

paragraph (b)(17)(i) of this section is met, a self-employed individual described in paragraph (b)(14) of this section is treated as a covered employee if such individual would be a covered employee but for the exclusion of self-employed individuals from the definition of covered employee in paragraph (b)(5) of this section.

(iii) *Excluded employees.* In determining whether the 85 percent threshold described in paragraph (b)(17)(i) of this section is met, an individual who is an excluded employee described in section 414(q)(5) is not treated as either an individual providing services or a covered employee.

(iv) *Treatment for calendar quarter.* A covered employee will be considered a work site employee for the entirety of a calendar quarter if the employee qualifies as a work site employee at any time during that quarter.C

(v) *Separate determination for each work site.* The determination of whether a covered employee is a work site employee is made separately with regard to each work site at which the covered employee regularly provides services and for each customer for which the covered employee is providing services. A covered employee may be determined to be a work site employee of more than one work site during a calendar quarter.

(vi) *Good faith determination respected.* A CPEO's determination that a covered employee is a work site employee will be respected if the CPEO has made a good faith determination that the covered employee meets the requirements of section 7705(e), this paragraph (b)(17), and any further guidance related to work site employee determinations.

(c) *Applicability date.* The rules in this section apply on and after May 3, 2019.

[T.D. 9860, 84 FR 24382, May 28, 2019]

**§ 301.7705-2 CPEO certification process.**

(a) *Application requirement and certification*—(1) *Application.* To be certified as a certified professional employer organization (CPEO), a person must submit a properly completed and executed application for certification as a CPEO in the time and manner prescribed by, and providing such information as re-

quired by, this section and any further guidance issued by the Commissioner. In addition, the applicant's responsible individuals must submit such information as is specified in this section and further guidance.

(2) *Notice.* A CPEO applicant will be notified by the Internal Revenue Service (IRS) whether its application for certification has been approved or denied, and, if approved, the effective date of certification. If the IRS denies the application, the IRS will inform the CPEO applicant of the reason(s) for denial. If the IRS denies an application for certification, or if the CPEO applicant withdraws an application for certification, the CPEO applicant may reapply for certification in such time and manner, and must include such information, as the Commissioner may prescribe in further guidance.

(3) *Public disclosure of certification.* If the IRS approves a CPEO applicant's application for certification, the IRS will make available to the public the name and address of the CPEO, as well as the effective date of its certification, in the time and manner described in further guidance.

(4) *Effective date of certification.* A CPEO's certification will be effective as of the effective date of certification specified in the notice described in paragraph (a)(2) of this section and in the public disclosure described in paragraph (a)(3) of this section and will continue in effect until the effective date of the revocation of the CPEO's certification, if any, as described in paragraph (n) of this section or, if earlier, the date that the CPEO voluntarily terminates its certification in the time and manner prescribed by the Commissioner in further guidance.

(b) *Requirements for certification.* To receive and maintain certification, a CPEO applicant or CPEO must meet the requirements described in this section, as well as any additional requirements the Commissioner may prescribe in further guidance. In addition, any precursor entities, related entities, and responsible individuals of the CPEO applicant or CPEO must meet any requirements applicable to them described in this section and in further guidance. The IRS may deny an application for certification or revoke or

suspend a CPEO's certification if a CPEO applicant or CPEO, or one or more of its precursor entities, related entities, or responsible individuals, fails to meet any applicable requirement described in this section or other applicable guidance, and the IRS will do so if the IRS determines, in its sole discretion, that such failure presents a material risk to the IRS's collection of federal employment taxes. In determining whether one or more failures to meet the requirements described in this section presents a material risk to the IRS's collection of federal employment taxes, the IRS generally will consider all relevant facts and circumstances, including the size, scope, nature, significance, recurrence, and timing of and reason for the failure and, in the case of a CPEO, any prior failures of the CPEO to meet the requirements of this section.

