

108TH CONGRESS  
1ST SESSION

# H. R. 2178

To amend the Internal Revenue Code of 1986 to clarify the status of professional employer organizations and to promote and protect the interests of professional employer organizations, their customers, and workers.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 21, 2003

Mr. PORTMAN (for himself and Mr. CARDIN) introduced the following bill;  
which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to clarify the status of professional employer organizations and to promote and protect the interests of professional employer organizations, their customers, and workers.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Professional Employer  
5       Organization Workers Benefits Act of 2003”.

6       **SEC. 2. NO INFERENCE.**

7       Nothing contained in this Act or the amendments  
8       made by this Act shall be construed to create any infer-

1 ence with respect to the determination of who is an em-  
2 ployee or employer—

3 (1) for Federal tax purposes (other than the  
4 purposes set forth in the amendments made by sec-  
5 tion 3), or

6 (2) for purposes of any other provision of law.

7 **SEC. 3. CERTIFIED PROFESSIONAL EMPLOYER ORGANIZA-**  
8 **TIONS.**

9 (a) EMPLOYMENT TAXES.—Chapter 25 of the Inter-  
10 nal Revenue Code of 1986 (relating to general provisions  
11 relating to employment taxes) is amended by adding at  
12 the end the following new section:

13 **“SEC. 3511. CERTIFIED PROFESSIONAL EMPLOYER ORGANI-**  
14 **ZATIONS.**

15 “(a) GENERAL RULES.—For purposes of the taxes  
16 imposed by this subtitle—

17 “(1) a certified professional employer organiza-  
18 tion shall be treated as the employer (and no other  
19 person shall be treated as the employer) of any work  
20 site employee performing services for any customer  
21 of such organization, but only with respect to remun-  
22 eration remitted by such organization to such work  
23 site employee, and

1           “(2) the exemptions and exclusions which would  
2           (but for paragraph (1)) apply shall apply with re-  
3           spect to such taxes imposed on such remuneration.

4           “(b) SUCCESSOR EMPLOYER STATUS.—For purposes  
5 of sections 3121(a) and 3306(b)(1)—

6           “(1) a certified professional employer organiza-  
7           tion entering into a service contract with a customer  
8           with respect to a work site employee shall be treated  
9           as a successor employer and the customer shall be  
10          treated as a predecessor employer, and

11          “(2) a customer whose service contract with a  
12          certified professional employer organization is termi-  
13          nated with respect to a work site employee shall be  
14          treated as a successor employer and the certified  
15          professional employer organization shall be treated  
16          as a predecessor employer.

17          “(c) LIABILITY WITH RESPECT TO INDIVIDUALS  
18 PURPORTED TO BE WORK SITE EMPLOYEES.—

19          “(1) GENERAL RULES.—Solely for purposes of  
20          its liability for the taxes imposed by this subtitle—

21                 “(A) the certified professional employer or-  
22                 ganization shall be treated as the employer of  
23                 any individual (other than a work site employee  
24                 or a person described in subsection (e)) who is  
25                 performing services covered by a contract meet-

1           ing the requirements of section 7705(e)(2)(F),  
2           but only with respect to remuneration remitted  
3           by such organization to such individual, and

4                   “(B) the exemptions and exclusions which  
5           would (but for subparagraph (A)) apply shall  
6           apply with respect to such taxes imposed on  
7           such remuneration.

8           “(d) SPECIAL RULE FOR RELATED PARTY.—Sub-  
9           section (a) shall not apply in the case of a customer which  
10          bears a relationship to a certified professional employer  
11          organization described in section 267(b) or 707(b). For  
12          purposes of the preceding sentence, such sections shall be  
13          applied by substituting ‘10 percent’ for ‘50 percent’.

14          “(e) SPECIAL RULE FOR CERTAIN INDIVIDUALS.—  
15          For purposes of the taxes imposed under this subtitle, an  
16          individual with net earnings from self-employment derived  
17          from the customer’s trade or business (including a partner  
18          in a partnership that is a customer), is not a work site  
19          employee with respect to remuneration paid by a certified  
20          professional employer organization.

21          “(f) REGULATIONS.—The Secretary shall prescribe  
22          such regulations as may be necessary or appropriate to  
23          carry out the purposes of this section.”.

1 (b) EMPLOYEE BENEFITS.—Section 414 of such  
2 Code (relating to definitions and special rules) is amended  
3 by adding at the end the following new subsection:

4 “(w) CERTIFIED PROFESSIONAL EMPLOYER ORGANI-  
5 ZATIONS.—

6 “(1) PLANS MAINTAINED BY CERTIFIED PRO-  
7 FESSIONAL EMPLOYER ORGANIZATIONS.—

8 “(A) IN GENERAL.—Except as otherwise  
9 provided in this subsection, in the case of a  
10 plan or program established or maintained by a  
11 certified professional employer organization to  
12 provide employee benefits to work site employ-  
13 ees, then, for purposes of applying the provi-  
14 sions of this title applicable to such benefits—

15 “(i) such plan shall be treated as a  
16 single employer plan established and main-  
17 tained by the organization,

18 “(ii) the organization shall be treated  
19 as the employer of the work site employees  
20 eligible to participate in the plan, and

21 “(iii) the portion of such plan covering  
22 work site employees shall not be taken into  
23 account in applying such provisions to the  
24 remaining portion of such plan or to any  
25 other plan established or maintained by

1 the certified professional employer organi-  
2 zation providing employee benefits (other  
3 than to work site employees).

