

Supporting Statement
Internal Revenue Service
Certified Professional Employer Organization (CPEO)
Forms: 14737, 1437-A, 14751, 8973 and TD 9860 (REG-
127561-15)
OMB Control Number 1545-2266

1. Circumstances necessitating collection of information

The Stephen Beck, Jr., Achieving a Better Life Experience (ABLE) Act of 2014, enacted on December 19, 2014, as part of The Tax Increase Prevention Act of 2014 (Pub. L. 113-295), added new sections 3511 and 7705 to the Internal Revenue Code (Code) relating to the certification requirements for, and the federal employment tax consequences of being, a certified professional employer organization (CPEO). The ABLE Act requires the establishment of a voluntary program for persons to apply to become certified as a CPEO.

Final regulations under TD 9860, published in the Internal Revenue Bulletin on June 10, 2019, (2019-24 I.R.B. 1297), set forth the requirements a person must satisfy in order to become and remain a CPEO and the federal employment tax liabilities and other obligations of persons certified by the Internal Revenue Service as CPEOs.

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. Revenue Procedure 2017-14, addressing the requirements for a CPEO to remain certified and the procedures relating to suspension and revocation, was published in the Internal Revenue Bulletin on December 29, 2016 (2017-3 IRB 733).

Form 14737, Request for Voluntary IRS Certification of a Professional Employer Organization ("certification application"), Form 14737-A, CPEO Responsible Individual Personal Attestation ("RIPA"), Form

14751 Certified Professional Employer Organization Surety Bond, Form 8973, Certified Professional Employer Organization/Customer Reporting Agreement. The forms will only be used by program applicants and related responsible individuals. Forms 14737 and 14737-A do not exist in paper form. Rather, these forms, which are called the certification application and the Responsible Individual Personal Attestation or RIPA, respectively, are completed using interactive online software called the Online Registration System.

Section 7705 of the Code requires that, to become and remain certified as a CPEO, CPEO applicants must meet certain tax status, background, experience, business location, financial reporting, and bonding requirements. Temporary regulations under section 7705 require that a CPEO applicant must submit a properly completed and executed application for certification as a CPEO, providing such information as required by the regulations and other guidance. In addition, the applicant's responsible individuals must also separately submit information required in the regulations and other guidance. The regulations also require that a CPEO periodically verify that it continues to meet the statutory and regulatory requirements for certification and notify the IRS of any material changes in the information it has provided.

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

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

In establishing this CPEO program, section 3511(g) of the Code provides that the IRS "develop such reporting and recordkeeping rules" concerning CPEOs that the IRS "determines necessary or appropriate to ensure compliance" with the CPEO statutes and regulations. More specifically, section 3511(g)(1) provides that such

reporting and recordingkeeping rules include “notification of the Secretary in such manner as the Secretary shall prescribe in the case of the commencement or termination of a service contract described in section 7705(e)(2) between such a person and a customer, and the employer identification number of such customer.” Proposed regulations under section 3511 provide that a CPEO must report the “commencement or termination of any CPEO contract ... with a customer, or any service agreement described in §31.3504-2(b)(2) with a client, and the name and employer identification number (EIN) of such customer or client.”

To comply with the requirements of section 3511(g)(1) and the proposed regulations thereunder, the IRS developed Form 8973, Certified Professional Employer Organization/Customer Reporting Agreement. The purpose of this form is so that a CPEO can report to the IRS the commencement or termination of a CPEO contract (as described in section 7705(e)(2)) or a service agreement described in §31.3504-2(b)(2). In addition, a CPEO uses Form 8973 to provide consent for the IRS to disclose to the customer or client identified on the form information from the CPEO’s employment tax returns (for example, Forms 940 and 941) filed with respect to the customer or client identified on the form. In general, CPEOs are required to secure the signature of all clients subject to a service agreement described in § 31.3504-2(b)(2) on Form 8973 prior to submission of the form to the IRS to report the commencement of the service agreement. However, if a CPEO is unable to obtain a signature from a client subject to a service agreement described in § 31.3504-2(b)(2), the CPEO must still submit Form 8973, as well as a written statement attached to the Form 8973 demonstrating that the CPEO attempted to obtain the client’s signature. This additional documentation is included in the paperwork burden estimates for the form.

