

IRS RESPONSES TO NAPEO’S COMMENTS IN FINAL CPEO REGULATIONS

On May 28, 2019, the Treasury Department and IRS published final regulations under Internal Revenue Code (Code) §§ 3511 and 7705, which implement the IRS’s certified professional employer organization (CPEO) program. This document (1) summarizes the IRS’s responses to NAPEO’s comments on the temporary and proposed regulations, as primarily described in NAPEO’s comment letter of March 21, 2019, and (2) categorizes the responses according to whether the IRS took favorable action (*Part I, page 1*) or unfavorable action (*Part II, page 6*), deferred or declined to address a comment (*Part III, page 9*),¹ or made additional changes (*Part IV, page 12*) in the final regulations.

ISSUE	NAPEO COMMENT/REQUEST	IRS RESPONSE	REFERENCES
I. Favorable Action by IRS			
Treatment of <i>non-work site</i> covered employees with respect to tax credits	The application of the credits listed in Code § 3511(d) with respect to <i>non-work site</i> covered employees should be governed by current law. But as a general matter, the customer (and not the CPEO) would be eligible for the tax credits.	The IRS agreed that current law should govern the eligibility for the tax credits listed in Code § 3511(d) with respect to wages paid to non-work site covered employees. As such, the final regulations do not address this. The IRS noted, however, that “generally the customer, and not the CPEO, will take into account wages and federal employment taxes paid by the CPEO,” which is the same treatment accorded for work site employees. Final rule: Issue addressed in preamble but not in rule.	<ul style="list-style-type: none"> • 84 FR 24,370
Reasonable, good faith determinations regarding 85% test	The IRS should clarify that, due to the potential complexity of applying the 85% test, reasonable good faith determinations will be respected unless there is a pattern of abuse by a CPEO or customer.	The IRS agreed that a good faith standard is appropriate. Final rule: Treas. Reg. § 301.7705-1(b)(17)(vi) provides that “[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.”	<ul style="list-style-type: none"> • 84 FR 24,375 • § 301.7705-1(b)(17)(vi)

¹ 84 FR 24,367 (May 28, 2019). The IRS stated in the preamble that comments relating to items specifically addressed in the online application for certification, Rev. Proc. 2016-33, Notice 2016-49, Rev. Proc. 2017-14, Form 8973, Schedule R (Form 941), and/or Form 14751 were beyond the scope of the final regulations except to the extent that certain of these comments also relate to issues covered by the regulations. Such comments are “under further consideration for future revisions of the revenue procedures and possible modifications to the application program and applicable forms.”

ISSUE	NAPEO COMMENT/REQUEST	IRS RESPONSE	REFERENCES
Addition of credits under Code § 3511(d)(2)	The employer credit for paid family and medical leave (Code § 45S) should be added to the list of specified credits under Code § 3511(d) in Treas. Reg. § 31.3511-1(e)(2).	<p>The IRS agreed that Code § 45S should be added to the list of specified credits. The IRS also added statutory employee retention credits that are similar to the employee retention credit in Code § 1400R and that provide disaster relief to employers in designated disaster areas.</p> <p>Final rule: The two credits described above were added in Treas. Reg. § 31.3511-1(e)(2)(vi) and (ix). Consistent with the proposed regulation, the final regulation retains the ability of the IRS to add additional credits in future guidance, which includes forms, publications, and guidance on IRS.gov.</p>	<ul style="list-style-type: none"> • 84 FR 24,370 • § 31.3511-1(e)(2)
E-file waivers due to technological issues	The IRS should broaden the grounds for applying for and obtaining an e-file waiver by clarifying that technological issues may be an undue hardship.	<p>As requested , the IRS clarified in the final regulations that undue economic hardship includes economic hardships resulting from software and technological issues.</p> <p>Final rule: Treas. Reg. § 31.3511-1(g)(2)(ii) specifies that the Commissioner may waive the e-file requirement in case of undue economic hardship, “including economic hardship resulting from temporary software and technological issues.”</p>	<ul style="list-style-type: none"> • 84 FR 24,372 • § 31.3511-1(g)(2)
Extension of suitability requirements to responsible individuals of related entities	The category of individuals who must authorize background checks and meet other requirements for purposes of certification should <i>not</i> be extended to responsible individuals of related entities.	<p>The IRS declined to expand the group of individuals subject to the suitability requirements, noting that the IRS has, to date, been able to make certification determinations without such additional information.</p> <p>Final rule: Issue addressed in preamble as requested, with no change to rule.</p>	<ul style="list-style-type: none"> • 84 FR 24,373

