AMERICAN
RETIREMENT
ASSOCIATION

4401 N. Fairfax Drive | Suite 600 | Arlington, VA 22203
P 703.516.9300 | F 703.516.9308 | info@usaretirement.org | usaretirement.org

Working for America's Retirement

September 25, 2026

Internal Revenue Service
Attn: CC:PA:01:PR (REG–101355–26)
Room 5503
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

RE: REG-101355-26, Employer Contributions to Trump Accounts and Nondiscrimination Rules for Dependent Care Assistance Programs

The American Retirement Association ("ARA") is writing in response to the Notice of Proposed Rulemaking regarding employer contributions to Trump Accounts and nondiscrimination rules for dependent care assistance programs under Internal Revenue Code ("IRC") §§128 and 129, published in the Federal Register on August 11, 2026, and referenced above (the "Proposed Rule").[1] ARA thanks the Internal Revenue Service ("IRS" or the "Service") and the Department of the Treasury ("Treasury") for the opportunity to provide input on these matters. ARA's comments below are limited to the provisions governing employer contributions to Trump Accounts under IRC § 128 ("Section 128") and do not address the dependent care assistance program provisions.

ARA is a national organization of over 40,000 members who provide consulting and administrative services to American workers, savers, and sponsors of retirement plans and IRAs. ARA members are a diverse group of retirement plan professionals of all disciplines, including financial advisors, consultants, administrators, actuaries, accountants, and attorneys. ARA is the coordinating entity for its five underlying affiliate organizations, representing the full spectrum of America's private retirement system: the American Society of Pension Professionals and Actuaries ("ASPPA"), the National Association of Plan Advisors ("NAPA"), the National Tax-Deferred Savings Association ("NTSA"), the American Society of Enrolled Actuaries ("ASEA"), and the Plan Sponsor Council of America ("PSCA"). ARA's membership is diverse but united in a common dedication to America's employer-based retirement plan system.

Summary

ARA appreciates Treasury's and the Service's efforts to provide a workable framework for employer-sponsored Trump Account contribution programs. The Proposed Rule addresses many important operational and compliance questions and represents a significant step toward making these programs a practical employee benefit.

To promote scalable administration, facilitate consistent implementation, and reduce operational errors and compliance burdens while preserving the policy objectives of Section 128, ARA recommends the Service revise the Proposed Rule to:

- Establish a standardized framework for validating Trump Accounts.
- Clarify the written requirement for Section 128 contributions.
- Establish a corrective-notice process, including trustee responsibilities following receipt of a correction.

[1] Employer Contributions to Trump Accounts and Nondiscrimination Rules for Dependent Care Assistance Programs, 91 Fed. Reg. 51611 (August 11, 2026).

- Clarify how statutory beneficiary conditions affect nondiscrimination testing.
- Clarify average-benefits testing rules for mixed-funded arrangements and employers maintaining multiple programs.
- Confirm the permissibility and nondiscrimination treatment of employer matching contributions tied to IRC § 125 salary-reduction elections.
- Provide additional payroll and tax-reporting guidance for when contributions lose Section 128 treatment.
- Provide standardized implementation guidance, sufficient lead time, and model notices.

Discussion

The Proposed Rule provides the first comprehensive regulatory framework for employer contributions to Trump Accounts under IRC §128, added to the Code by the One Big Beautiful Bill Act. ARA supports the efforts of Treasury and IRS to provide guidance that minimizes the burden on employers and facilitates the prompt implementation of Trump Account contribution programs. Section 128 requires coordination among employers, payroll providers, trustees, and other service providers that may not otherwise maintain direct administrative relationships, and the nondiscrimination testing framework raises questions specific to the structure of Trump Account contribution programs. The effectiveness of the account validation, contribution identification, and correction procedures established by employers under the Proposed Rule depends not only on the employer's ability to provide accurate and timely information, but also on the trustee's ability to receive, process, and act upon that information in a consistent manner. ARA accordingly recommends that Treasury establish minimum standards applicable to all trustees receiving Section 128 contributions and that the Service provide the following additional clarifications.

I. Account Validation

The Proposed Rule generally permits employers to rely on employee certifications regarding certain beneficiary information, including the beneficiary's relationship with the employee, date of birth, and absence of known facts that would make the beneficiary ineligible to receive a contribution. However, it prohibits reliance on employee certification that the designated account is a valid Trump Account, requiring employer validation through information obtained from a trustee, payroll processor, or other service provider. While the Proposed Rule states an employer may not rely solely on an employee certification that the recipient account is a valid Trump Account, it does not specify what information must be independently verified.

ARA recommends the Service define the account-level information that should be verified to establish that a destination account is a valid Trump Account. Providing a standardized, secure electronic validation method together with a reasonable-reliance safe harbor is critical to reducing the employer burden in establishing a Trump Account contribution program. Consistent with the preamble's example involving the use of a unique account identifier, the final regulations should clarify what confirmation from a trustee or other authorized source is sufficient to establish that a designated account exists and is a Trump Account within the meaning of IRC § 530A(b)(1).

