U.S. Chamber of Commerce

1615 H Street, NW
Washington, DC 20062-2000
uschamber.com

September 25, 2026

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

Re: REG-101355-26; RIN 1545-BS19

To Whom It May Concern:

The U.S. Chamber of Commerce appreciates the continued work of the Department of the Treasury ("Treasury") and the Internal Revenue Service ("IRS") to implement Sections 128 and 530A of the Internal Revenue Code of 1986, as amended (the "Code"), both enacted by the One Big Beautiful Bill Act ("OBBBA")[1]. These provisions created Trump Accounts and authorized employer contributions to those accounts through Trump Account contribution programs.

The Chamber has previously submitted comments on Trump Accounts, including comments addressing employer contributions, account administration, rollover mechanics, and administrability for employers.[2] This letter builds on those prior comments and focuses on issues raised by the proposed regulations concerning employer contributions under Section 128.

The Chamber supports a framework that allows employers to help employees save for their children and dependents through Trump Accounts. To do so, employers need clear, administrable rules before they can confidently design, communicate, and operate these programs. The recommendations below reflect practical implementation

[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] See U.S. Chamber of Commerce, Comment Letter on Notice 2025-68, Re: CC:PA:01:PR (Feb. 20, 2026), https://www.uschamber.com/retirement/re-ccpa01pr-notice-2025-68; U.S. Chamber of Commerce, Comment Letter, Re: CC:PA:01:PR (REG-117002-52) (Apr. 8, 2026); U.S. Chamber of Commerce, Comment Letter, Re: CC:PA:01:PR (REG-117270-25) (May 8, 2026).

issues employers are identifying as they evaluate whether and how to make these programs available to their workforces.

In particular, Treasury and the IRS should adopt final rules that minimize unnecessary complexity, permit reasonable employer reliance on employee certifications, coordinate with Department of Labor ("DOL") guidance, provide practical rules for payroll and reporting, and offer broad transition and correction relief during the initial implementation period.

Accordingly, the Chamber urges Treasury and the IRS to finalize rules that:

- Provide clear DOL coordination;
- Permit reasonable employer reliance on employee certifications;
- Allow practical use of payroll and remittance infrastructure;
- Clarify contribution limits and reporting obligations;
- Provide workable nondiscrimination safe harbors;
- Assign account-level tracking responsibilities appropriately; and
- Provide broad good-faith transition and correction relief.

I. ERISA Issues and DOL Coordination

The Chamber appreciates that DOL's Employee Benefits Security Administration issued Technical Release 2026-02 addressing the application of Title I of ERISA to Trump Accounts and Trump Account contribution programs[3]. That release provides important confirmation that Trump Account contribution programs generally will not constitute "employee pension benefit plans" under Title I of ERISA.

The final regulations on employer contributions should expressly reflect and coordinate with that DOL guidance. Employers should not be required to interpret Treasury, IRS, and DOL rules in isolation. Because the decision to offer a Trump Account contribution program will often involve tax, payroll, benefits, and ERISA counsel, consistent guidance across agencies is essential.

The Chamber requests that Treasury and the IRS coordinate with DOL to provide joint model structures, checklists, FAQs, or similar guidance that employers can use in designing and implementing Trump Account contribution programs. These

[3] See U.S. Dep't of Labor, Employee Benefits Sec. Admin., Technical Release No. 2026-02 (2026).

materials should identify practical, compliant program structures, including structures involving payroll vendors, trustees, custodians, and common remitters.

In addition, Treasury and the IRS should confirm that employer activities recognized by EBSA Technical Release 2026-02 as not triggering ERISA coverage, including collection and remittance activities, will be treated consistently for Federal tax administration purposes. Employers should be able to establish straightforward contribution programs without concern that routine administrative support will create unintended ERISA status or tax consequences.

II. Employer Administration

Employers need clear operational rules to administer Trump Account contribution programs at scale. The final regulations should recognize that employers generally will not have complete visibility into an employee's family circumstances, all contributions made by other employers or parties, or account-level information maintained by trustees or custodians. Employers should be responsible only for information within their own records and for contributions made through their own programs, while trustees and custodians should remain responsible for account-level information they maintain.

