THE ERISA INDUSTRY COMMITTEE
Shaping benefit policies before they shape you.

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SUBMITTED ELECTRONICALLY

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: RIN 1545-BS19; Employer Contributions to Trump Accounts and Nondiscrimination Rules for Dependent Care Assistance Programs

To Whom It May Concern:

On behalf of The ERISA Industry Committee (ERIC), thank you for the opportunity to comment on the proposed regulations entitled "Employer Contributions to Trump Accounts and Nondiscrimination Rules for Dependent Care Assistance Programs (proposed rule or proposed regulations).[1] Large employers are at the forefront of helping millions of American workers achieve financial security and wellness, including planning so that their children can have a head start toward reaching their dreams. To that end, Trump accounts represent an intriguing new option that many Americans will consider, and many employers will explore creating "Trump account contribution plans" (TACPs).

By way of background, ERIC is a national advocacy organization exclusively representing the largest employers in the United States in their capacity as sponsors of employee benefit plans for their nationwide workforces. With member companies that are leaders in every economic sector, ERIC is the voice of large employer plan sponsors on federal, state, and local public policies impacting their ability to sponsor benefit plans. ERIC member companies offer benefits to tens of millions of employees and their families, located in every state, city, and Congressional district. Our members sponsor benefit plans subject to the *Employee Retirement Income Security Act* (ERISA) and provisions of the Internal Revenue Code (Code).

ERIC appreciates the helpful and thoughtful guidance that was included in the proposed regulations, which explain a wide range of implementation issues relating to Trump accounts. However, additional operational questions remain, many of which we understand the agencies are addressing or intending to address with BNY, the government's financial agent. We also strongly appreciate the coordination the IRS and Treasury provided in connection with the Department of Labor confirming that, in most cases, TACPs do not create ERISA plans. While

[1] 91 Fed. Reg. 51611 (Aug. 11, 2026).

we understand many details are still in development, we offer the following comments on the proposed regulations.

- **Requirement for a Written Plan**

§1.128-2(b) of the proposed rule lays out requirements for the separate written plan under which a TACP is administered. Among these requirements is a recitation of various operational rules relating to how an employee designates the relevant Trump account; certification, notice, and reporting procedures, and the procedures for correcting administrative failures and providing certain corrective notices to employees and trustees. While these processes must exist, it is unclear why they must be recited in the plan document, which would require a plan amendment if and when the processes are updated. We recommend permitting these to be incorporated by reference in lieu of enshrinement in the plan document.

- **Notice to Employees**

Code Sec. 128 and §1.128-2(f) of the proposed rule require that employees be given reasonable notification of the availability and terms of the TACP. However, the proposed rule does not include content requirements or a method of furnishing the notice. While ERIC appreciates the flexibility provided by the proposed rule, we also recommend that IRS and Treasury consider providing a model notice and confirming that the notice can be delivered electronically.

- **Remitting Contributions**

In comments we submitted in February, we stressed the importance of having a single repository for Trump account contributions. One way that could have worked was to permit employers to designate a single receiving trustee. In the proposed regulations, Treasury has foreclosed that possibility. However, we subsequently understand that the Treasury Department is considering establishing a process for BNY, as the financial agent, to functionally serve as the common clearinghouse for contributions. ERIC requests (1) that this arrangement be formalized in the final regulations, so that it is permanently a feature of the administration of Trump Accounts; and (2) additional guidance be provided to plan sponsors about the timing and details surrounding the mechanism to remit contributions to BNY on behalf of their employees. We also request that guidance make clear that TACP contributions may be remitted by check, ACH, wire, or other commercially reasonable methods.

