Feature

New IRS Certification Program Could Mean More Business for Producers, Sureties That Write Employer Bonds

BY CORBAN ENNS

DUE TO A new federal bond requirement, bond producers and underwriters that write employer bonds may experience a surge of new clients—human resource-outsourcing companies, also referred to as professional employer organizations (PEOs). The affordable services of PEOs, such as the management of employee benefits, payroll, taxes, worker's compensation, and retirement plans, are appealing to many small businesses.

Pat Cleary, President and CEO of the National Association of Professional Employer Organizations (NAPEO), explained that PEOs are *not* temporary employment service agencies. "We come in and co-employ [your] employees," said Cleary. "We take your employees as we find them. We don't staff; we don't cherry pick them—we take who you have and do payroll, benefits, taxes, and [more]." These PEOs often manage risks and liabilities related to personnel functions of small businesses' worksite employees by monitoring new employer requirements and by developing policies and procedures for these small businesses' employees.

The new bond requirement is part of a voluntary certification being established by the Internal Revenue Service (IRS) for PEOs, and NAPEO is pleased. "PEO is the rarest of industries in the sense that we have fought for regulation; most industries want less regulation, but we have fought for more," said Cleary.

Thom Stohler, Vice President of Federal Government Affairs at NAPEO, said that NAPEO, the Surety & Fidelity Association of America (SFAA), and the IRS worked together to create this new voluntary PEO certification, because many PEOs wish to be certified (CPEOs) and have statutory authority to collect and remit federal employment taxes under their Employer Identification Number (EIN) for wages they pay to worksite employees.

"The bond is critical to obtaining the certification; it guarantees that the company is reputable," said Stohler.

To maintain this certification, the PEO must post a bond each year in an amount up to 5% of the PEO's federal employment tax liability in the preceding calendar year, up to a ceiling of $1 million. The bond amount must be at least $50,000. The requirements to maintain certification are described at the NAPEO site (see https://www.napeo.org/sbea).

The IRS has indicated that it plans to begin accepting applications for PEO certification beginning July 1, 2016. The IRS continues to work to set up this new voluntary certification program to identify and define the policy, procedural, and information system changes necessary to meet the requirements of the new law (see https://www.irs.gov/businesses/small-businesses-&-self-employed/voluntary-certification-program-for-professional-employer-organizations).

Small Business Efficiency Act (SBEA)

In December 2014, President Obama signed the Small Business Efficiency Act (SBEA), which included provisions providing for PEOs being written into the IRS code and establishing a voluntary certification program for PEOs (see https://www.irs.gov/businesses/small-businesses-&-self-employed/voluntary-certification-program-for-professional-employer-organizations). The federal law requires PEOs to meet a number of requirements, including bond and independent financial review requirements (see https://www.congress.gov/bill/113th-congress/house-bill/5771). The IRS continues to work to set up this new voluntary certification program to meet the requirements of the new law that balances customer service with the interests of tax administration.

The following is the SBEA bond language in the new federal requirement of 26 IRC § 7705(b) from Title 26-INTERNAL REVENUE CODE Subtitle F-Procedure and Administration CHAPTER 79-DEFINITIONS: http://uscode.house.gov/view.xhtml?req=(title:26%20section:7705%20edition:prelim)

(c) BOND AND INDEPENDENT FINANCIAL REVIEW.—

(1) IN GENERAL.—An organization meets the requirements of this paragraph if such organization—

(A) meets the bond requirements of paragraph (2), and

(B) meets the independent financial review requirements of paragraph (3).

(2) BOND.—

(A) IN GENERAL.—A certified professional employer organization meets the requirements of this paragraph if the organization has posted a bond for the payment of taxes under subtitle C (in a form acceptable to the Secretary) that is in an amount at least equal to the amount specified in subparagraph (B).

(B) AMOUNT OF BOND.—For the period April 1 of any calendar year through March 31 of the following calendar year, the amount of the bond required is equal to the greater of—

(i) 5 percent of the organization's liability under section 3511 for taxes imposed by subtitle C during the preceding calendar year (but not to exceed $1,000,000), or

(ii) $50,000.

NAPEO anticipates that, as a result of the new certification requiring a bond, hundreds of new bonds may need to be placed for existing PEOs once the IRS completes setting up the certification program. Approximately 40 states require a PEO to go through a licensing or registration process and roughly 20 of those states require a state license and permit surety bond, according to NAPEO's research. NAPEO estimates 700 to 900 PEOs are in business.

See the white paper on PEOs by Corban Enns at www.nasbp.org. To learn more about the trade association for PEOs, visit NAPEO at www.napeo.org. Also, view Surety Solutions' article on the new law, titled "NEW LEGISLATURE FOR PEOs WILL REQUIRE ADDITIONAL BOND—And this is good."

Corban Enns is founder and president of the NASBP member firm of Surety Solutions LLC in Salem, OR. Since its inception in 2004, Surety Solutions has helped place, write, and manage over 30,000 mortgage broker and lender bonds. Enns has also collaborated with various state agencies to create or modify mortgage bond obligations to meet the requirements of new legislation. He can be reached at corban@suretysolutionsllc.com and 503.363.6889.