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September 25, 2026

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

Re: Comments on Employer Contributions to Trump Accounts and Nondiscrimination Rules for Dependent Care Assistance Programs (REG-101355-26)

Dear Sir or Madam:

The SPARK Institute, Inc. appreciates the opportunity to provide comments on the proposed regulations on employer contributions to Trump accounts under Code sections 128 and 530A.

The SPARK Institute represents retirement plan recordkeepers, mutual fund companies, brokerage firms, insurance companies, banks, consultants, trade clearing firms, and investment managers. Collectively, our member firms administer the retirement plans for over 110 million American workers.

A number of SPARK members have indicated that they will offer services to employers to assist in administering Trump account contribution programs (TACPs), including assisting employers in adopting TACPs, interfacing with Treasury's new online system, transmitting contributions, and assisting in non-discrimination testing. We expect a robust marketplace composed of defined contribution recordkeepers, payroll providers, and voluntary benefit providers to build service offerings to support TACPs. In addition, a number of SPARK members who offer retail IRAs have indicated they are considering offering a rollover Trump account product. Finally, some SPARK members have announced publicly that they intended to provide Trump account contributions for children of their own employees. For all these reasons, SPARK has a keen interest in assisting the Department of the Treasury and the Internal Revenue Service (collectively, "Treasury") in making the rules for TACPs as effective as possible.

Our comments in this letter relate primarily to the formal regulations published on August 11, 2026.[1] We have participated, and will continue to participate, in the variety of extremely helpful discussions that Treasury and its partners BNY and Robinhood have held to seek input from

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

employers and service providers on the mechanic of verifying accounts and transmitting contributions. We offer a few operational comments at the end of the letter.

Our overall reaction to the proposed regulations was that Treasury did an excellent job, under significant time pressure, to implement the TACP rules and provide workable nondiscrimination testing, consistent with the rules Congress set out in new Code section 128. Our comments below largely suggest improvements and clarifications.

Employee Certification

Under the proposed regulation, an employee is required to certify (a) that the beneficiary of the account designated for the employer contribution is the employee or anticipated to be the dependent of the employee for the employee's taxable year in which the contribution is to be made; (b) the account beneficiary's date of birth; and (c) that no facts known to the employee would make such account beneficiary ineligible to receive a contribution to his or her Trump account for that calendar year. The employer may rely on this certification unless it has actual knowledge that the certification is incorrect.

We support the idea that an employer should be entitled to rely on this representation. As a practical matter, service providers may be collecting these certifications and will not be a position to verify, for example, that a child is in fact an employee's dependent.

We further support that the employee need only certify that the child is "anticipated" to be the dependent of the employee. It may not be possible to know for sure until after the year is over whether a child is a dependent under Code section 152, by which time the employer will have made the contributions and reported them as pre-tax to the Trump account custodian and on Form W-2.

SPARK members have asked about changes during the year, for example, if a child ceases to be expected to be a dependent, or if child's parents divorce (more on that below). We need a workable system to address this situation. We believe that the most efficient rule is that an employer can continue to rely on the certification unless or until the employee provides a new certification. Any other rule could result in significant requirements to correct reporting to the Trump account custodian and Form W-2.

We further recommend that the final regulations confirm that the employer can treat these certifications as evergreen from year to year, at least until, based on the date of birth provided in the certification, the child's growth period ends.

Definition of Dependent – Divorced Parents

The proposed regulations cross reference Code section 152 to determine whether or not a child is considered a "dependent" of the employee. The preamble explains that one implication of this is that if the child's parents are married, both parents can receive an employer contribution (or contribute under a cafeteria plan) up to $2500 per parent. However, if a child's parents are not

married, then only one parent can treat the child as their dependent. That is how Code section 152 works, but we think this is not consistent with the policy behind Trump accounts. We ask you to reconsider this for the final regulations.