A. Common Remitters, Validation, and Remittance Formats

Treasury and the IRS should provide guidance on how employers may use common remitters to transmit Trump Account contributions, what functions common remitters may provide to employers and trustees, and how remittance processes may evolve as common-remitter services and related infrastructure develop. This confirmation is particularly important if employees may maintain Trump Accounts with different trustees or custodians. A common remitter can reduce administrative burdens, improve accuracy, and provide a more consistent process for employers and account providers. However, the role common remitters may play with respect to Trump Accounts is not clearly defined, and additional clarity would be helpful for employers and trustees.

Treasury and the IRS should also provide, or commit to developing, a standardized electronic validation method and remittance format. Employers, payroll vendors, trustees, custodians, and common remitters will need clear technical specifications to confirm account information, identify contribution type, associate contributions with the correct employee and beneficiary, and support compliance with applicable limits.

Until standardized infrastructure is available, the final regulations should provide an interim good-faith reliance rule. Employers should be permitted to use reasonable verification methods, including employee certifications and reasonable vendor or trustee confirmations, without risk of retroactive penalty if later guidance adopts more specific validation standards.

B. Return of Excess Contributions

The final regulations should provide clear mechanics for the return of excess contributions. In particular, Treasury and the IRS should clarify whether excess employer contributions may be returned directly to the employer or common remitter, rather than to the employee or account beneficiary.

The final rules should also specify what employee-level and dependent-level information must accompany a return of excess contributions. Where a trustee or custodian returns excess amounts to an employer or common remitter in bulk, the employer must have sufficient information to determine which employee and which account the return relates to, how the amount should be treated for payroll and tax reporting purposes, and whether any correction notice is required.

The final regulations should distinguish between excess contributions, which may arise because applicable limits have been exceeded, and mistaken contributions, which may arise from payroll, coding, account-association, or administrative errors. The final regulations should also provide guidance on how an employer or trustee may recover mistaken contributions. The final regulations should recognize that IRA trustees do not typically have authority to recover a mistaken contribution from an IRA without direction from the IRA owner. Treasury and the IRS should also consider that employers, in the HSA context, can recover mistaken contributions if permissible in the contract between the employer and an HSA provider and consistent with existing IRS guidance. Treasury and the IRS should clarify the tax treatment of returned contributions and confirm that correction of good-faith administrative errors will not disqualify a cafeteria plan or Trump Account contribution program.

C. Employer Reliance on Employee Certifications

Treasury and the IRS should confirm that an employer is responsible only for monitoring contributions made through its own Trump Account contribution program. Employers should not be required to track or verify contributions made by other employers, family members, account beneficiaries, or other third parties.

The final regulations should permit employers to rely in good faith on employee certifications regarding facts outside the employer's own records, including:

- The existence of a valid Trump Account;
- Dependent or legal guardian status;
- Rollover account status;
- Prior employer contributions;
- Contributions made by another current employer;
- Contributions made by a spouse's or co-parent's employer;
- Employee, family, or other non-employer contributions; and
- Remaining contribution capacity under applicable employee-level and account-level annual limits.

Employers should be permitted to rely on employee certifications where the employer reasonably believes, at the time a contribution is made, that the certification is accurate. Employers should have no duty to independently verify facts outside their own records. If a certification later proves inaccurate, prior contributions made in reasonable reliance on that certification should not create retroactive liability for the employer. If an employer later acquires actual knowledge that a certification is incorrect, the final regulations should provide a reasonable prospective correction process.

D. Written Plan Document

Section 128 requires a Trump Account contribution program to be set forth in a separate written plan. The proposed regulations identify categories of information that must be included in the written plan, including eligible employee classifications, contribution rules, designation procedures, notice and reporting procedures, the plan year, and correction procedures. Treasury and the IRS should clarify these requirements in the final regulations and provide model plan language or a model plan document.

