# LEGAL UPDATE

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**HIGHLIGHTS**

- The IRS has proposed rules regarding employer contributions to Trump accounts that would establish general requirements for these contribution programs.
- The proposed rules also provide more guidance on the nondiscrimination requirements for dependent care FSAs and would apply parallel rules to Trump account contribution programs.
- The proposed rules may be relied upon for plan years beginning before the date final rules are published.

# IRS Proposes Rules for Employer Contributions to Trump Accounts and Nondiscrimination Rules for Dependent Care FSAs

On Aug. 10, 2026, the IRS released proposed rules to provide guidance on employer contributions to Trump accounts and the nondiscrimination rules for dependent care flexible spending accounts (FSAs). Although the proposed rules are not effective until they are finalized, they can be relied upon for plan years beginning before the date final rules are published. Employers interested in Trump account contribution programs and those with dependent care FSAs should become familiar with the proposed guidance.

## Background

The "One Big Beautiful Bill Act" created Trump accounts, a type of federal tax-favored account for children, effective for tax years beginning in 2026. Trump accounts are a type of traditional individual retirement account, with special rules applying during a "growth period" that ends on Dec. 31 of the year before the calendar year in which the child reaches age 18. Contributions are subject to an annual limit of $5,000 (subject to cost-of-living adjustments after 2027), although certain types of contributions are not counted toward this limit, such as the federal government's $1,000 pilot program contribution for eligible children born between 2025 and 2028.

Employers can contribute to the Trump account of an employee or an employee's dependent pursuant to an Internal Revenue Code (Code) **Section 128 Trump account contribution program**. These contributions are excludable from the employee's income for federal tax purposes. Contributions are limited to $2,500 per employee per year, subject to cost-of-living adjustments after 2027. This program must be established pursuant to a written plan document and meet certain tax rules that apply to dependent care FSAs regarding discrimination, eligibility, notifications and benefits.

Also, a Trump account contribution program may be offered via salary reduction under a Section 125 cafeteria plan if the contribution is made to the Trump account of an employee's dependent, but not if the contribution is made to the Trump account of the employee (IRS Notice 2025-68).

## Proposed General Requirements

The proposed rules would establish general requirements for Trump account contribution programs, including following the terms of the written plan document and providing various notices and certifications. Failing to satisfy these criteria would make employer contributions includible in employees' income for tax purposes.

Key aspects of the proposed rules include the following:

- **Written plan document**: A Trump account contribution program must be set forth in a written plan document that includes specific information, such as the classes of employees eligible to participate, the rules governing employer contributions (including the amount of contributions and whether contributions may be made via a Section 125 cafeteria plan salary reduction arrangement) and the procedures under which an employee must designate the Trump account to receive contributions;

- **Reasonable notification**: All eligible employees must be given reasonable notification of the availability and terms of the Trump account contribution program. The proposed rules do not prescribe content requirements or a particular method for furnishing this notice.
- **Annual written statement**: Employers should include the amount of Trump account contributions on the employee's Form W-2, Wage and Tax Statement. The 2026 General Instructions for Forms W-2 and W-3 provide that the employer must report the amount of Section 128 contributions made to the Trump account of an employee or dependent of an employee in box 12 of the Form W-2 with code TA.
- **Certification**: A Trump account contribution program may only contribute to a Trump account whose account beneficiary is in their growth period and is an employee or an employee's dependent. While employers may rely on certain employee certifications regarding eligibility, they cannot rely solely on an employee certification to establish that the recipient account is a valid Trump account. Employers must use a method reasonably designed to verify, through information provided by the trustee, payroll processor or other service provider, that the contribution is made to a valid Trump account.
- **Employer communication**: Employers must advise trustees that contributions are Section 128 Trump account contributions when they are made. Employers must adopt procedures to ensure that Section 128 contributions are properly identified and notify trustees if they subsequently determine that any such contributions do not qualify as a Section 128 contribution.
- **Trustee selection**: Employers cannot limit contributions to Trump accounts held by a particular trustee or trustees.
- **Salary reduction contributions**: A Section 125 cafeteria plan may permit employees to make prospective salary reduction elections for Trump account contributions, or to change or revoke those elections at any time during the plan year, provided the election change is effective before the salary becomes currently available. Also, the Section 125 cafeteria plan must specifically describe the Trump account program contribution benefit and permit participants to prospectively change or revoke elections at least monthly before salary becomes currently available.
- **Annual limits**: The total contributions under a Trump account contribution program for a calendar year may not exceed the lesser of $2,500, as adjusted for inflation for years after 2027, or the amount specified in the program's written plan document. The contribution limit is a per-employee limit (not a per-dependent limit); however, if an employee has more than one dependent with a Trump account, a program may permit the contribution to be allocated among those accounts, provided that the aggregate amount an employer contributes with respect to the employee for the calendar year does not exceed the annual limit.

## Proposed Nondiscrimination Rules

The proposed rules would provide more guidance on the nondiscrimination requirements for dependent care FSAs and apply similar requirements to Trump account contribution programs. As background, a dependent care FSA must satisfy the following four nondiscrimination tests:

1. **Contributions and benefits test**: The contributions and benefits provided under the plan cannot discriminate in favor of highly compensated employees (HCEs);
2. **Eligibility test**: The plan must benefit employees who qualify under a classification that does not discriminate in favor of HCEs;
3. **Owner concentration test**: No more than 25% of the amounts paid or incurred by the employer are provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom owns more than 5 percent of the stock or of the capital or profits interest in the employer; and
4. **Average benefits test**: The average benefits provided to employees who are not HCEs under all plans of the employer are at least 55 percent of the average benefits provided to the HCEs under all plans of the employer.

The proposed rules would provide parallel rules regarding applying these nondiscrimination tests to dependent care FSAs and Trump account contribution programs, although Trump account contribution programs are not subject to the owner concentration test. For example, the proposed rules would provide that a program satisfies the contributions and benefits test if it is designed to provide contributions and benefits on the same terms for all employees who are eligible to participate, even if eligible employees receive different amounts of contributions and benefits as a result of differing elections or differing utilization of the contributions and benefits. The proposed rules would also clarify that reasonable classifications under the eligibility test generally include specified job categories, nature of compensation (salaried or hourly), geographic location, and similar bona fide business criteria, but that an enumeration of employees by name, or by criteria having substantially the same effect, is not a reasonable classification.

## Pilot Match Contributions

Some employers have announced their intention to match the federal government’s $1,000 contribution for eligible children born in the years 2025 through 2028. Provided that the arrangement otherwise qualifies as a Trump account contribution program under Code Section 128, these employer contributions would be excludable from employees’ gross income. Like other Section 128 contributions, the match contributions would count toward the program’s annual limit. Also, the proposed rules would create a safe harbor disregarding match contributions for purposes of the contribution and benefits test and the average benefits test. To be eligible for the safe harbor, the match contributions must generally be made available on the same terms and conditions to all employees with dependents who are eligible to receive pilot program contributions to their Trump accounts.