(c) *Suitability*—(1) *In general.* The IRS may deny an application for certification or revoke or suspend a CPEO's certification for any of the following reasons:

(i) The CPEO applicant or CPEO, or any of its precursor entities, related entities, or responsible individuals, has failed 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.

(ii) The CPEO applicant or CPEO, or any of its precursor entities, related entities, or responsible individuals, has been charged with or convicted of any criminal offense under the laws of the United States or of a state or political subdivision thereof, or is the subject of an active IRS criminal investigation.

(iii) The CPEO applicant or CPEO, or any of its precursor entities, related entities, or responsible individuals, has been sanctioned, or had a license, registration, or accreditation (including a license, registration, or accreditation relating to its status or ability to operate as a professional employer organization) denied, suspended, or revoked, by a court of competent jurisdiction, licensing board, assurance or other professional organization, or federal or state agency, court, body, board, or

other authority for any misconduct that involves dishonesty, fraud, or breach of trust or that otherwise bears upon the suitability of the CPEO applicant or CPEO to perform its professional functions (including, but not limited to, any civil or criminal penalty described in 42 U.S.C. 503(k)(1)(D) imposed by state law).

(iv) The CPEO applicant or CPEO, or any of its precursor entities, related entities, or responsible individuals, is listed on any sanctions list compiled by the Office of Foreign Assets Control (OFAC) within the Department of Treasury, including, but not limited to, the OFAC Consolidated Sanctions List and the OFAC Specially Designated Nationals List.

(v) The CPEO applicant or CPEO, or any of its precursor entities, related entities, or responsible individuals, fails to demonstrate a history of financial responsibility, which the IRS may assess by checks on credit history and other similar indicators.

(vi) The CPEO applicant or CPEO and the responsible individuals of the CPEO applicant or CPEO fail to demonstrate adequate collective knowledge or experience with respect to:

(A) Federal or state employment tax reporting, depositing, and withholding requirements;

(B) Handling of and accounting for payroll, tax payments, and other funds on behalf of others;

(C) Effective recordkeeping systems;

(D) Retention of qualified personnel and legal advisors as needed; and

(E) General business and risk management.

(vii) The CPEO applicant or CPEO, or any of its responsible individuals, gives false or misleading information (including by intentionally omitting relevant information), or participates in any way in the giving of false or misleading information, to the IRS, knowing, or having reason to know, that the information is false or misleading. For the purpose of this paragraph (c)(1)(vii), "information" includes (but is not limited to) facts or other matters contained in testimony, federal tax returns, and financial statements and opinions regarding such statements; applications for certification

(and all accompanying documentation); affidavits, declarations, assertions, attestations, statements, and agreements; and periodic verifications that the requirements of this section continue to be met; and any other information that is required to be provided by this section, section 3511(g), §31.3511-1 of this chapter, or further guidance.

(2) *Must be a business entity or sole proprietorship*—(i) *In general.* A CPEO must be a business entity described in §301.7701-2(a) or a sole proprietorship. Accordingly, a CPEO may not be an entity classified as a trust under §301.7701-4.

(ii) *Ownership by a United States person.* In addition, a sole proprietorship or a business entity that is disregarded as an entity separate from its owner for federal tax purposes under §§301.7701-2 and 301.7701-3 (without regard to the special rule in §301.7701-2(c)(2)(iv) that provides that such entities are corporations for federal employment tax purposes) must be wholly owned directly (including through one or more disregarded entities organized in the United States, in the case of a business entity) by a United States person (as defined in section 7701(a)(30)).

(iii) *Treatment as separate member of a controlled group.* Except as provided in paragraph (h) of this section, a CPEO applicant or CPEO that otherwise qualifies as a member of a controlled group (within the meaning of sections 414(b) and (c) and §§1.414(b)-1 and 1.414(c)-1 through 1.414(c)-6 of this chapter) but for its status as an entity disregarded as separate from its owner for federal tax purposes under §§301.7701-2 and 301.7701-3, is treated as a separate member of a controlled group for purposes of this section, §301.7705-1, section 3511, §31.3511-1 of this chapter, and section 7705.