4 “(B) SPECIAL EXCEPTIONS IN APPLYING  
5 RULES TO BENEFITS.—

6 “(i) IN GENERAL.—In applying any  
7 requirement listed in clause (iii) to a plan  
8 or program established by the certified  
9 professional employer organization—

10 “(I) the portion of the plan es-  
11 tablished by the certified professional  
12 employer organization which covers  
13 work site employees performing serv-  
14 ices for a customer shall be treated as  
15 a separate plan of the customer (in-  
16 cluding for purposes of any disquali-  
17 fication or correction),

18 “(II) the customer shall be treat-  
19 ed as establishing and maintaining  
20 the plan, as the employer of such em-  
21 ployees, and as having paid any com-  
22 pensation remitted by the certified  
23 professional employer organization to  
24 such employees under the service con-

1                   tract entered into under section 7705,  
2                   and

3                   “(III) a controlled group that in-  
4                   cludes a certified professional em-  
5                   ployer organization shall not include  
6                   in the controlled group any work site  
7                   employees performing services for a  
8                   customer.

9                   For purposes of subclause (III), all persons  
10                  treated as a single employer under sub-  
11                  sections (b), (c), (m), and (o) shall be  
12                  treated as members of the same controlled  
13                  group.

14                  “(ii) SELF-EMPLOYED INDIVID-  
15                  UALS.—A work site employee who would  
16                  be treated as a self-employed individual (as  
17                  defined in section 401(c)(1)), a disqualified  
18                  person (as defined in section 4975(e)(2)),  
19                  a 2-percent shareholder (as defined in sec-  
20                  tion 1372(b)(2)), or a shareholder-em-  
21                  ployee (as defined in section  
22                  4975(f)(6)(C)), but for the relationship  
23                  with the certified professional employer or-  
24                  ganization, shall be treated as a self-em-  
25                  ployed individual, disqualified person, a 2-

1 percent shareholder, or shareholder-em-  
2 ployee for purposes of rules applicable to  
3 employee benefit plans maintained by such  
4 certified professional employer organiza-  
5 tion.

6 “(iii) LISTED REQUIREMENTS.—The  
7 requirements listed in this clause are:

8 “(I) NONDISCRIMINATION AND  
9 QUALIFICATION.—Sections 79(d),  
10 105(h), 125(b), 127(b)(2) and (3),  
11 129(d)(2), (3), (4), and (5), 132(j)(1),  
12 274(j)(3)(B), 401(a)(4), 401(a)(17),  
13 401(a)(26), 401(k)(3) and (12),  
14 401(m)(2) and (11), 404 (in the case  
15 of a plan subject to section 412),  
16 410(b), 412, 414(q), 415, 416, 419,  
17 422, 423(b), 505(b), 4971, 4972,  
18 4975, 4976, 4978, and 4979.

19 “(II) SIZE.—Sections 220,  
20 401(k)(11), 401(m)(10), 408(k), and  
21 408(p).

22 “(III) ELIGIBILITY.—Section  
23 401(k)(4)(B).

1                   “(IV) AUTHORITY.—Such other  
2                   similar requirements as the Secretary  
3                   may prescribe.

4                   “(iv) WELFARE BENEFIT FUNDS.—  
5                   With respect to a welfare benefit fund  
6                   maintained by a certified professional em-  
7                   ployer organization for the benefit of work  
8                   site employees performing services for a  
9                   customer, section 419 shall be treated as  
10                  not listed in clause (iii)(I) if the fund pro-  
11                  vides only 1 or more of the following:

12                   “(I) Medical benefits other than  
13                   retiree medical benefits.

14                   “(II) Disability benefits.

15                   “(III) Group term life insurance  
16                   benefits which do not provide for any  
17                   cash surrender value or other money  
18                   that can be paid, assigned, borrowed  
19                   or pledged for collateral for a loan.

20                   “(v) EXCISE TAXES.—Notwith-  
21                   standing clause (iii), the certified profes-  
22                   sional employer organization and the cus-  
23                   tomer contracting for work site employees  
24                   to pay services shall be jointly and sever-  
25                   ally liable for the tax imposed by section

1 4971 with respect to failure to meet the  
2 minimum funding requirements and the  
3 tax imposed by section 4976 with respect  
4 to funded welfare benefit plans.

5 “(vi) CONTINUATION COVERAGE RE-  
6 QUIREMENTS.—For purposes of applying  
7 the provisions of section 4980B with re-  
8 spect to a group health plan maintained by  
9 a certified professional employer organiza-  
10 tion for the benefit of work site employees:

11 “(I) TERMINATION OF EMPLOY-  
12 MENT EVENTS.—Each of the following  
13 events shall constitute a termination  
14 of employment of a work site em-  
15 ployee for purposes of section  
16 4980B(f)(3)(B):

17 “(aa) The work site em-  
18 ployee ceasing to provide services  
19 to any customer of such certified  
20 professional employer organiza-  
21 tion.

