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Internal Revenue Service
Room 5203
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Re: CC:PA:01:PR (Notice 2025-68)

To Whom It May Concern:

The U.S. Chamber of Commerce (Commerce) appreciates the work the Department of the Treasury and the Internal Revenue Service (collectively, Treasury) are doing in implementing Section 530A of the One Big Beautiful Bill Act (OBBBA),[1] which created Trump accounts. Although Treasury requested comments on a number of issues in Notice 2025-68 (Notice), the comments below focus on employer contributions to Trump accounts.

Background

OBBBA amended the Internal Revenue Code (Code) to add a new Section 530A to create Trump accounts. Section 530A(a) specifically provides that "[e]xcept as provided in this section or under regulations or guidance established by the Secretary, a Trump account shall be treated for purposes of this title in the same manner as an individual retirement account under section 408(a)." Individual Retirement Accounts (IRA) are only subject to the Code, and they are not subject to Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA).[2]

The additional rules that apply to these accounts only apply during the period that ends before January 1 of the calendar year in which the account beneficiary turns 18, referred to as the "growth period" in the Notice. After the growth period, the account is subject to the rules in Code Section 408 that apply to IRAs, with limited

[1] An Act to provide for reconciliation pursuant to title II of H. Con. Res. 14, Pub. L. No. 119-21, 139 Stat. 72 (2025).

[2] ERISA was enacted to regulate employer provided plans. As enacted, ERISA contains four titles. Title I contains the labor provisions that regulate employer plans, and DOL has jurisdiction over this title. Title II contains the tax provisions which amended the Code, and Treasury has jurisdiction over this title. Title III contains administrative provisions, and Title IV includes plan termination and multiemployer plan provisions. IRAs were included in Title II and not in Title I because they are not employer plans, and Congress did not intend for DOL to have jurisdiction over IRAs.

exceptions such as determining basis related to a distribution and as determined by the Secretary of the Treasury (Secretary).

A Trump account may only be established for an eligible individual, which is an individual for whom an election is made to establish the account, who has not turned 18 before the close of the calendar year in which the election is made, and for whom a Social Security number has been issued before the election date. The Secretary (or a delegate) creates the initial Trump account (initial Trump account) for each eligible individual. A subsequent account (referred to as a rollover account) may be established by someone other than the Secretary, but it may only be funded by a trustee-to-trustee transfer from the entire account balance of the initial Trump account making this a qualified rollover contribution.

OBBBA also added a new Section 128 to allow for employer contributions to Trump accounts. Under Section 128(a), an employee's gross income "does not include amounts paid by the employer as a contribution to the Trump account of such employee or of any dependent of such employee if the amounts are paid or incurred" pursuant to a Trump account program. Section 128(b) states that the "amount which may be excluded under subsection (a) with respect to any employee shall not exceed $2,500."

Aggregate annual contributions to each Trump account (other than qualified rollovers, qualified general contributions and pilot plan contributions), cannot exceed $5,000 (inflation adjusted).

For purposes of Section 128(c) a Trump account contribution program of an employer is a "separate written plan of an employer for the exclusive benefit of his employees to provide contributions to the Trump accounts of such employees or dependents of such employees which meets requirements similar to the requirements of paragraphs (2), (3), (6), (7) and (8) of section 129(d)."

Paragraph 129(d)(2) provides that contributions and benefits under a dependent care program (DCAP) cannot discriminate in favor of highly compensated employees HCEs (as defined in Code section 414(q) or their dependents). Paragraph 129(d)(3) provides that a DCAP must benefit employees who qualify as a classification set up by the employer that does not discriminate in favor of HCEs or their dependents. Paragraph 129(d)(6) requires employers to notify employees of the availability and terms of a DCAP. Paragraph 129(d)(7) requires the DCAP provide each employee with a written statement on or before January 31 showing the amounts paid or expenses incurred by the employer in providing dependent care assistants to the employee during the previous calendar year. Finally, paragraph 129(8) provides that average benefits provided to employees who are not HCEs must be at least 55 percent of the average benefits provided to HCEs (including benefits made by employees under salary reduction agreements). This is known as the utilization test. However, for contributions made through salary reduction agreements, a plan may disregard any employees whose compensation is less than $25,000.

