j), a CPEO must submit a properly completed and executed online annual verification to maintain certification. 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) of the Code, 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 through [www.pay.gov](http://www.pay.gov). Payment confirmations are provided through the [www.pay.gov](http://www.pay.gov) portal. Additional information about payment submission can be found under Frequently Asked Questions at [www.pay.gov](http://www.pay.gov). No CPEO annual verification will be processed until a user fee in the amount of \$1,000 is received. 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 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. In addition to the bond that must be posted within 30 days of the notice of certification, as provided in section 7705(c) of the Code, §301.7705-2T(g), and section 2.04(2) of Rev. Proc. 2016-33, a CPEO must continue to post a bond (or bonds, as described in section 2.03(3) of this revenue procedure) from a qualified surety for the payment of federal employment taxes using Form 14751, *Certified Professional Employer Organization Surety Bond*, in the amount described in §301.7705-2T(g)(2) and this section 2.03, for each period beginning on April 1 of any calendar year and ending on March 31 of the following calendar year (the bond period). As prescribed by §301.7705-2T(g)(2)(i), the amount of the bond (or bonds, as described in section 2.03(3) of this revenue procedure) with respect to the bond period must be at least equal to the greater of 5 percent of the CPEO's liability under section 3511 of the Code during the preceding calendar year (up to \$1 million) or \$50,000. See §301.7705-2T(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 2.03(3) of this revenue procedure, 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 2.03(3) of this revenue procedure, or cancelled, as described in section 2.03(4) of this revenue procedure (the term of the bond).

(2) Controlled Groups. All CPEO members of a controlled group are required to be covered by the same bond in the amount required by §301.7705-2T(g)(2), applied as if all such CPEO members were one organization.

(3) Increase in bond amount. By March 1 in any calendar year, a CPEO must determine if an increase in bond amount for the new bond period beginning on April 1 of that calendar year is necessary and, if so, increase the amount of the bond covering the new bond period. That is, if 5 percent of a CPEO's liability under section 3511 of the Code (or other applicable federal employment tax liability) for the preceding calendar year 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 1 (up to the \$1,000,000 maximum bond amount). To increase the amount of the bond, the CPEO must submit 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 1 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 applicable federal employment tax liability 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 such an adjustment or assessment, the CPEO must submit 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, where applicable.

(a) For these purposes, 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 of the Code, respectively, with respect to any taxable period that occurs during the term of the bond unless and until the bond is superseded.

(b) For these purposes, 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 of the Code, respectively, with respect to any taxable period that occurs during the term of the bonds, unless and until the bonds are superseded.

(c) For these purposes, 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) For these purposes, 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 of the Code, respectively, with respect to any taxable period that occurred during the term of that bond.

(4) Cancellation of bond. Consistent with §301.7705-2T(g)(3), a bond may be cancelled by the surety only after the surety gives written notice of such cancellation to the IRS and the CPEO in the manner provided in the instructions for Form 14751. Similarly, a bond may be cancelled by the CPEO only after the CPEO gives written notice of such cancellation to the IRS in the manner provided in the instructions for Form 14751 or other guidance. If a CPEO either receives a notice of cancellation from the surety provider of its bond, or gives notice to the IRS of the CPEO's intent to cancel

the bond, the CPEO must 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.

(5) 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 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. 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) of the Code), and beginning with the first fiscal year that ends after the CPEO's effective date of certification, a CPEO must submit a copy of its annual audited financial statements for the fiscal year.

(2) CPA opinion. With its annual audited financial statements, a CPEO must submit an opinion of a CPA that such 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 an opinion subject to a disclaimer of opinion) and accompanied by a written declaration, signed by the CPA, that he or she is currently qualified as a CPA.

(3) Working capital statement. Either the CPA opinion or a Note to the Financial Statements covered by the CPA opinion must state that the CPEO's financial

statements reflect positive working capital (as defined by GAAP), or, only if the requirements of section 2.04(4) of this revenue procedure are met, reflect negative working capital, and, in either case, set forth in detail a calculation of the CPEO's working capital as reflected in the financial statements.

(4) Exception for negative working capital. A working capital statement that states that a CPEO's annual audited financial statements reflect negative working capital will meet the requirements of section 2.04(3) of this revenue procedure only if--

(a) The CPEO 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 2.05(3) of this revenue procedure, or the submission of quarterly unaudited financial statements;

(b) The CPEO provides with the statement a detailed calculation of its negative working capital and an explanation to the IRS describing the reason for the 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 has identified facts and circumstances that will result in positive working capital in the near future.