22 “(bb) The work site em-  
23 ployee ceasing to provide services  
24 to one customer of such certified  
25 professional employer organiza-

1 tion and becoming a work site  
2 employee with respect to another  
3 customer of such certified profes-  
4 sional employer organization; and

5 “(cc) The termination of a  
6 service contract between the cer-  
7 tified professional employer orga-  
8 nization and the customer with  
9 respect to which the work site  
10 employee performs services, pro-  
11 vided, however, that such a con-  
12 tract termination shall not con-  
13 stitute a termination of employ-  
14 ment under section  
15 4980B(f)(3)(B) for such work  
16 site employee if, at the time of  
17 such contract termination, such  
18 customer maintains a group  
19 health plan (other than a plan  
20 providing only excepted benefits  
21 within the meaning of sections  
22 9831 and 9832 or a plan cov-  
23 ering less than two participants  
24 who are employees).

1                   “(II) TERMINATION EVENT CON-  
2                   STITUTING A QUALIFYING EVENT.—If  
3                   an event described in subparagraph  
4                   (vi)(I) also constitutes a qualifying  
5                   event under section 4980B(f)(3) with  
6                   respect to the group health plan main-  
7                   tained by the certified professional  
8                   employer organization for the affected  
9                   work site employee, such plan shall no  
10                  longer be required to provide continu-  
11                  ation coverage as of any new coverage  
12                  date.

13                  “(III) NEW COVERAGE DATE  
14                  WHEN TERMINATION EVENT CON-  
15                  STITUTES QUALIFYING EVENT.—For  
16                  purposes of subclause (II), a new cov-  
17                  erage date shall be the first date on  
18                  which—

19                         “(aa) the customer main-  
20                         tains a group health plan other  
21                         than a plan described in section  
22                         4980B(d), a plan providing only  
23                         excepted benefits within the  
24                         meaning of sections 9831 and  
25                         9832, or a plan covering less

1 than two participants who are  
2 employees, or

3 “(bb) a service contract be-  
4 tween such customer and another  
5 certified professional employee  
6 organization becomes effective  
7 under which worksite employees  
8 performing services for such cus-  
9 tomer are covered under a group  
10 health plan of such other cer-  
11 tified professional employee orga-  
12 nization, other than a plan de-  
13 scribed in section 4980B(d), a  
14 plan providing only excepted ben-  
15 efits within the meaning of sec-  
16 tions 9831 and 9832, or a plan  
17 covering less than two partici-  
18 pants who are employees.

19 “(IV) EFFECT OF CUSTOMER-  
20 MAINTAINED PLAN.—As of a new cov-  
21 erage date described in subclause  
22 (III)(aa), the customer shall be re-  
23 quired to make continuation coverage  
24 available to any qualified beneficiary  
25 who was receiving (or was eligible to

1 elect to receive) continuation coverage  
2 under a certified professional em-  
3 ployer organization’s group health  
4 plan and who is, or whose qualifying  
5 event occurred in connection with, a  
6 person whose last employment prior to  
7 such employee’s qualifying event was  
8 as a work site employee providing  
9 services to such customer pursuant to  
10 a service contract with such certified  
11 professional employer organization.

12 “(C) EFFECT OF NEW SERVICE CONTRACT  
13 WITH CERTIFIED PEO.—As of a new coverage  
14 date described in subclause (III)(bb), the sec-  
15 ond certified professional employee organization  
16 shall be required to make continuation coverage  
17 available to any qualified beneficiary who was  
18 receiving (or was eligible to elect to receive)  
19 continuation coverage under the first certified  
20 professional employer organization’s group  
21 health plan and who is, or whose qualifying  
22 event occurred in connection with, a person  
23 whose last employment prior to such employee’s  
24 qualifying event was as a work site employee  
25 providing services to the customer pursuant to

1 a service contract with the first certified profes-  
2 sional employer organization.

3 “(vii) CONTINUED COVERAGE FOR  
4 QUALIFIED BENEFICIARIES.—As of the  
5 date that a certified professional employee  
6 organization’s group health plan first pro-  
7 vides coverage to one or more work site  
8 employees providing services to a customer,  
9 such group health plan shall be required to  
10 make continuation coverage available to  
11 any qualified beneficiary who was receiving  
12 (or was eligible to receive or elect to re-  
13 ceive) continuation coverage under a group  
14 health plan sponsored by such customer if,  
15 in connection with coverage being provided  
16 by the organization’s plan, such customer  
17 terminates each of its group health plans,  
18 other than a plan or plans providing only  
19 excepted benefits within the meaning of  
20 sections 9831 and 9832 or covering less  
21 than two participants who are employees.

22 “(viii) EFFECT OF TERMINATION OF  
23 PEO STATUS.—The termination of a pro-  
24 fessional employer organization’s status as

1 a certified professional employer  
2 organization—

3 “(I) shall constitute an event de-  
4 scribed in section 4980B(f)(3)(B) for  
5 any work site employee performing  
6 services pursuant to a contract be-  
7 tween a customer and such profes-  
8 sional employer organization, but

9 “(II) no loss of coverage within  
10 the meaning of section 4980B(f)(3)  
11 occurs unless, in connection with such  
12 termination of status as a certified  
13 professional employer organization,  
14 the individual formerly treated as a  
15 work site employee performing serv-  
16 ices for the customer pursuant to a  
17 contract with such professional em-  
18 ployer organization ceases to be cov-  
19 ered under the arrangement of the  
20 professional employer organization  
21 that had been, prior to such termi-  
22 nation of status, the group health  
23 plan of such organization.

