



American Institute of CPAs
1455 Pennsylvania Avenue, NW
Washington, DC 20004-1081

August 16, 2016

Internal Revenue Service
Attn: CC:PA:LPD:PR (REG-127561-15)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

RE: Proposed Regulations Regarding Certified Professional Employer Organizations (CPEO) (REG-127561-15)¹

Dear Sir/Madam:

The American Institute of CPAs (AICPA) is pleased to offer our suggestions regarding the notice of proposed rulemaking that relates to the requirements for applying for, receiving, and maintaining certification as a CPEO. The comments were prepared by various AICPA technical groups and approved by our Tax Executive Committee.

We recognize, and appreciate, the recent release of interim guidance² that addresses concerns that have been expressed regarding the application for, and maintenance of, certification as a CPEO. Our comments below also address the changes reflected in the interim guidance.

1. § 301.7705-1T(b)(4)(i)³ – Definition of CPA

The above referenced section requires the opinion regarding a CPEO's financial statements to be provided by a CPA who is independent of the CPEO. For this purpose, the temporary regulations require a CPA to be independent as prescribed by the AICPA Professional Standards, Code of Professional Conduct, and its interpretations and rulings. (When the AICPA Code of Conduct was last revised, ethics rulings were eliminated; now we only have interpretations.) The final and temporary regulation's "Explanation of Provisions" (c. Financial Statements) indicate that the "Treasury Department and the IRS request comments regarding whether the CPA independence guidelines or requirements of other governmental agencies or departments or industry self-regulatory bodies, as adapted for a

¹ While these comments relate to the notice of proposed rulemaking by cross-reference to temporary regulations with regard to Certified Professional Employer Organizations (CPEOs), corresponding changes are also necessary with regard to Rev. Proc. 2016-33, 2016-25 IRB 1034 that sets forth the detailed procedures for applying to be certified as a CPEO.

² Notice 2016-49, 2016-34 IRB 1.

³ All references herein to "section" or "§" are to the Internal Revenue Code of 1986, as amended, or the Treasury Regulations promulgated thereunder.

CPA of a CPEO, would better ensure the impartiality of CPAs providing opinions on CPEO's financial statements. . .”

We believe that the AICPA's Code of Professional Conduct is appropriate to provide for an independent audit and examination with regard to the CPEO process. Our Code of Professional Conduct is familiar to not only all 412,000 AICPA members but to the majority of CPAs in the country, whereas some of the other independence standards are not.

Currently 35 of the 55 jurisdictions in the US have adopted the AICPA's independence rules, and the AICPA and National Association of State Boards of Accountancy (NASBA) are working with state boards of accountancy to encourage nationwide adoption of the AICPA Code of Professional Conduct over the next few years.

2. § 301.7705-1T(b)(4)(iii) – Definition of CPA

In accordance with the AICPA – NASBA Uniform Accountancy Act ([UAA](#)), an individual whose principal place of business is not in a particular state but holds a valid license as a Certified Public Accountant from any state which the NASBA National Qualification Appraisal Service has verified to be in substantial equivalence with the CPA licensure requirements of the UAA has all the privileges of licensees of this state without the need to obtain a license.⁴ As of May 2014, NASBA has indicated that all states and territories have gained [substantial equivalence](#) status. This means that a CPA who is licensed in any jurisdiction has practice rights in all other jurisdictions even though they may not necessarily be qualified to actually obtain a license in another state. Because of this difference between “practice rights” versus “qualification to be licensed,” we recommend that the language of the above referenced section be changed from “(iii) Is duly qualified to practice in any state” to “(iii) Is duly authorized to practice by a state board of accountancy.”

We also note that the interim guidance⁵ retains the same definition as in the above referenced section and also should be changed to reflect the position of the National Association of State Boards of Accountancy.

3. § 301.7705-1T(b)(4)(iv) – Definition of CPA

Consistent with the discussion in 2 above, the language of the above referenced section, “(iv) Files with the IRS a written declaration that he or she is currently qualified as a CPA . . .” be changed to “(iv) Files with the IRS a written declaration that he or she is currently authorized to practice as a CPA . . .”

