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Beginning in 2027, for calendar year taxpayers, a public company's covered employees will include Current Law Covered Employees as well as the next five highest paid employees.

Mar. 06, 2023



The American Institute of CPAs (AICPA) has submitted comments to the Department of the Treasury and Internal Revenue Service (IRS) related to changes made to

section 162(m) by the American Rescue Plan Act of 2021 (ARPA).

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employees will include Current Law Covered Employees as well as the next five highest paid employees (the "ARPA 5"). The employees included in the ARPA 5 are subject to change every year, and they do not remain covered employees in future years unless they meet the criteria in that future year or become a Current Law Covered Employee.

The AICPA letter identifies recommendations requiring clarification regarding covered employee classification. The items and recommendations are:

I. Covered Employees as ARPA 5 Employees

AICPA Recommendations:

The AICPA recommends that Treasury and the IRS issue guidance clarifying that a covered employee under section 162(m)(3)(D) may be included as one of the five highest paid employees under section 162(m)(3)(C) for a particular taxable year.

II. Determination of ARPA 5 – Definition of Compensation

AICPA Recommendations:

The AICPA recommends that Treasury and the IRS issue guidance related to the determination of which employees are included in the ARPA 5 –

- Define compensation for identifying the ARPA 5 in the same manner that compensation is defined for Current Law Covered Employees
- Allow a publicly held corporation to elect to define compensation for purposes of determining the ARPA 5 as the aggregate amount of compensation otherwise deductible by the taxpayer or the amount of compensation that would be deductible if the employer were a taxable U.S. corporation

- Treat taxpayers as having made the election to define compensation by how they

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AICPA Tax Executive Committee Chair. “Clarifying the treatment of issues we’ve identified regarding the changes to section 162(m) in future guidance will go a long way towards implementing the ARPA changes in a workable fashion.”

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