24 “(ix) PERSON LIABLE FOR TAX.—For  
25 purposes of the liability for tax under sec-

1           tion 4980B, the person or entity required  
2           to provide continuation coverage under this  
3           clause (vi) shall be deemed to be the em-  
4           ployer under section 4980B(e)(1)(A).

5           “(2) PLANS MAINTAINED BY CUSTOMERS OF  
6           CERTIFIED PROFESSIONAL EMPLOYER ORGANIZA-  
7           TIONS.—If a customer of a certified professional em-  
8           ployer organization provides (other than through  
9           such organization) any employee benefits, then with  
10          respect to such benefits—

11           “(A) work site employees of the organiza-  
12          tion who perform services for the customer shall  
13          be treated as leased employees of such cus-  
14          tomer,

15           “(B) such customer shall be treated as a  
16          recipient for purposes of subsection (n), and  
17          paragraphs (4) and (5) of subsection (n) shall  
18          not apply for such purposes, and

19           “(C) with respect to such work site em-  
20          ployees, sections 105(h), 403(b)(12), 422, and  
21          423 shall be treated as a benefit listed in sub-  
22          section (n)(3)(C).

23           “(3) PLANS MAINTAINED BY COMPANIES IN  
24          SAME CONTROLLED GROUP AS CERTIFIED PROFES-  
25          SIONAL EMPLOYER ORGANIZATION.—In applying any

1 requirement listed in paragraph (1)(B)(iii), a controlled group which includes a certified professional  
2 employer organization shall not include in such controlled group any work site employees performing  
3 services for a customer. For purposes of this paragraph, all persons treated as a single employer  
4 under subsections (b), (c), (m) and (o) shall be  
5 treated as members of the same controlled group.  
6

7 “(4) RULES APPLICABLE TO PLANS MAINTAINED BY CERTIFIED PROFESSIONAL EMPLOYER  
8 ORGANIZATIONS AND PLANS MAINTAINED BY THEIR CUSTOMERS.—  
9

10 “(A) SERVICE CREDITING FOR PARTICIPATION AND VESTING PURPOSES.—In the case of  
11 a plan maintained by a certified professional employer organization or a customer, for purposes of determining a work site employee’s  
12 service for eligibility to participate and vesting under sections 410(a) and 411, rules similar to  
13 the rules of paragraphs (1) and (3) of section 413(c) shall apply to service for the certified  
14 professional employer organization and customer.  
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24 “(B) COMPENSATION.—

1           “(i) IN GENERAL.—Except as pro-  
2           vided in clause (ii), for purposes of sub-  
3           section (s) and section 415(c)(3), or other  
4           comparable provisions of this title based on  
5           compensation which affects employee ben-  
6           efit plans, compensation received from the  
7           customer with respect to which the work  
8           site employee performs services shall be  
9           taken into account together with com-  
10          pensation received from the certified pro-  
11          fessional employer organization.

12          “(ii) EXCEPTION.—For purposes of  
13          applying sections 404 and 412 to a plan  
14          maintained by a certified professional em-  
15          ployer organization, only compensation re-  
16          ceived from the certified professional em-  
17          ployer organization shall be taken into ac-  
18          count.

19          “(C) ELIGIBLE EMPLOYERS.—The provi-  
20          sions of sections 457(f)(1)(A) and (B) apply to  
21          a work site employee performing services for a  
22          customer that is an eligible employer as defined  
23          in section 457(e)(1). The preceding sentence  
24          shall not apply in the case of a plan described  
25          in section 401(a) which includes a trust exempt

1 from tax under section 501(a), an annuity plan  
2 or contract described in section 403, the portion  
3 of a plan which consists of a transfer of prop-  
4 erty described in section 83, the portion of a  
5 plan which consists of a trust to which section  
6 402(b) applies, or a qualified governmental ex-  
7 cess benefit arrangement described in section  
8 415(m).

9 “(5) SPECIAL RULES WHERE MULTIPLE  
10 PLANS.—

11 “(A) IN GENERAL.—For purposes of ap-  
12 plying section 415 with respect to a plan main-  
13 tained by a certified professional employer orga-  
14 nization, the organization and customers of  
15 such organization shall be treated as a single  
16 employer, except that if plans are maintained  
17 by a certified professional employer organiza-  
18 tion and a customer with respect to a work site  
19 employee, any action required to be taken by  
20 such plans shall be taken first with respect to  
21 the plan maintained by the customer.

22 “(B) MINIMUM BENEFIT.—If a minimum  
23 benefit is required to be provided under section  
24 416, such benefit shall, to the extent possible,

1           be provided through the plan maintained by the  
2           certified professional employer organization.