(5) 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, each CPEO in the controlled group must submit the annual audited financial statements

described in section 2.04(1) of this revenue procedure, with an accompanying CPA opinion described in section 2.04(2) of this revenue procedure, on a combined or consolidated basis for all CPEOs in the controlled group, rather than for the CPEO individually. Although the 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 2.04(5) 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 so provided (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 by a responsible individual of the CPEO under penalties of perjury.

(b) As required by section 2.04(3) of this revenue procedure, a CPEO that is a member of a controlled group of which other members are CPEOs must provide, in the CPA opinion or in a Note to the Financial Statements covered by the CPA opinion, a statement that the individual CPEO's financial statements reflect positive working capital (as defined by GAAP) or, if the requirements of section 2.04(4) of this revenue

procedure 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 because the CPEO's working capital statement reflects negative working capital and the CPEO fails to meet the exception described in section 2.04(4).

.05 Submission of 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 provide an assertion, as described in section 2.05(1) of this revenue procedure, 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 2.05(2) of this revenue procedure, stating that this assertion is fairly stated in all material respects; and a statement verifying that the CPEO has positive working capital, as described in section 2.05(3) of this revenue procedure.

(1) Assertion. The assertion must be signed under penalties of perjury by a responsible individual of the CPEO and state that the CPEO has withheld and made deposits of all federal employment taxes for the calendar quarter as required by subtitle C (except that the assertion is not required with respect to federal employment taxes imposed by chapter 23 of the Code).



(2) Examination level attestation. The examination level attestation from a CPA must state that the assertion described in section 2.05(1) of this revenue procedure 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, that he or she is currently qualified as a CPA. A CPEO will not fail to meet the requirements of this section 2.05(2) if the examination level attestation indicates that the CPEO 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 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) Working capital statement. The statement verifying positive working capital must be signed by a responsible individual under penalties of perjury and verify that the CPEO 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's working capital and be accompanied by a copy of the CPEO's unaudited

financial statements for the most recently completed fiscal quarter, if such statements are available. A CPEO will not fail to meet the requirements of this section 2.05(3) as a result of having negative working capital at the end of the fiscal quarter if--

(a) The CPEO does not have negative working capital at the end of the two fiscal quarters immediately preceding such fiscal quarter, as demonstrated by the required annual audited financial statements described in section 2.04 of this revenue procedure or the statements described in this section 2.05(3), or by the submission of quarterly unaudited financial statements;

(b) The CPEO 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 such 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 negative working capital presents a material risk to the IRS's collection of federal employment taxes may depend, in part, on whether the CPEO has identified facts and circumstances that will result in positive working capital in the near future.

(4) 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 2.05(1) of this revenue procedure and the examination level attestation described in section 2.05(2) of this revenue

procedure 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 2.05(3) of this revenue procedure 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 2.05(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 because the working capital statement described in section 2.05(3) reflects negative working capital and the CPEO fails to meet the exception described in section 2.05(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 2.06(1)(b) of this revenue procedure, a CPEO must submit 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).

(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) 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).

(d) 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 such 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 such CPEO contract or service agreement. For more information, see Form 8973 and its instructions.

(2) Employment tax reporting. A CPEO that is treated as an employer of a covered employee under section 3511 of the Code must meet all reporting and recordkeeping requirements described in subtitle F of the Code that are applicable to employers, in a manner consistent with such treatment. Specifically, with any Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*, and Form 941, *Employer's QUARTERLY Federal Tax Return*, that it files, a CPEO must file Schedule R (Form 940), *Allocation Schedule for Aggregate Form 940 Filers*, and Schedule R (Form 941), *Allocation Schedule for Aggregate Form 941 Filers*, respectively, providing all the information required by the form and its instructions. In addition, Form 940 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 certification. See the instructions for Form 940, Form 941, Schedule R (Form 940), and Schedule R (Form 941) for additional information on filing these forms. The IRS may waive the electronic filing requirements of this section 2.06(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 and Form 941

(and all applicable schedules) exceeds the cost of paper filing. To request a waiver from electronic filing requirements, a CPEO must submit in writing a request that specifies the type of filing (that is, the name of the form or schedule), as well as the period to which it applies, and that explains the undue economic hardship caused by electronic filing. In addition, the waiver will be subject to such terms and conditions regarding the method of filing as may be prescribed by the IRS. For additional information on how to request a waiver from electronic filing requirements, see the information provided on the IRS CPEO web page on [www.irs.gov](http://www.irs.gov).

