

107TH CONGRESS
1ST SESSION

S. 1305

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.

IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2001

Mr. GRAHAM (for himself and Mr. GRASSLEY) introduced the following bill;
which was read twice and referred to the Committee on Finance

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 2001”.

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 remu-
 22 neration 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 FESSIOAL 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-

tract entered into under section 7705,
and

“(III) a controlled group that includes a certified professional employer organization shall not include in the controlled group any work site employees performing services for a customer.

For purposes of subclause (III), all persons treated as a single employer under subsections (b), (c), (m), and (o) shall be treated as members of the same controlled group.

“(ii) SELF-EMPLOYED INDIVIDUALS.—A work site employee who would be treated as a self-employed individual (as defined in section 401(c)(1)), a disqualified person (as defined in section 4975(e)(2)), a 2-percent shareholder (as defined in section 1372(b)(2), or a shareholder-employee (as defined in section 4975(f)(6)(C)), but for the relationship with the certified professional employer organization, shall be treated as a self-employed individual, disqualified person, a 2-percent shareholder,

1 or shareholder-employee for purposes of
 2 rules applicable to employee benefit plans
 3 maintained by such certified professional
 4 employer organization.

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

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

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

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

23 “(IV) AUTHORITY.—Such other
 24 similar requirements as the Secretary
 25 may prescribe.

1 “(iv) WELFARE BENEFIT FUNDS.—

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

9 “(I) Medical benefits other than
 10 retiree medical benefits.

11 “(II) Disability benefits.

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

17 “(v) EXCISE TAXES.—Notwith-
 18 standing clause (iii), the certified profes-
 19 sional employer organization and the cus-
 20 tomer contracting for work site employees
 21 to pay services shall be jointly and sever-
 22 ally liable for the tax imposed by section
 23 4971 with respect to failure to meet the
 24 minimum funding requirements and the

1 tax imposed by section 4976 with respect
2 to funded welfare benefit plans.

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

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

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

20 “(bb) The work site em-
21 ployee ceasing to provide services
22 to one customer of such certified
23 professional employer organiza-
24 tion and becoming a work site
25 employee with respect to another

customer of such certified professional employer organization; and

“(cc) The termination of a service contract between the certified professional employer organization and the customer with respect to which the work site employee performs services, provided, however, that such a contract termination shall not constitute a termination of employment under section 4980B(f)(3)(B) for such work site employee if, at the time of such contract termination, such customer maintains a group health plan (other than a plan providing only excepted benefits within the meaning of sections 9831 and 9832 or a plan covering less than two participants who are employees).

“(II) TERMINATION EVENT CONSTITUTING A QUALIFYING EVENT.—If an event described in subparagraph

1 (vi)(I) also constitutes a qualifying
 2 event under section 4980B(f)(3) with
 3 respect to the group health plan main-
 4 tained by the certified professional
 5 employer organization for the affected
 6 work site employee, such plan shall no
 7 longer be required to provide continu-
 8 ation coverage as of any new coverage
 9 date.

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

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

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

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

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

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

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

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

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

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

22 “(ix) PERSON LIABLE FOR TAX.—For
23 purposes of the liability for tax under sec-
24 tion 4980B, the person or entity required
25 to provide continuation coverage under this

1 clause (vi) shall be deemed to be the em-
 2 ployer under section 4980B(e)(1)(A).

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

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

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

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

21 “(3) PLANS MAINTAINED BY COMPANIES IN
 22 SAME CONTROLLED GROUP AS CERTIFIED PROFES-
 23 SIONAL EMPLOYER ORGANIZATION.—In applying any
 24 requirement listed in paragraph (1)(B)(iii), a con-
 25 trolled group which includes a certified professional

1 employer organization shall not include in such con-
 2 trolled group any work site employees performing
 3 services for a customer. For purposes of this para-
 4 graph, all persons treated as a single employer
 5 under subsections (b), (c), (m) and (o) shall be
 6 treated as members of the same controlled group.

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

11 “(A) SERVICE CREDITING FOR PARTICIPA-
 12 TION AND VESTING PURPOSES.—In the case of
 13 a plan maintained by a certified professional
 14 employer organization or a customer, for pur-
 15 poses of determining a work site employee’s
 16 service for eligibility to participate and vesting
 17 under sections 410(a) and 411, rules similar to
 18 the rules of paragraphs (1) and (3) of section
 19 413(c) shall apply to service for the certified
 20 professional employer organization and cus-
 21 tomer.

22 “(B) COMPENSATION.—

23 “(i) IN GENERAL.—Except as pro-
 24 vided in clause (ii), for purposes of sub-
 25 section (s) and section 415(c)(3), or other

1 comparable provisions of this title based on
2 compensation which affects employee ben-
3 efit plans, compensation received from the
4 customer with respect to which the work
5 site employee performs services shall be
6 taken into account together with com-
7 pensation received from the certified pro-
8 fessional employer organization.

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

16 “(C) ELIGIBLE EMPLOYERS.—The provi-
17 sions of sections 457(f)(1)(A) and (B) apply to
18 a work site employee performing services for a
19 customer that is an eligible employer as defined
20 in section 457(e)(1). The preceding sentence
21 shall not apply in the case of a plan described
22 in section 401(a) which includes a trust exempt
23 from tax under section 501(a), an annuity plan
24 or contract described in section 403, the portion
25 of a plan which consists of a transfer of prop-

erty described in section 83, the portion of a plan which consists of a trust to which section 402(b) applies, or a qualified governmental excess benefit arrangement described in section 415(m).