3           “(6) TERMINATION OF SERVICE CONTRACT BE-  
4           TWEEN CERTIFIED PROFESSIONAL EMPLOYER ORGA-  
5           NIZATION AND CUSTOMER.—

6           “(A) IN GENERAL.—

7           “(i) TREATMENT OF SUCCESSOR  
8           PLAN.—If a service contract between a  
9           customer and a certified professional em-  
10          ployer organization is terminated and work  
11          site employees of the customer were cov-  
12          ered by a plan maintained by the organiza-  
13          tion, then, except as provided in regula-  
14          tions, any plan of another certified profes-  
15          sional employer organization or the cus-  
16          tomer which covers such work site employ-  
17          ees shall be treated as a successor plan for  
18          purposes of any rules governing in-service  
19          distributions.

20          “(ii) TREATMENT AS SEVERANCE  
21          FROM EMPLOYMENT AND SEPARATION  
22          FROM SERVICE.—If a service contract be-  
23          tween a customer and a certified profes-  
24          sional employer organization is terminated,  
25          and there is no plan treated as a successor

1 plan under clause (i), then such termi-  
2 nation shall be treated as a plan termi-  
3 nation with respect to each work site em-  
4 ployee of such customer.

5 “(B) DISTRIBUTION RULES APPLICABLE  
6 TO SUBPARAGRAPH (A)(ii).—Except as other-  
7 wise required by this title, in any case to which  
8 subparagraph (A)(ii) applies, the certified pro-  
9 fessional employer organization plan may  
10 distribute—

11 “(i) during the 2-year period begin-  
12 ning on the date of such termination (in  
13 accordance with plan terms) only—

14 “(I) elective deferrals and earn-  
15 ings attributable thereto,

16 “(II) qualified nonelective con-  
17 tributions (within the meaning of sec-  
18 tion 401(m)(4)(C)) and earnings at-  
19 tributable thereto, and

20 “(III) matching contributions de-  
21 scribed in section 401(k)(3)(D)(ii)(I)  
22 and earnings attributable thereto,  
23 of former work site employees associated  
24 with the terminated customer only in a di-

1 rect rollover described in section  
2 401(a)(31), and

3 “(ii) after such 2-year period,  
4 amounts in such plan in accordance with  
5 plan terms.”.

6 (c) CERTIFIED PROFESSIONAL EMPLOYER ORGANI-  
7 ZATION DEFINED.—Chapter 79 of such Code (relating to  
8 definitions) is amended by adding at the end the following  
9 new section:

10 **“SEC. 7705. CERTIFIED PROFESSIONAL EMPLOYER ORGANI-  
11 ZATIONS.**

12 “(a) IN GENERAL.—For purposes of this title, the  
13 term ‘certified professional employer organization’ means  
14 a person who applies to be treated as a certified profes-  
15 sional employer organization for purposes of sections  
16 414(w) and 3511 and who has been certified by the Sec-  
17 retary as meeting the requirements of subsection (b).

18 “(b) CERTIFICATION.—A person meets the require-  
19 ments of this subsection if such person—

20 “(1) demonstrates that such person (and any  
21 owner, officer, and such other persons as may be  
22 specified in regulations) meets such requirements as  
23 the Secretary shall establish with respect to tax sta-  
24 tus, background, experience, business location, and  
25 annual financial audits,

1           “(2) represents that it will satisfy the bond and  
2 independent financial review requirements of sub-  
3 sections (c) on an ongoing basis,

4           “(3) represents that it will satisfy such report-  
5 ing obligations as may be imposed by the Secretary,

6           “(4) represents that it will maintain a qualified  
7 plan (as defined in section 408(p)(2)(D)(ii)) or an  
8 arrangement to provide simple retirement accounts  
9 (within the meaning of section 408(p)) which benefit  
10 at least 95 percent of all work site employees who  
11 are not highly compensated employees for purposes  
12 of section 414(q),

13           “(5) computes its taxable income using an ac-  
14 crual method of accounting unless the Secretary ap-  
15 proves another method,

16           “(6) agrees to verify the continuing accuracy of  
17 representations and information which was pre-  
18 viously provided on such periodic basis as the Sec-  
19 retary may prescribe, and

20           “(7) agrees to notify the Secretary in writing of  
21 any change that materially affects the continuing ac-  
22 curacy of any representation or information which  
23 was previously made or provided.

24           “(c) REQUIREMENTS.—

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

4           “(A) meets the bond requirements of sub-  
5 paragraph (2), and

6           “(B) meets the independent financial re-  
7 view requirements of subparagraph (3).

8           “(2) BOND.—

9           “(A) IN GENERAL.—A certified profes-  
10 sional employer organization meets the require-  
11 ments of this paragraph if the organization has  
12 posted a bond for the payment of taxes under  
13 subtitle C (in a form acceptable to the Sec-  
14 retary) that is in an amount at least equal to  
15 the amount specified in subparagraph (B).

16           “(B) AMOUNT OF BOND.—

17           “(i) IN GENERAL.—For the period  
18 April 1 of any calendar year through  
19 March 31 of the following calendar year,  
20 the amount of the bond required is equal  
21 to the greater of:

22           “(I) 5 percent of the organiza-  
23 tion’s liability for taxes imposed by  
24 this subtitle during the preceding cal-

1           endar year (but not to exceed  
2           \$1,000,000), or

3           “(II) \$50,000.

