November 14, 2017

The Honorable Robert J. Portman
Senate Committee on Finance
448 Russell Senate Office Building
Washington, DC 20510

RE: Portman Amendment #3 to the Tax Cuts and Jobs Act

Dear Senator Portman:

The American Institute of CPAs (AICPA) appreciates and supports your proposed Amendment #3 to the Tax Cuts and Jobs Act (the "Act") which would repeal certain provisions of the Act, including the "nonqualified deferred compensation" provision (III. H. 1) of the Chairman's mark. Under the provision, service providers would include nonqualified deferred compensation (NQDC) in income when there is no substantial risk of forfeiture *regardless of whether the service provider has received the corresponding cash*.

The AICPA is concerned that the provision could limit economic growth and place U.S. businesses at a competitive disadvantage compared to foreign businesses that utilize NQDC arrangements. The provision would also interrupt millions of taxpayers' personal financial plans.

Partnerships, generally unable to access public capital markets, must derive working capital from sources such as the unfunded, unsecured promise to pay retirement income to partners and employees after they retire. Partnerships utilize NQDC arrangements as mandatory components of their partners' and employees' compensation packages to fulfill this need.

NQDC arrangements are often used as a retirement vehicle in partnerships where there is a mandatory retirement age (e.g., age 58). Mandatory retirement ages are an important technique used by partnerships to provide smooth management transitions and paths of advancement at all levels throughout the partnerships. In order to ensure that their partners have an adequate income stream to accommodate their mandatory retirement, they provide NQDC arrangements to them. This technique is prevalent throughout various industries regardless of the size of a partnership.

Under the Chairman's mark, retired individuals would have to include in income an amount attributable to future NQDC payments no later than 2026 without having received the cash, which would create a cash flow deficit and financial burden. In order for employees and partners to have the ability to pay the tax upon vesting, partnerships would need to advance cash to them, an obligation not considered by the partnership when the NQDC arrangement

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was established. A potentially significant depletion of a partnership's working capital would occur affecting its ability to offer competitive compensation packages, hire new employees, or create jobs.

We appreciate your leadership in recognizing the negative effect of the nonqualified deferred compensation provision in the Chairman's mark and fully support the amendment to repeal it.

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The AICPA is the world's largest member association representing the accounting profession with more than 418,000 members in 143 countries and a history of serving the public interest since 1887. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

We appreciate your consideration of our recommendation and welcome the opportunity to discuss this issue further. If you have any questions, please contact Jeffrey A. Porter, Chair of the AICPA Tax Reform Task Force, at (304) 522-2553, or jporter@portercpa.com; Kristin Esposito, Senior Manager – AICPA Tax Policy & Advocacy, at (202) 434-9241, or Kristin.esposito@aicpa-cima.com; Lakecia Foster, AICPA Director of Congressional & Political Affairs, at (202) 434-9208, or lakecia.foster@aicpa-cima.com; or me at (408) 924-3508 or annette.nellen@sjsu.edu.

Sincerely,

Annette Nellen, CPA, CGMA, Esq.
Chair, AICPA Tax Executive Committee

cc: Members of the Senate Finance Committee