ARA further recommends that the Service create a single validation portal. Because the Proposed Rule prohibits employers from restricting Section 128 contributions to accounts maintained by any particular trustee, employers will not be able to establish a streamlined validation process with a single service provider for the Trump Accounts receiving their Section 128 contributions. Without a centralized portal or other standardized validation method, employers may have to validate accounts independently across potentially hundreds of trustees. Establishing and maintaining multiple validation methods as additional trustees emerge would impose a significant burden on employers, hamper widespread adoption, and increase the likelihood of errors.

II. Written Identification Requirement

ARA recommends the Service confirm that machine-readable electronic designations, including standardized transaction codes, file fields, or API specifications, satisfy the employer's written-identification requirement for Section 128 contributions. The Proposed Rule states the employer must affirmatively identify contributions as Section 128 contributions "in writing." Example 5 under Prop. Treas. Reg. §1.128-2(d)(5)(vi)(E) further requires the employer to not identify a $1,000 pilot program contribution as a Section 128 contribution. This requirement, unlike the employee certification of beneficiary's identity, date of birth, and absence of known disqualifying facts, does not specifically mention that paper or electronic form is permitted. We note that the preamble stated that Treasury and IRS are exploring ways in which information can be validated in a secure, electronic way. Employer contribution transmissions are overwhelmingly electronic and, therefore, providing a mechanism for incorporating the identification of Section 128 contributions in an electronic file is critical to reducing employer burden caused by ad hoc solutions and inconsistent identification practices across different trustee platforms.

III. Corrective-Notices and Trustee Standards

ARA recommends that the Service and Treasury establish a correction process that includes both employer and trustee responsibilities. The Proposed Rule imposes obligations on employers to issue corrective notices but provides limited guidance regarding the administrative procedures trustees should follow upon receipt of those notices, creating uncertainty for employers, trustees, payroll providers, and other service providers attempting to establish operational processes. Guidance should permit standardized electronic and batch corrective notices and identify the information necessary to match a correction to an original transaction, including account identifiers, transaction identifiers, contribution dates, contribution sources, and corrected amounts.

The guidance should also specify the actions trustees must take upon receipt of a corrective notice and address issues such as partial corrections, unmatched transactions, transferred accounts, corrections involving multiple Trump Accounts, and situations in which correction notices are received after distributions have occurred. Establishing a standardized correction framework would promote consistent administration and help ensure that downstream reporting is handled accurately.

IV. Eligibility Testing and Beneficiary Conditions

ARA recommends that the final regulations provide that an employee is treated as eligible for purposes of the eligibility test under Proposed Treas. Reg. § 1.128-3(b) where the employer makes the program available on the same terms as similarly situated employees and the employee's inability to receive a contribution results solely from statutory requirements applicable to the employee or beneficiary. ARA believes that the Proposed Rule appropriately applies nondiscrimination principles to Trump Account contribution programs. However, unlike many employee benefit arrangements, eligibility to receive a benefit under a Trump Account contribution program (and a dependent care assistance program under IRC § 129) may depend on statutory requirements relating to a beneficiary rather than eligibility conditions established by the employer.

This distinction creates a unique administrative challenge in applying the "meaningful opportunity to receive benefits" standard. An employee may be fully eligible to participate in a program offered on uniform terms yet be unable to receive a contribution because the employee does not have a qualifying dependent or a valid Trump Account. In such circumstances, differences in testing results may reflect employee demographics rather than employer-imposed eligibility classifications. However, the Proposed Rule does not clearly address how employees affected solely by statutory beneficiary requirements should be treated for purposes of determining eligibility percentages.

V. Average-Benefits Testing

The Proposed Rule provides employers with flexibility in designing Trump Account contribution programs, including programs funded through salary-reduction arrangements, employer contributions, or a combination of both. Proposed Treas. Reg. § 1.128-3(c)(4) permits employers to disregard employees with compensation below $25,000 in certain salary-reduction arrangements. However, the Proposed Rule does not clearly address how that rule applies when employees receive both salary-reduction and employer-funded contributions.

ARA recommends that the Service clarify how the less than $25,000 exclusion applies to employees who receive benefits both through a salary-reduction agreement and through employer-provided contributions. In particular, the Service should clarify whether these employees may be disregarded entirely or only if their sole benefits are provided through a salary-reduction agreement and whether the exclusion must be applied consistently across all §128 programs.

In addition, guidance is needed for employers operating non-calendar plan years. The average benefits test must be satisfied as of the last day of the plan year and the remediation mechanism under Prop. Treas. Reg. §1.128-3(c)(5) requires income inclusion by the Form W-2 furnishing deadline. This presents unique issues for non-calendar year plans. For example, if two controlled-group members maintain programs with different plan-year end dates — one ending December 31 and the other ending June 30 — the average-benefits test must account for contributions across both programs, but the Proposed Rule does not specify when the aggregate test is performed, how contributions are measured for the program whose plan year has not yet ended, or how remediation under one program's testing cycle interacts with the other program's contribution data.