The final regulations should confirm that the written plan may include employer-imposed administrative conditions that are reasonably designed to facilitate administration, including use of a designated trustee, custodian, rollover account, payroll vendor, or common remitter. These conditions should be permitted where they are used for administrative ease and do not impose restrictions inconsistent with the Code.

Treasury and the IRS should also clarify whether any additional written plan, notice, election, or cafeteria-plan documentation requirements apply if contributions are made through a cafeteria plan. Employers need to understand whether Trump Account contribution programs must be addressed separately from, incorporated into, or coordinated with existing cafeteria-plan documentation. For employers that may initially choose to provide matching pilot contributions only, Treasury and the IRS should confirm that these match-only programs do not need to be included in a cafeteria plan.

Treasury and the IRS should further state directly in the final Section 128 regulations or other binding guidance that plan sponsors may rely on the Section 125 rules and guidance included in those Section 128 regulations to amend existing cafeteria plans or draft separate cafeteria-plan provisions, for purposes of offering excludable or pre-tax contributions, as applicable, to Trump Accounts. The Section 128 regulations should include sufficient Section 125 guidance to allow plan sponsors to rely on those rules when designing and administering these arrangements. Plan sponsors should not have to delay implementation until separate guidance under Section 125 is issued. Clear reliance language in the Section 128 regulations would allow employers to complete open enrollment, payroll, vendor, and plan-document work on a practical timeline.

The Section 128 regulations should also confirm that a cafeteria plan may offer employees a choice between a taxable benefit and an excludable employer contribution to a Trump Account. To the extent the proposed regulations focus on a choice between current salary and pre-tax deferrals to a Trump Account, the final regulations should make clear that this is not the only permissible design. For example, an employer should be permitted to allow an employee to elect, under

Section 125, between a taxable lifestyle account or similar taxable benefit and an excludable employer contribution to a Trump Account. The final regulations should not be limited to a choice between current salary and pre-tax deferrals to a Trump Account.

Finally, the final regulations should permit operational procedures to be incorporated by reference to guidance issued by Treasury and the IRS, rather than requiring detailed operational rules to be restated in the written plan document. Employers should also be permitted to implement operational changes required by future guidance without formal amendment of the written plan document where plan terms incorporate applicable law by reference.

III. Contribution Limits and Allocation Rules

Section 128 provides an exclusion for employer contributions up to $2,500 with respect to an employee. The final regulations should confirm that this limit is applied per employee, not per dependent. Treasury and the IRS should also clarify how that employee-level limit applies when an employee has multiple eligible children or dependents.

The final regulations should confirm that each parent who is an employee may use the full $2,500 exclusion with respect to the same child, subject to the applicable account-level annual contribution limit. This clarification should apply whether the parents are employed by the same employer or by different employers.

Treasury and the IRS should clarify how employees may allocate employer contributions when an employee has multiple eligible children or dependents. The final regulations should confirm that an employee may direct how employer contributions are allocated among eligible dependent beneficiaries and should also confirm the permissibility of an employer default allocation rule where no direction is provided. In addition, the final regulations should clarify that an employer may, but is not required to, permit employee-directed allocation among multiple eligible dependents. Treasury and the IRS should also clarify how the employee-level exclusion and account-level annual limit apply where an employer matches pilot program contributions and multiple eligible children are born or become eligible in the same year.

The final regulations should also clarify how the applicable account-level annual contribution limit applies when employer and non-employer contributions are made to the same Trump Account, including where an employee has multiple eligible dependents.

Because employers generally will not have visibility into contributions made by other parties, the final regulations should apply the reliance standard described in Section II.C, Employer Reliance on Employee Certifications, and the correction framework described in Section VI, Corrections and Corrective Notices.

Treasury and the IRS should clarify whether unused annual contribution capacity may be used in a subsequent year through catch-up contributions. If such contributions are permitted, the final regulations should specify whether employer contributions may be made for that purpose and how those contributions would apply for purposes of the employee-level annual exclusion.