2. Use of data

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

customers and clients so that the IRS is knows which entity has the relevant employment tax obligations.

3. Use of improved information technology to reduce burden

All of the required information and supporting documentation for the certification application and RIPA are submitted electronically via the Online Registration System to minimize the paperwork burden on taxpayers. In addition, Form 14751 is submitted electronically via the Online Registration System, an annual fee is charged in connection with applying for and maintaining certification as a CPEO.

4. Efforts to identify duplication

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

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

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

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

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

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

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

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

In response to the *Federal Register* notice (85 FR 79077) dated December 08, 2020, we received several comments from the National Association of Professional Employer Organizations (NAPEO) relating to Certified Professional Employer Organization (CPEO) forms and regulations.

In response to Form 8973, the IRS appreciates the suggestions provided by NAPEO commenters. Currently, IRS is considering electronic signatures on Form 8973 and recognizes the burden this puts on the CPEO and their customer/client. The IRS is working diligently to determine if electronic signatures can be accepted. The IRS will consider the additional suggestions as the IRS continues to review and modify the Form 8973 for subsequent years.

NAPEO submitted the following comments regarding form 8973.

- Form 8973:
 - o Request to accept electronic signatures
 - o Provide an option to allow electronic submission
 - o Change the requirement of the CPEO to file the form within 30 days of starting or ending the service contact to a quarterly requirement
 - o Eliminate the renewal three-year refiling requirement or create a process to allow bulk submissions
 - o Extend the six-month rule in acquisitions to CPEO's who acquire a new PEO.
 - o Clarify when the customer/client can stop filing Forms 940 and Form 941, indicating zero wages and taxes paid, after entering into a contract with a CPEO.

In response to Form 14751, the IRS appreciates the suggestions provided by NAPEO commenters. The IRS will consider the additional suggestions as the IRS continues to review and modify the Form 14751 for subsequent years.

The following comments on the Form 14751 were submitted:

- Form 14751:
 - o That if a surety company chooses to seek collateral that it be treated as one factor that the IRS considers in its evaluation of the CPEO's initial or ongoing certification and not as an event that precludes certification or, as an event that will generally

result in the revocation of the CPEO certification if a bond from another surety isn't obtained showing no collateral.

- o Revise the language to underscore the surety's liabilities do not arise pursuant to a mere demand for payment.

In response to Form 14737 and Form 14737-A, The IRS appreciates the suggestions provided by NAPEO commenters. The IRS will consider the additional suggestions as the IRS continues to review and modify the Form 14737 and Form 14737-A for subsequent years.

The following comments on the Form 14737 and Form 14737-A were submitted:

- Form 14737 and Form 14737-A
 - o Allow a single application for all CPEO Applicants in a controlled group.
 - o Allow a parent entity to apply for certification on behalf of itself or any of its PEO subsidiaries with the same controlled group that are identified in a single application
 - o Allow two or more PEOs with a controlled group to jointly apply for certification (even if the parent is not requesting certification).
 - o Clarify if information obtained from CPEO Applicants, Related Entities, Precursor Entities, and Responsible Individuals is kept confidential, except as specifically provided in the regulation and not made available to the public.

Finally, NAPEO submitted several comments pertaining to CPEO regulations under (TD 9860).

A. Regulations under Code § 7705

1. Definition of "CPEO Contract": CPEO Responsibility to Maintain Employee Records

- NAPEO requested more specifics concerning the statutory requirement to maintain employee records, including specifics as to which records a CPEO is required to maintain.
 - o Although the statutory and regulatory provisions regarding service agreements and CPEO contracts require that the contract or agreement include certain provisions, including that the CPEO maintain employee records, the CPEO and its customers and clients may choose to include additional provisions in their contracts. To allow for some flexibility and business judgment in

negotiating CPEO contracts, the regulations do not expand upon the statutory requirements concerning maintaining employee records. The IRS continues to believe that maintaining this flexibility is important and will not adopt the suggestion to provide specific requirements concerning maintaining employee records.

