

October 20, 2026

Internal Revenue Service
Attn: CC:PA:01:PR (CC-00349938-26)
Room 5503
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

RE: CC-00349938-26 (RIN 1545-BS14), Guidance on Eligible Investments for Trump Accounts

The American Retirement Association (“ARA”) is writing in response to the proposed regulations regarding eligible investments for Trump Accounts under Internal Revenue Code (“IRC”) § 530A, as added by section 70204 of Public Law 119-21, published in the Federal Register on August 21, 2026 (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 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 and the Service’s willingness to provide guidance on specific questions raised by stakeholders, including securities lending, the use of borrowings and derivatives, and trustee monitoring of eligible investments. As the preamble to the Proposed Rule recognizes, trustees need “legal certainty” to provide appropriate investment fund alternatives in Trump Accounts. To provide that certainty, ARA recommends that Treasury and the Service:

- Confirm that securities lending compensation is neither an annual fee nor an annual expense for purposes of the 0.1 percent limit;
- Confirm that whether an investment fund is excluded under the other index-related criteria is determined based on the fund’s stated investment objective and principal investment strategies as disclosed in its prospectus and that other activities of a fund or its sponsor do not cause the fund to fail to be an eligible investment, and conform the language of the other index-related criteria to the tracking requirement and the qualified index requirements; and
- Include Trump Account corrections in the IRA correction procedure authorized under section 305(c) of the SECURE 2.0 Act.

¹ Guidance on Eligible Investments for Trump Accounts, 91 Fed. Reg. 54281 (August 21, 2026).

Discussion

The Proposed Rule would add new regulations under IRC § 530A addressing eligible investments for Trump Accounts, largely carrying forward, with modifications, the guidance on eligible investments described in Notice 2025-68.² A Trump Account that holds an ineligible investment during the growth period may cease to be a Trump Account, so trustees need clear, objective standards they can apply when making the eligibility determinations the Proposed Rule requires.

I. Clarify Treatment of Securities Lending Compensation

The Proposed Rule measures the limit on annual fees and expenses in IRC § 530A(b)(3)(A)(iii) (the “0.1 percent limit”) by “the sum of its annual fees . . . and annual expenses.” Fees are “all of the amounts that the fund charges its investment fund holders directly,” and annual expenses are “the amount set forth as the investment fund’s total annual operating expenses in its prospectus,” with “the reduced amount” applying when the prospectus reflects fee waivers or expense reimbursements. Neither provision addresses compensation retained by a securities lending agent, which may be an affiliate of the fund’s adviser, out of the income the fund earns from lending its securities. That compensation is not charged to fund holders directly, but it arguably reduces the lending income that would otherwise be available to the fund.

For example, a broad U.S. index fund may report total annual operating expenses well below 0.1 percent in its prospectus fee table but also disclose in its prospectus that it pays a securities lending agent, which may be an affiliate of the fund’s adviser, a fee based on the fund’s lending returns. A trustee therefore knows the fund incurs a securities lending fee but cannot determine its amount from the prospectus, and the Proposed Rule does not say whether or how that fee counts toward the 0.1 percent limit. A trustee that cannot resolve that question initially or during its periodic determination may avoid lower-cost index funds because they engage in securities lending.

ARA recommends that the final regulations confirm that securities lending compensation retained by a securities lending agent, including an affiliate of the fund’s adviser, is neither part of an investment fund’s annual fees nor part of its annual expenses for purposes of the 0.1 percent limit.

Lending compensation is not a fee because it is not charged to fund holders directly, and it is not an expense because it is not included in the prospectus figure for total annual operating expenses that the Proposed Rule uses to measure expenses. Confirming this would let trustees rely on the prospectus, as the Proposed Rule permits, without needing information about lending arrangements that is not reported there. It would also be consistent with the treatment of portfolio transaction costs, which the fund pays and which affect fund performance but are not reflected in annual fund operating expenses, and with the preamble’s recognition that “securities lending by investment funds is common.”

II. Clarify the ESG Exclusion

The Proposed Rule establishes objective standards for determining whether an investment fund tracks the returns of an index (the “tracking requirement”) and whether that index is a qualified index (the “qualified index requirements”). ARA appreciates the effort to provide objective criteria, which is essential to providing service providers with the clarity necessary to operate Trump Accounts in a compliant manner. However, the current construction of certain provisions in the Proposed Rule introduces problematic uncertainty.

