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Trump Account Contribution Program for Employers

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Trump accounts have received a lot of publicity lately, but perhaps not as much as they should, including for the **Trump Account Contribution Program (TACP)** for employers. Legally, Trump accounts are a form of traditional IRA under Internal Revenue Code Section 408(a). Unlike IRAs, the account must be held at an approved Trustee (initially banks, although brokers such as Schwab can apply to be approved to hold Trump accounts as Trustees). The account is a custodial account, meaning the responsible party acts for the beneficiary until that beneficiary gains legal capacity over the account at age 18.

The responsible party is usually the individual making the election to create the Trump account. The responsible party elects to open a Trump account using IRS form 4547 or through the taxpayer's IRS Individual Online Account. The responsible party has a strict hierarchy (in order) of permissions for electing a Trump account: legal guardian, parent, adult sibling, or grandparent.

During the *growth period*, which runs from establishment until December 31st of the year in which the beneficiary turns 17, certain rules and restrictions apply:

- Funds need to be invested in non-leveraged funds that track a U.S. equity index with fees capped at 0.10%
- A separate contribution limit exists from other IRAs ($5,000 per year)
- Generally, no distributions are permitted
- No tax deduction is permitted for donors
- Certain contributions are excluded from the annual limit (such as the pilot program contribution)

After the growth period ends, the account is generally subject to traditional IRA rules, however it cannot accept SEP or SIMPLE rollovers and the Trump account portion basis must be tracked separately.

Free Money ($1,000 from the Treasury)

The pilot program must be elected by an individual for a qualifying child (the same criteria that is used on federal tax returns applies here). The child must be a US citizen with a social security number born between January 1, 2025 and December 31, 2028. Only one pilot program election is permitted per child. The election is also made using IRS form 4547 or via the smartphone app available at www.trumpaccounts.gov. The pilot program election must occur before December 31st of the year in which the qualifying child turns 17; there is no option for a late election.

The Trump Account Contribution Program

An employer may establish a Trump Account Contribution Program (TACP) to enable contributions to dependents of employees. A TACP must be a written plan that defines:

- Classes of employees eligible to participate
- Contribution types: employer, employee, both (more on this later)
- How to designate the recipient account
- How certification, notice, and reporting will operate
- Plan year
- How administrative failures will be corrected, including notice procedures

Employers must follow their written plan and may not attempt to limit their program to only certain Trustees. The TACP must not discriminate in favor of Highly Compensated Employees. The contributions are excluded from gross federal income, but are still subject to wage taxes such as FICA, FUTA, and RRTA.

Employer Contributions – Option 1

The employer may contribute up to $2,500 per year to the dependents of each employee. If an employee has 3 eligible dependents, they must decide the allocation to each dependent. However, if the employer chooses to match the pilot program funding, that is excluded from the employee's compensation and also does not count towards the $2,500 limit per employee. The employer may accept the employee's self-certification as to the age and dependent status of the child. The employer must implement a procedure to ensure that the receiving account is a valid Trump account at an approved Trustee.

Employer Contributions – Option 2

The employer may also permit employees to make contributions through a Section 125 Cafeteria Plan, however the exclusion from gross income includes both options. Any amount over $2,500 per employee would be subject to tax. The Section 125 Plan must describe the Trump account option in its plan document.

"Owners"

The current guidance does not permit sole proprietors, partners, or 2% or greater S-corporation owners to receive "employee" contributions from employers, regardless of title or duties performed. This is the common-law definition of employees and may change as the regulations evolve.

ERISA and Nondiscrimination Testing

The proposed guidance has stated that generally TACPs will not be subject to ERISA. There is no guidance on what may make the programs subject to ERISA, but for now we can assume that the conditional statement is left open-ended to provide flexibility if an abusive use case is discovered. The nondiscrimination testing is fairly straightforward and resolved a long-standing unknown in another Code section.

The ***contribution and benefits test*** is satisfied if all eligible employees are treated the same by permitting them to benefit up to the same amount, regardless of whether employees elect to do so.

The ***eligibility test*** is satisfied if the criteria for eligibility is reasonable and based on objective business criteria. The simplest way to pass this test is to include all full-time employees; otherwise testing may be required.

The ***average benefits test*** measures whether the non-highly compensated employees receive disproportionate benefits under the plan. A brief description is that those employees must receive at least 55% of the benefits received by highly compensated employees. This test is similar to the dependent care test. The clarification is that the proposed regulations permit an employee receiving no contributions or benefits to be excluded from the test, making this hurdle much easier to pass for either program.

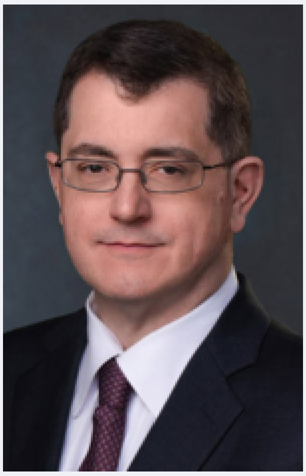
The good news is that even if the TACP fails these tests, the program is still valid for most employees – only highly compensated employees are affected in that their TACP benefits become taxable.

Other Contributions

Parents, family, and friends may make after-tax contributions up to the $5,000 per account annual limit. The one item of note is that any contributions to a Trump account are treated as completed gifts to the beneficiary and therefore count in the annual gift tax exclusion for gifts from that donor to that recipient.

Next Steps

If you want to consider adding this benefit to your corporate benefit package, you should contact your attorney , or Knox Law's Employee Benefits team for a more detailed discussion as this article is general information and not legal advice.



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Brian focuses his practice on business & tax, public finance & bonds, and employee benefits matters for a variety of clients in the private and public sector. His breadth of experience across roles and industries provides clients a 360 degree view of situations, often providing unique but simple solutions while also able to engage in the most complex financial situations.

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