2. Fingerprint Requirements

- NAPEO requested the IRS clarify that only one fingerprint card is necessary from a responsible individual, and that the single fingerprint card be used for background check purposes for all CPEO applicants in a controlled group for which that person is a responsible individual.
 - o When the IRS issued final regulations, the IRS determined that the regulations should continue to provide the IRS with the flexibility to include specific instructions regarding fingerprint cards in other guidance, such as revenue procedures and the application for certification, as the program develops and as changes in technology permit new procedures. The IRS will consider this comment and if it determines further clarification is necessary, will provide more information in further guidance.

3. Working Capital Requirement

- NAPEO requested that the failure to maintain a positive net worth not be grounds for rejecting, revoking, or suspending a PEO/CPEO's certification and instead consider net worth and cross-guarantee alternatives to meeting working capital requirements.
 - o The IRS considers a CPEO with annual audited financial statements that reflect positive working capital (as determined in accordance with GAAP) to present a materially lower risk to the IRS's collection of federal employment taxes than a CPEO without positive working capital. Accordingly, pursuant to section 7705(b)(1) and consistent with several state PEO certification and registration laws, the IRS will continue to retain the positive working capital requirement.

4. Definition of “Responsible Individual”: Administrability of Definition with Respect to Ownership of Capital Interest or Profits Interests in a Partnership

- NAPEO requested that the IRS modify requirements relating to reporting of material changes so that changes in responsible individuals due to fluctuations in ownership percentage do not need to be reported within 30 days. NAPEO specifically requested that such changes be required to be reported once per year or upon significant turnover.
 - o The regulations require that a CPEO applicant or CPEO notify the IRS, in the time and manner prescribed by the Commissioner in further guidance, of any change that materially affects the continuing accuracy of any agreement or information that was previously made or provided to the IRS. A change in responsible individuals is an example of a material change, and the time and manner for reporting this information to the IRS is currently set forth in Rev. Proc. 2016-33 and Rev. Proc. 2017-14. Specifically, these revenue procedures provide that such material changes must be reported within 30 days of the date of the change. The IRS continues to believe that changes in responsible individuals, even when such changes are caused by fluctuations in business ownership, can affect a CPEO’s suitability for certification and should therefore be reported promptly. For this reason, the IRS will not adopt the suggestion to change the time for reporting responsible individual changes.

5. Reporting New Related Entities

- NAPEO requested that the requirement to report new related entities be limited to changes that are material to the overall financial position of the CPEO or CPEO Applicant, and that CPEOs only be required to report new related entities annually or bi-annually, rather than 30 days after they become new related entities.
 - o A change in related entities, just as a change in responsible individuals, is a material change, and the time and manner for reporting this information to the IRS is currently set forth in Rev. Proc. 2016-33 and Rev. Proc. 2017-14, which provide that such

material changes must be reported within 30 days of the date of the change. The IRS continues to believe that *all* changes in related entities can affect a CPEO's suitability for certification and therefore all such changes should be reported promptly. For this reason, the IRS will not adopt the suggestion to change the reporting requirements for changes in related entities.

6. Surety's Exercise of Right to Seek Collateral

- NAPEO requested that a surety exercising the right to seek collateral not preclude certification or cause revocation, and rather that it just be one factor in the IRS's evaluation of the CPEO's initial and ongoing certification.
 - o The IRS views a surety's financial underwriting process as a fundamental component of the bond requirement in section 7705(c) and has determined that the purpose of the bond requirement is substantially undermined if the CPEO obtains the bond by posting collateral in the amount of the bond. For this reason, the regulations prohibit posting collateral to obtain a bond. Nevertheless, the IRS does acknowledge that in certain limited circumstances, an exception to the prohibition on posting collateral *may* be appropriate and the regulations state that the Commissioner may provide exceptions to this rule in further guidance. However, at this time the IRS has not determined any specific circumstances for which an exception to the rule would be appropriate. The IRS will continue to consider this issue and if it determines that certain exceptions would be appropriate, it will provide for those in future guidance.