“(5) SPECIAL RULES WHERE MULTIPLE PLANS.—

“(A) IN GENERAL.—For purposes of applying section 415 with respect to a plan maintained by a certified professional employer organization, the organization and customers of such organization shall be treated as a single employer, except that if plans are maintained by a certified professional employer organization and a customer with respect to a work site employee, any action required to be taken by such plans shall be taken first with respect to the plan maintained by the customer.

“(B) MINIMUM BENEFIT.—If a minimum benefit is required to be provided under section 416, such benefit shall, to the extent possible, be provided through the plan maintained by the certified professional employer organization.

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

4 “(A) IN GENERAL.—

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

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

1 nation with respect to each work site em-
 2 ployee of such customer.

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

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

12 “(I) elective deferrals and earn-
 13 ings attributable thereto,

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

18 “(III) matching contributions de-
 19 scribed in section 401(k)(3)(D)(ii)(I)
 20 and earnings attributable thereto,
 21 of former work site employees associated
 22 with the terminated customer only in a di-
 23 rect rollover described in section
 24 401(a)(31), and

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

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

8 **“SEC. 7705. CERTIFIED PROFESSIONAL EMPLOYER ORGANI-
 9 ZATIONS.**

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

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

18 “(1) demonstrates that such person (and any
 19 owner, officer, and such other persons as may be
 20 specified in regulations) meets such requirements as
 21 the Secretary shall establish with respect to tax sta-
 22 tus, background, experience, business location, and
 23 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 45B of such Code is amended by
15 adding at the end the following new subsection:

16 “(e) CERTIFIED PROFESSIONAL EMPLOYER ORGANI-
17 ZATIONS.—For purposes of this section, in the case of a
18 certified professional employer organization that is treat-
19 ed, under section 3511, as the employer of a worksite em-
20 ployee who is a tipped employee, the credit determined
21 under this section does not apply to such organization, but
22 does apply to the customer of such organization. For this
23 purpose the customer shall take into account any remu-
24 nation and taxes remitted by the certified professional
25 employer organization.”.

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

3 “(d) PAYMENTS TO CERTIFIED PROFESSIONAL EM-
4 PLOYER ORGANIZATIONS.—If a partnership that is a cus-
5 tomer of a certified professional employer organization (as
6 defined in section 7705) makes a payment to such an or-
7 ganization on behalf of a partner, and the payment, if
8 made directly to the partner, would be treated as a guar-
9 anteed payment under section 707(c), the partnership
10 shall treat the payment as if it were a guaranteed payment
11 made to a partner. To the extent that the relevant partner
12 receives all or any portion of such a payment, such partner
13 shall be treated as receiving a guaranteed payment for
14 services under section 707(c).”.

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

17 “(h) TREATMENT OF CERTIFIED PROFESSIONAL EM-
18 PLOYER ORGANIZATIONS.—If a certified professional em-
19 ployer organization (as defined in section 7705) (or a cli-
20 ent of such organization) makes a payment to the State’s
21 unemployment fund with respect to a work site employee,
22 such organization shall be eligible for the credits available
23 under this section with respect to such payment.”.

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

1 (A) by striking the period at the end of
 2 subparagraph (D) of paragraph (3) and insert-
 3 ing “; and”,

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

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

12 (C) in the last sentence—

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

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

19 (5) Section 6053(c) such Code is amended by
 20 adding at the end the following new paragraph:

21 “(8) CERTIFIED PROFESSIONAL EMPLOYER OR-
 22 GANIZATIONS.—For purposes of any report required
 23 by this section, in the case of a certified professional
 24 employer organization that is treated, under section
 25 3511, as the employer of a worksite employee, the

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

8 (e) CLERICAL AMENDMENTS.—

9 (1) The table of sections for chapter 25 of such
 10 Code is amended by adding at the end the following
 11 new item:

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

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

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

15 (f) REPORTING REQUIREMENTS AND OBLIGA-
 16 TIONS.—The Secretary of the Treasury shall develop such
 17 reporting and recordkeeping rules, regulations, and proce-
 18 dures as the Secretary determines necessary or appro-
 19 priate to ensure compliance with the amendments made
 20 by this Act with respect to entities applying for certifi-
 21 cation as certified professional employer organizations or
 22 entities that have been so certified. Such rules shall be
 23 designed in a manner which streamlines, to the extent pos-
 24 sible, the application of requirements of such amendments,

1 the exchange of information between a certified profes-
 2 sional employer organization and its customers, and the
 3 reporting and recordkeeping obligations of the certified
 4 professional employer organization.

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

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

15 (h) EFFECTIVE DATES.—

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

18 (A) January 1, 2003, or

19 (B) the January 1st of the first calendar
 20 year beginning more than 12 months after the
 21 date of the enactment of this Act.

22 (2) CERTIFICATION PROGRAM.—The Secretary
 23 of the Treasury shall establish the certification pro-
 24 gram described in section 7705(b) of the Internal
 25 Revenue Code of 1986 (as added by subsection (c))

1 of this section) not later than 3 months before the
2 effective date determined under paragraph (1).

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

○