In a footnote, Treasury suggests that this result is compelled by the Code because Code section 152(a) states that "the definition of dependent in section 152 applies for purposes of subtitle A of the Code, which includes section 128." However, because Code section 128 did not specifically cross reference section 152, we believe that Treasury has some authority in regulations to depart from particular rules in Code section 152, including subsections (c)(4) and (e), where consistent with Congressional intent.

Salary Reduction Elections

Consistent with Notice 2025-68, the proposed regulations provide that an employer a Trump account contribution may be offered through salary reduction under a section 125 cafeteria plan. The proposed regulations would provide, if salary reduction contributions are offered, the employer must permit participants to prospectively change or revoke elections at least monthly before salary becomes currently available.

We generally support that rule, but we offer two very important suggestions for improvement.

Cafeteria plans with no cash offering. First, we understand that some employers may offer employees the ability to choose to have Trump account contributions made under a "lifestyle" or "flex" benefit that current offers a variety of after-tax benefits, but not cash. If such a program added Trump account contributions as one of the options, it technically may need to offer monthly changes in elections, but that would not make sense and would be very difficult to administer, especially since the employer is likely making a single lump contribution of what is truly an employer contribution. Instead, we believe that the monthly change election need only be offered if the employee is allowed to reduce *salary* that would otherwise be paid in cash throughout the year.

Additional time to implement. Second, we believe that some employers (and their providers) may not be in a position to administer a monthly change rule quickly, such as in 2027. Treasury has proposed to make the final regulations applicable to plan years beginning on or after the date final regulations are published. If the final regulations are published in late 2026, we think payroll systems may not be able to updated for 2027. For this reason, we suggest that additional time be given to implement this particular requirement, which may help encourage more employers to offer salary reduction contributions in 2027.

Plan Document Requirements

The proposed regulation lays out the requirements for the TCAP plan document. We offer a few suggestions.

First, some of the details of the plan document requirement seem unnecessary, such as the requirement to send notices, report contributions on Form W-2, and correct testing failures. For example, 401(k) plan documents do not describe reporting requirements on Form 1099-R. We ask you to consider streamlining the formal plan document rules, to the extent feasible.

Second, we understand from informal comments that Treasury expects an employer to amend its section 125 plan to reflect salary reduction contributions. This is not explicitly stated in the regulation, and Treasury has not proposed any section 125 regulations yet (although those are anticipated). We ask Treasury to confirm (a) whether 125 plan documents need to be amended; and (b) that plan sponsors do not need to wait for the proposed 125 regulations and can rely on the section 128 regulations. We also ask Treasury to consider providing model language. After all, the regulations governing section 125 plans have been in proposed form for decades.

Third, we ask Treasury to consider providing model language for TACP plan documents, particularly the provisions that largely just restate a regulatory requirements such as the "certification, notice, and reporting procedures required under paragraphs (d), (f), and (g) of [the regulation]" and "the procedures for correcting administrative failures and for furnishing notices to employees and trustees when amounts previously designated as section 128 contributions are subsequently determined not to be excludable from an employee's gross income under section 128(a) (for example, due to the nondiscrimination requirements…)."

Nondiscrimination Testing

In general. We support the proposed regulations in proposed regulation 1.128-3 related to the TACP nondiscrimination tests. In particular, we strongly support the decision that employees who do not contribute, or have contributions made on their behalf, are excluded from the average benefits test. This makes the average benefits test much less likely to fail in the case of an employer that offers salary reduction contributions.

Definition of eligible employee. The eligibility test is based on the employees who are eligible for the TACP. The proposed regulations state that "[f]or these purposes, an employee is eligible under the program only if the employee had a meaningful opportunity to receive benefits, via salary reduction or otherwise, regardless of whether any benefits were actually received."

We understand from informal discussions that Treasury intends this to mean that an employee is considered eligible if, under the terms of the plan, the employee *could* receive a section 128 contribution, by salary reduction or otherwise, even if the employee does not have a dependent in the growth period and likely never will in the future. We ask that the final regulations confirm this interpretation.