7. Allowance of Cash Method of Accounting

- NAPEO requested that the IRS permit a CPEO to compute its taxable income using the cash method of accounting since, certain entities, such as partnerships and S corporations, may use a cash method of accounting for determining taxable income.

- o The regulations currently require the use of the accrual method of accounting but also allow the Commissioner to provide for other accounting methods in further guidance. The IRS will continue to consider the issue of whether CPEOs may use the cash method of accounting and if such method is considered appropriate, will provide for its use in future guidance.

B. Regulations under Code § 3511

1. Customer-by-Customer Wage Bases

- NAPEO requested that the regulations provide that the wage base for an individual who is an employee of multiple customers of a CPEO not apply separately to each customer. NAPEO also requests that, if the IRS continues to maintain the position of a separate wage base for each customer, the IRS addresses the challenge employees have encountered when seeking a refund of excess Social Security taxes paid via their individual income tax return, such as by following the recommendation of the IRS Advisory Council in its 2020 report to modify Form W-2 in order to address this issue.
 - o A customer-by-customer treatment of the annual wage base is consistent with section 3511. Specifically, the maintenance of a separate annual wage base and withholding threshold with respect to each customer for which a covered employee performs services during a calendar year is consistent with the statutory language of section 3511(a)(1) which provides that the CPEO will “be treated as the employer (and no other person will be treated as the employer) of any work site employee performing services for any customer of such organization, but only with respect to remuneration remitted by such organization to such work site employee” (emphasis added). This language contemplates that the CPEO will have a separate annual wage base under 3121(a), 3231(e), and 3306(b) (subject to the application of the predecessor-successor employer rules on a customer-by-customer basis). Furthermore, under section 3511(a)(2) (applicable to work site employees) and section 3511(c)(2) (applicable to non-work site covered employees), the

exemptions, exclusions, definitions, and other rules, which are based on the type of employer in most cases will be based on the CPEO customer (assuming the typical situation in which the CPEO customer is the common law employer of the covered employees). In these instances, the attributes of the CPEO customer (e.g. tax-exempt or not) will be used to determine the taxes on the remuneration paid by the CPEO with respect to services performed for a customer. In addition, section 3511(d) (1)(A) provides that, for purposes of certain specified credits, with respect to services performed by a work site employee for a CPEO customer, the credits apply to the CPEO customer, not the CPEO. Thus, section 3511 requires, for both work site and non-work site covered employees, the separate treatment of amounts paid by the CPEO to one employee with respect to services performed by the employee for two or more different customers. A separate annual wage base and withholding threshold with respect to each customer for which a covered employee performs services is needed for purposes of applying some of the exemptions, exclusions, definitions, and other rules addressed in section 3511(a)(2) and (c)(2) and the treatment of some of the credits discussed in section 3511(d). Therefore, if a single employee receives remuneration from a CPEO pursuant to multiple CPEO contracts with different customers, the CPEO must maintain a separate annual wage base and withholding threshold for the employee with respect to each customer.

For these reasons, the IRS will not adopt this suggestion. Concerning challenges employees have encountered when seeking a refund of excess Social Security taxes paid via their individual income tax return, the IRS has made certain procedural changes to address these challenges and will continue to work to address any continuing challenges employees might encounter concerning this issue.

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

No payment or gifts are being provided to respondents.

10. Assurance of confidentiality of responses

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

11. Justification of sensitive questions

A Privacy & Civil Liberties Impact Assessment (PCLIA) has been conducted for information collected under this request as part of the “Certified Professional Employer Organization and 501(c)(4) Registration, CPEO & 501 (c)(4), and a Privacy Act System of Records notice (SORN) has been issued for this system under IRS PCLIA ID Number 1699. The Internal Revenue Service PIA’s can be found at <http://www.irs.gov/uac/Privacy-Impact-Assessments-PIA>.