The final regulations should provide employers with flexibility on contribution frequency. Employers should be allowed to contribute annually, monthly, periodically through payroll, in a lump sum through a trustee, custodian, common remitter, or administrator, or through another reasonable method. The rules should also clarify whether contributions may be transmitted by individual account or in aggregate through a trustee, payroll provider, or common remitter.

The final regulations should specifically confirm that an employer may make a one-time annual contribution, including a contribution made in January or December of the plan year, where employees elect during the prior open-enrollment period, for example, during 2026 open enrollment for the 2027 plan year, to receive the amount as an excludable or pre-tax contribution, as applicable, to a Trump Account under Section 125.

Treasury and the IRS should confirm how the Section 125 election-timing rules apply where a cafeteria-plan design gives employees a choice between a taxable benefit, such as a lifestyle account, and a non-taxable employer contribution to a Trump Account. In particular, the final regulations should clarify that an annual or lump-sum design is permissible where employees are choosing between two non-salary benefit options of differing tax character, rather than electing to reduce current salary in favor of a non-taxable benefit. This clarification is important to allow employers to administer annual or lump-sum contribution structures without unnecessary payroll-by-payroll election mechanics and to give plan sponsors confidence that a one-time or periodic contribution design is permissible under Section 125.

Finally, Treasury and the IRS should confirm that employers may set eligibility conditions for employer contributions. Employers would benefit from confirmation that eligibility parameters may be used. For example, an employer may condition contributions on length of employment.

IV. Nondiscrimination

The Chamber supports clear nondiscrimination rules that prevent discriminatory benefit designs while remaining workable for employers. Trump Account contribution programs are materially different from dependent care assistance programs. A dependent care assistance program generally reimburses current-year expenses, while a Trump Account contribution program supports long-term savings for children and dependents. For that reason, rules modeled on Section 129 should be adapted to the Trump Account context rather than imported mechanically.

Treasury and the IRS should confirm that a program providing the same dollar amount to all employees in a classification that does not favor highly compensated employees is deemed to satisfy the applicable nondiscrimination requirements. The final regulations should also provide a safe harbor under which a program that applies a uniform contribution formula within a classification that does not favor highly compensated employees is deemed compliant. The safe harbor should apply whether the formula provides the same dollar amount per employee or the same dollar amount per eligible child or dependent, subject to applicable contribution and exclusion limits.

The final regulations should clarify whether Treasury and the IRS will provide an optional utilization test that counts only employees for whom a contribution can be made because they have an eligible child or dependent. Any such utilization test should be optional. Many employers may not know which employees have eligible children or dependents, and requiring employers to collect that information for testing purposes would add cost, complexity, and privacy concerns.

Any average-benefits or utilization test should also account for the fact that participation in dependent-related benefits may vary significantly by workforce population, including among lower-paid and hourly employees, for reasons unrelated to employer discrimination. Employees may decline to participate because they do not have an eligible child, do not want to provide family information, have already reached applicable contribution limits, have used another employer's program, or prefer other benefit options.

Treasury and the IRS should also provide transition relief for employers involved in mergers, acquisitions, and similar corporate transactions. Employers need time to integrate payroll systems, benefit programs, workforce classifications, and employee communications. Treasury and the IRS should consider a grace period through the end of the following plan year after a merger before combined nondiscrimination testing is required.

The final regulations should clarify whether nondiscrimination testing must be performed on a calendar-year basis. If a non-calendar-year program is permitted, the final regulations should explain how the program year maps onto the calendar-year contribution limit and any remediation deadline.

Treasury and the IRS should also clarify the relationship between Section 128 nondiscrimination requirements and dependent care assistance program nondiscrimination testing. The final regulations should confirm that dependent care assistance program testing results do not determine whether a Trump Account contribution program satisfies Section 128 and that employer contributions to Trump Accounts do not adversely affect dependent care assistance program nondiscrimination testing or otherwise complicate dependent care compliance.

Treasury and the IRS should coordinate any Section 128 nondiscrimination rules with ongoing guidance activity concerning dependent care assistance program nondiscrimination requirements. In particular, Treasury and the IRS should ensure that any final Section 128 approach is considered alongside the recently proposed changes to dependent care assistance program nondiscrimination rules so that employers are not required to navigate overlapping or inconsistent testing frameworks. Any approach adopted under Section 128 should avoid introducing additional complexity or uncertainty for employers that already administer dependent care assistance programs.