(3) Reporting of material changes. A CPEO must notify the IRS of any change that materially affects the continuing accuracy of any agreement or information that was previously made or 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 online account of the CPEO by which the initial application was submitted, or through such other means as the IRS prescribes in further guidance. Material changes that must be reported as prescribed in this section 2.06(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 related 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: (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 2.04 of this revenue procedure, section 2.05 of Rev. Proc. 2016-33, and §301.7705-2T(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 2.05 of this revenue procedure, section 2.06 of Rev. Proc. 2016-33, and §301.7705-2T(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 2.05(3) of this revenue procedure 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 charging or conviction of the CPEO, or a related entity or a responsible individual of the CPEO, with or for any federal, state, or local criminal offense.

(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 50 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 business, or the reorganization, spin off or similar division, liquidation, or closure of the CPEO business, directly or indirectly (including through sale, transfer, disposition, reorganization, spin off, 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 and reporting of new responsible individuals. Responsible individuals of a CPEO must notify the IRS of any material changes to the information they submitted on the Responsible Individual Personal Attestation (RIPA) pursuant to section 2.01 of Rev. Proc. 2016-33 or this section 2.06(4), within 30 days of the change, by submitting an update through the online account of the responsible individual who submitted the previous RIPA. Material changes that must be reported as prescribed in this section 2.06(4) include 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; disbarments; charges or convictions for any federal, state, or local criminal offense; IRS criminal investigations; 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; the initiation of a bankruptcy proceeding by the responsible individual; and any assessments of the Trust Fund Recovery Penalty on the responsible individual). This reporting requirement is in addition to the requirement that the CPEO report material changes relating to responsible individuals, as provided in sections 2.06(3)(a), (e), (f),

and (g) of this revenue procedure. In addition, each individual who, since 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) if the responsible individual had previously completed a RIPA for any CPEO, submit an update through his or her online account adding the CPEO as a CPEO with which the responsible individual is associated; or, (ii) if the responsible individual had not previously completed a RIPA, electronically submit a properly completed and executed online RIPA and provide a FD-258, Fingerprint Card, obtain an individual (INDV) number from the IRS, and provide this INDV number to the CPEO in the manner described on [www.irs.gov](http://www.irs.gov) (all of which must take place before the CPEO can update its responsible individual information).

(5) 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) of the Code and any other credits specified in

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

(c) If a CPEO's certification is suspended or revoked, as described in section 3 of this revenue procedure, the CPEO must provide written notice to each of its customers within 10 days of the effective date of such suspension or revocation, as provided in sections 5.03 and 5.09 of this revenue procedure.

(d) If any covered employees are not, or cease to be, work site employees because they perform services at a location at which the 85 percent threshold described in section 7705(e)(3) of the Code 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 such covered employees.

(6) Information and agreements required in any contract between a CPEO and a client or customer.

(a) In general. 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 of the Code does not apply to a CPEO contract in accordance with paragraph (b) of this section 2.06(6), 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 of the Code 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) Section 3511 of the Code 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) of the Code (including, by cross-reference to section 267(f) of the Code) or section 707(b) of the Code, 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 such commencement has not been reported to the IRS in accordance with section 2.06(1) of this revenue procedure;

(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 revocation or voluntary termination, and in such case the notification required by paragraph (a) of this section 2.06(6) should be sent as required by sections 3.09 and 4.01 of this revenue procedure.

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

(7) Penalties and additions to tax. A CPEO is subject to the penalty under section 6652(n) of the Code for failure to make any report required by sections 3511 and 7705 of the Code (and the guidance thereunder), which includes the reporting requirements described in this section 2.06. 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 2.06(2) of this revenue procedure, including but not limited to penalties and additions to tax under sections 6651, 6656, 6672, 6721, 6722, and 6723 of the Code. However, the failure to file Forms 940 and 941, along with all required schedules, electronically, as provided in section 2.06(2) of this revenue procedure, 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 3 of this revenue procedure.