- **Account Validation**

Proposed rule §1.128-2(d)(4) permits but does not require an employer to rely on certain employee certifications in order to determine whether a contribution is permitted, unless the employer has actual knowledge that the certification is incorrect. These certifications include (a) that the account beneficiary is the employee or anticipated to be the dependent of the employee during the taxable year in which the contribution is made; (b) the beneficiary's date of birth; (c) that no facts are known to the employee that would make the beneficiary ineligible to receive the contribution. However, the employer is not permitted to solely rely on an employee certification to establish that the recipient account is a valid Trump account. Instead, under §1.128-

2(d)(4)(iii), the employer must use a "method reasonably designed to verify, through information provided by the trustee, payroll process, or other service provider, that the contribution is made to a valid Trump account." The preamble contemplates that the employee will provide to the employer a "unique identifying number that corresponds to a particular Trump account" which could then be used to verify that the account is a valid Trump account. We understand Treasury is exploring ways to facilitate this verification. We recommend that Treasury clarify an employer's obligations when an employer knows an employee certification is incorrect. We also recommend that Treasury create a centralized mechanism for verification using these unique identifiers. That could be in conjunction with BNY's role as a clearinghouse for contributions. Treasury should also confirm that no additional information or process would be required from employers other than providing these unique identifiers. Finally, the regulations should also address the eligibility and contribution issues applicable to U.S. citizens working abroad, including whether the employee's child is eligible for a Trump Account, the $1,000 pilot program, and contributions under a TACP.

- **Corrections Issues**

Proposed rule §1.128-2(f) delineates the rules for communications between the contributing employer and the Trump account trustee. The employer must affirmatively identify the amount as a section 128 contribution in writing. The employer must adopt procedures to ensure that these section 128 contributions are properly identified, and to notify the trustee when there are erroneous contributions. If there is an erroneous contribution, the employer is required to provide a corrective notice identifying the affected account, the calendar year in which the contribution was made, and the amount the erroneous contribution, within 21 days of the date the employer makes the determination that the amount is not a valid section 128 contribution. We have several recommendations relating to these obligations:

- Treasury and IRS should provide a model corrective notice and confirm it may be delivered electronically. The agencies should also clarify whether notice to the impacted employee, which can then be remitted to the trustee, is sufficient.

- Employers should be permitted to request a Trump account trustee return a TACP pre-tax salary reduction contribution if the employer determines that the individual is not a permitted recipient, or if there is a mistaken identity or payroll error (such as similar names or identifying numbers), or if the remitted contribution exceeds the employee's TACP election. In those cases, the contribution should be remitted so it can be distributed to the employee as taxable wages. Such a contribution should not affect the qualification of the TACP. Additional analogous scenarios adapted from the Health Savings Account context should similarly be incorporated into the final regulations. *See* IRS Information Letter 2018-0033 (Sept. 9, 2015).

- Similarly, we appreciate that employers do not have a responsibility to track total contributions made to a Trump account (i.e. to track whether total contributions exceed the $5,000 annual limit), and that any excess contributions will be attributed to non-employer contributions. We urge this to be included in the final regulations.

- Similarly, the final regulations should include an ordering rule to coordinate the $2,500 employer contribution cap and the $5,000 overall annual contribution cap. This could draw inspiration from the ordering rules in the Employee Plans Compliance Resolution System (EPCRS) to correct excess contributions. An explicit ordering rule would help the correction framework operate predictably and provide a clear path for returning or recharacterizing excess amounts.

- The agencies should also establish clear rules for trustees to follow regarding the "time" that controls ordering contributions. Several different times could be used, including account validation time, payroll date, remittance time, or posting date. The rules should be clear about how the trustee or centralized clearinghouse must handle a contribution that would cause one or both limits to be exceeded. In particular, Treasury/IRS should clarify whether trustees must accept a partial contribution up to remaining capacity and reject the balance, or whether they may (or must) reject the entire contribution. The agencies should also create model standardized rejection and correction verbiage to enable employers to remediate payroll and tax treatment (e.g., distinguishing between "no remaining capacity under the overall cap," "exceeds remaining capacity," and "employer cap exceeded"). Finally, the agencies should also clarify the trustee's obligations upon receiving a corrective notice, including the timing and tax reporting for distributing impermissible contributions.

