Tax Insights
from Compensation,
Benefits, and Employment
Tax Services

Proposed regulations address employer contributions to Trump accounts and related nondiscrimination rules

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In brief

What happened?

Treasury and the IRS on August 11 issued proposed regulations addressing employer contributions to "Trump accounts" under new Section 128 and nondiscrimination rules that apply to Trump account contribution (TAC) programs and Section 129 dependent care assistance (DCA) programs. The regulations are proposed to apply to plan years beginning on or after the date final regulations are published, but taxpayers may rely on the proposed regulations now.

Why is it relevant?

The proposed regulations establish the framework employers need to offer TAC programs, while also clarifying the complex nondiscrimination testing that applies to TAC programs and to DCA programs. Historically, DCA program nondiscrimination rules have been challenging for employers; the proposed regulations provide long-awaited guidance including correction mechanisms for certain failures.

Because taxpayers may rely on the proposed regulations now, employers can begin designing and implementing programs and procedures to address compliance immediately rather than waiting for final rules.

Actions to consider

Employers considering TAC programs should review the written plan requirements and assess whether they can administer the benefit operationally. This assessment includes aligning payroll, benefits, and trustee stakeholders plus evaluating cafeteria plans, recordkeeping, and Form W-2, *Wage and Tax Statement*, reporting systems so they can identify Section 128 contributions, apply the employee-level annual limit, validate Trump account eligibility, and provide corrective notices to trustees if an amount is later determined not to be a qualifying contribution.

Employers that maintain DCA programs should review existing nondiscrimination testing procedures.

Taxpayers may submit comments by September 25, 2026, or participate in the public hearing scheduled for October 15, 2026.

In detail

Background

The One Big Beautiful Bill Act (the Act) added new Section 530A, establishing Trump accounts as a type of traditional individual retirement account (IRA) for eligible children. Special rules apply during the "growth period"— from the date when the account is established through December 31 of the calendar year in which the account beneficiary turns age 17 —after which traditional IRA rules generally apply.

The Act also added new Section 128, which allows employer contributions to a Trump account of the employee or the employee's dependents under a TAC program to be excluded from the employee's taxable income up to a threshold. For 2026 and 2027, the annual threshold per employee is $2,500, inflation-adjusted thereafter.

Treasury and the IRS previously issued Notice 2025-68, which described anticipated guidance on Trump accounts and specifically addressed the $2,500 employee-level limit, employer identification of Section 128 contributions to trustees, and the rule that Section 125 cafeteria plan salary reduction may fund only a dependent's Trump account, not an employee's own. The proposed regulations generally build on that notice, adding detailed operative rules for TAC programs and providing new nondiscrimination rules for TAC programs and for Section 129 DCA programs.

TAC program proposed requirements

Consistent with the Act, the proposed regulations define a TAC program as a program governed by a separate written plan maintained by an employer for the exclusive benefit of its employees to fund contributions to the Trump accounts of the employees or their dependents, subject to various requirements detailed in the regulations. These requirements include a compliant written plan, operational compliance with the terms of the written plan, providing various notices and certifications, and satisfying nondiscrimination requirements. If an arrangement fails to satisfy a requirement, contributions are not excludable from employee income—though a nondiscrimination failure would apply only with respect to highly compensated employees (HCEs) and not non-highly compensated employees (NHCEs), as defined.

Eligible employees

An employer may permit contributions only for common-law employees, as described under Section 3401 regulations. Self-employed individuals—such as partners in a partnership, sole proprietors, directors, and 2% S corporation shareholders—may not participate in TAC programs or receive excludable contributions.

The proposed regulations also define an employer based on the common-law standard and treat all persons within a controlled group under Section 414(b), (c), (m), or (o) as a single employer for purposes of Section 128 TAC programs.

Observation: TAC programs place another spotlight on proper worker classification. An employer that excludes common law employees who are misclassified as independent contractors could create noncompliance with various TAC program requirements.

Contributions to TAC programs

Aggregate contributions for each employee for a calendar year cannot exceed $2,500 (adjusted for inflation after 2027), or a lesser amount specified in the employer's written plan. This limit applies per employee (not per dependent) and serves as the maximum contribution for an employee of any member of the controlled group, with certain limitations.

Consistent with prior guidance under Notice 2025-68, the proposed regulations permit employees to make a pre-tax salary contribution under a Section 125 cafeteria plan, but only to the Trump account of the employee's dependent.

Observation: A salary reduction arrangement requires amendments to the cafeteria plan document, its administration, and communications specific to the TAC program's rules. In particular, TAC program election rules are more generous than those for other cafeteria plan benefits such as healthcare contributions, health flexible spending accounts, and DCA programs. Treasury and the IRS indicate their intention to amend the regulations under Section 125 for cafeteria plans to incorporate the proposed TAC program rules.