ISSUE	NAPEO COMMENT/REQUEST	IRS RESPONSE	REFERENCES
Disregarded entities	The temporary regulation’s prohibition on disregarded entities applying for certification should be eliminated.	<p>In accordance with Notice 2016-49, the final regulations allow domestic disregarded entities to apply for certification as CPEOs. Such entities must be domestically organized and wholly owned directly by a United States person. The final regulations also expressly allow sole proprietorships to apply for certification as CPEOs.</p> <p>Final rule: Treas. Reg. § 301.7705-2(c)(2) no longer includes language prohibiting disregarded entities from applying for certification.</p> <p><i>Note: Corresponding changes to the definition of “responsible individual” and controlled group-related provisions were made.</i></p>	<ul style="list-style-type: none"> • 84 FR 24,375 • § 301.7705-2(c)(2)
CPA independence guidelines	The proposed regulations’ reference to the AICPA’s independence guidelines is more appropriate for the CPEO program than the alternatives suggested, such as similar guidelines provided under Department of Labor regulations with respect to employee benefit plans.	<p>The IRS agreed that the AICPA standards are the most appropriate to apply to CPAs for purposes of the CPEO program.</p> <p>Final rule: Treas. Reg. § 301.7705-1(b)(4)(i) retains the proposed rule’s requirement that a CPA be independent of the CPEO or CPEO applicant (as prescribed by AICPA professional standards).</p>	<ul style="list-style-type: none"> • 84 FR 24,373 • § 301.7705-1(b)(4)(i)
CPA independence requirement	In accordance with Notice 2016-49, the final regulations should eliminate the requirement that the CPA file with the IRS a written authorization to represent the CPEO applicant or CPEO before the IRS.	<p>The IRS omitted the written authorization requirement.</p> <p>Final rule: Treas. Reg. § 301.7705-1(b)(4)(iv) requires a CPA to file a written declaration that he or she is currently qualified to practice as a CPA in any state, but the rule no longer requires a CPA to file a written declaration that he or she is authorized to represent the CPEO/applicant before the IRS.</p>	<ul style="list-style-type: none"> • 84 FR 24,373
Definition of “provider of employment-related services”	Defining a “provider of employment-related services” as a person that provides employment tax administration, payroll services, <i>or other employment-related compliance services</i> could be interpreted in an excessively broad manner.	<p>The IRS agreed and (1) changed the defined term to “provider of payroll services” and (2) made additional changes to the definition to clarify the more limited scope of the term.</p> <p>Final rule: Treas. Reg. § 301.7705-1(b)(11) provides the updated definition.</p>	<ul style="list-style-type: none"> • 84 FR 24,374 • § 301.7705-1(b)(11)

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Definition of “work site”	The definition of “work site” in the proposed rule is expected to generally be workable, although the IRS could make modifications such as (1) accommodating situations in which an employee performs one type of work (e.g., technology services) at a variety of locations as a contractor to businesses in different industries, and (2) considering where an employee “primarily” performs services as opposed to “regularly” performs services.	<p>To address situations in which employees of a CPEO customer regularly work at the location of clients in varying industries, the final regulations provide that the determination of the industry of a work site is based on the nature of the work of the CPEO customer’s work at that work site.</p> <p>Note, however, that the IRS retained the word “regularly” instead of “primarily” because the IRS believes it provides more flexibility to the CPEO.</p> <p>Final rule: Treas. Reg. § 301.7705-1(b)(16) provides the updated definition.</p>	<ul style="list-style-type: none"> • 84 FR 24,374 • § 301.7705-1(b)(16)
Excluded employees described in Code § 414(q)(5)	For purposes of the 85% test, the regulations should state that a CPEO <i>may</i> disregard employees who are excluded employees described in Code § 414(q)(5). In addition, a CPEO should be permitted to substitute a shorter period of service, smaller number of hours or months, or lower age for the period of service, as applicable, in accordance with the flush language of Code § 414(q)(5).	<p>The IRS agreed that the flush language of Code § 414(q)(5) can be applied in the context of determining whether the 85% work site coverage requirement threshold is met.</p> <p>Final rule: Issue addressed in preamble, but no change to rule.</p>	<ul style="list-style-type: none"> • 84 FR 24,375 • § 301.7705-1(b)(17)(iii)
Reapplication after denial of certification or withdrawal of application	The proposed regulations do not address reapplications for certification. The IRS should clarify that a CPEO applicant whose application is denied may reapply after one year or once the issues that were identified as being the grounds for denial have been resolved. Also, a CPEO applicant that withdraws its application should be allowed to reapply at any time.	<p>The IRS agreed that the final regulations should address the ability to reapply after a denial of certification or withdrawal.</p> <p>Final rule: Treas. Reg. § 301.7705-2(a)(2) states, “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.”</p> <p><i>Note: The IRS said it intends to address these requirements in a future revision of Rev. Proc. 2016-33.</i></p>	<ul style="list-style-type: none"> • 84 FR 24,375 • § 301.7705-2(a)(2) • Rev. Proc. 2016-33