(3) *Authorization to investigate suitability.* A CPEO applicant or CPEO, and each of its responsible individuals, must take such actions as are necessary to authorize the IRS to investigate the accuracy of statements and submissions, including waiving confidentiality and privilege when necessary (*i.e.*, in situations in which the IRS is otherwise unable to obtain or

confirm information necessary to evaluate a CPEO applicant's or CPEO's qualification for certification), and to conduct comprehensive background checks, including, but not limited to, Federal Bureau of Investigation or other similar criminal background checks, checks on tax compliance, professional experience (including through the contact of third-party references), credit history, and professional sanctions. In addition, a CPEO applicant or CPEO, and any of its responsible individuals, must provide the IRS with such additional information as the IRS may request to facilitate such background investigations. Each responsible individual of a CPEO applicant or CPEO must also submit fingerprints in the time and manner and under the circumstances prescribed by the Commissioner in further guidance.

(d) *Business location*—(1) *State of organization.* A CPEO applicant or CPEO must be created or organized in the United States or under the law of the United States or of any state.

(2) *Business location in the United States.* A CPEO applicant or CPEO must have one or more established, physical business locations in the United States at which regular operations of an activity that constitutes a trade or business within the United States (within the meaning of section 864(b)) take place and at which a significant portion of its CPEO-related functions are carried on and administrative records are kept.

(3) *United States responsible individuals.* A majority of the CPEO applicant's or CPEO's responsible individuals must be citizens or residents of the United States.

(4) *Use of financial institution.* A CPEO applicant or CPEO must use only financial institutions described in section 265(b)(5) to hold substantially all of its cash and cash equivalents, receive payments from customers, and pay wages and federal employment taxes.

(e) *Financial statements*—(1) *CPEOs.* By the last day of the sixth month after the end of each fiscal year, and beginning with the first fiscal year that ends after the CPEO's effective date of certification, a CPEO must

cause to be prepared and provided to the IRS—

(i) A copy of its annual audited financial statements for the fiscal year;

(ii) An opinion of a certified public accountant (CPA) that such financial statements are presented fairly and in accordance with generally accepted accounting principles (GAAP); and

(iii) A statement in the Note to the Financial Statements covered by the CPA opinion that the CPEO's annual audited financial statements reflect positive working capital or, only if the CPEO satisfies the requirements of paragraph (e)(3) of this section, reflect negative working capital, with such statement in either case setting forth in detail a calculation of the CPEO's working capital as reflected in the annual audited financial statements (a working capital statement).

(2) *CPEO applicants*—(i) *In general.* A CPEO applicant must cause to be prepared and provided to the IRS, with its application, a copy of its annual audited financial statements, an opinion with respect to such financial statements, and a working capital statement (each as described in paragraph (e)(1) of this section) for the most recently completed fiscal year as of the date it applies for certification. Notwithstanding the preceding sentence, if a CPEO applicant applies for certification 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 yet been completed at the time of application, a CPEO applicant must provide to the IRS, with its application, the financial statements, opinion, and working capital statement described in paragraph (e)(1) of this section for the immediately preceding fiscal year, if any, and must subsequently provide to the IRS the financial statements, opinion, and working capital statement 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 applies for certification and on or before the effective date of certification, if applicable, the CPEO applicant must provide the audited financial statements, opinion, and working capital statement

by the last day of the sixth month after such fiscal year ends. The obligation to provide the annual audited financial statements described in the preceding sentence continues to apply even if the CPEO applicant is certified as a CPEO prior to the date the annual audited financial statements are provided.