The proposed regulations include a safe harbor for an employer contribution designed to match the Act's Section 6434 pilot program contribution of $1,000 for each Trump account established for an eligible child born in calendar years 2025 through 2028. Employers offering pilot match contributions and other Section 128 contributions must address separate designations and nondiscrimination testing.

Wage exclusion and employment tax reporting

A TAC program must furnish a written statement showing the amount of Section 128 contributions made for an employee for the calendar year. The draft 2026 Form W-2 includes an update to Box 12 with code TA to satisfy this requirement.

The proposed regulations clarify that although Section 128 excludes qualifying employer contributions from an employee's gross income for federal income tax withholding purposes, contributions generally remain taxable wages subject to Social Security, Medicare, and Additional Medicare (FICA) taxes, federal unemployment (FUTA) tax, and Railroad Retirement Tax Act (RRTA) tax unless another exclusion applies.

Observation: Employers should work with internal stakeholders and third-party vendors to determine correct tax set up and payroll configuration. The coding within the payroll system should include a federal income tax withholding exclusion while preserving FICA and FUTA tax treatment, as applicable.

Eligibility certifications, trustee validation, and communications

Contributions can be made only while the Trump account beneficiary is in the growth period, which can pose compliance challenges for employers. The proposed regulations allow, but do not require, employers to rely on written employee certifications meeting certain criteria. Further, employers must use a method reasonably designed to verify— through information from the trustee, payroll processor, or other service provider—that contributions are made to a valid Trump account.

Because the employee establishes the Trump account with a third-party trustee, the proposed regulations note that employers must identify Section 128 contributions to the trustee when transmitted, adopt procedures ensuring proper identification, and provide a timely corrective notice with certain required information to the trustee if an amount is later determined not to be a Section 128 contribution. Notice provided within 21 calendar days after the employer's determination is deemed timely under the proposed rule.

An arrangement is not a TAC program if an employer limits contributions to Trump accounts held by a particular trustee or trustees.

Additionally, employers must give eligible employees reasonable notice of TAC program availability and terms, though the proposed regulations do not prescribe the content or method.

Proposed nondiscrimination rules

The proposed regulations provide parallel (not identical) nondiscrimination frameworks for TAC programs under Section 128 and DCA programs under Section 129, modifying the rules as needed to reflect the purposes of Section 128.

- **Proposed contributions and benefits rule:** A program fails nondiscrimination requirements if it provides more favorable terms for HCEs than for other employees; however, a program designed to provide contributions or benefits on the same terms to all eligible employees may satisfy the rule even if actual amounts differ due to varying elections or utilization.

- **Proposed eligibility rule:** The employer's eligibility classification must be reasonable, based on objective business criteria, and nondiscriminatory in operation. Reasonable classifications may include job category, salaried versus hourly status, geographic location, or similar bona fide business criteria, while naming employees individually—or using criteria with substantially the same effect—would not be reasonable. A classification could satisfy this requirement through either a facts-and-circumstances test or a numerical safe harbor.

- **Proposed average benefits test:** Average benefits provided to NHCEs under all TAC programs, or all DCA programs, of the employer must be at least 55% of the average benefits provided to HCEs. The proposed regulations provide a framework for applying this test.

- **DCA statutory owner concentration limit:** For DCA programs, the proposed regulations restate the statutory owner concentration rule, limiting benefits to no more than 25% of amounts paid or incurred by the employer for dependent care assistance during the year for the class of individuals (or their spouses or dependents) each of whom is a greater than 5% shareholder or owner during the year.

- **Correction and remediation:** If a TAC program fails the average benefits test as of the last day of the plan year, the proposed regulations allow the program to be treated as satisfying the requirement with respect to HCEs if the employer includes excess benefits in their income and applicable wages not later than the deadline to furnish Forms W-2 for the year in which the benefits were received, and provides a corrective notice to the trustee. Similar correction rules apply to DCA programs (but not the trustee notice requirement) for average benefits test failures and owner concentration failures, including income inclusion and wage reporting by the same deadline.

Observation: The requirement to identify and correct failures by the date Forms W-2 are required to be furnished (e.g., February 1, 2027, for 2026 Forms W-2) may be particularly challenging. Third-party vendors, such as payroll providers and professional employer organizations, also have strict cut-off dates to meet payroll deadlines.

Next steps

Employers considering Trump account contributions should assess whether they intend to provide employer-funded contributions, employee salary reduction contributions under a cafeteria plan, pilot match contributions, or some combination. They also should evaluate whether they can satisfy written plan, administration, notice, certification, trustee validation, trustee and payroll provider communication, Form W-2 reporting, and correction requirements before implementation.

If salary reduction contributions are considered, employers should address cafeteria plan documents, enrollment, communications, and administration specific to TAC programs.

Finally, employers maintaining DCA programs should revisit nondiscrimination testing procedures to address the proposed Section 129 framework and timing of any remedial income inclusion by the Form W-2 furnishing deadline.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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