

Preview of Expected Guidance for Employers on “Trump Accounts” and Upcoming Regulations Announced

On December 2, 2025, the Department of the Treasury (“Treasury Department”) and the Internal Revenue Service (“IRS”) issued [Notice 2025-68](#) (the “Notice”). The Notice announces upcoming regulations with respect to the so-called “Trump Accounts,” which the Treasury Department and IRS expect to be consistent with the initial guidance previewed in the Notice. The Notice describes how Trump Accounts are expected to be established and operate, including employer contributions and cafeteria plan salary deferrals.

Takeaways for Interested Employers

As we previously discussed in our client alert [highlighting the employee benefits provisions in the One Big Beautiful Bill \(“OBBB”\)](#), Trump Accounts are a new type of individual retirement account for the benefit of children under the age of 18, pursuant to Section 70204 of the OB BB, which added Section 530A and related sections regarding Trump Accounts to the Internal Revenue Code (“Code”).

Employer contributions that are not includible in the gross income of the employee under the new Code Section 128, as discussed below, are one of the five types of permissible contributions to Trump Accounts starting no earlier than July 4, 2026. Contributions that are not made under Code Section 128 (and that are not qualified rollover contributions) are generally made by individuals with after-tax dollars. This alert summarizes takeaways of the anticipated guidance for employers interested in making direct contributions and/or enabling employees to make pre-tax contributions to Trump Accounts:

- **Direct Employer Contributions:** Employers may make applicable contributions to the Trump Account of an eligible employee or of an eligible dependent child of an employee under the new Code Section 128. Eligible contributions are excludible from income of the employee up to certain annual limits if made pursuant to a “Trump account contribution program.” (Notably, the Notice states that the Departments of Labor and Treasury anticipate issuing guidance on how to structure Code Section 128 employer contributions to Trump Accounts to ensure that they are not subject to the ERISA coverage framework.)
- **Cafeteria Plan Salary Deferrals:** A Trump account contribution program may also be offered via salary reduction under a Code Section 125 cafeteria plan so that employees can make pre-tax salary deferrals to the Trump Account of a dependent child but not to the employee’s own Trump Account. (Notably, the Notice states that the Treasury Department and the IRS intend to address rules related to the coordination of Trump account contribution programs and Code Section 125 cafeteria plans in the proposed regulations.)

- **Indexed Limits**: Employer contributions to Trump Accounts that are excludible from an employee's income through direct employer contributions and/or cafeteria plan salary deferrals will be subject to an aggregate annual limit of up to \$2,500 per employee (not per dependent), which will count toward the aggregate annual contribution limit of \$5,000¹ per account (both limits will be indexed for inflation after 2027).
- **Plan Document**: In order to make employer contributions, a "Trump account contribution program" must be established for the exclusive benefit of employees pursuant to a separate written plan that meets requirements similar to the requirements of Code Section 129 dependent care assistance programs (including non-discrimination, eligibility, notification, statements, and benefits).
- **Reporting**: An employer that makes a Code Section 128 employer contribution will be required to affirmatively indicate to the trustee of the Trump Account that the contribution is a Code Section 128 employer contribution when the contribution is made.

What's Next?

Employers who wish to make contributions to Trump Accounts starting next year will be required to establish a separate written plan (and, if applicable, may be required update its Code Section 125 cafeteria plan document to enable employee pre-tax contributions). Employers may also consider other steps that may be required to operationalize contributions.

We note that the Notice describes the process for establishing Trump Accounts, i.e., an authorized individual must make an election to establish a Trump Account for the benefit of an eligible individual by specified means. For calendar year 2026, this election may be made on the upcoming IRS Form 4547 ([a draft](#) is currently available) or through the online tool or application, which is expected to be made available on trumpaccounts.gov mid-year.

The Treasury Department and IRS have requested comments on the intended regulations, which should be submitted by February 20, 2026.

¹ For children born in the years 2025 through 2028, the total contribution limit in their birth year is up to \$6,000 due to the \$1,000 contribution from the federal government under the new Code Section 6434 Trump accounts contribution pilot program.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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