(ii) *Newly established CPEO applicants.* In addition to the requirements in paragraph (e)(2)(i) of this section, a CPEO applicant that was not operating as a provider of payroll services for all or part of its most recently completed fiscal year as of the date it applies for certification must provide a copy of the annual audited financial statements of any precursor entity, if one exists, an opinion with respect to such financial statements, and a working capital statement (each as described in paragraph (e)(1) of this section) for the precursor entity's most recently completed fiscal year as of the date of the application for certification in such time and manner as the Commissioner may prescribe in further guidance, as well as such additional information as the Commissioner may prescribe in further guidance.

(3) *Exception to positive working capital requirement.* A CPEO applicant or CPEO with annual audited financial statements for a fiscal year that do not reflect positive working capital will not fail to meet the requirements of paragraph (e)(1)(iii) of this section if—

(i) The CPEO applicant or CPEO has negative working capital for no more than two consecutive fiscal quarters of that fiscal year, as demonstrated by the financial statements (for the final fiscal quarter in the fiscal year) and the statements described in paragraph (f)(1)(ii) of this section (for any other fiscal quarter), as applicable;

(ii) The CPEO applicant or CPEO, or its CPA, provides, in such time and manner as the Commissioner may prescribe in further guidance, an explanation to the IRS describing the reason for the failure; and

(iii) 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.

(4) *Completed fiscal year.* For purposes of this paragraph (e), a fiscal year will

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

(f) *Quarterly assertions and attestations*—(1) *CPEOs*. By the last day of the second month after the end of each calendar quarter, and beginning with the first calendar quarter that ends after the CPEO's effective date of certification, a CPEO must provide the following to the IRS:

(i) An assertion, signed by a responsible individual under penalties of perjury, stating that the CPEO has withheld and made deposits of all federal employment taxes (other than taxes imposed by chapter 23 of the Code) as required by subtitle C for such calendar quarter and an examination level attestation from a CPA stating that such assertion is fairly stated in all material respects.

(ii) A statement signed by a responsible individual under penalties of perjury verifying that the CPEO has positive working capital (as determined in accordance with GAAP) at the end of the most recently completed fiscal quarter, as well as such additional financial information that the Commissioner may specify in further guidance.

(2) *Exceptions*—(i) *Immaterial failures*. A CPEO will not fail to meet the requirements of paragraph (f)(1)(i) of this section if the CPA 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 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.

(ii) *Negative working capital*. A CPEO with negative working capital at the end of a fiscal quarter will not fail to meet the requirements of paragraph (f)(1)(ii) of this section 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 annual audited financial statements described in paragraph (e)(1) of this section, if available, or the statements described in paragraph (f)(1)(ii) of this section;

(B) The CPEO provides an explanation to the IRS describing the reason for such negative working capital in such time and manner as the Commissioner may prescribe in further guidance; 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.

(3) *CPEO applicants*—(i) *In general*. By the last day of the second month after the end of each calendar quarter, beginning with the most recently completed calendar quarter as of the date of a CPEO applicant's application for certification and ending with the most recently completed calendar quarter as of the effective date of certification (if applicable), a CPEO applicant must provide to the IRS the assertion, examination level attestation, and working capital statement described in paragraph (f)(1) of this section, subject to the exceptions described in paragraph (f)(2) of this section (though substituting "CPEO applicant" for "CPEO").

(ii) *Newly established CPEO applicants*. A CPEO applicant that was not operating as a provider of payroll services during 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 must provide to the IRS the assertion, examination level attestation, and working capital statement described in paragraph (f)(1) of this section with respect to any precursor entity, if applicable, in such time and manner as the Commissioner may prescribe

in further guidance, as well as such additional information as the Commissioner may prescribe in further guidance.

(g) *Bond*—(1) *In general*. A CPEO must post a bond (or bonds, as described in paragraph (g)(3) of this section) from a qualified surety (as described in paragraph (g)(6) of this section) for the payment of federal employment taxes, issued in the form and containing the terms prescribed by the Commissioner in this paragraph (g) and in further guidance and in an amount described in paragraph (g)(2) of this section.