DCAPs are not considered welfare plans under the ERISA[3]; however, if contributions are made through a salary reduction agreement, they must also meet the requirements under Code section 125. The Notice clarified that contributions to Trump accounts may be made through a cafeteria plan if the contribution is for the employee's child, but not if it is for the employee.[4]

Discussion

1. ERISA coverage

In the Notice, Treasury stated that it intends to work with the Department of Labor to issue guidance on how to structure employer contributions to Trump accounts to ensure they are not subject to ERISA. Our position is that Trump accounts are not subject to ERISA. Congress could have amended ERISA to include Trump accounts as ERISA covered plans. However, it did not. Furthermore, given that a Trump account program is to be set up similar to a DCAP under Code section 129(d), which are not considered ERISA plans, a Trump account contribution program also should not be considered an ERISA covered plan.[5] Finally, because these accounts are treated in a similar manner as IRAs which are not covered by ERISA, the fact that an employer may contribute to the account will not make it an ERISA covered plan.[6]

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[3] See Advisory Opinion 1993-25A (DOL stating that a DCAP is not a welfare plan under ERISA). ERISA defines a welfare plan as "any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 186(c) of this title (other than pensions on retirement or death, and insurance to provide such pensions)." 29 U.S.C. Section 1002(1).
[4] Treasury indicated in the Notice that it would issue future guidance on contributions being made through Code section 125 plans. Presumably, this would include clarification that any employee contributions made on a pre-tax basis through the Code section 125 plan are included in the total $2,500 that may be excluded from income tax. Furthermore, if an employer allows for contributions through a cafeteria plan, Treasury should clarify that there are no additional notice or written plan document requirements other than those applicable to a cafeteria plan.
[5] ERISA defines a pension plan in relevant part as "any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program: (i)provides retirement income to employees, or (ii)results in a deferral of income by employees for periods extending to the termination of covered employment or beyond." 29 U.S.C. Section 1002(2).
[6] In a 2008 GAO Report entitled "Individual Retirement Accounts: Government Actions Could Encourage More Employers to Offer IRAs to Employees", GAO stated that:

2. Self-certification

An initial account must be established by the Secretary, and an individual may only have one funded account open at a time. An individual may establish subsequent accounts referred to as rollover accounts. To be a qualified rollover contribution, all money from an initial account must be transferred to a rollover account. The Treasury should provide that an employer may rely on a certification from the employee that any subsequent account meets all necessary requirements to be a rollover account.

3. Employer-selected trustee and common remitter

As noted above, the initial Trump account is set up by the Secretary. A subsequent Trump account may be established, known as a rollover Trump account, and the amounts in either the initial Trump account or amounts in a rollover Trump account can be rolled over by trustee-to-trustee transfers. To avoid administrative burden and complexity, Treasury should allow an employer to draft its Trump account contribution program written plan document to condition contributions on the employee maintaining a rollover Trump account with the employer's selected trustee. Furthermore, Treasury should work with DOL to provide guidance that conditioning the employer contribution on an employee maintaining a rollover Trump account with the employer's selected trustee will not subject the program to ERISA.[7]

> IRS is responsible for tax rules on establishing and maintaining IRAs, while Labor is responsible for oversight of fiduciary standards for employer-sponsored IRAs and provides certain guidance on payroll-deduction IRAs, although Labor does not have jurisdiction.
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> In written comments on the draft, Labor stated that it does not have jurisdiction over payroll-deduction IRAs. Although Labor is responsible for oversight of fiduciary standards for employer-sponsored IRAs, Labor stated in its comment on our draft report that payroll-deduction IRAs are not under Labor's jurisdiction because they are exempt from the requirements imposed on plans by Title I of ERISA

GAO Report available at https://www.gao.gov/products/gao-08-590.