4           “(ii) SPECIAL RULE FOR NEWLY CRE-  
5           ATED PROFESSIONAL EMPLOYER ORGANI-  
6           ZATIONS.—During the first three full cal-  
7           endar years that an organization is in ex-  
8           istence, subclause (I) of clause (i) shall not  
9           apply. For this purpose—

10           “(I) under rules provided by the  
11           Secretary, an organization is treated  
12           as in existence as of the date that  
13           such organization began providing  
14           services to any client which were com-  
15           parable to the services being provided  
16           with respect to worksite employees,  
17           regardless of whether such date oc-  
18           curred before or after the organization  
19           is certified under section 7705, and

20           “(II) an organization with liabil-  
21           ity for taxes imposed by this subtitle  
22           during the preceding calendar year in  
23           excess of \$5,000,000 shall no longer  
24           be described in this clause (ii) as of

1 April 1 of the year following such cal-  
2 endar year.

3 “(3) INDEPENDENT FINANCIAL REVIEW RE-  
4 QUIREMENTS.—A certified professional employer or-  
5 ganization meets the requirements of this subpara-  
6 graph if such organization—

7 “(A) has, as of the most recent audit date,  
8 caused to be prepared and provided to the Sec-  
9 retary (in such manner as the Secretary may  
10 prescribe) an opinion of an independent cer-  
11 tified public accountant as to whether the cer-  
12 tified professional employer organization’s fi-  
13 nancial statements are presented fairly in ac-  
14 cordance with generally accepted accounting  
15 principles, and

16 “(B) provides to the Secretary an assertion  
17 regarding Federal employment tax payments  
18 and an examination level attestation on such  
19 assertion from an independent certified public  
20 accountant not later than the last day of the  
21 second month beginning after the end of each  
22 calendar quarter. Such assertion shall state  
23 that the organization has withheld and made  
24 deposits of all taxes imposed by chapters 21,  
25 22, and 24 of the Internal Revenue Code in ac-

1 cordance with regulations imposed by the Sec-  
2 retary for such calendar quarter and such ex-  
3 amination level attestation shall state that such  
4 assertion is fairly stated, in all material re-  
5 spects.

6 “(4) SPECIAL RULE FOR SMALL CERTIFIED  
7 PROFESSIONAL EMPLOYER ORGANIZATIONS.—The  
8 requirements of paragraph (3)(A) shall not apply  
9 with respect to a fiscal year of an organization if  
10 such organization’s liability for taxes imposed by  
11 subtitle C during the calendar year ending on (or  
12 concurrent with) the end of the fiscal year were  
13 \$5,000,000 or less.

14 “(5) FAILURE TO FILE ASSERTION AND ATTES-  
15 TATION.—If the certified professional employer orga-  
16 nization fails to file the assertion and attestation re-  
17 quired by paragraph (3) with respect to a particular  
18 quarter, then the requirements of paragraph (3)  
19 with respect to such failure shall be treated as not  
20 satisfied for the period beginning on the due date for  
21 such attestation.

22 “(6) AUDIT DATE.—For purposes of paragraph  
23 (3)(A), the audit date shall be six months after the  
24 completion of the organization’s fiscal year.

1       “(d) SUSPENSION AND REVOCATION AUTHORITY.—  
2 The Secretary may suspend or revoke a certification of  
3 any person under subsection (b) for purposes of section  
4 414(w) or 3511, or both, if the Secretary determines that  
5 such person is not satisfying the representations or re-  
6 quirements of subsections (b) or (c), or fails to satisfy ap-  
7 plicable accounting, reporting, payment, or deposit re-  
8 quirements.

9       “(e) WORK SITE EMPLOYEE.—For purposes of this  
10 title—

11           “(1) IN GENERAL.—The term ‘work site em-  
12 ployee’ means, with respect to a certified profes-  
13 sional employer organization, an individual who—

14                   “(A) performs services for a customer pur-  
15 suant to a contract which is between such cus-  
16 tomer and the certified professional employer  
17 organization and which meets the requirements  
18 of paragraph (2), and

19                   “(B) performs services at a work site  
20 meeting the requirements of paragraph (3).

21           “(2) SERVICE CONTRACT REQUIREMENTS.—A  
22 contract meets the requirements of this paragraph  
23 with respect to an individual performing services for  
24 a customer if such contract is in writing and pro-

1 vides that the certified professional employer organi-  
2 zation shall—

3 “(A) assume responsibility for payment of  
4 wages to the individual, without regard to the  
5 receipt or adequacy of payment from the cus-  
6 tomer for such services,

7 “(B) assume responsibility for reporting,  
8 withholding, and paying any applicable taxes  
9 under subtitle C, with respect to the individ-  
10 ual’s wages, without regard to the receipt or  
11 adequacy of payment from the customer for  
12 such services,

13 “(C) assume responsibility for any em-  
14 ployee benefits which the service contract may  
15 require the certified professional employer orga-  
16 nization to provide, without regard to the re-  
17 ceipt or adequacy of payment from the cus-  
18 tomer for such services,

19 “(D) assume shared responsibility with the  
20 customer for firing the individual and for re-  
21 cruiting and hiring any new worker,

22 “(E) maintain employee records relating to  
23 the individual, and

24 “(F) agree to be treated as a certified pro-  
25 fessional employer organization for purposes of

1 sections 414(w) and 3511 with respect to such  
2 individual.

