

Compliance Alert

PRO  NT

IRS Proposes New Rules for Trump Accounts and Eases DCAP Nondiscrimination Testing

August 12th, 2026

IRS Proposes Trump Account Contribution Program Rules and Changes to DCAP Nondiscrimination Rules

On August 11, 2026, the Department of the Treasury and Internal Revenue Service (IRS) published a proposed rule addressing Trump Account Contribution Programs (TACPs) and amending the nondiscrimination rules for Dependent Care Assistance Programs (DCAPs).

The government indicates that taxpayers may rely on these proposed rules until a final rule is published. So, while employers may still need more time to review and implement TACPs (as the IRS is still asking for a lot of comments on logistics), the proposed DCAP nondiscrimination testing changes can be relied upon now until a final rule is published.

Applies To: Employer of any size sponsoring a DCAP, and employer of any size interested in sponsoring a TACP.

Go Deeper:

Proposed DCAP Changes

- The proposed rules would add a new numerical safe harbor for the DCAP and TACP Eligibility Test, allowing the plan to automatically satisfy the eligibility test if the percentage of non-highly compensated employees (non-HCEs) eligible for the program are at least 90% of the percentage of highly compensated employees (HCEs) who are eligible.
 - Employers with a higher concentration of non-HCEs may be able to satisfy the safe harbor using a lower percentage.
 - Employers that do not satisfy the safe harbor may still be able to pass the Eligibility Test under a facts-and-circumstances analysis.
 - Passing the Eligibility Test does not mean the program automatically passes nondiscrimination testing overall. The program would still need to satisfy the other applicable tests, such as the Contributions and Benefits Test and, for DCAPs, the 55% Average Benefits Test.
- The most consequential proposal would amend the 55% Average Benefits Test to only account for employees receiving more than \$0 in DCAP benefits during the plan year. Employees receiving no DCAP benefits would not be included in the denominator of that test.

WHAT'S NEW

- **DCAP testing just got easier.** The 55% Average Benefits Test now only counts employees who actually received DCAP benefits, no longer counting \$0 elections against the average.
- **Failed testing isn't all-or-nothing anymore.** A DCAP that fails year-end testing can now add the excess to affected HCEs'/owners' W-2 income by the following January 31, instead of taxing the entire benefit.
- **New TACP guidance lays the groundwork.** Covers written plan requirements, notices, W-2 reporting (Box 12, code TA), a \$2,500 annual contribution cap per employee, and monthly election changes.

TAKEAWAY

Employers can rely on the DCAP testing changes right now, so plans facing a failure have real relief today. TACPs are still taking shape, and comments are open through September 25, 2026, before employers need to build one out.

- This means the average for non-HCEs will be an actual average of just those participating, rather than being dragged down to a significantly lower average by all the \$0 non-participant elections.
- This may make employers who were hesitant to adopt the increased \$7,500 DCAP contribution limit more comfortable with adopting the increased allowance.
- A remedial rule would allow a failure of the 55% Average Benefits Test and More-than-5% Owners Concentration Test on the last day of the year to simply add the excess benefits as taxable income on the W-2 of affected HCEs/owners by the Form W-2 furnishing deadline (usually January 31) immediately following the year of the failure.
 - Currently, when such tests are failed at the end of the year, HCEs/owners get taxed on the entirety of benefits they received from the DCAP. So failures must be cured before the end of the plan year to ensure affected HCEs can get at least some tax-favored DCAP reimbursements.
 - As a reminder, pass-through entity owners (and certain employed family members of more-than-2% S-corp shareholders) cannot participate pre-tax in the DCAP, so they usually do not make DCAP elections.

Proposed TACP Guidance

- Written plan requirements, including required content elements
- Reasonable notification of availability and terms (without prescribing specific content or furnishing methods)
- Annual written statement (typically via W-2 box 12 using code TA)
- Optional employee certification (must be in writing, either paper or electronic, with specific representations made unless the employer has actual knowledge that the certification is incorrect)
- Employer communication protocols with Trump Account trustees
- Employer prohibition on restricting contributions to certain Trump Account trustees
- Section 125 rules, including a requirement to allow employees to make prospective election changes at least monthly without the need for a qualifying event (similar to HSAs)
 - As a reminder, employees can only make pre-tax salary reductions toward the Trump Account of their dependent, not toward an employee's own Trump Account
- Clarification that an employee may not receive more than \$2,500 per year in tax-favored TACP contributions across all employers they might work for that year (subject to future indexing after 2027), regardless of the number of qualifying dependents they have
 - Any excess TACP contributions will be taxable compensation
 - A married couple filing jointly and working for the same employer or controlled group of employers may each receive the full TACP to their own respective Trump Accounts or Trump Accounts of their dependent(s)
 - But only one parent may claim a dependent for divorced or separated parents or married taxpayers filing separately (similar to DCAPs)
 - Self-employed owners are not eligible for TACP contributions
- Delineation that TACP contributions are excludable from federal income taxes but not excludable from other payroll taxes such as FICA, FUTA, or RRTA
- Employer Pilot Match Contributions that meet the safe harbor are disregarded for the contributions-and-benefits requirement and the average-benefits test, but remain relevant for the eligibility test. Several proposals seek to provide greater flexibility in the modern workplace for TACPs and DCAPs to pass nondiscrimination testing

Practical Impact to Employers:

Since the proposed rule can be relied upon immediately:

- DCAP nondiscrimination testing may be run using updated criteria, including the 55% Average Benefits Test no longer including employees receiving no DCAP benefits in the denominator, and a failure of that test or More-than-5% Owners Concentration Test may be rectified by including the excess in affected individuals' gross income by the W-2 distribution date immediately following the year of the failure.
- The comment period is open through September 25, 2026. Comments are requested on specific TACP and DCAP administrative provisions, such as:
 - What electronic mechanisms should be available to allow employers or service providers to verify that the designated accounts are valid Trump accounts? For example, to ensure these are not the Trump Accounts of non-tax dependent children.
 - How best to address operational challenges of corrective notices/actions?
 - For DCAPs - whether any additional information would be helpful in applying the average benefits test.