Under the tracking requirement, an investment fund tracks the returns of an index if “the fund’s investment objective is to seek to provide investment results that, before fees and expenses, replicate the performance of the index,” and under the qualified index requirements, the index must have “a publicly available index methodology that describes the criteria for inclusion in the index and the construction of the index.” Whether the index that an investment fund tracks meets the qualified index requirements “is *generally* determined by

² See Notice 2025-68, 2025-52 I.R.B. 856.

reference to the index methodology for the index” (emphasis added). The Proposed Rule then provides, under the heading “Other index-related criteria for eligible investments,” that “[a]ny investment fund that *corresponds to* the returns of an environmental, social, and governance (ESG) index is not an eligible investment,” that “[a]n ESG index includes any index that has, or is marketed as having, a *focus on* environmental, social, or governance factors,” and that “[a]ny investment fund that is marketed or sold as having an investment objective to track an ESG index is not an eligible investment” (emphasis added).

Several terms in the three ESG-related provisions quoted above create uncertainty because they introduce considerations unrelated to tracking or qualified index requirements. First, by stating that qualification is “generally” determined by reference to the index methodology, the provision leaves service providers uncertain about when they may rely on that methodology and when other factors may affect qualified index status.

Additionally, the provisions use “corresponds to the returns of” rather than the defined “tracks the returns of” standard, even though the preamble describes the exclusion as applying to “any investment fund that tracks the returns of an ESG index.” Corresponding to an index is a different standard than tracking an index, and therefore, use of that term introduces uncertainty into the permissible design of qualifying investments.

Finally, the Proposed Rule seeks to clarify the prohibition on ESG index funds by prohibiting funds that focus on ESG factors or are marketed as having an investment objective to track an ESG index. The Proposed Rule does not, however, define these terms. As a result, “focus on,” “marketed as,” and the reference to “governance” might be read to treat a fund seeking to replicate an index with no ESG criteria as an ESG index, or as an ineligible fund, due to fund sponsor activity of which a service provider is not aware when selecting the investment.

This uncertainty imposes undue compliance risks and administrative burdens on trustees and other service providers, potentially discouraging them from offering otherwise eligible investments to Trump Account beneficiaries.

ARA recommends that the final regulations (1) confirm that whether an investment fund is excluded under the other index-related criteria is determined based on the fund’s stated investment objective and principal investment strategies as disclosed in its prospectus, and that other activities of a fund or its sponsor (or the marketing of them) do not cause the fund to fail to be an eligible investment; (2) replace “corresponds to the returns of” with “tracks the returns of” in the other index-related criteria; and (3) remove “generally” from the rule that qualified index status is determined by reference to the index methodology.

Removing uncertainty from these provisions and allowing reliance on the stated objectives and strategies in a fund’s prospectus is consistent with the stated intent of the Proposed Rule. The preamble explains that funds tracking ESG indices are excluded “because they limit exposure to companies in a way that makes them similar to sector-specific funds.” Whether an investment fund limits exposure to companies in that way is shown by the investment objective and principal investment strategies described in its prospectus, which identify the index the fund seeks to replicate and how the fund invests. Keeping the focus on these disclosures gives trustees an objective basis for their determinations, consistent with the Proposed Rule’s provision that trustees may rely on a fund’s prospectus and other public documents required by Federal securities laws. The recommended clarifications would confirm that the “marketed as” language supplements, rather than displaces, that focus on the fund’s stated objective and strategy. The exclusion would remain fully effective, as a fund that deviates from the index identified in its prospectus based on ESG factors would not meet the tracking requirement. At the same time, trustees and account beneficiaries would benefit from stable, predictable eligibility determinations.

III. Include Trump Accounts in the IRA Correction Procedure

The Proposed Rule provides a correction procedure for a trustee’s administrative error that results in an ineligible investment, and Treasury and the Service request comments on whether Trump Account

corrections should be included in the IRA correction procedure authorized under section 305(c) of the SECURE 2.0 Act.

ARA recommends that Treasury and the Service include Trump Account corrections in the IRA correction procedure authorized under section 305(c). Section 305(c) builds on the Employee Plans Compliance Resolution System, which provides plan sponsors and service providers with a proven framework for correcting failures. Including Trump Account corrections in the IRA correction procedure would give trustees, who likely also work with other IRAs, a single, familiar framework for correcting failures, which will promote compliant administration and lower the burdens of offering Trump Accounts.

Conclusion

The Proposed Rule provides important guidance that will help trustees identify the eligible investments in which Trump Account funds may be invested during the growth period. Clarifying the treatment of securities lending compensation, clarifying application of the ESG exclusion, and providing familiar correction options would provide certainty to service providers, preserve access to low-cost index funds, protect account beneficiaries from unnecessary sales and reinvestments, and promote compliant administration of accounts.

These comments are submitted on behalf of ARA and were prepared in consultation with the NAPA Government Affairs Committee. ARA appreciates the opportunity to submit these comments on the Proposed Rule and would welcome the opportunity to discuss them further. Please contact Kelsey 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:

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. Scott Steadman
Attorney-Advisor
Benefits Tax Counsel
U.S. Department of the Treasury