3 “(3) WORK SITE COVERAGE REQUIREMENT.—

4 “(A) IN GENERAL.—The requirements of  
5 this paragraph are met with respect to an indi-  
6 vidual if at least 85 percent of the individuals  
7 performing services for the customer at the  
8 work site where such individual performs serv-  
9 ices are subject to 1 or more contracts with the  
10 certified professional employer organization  
11 which meet the requirements of paragraph (2).

12 “(B) SPECIAL RULES.—For purposes of  
13 subparagraph (A)—

14 “(i) WORK SITE.—The term ‘work  
15 site’ means a physical location at which an  
16 individual generally performs service for  
17 the customer or, if there is no such loca-  
18 tion, the location from which the individual  
19 receives job assignments from the cus-  
20 tomer.

21 “(ii) CONTIGUOUS LOCATIONS.—For  
22 purposes of clause (i), work sites which are  
23 contiguous locations shall be treated as a  
24 single physical location.

1                   “(iii) NONCONTIGUOUS LOCATIONS.—  
2                   For purposes of clause (i), noncontiguous  
3                   locations shall be treated as separate work  
4                   sites, except that each work site within a  
5                   reasonably proximate area must satisfy the  
6                   85 percent test under subparagraph (A)  
7                   for the individuals performing services for  
8                   the customer at such work site. In deter-  
9                   mining whether noncontiguous locations  
10                  are reasonably proximate, all facts and cir-  
11                  cumstances shall be taken into account.

12                  “(iv) WORK SITES 35 MILES OR MORE  
13                  APART.—Any work site which is separated  
14                  from all other customer work sites by at  
15                  least 35 miles shall not be treated as rea-  
16                  sonably proximate under clause (iii).

17                  “(v) DIFFERENT INDUSTRY.—A work  
18                  site shall not be treated as reasonably  
19                  proximate to another work site under  
20                  clause (iii) if the work site operates in a  
21                  different industry or industries from such  
22                  other work site as determined by the Sec-  
23                  retary.

24                  “(f) EMPLOYER AGGREGATION RULES.—

1           “(1) IN GENERAL.—For purposes of sub-  
2           sections (c)(2)(B)(ii), (c)(4) and (e), all persons  
3           treated as a single employer under subsection (b),  
4           (c), (m), or (o) of section 414 shall be treated as 1  
5           person.

6           “(2) PLANS MAINTAINED BY COMPANIES IN  
7           SAME CONTROLLED GROUP AS CERTIFIED PROFES-  
8           SIONAL EMPLOYER ORGANIZATION.—For purposes  
9           of subsection (b)(4), if certified professional em-  
10          ployer organizations are part of a controlled group,  
11          then the certified professional employer organiza-  
12          tions (but no other member of the controlled group)  
13          shall be treated as 1 person.

14          “(3) QUALIFIED PLANS.—For purposes of sub-  
15          section (b)(4)—

16                 “(A) a qualified plan (as defined in section  
17                 408(p)(2)(D)(ii)) which is maintained by, or an  
18                 arrangement to provide a simple retirement ac-  
19                 count (within the meaning of section 408(p))  
20                 to, a customer with respect to a work site em-  
21                 ployee performing services for such customer  
22                 shall be treated as if it were maintained by the  
23                 applicant, and

24                 “(B) work site employees who do not meet  
25                 the minimum age and service requirements of

1 section 410(a)(1)(A) (or who are excludable  
2 from consideration under section 410(b)(3))  
3 shall not be taken into account.

4 “(g) DETERMINATION OF EMPLOYMENT STATUS.—  
5 Except to the extent necessary for purposes of section  
6 414(w) or 3511, nothing in this section shall be construed  
7 to affect the determination of who is an employee or em-  
8 ployer for purposes of this title.

9 “(h) REGULATIONS.—The Secretary shall prescribe  
10 such regulations as may be necessary or appropriate to  
11 carry out the purposes of this section and sections 414(w)  
12 and 6503(k).”.

13 (d) CONFORMING AMENDMENTS.—

14 (1) Section 45(B) of such Code (relating to  
15 credit for portion of employer social security taxes  
16 paid with respect to employees with cash tips) is  
17 amended by adding at the end the following new  
18 subsection:

19 “(e) CERTIFIED PROFESSIONAL EMPLOYER ORGANI-  
20 ZATIONS.—For purposes of this section, in the case of a  
21 certified professional employer organization that is treat-  
22 ed, under section 3511, as the employer of a worksite em-  
23 ployee who is a tipped employee, the credit determined  
24 under this section does not apply to such organization, but  
25 does apply to the customer of such organization. For this

1 purpose the customer shall take into account any remuneration and taxes remitted by the certified professional employer organization.”.