⁴ UAA, Section 23.

⁵ Op. cit. note 2, Section V, page 11.

4. § 301.7705-1T(b)(4)(iv) – Representation

The above referenced section requires that the CPA be “. . . authorized to represent the CPEO applicant or CPEO before the IRS . . .” Presumably, representation rights would be granted to the CPA by the CPEO through a power of attorney, however, in general representation rights or a power of attorney would impair independence because it gives the CPA the authority to act on behalf of management (e.g., make decisions or negotiate on behalf of management). Paragraph .06 of the [Tax Services](#) interpretation⁶ explains that when a member has an attest client’s power of attorney, the self-review, management participation and advocacy threats to the member’s compliance’s with the [Independence Rule](#)⁷ may exist. This paragraph goes on to provide that if the power of attorney is limited strictly to tax matters and the member does not bind the attest client with the taxing authority or other regulatory agency, independence will not be impaired.

As discussed above, any representation rights or a power of attorney has to be limited to tax matters; if the representation rights or power of attorney is broader in scope, for example, to discuss the annual or quarterly attestations, independence would be impaired. The Code of Conduct makes an exception for representation rights or a power of attorney for tax matters but the Code is clear that independence is impaired if a CPA were to assume any management responsibilities or act as an advocate of a client.

We, therefore, are pleased that the interim guidance⁸ anticipates omitting the written authorization requirement in the final guidance.

5. § 301.7705-2T(e)(1)(ii) – Working Capital

The financial statement opinion of a CPA cannot include the language as presented in the above referenced section. Rather, with respect to an opinion on working capital, we believe that this requirement could be satisfied by the CPEO preparing a supplemental schedule of working capital and the Independent CPA issuing an opinion, pursuant to generally accepted auditing standards (GAAS) AU-C Section 725 *Supplementary Information In Relation to the Financial Statements as a Whole*, that the working capital amount and information is fairly stated in in all material respects in relation to the financial statements taken as a whole. We would expect that the CPEO would disclose, within the schedule of working capital, how the CPEO has defined and calculated working capital and how such calculation reconciles to the audited financial statements.

⁶ AICPA, *Professional Standards*, ET 1.295.160.

⁷ *Ibid.*, ET 1.200.001.

⁸ *Op. cit.*, note 4.

Again, we are pleased that the interim guidance⁹ anticipates revising the above referenced section to ensure consistency with AICPA professional standards with regard to financial statement opinions.

6. § 301.7705-2T(f)(1)(i) – Quarterly Assertions and Attestations

To clarify a CPA’s responsibilities with respect to the quarterly assertions and attestations, it is our understanding that the CPEO would prepare an assertion and applicable schedules, including disclosures, as to the information required. The CPA would conduct an independent examination pursuant to the AICPA’s Attestation Standards and would report on management’s assertion (or directly on the subject matter) in accordance with the examination standard AT-C Section 205 *Examination Engagements*.

The interim guidance does not address the quarterly assertions and attestations directly but presumably, the changes¹⁰ in the interim guidance described in 5 above would be applied consistently to ensure consistency with AICPA professional standards with regard to quarterly assertions and attestations.

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The AICPA is the world’s largest member association representing the accounting profession, with more than 412,000 members in 144 countries, and a history of serving the public interest since 1887. Our members advise clients on Federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America’s largest businesses.

We appreciate your consideration of our comments and proposed changes that are necessary to provide clarification in the CPEO process and that we believe should be reflected in the final regulations and an updated revenue procedure. The AICPA welcomes the opportunity to discuss these comments. If you have any questions, please contact me at (801) 523-1051, or tlewis@sisna.com; or Edward Karl, AICPA Vice President - Taxation at (202) 434-9228, or ekarl@aicpa.org.

Sincerely,



Troy K. Lewis, CPA
Chair, AICPA Tax Executive Committee

⁹ *Op. cit.*, note 2, Section III, page 6.

¹⁰ *Ibid.*