

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

Rev. Proc. 2016-33

SECTION 1. PURPOSE

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 federal employment tax consequences and certification requirements, respectively, of 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 regulations under section 7705 (TD 9768) describe the certification requirements necessary for a person to become and remain a CPEO. This revenue procedure sets forth the detailed procedures for applying to be certified as a CPEO. A future revenue procedure will address requirements for a CPEO to remain certified and the procedures relating to suspension and revocation of CPEO certification.

.01 Description of terms used in this revenue procedure. 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 Internal Revenue Service (IRS) on

www.irs.gov), as well as all accompanying forms and documentation required by § 301.7705-2T of the Treasury Regulations, this revenue procedure, 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 applicant, is independent of the 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 he or she is currently qualified as a CPA and an authorization, in accordance with the requirements of § 601.503(a), to represent the CPEO applicant before the IRS.

(4) The term “CPEO” means a person that has been certified by the Commissioner as meeting the requirements of § 301.7705-2T, this revenue procedure, and the instructions accompanying the application and whose certification has not been revoked.

(5) The term “CPEO applicant” means a person that submits or has submitted an application to be certified as a CPEO in accordance with § 301.7705-2T, this revenue

procedure, and instructions accompanying the application. A CPEO applicant remains a CPEO applicant until the CPEO applicant withdraws its application; 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; or receives a notice of final denial, as described in section 8.04.

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

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

(8) The term “provider of employment-related services” means a person described in § 301.7705-1T(b)(11).

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

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

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

.02 Changes and request for comments. This revenue procedure may be updated periodically to improve the CPEO certification process. The IRS solicits comments, including suggestions, relating to this revenue procedure and the administration of the CPEO certification 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. 2016-33), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

(2) Electronically to Notice.Comments@irs.counsel.treas.gov. Please include "Rev. Proc. 2016-33" 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 APPLYING FOR CERTIFICATION AS A CPEO

.01 Method of submission. A person seeking certification as a CPEO must electronically submit a properly completed and executed online application for CPEO certification (made available by the IRS on www.irs.gov) and the accompanying forms and documentation required by § 301.7701-2T, this revenue procedure, and instructions accompanying the application. 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 accompanying the application, documents required by this revenue procedure to be submitted after the application is submitted and while the application is pending must also be submitted electronically, as provided by the instructions accompanying the application. 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. In addition, each of the CPEO applicant's responsible individuals must electronically submit a properly completed and executed online Responsible Individual Personal Attestation

(RIPA) form and must also provide a FD-258, Fingerprint Card at the time and in the manner described in the instructions accompanying the application. Once the RIPA is submitted, the information contained in the RIPA becomes return information of the CPEO applicant and may be disclosed to the CPEO applicant if the IRS determines that such disclosure will not impair Federal tax administration.

.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 application. Members of a controlled group may not apply jointly on one application. See sections 2.04, 2.05(6), and 2.06(5) for details regarding the 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 initial certification, the individual that submits the application will be automatically directed to pay a user fee in the amount of \$1,000 through www.pay.gov. Payment confirmations are provided through the www.pay.gov portal. Additional information about payment submission can be found under Frequently Asked Questions at www.pay.gov. No CPEO application will be processed until a user fee in the amount of \$1,000 is received. Once processing of the application has begun, the user fee will not be returned, even if the application is withdrawn or denied.

.04 Proof of bond.

(1) Surety letter. With its application, a CPEO applicant must submit 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 § 301.7705-2T(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 § 301.7705-2T(g)(2), applied as if all such CPEO members (and/or any of their precursor entities, if applicable) were one organization.

(2) Form 14751. If the IRS approves a CPEO applicant’s application for certification, the CPEO applicant has 30 days from the date the IRS provides notice of certification (see section 6) to submit a properly completed and executed Form 14751 (or, in the case of a CPEO applicant that is a member of a controlled group with existing CPEOs, to post a superseding bond using a properly completed and executed Form 14751, as described in section 6.02) providing for a bond in the amount required by § 301.7705-2T(g)(2) and signed by both a qualified surety and the CPEO (or CPEOs in the case of a bond covering a controlled group).