ISSUE	NAPEO COMMENT/REQUEST	IRS RESPONSE	REFERENCES
Waiver of privilege and confidentiality	The IRS should confirm that the requirement for CPEOs and responsible individuals to waive privilege and confidentiality “when necessary” is not intended to require a blanket waiver with respect to all issues.	The final regulations provide such clarification. Final rule: Treas. Reg. § 301.7705-2(c)(3) requires CPEOs and responsible individuals to waive 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).”	<ul style="list-style-type: none"> • 84 FR 24,376 • § 301.7705-2(c)(3)
Use of financial institution	The final regulations should (1) introduce a materiality standard to the requirement that cash be held at a financial institution, and (2) not require CPEOs to hold cash equivalents (e.g., checks not yet deposited) in a financial institution.	To address this concern, the final regulations require CPEO applicants and CPEOs to hold substantially all of their cash and cash equivalents in financial institutions. Final rule: Treas. Reg. § 301.7705-2(d)(4) was revised to reflect this change.	<ul style="list-style-type: none"> • 84 FR 24,376 • § 301.7705-2(d)(4)
Statement on working capital in CPA opinion	CPAs may be prohibited from including a statement on working capital in the CPA’s opinion due to AICPA limitations on what can be included in a CPA opinion.	The final regulations have been revised in accordance with Notice 2016-49 to require a CPEO or CPEO applicant to submit a copy of its annual audited financial statements and an opinion of a CPA that the statements are presented fairly in accordance with GAAP, provided that the audited financial statements covered by the opinion include a Note to the Financial Statements that states that the financial statements reflect positive working capital (or that the exception to positive working capital is satisfied). Final rule: Treas. Reg. § 301.7705-2(e)(1)(iii) was revised to reflect this change.	<ul style="list-style-type: none"> • 84 FR 24,377 • § 301.7705-2(e)(1)(iii)
Exception to no collateral rule	A surety’s request for collateral should not be a <i>per se</i> ground for denial, revocation, or suspension of certification.	The IRS acknowledged that in certain limited circumstances, an exception to the prohibition on posting collateral may be appropriate. The IRS will consider this issue in connection with anticipated revisions to Rev. Proc. 2017-14. Final rule: Treas. Reg. § 301.7705-2(g)(5)(iii) provides that the Commissioner may provide exceptions to the “no collateral” rule in further guidance published in the Internal Revenue Bulletin.	<ul style="list-style-type: none"> • 84 FR 24,378 • § 301.7705-2(g)(5)(iii)