### SECTION 3. SUSPENSION AND REVOCATION OF CPEO CERTIFICATION

.01 In general. The IRS may suspend and/or 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 of the Code, the regulations thereunder, Rev. Proc. 2016-33, Notice 2016-49, this revenue procedure, and any other guidance issued by the IRS applicable to CPEOs, 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 of such failures present a material risk to the IRS's collection of federal

employment taxes. Section 3.02 of this revenue procedure 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 3.03(1) of this revenue procedure. A CPEO may request review of the proposed revocation, in the manner described in section 3.03(2) of this revenue procedure, 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 3.09 of this revenue procedure.

.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) 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 2.02, 2.04, and 2.05 of this revenue procedure;

(2) A failure to maintain a bond or bonds in the required bond amount, as provided in section 2.03 of this revenue procedure;

(3) A failure to satisfy the reporting requirements provided in section 2.06 of this revenue procedure, 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 2.06(3) and 2.06(4) of this revenue procedure);

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

(6) 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) 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) The discovery of any errors or omissions in any annual audited financial statements or working capital statements previously submitted to the IRS in accordance with sections 2.04 and 2.05 of this revenue procedure, sections 2.05 and 2.06 of Rev. Proc. 2016-33, and §§301.7705-2T(e) and (f), that would require a restatement of previously submitted statements.

.03 Notice of suspension and proposed revocation. If the 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 that will explain the reason(s) for and consequences of the suspension and proposed

revocation, as described in section 3.03(1) of this revenue procedure, and advise the CPEO of its opportunity to request review of the proposed revocation, as described in section 3.03(2) of this revenue procedure. The CPEO's suspension is effective as of the date on the notice.

(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. Moreover, the IRS will include the suspended CPEO in the published list of suspended CPEOs, available on [www.irs.gov](http://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 contained in the regulations and this revenue procedure. However, section 3511 of the Code will not apply to any new CPEO contract (not including modifications or extensions to existing contracts) that the CPEO 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 sections 2.06(1), (2), and (6) of this revenue procedure, which restate requirements stated in §31.3511-1(g) of the proposed regulations, assuming such 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, in accordance with this section 3.03, will advise the CPEO of its opportunity to request review of the proposed revocation. To request a review, the



CPEO must submit to the CPEO program office identified in the notice of suspension and proposed revocation, within 30 days of the date of the notice and in the manner prescribed by 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/or 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.

.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 3.03(2) of this revenue procedure, a notice of final revocation will be issued to the CPEO by the CPEO program office.

.05 How the IRS handles a request for review of the proposed revocation. The CPEO program office will first review the request.

(1) If the 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 CPEO program office will provide to the CPEO written notice of this finding that will include the date the suspension is lifted. Section 3511 of the Code will apply to any new CPEO contract that the CPEO enters into on or after the date the suspension is lifted. However, section 3511 of the Code 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.

(2) If, upon review of the CPEO's request for review of the proposed revocation, the 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 notice of suspension and proposed revocation, the CPEO's request for review, and all accompanying supporting documentation to the IRS Office of Professional Responsibility (OPR).

.06 Consideration by OPR. If the request for review of the proposed revocation is forwarded to OPR, OPR will consider the CPEO's request for review. OPR will apply an abuse-of-discretion standard to its review, and if, applying this standard, OPR finds that the CPEO program office erred in proposing revocation or in determining 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 CPEO's certification will not be revoked, and its suspension will be lifted. OPR will provide written notice of its finding to both the CPEO and the 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 of the Code will once again apply to any new CPEO contract that the CPEO enters into. However, section 3511 of the Code 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 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. If OPR finds no abuse of discretion, OPR will provide written notice of its finding to both the CPEO and the CPEO program office and will issue a notice of final revocation to the CPEO, which is described in section 3.08 of this revenue procedure.

.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 the CPEO. 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 3.09 of this revenue

procedure. 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.

.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 of the Code 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 and no less than 30 days before the effective date of revocation, the CPEO must provide written notice to each of its customers that the CPEO's certification has been revoked, that the provisions of section 3511 of the Code no longer apply to the customer's relationship with the 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 CPEO to all employees covered by the customer's contract with the CPEO. Moreover, the IRS will include the CPEO in the published list of revoked CPEOs, available on [www.irs.gov](http://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 CPEO's customers of the revocation. The former CPEO may not reapply to be certified as a CPEO until one year has passed after the effective date of its revocation.

## SECTION 4. 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, via the CPEO's online account or such other method as the IRS shall prescribe in further guidance, 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. 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. A sample of the notification to customers referred to in the preceding sentence must be attached to the notice of voluntary termination submitted by the CPEO to the IRS.