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

12. Estimated burden of information collection

Forms 14737 and 14737-A do not exist in paper form. Rather, these forms, which are called the certification application and the Responsible Individual Personal Attestation or RIPA, respectively, are completed using interactive online software called the Online Registration System. Form 14751, Certified Professional Employer Organization Surety Bond, is used to post the bond required by section 7705(c)(2) and to amend the bond if necessary. This form is also used in the event that the IRS must call the bond to cover an unpaid employment tax liability.

Form 8973, Certified Professional Employer Organization/Customer Reporting Agreement, The purpose of this form is so that a CPEO can report to the IRS the commencement or termination of a CPEO contract (as described in section 7705(e)(2)) or a service agreement described in §31.3504-2(b)(2).

The burden estimate is as follows:

Authoriti es	Descriptio n	# of Responde nts	# of Respon ses per Responde nt	Annual Respon se	Time per Respon ses	Total Burd en Hrs.

IRC 3511 and 7705	Form 14737	120	1	120	145 hrs.	17,400
IRC 3511 and 7705	Form 14737-A	565	1	565	20hrs.	11,300
IRC 7705(c) (2)	Form 14751	170	1	170	2 hrs.	340
IRC 3511 and 7705	Form 8973	41,350	1	41,350	1.5 hrs.	62,025
Totals		42,205		42,205		91,065

13. Estimated total annual cost burden to respondents

There is an annual fee of \$1,000 required to apply for or maintain certification as a CPEO.

14. Estimated annualized cost to the federal government

The primary cost to the government consists of the costs of printing, the forms. We estimate that the costs of printing the forms are \$36,908.

The Federal government cost estimate is based on a model that considers the following three cost factors for each information product: aggregate labor costs for development, including annualized start-up expenses, operating and maintenance expenses, and distribution of the product that collects the information.

The government computes cost using a multi-step process. First, the government creates a weighted factor for the level of effort to create each information collection product based on variables such as; complexity, number of pages, type of product and frequency of revision. Second, the total costs associated with developing the product such as labor cost, and operating expenses associated with the downstream impact such as support functions, are added together to obtain the aggregated total cost. Then, the aggregated total cost and factor are multiplied together to obtain the aggregated cost per product. Lastly, the aggregated cost per product is added to the cost of shipping and printing each product to IRS offices, National

Distribution Center, libraries and other outlets. The result is the Government cost estimate per product.

The government cost estimate for this collection is summarized in the table below.

Product	Aggregate Cost per Product (factor applied)	Printing and Distribution	Government Cost Estimate per Product
Form 8973	\$32,807	\$0	\$32,807
Instructions Form 8973	\$4,101	\$0	\$4,101
*Form 14737	\$0	\$0	\$0
*Form 14737-A	\$0	\$0	\$0
*Form 14751	\$0	\$0	\$0
Grand Total	\$36,908	\$0	\$36,908
Table costs are based on 2020 actuals obtained from IRS Chief Financial Office and Media and Publications			
* New product costs will be included in the next collection update.			
* Forms notated with asterisk are not available in paper format, but submitted through the online Registration System at no cost to Federal Government.			

15. Reasons for change in burden

Changes were made to the burden previously approved to update the estimated number of responses based on the most recent filing data. No changes have been made to the form. The annual number of responses requested is 42,205 (an increase of 40,480 from the previously approved 1,725 and a total burden increase of 235 from (90,830 to 91065).

	Requested	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Potential Violation of the PRA	Previously Approved
Annual Number of Responses	42,205	0	0	40,480	0	1,725
Annual Time	91,065	0	0	235	0	90,830

Burden (Hr.)						
-----------------	--	--	--	--	--	--

16. Plans for tabulation, statistical analysis, and publication

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

17. Reasons why displaying the OMB expiration date is inappropriate

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

18. Exceptions to the certification statement

There are no exceptions to the certification statement.

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

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential as required by 26 U.S.C. § 6103.