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The [American Institute of CPAs](#) (AICPA) has written the U.S. Department of the Treasury and the Internal Revenue Service (IRS) with recommendations about the guidance in Notice 2018-68, which was issued to comply with the changes made by the Tax Cuts and Jobs Act (TCJA) relating to executive compensation under section 162(m) of the Internal Revenue Code.

The AICPA explained in its letter that section 162(m) places a \$1 million limitation on the amount of compensation that a "publicly held corporation" can deduct in a taxable year for a "covered employee." The TCJA broadened the definition of "covered employee" to include the principal executive officer (PEO) and principal financial officer (PFO) at any time during the year and not just on the last day of the year as was previously the case. The TJCA also included in the definition the three other most highly compensated officers, for a minimum of five covered employees.

In addition, the TCJA added section 162(m)(3)(C), which mandates that if an

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Exchange Act of 1934.

The AICPA recommended that Treasury and the IRS:

- Provide guidance defining the term “predecessor employer” for purposes of determining who is a covered employee under new section 162(m)(3)(C);
- Provide taxpayers with a safe harbor method for calculating compensation for purposes of determining the three highest paid officers other than the PEO and PFO;
- Provide guidance in relation to which employees are considered officers of a publicly held company for section 162(m) purposes by reference to the U.S. Securities and Exchange Commission’s definition of officer; and
- Provide guidance excluding directors’ fees earned after an individual terminates service as an employee, from the definition of compensation for purposes of section 162(m).

Additionally, the AICPA recommended that Treasury and the IRS allow transition relief in instances related to becoming a publicly held corporation and for nonqualified deferred compensation plans with set formulas.

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