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Surety's retention of right to seek collateral	The IRS should confirm that a surety's mere retention of the right to request collateral does not cause the surety bond to fail to satisfy the "no collateral" requirement.	The final regulations provide this confirmation. Final rule: Treas. Reg. § 301.7705-2(g)(5)(ii) provides, "A surety's retention of the right to seek collateral, as long as no collateral is actually required by the surety or posted by the CPEO, does not violate the ['no collateral' rule]."	<ul style="list-style-type: none"> • 84 FR 24,378 • § 301.7705-2(g)(5)(ii)
Surety bonds	<i>NAPEO and the Surety & Fidelity Association of America submitted a number of comments on the surety bond form when it was being drafted. Many of the issues identified were addressed in IRS informal guidance.</i>	The final regulations incorporate several guidance items from Rev. Proc. 2017-14 with respect to surety bonds. Final rule: see various revisions to Treas. Reg. § 301.7705-2(g).	<ul style="list-style-type: none"> • 84 FR 24,378 • § 301.7705-2(g) • Rev. Proc. 2017-14 • Form 14751
II. Unfavorable Action by IRS			
Wage base restarts for <i>non-work site</i> covered employees	Although the SBEA limits successor/ predecessor treatment to work site employees, CPEOs should not be required <i>per se</i> to restart the wage base for <i>non-work site</i> covered employees. Instead, current law should apply (i.e., the facts and circumstances of each individual relationship should determine whether the CPEO restarts the wage base).	Because Code § 3511 treats a CPEO as an employer separate and apart from the CPEO customer, then, consistent with Treas. Reg. § 31.3121(a)(1)-1(a)(3), covered employees who receive remuneration from both the CPEO and the CPEO customer in a calendar year must be treated as receiving remuneration from two different employers and the annual wage base applies separately unless the predecessor/successor rules of § 3511(b) apply. Final rule: Treas. Reg. § 31.3511-1(c)(1) requires CPEOs to restart the wage base with respect to non-work site covered employees.	<ul style="list-style-type: none"> • 84 FR 24,369 • § 31.3511-1(c)(1)
Customer-by-customer wage bases	Because the CPEO "shall be treated" as the sole employer of work site employees, the CPEO should not be required to apply separate wage bases on a customer-by-customer basis when a work site employee performs services for more than one customer of the CPEO during a taxable year.	Because the CPEO shall be treated as the sole employer of work site employees, "but only with respect to remuneration remitted by such organization to such work site employee," the statute contemplates that the CPEO will maintain separate wages bases on a customer-by-customer basis. Separate wage bases are also required for purposes of applying some of the exemptions, exclusions, etc., that could apply differently based on the type of organization the customer is (e.g., a 501(c)(3) organization that is exempt from FUTA).	<ul style="list-style-type: none"> • 84 FR 24,369 • § 31.3511-1(c)(2)

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		<p>Final rule: Treas. Reg. § 31.3511-1(c)(2) requires CPEOs to maintain separate wage bases with respect to each customer for whom a covered employee performs services.</p>	
Form 8973 customer signature	The customer signature requirement on Form 8973 should be eliminated.	<p>The customer signature requirement is retained because it ensures that customers and clients understand the nature of their relationship with the CPEO and provides a means for the IRS to verify that the CPEO has properly represented the nature of the contractual arrangement (i.e., whether the customer/client is covered by a CPEO contract).</p> <p>Final rule: Issue addressed in Form 8973 and instructions, not in final rule.</p>	<ul style="list-style-type: none"> • 84 FR 24,372 • Form 8973 • Instructions for Form 8973
Form 8973 and Schedule R reporting for service agreements described in § 31.3504-2(b)(2)	The Form 8973 and Schedule R reporting requirements with respect to non-CPEO contracts should be eliminated.	<p>Form 8973 reporting with respect to service agreements described in § 31.3504-2(b)(2) is being retained because the IRS wants a record that explicitly provides which CPEO clients are <i>not</i> under a CPEO contract in the event that a dispute concerning liability arises.</p> <p>The Schedule R reporting requirement is retained so that (1) the IRS has a record of which amounts reported on Forms 940/941 are <i>not</i> subject to the liability provisions in Code § 3511(a) and (c), and (2) the IRS can better reconcile amounts reported on Form 940/941.</p> <p>Final rule: No change to Treas. Reg. § 31.3511-1(g)(3).</p>	<ul style="list-style-type: none"> • 84 FR 24,372 • § 31.3511-1(g)(3) • Form 8973 • Schedules R
Reliance on wage information from customer/predecessor employer	For CPEOs that are treated as a successor employer, CPEOs should be allowed to rely on wage base information provided to the CPEO in the form of a wage report from a customer.	<p>Whether, and to what extent, a CPEO relies on a wage report from the customer is a business decision. General guidance on this matter is available in the regulations under Code § 3121(a)(1) and Rev. Proc. 2004-53.</p> <p>Final rule: Issue addressed in preamble but not in rule.</p>	<ul style="list-style-type: none"> • 84 FR 24,370 • § 31.3511-1(d)