(2) *Bond amount*—(i) *In general*. The amount of the bond (or bonds, as described in paragraph (g)(3) of this section) must be, for each period beginning on April 1 of any calendar year and ending on March 31 of the following calendar year (or, in the case of a newly certified CPEO, beginning with the effective date of certification and ending on the subsequent March 31) (the bond period), at least equal to the greater of—

(A) Five percent of the CPEO's liability under section 3511 (or, if applicable, the liability described in paragraph (g)(2)(ii) of this section) during the calendar year preceding the beginning of the bond period, but not more than \$1,000,000; or

(B) \$50,000.

(ii) *Amount of bond in first and second year as a CPEO*. If a CPEO does not have any liability under section 3511 for all or a portion of a preceding calendar year because the CPEO was not certified as a CPEO for all or a portion of that preceding calendar year, the liability applied for purposes of paragraph (g)(2)(i)(A) of this section for the entirety or portion of the preceding calendar year during which the CPEO was not certified will be the federal employment tax liability of the CPEO, and of any precursor entity of the CPEO described in § 301.7705-1(b)(10)(i)(A), that results from one or more service agreements described in § 31.3504-2(b)(2) of this chapter. With respect to the federal employment tax liability of such precursor entity during a preceding calendar year, for purposes of paragraph (g)(2)(i)(A) of this section, the liability will be applied only to the extent it results from service agree-

ments that have been transferred or are intended to be transferred by the precursor entity to the CPEO at the time the bond amount is determined. For purposes of this paragraph (g)(2)(ii), an entity is considered a precursor entity of a CPEO described in § 301.7705-1(b)(10)(i)(A) if it was determined to be its precursor entity under that section at the time it was a CPEO applicant.

(iii) *One continuous obligation*. The bond, any riders thereto, and any strengthening bonds posted to satisfy the requirements of this section 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 or cancelled.

(3) *Increase in bond amount*—(i) *In general*. A CPEO must determine if an increase in the bond amount is necessary for each new bond period. If a CPEO's liability under section 3511 (or, if applicable, the liability described in paragraph (g)(2)(ii) of this section) for the preceding calendar year results in a minimum required bond amount specified in paragraph (g)(2) of this section that exceeds the current amount of the bond, the CPEO must increase the amount of its bond with respect to the new bond period in order to meet the minimum required bond amount specified in paragraph (g)(2) of this section. 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, and in such time and manner as the Commissioner may prescribe in further guidance.

(ii) *To reflect adjustment or assessment*. Subject to the limit in paragraph (g)(2)(i)(A) of this section, if, during 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 the applicable party makes an adjustment or assessment reflecting such determination), a CPEO must increase the amount of its bond to meet the minimum required bond amount specified in paragraph

(g)(2) of this section through the use of a rider, or by posting a strengthening, superseding, or new bond in such time and manner as the Commissioner may prescribe in further guidance.

(4) *Cancellation*—(i) *Notice*. A bond required under this paragraph (g) must provide that it may be cancelled by the surety only after the surety gives written notice of such cancellation to the IRS and the CPEO in such time and manner as the Commissioner may prescribe in further guidance.

(ii) *New or superseding bond required*. If a CPEO either receives 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 minimum required bond amount specified in paragraph (g)(2) of this section in such time and manner as the Commissioner may prescribe in further guidance.

(iii) *Ongoing liability*. A bond required under this paragraph (g) must provide that, if a surety cancels the bond without issuing a superseding bond to the CPEO, the surety will, notwithstanding the cancellation, remain liable for all federal employment tax liability accrued by the CPEO during the period beginning with the effective date of the first bond issued by the surety to the CPEO in any consecutive series of bonds issued by that surety prior to cancellation and ending with the cancellation of the bond (the total bond period), up to the penal amount of the bond at the time of the cancellation. A cancelling surety will remain liable as described in this paragraph (g)(4)(iii) for federal employment tax liability accrued during the total bond period up to the penal amount of the bond for as long as the Commissioner may assess and collect taxes for such period under sections 6501 and 6502.