If a payroll-deduction IRA would not be considered an ERISA plan even though employee contributions are made by an employee of the employer, a Trump account should not be either given that nearly all contributions will be to an account of a child of the employee which would not be the deferral of income for the employee. The fact that an employee under 18 technically could be allowed to contribute to his or her own account (either through direct employer contributions or salary reductions), should not convert all accounts to ERISA covered pension plans. As such, one parameter the Agencies could impose is that to avoid ERISA coverage, a Trump account program may not allow an employee under 18 to contribute to their own account.

[7] In FAB 2004-1, DOL provided that to meet the safe harbor for group or group-type insurance programs at 29 C.F.R. § 2510.3-1(j)(1)-(4), an employer could not limit the ability of eligible individuals to move their funds to another Health Savings Account (HSA) beyond restrictions imposed by the Code. As noted above, Trump accounts are not welfare plans under ERISA, and, therefore, would not qualify for the exemption and would not need to be shown to be "voluntary" in nature. As such, conditioning receipt of an employer contributions would not otherwise subject Trump accounts to ERISA.

If an employer allows employees to elect any trustee, for logistical purposes, the employer would need to use a common remitter. This would be an entity to which the employer could transmit all contributions, and the common remitter would then transmit the applicable amounts to each individual Trump account. Treasury should confirm that such practice would be allowed.

4. Excluded amount

As noted above, Code section 128(b) provides that the "amount which may be excluded under subsection (a) with respect to any employee shall not exceed $2,500." However, it does not indicate if this is the total amount per employee per year or overall. The Notice clarifies that for a calendar year, up to $2,500 (cost of living adjusted) in contributions made by an employer may be excluded from the employee's gross income. Any future guidance should include this clarification that this $2,500 is annual.

Treasury should issue guidance that the exclusion is for all employer contributions during a year because the legislative language could be read that it is for each employer for whom the employee worked in a year, subject to the beneficiary's limit. For example, if an employee received $2,500 from Employer A and then changes jobs, is Employer B allowed to contribute $2,500 on a tax preferred basis or is Employer B precluded from making a contribution on a tax preferred basis because the $2,500 was met. If Employer B is not allowed to make this contribution, how will Employer B know the limit was met? In addition, how would either employer know if the beneficiary's aggregate limit of $5,000 (as adjusted) has already been met (e.g., through the employee's own contributions directly to the Trump account), such that the employer cannot make its full contribution? If such amounts are already met, what is the corrective procedure for (1) the custodian to notify the employer and employee of the excess contributions, (2) the employer to recover excess contributions from the Trump account custodian, and (3) including the excess amount in employee income (as applicable)?

Notice, Q&A. C-1, states that the Treasury and IRS "are considering" procedures to automatically return any excess contributions to the contributor. Such procedures should include clarification that the contributor may be an employer or common remitter (such that excess employer contributions will be returned to the employer or common remitter directly, rather than to the employee or beneficiary), require a prompt return of excess contributions, and require a breakdown by dependent and the employee associated with the dependent of the excess amounts (in cases where the trustee is returning excess for multiple dependents at one time to one contributor).

5. Both parents as employees

Section 128 provides that an employee's gross income does not include "amounts paid by the employer as a contribution to the Trump account of such employee," and such amount cannot exceed $2,500. In future guidance, Treasury should clarify that the full amount is available for each employee. For example, employee A and B have a child together, and the child is under 18 with a Trump account. An employer may contribute a total of $5,000 to that child's Trump account and $2,500 is excludable for each employee.

6. Multiple dependents

As noted above, Code section 128(b) provides that the "amount which may be excluded under subsection (a) with respect to any employee shall not exceed $2,500." This limit is per employee, not per dependent. If an employee has multiple dependents, Treasury should issue guidance on whether and how the employee can direct the employer to split the employer contribution among the employee's dependents' Trump accounts. If the employee fails to so direct the employer, Treasury should issue guidance whether the employer may establish a default method of splitting its contribution among known Trump accounts for the employee's dependents.