ISSUE	NAPEO COMMENT/REQUEST	IRS RESPONSE	REFERENCES
Quarterly vs. annual determination of work site employee status	A covered employee who qualifies as a work site employee on any day during a calendar quarter should be considered a work site employee for the entirety of that calendar quarter <i>and</i> for the remainder of the year.	<p>The IRS declined to adopt this suggestion because it has not been made aware of any issues concerning the quarterly determination of work site employees, and because quarter-by-quarter work site employee determination coincides with a CPEO's quarterly federal employment tax reporting.</p> <p>Final rule: No change to Treas. Reg. § 301.7705-1(b)(17)(iv).</p>	<ul style="list-style-type: none"> • 84 FR 24,374 • § 301.7705-1(b)(17)(iv)
Alternative to fingerprint cards	Responsible individuals who are attorneys, CPAs, Enrolled Agents, officers of publicly traded companies, and any others specified by the IRS should be allowed to provide their professional status information (e.g., credential number) in lieu of fingerprints.	<p>The IRS declined to adopt the suggestion because it views the criminal background check to be an important factor in determining whether the CPEO applicant's or CPEO's certification presents a material risk to the IRS's collection of federal employment taxes.</p> <p>Final rule: No change to Treas. Reg. § 301.7705-2(c)(3).</p>	<ul style="list-style-type: none"> • 84 FR 24,376 • § 301.7705-2(c)(3)
Working capital requirement	A failure to maintain positive working capital should not be a mandatory ground for rejecting, revoking, or suspending a PEO's certification.	<p>The final regulations retain the positive working capital requirement (with exceptions in certain cases) because the IRS considers a CPEO with annual audited financial statements that reflect positive working capital to present a materially lower risk to the IRS's collection of federal employment taxes than a CPEO without positive working capital.</p> <p>Final rule: No change to Treas. Reg. § 301.7705-2(e)(1)(iii).</p>	<ul style="list-style-type: none"> • 84 FR 24,376 • § 301.7705-2(e)(1)(iii)
Calculating working capital on a controlled group basis	The IRS should permit PEO entities to demonstrate positive working capital on a controlled group basis, including possibly a requirement for the entities to provide cross-guarantees.	<p>The final regulations do not adopt this suggestion because the IRS's decision whether to certify, suspend, or revoke is made on an entity-by-entity basis.</p> <p>Final rule: N/A</p>	<ul style="list-style-type: none"> • 84 FR 24,377
Agreed-upon procedures	The final regulations should provide the IRS with authority to provide an agreed-upon procedures alternative to the quarterly examination level attestation requirement.	<p>The final regulations do not adopt this suggestion because Code § 7705(c)(3)(B) specifically requires an examination level attestation and does not provide authority for other options.</p> <p>Final rule: N/A</p>	<ul style="list-style-type: none"> • 84 FR 24,377 • Code § 7705(c)(3)(B)

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Maintenance of employee records	A CPEO should only be responsible for maintaining employee records with respect to covered employees that concern any matter relating to the CPEO program for which the CPEO has assumed responsibility. Guidance should clarify that a CPEO is only responsible for maintaining such records to the extent that the CPEO possesses the relevant information, and the customer remains responsible for retaining all employee records required under labor and other laws.	The final regulations do not adopt this suggestion in order to allow for some flexibility and business judgment in negotiating CPEO contracts. Final rule: No change to Treas. Reg. § 301.7705-1(b)(3)(v).	<ul style="list-style-type: none"> • 84 FR 24,378 • § 301.7705-1(b)(3)(v)
Claims of certified status	The IRS should clarify that only CPEOs may make known their status as having been certified by the IRS.	The CPEO rules and requirements do not apply to those entities that do not apply for or obtain certification. Whether a non-CPEO entity misrepresents itself is not a matter for IRS enforcement. Final rule: N/A	<ul style="list-style-type: none"> • 84 FR 24,378
No inference language	The regulations should specifically reference the “no inference” language in § 206(h) of the ABLE Act by stating that neither the treatment of the CPEO as the employer for employer tax purposes, nor compliance with the other requirements applied to treatment as a CPEO, shall be construed to create any inference with respect to the determination of who is an employee, employer, or joint employer for purposes of provisions of federal tax law (other than Subtitle C), or any other provision of federal law, state law, common law, or otherwise.	The IRS stated that this suggested addition is not necessary as Code § 7705(g) sufficiently addresses the implications of the no inference provisions with respect to the Code. Comments related to other laws are beyond the scope of these regulations. Final rule: No change to Treas. Reg. § 31.3511-1(b)(3).	<ul style="list-style-type: none"> • 84 FR 24,379 • § 31.3511-1(b)(3)
III. Not Addressed and/or Deferred by IRS			
Electronic signatures on Form 8973	The IRS should accept electronic customer/client signatures on Form 8973.	Requirements relating to the time and manner of reporting on Form 8973 are more appropriately addressed in tax forms and publications or revenue procedures.	<ul style="list-style-type: none"> • 84 FR 24,372

