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**Statement for the Record
Ways and Means Oversight Subcommittee Hearing
On the
Small Business Health Insurance Tax Credit**

**Submitted by the National Association of Professional Employer
Organizations**

November 15, 2011

The National Association of Professional Employer Organizations (NAPEO) submits the following statement for the record.

NAPEO is the national trade association for the professional employer organization (PEO) industry and the voice of the PEO industry. NAPEO has more than 300 PEO members operating in all 50 states, representing more than 85 percent of the industry's \$81 billion in revenues. NAPEO's PEO members range in size from start-up PEOs to large publicly held companies.

PEOs help small- and medium-sized businesses with human resources, compensation, and employee benefits issues through a co-employment arrangement whereby the PEOs assume W-2 employer status for the client's worksite employees. Employer responsibilities for those worksite employees are shared or allocated between the client and the PEO. Through economies of scale, PEOs improve compliance with federal and state tax and benefits laws and often provide retirement and health benefits that were not available to the workers prior to the PEO arrangement. PEOs collect employment taxes from their clients and remit the taxes to the federal government under the PEO's Employer Identification Number (EIN). This facilitates tax administration by reducing the number of returns processed and by reducing errors in calculating employment taxes. In addition, compliance is improved by accelerating the timing of collection of employment taxes because PEOs deposit taxes more quickly than their small business clients.

The hearing today is to examine the findings of a report (2011-40-103) issued on September 19, 2011, by the Treasury Inspector General for Tax Administration (TIGTA), on the implementation of the Small Business Health Care Tax Credit by the IRS. One of the findings of the report is that small business clients of PEOs may find they are targets of IRS enforcement efforts designed to address employers who do not pay employment taxes. Because these small businesses do not file employment tax returns, TIGTA stated that this problem is caused in part by the inability of the IRS to link a small business client to the PEO with which it contracts.

In 2007, TIGTA issued another report, *Improvements Have Been Made to Monitor Employers That Use Professional Employer Organizations, but More Can Be Done*, (2007-30-169) that recognized that PEO clients and the IRS are vulnerable to non-payment of federal employment taxes by PEOs, because under the regulations, the IRS's only recourse in the event of PEO failure to remit employment taxes is to collect the amounts due from the PEO's clients. TIGTA also reported that several states have laws that require bonding and independent audits for PEOs that do business in their states.

Fortunately, there is legislation that would address many of the concerns raised by TIGTA. Representatives Kevin Brady (R-TX) and Mike Thompson (D-CA) have introduced The Small Business Efficiency Act of 2011 (H.R. 2466) to create a voluntary certification program for PEOs within the IRS.¹ To become IRS-certified, a PEO would have to meet financial standards (including bonding and independent financial audit requirements) and satisfy reporting obligations and other appropriate standards set by the IRS. These reporting requirements could include reporting of the EINs of a PEO's clients as recommended by the TIGTA report.

Under H.R. 2466, certified PEOs would take on sole liability for the collection of federal employment taxes for worksite employees performing services for their PEO clients. Small- and medium-sized business clients that contract with certified PEOs would be assured that they would not be liable for employment taxes when the PEO has accepted that responsibility. This provision would help address one of the findings in the TIGTA report being discussed in today's hearing. TIGTA found that small businesses using PEOs were "unnecessarily" falling into an IRS compliance program designed to identify and audit employers who are not paying their employment taxes. TIGTA called this "a waste of IRS resources" and "an increased burden on those affected taxpayers"—meaning the small and midsized business clients of PEOs. H.R. 2466 would afford protection to businesses that use IRS-certified PEOs from such enforcement.

NAPEO strongly supports H.R. 2466. Enactment of this legislation would result in improved compliance with federal tax law, grant legal status within the IRS for PEOs, and create a safe harbor from IRS enforcement on the payment of employment taxes for small businesses that use certified PEOs. It addresses several of the problems raised by TIGTA in its report in 2007 and the report that is the focus of today's hearing. For these reasons, we ask that the Ways and Means Committee move forward on consideration of H.R. 2466.

¹ Comparable bipartisan legislation has passed the Senate in a previous Congress and a bill identical to the one passed previously by the Senate (S. 1908) has been reintroduced in this Session of Congress by Senators Charles Grassley (R-IA) and Bill Nelson (D-FL).