(5) *No posting of collateral*—(i) *In general*. Except as provided in paragraph (g)(5)(iii) of this section, a CPEO must meet the bond requirements of this paragraph (g) without posting collateral.

(ii) *Surety's retention of the right to seek collateral by itself not a violation of paragraph (g)(5)(i) of this section*. A surety's retention of the right to seek collateral, as long as no collateral is actu-

ally required by the surety or posted by the CPEO, does not violate the rule in paragraph (g)(5)(i).

(iii) *Exceptions to no collateral requirement*. The Commissioner may provide exceptions to the rule in paragraph (g)(5)(i) of this section in further guidance published in the Internal Revenue Bulletin.

(6) *Requirements for surety*. Any surety that issues a bond required by this paragraph (g) to a CPEO must be a surety company that holds a certificate of authority from the Secretary as an acceptable surety on federal bonds and meets such other requirements as the Commissioner may prescribe in further guidance.

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

(ii) *Strengthening bond*. 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 minimum required bond amount specified in paragraph (g)(2) of this section. The strengthening bond must apply to liabilities that arise on or after the effective date of the bond it strengthens. Both the strengthening bond and the bond it strengthens must remain in effect, and the surety remains liable under both bonds for the assessment and collection periods applicable to the CPEO under sections 6501 and 6502, respectively, with respect to any taxable period that occurs during the term of the bonds, unless and until the bonds are superseded.

(iii) *New bond*. A new bond is a bond posted for the total required bond amount, and a new bond may only be posted upon the CPEO's initial certification or immediately following cancellation of an existing bond. In the case of a cancellation of an existing

bond, the effective date of the new bond must be no later than the effective date of the cancellation of the existing bond, and the surety providing the existing (now cancelled) bond remains liable for liabilities that accrued during the term of the cancelled bond for the assessment and collection periods applicable to the CPEO under sections 6501 and 6502, respectively, with respect to any taxable period that occurred during the term of that bond.

(iv) *Superseding bond.* A superseding bond is a bond posted for the total minimum required bond amount specified in paragraph (g)(2) of this section, not just for an 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.

(h) *Controlled group.* All CPEO applicants and CPEOs that are members of a controlled group within the meaning of sections 414(b) and (c), and §§1.414(b)-1 and 1.414(c)-1 through 1.414(c)-6 of this chapter, will be treated as a single CPEO applicant or CPEO for purposes of paragraphs (e) (other than (e)(1)(iii)), (f) (other than (f)(1)(ii)), and (g) of this section.

(i) *Consents to disclose.* To receive and maintain certification, a CPEO applicant or CPEO must provide such consents for the IRS to disclose confidential tax information to its customers, and to other persons as necessary to carry out the purposes of these regulations, that relates to its certification and obligations to report, deposit, and pay federal employment taxes as the Commissioner may require in further guidance.

(j) *Periodic verification.* A CPEO must periodically verify that it continues to meet the requirements of this section in the time and manner prescribed by the Commissioner in further guidance.

(k) *Notification of material changes.* A CPEO applicant or CPEO must 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.

(1) *Accrual method of accounting.* A CPEO must compute its taxable income using an accrual method of accounting or, if applicable, another method that the Commissioner provides for in further guidance.

(m) *Compliance with reporting obligations—(1) In general.* A CPEO must agree to make reports to the IRS and to its clients as provided in section 3511(g) and §31.3511-1 of this chapter, including filing all federal employment tax returns and information returns as required.

(2) *Filing on magnetic media.* A CPEO must file all returns, schedules, reports, and other forms and documents on magnetic media when required by section 3511(g) and §31.3511-1 of this chapter, other Treasury regulations, or other guidance.

