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IRS Proposes Rules for Employer Trump Account Contribution Programs

The Treasury Department and Internal Revenue Service (the Agencies) have issued proposed regulations governing employer contributions to Trump accounts. The proposal provides detailed rules for employer-sponsored Trump account contribution programs, includes parallel guidance for dependent care assistance programs (DCAPs), and represents the latest step in implementing the new savings initiative.

Background

The One Big Beautiful Bill Act (OBBBA) enacted as Public Law 119-21, created Trump accounts as a new savings vehicle intended to help children begin building assets at an early age. Specifically, the legislation

- created Trump accounts as a new type of traditional IRA for children (Internal Revenue Code Section (IRC Sec.) 530A),
- established a $1,000 federal pilot contribution program for certain eligible children (IRC Sec. 6434), and
- encouraged additional savings by allowing employees to exclude up to $2,500 annually from gross income for qualifying employer contributions made to their own Trump accounts or the accounts of their dependents (IRC Sec. 128).

Since the law's enactment, the Agencies have implemented the program in stages. Initial guidance addressed foundational issues, followed by proposed regulations governing account establishment and the operation of the $1,000 federal pilot contribution program.

General Requirements: Trump Account Contribution Programs

A Trump account is a special type of traditional individual retirement account (IRA) established exclusively for eligible children. Established under IRC Sec. 530A, the account can receive funding from a variety of sources, including individual contributions (e.g., from family members), the $1,000 federal pilot contribution program, qualified general contributions from governments and nonprofit organizations, qualified rollover contributions, and employer contributions under IRC Sec. 128.

Until the account beneficiary reaches age 18, the account is subject to a special "growth period". This period begins when the account is established and ends on December 31 of the year when the beneficiary turns age 17. During this period, special rules govern contributions, investments, distributions, and reporting requirements. Once the growth period ends, the account generally becomes subject to the traditional IRA rules under IRC Section 408(a).

Employers may make contributions to a Trump account established for an employee or an employee's dependent. While employers may make direct contributions to either account, contributions made through a salary reduction arrangement may be made only to the account of an employee's dependent. Employer contributions made through a qualifying Trump account contribution program described by IRC Sec. 128 may be excluded from the employee's gross income. To qualify for this favorable tax treatment, the employer must establish and operate a separate written plan and meet several requirements relating to plan administration, nondiscrimination testing, employee communications, reporting, certifications, and trustee coordination.

Trump Account Contribution Plan Definition

The proposed regulations outline several foundational requirements that employers would need to satisfy to establish and administer a Trump account contribution program.

- **Written Plan.** A Trump account contribution program must be maintained under a separate written plan established by an employer exclusively for the benefit of its employees and their dependents. At a minimum, the written plan must
    - identify the classes of employees eligible to participate in the program;
    - describe how employer contributions are made, including contribution amounts and whether contributions may be made through a section 125 cafeteria plan salary reduction arrangement;
    - explain how employees designate a Trump account for themselves or a dependent to receive contributions;
    - include the certification, employee notice, and reporting procedures required under the proposed regulations;
    - specify the program's plan year; and
    - establish procedures for correcting administrative failures and for notifying employees and trustees when contributions previously treated as IRC Sec. 128 contributions are later determined not to qualify for exclusion from the employee's gross income.
- **No Discrimination in Favor of Highly Compensated Employees (HCEs).** A Trump account contribution program must satisfy certain nondiscrimination requirements as detailed in the Nondiscrimination Rules section below.
- **Reasonable Notification.** Employers must take reasonable steps to inform eligible employees about the availability and terms of a Trump account contribution program. The proposal does not require a specific notice format or method of delivery, allowing employers flexibility in meeting this requirement.
- **Written Statement.** Employers must provide employees with an annual statement reporting the amount of contributions made under the employer's Trump account contribution program during the prior calendar year. Employers can satisfy this requirement by reporting Trump account contributions on Form W-2, in Box 12, using Code TA.
- **Certification.** Under the proposed regulations, employers could rely on an employee's written certification regarding a beneficiary's eligibility for a Trump account contribution, provided the employer has no actual knowledge that the certification is inaccurate. However, the proposal would not allow employers to rely solely on the certification to validate that the account is a valid Trump account. Instead, employers would be required to use an additional reasonable verification method, such as information provided by a trustee, payroll processor, or other service provider (e.g., a unique identifying number corresponding to a particular account).
- **Employer Communication.** The proposed regulations would require employers to notify the trustee when a contribution is intended to qualify as a Section 128 contribution at the time the contribution is made. If an employer later determines that all or part of the contribution does not qualify, it would also be required to provide a corrective notice within a reasonable period. The proposal clarifies that providing notice within 21 calendar days of making that determination would be considered reasonable.
- **Trustee Selection.** A Trump account contribution program may not restrict contributions to a particular trustee or trustees.

Trump Account Contributions Made by Salary Reduction Under an IRC Sec. 125 Cafeteria Plan

Consistent with Notice 2025-68, the proposed regulations would permit Trump account contributions to be made through salary reduction under an IRC Sec. 125 cafeteria plan only when the contributions are made to an account for an employee's dependent. Based on comments received in response to Notice 2025-68, the proposal would also allow employees to make or change prospective salary reduction elections at any time during the plan year, provided the change takes effect before the compensation becomes currently available. In addition, cafeteria plans offering this benefit would be required to specifically describe the Trump account contribution program and permit participants to change or revoke their elections on at least a monthly basis.

Applying the Annual Limit to Trump Account Contribution Program Contributions

The proposal clarifies that IRC Sec. 128(b) limits the amount of employer contributions that may be excluded from an employee's income to $2,500, indexed, applied on a per-employee basis across multiple employers and dependents. Contributions above that limit would remain permissible but would not qualify for the income exclusion.