Many employers already experience recurring challenges satisfying dependent care assistance program nondiscrimination requirements, even where dependent care eligibility is broadly available across the workforce. Treasury and the IRS should avoid importing dependent care rules in a way that compounds existing testing difficulties or discourages employers from offering Trump Account contribution programs.

Consistent with the correction and transition relief requested throughout this letter, reasonably designed good-faith programs should be deemed compliant during the initial implementation period.

V. Account-Level Administration and Basis Tracking

The final regulations should clearly allocate responsibility for tracking contribution source, tax basis, and other account-level data by contribution type. Employers can identify contributions they make through their own programs, but trustees and custodians are better positioned to track account-level data after contributions are transmitted.

Treasury and the IRS should clarify whether contributions that are subsequently treated as taxable income to the account owner or beneficiary, as applicable, are added to account basis and how basis adjustments should be tracked and reported. The final regulations should also provide standardized data fields for trustee, custodian, payroll vendor, employer, and common remitter reporting.

The final regulations should clarify data-transfer requirements for trustee-to-trustee transfers. Account transfers should include sufficient information to preserve contribution source, basis, beneficiary, and annual-limit data. Treasury and the IRS should also confirm how account-level errors should be corrected, including errors involving contribution source, basis, employee or dependent association, or annual-limit tracking.

The final regulations should confirm that employers are not responsible for account-level tax basis tracking after contributions are transmitted, except with respect to information in the employer’s own records. Employers should not be required to reconstruct account-level tax data maintained by trustees or custodians.

VI. Corrections and Corrective Notices

The Chamber supports the proposed 21-day corrective notice safe harbor. The final regulations should clarify, however, that the 21-day period begins when the error is discovered, not when the error first occurred. Employers may identify errors through payroll reconciliation, year-end review, trustee reporting, employee certification updates, or vendor review. Treasury and the IRS should confirm that notices sent based on corrections discovered through those processes should be treated as timely if notice is provided within 21 days of discovery.

The final regulations should permit direct employer-to-trustee or common-remitter-to-trustee notice. The correction process should not be replaced entirely by an employer-to-employee-to-trustee process. Direct notice will often be faster, more accurate, and easier to document.

Treasury and the IRS should also create a self-correction program for operational errors that are not otherwise addressed through return-of-excess-contribution procedures. The program should cover payroll errors, contribution-coding errors, account-association errors, and similar administrative mistakes that are identified and corrected within a reasonable period.

The final regulations should provide streamlined correction procedures for good-faith nondiscrimination testing failures, including failures attributable to participation patterns outside the employer's control. Employers should be allowed to correct without disqualifying the entire Trump Account contribution program.

Finally, Treasury and the IRS should provide model corrective notice language and clarify permissible methods of delivery, timing requirements, and trustee responsibilities upon receipt of corrective notices.

VII. Payroll and Reporting

The final regulations should clarify income tax withholding, FICA, FUTA, and Form W-2 reporting treatment for Section 128 employer contributions. Employers and payroll vendors will need clear rules for wage-base treatment, year-end reconciliation, and corrected reporting, including rules that address employers that provide only matching contributions with respect to pilot program contributions. Treasury and the

IRS should also clarify how corrected contributions and returned contributions should be reflected for payroll tax and Form W-2 reporting purposes.

The proposed regulations would require employers to report contributions on Form W-2 using a designated code. Consistent with the implementation relief requested in Section X, Transition and Implementation Relief, Treasury and the IRS should provide transition relief for employers and payroll vendors implementing new reporting codes, payroll fields, transmission standards, and reconciliation processes. Treasury and the IRS should also clarify whether the designated code applies only to excludable employer contributions or also to taxable, corrected, or returned amounts.

