

IRS Proposes Rules for Trump Account Contribution Programs and Dependent Care FSAs

On Aug. 10, 2026, the IRS released [proposed rules](#) to provide guidance on employer contributions to Trump Accounts and the nondiscrimination rules for dependent care flexible spending accounts (FSAs). Although the proposed rules are not effective until they are finalized, they can be relied upon for plan years beginning before the date the final rules are published.

Effective for tax years beginning in 2026, employers may contribute to the Trump Account of an employee or an employee's dependent pursuant to a Section 128 Trump Account Contribution Program (TACP). These contributions are excludable from the employee's income for federal tax purposes. Contributions are limited to \$2,500 per employee per year, subject to cost-of-living adjustments after 2027. This program must be established pursuant to a written plan document and meet certain tax rules that apply to dependent care FSAs regarding nondiscrimination, notifications and benefits.

Also, a TACP may allow employees to make pre-tax contributions to their dependents' Trump Accounts under a Section 125 cafeteria plan.

The proposed rules would establish general requirements for TACPs, including following the terms of the written plan document, providing employees with reasonable notification of the plan's availability and terms, furnishing an annual written statement to employees, and complying with eligibility certification and account verification requirements.

The proposed rules would also provide the first set of regulatory guidance on the mechanics of nondiscrimination testing for dependent care FSAs and apply similar requirements to TACPs. This guidance may make it easier for dependent care FSAs to satisfy nondiscrimination testing, especially the 55% average benefits test.

Federal Agencies Issue FAQs Addressing Key Issues in Health Plan Tobacco Surcharge Lawsuits

On Aug. 26, 2026, federal agencies released [FAQs](#) addressing topics that have been the focus of numerous class-action lawsuits challenging health plan surcharges for tobacco users. Wellness programs that impose a health plan premium surcharge (or provide a reward) based on a health-related standard (e.g., using tobacco) must adhere to specific standards for health-contingent wellness programs.

In general, the lawsuits allege that the tobacco surcharges violate these standards because the full reward was not provided for completing the alternative standard midway through the year and employees were not notified about a reasonable alternative standard to avoid the surcharge.

The FAQs provide that the federal agencies will not take enforcement action against a wellness program just because it provides a reward corresponding to the period after the reasonable alternative standard is satisfied (but not retroactively to the beginning of the plan year) for individuals who qualify for the reward partway through the year.

In addition, the FAQs clarify that the availability of a reasonable alternative standard must be disclosed in all materials describing the wellness program and, for outcome-based wellness programs, in any disclosure that an individual did not satisfy an initial outcome-based standard. However, if plan materials merely mention that such a program is available, without describing its terms, this disclosure is not required.