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Reporting payments to self-employed individuals on Form W-2	In instances where CPEO-paid remuneration to individuals is appropriately treated as subject to SECA tax, the IRS should allow CPEO payroll systems the option to report remuneration attributable to self-employment using Form W-2 in a manner similar to the procedure used by churches to report payments to ministers.	The IRS declined to address this request because “the reporting of amounts paid to self-employed individuals is outside of the scope of these regulations.” Payments made to self-employed individuals should be reported in accordance with the rules under Code § 6041 and other applicable provisions.	<ul style="list-style-type: none"> • 84 FR 24,371 • Code § 3511(f)
Controlled group applications	CPEO applicants in the same controlled group should be allowed to file a single group application for certification.	Not addressed.	
Due process protections	Enhanced due process protections should be provided for CPEO applicants that are denied certification and for CPEOs whose certification is revoked.	Not addressed. <i>Appeal rights are currently addressed in Rev. Proc. 2016-33 (proposed denial of certification) and Rev. Proc. 2017-14 (proposed revocation of certification).</i>	<ul style="list-style-type: none"> • Rev. Proc. 2016-33 • Rev. Proc. 2017-14
Three-year renewal of CPEO consent to disclose	The three-year refiling requirement with respect to page 3 of Form 8973 should be eliminated or, at a minimum, streamlined to reduce the filing burden.	Not addressed. <i>The CPEO consent to disclosure with periodic renewal is required under Rev. Proc. 2017-14.</i>	<ul style="list-style-type: none"> • Rev. Proc. 2017-14 • Form 8973, pg. 3
Treatment of <i>non-work site</i> covered employees with respect to FUTA/SUTA	The IRS should confirm that, with respect to <i>non-work site</i> covered employees, the FUTA tax credits under Code §§ 3302(h) and 3303(a)(4) are governed by current law rules and the facts of the particular case. But, as a general matter, the IRS should note that the CPEO that is liable for the FUTA taxes on remuneration it pays would be eligible for the FUTA tax credits.	The IRS declined to address this issue in the final regulations because amendments to the regulations under Code §§ 3302(h) and 3303(a)(4) were not included in the notice of proposed rulemaking (NPRM). Treasury/IRS “will continue to consider this issue.”	<ul style="list-style-type: none"> • 84 FR 24,370
Timing of Form 8973 submissions	CPEOs should be required to report the commencement or termination of a contract on a quarterly basis (i.e., within 30 days of the end of each quarter).	Requirements relating to the time and manner of reporting on Form 8973 are more appropriately addressed in tax forms and publications or revenue procedures.	<ul style="list-style-type: none"> • 84 FR 24,372
Electronic submission of Form 8973	The IRS should provide a means for Forms 8973 to be submitted electronically rather than by mailing a paper form.	Requirements relating to the time and manner of reporting on Form 8973 are more appropriately addressed in tax forms and publications or revenue procedures.	<ul style="list-style-type: none"> • 84 FR 24,372