.05 Submission of annual audited financial statements.

(1) Copy of financial statements. With its application, a CPEO applicant must submit a copy of its annual audited financial statements for the most recently completed fiscal year as of the date it submits its application, 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 immediately preceding 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, if applicable, 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 paragraph continue even if the CPEO applicant is certified as a CPEO before the IRS has received the annual audited financial statements.

(2) CPA opinion. With each of these required annual audited financial statements, a CPEO applicant must submit an opinion of a CPA that such financial statements--

(a) Are presented fairly and in accordance with generally accepted accounting principles (GAAP);

(b) Reflect positive working capital (as defined by GAAP) or, only if the requirements of section 2.05(4) are met, reflect negative working capital, with the opinion in either case setting forth in detail a calculation of the CPEO applicant's working capital as reflected in the financial statements; and

(c) Reflect that the CPEO applicant computes its taxable income using an accrual method of accounting.

(3) CPA opinion must be unmodified. The CPA opinion must be unmodified (such that it cannot be a qualified opinion, an adverse opinion, or a disclaimer of opinion) and accompanied by a written declaration, signed by the CPA, that the CPA is currently qualified as a CPA and is authorized to represent the CPEO applicant before the IRS.

(4) Exception for negative working capital. A CPA opinion described in section 2.05(2) may state that a CPEO applicant's annual audited financial statements reflect negative working capital, but in that case the opinion will meet the requirements of section 2.05(2) 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 or its CPA provides with the CPA opinion a detailed calculation of its negative working capital and an explanation to the IRS describing the reason for the failure; and

(c) The IRS determines, in its sole discretion, that the failure 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.

(5) Newly-established CPEOs. A CPEO applicant that was not operating as a provider of employment-related services for all or part of the most recently completed fiscal year as of the date it submits its application for certification must also provide a copy of the audited financial statements of the following entity or entities, if applicable, for each applicable entity's most recently completed fiscal year, accompanied by an unmodified opinion of a CPA that such financial statements are presented fairly and in accordance with GAAP and reflect positive working capital (as defined by GAAP) or, only if the requirements of section 2.05(4) are met (as applied to such entities), reflect negative working capital, with the opinion in either case setting forth in detail a calculation of the entity's working capital as reflected in the financial statements:

(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 § 301.7705-1T(b)(12)(ii)(B).

(6) Financial statements for controlled groups. In satisfaction of the requirement in paragraph (1), 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 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 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(2), a CPEO applicant that is a member of a controlled group of which other members are CPEO applicants or CPEOs must provide an opinion of a CPA that the individual CPEO applicant's financial statements reflect positive working capital (as defined by GAAP) or, if the requirements of section 2.05(4) are met, reflect negative working capital, with the opinion 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) 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 provide 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 such subsequent quarter, even if the CPEO applicant receives its certification before this deadline.

(1) 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 (except that

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

(2) 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 comply 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 the CPA is currently qualified as a CPA and is authorized to represent the CPEO applicant before the IRS. 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 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) 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 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 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 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) 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) 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 controlled group basis, rather than for the CPEO applicant individually. The quarterly assertions and attestations must contain 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).

(6) If a CPEO applicant submits its CPEO application before September 1, 2016, it may include with its application the assertion, examination level attestation, and working capital statement described in this section 2.06 with respect to the first calendar quarter of 2016, provided it subsequently provides the assertion, examination level attestation, and working capital statement with respect to the second calendar quarter of 2016 by September 1, 2016.

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 the 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 application by conducting background checks of the CPEO applicant, any related entities or precursor entities, and responsible individuals. These background checks may include checks on tax 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 such additional information as the IRS may request to facilitate its background investigations (see section 4.03). A CPEO applicant 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, including waiving confidentiality and privilege in situations in which the IRS is otherwise unable to obtain information. 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 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 § 301.7705-2T, this revenue procedure, and the instructions accompanying the application so as not to present a material risk to the IRS's collection of federal employment taxes.