4 (2) Section 707 of such Code is amended by adding at the end the following new subsection:

6 “(d) PAYMENTS TO CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS.—If a partnership that is a customer of a certified professional employer organization (as defined in section 7705) makes a payment to such an organization on behalf of a partner, and the payment, if made directly to the partner, would be treated as a guaranteed payment under section 707(c), the partnership shall treat the payment as if it were a guaranteed payment made to a partner. To the extent that the relevant partner receives all or any portion of such a payment, such partner shall be treated as receiving a guaranteed payment for services under section 707(c).”.

18 (3) Section 3302 of such Code is amended by adding at the end the following new subsection:

20 “(h) TREATMENT OF CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS.—If a certified professional employer organization (as defined in section 7705) (or a client of such organization) makes a payment to the State’s unemployment fund with respect to a work site employee,

1 such organization shall be eligible for the credits available  
2 under this section with respect to such payment.”.

3 (4) Section 3303(a) of such Code is amended—

4 (A) by inserting ‘and’ at the end of para-  
5 graph (3),

6 (B) by inserting immediately after para-  
7 graph (3) the following new paragraph:

8 “(4) a certified professional employer organiza-  
9 tion (as defined in section 7705) is permitted to col-  
10 lect and remit, in accordance with paragraphs (1),  
11 (2), and (3), contributions during the taxable year  
12 to the State unemployment fund with respect to a  
13 work site employee.”, and

14 (C) in the last sentence—

15 (i) by striking “paragraphs (1), (2),  
16 and (3)” and inserting “paragraphs (1),  
17 (2), (3), and (4)”, and

18 (ii) by striking “paragraph (1), (2), or  
19 (3)” and inserting “paragraph (1), (2),  
20 (3), or (4)”.

21 (5) Section 6053 of such Code (relating to re-  
22 porting of tips) is amended by adding at the end of  
23 subsection (c) the following new paragraph:

24 “(8) CERTIFIED PROFESSIONAL EMPLOYER OR-  
25 GANIZATIONS.—For purposes of any report required

1 by this section, in the case of a certified professional  
2 employer organization that is treated, under section  
3 3511, as the employer of a worksite employee, the  
4 customer with respect to whom a worksite employee  
5 performs services shall be the employer for purposes  
6 of reporting under this section and the certified pro-  
7 fessional employer organization shall furnish to the  
8 customer any information necessary to complete  
9 such reporting no later than such time as the Sec-  
10 retary shall prescribe.”.

11 (e) CLERICAL AMENDMENTS.—

12 (1) The table of sections for chapter 25 of such  
13 Code is amended by adding at the end the following  
14 new item:

“Sec. 3511. Certified professional employer organizations.”.

15 (2) The table of sections for chapter 79 of such  
16 Code is amended by inserting after the item relating  
17 to section 7704 the following new item:

“Sec. 7705. Certified professional employer organizations.”.

18 (f) REPORTING REQUIREMENTS AND OBLIGA-  
19 TIONS.—The Secretary of the Treasury shall develop such  
20 reporting and recordkeeping rules, regulations, and proce-  
21 dures as the Secretary determines necessary or appro-  
22 priate to ensure compliance with the amendments made  
23 by this Act with respect to entities applying for certifi-  
24 cation as certified professional employer organizations or

1 entities that have been so certified. Such rules shall be  
2 designed in a manner which streamlines, to the extent pos-  
3 sible, the application of requirements of such amendments,  
4 the exchange of information between a certified profes-  
5 sional employer organization and its customers, and the  
6 reporting and recordkeeping obligations of the certified  
7 professional employer organization.

8 (g) USER FEES.—Subsection (b) of section 10511 of  
9 the Revenue Act of 1987 (relating to fees for requests for  
10 ruling, determination, and similar letters) is amended by  
11 adding at the end thereof the following new paragraph:

12 “(4) CERTIFIED PROFESSIONAL EMPLOYER OR-  
13 GANIZATIONS.—The fee charged under the program  
14 in connection with the certification by the Secretary  
15 of a professional employer organization under sec-  
16 tion 7705 of the Internal Revenue Code of 1986  
17 shall not exceed \$500.”.

18 (h) EFFECTIVE DATES.—

19 (1) IN GENERAL.—The amendments made by  
20 this Act shall take effect on the later of—

21 (A) January 1, 2005, or

22 (B) the January 1st of the first calendar  
23 year beginning more than 12 months after the  
24 date of the enactment of this Act.

1           (2) CERTIFICATION PROGRAM.—The Secretary  
2 of the Treasury shall establish the certification pro-  
3 gram described in section 7705(b) of the Internal  
4 Revenue Code of 1986 not later than 3 months be-  
5 fore the effective date determined under paragraph  
6 (1).

7           (3) TRANSITION ISSUES.—For years beginning  
8 before the effective date specified in paragraph (1),  
9 subject to such conditions as the Secretary of the  
10 Treasury may prescribe, employee benefit plans in  
11 existence on the date of the enactment of this Act  
12 shall not be treated as failing to meet the require-  
13 ments of the Internal Revenue Code of 1986 merely  
14 because such plans were maintained by an organiza-  
15 tion prior to such organization becoming a certified  
16 professional employer organization (as defined by  
17 section 7705 of such Code (as added by subsection  
18 (c) of this section)).

○