7. Legal guardians

A legal guardian may open an account on behalf of a beneficiary. Treasury should clarify in guidance that an employer may make a contribution to a Trump account where the employee is the beneficiary's legal guardian and that amount is not included in that employee's income.

8. Written plan document

Code section 128(c) requires a Trump account contribution program to be a separate written plan of an employer. However, this paragraph does not include any requirements of what must be in the written plan document.[8] Treasury should provide guidance on what must be in the written plan document and consider issuing a model plan document.

9. Statement of Expenses

Because contributions under a Trump account contribution program are actual contributions and not expenses to pay or reimburse for dependent care, listing the

[8] Code Section 530A(b)(1)(C) contains a list of items that must be in the written document governing the Trump account, but these do not appear to apply to the requirements for a written plan document under Code section 128.

amount contributed to Trump accounts on behalf of an employee on the Form W-2 should suffice.

10. Non-discrimination rules

Code section 128 provides that rules similar to those under Code Section 129(d)(8) should apply to Trump account contribution program. However, the two programs are very different and are for different purposes, which means that the rules under Code section 129 may not fully address Trump account programs. A Code section 129(d) dependent care account is one account to be used within the year the money is contributed for eligible dependent care expenses. Trump accounts are long term savings accounts for individuals, and each employee could have one or more child eligible for such account or may not have any child eligible for such account. Code section 128 provides that rules similar to certain sections of Code Section 129(d) will apply. However, they need not be the same. As such, Treasury should provide that if an employer makes a contribution in the same amount to all employees in a classification that does not favor highly compensated employees, the employer will be deemed to have met the non-discrimination rules under Code section 128.

Treasury also could provide an optional “utilization” test under 129(d)(8) where only employees for whom a contribution can be made because they have children under age 18 are included. This should be optional because many employers may not have knowledge of which employees have children under age 18.

11. Self-correction and remedial action

Treasury has provided many self-correction programs for other tax preferred accounts, such as those in the Employee Plans Compliance Resolution System. Treasury should create a self-correction program for Trump account contribution programs to allow employers to remedy good-faith operational or administrative errors.

12. Prohibited Transaction Rules

Code section 4975 includes a number of prohibited transactions between a plan and a disqualified person. Although subparagraph 4975(e)(1) defines a plan to include an individual retirement account described in section 408(a), OBBA did not amend Code section 4975(e)(1) to specifically include Trump accounts under Code section 530A[9]. As such, given the Secretary’s authority under Code section 530A(a) to provide guidance where Trump accounts under Code section 503A will not be treated

[9] Note, in 2003 when Congress amended the Code to provide for HSAs under Code section 223, Congress also specifically amended Code section 4975(e)(1) to include HSAs as plans for purposes of the prohibited transaction rules. This shows that if Congress intends to include a new type of account as a plan for purposes of the prohibited transaction rules it knows how to do so.

as IRAs, the Secretary should issue guidance that a Trump account is not a plan for purposes of Code section 4975.[10]

Code Section 4975(e)(2)(B) defines who is a disqualified person to include "an employer any of whose employees are covered by the plan". If Treasury decides that a Trump account is plan for purposes of Code Section 4975, Treasury should clarify in guidance that an employer that only makes contributions to children of employees is not considered a disqualified person because even were a Trump account a plan for purposes of Code section 4975(e)(1), no employees of the employer are covered under the plan, and, therefore, the employer cannot be a disqualified person.

Conclusion

We appreciate the work on this issue, and we look forward to working with you on this.

Sincerely,

Chantel Sheaks

Chantel Sheaks
Vice President, Retirement Policy
U.S. Chamber of Commerce

[10] At the very least, given the restrictions that apply to Trump accounts during the growth period, the Secretary could provide that the Trump account is not considered a plan during the growth period.