VIII. Prohibited Transactions

The final regulations should confirm that Trump Accounts are not treated as plans for purposes of Section 4975 of the Code. Trump Accounts are created under a separate statutory framework, and treating them as plans for prohibited transaction purposes would create substantial uncertainty for employers, trustees, custodians, families, and account beneficiaries.

If Treasury and the IRS determine that Section 4975 applies to Trump Accounts, the final regulations should provide detailed guidance on several issues. Specifically, the final regulations should clarify:

- Who is a disqualified person with respect to a child's Trump Account;
- Whether an employer is a disqualified person merely because it contributes to the Trump Account of an employee's child or dependent;
- What happens when a prohibited transaction occurs; and
- What corrective relief applies.

At a minimum, an employer should not be treated as a disqualified person solely because it contributes to the Trump Account of an employee's child or dependent through a Section 128 Trump Account contribution program.

IX. Other Tax and Eligibility Issues

The final regulations should clarify that an employer may make excludable contributions to a Trump Account for a child or ward for whom the employee is the legal guardian, provided the child or ward otherwise satisfies the applicable dependent eligibility requirements.

Treasury and the IRS should also clarify the deductibility and employment-tax treatment of employer contributions under Section 128. The final regulations should specify whether employer contributions are deductible under otherwise applicable deduction rules and whether they are treated as compensation, employee benefit expenses, or another category for deduction and employment-tax purposes. Section 530A contains an express deduction limitation where Congress intended one, while Section 128 does not appear to contain a comparable express deduction bar[4].

The final regulations should also clarify the treatment of S-corporation shareholder-employees and other owner-employees. Employers need clear rules to determine whether and how these individuals may participate, how contributions are taxed, and how deductions and employment taxes apply.

Treasury and the IRS should address the treatment of employer-paid, subsidized, or waived Trump Account administrative fees. The final regulations should clarify whether fee subsidies constitute contributions, taxable compensation, or neither. The final regulations should also clarify when trustee, custodial, account administration, and related fees are disregarded for purposes of applicable contribution limits.

Treasury and the IRS should also confirm whether the Section 128 exclusion applies with respect to children of expatriates living outside the United States, assuming all other eligibility requirements are satisfied.

The final regulations should also address the application of Section 128 to Puerto Rico employees and dependents. Treasury and the IRS should clarify the treatment of employer contributions made with respect to Puerto Rico employees and dependents, including any applicable reporting, participation, and nondiscrimination considerations.

X. Transition and Implementation Relief

---

[4] See I.R.C. §§ 128, 530A; see also I.R.C. § 162.

Treasury and the IRS should provide reasonable implementation relief during the initial implementation period and coordinate implementation timing among Treasury, the IRS, DOL, payroll providers, trustees, custodians, and common remitters. Phased implementation of new reporting and correction requirements would help avoid unnecessary disruption and reduce the risk of errors during the first years of program operation. Such relief should apply for a sufficient period to allow employers, payroll providers, trustees, custodians, and common remitters to build, test, and implement necessary systems after final guidance and technical specifications are issued.

Until standardized validation, transmission, and reporting systems are available, Treasury and the IRS should permit employers, payroll providers, trustees, custodians, and common remitters to rely on reasonable, good-faith compliance methods and provide transition relief while additional operational infrastructure and technical specifications are developed.

XI. Conclusion

The Chamber appreciates the continued work of Treasury and the IRS to implement Trump Accounts and employer contribution programs under Section 128. Employers are more likely to offer these programs if the final rules are clear, practical, and administrable. The recommendations in this letter reflect the operational issues employers must resolve before they can confidently design, communicate, and operate these programs.

The final regulations should coordinate with DOL guidance, permit reasonable employer reliance on employee certifications, allow common remitters and standardized electronic processes, clarify contribution limits and allocation rules, provide workable nondiscrimination safe harbors, allocate account-level tracking responsibilities appropriately, and provide broad transition and correction relief.

We would welcome the opportunity to continue working with Treasury and the IRS as they finalize guidance on these important issues.

Sincerely,

Mike Flood
Senior Vice President
Center for Capital Markets Competitiveness
U.S. Chamber of Commerce