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Advertising by CPEOs	The IRS should provide additional guidance with respect to what is permissible or impermissible advertising of certified status.	Not addressed.	
Customer's continued submission of Forms 940 and 941	The IRS should clarify whether (1) customers should continue to file Forms 940 and 941, indicating zero wages and taxes paid, after entering into a contract with a CPEO, or (2) the submission of Form 8973 is sufficient.	Not addressed.	
Reporting of responsible individuals in cases of fluctuating ownership interests	In response to the IRS's request for comments regarding the ability to administer the definition of "responsible individual" to the extent that it applies to potentially fluctuating capital or profits interest in a partnership, NAPEO indicated that this issue could arise in other situations, such as changes in corporate ownership. To make the reporting of responsible individuals more administrable in light of potentially frequent changes, NAPEO suggested that changes in responsible individuals should be reported annually except in cases of significant turnover.	The IRS did not adopt NAPEO's suggestion but indicated it will consider NAPEO's comment in any future updates to Rev. Proc. 2016-33 and Rev. Proc. 2017-14, which currently describe the time and manner in which material changes (including changes in responsible individuals) must be reported.	<ul style="list-style-type: none"> • 84 FR 24,373 • Rev. Proc. 2016-33 • Rev. Proc. 2017-14
One fingerprint card per responsible individual	The IRS should clarify that a single fingerprint card from a responsible individual will be sufficient with respect to all CPEO applicants in a controlled group that are associated with that responsible individual.	The IRS will consider this comment in any future updates to Rev. Proc. 2016-33. The final regulations do not adopt this suggestion in order to provide the IRS with flexibility to include specific fingerprint card instructions in other guidance as the program develops and technology changes permit new procedures.	<ul style="list-style-type: none"> • 84 FR 24,376 • Rev. Proc. 2016-33
Cash method of accounting	CPEOs should be allowed to use a cash method of accounting provided that annual audited financial statements using the accrual method are submitted to the IRS.	The final regulations allow the Commissioner to provide for other accounting methods in further guidance, and the IRS will continue to consider the issue of whether to allow CPEOs to use the cash method of accounting.	<ul style="list-style-type: none"> • 84 FR 24,378
Tip reporting	The IRS should clarify that the information required to be provided by a CPEO to a customer under Code § 6053(c)(8) is limited to information (1) generated by the CPEO as a function of the services it performs as a CPEO and (2) not already available to the customer.	This issue is not addressed because the NPRM did not include amendments to the regulations under Code § 6053(c)(8).	<ul style="list-style-type: none"> • 84 FR 24,378

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Confidentiality of submissions	The IRS should issue guidance stating that, except as specifically provided in the regulations, information submitted to or obtained by the IRS as part of the certification application process will be kept confidential.	This comment is beyond the scope of the regulations. Generally, returns and return information, including CPEO applications, are confidential and may only be disclosed as authorize by the IRS (see Code § 6103).	<ul style="list-style-type: none"> • 84 FR 24,379
Collection of state license/ registration date	The application for certification should either remove the date field from the “Existing Applicant Licensing” tab or more explicitly indicate that the date field is optional for CPEO applicants to complete.	Not addressed.	<ul style="list-style-type: none"> • CPEO online application
Reporting new related entities	Due to the potential for frequent shifts in corporate structure, the current reporting rule requiring new related entities to be reported within 30 days should be modified to limit such reporting to changes in related entities that are material to the overall financial position of the CPEO or CPEO applicant, with all changes to related entities being reported on an annual or semiannual basis.	Not addressed.	
Reduced user fee for small CPEOs	The user fee for CPEO applicants that are required to obtain less than the maximum \$1 million bond should be \$500 for initial certification, and \$250 each year thereafter.	Not addressed.	
IV. Additional Items Addressed by IRS			
Characterization of remuneration paid by CPEOs to partners in partnerships	N/A	<p>Any payment made by a CPEO to a partner in a partnership under a contract between the partnership and the CPEO must always be treated as a payment to a self-employed individual and reported as such.</p> <p>Final rule: Statement provided in preamble, but not explicitly addressed in final regulation.</p>	<ul style="list-style-type: none"> • 84 FR 24,371

ISSUE	NAPEO COMMENT/REQUEST	IRS RESPONSE	REFERENCES
Form 943	N/A	<p>Now that a Schedule R and electronic filing are available with respect to Form 943 (Employer's Annual Federal Tax Return for Agricultural Employees), CPEOs are required to file Schedule R with Form 943 on magnetic media (unless a waiver is obtained).</p> <p>Final rule: See addition of Form 943 to Treas. Reg. § 31.3511-1(g) and (h).</p>	<ul style="list-style-type: none"> • 84 FR 24,372 • § 31.3511-1(g), (h) • Form 943