.02 Incomplete or inaccurate application. An application 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 § 301.7705-2T, this revenue procedure, and the instructions accompanying the application. It is anticipated that the online application system will permit the submission of an application only once it is complete. 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 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 or tax compliance check suggest a potential failure to meet any requirement described in § 301.7705-2T, the IRS may request that the CPEO applicant provide an explanation for such results. As another example, the IRS may ask a CPEO applicant to support its representations with respect to its knowledge or 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 of any change that materially affects the continuing accuracy of any agreement or information that was previously made or provided to the IRS as a part of its application for certification. A material change includes, but is 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 this purpose, 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. Additional information concerning what qualifies as a material change and how and when, once certified, a CPEO must notify the IRS of a material change will be provided in a future revenue procedure.

SECTION 5. WITHDRAWAL OF APPLICATION

.01 Application may be withdrawn. An application may be withdrawn only upon the written request of a responsible individual authorized to correspond with the IRS on behalf of the CPEO applicant.

.02 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. The IRS will issue electronically or by mail a notice of certification to a CPEO applicant that has been approved for certification. 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 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 § 301.7705-2T(g)(2). If the CPEO applicant fails to provide such 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 CPEO applicant (or other members of the controlled group) will be required to post a superseding bond, in the form of a properly completed and executed Form 14751, that identifies all CPEOs in the controlled group and reflects the correct bond amount for all CPEOs in the controlled group, including the CPEO applicant. If the CPEO applicant fails to submit a superseding bond on Form 14571 within the time period provided in this paragraph, 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. However, the effective date of certification for a CPEO applicant that submits a complete and accurate application before September 1, 2016, and is certified will be January 1, 2017, even if the date of its notice of certification is after January 1, 2017.

SECTION 7. 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 the IRS website at www.irs.gov/CPEOs, which will be updated to reflect newly certified CPEOs by the 15th day of the first month of every calendar quarter. An organization will not appear on this list until the IRS has received from it the proof of bond on Form 14751, as described in section 6.02.

SECTION 8. 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 § 301.7705-2T, the IRS will issue a notice of proposed denial (unless the circumstances in section 8.02 apply), which will--

- (1) Include the reason(s) for the denial of certification; and
- (2) Advise 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 § 301.7705-2T, this revenue procedure, or the instructions to the application 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) 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) 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) 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) The CPEO applicant fails to provide proof of the bond required in section 2.04 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 8.01, will advise the CPEO applicant of its opportunity to request a review by the IRS Office of Professional Responsibility (OPR). To request a review, the CPEO applicant must submit to the IRS CPEO program office identified in the notice of proposed denial 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 with or subsequent to 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.

.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 8.03, 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 request for review, the IRS CPEO program office will first review the request and accompanying written statement of supporting arguments, and, if it determines that the CPEO applicant qualifies for certification, will issue the applicant a notice of certification. If the IRS CPEO program office maintains its position regarding a proposed denial after reviewing the request, it will forward the request for review and the application case file to OPR.

.06 Consideration by OPR. OPR will consider the CPEO applicant's request for review. OPR will apply an abuse of discretion standard to its review, and if OPR concludes that the CPEO program office erred in denying certification, it will issue a letter notifying the CPEO applicant that notice of certification will be issued by the CPEO program office. 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 a responsible individual authorized to correspond with the IRS on behalf of the CPEO applicant. Upon receipt of the CPEO applicant's withdrawal request, the IRS will complete the processing of the application in the same manner as if no request for review was received.

SECTION 9. EFFECTIVE DATE

This revenue procedure is effective July 1, 2016.

SECTION 10. 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 that a person must submit to the IRS to be certified as a CPEO for purposes of sections 3511 and 7705 of the Code. 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 § 301.7705-2T, all of which are under the same control number.

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.

DRAFTING INFORMATION

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