Separately, IRC Sec. 530A(c)(2) imposes a $5,000 aggregate limit (indexed) on contributions to a Trump account from all applicable sources, including parents, but excluding the $1,000 federal contribution pilot program, qualified rollover, and qualified general contributions. Employers would not be responsible for monitoring compliance with the IRC Sec. 530A(c)(2) limit.

Defining Eligible Individuals and Tax Treatment

The proposal clarifies who may benefit from employer contributions to Trump accounts and how those contributions are treated for tax purposes.

- **Definition of Employee.** Under the proposal, an employee would be defined according to the traditional common-law employee standard. As a result, self-employed individuals, including sole proprietors, partners, corporate directors acting solely as directors, and 2-percent S corporation shareholders, would not be eligible to receive IRC Sec. 128 contributions. While these individuals could sponsor a Trump account contribution program for their employees, they could not participate personally.
- **Definition of Employer.** The proposal would also define an employer using similar common-law principles. In addition, organizations that are treated as a single employer under the controlled-group and affiliated-service-group rules of IRC Sec. 414 would likewise be treated as a single employer for IRC Sec. 128 purposes. This means that related entities within a controlled group of corporations, businesses under common control, or affiliated service groups generally would be aggregated when applying the program's requirements, including nondiscrimination testing.
- **Definition of Dependent.** The proposal adopts the existing definition of dependent as described under IRC Sec. 152. As a result, a child generally may be treated as the dependent of only one parent in the case of divorced or separated parents, while a child may be considered the dependent of both parents when married taxpayers file jointly.
- **Exclusion from Gross Income.** Under the proposal, employer contributions to a Trump account made on behalf of an employee or the employee's dependent would be excluded from the employee's gross income, provided the contributions satisfy the requirements described by IRC Sec. 128. Amounts exceeding the statutory exclusion limit would remain taxable. Although excluded from federal income tax, the contributions generally would still be treated as wages for Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act (FUTA), and Railroad Retirement Tax Act (RRTA) purposes because IRC Sec. 128 does not provide a corresponding payroll tax exclusion. However, because the contributions are excluded from taxable income, they generally would not be subject to federal income tax withholding.

Nondiscrimination Rules

The proposal includes nondiscrimination requirements applicable to Trump account contribution programs under IRC Sec. 128. Specifically, the regulations provide guidance regarding the determination of HCE status; the requirement that contributions and benefits not discriminate in favor of HCEs; compliance with applicable eligibility, classification, and average benefits testing requirements; and the treatment of excluded benefits for testing purposes. In addition, the proposal establishes a safe harbor with respect to the $1,000 federal pilot contribution, clarifies the operation of the 55-percent average benefits test, and sets forth the consequences of a nondiscrimination failure, including available methods for correction and remediation.

- **Definition of HCEs.** The proposal would incorporate familiar nondiscrimination concepts by defining highly compensated employees (HCEs) under existing IRC Sec. 414(q) rules and using those classifications as the basis for Trump account testing. The Agencies state the approach is designed to promote consistency, ease administration, and align Trump account requirements with established employee benefit nondiscrimination standards.
- **Contributions and Benefits.** The proposal would provide that a Trump account contribution program fails the nondiscrimination requirement if it offers more favorable contribution or benefit terms to HCEs. A program generally would satisfy the requirement if it is designed to provide contributions and benefits on the same terms to all eligible employees, even if employees ultimately receive different amounts based on their elections or use of available benefits

- **Eligibility.** The proposal would require Trump account eligibility classifications to be based on reasonable business criteria and not discriminatory in favor of HCEs. The Agencies would provide both a facts-and-circumstances test and a numerical safe harbor for the nondiscriminatory classification requirement, drawing on established nondiscrimination principles used in other employee benefit programs.
- **Average Benefits Test.** Under the proposal, a Trump account program would satisfy the average benefits test if the average benefits provided to non-highly compensated employees (NHCEs) are at least 55 percent of the average benefits provided to HCEs. The proposal would also establish rules for calculating average benefits, determining the testing period, and excluding certain employees from eligibility and average benefits testing.
- **Excluded Employees.** The proposal would clarify that, for purposes of the eligibility and average benefits tests, employers generally must exclude employees who have not attained age 21 and completed one year of service, as well as certain employees covered by a collective bargaining agreement.
- **$1,000 federal pilot contribution safe harbor.** The proposal would provide a safe harbor under which employer matching contributions made to Trump accounts of employees' dependents pursuant to the $1,000 federal pilot contribution program for account beneficiaries born in calendar years 2025 through 2028 may be disregarded for purposes of the contributions-and-benefits nondiscrimination requirement and the 55 percent average benefits test.
- **Testing Failure and Remediation.** The proposal would provide that if a program fails to satisfy applicable nondiscrimination requirements, it generally would not jeopardize its status as a Trump account contribution program with respect to NHCEs. Instead, the arrangement typically would lose status as a Trump account contribution program only with respect to HCEs—except when the employer takes certain steps to remedy an average benefits test failure by including the affected HCEs' contributions in their gross income.

Next Steps

The Agencies accepted comments on the proposed regulations through September 25, 2026, and scheduled a public hearing for October 15, 2026. Comments were requested on several aspects of the proposal, including corrective notice procedures for recharacterized IRC Sec. 128 contributions, approaches for addressing excess contributions under IRC Sec. 530A, and whether additional guidance is needed to apply the 55 percent average benefits test. The Agencies also request comments on the proposed information collection requirements, including compliance burdens, practical utility, opportunities for automation, and related implementation costs. The proposed regulations would apply to plan years beginning on or after the date final regulations are published in the *Federal Register*.

Futureplan will continue to monitor any new guidance as it is released. Visit futureplan.com for the latest developments.

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