Definition of HCE. The proposed regulations provide that the rules that apply to retirement plans under Code section 414(q) are used to determine highly compensated employee (HCE) status for TACP nondiscrimination testing. We ask you to clarify two points. First, please confirm that all the rules that apply to HCE status in Code section 414(q) and the implementing

regulations would apply here, such as the ability to make the "top paid" group election in Code section 414(q)(3).

Second, we ask you to confirm whether or not an employer must use the *same* set of rules to determine HCE status as is used under the employer's retirement plan. We suggest that this should not be required, as nothing in sections 128 or 129 suggest that the top paid group election must be applied uniformly. Because an employer's TACP provider may be different than their retirement plan provider, requiring an exact match could complicate administration for no significant benefit.

Operational Issues

As noted earlier, our comments relate primarily to the formal proposed regulations. However, there are some operational issues we want to comment on.

Need for Common Remitter. The proposed regulations provide that an employer may not limit contributions to Trump accounts held by a particular trustee or trustees. We understand why Treasury has come to this conclusion. That said, to reduce the operational burden for employers and their providers, we strongly encourage Treasury, working with its partners BNY and Robinhood, to provide for a "common remitter" system under which employers can send section 128 contributions to one place, and the contributions are then distributed to the Trump account custodian for a particular account beneficiary. We understand that such a system is planned, and we think it will significantly reduce administrative burden.

We would note that Treasury needs to be build this contribution distribution system anyway: Because an account beneficiary can only have one Trump account open at a particular time, Treasury will need to send funds to a variety of custodians to support qualified general contributions from states and non-profits. Thus, a similar system for employer contributions should be feasible.

Use of Trump Account App Number. We understand that, at least initially, the process to send contributions to Treasury will require an employee to go into the Trump account app and find an account number or similar unique identifier for their dependent's account. The employee then provides this number to the employer, who uses it to verify the account exists and remit the funds to Treasury. We understand why this somewhat manual process may be necessary initially. We are concerned, however, that this will lead to significant errors in transposition, and if an employee does not take this extra step, the employer will be delayed in sending funds.

We encourage Treasury and its partners to consider, as an enhancement, an automatic system that might allow an employer's service provider to pull the unique account number. For example, the employee might provide, in an online portal, credentials for the Trump account to the service provider solely for purpose of pulling the account number, not unlike how many individuals allow financial aggregators to connect their financial accounts solely to pull information, using secure platforms like Plaid, MX, or Finicity.

Validation. We support a Hub check that uses the unique destination number and the account beneficiary's date of birth (the same date of birth the employee already certifies) to confirm the account is live and is the child's one Trump account. That check should occur before funds move. It is a payment-validation step, not a requirement that employers or their service providers transmit a file of customer personal information to Treasury. A failed match should return a reason code so, for example, the employee can refresh a stale number.

Excess Contributions. A significant question is whether a contribution that would exceed the annual Trump account limit should be rejected in full, accepted only up to the remaining room, or accepted in full with the excess moved elsewhere. We understand the one idea under consideration is to place amounts above the statutory limit in a supplemental Uniform Transfers to Minors Act (UTMA) account. We ask Treasury to confirm how that result interacts with section 128. In particular: whether any amount placed in a UTMA remains a section 128 contribution; whether the employer must amend Form W-2; whether the employee must be notified; and whether the employer may treat Hub acceptance as conclusive that the amount was a valid section 128 contribution. We also ask Treasury to confirm that, consistent with the proposed ordering rule, employer contributions are not treated as excess contribution when other contributions to the same account cause the $5,000 limit to be exceeded.

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The SPARK Institute appreciates the opportunity to provide comments on this matter and look forward to providing additional comments on the proposed regulations. If you have any questions or would like more information regarding this letter, please contact me or the SPARK Institute's outside counsel, Michael Hadley (mlhadley@davis-harman.com), Davis & Harman LLP.

Sincerely,



Tim Rouse
Executive Director