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Internal Revenue Service
Room 5503, P.O. Box 7604
Ben Franklin Station, Washington, D.C. 20044

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

To the Office of Associate Chief Counsel,

The CHRO Association ("Association") appreciates the opportunity to submit comments on the proposed regulations implementing section 128 employer contributions to Trump accounts and the related nondiscrimination rules under sections 128 and 129 of the Internal Revenue Code (REG-101355-26). We commend the Treasury Department and the Internal Revenue Service (IRS) for a thoughtful proposal that resolves many of the operational and compliance questions our members raised in response to Notice 2025-68, included in our February 2026 comment letter.

The CHRO Association is a public policy advocacy organization representing the most senior human resources officers (CHROs) at nearly 400 of the largest corporations doing business in the United States and globally. Collectively, these companies employ more than 10 million employees in the United States—nearly nine percent of the private-sector workforce—and approximately 20 million employees worldwide.

Our member companies are leaders in designing and delivering competitive, comprehensive benefits that address the diverse and evolving needs of today's workforce. Many members have already announced their intention to match the government's \$1,000 pilot program contribution for eligible children, and a number are actively evaluating broader Trump account contribution programs as part of their total rewards strategies. We appreciate that the proposed regulations address several of the core issues our members identified as prerequisites to implementation at scale, and we offer the comments below to support a workable final rule.

I. Support for Key Provisions Addressing Prior Employer Concerns

The Association appreciates that the proposed regulations directly address several concerns raised in our prior comments, and we urge the Treasury Department and the IRS to retain the following provisions in the final rule:

- Reliance on employee certification. Proposed § 1.128-2(d)(4) would allow, but not require, employers to rely on an employee's written certification regarding the account beneficiary's identity, date of birth, and eligibility, absent actual knowledge to the contrary. This approach appropriately balances program integrity with administrative

feasibility and avoids requiring employers to collect and retain sensitive documentation such as birth certificates.

- Use of Form W-2 for annual reporting. Permitting employers to satisfy the annual written statement requirement through existing Form W-2 reporting (Box 12, Code TA) will meaningfully reduce duplicative recordkeeping.
- Pilot Match Contribution Arrangement safe harbor. Proposed § 1.128-3(d), which would disregard qualifying pilot-match contributions for purposes of the contributions-and-benefits and average benefits nondiscrimination tests, gives employers the certainty needed to implement broadly available matches for section 6434 pilot contributions without fear of inadvertently favoring highly compensated employees (HCEs).
- Eligibility classification safe harbor. The proposed 90-percent ratio percentage safe harbor under §§ 1.128-3(b)(3)(iii) and 1.129-2(b)(3)(iii) offers a more administrable alternative to a facts-and-circumstances analysis and should reduce compliance costs for employers designing eligibility classifications.

II. Verification of Trump Account Status

Proposed § 1.128-2(d)(4) would prohibit an employer from relying solely on an employee's certification to establish that a recipient account is a valid Trump account, instead requiring a method "reasonably designed" to verify account validity through the trustee, payroll processor, or other service provider. While we appreciate the flexibility of a reasonableness standard, our members are concerned that, absent a standardized mechanism, employers and their vendors will each need to develop bespoke verification processes with individual trustees, increasing cost and the risk of inconsistent practices across the market.

We recommend that the Treasury Department and the IRS work toward a centralized, electronic verification mechanism—as the preamble suggests is already under consideration—and, in the interim, provide a safe harbor example (or examples) of a verification method that will be deemed reasonably designed, such as reliance on a unique account identifier furnished by the trustee. Standardization at the outset will materially reduce the administrative burden on employers seeking to implement programs promptly.

III. Corrective Notice Timing and Method

The Association supports the proposed 21-calendar-day safe harbor for employer notice to a trustee when a previously identified section 128 contribution is later determined not to qualify. This timeframe is reasonable and consistent with correction periods employers are accustomed to in other benefits contexts.

The preamble specifically requests comment on whether it would be viable for an employer to furnish a corrective notice to the affected employee, which the employee could then submit to, and the trustee could rely upon. We support this alternative. Many employers do not have a direct operational relationship with every trustee that may hold a dependent's Trump account, particularly where the account was established independently by an employee or a family

member. Permitting an employee-mediated notice would preserve the integrity of the correction process while avoiding the need for employers to establish bespoke communication channels with every trustee with which their employees' dependents happen to hold accounts.

IV. Average Benefits Test

As the preamble acknowledges, the 55-percent average benefits test has long been a source of confusion for employers administering dependent care assistance programs, and we are concerned this complexity will carry over to Trump account contribution programs. We appreciate the proposed clarification that the test is based only on employees receiving more than zero dollars in benefits during the plan year, and the parallel remediation mechanism permitting correction through income inclusion by the Form W-2 filing deadline.

We recommend that the final regulations include additional worked examples—particularly addressing employers that maintain both a pilot-match arrangement and a separate salary-reduction-funded Trump account contribution program—to illustrate how the average benefits calculation applies when an employer elects to disregard pilot-match contributions for some purposes but not others. Additional guidance in this area will reduce inadvertent compliance failures and the associated need for corrective action.