(n) *Suspension and revocation—(1) In general.* The IRS may suspend or revoke the certification of any CPEO, in the time and manner and under the circumstances prescribed by the Commissioner in this section and in further guidance, as a result of one or more failures to meet any of the requirements for CPEOs described in this section, section 3511(g), §31.3511-1 of this chapter, and any further guidance and will suspend or revoke certification if the IRS determines, in its sole discretion, that such failure(s) present a material risk to the IRS's collection of federal employment taxes. See paragraph (b) of this section for the factors the IRS will consider in determining whether one or more failures to meet any of the requirements described in this section presents a material risk to the IRS's collection of federal employment taxes.

(2) *Suspension.* Section 3511 will not apply to any contract described in section 7705(e)(2) into which the CPEO enters while its certification is suspended.

(3) *Revocation.* If an organization's certification as a CPEO is revoked, the organization will not be considered a CPEO for purposes of section 3511 unless and until it again applies to be certified as a CPEO in accordance with paragraph (a) of this section and is again certified by the IRS as meeting

the requirements of this section. An organization whose certification as a CPEO has been revoked may not re-apply to be certified as a CPEO until one year has passed after the effective date of its revocation.

(4) *Disclosure of suspension and revocation*—(i) *Notification by the CPEO*. An organization whose certification as a CPEO has been suspended or revoked must notify its customers of such suspension or revocation in the time and manner prescribed by the Commissioner in further guidance.

(ii) *Disclosure by the IRS*. If the IRS suspends or revokes an organization's certification as a CPEO, the IRS will make available to the public the fact of such suspension or revocation in the time and manner described in further guidance. The IRS may also separately notify the organization's customers of such suspension or revocation.

(o) *Applicability date*. The rules in this section apply on and after May 3, 2019.

[T.D. 9860, 84 FR 24382, May 28, 2019]

## General Rules

### APPLICATION OF INTERNAL REVENUE LAWS

#### § 301.7803-1 Security bonds covering personnel of the Internal Revenue Service.

For regulations relating to the procurement of security bonds covering designated personnel of the Internal Revenue Service between January 1, 1956, and June 6, 1972, see 31 CFR part 226.

(Sec. 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805))

[T.D. 7239, 37 FR 28628, Dec. 28, 1972]

#### § 301.7805-1 Rules and regulations.

(a) *Issuance*. The Commissioner, with the approval of the Secretary, shall prescribe all needful rules and regulations for the enforcement of the Code (except where this authority is expressly given by the Code to any person other than an officer or employee of the Treasury Department), including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

(b) *Retroactivity*. The Commissioner, with the approval of the Secretary, may prescribe the extent, if any, to which any regulation or Treasury decision relating to the internal revenue laws shall be applied without retroactive effect. The Commissioner may prescribe the extent, if any, to which any ruling relating to the internal revenue laws, issued by or pursuant to authorization from him, shall be applied without retroactive effect.

(c) *Preparation and distribution of regulations, forms, stamps, and other matters*. The Commissioner, under the direction of the Secretary, shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue.

#### § 301.7811-1 Taxpayer assistance orders.

(a) *Authority To Issue*—(1) *In general*. When an application for a taxpayer assistance order (TAO) is filed by the taxpayer or the taxpayer's authorized representative in the form, manner and time specified in paragraph (b) of this section, the National Taxpayer Advocate (NTA) may issue a TAO if, in the determination of the NTA, the taxpayer is suffering or is about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Internal Revenue Service (IRS), including action or inaction on the part of the IRS.

(2) *The National Taxpayer Advocate defined*. The term *National Taxpayer Advocate* includes any designee of the NTA, such as a Local Taxpayer Advocate.

(3) *Issuance without a written application*. The NTA may issue a TAO in the absence of a written application by the taxpayer under section 7811(a).

(4) *Significant hardship*—(i) *Determination required*. Before a TAO may be issued, the NTA is required to make a determination regarding significant hardship.

(ii) *Term defined*. The term *significant hardship* means a serious privation caused or about to be caused to the taxpayer as the result of the particular manner in which the revenue laws are