ARA recommends that the Service provide coordination rules for employers maintaining multiple programs, including programs sponsored by members of the same controlled group operating under different plan years.

VI. Employer Matching Contributions Tied to Section 125 Salary-Reduction

Prop. Treas. Reg. §1.128-2(d)(7) contemplates both salary-reduction contributions made through a cafeteria plan and employer-funded Section 128 contributions. However, it does not expressly address arrangements that combine these concepts by conditioning an employer contribution on an employee's salary-reduction election.

ARA recommends that the Service clarify that matching arrangements are permitted and are treated as part of the same Section 128 arrangement as the benefits provided through a salary reduction agreement. The Service should also confirm that a uniform matching formula satisfies the contributions-and-benefits test under Prop. Treas. Reg. §1.128-3(a) notwithstanding variations in employee elections and resulting contribution amounts.

Resolving this uncertainty is important because matching contributions may represent one of the most practical and attractive plan designs available to employers considering adoption of a Trump Account contribution program. Employers are familiar with matching-contribution structures, employees readily understand them, and such arrangements may encourage participation while allowing employers to maintain predictable benefit costs. Clarifying that an employer-funded matching contribution conditioned on an employee's Section 125 election is permissible and how such contribution should be characterized for Section 128 purposes will improve administration, adoption, and avoid errors.

VII. Payroll and Tax-Reporting

The Proposed Rule establishes procedures for determining whether contributions qualify for §128 treatment, but administration of those rules ultimately depends upon accurate payroll and tax reporting. Additional guidance is needed regarding the reporting consequences when contributions initially treated as excludable later become taxable.

ARA recommends the Service issue guidance addressing Forms W-2c, Forms 941-X, withholding obligations, employment-tax deposits, and related reporting issues arising when contributions lose Section 128 treatment. The guidance should also coordinate these reporting requirements with the correction procedures applicable to trustees.

Without clear reporting rules, employers may face uncertainty regarding employment tax corrections, wage reporting obligations, withholding requirements, and coordination with trustee correction procedures. These issues become particularly challenging when compliance failures are identified after Forms W-2 have already been issued or when affected employees have terminated employment.

Additional guidance is particularly important for employers operating non-calendar-year programs. Because nondiscrimination failures and other compliance issues may not be identified until after a calendar year's reporting deadline has passed, Treasury should clarify the treatment of contributions spanning multiple calendar years and explain how required corrections interact with existing wage-reporting deadlines.

VIII. Implementation and Transition Relief

ARA recommends that the Service issue model certifications, notices, technical specifications, testing examples, and reporting guidance sufficiently in advance of mandatory compliance to permit systems to be developed and tested. Implementation will require coordinated processes among employers, payroll providers, benefits administrators, trustees, and other service providers, and additional guidance under IRC § 530A remains forthcoming.

Conclusion

These recommendations reflect ARA's view that the Proposed Rule provides a strong foundation for Trump Account contribution programs but that additional operational and interpretive guidance is necessary to permit employers, service providers, and trustees to administer these programs consistently and at scale. Standardized account validation procedures, minimum trustee interoperability standards, an end-to-end corrective-notice framework, targeted nondiscrimination testing clarifications, and coordinated payroll reporting guidance would reduce the compliance burden on employers, promote consistent treatment of similarly situated taxpayers, and support the prompt adoption of Trump Account contribution programs that Section 128 is intended to facilitate. We appreciate Treasury's and the Service's consideration of these comments.

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These comments are submitted on behalf of ARA and were prepared by ASPPA's IRS Subcommittee, Laura R. Harrington, CPC, QPA, QKA, TGPC, Chair. ARA appreciates the opportunity to submit these comments on the Proposed Rule and would welcome the opportunity to discuss them further. Please contact Kelsey N.H. Mayo, Chief of Retirement Policy and Regulatory Affairs, at kmayo@usaretirement.org or (703) 516-9300, with any questions regarding this matter. Thank you for your time and consideration.

Sincerely,

/s/

Brian H. Graff, Esq., APM
Executive Director/CEO
American Retirement Association

/s/

Kelsey Mayo, Esq.
Chief, Retirement Policy & Regulatory Affairs
American Retirement Association

cc:
Mr. John Hughes
Director, Employee Plans
Internal Revenue Service

Mr. Louis J. Leslie
Senior Technical Advisor
Employee Plans
Internal Revenue Service

Ms. Laura Warshawsky
Deputy Associate Chief Counsel
Tax Exempt and Government Entities
IRS Chief Counsel

Ms. Helen Morrison
Benefits Tax Counsel
Office of Tax Policy
U.S. Department of the Treasury

Mr. William Evans
Attorney-Advisor
Benefits Tax Counsel
U.S. Department of the Treasury