V. Monthly Election Change Requirement Under Section 125 Cafeteria Plans

Proposed § 1.128-2(d)(7) would require that a section 125 cafeteria plan permitting salary-reduction contributions to a dependent's Trump account allow participants to prospectively change or revoke elections at least monthly. We appreciate that this cadence mirrors existing practice for many HSA and 401(k) programs. For employers whose payroll and cafeteria plan administration systems are not currently configured for monthly changes with respect to this particular benefit, however, we ask that the final rule confirm a reasonable transition period following publication of final regulations to update plan documents and payroll systems before the monthly cadence requirement takes effect.

VI. Coordination of the Annual Limitation Across Multiple Employers

We appreciate the clarification that the \$2,500 annual exclusion limit under section 128(b) applies per employee, in the aggregate across all employers and dependents, rather than being administered by any single employer. We note, however, that individual employers generally have no visibility into contributions made by an employee's other employer(s) and therefore cannot independently confirm that the aggregate limit has not been exceeded. We recommend that the final rule confirm, consistent with the proposed rule's treatment of this issue, that an employer's program remains a qualifying Trump account contribution program so long as the employer's own written plan caps contributions at the statutory limit, regardless of contributions the employee may separately receive from another employer, and that employers bear no independent verification obligation with respect to a different employer's contributions.

VII. Additional Employer Open Items Regarding Trump Accounts

Beyond the issues addressed above, our members have identified a number of additional operational and compliance questions that remain open under the proposed regulations. We urge the Treasury Department and the IRS to address these items in the final rule or in related subregulatory guidance.

A. Employer Administration

- Publish the definitive employer remittance architecture, including technical and interface specifications and any applicable payroll and human resources system standards. Treasury and its financial agent should publish the authoritative operating model, including whether the central hub will receive aggregate employer payments and route contributions to each beneficiary's current trustee.
- Clarify account validation and seed-contribution confirmation. Treasury should define the permitted validation request, the required response fields, the party responsible for responding, expected response timing, and the scope of employer reliance protection, and should address how validation and confirmation apply in connection with trustee transfers and account portability.
- Clarify how contributions should be allocated among multiple eligible dependents, and publish model rules or confirm employer flexibility in this area.
- Coordinate privacy and data-security requirements across the agencies involved. The agencies should define the minimum necessary data set, permitted uses, retention expectations, applicable security standards, and the responsibilities of each party when data passes through the verification and payment hub.

B. Employer Compliance and Reporting

- Clarify employer verification obligations and associated liability. Treasury should establish a reliance safe harbor under which an employer is not liable when it reasonably relies on employee certifications and a validation response received from Treasury's financial agent, a trustee, or an approved administrator.
- Clarify which party is responsible for monitoring the annual contribution limit. Final rules should permit employers to rely on employee certification regarding contributions made by other employers or contributing parties, and should protect employers when an account exceeds the applicable limit because of contributions outside the employer's control.
- Clarify the precise nondiscrimination-testing framework and applicable deadlines. Final regulations should expressly state whether aggregation of separate Trump account programs is required or permitted, identify the applicable testing population, and confirm that section 128 benefits are not combined with dependent care assistance program benefits merely because both programs apply similar nondiscrimination standards.
- Prescribe the required approach to employer Form W-2 reporting. While the proposed regulations would permit employers to satisfy the annual written statement requirement

using existing Form W-2 reporting (Box 12, Code TA), several implementation questions remain open. The final rule should specify how an employer reports contributions remitted through a third-party payroll provider, trustee, or other agent on the employer's behalf; how a contribution should be reported when it is corrected, rejected, or returned after the original Form W-2 has been filed, including whether a corrected Form W-2 is required; whether a contribution made after the close of the calendar year but attributable to that year should be reported for the year of contribution or the year to which it relates; and how an employer should report a contribution when the employee terminates employment before the contribution is made or account validation is confirmed. The final rule should also confirm the reporting treatment of contributions made through a trustee-to-trustee transfer, and should provide model reporting language or a sample Form W-2 entry to promote consistent practice across employers and payroll systems.

- Establish comprehensive rules governing excess contributions and rejected payments. Guidance should identify the party responsible for initiating a correction, the deadline and destination for returned funds, the applicable tax year, the impact on payroll taxes and Form W-2 reporting, and whether a corrected contribution may be redirected to another valid Trump account or a permitted Uniform Transfers to Minors Act (UTMA) account.

VIII. Applicability Date and Transition Relief

The proposed regulations would apply to plan years beginning on or after the date final regulations are published, while permitting employers to rely on the proposed regulations in the interim. Given that a number of member companies have already announced matching arrangements tied to the section 6434 pilot program and are implementing programs in the current plan year, we urge the Treasury Department and the IRS to finalize these regulations as promptly as practicable following the close of the comment period, in order to give employers certainty as they finalize written plans, vendor arrangements, and payroll configurations for 2027 plan years.

We appreciate the opportunity to comment on these proposed regulations and would welcome the opportunity to discuss these issues further or provide additional operational input to support efficient and workable implementation for employers and employees alike.

Respectfully submitted,



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