- The agencies should also clarify what happens in the example provided in Proposed Rule §1.128-2(d)(5)(vi)(D). In this example, two unrelated employers each contribute $2,500 with respect an individual employed by both employers. Under the example, neither would need to provide a corrective notice, as both employers' contributions comply with the $2,500 limit individually. However, the employee is required to include $2,500 of gross income on the employee's tax return. The agencies should clarify whether the excess funds can remain in the Trump account or if (and how) they are remitted to the employers.

- **Nondiscrimination Issues**

  - ***TACPs***

The Proposed Rules subject TACPs generally to three nondiscrimination tests: the contributions and benefits test, the eligibility test, and the average benefits test. Under a proposed regulatory safe harbor, a pilot match contribution arrangement is exempt from the contributions and benefits test and the average benefits test.

We request further clarification of the operation of the safe harbor in a situation where an employee has more than one qualifying dependent eligible to receive a matching contribution. Additionally, it would be very helpful for the agencies to provide transition relief for at least 2026 and 2027 for TACPs designed in good faith. This would remove a significant hurdle to establishing TACPs as an initial matter.

Further, §1.128-3(b) of the proposed rule lays out a general requirement that the TACP design must not be discriminatory in favor of highly compensated employees or their dependents. However, employers are allowed to use “eligibility classifications” based on objective business criteria to define eligibility. The proposed regulation specifically permits classifications including job categories, nature of compensation, geographic location, and other business criteria. We suggest the final regulations include flexibility for employers to restrict matching contributions to be made for employees whose dependents receiving pilot program contributions for a birth that occurred before the onset of the employment relationship, or to permit a reasonable period of time to pass after birth before a matching contribution is made.

- ***DCAPs***

ERIC appreciates the Department for modernizing dependent care assistance programs' nondiscrimination testing rules as it will permit employers to conduct testing based on actual plan participants and beneficiaries rather than the entire eligible employee population. Employers have frequently encountered difficulties satisfying existing nondiscrimination testing requirements because the rules require testing based on all employees eligible for the benefit — not just those who actually elect and utilize the arrangement. This clarification will more accurately reflect real-world utilization of the benefit and reduce testing failures while preserving the integrity of nondiscrimination safeguards.

Dependent care assistance programs are an important workforce support tool, particularly as employers seek to improve employee retention, recruitment, and workforce participation. This technical change will better support working families with caregiving responsibilities and encourage continued employer sponsorship of dependent assistance benefits.

- **Puerto Rico Considerations**

Many large employers have operations in Puerto Rico. It is therefore important that Treasury provide guidance to clarify how TACP rules apply to employees in Puerto Rico. Specifically, we request that Treasury and IRS coordinate with Puerto Rico tax authorities to make clear that Puerto Rico-based employees may make pre-tax TACP deferrals. If pre-tax salary reduction TACP contributions are not allowed in Puerto Rico, the agencies should confirm that Puerto Rico employees who establish a dependent Trump account are permitted to receive an employer pilot match contribution. The agencies should also allow employers to exclude Puerto Rico employees from TACP nondiscrimination testing.

- **Administrative Fees for Affiliated Trustees**

Some TACP plan sponsors may have affiliated custodians serving as Trump account trustees. It should be clarified whether those trustees are permitted to charge administrative fees for participating employees. If so, and if the employer chooses to subsidize those fees, the agencies should clarify whether those subsidized fees are taken into consideration for determining the annual contribution limit or for other tax purposes.

- **Transition Relief**

Many employers are working hard to establish TACPs in a timely way, but the complexity of compliance may slow down contributions for 2026. We request permitting employers to make 2026 contributions through April 15, 2027. We also request relief from reporting penalties for 2026 contributions. This relief will encourage more employers to consider making 2026 contributions.

Conclusion

Thank you again for the opportunity to provide these initial comments. We look forward to providing additional comments and working with IRS, the Department of Treasury, the Department of Labor, and others to ensure that these new accounts are as operationally feasible as possible – and thus are able to benefit as many American families as possible.

Respectfully submitted,

Andrew Banducci