.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 of the Code will no longer apply to the organization. The CPEO will also be removed from the list of CPEOs that the IRS publishes on [www.irs.gov](http://www.irs.gov), which is updated by the 15th day of the first month of every calendar quarter.

#### SECTION 5. GUIDANCE FOR CPEOS WITH AN EFFECTIVE DATE OF CERTIFICATION OF JANUARY 1, 2017, THAT RECEIVE NOTICE OF CERTIFICATION AFTER THAT DATE

.01 In general. Rev. Proc. 2016-33, as modified by Notice 2016-49, provides that the effective date of certification for a CPEO applicant that submits a complete and accurate application before October 1, 2016, and is certified, will be January 1, 2017, even if the date of its notice of certification is after January 1, 2017. A CPEO applicant that submitted a complete and accurate application before October 1, 2016, under this special rule should begin keeping track of the information necessary to properly complete a Schedule R (Form 941), *Allocation Schedule for Aggregate Form 941 Filers* (a draft of the new Schedule R (Form 941) that includes CPEO reporting is available at [www.irs.gov](http://www.irs.gov)) as of January 1, 2017, even if the CPEO applicant has not yet received notice of certification. The IRS anticipates that a CPEO that receives a notice of certification during the first quarter of 2017 providing for an effective date of certification of January 1, 2017, will be able to comply with CPEO employment tax reporting requirements, as described in section 2.06(2) of this revenue procedure, and file Form 941 with an attached Schedule R by the first quarter deadline of April 30, 2017. However, in the event a CPEO receives a notice of certification after the end of the first quarter of 2017 (that is, after March 31, 2017) that provides for an effective date of

certification of January 1, 2017, the CPEO may file Form 941 for the first quarter of 2017 without an attached Schedule R, but then must file Form 941-X, *Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund*, with a properly completed Schedule R for the first quarter by July 31, 2017.

.02 Transition rule for filing Form 14751. Under §301.7705-2T(g) and section 2.04(2) of Rev. Proc. 2016-33, a CPEO applicant that is certified under the special rule described in section 5.01 of this revenue procedure would have 30 days to post a bond that is effective beginning January 1, 2017, (using Form 14751) in the amount required by § 301.7705-2T(g)(2). To comply with section 2.03(3) of this revenue procedure, a CPEO that is certified under the special rule and whose bond amount under §301.7705-2T(g)(2) increases for the bond period beginning April 1, 2017, would need to increase its bond amount (using Form 14571) for the new bond period by March 1, 2017. If a CPEO that is certified under the special rule receives its notice of certification after March 1, 2017, meeting this March 1 deadline will not be possible. Moreover, whether or not notice of certification is received by the March 1 deadline, obtaining a bond for a three-month period beginning January 1, 2017, and then within a short timeframe increasing that bond amount for a period beginning April 1, 2017, may prove administratively difficult.

Accordingly, Treasury and the IRS are providing transition relief for newly certified CPEOs that are certified with an effective date of January 1, 2017, under the special rule described in section 5.01 of this revenue procedure. Specifically, with respect to both the bond period from January 1, 2017, to March 31, 2017, and the bond period

from April 1, 2017, to March 31, 2018, such a CPEO will be required to submit only one properly completed and executed Form 14751 covering both bond periods. The single bond posted using this Form 14751 must have an effective date of January 1, 2017, and cover both bond periods using the same bond amount, which is in the amount required by §301.7705-2T(g)(2), calculated for the bond period beginning April 1, 2017, and ending March 31, 2018. In addition, the CPEO will have 30 days from the date of its notice of certification to submit this Form 14751, without regard to when the CPEO's notice of certification is received.

#### SECTION 6. EFFECTIVE DATE

This revenue procedure is effective December 29, 2016.

#### SECTION 7. 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 maintain certification as a CPEO for purposes of sections 3511 and 7705 of the Code 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 sections 2 through 4 of 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 §301.7705-2T and §31.3511-1, all of which are under the same control number. The collection of information burden associated with sections 2.06(1) and 2.06(2) of this revenue procedure, 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 and 941.

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 of the Code.

## SECTION 8. DRAFTING INFORMATION

The principal authors of this revenue procedure are Andrew Holubeck and Melissa Duce of the Office of the Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue procedure, please contact Andrew Holubeck at (202) 317-4774 (not a toll-free number).