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Third Set is a Charm? Proposed Regulations Regarding Employer Contributions to Trump Accounts

By Allison Martinez
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Highly anticipated proposed regulations governing employer contributions to Trump Accounts ("Accounts") and related nondiscrimination rules were published on August 11, 2026. (91 Fed. Reg. 51611). These proposed rules came with a bonus—proposed nondiscrimination rules for dependent care assistance programs—which we will cover in a future post. The proposed rules provide much needed information for employers considering adding Accounts to benefits packages offered to employees.

The framework for the Accounts was established by the One, Big, Beautiful Bill Act ("OBBA"), which added Sections 530A, 128, 139J, 6434, and 6659 to the Internal Revenue Code ("Code"). OBBA, however, left the formulation of the rules surrounding the Accounts' administration and operation to the Secretary of the Treasury. Proposed regulations regarding Accounts, their lifecycle, and the federal government's $1,000 seed contribution were published in March 2026. This article will discuss the highlights of the latest set of proposed rules and what to watch for on the horizon as there are still many unanswered questions employers must consider.

The Genie is Out of the Bottle

July 4, 2026, marked the first day when contributions could be made to the Accounts. The Accounts, in short, are restricted IRAs that can be established for "eligible children" who have a valid SSN and will be under 18 during the entire calendar year in which the election to open the Account is made. Contributions of up to $5,000 per year (indexed for inflation after 2027) can be made to the Accounts. Employers can contribute up to $2,500 (indexed for inflation after 2027) *per employee* to the Accounts of employees or their dependents. The federal government will provide a $1,000 seed contribution for eligible children born in 2025, 2026, 2027, and 2028. Many large companies and private donors have pledged to match the federal government's seed contribution made to employees' dependents' Accounts or to make separate contributions to the Accounts.

The Proposed Regulations Aren't *Everything* Employers Wished For

The proposed regulations answer many—but not all—of employers' outstanding questions surrounding their ability to make tax-free contributions to employees' and employees' dependents' Accounts. The proposed regulations define key terms and outline the requirements for a Code Section 128 compliant Trump Account Contribution Program ("TACP").

Self-Employed Individuals Can't Participate in Their Own TACP

Code Section 128 allows employers to make tax-free contributions to employees' and employees' dependents' Accounts each year. The proposed rules define the term "employee" to mean common law employees and specifically provide that "employee" does not include self-employed individuals. Self-employed individuals may maintain a TACP for their employees but cannot participate in the TACP.

TACP Requirements

For a TACP to comply with Code Section 128 and provide tax-free benefits to employees, employers must adopt a separate written plan exclusively for employees' benefit that:

1. Specifies who is eligible to participate;
2. Provides the rules governing employer contributions, including the amount of contributions and whether contributions may be made through a Code Section 125 cafeteria plan salary reduction arrangement;
3. Satisfies the proposed regulations regarding permitted contributions (e.g., required certifications from employees, the extent to which employers may rely on these certifications, and the treatment of excess contributions);
4. Does not discriminate in favor of highly compensated employees ("HCEs");
5. States the plan year; and
6. Outlines the procedures for correcting administrative failures and giving notice to employees regarding such corrections (e.g., when the nondiscrimination tests are not met).

For a TACP to comply with the proposed regulations, employers must also give employees reasonable notice of its availability and provide employees an annual written statement of the contributions that were made on their behalf (i.e., on the employee's Form W-2). When transmitting contributions to trustees, the proposed regulations also require that employers affirmatively identify contributions as a Code Section 128 contribution in writing.

Cafeteria Plans

The proposed regulations incorporate guidance from Notice 2025-68, which allowed employees to make prospective salary reduction contributions to their dependents' Accounts via their employer's Code Section 125 cafeteria plans. The proposed regulations provide cafeteria plans must specifically describe the TACP benefit and allow participants to "prospectively change or revoke elections at least monthly, before salary becomes currently available." Employers wishing to adopt a compliant TACP which allows employees to make pre-tax contributions via their 125 cafeteria plan will not only need to adopt a separate written TACP but will also need to amend their cafeteria plan.

Nondiscrimination Requirements

The proposed regulations outline the nondiscrimination tests a TACP must meet. In general, as expected, TACPs cannot discriminate in favor of HCEs, which for purposes of the proposed regulations has the same definition as set forth in Code Section 414(q).

The proposed nondiscrimination rules also outline how employers can swiftly correct a TACP that fails to meet the nondiscrimination tests. Effectively, this requires that HCEs include the excess benefit amounts in their gross income. The catch is that these excess benefits must be reported on the Form W-2 for the year in which the excess benefits are received, so employers must ensure they perform their testing with enough time to issue corrections and timely report them.

Employers are allowed, but are not required, to include their match of the federal government's seed contribution for purposes of the TACP's contributions and benefits test and average benefits test. This certainly answered some of the questions for large employers who promised to match the federal government's seed contributions to employees' dependents' accounts and were concerned about running afoul of the nondiscrimination rules.

What Should Employers Wish for Next?

The proposed regulations provide much needed clarity on the existing regulations, but some hard questions remain unanswered. Many of these questions fall on recordkeepers and other service providers—are they prepared to administer TACPs and to run the related nondiscrimination tests? Employers also should consider whether they are ready to take on the responsibility associated with TACPs, and whether the administrative burdens and expenses outweigh just giving employees additional taxable compensation.

Comments on the proposed regulations are due on September 25, 2026. A public hearing is scheduled for October 15, 2026. Requests to speak including an outline of the topics to be discussed at the public hearing are also due on September 25, 2026.

Additional information regarding Accounts can also be found in our earlier articles:

- *Trump Accounts are Exempt from ERISA: Should Employers Celebrate by Making Contributions?*
- *Trump Accounts: At least 5 Million Reasons Why Employers Should be Ready for Questions*
- *Joining the Party or Sitting on the Sidelines? What Employers Need to Know About Trump Accounts*

If you have questions regarding Accounts and whether they are a good fit for your organization's benefits package, please contact your Boutwell Fay attorney.