Proposed regulations released on employer contributions to Trump accounts

KPMG analysis and observations

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The U.S. Treasury Department and IRS released proposed regulations under sections 128 and 129 addressing employer contributions to Trump accounts and the nondiscrimination requirements applicable to both Trump account contribution programs and dependent care assistance programs. This report focuses on the proposed regulations related to employer contributions to Trump accounts under section 128.

KPMG observation

While the proposed regulations provide initial guidance on establishing a Trump account employer contribution program, employers may find some of the administrative requirements difficult or expensive to satisfy. In particular,

(1) the proposed regulations provide that an employer cannot limit the trustees an employee may use to hold the Trump account, meaning an employer program may have to make contributions through multiple trustees, and

(2) there are significant nondiscrimination testing requirements that may make it difficult to avoid having some portion of the contribution becoming taxable for highly compensated employees, although any taxable contributions could remain in the Trump account.

Description of Trump accounts

A Trump account is a type of traditional individual retirement account (IRA) established under new section 530A for the exclusive benefit of an eligible individual or such eligible individual's beneficiaries. An eligible individual is any individual (1) who has not attained age 18 before the close of the calendar year in which an election to open an initial Trump account is made, (2) for whom a social security number has been issued before the date on which the election is made, and (3) for whom the election is made. After an initial Trump account has been established, a subsequent Trump account ("rollover Trump account") may be established for the account beneficiary during the period that begins when such initial Trump account is established and that ends on December 31 of the calendar year in which the account beneficiary of the initial Trump account attains age 17 (the "growth period"). The rollover Trump account must be funded by a qualified rollover contribution, which is a trustee-to-trustee transfer of the entire account balance from the account beneficiary's existing Trump account. An individual may have only one Trump account.

Although generally subject to the same rules as traditional IRAs, a Trump account is subject to certain special rules. Specifically, during the growth period (1) funds in a Trump account can be invested only in eligible investments, (2) a separate contribution limit from other IRAs applies—the maximum contribution to a Trump account starting in 2026 will be $5,000, indexed starting in 2028, (3) a Trump account generally may not make distributions during the growth period, (4) no deduction by an individual is allowed under section 219 for any contribution to a Trump account, and (5) Trump account trustees have similar but different reporting requirements from trustees of other IRAs. After the growth period, most of these special rules no longer apply and the rules under section 408 governing traditional IRAs will apply.

Section 128 allows employer contributions to a Trump account of an employee or the employee's dependents. The contribution is not included in the employee's gross income if made pursuant to a program meeting certain requirements. The employer contribution for any employee is limited to $2,500 per year, indexed starting in 2027.

Section 6434 also provides for a one-time pilot program under which U.S. citizens born in 2025 through 2028 are eligible for a $1,000 contribution to a Trump account. The contribution is considered an exempt contribution and does not count towards either the 2,500 annual contribution limit on employer contributions or the $5,000 overall annual limit on contributions.

Proposed regulations on employer contributions to Trump accounts

The proposed regulations on employer contributions to Trump accounts provide (1) guidance on the general requirements for employer contributions to Trump accounts under a section 128 program, (2) nondiscrimination rules for employer contributions to both Trump accounts and dependent care programs, and (3) safe harbor rules for employer contributions related to the Trump account pilot program.

Employer contribution programs under section 128

An employer must have a separate written plan for the exclusive benefit of its employees or dependents. The terms of the plan must include:

- The classes of employees eligible to participate,
- The rules for employer contributions including amount of contributions and whether there is a salary reduction arrangement,
- How an employee designates the specific Trump account to receive contributions,
- Certification, notice, and reporting procedures, and
- A correction process for administrative failures and notice when contributions are not excluded from income.

Only employees can participate in a section 128 program, meaning a common law employee; accordingly a partner in a partnership, a sole proprietor, a director, or a 2-percent shareholder of an S corporation may not participate. A self-employed individual can maintain a Trump account but cannot receive pre-tax contributions through a section 128 program.

The definition of employer also relies on the common law definition, and the proposed regulations provide that all entities treated as a single employer under section 414(b), (c), (m), or (o) are treated as a single employer for purposes of section 128.

Each year the employer must provide a written statement showing amounts paid by the employer to the employee. This requirement is satisfied if these amounts are reported on Form W-2 in box 12 with code TA. Contributions under a section 128 plan are not included in income, but remain wages for FICA, RRTA, and FUTA purposes.

An employer can only contribute to an employee or their dependent who is of an appropriate age for a Trump account. An employer can rely on certain employee certifications related to these requirements unless the employer has actual knowledge that the certification is incorrect. Employee certifications must include the following representations (in either written or electronic form):

- The beneficiary is the employee or a dependent of the employee for the tax year of the contribution,
- The beneficiary's date of birth,
- No facts are known to the employee that would make the account ineligible to receive a contribution.

The proposed regulations provide that an employer must use a reasonable method to verify that there is a valid Trump account. Verification can be received through information provided by the trustee, payroll processor or service provider.

If an employer determines an amount is not a section 128 contribution, the employer must provide notice to the employee within a reasonable time that the amount is not tax-free under section 128. The safe harbor for a reasonable notice period is 21 calendar days after the determination.

The proposed regulations specify that employers cannot limit contributions to accounts held by a particular trustee or trustees.

KPMG observation

Not allowing employers to limit the number of trustees holding employee Trump accounts could make it more difficult for a large employer to administer contributions under a section 128 plan, as it will require employers to deal with an unknown number of trustees. In addition, this may impact the willingness of traditional IRA trustees to establish and operate employer contribution programs on behalf of clients, since the funds can't be guaranteed to be contributed to Trump accounts administered by that traditional IRA trustee. How the potential third party administrator market responds to these rules, as well as to related anticipated rules on administering non-employer contributions to Trump accounts, remains to be seen.

Salary reduction

An employer Trump account program can allow an employee to make a salary reduction contribution to the program under a section 125 cafeteria plan. The contribution can be made to the Trump account of an employee's dependent only, not a Trump account of an employee (e.g., a teen-aged employee), as a contribution to the employee's Trump account would be prohibited under the section 125 rules as resulting in deferred compensation.

The cafeteria plan may permit employees to make prospective elections or changes or revoke an existing election at any time during the plan year, provided the election change is effective before the salary is available, and must allow changes to contribution amounts on at least a monthly basis. Treasury and the IRS intend to amend Treas. Reg. section 1.125-4 to address Trump account contributions under cafeteria plans.

Annual contributions

The $2,500 annual limit is the aggregate limit for each employee. The limit is not increased if the employee has more than one dependent eligible for Trump account contributions. While an employee with more than one dependent is still limited to $2,500 per year, the amount can be allocated among the dependents' accounts.

Safe harbor pilot program

The Trump account pilot program provides that children born during the years 2025 through 2028 can receive a $1,000 federal government contribution to their account. Employers have expressed interest in a similar employer version and to match the government contribution. The proposed regulations allow such a contribution so long as the contribution otherwise satisfies section 128 and the match counts towards the annual limit under section 128. The proposed regulations provide a nondiscrimination safe harbor under which the contributions are not subject to either the contribution and benefits requirements or the average benefits percentage test. However, the safe harbor does not implicate the nondiscriminatory eligibility requirements because to be eligible for the safe harbor, an employer must make contributions under the pilot match contribution arrangement on behalf of all employees with dependents who are eligible to receive a section 6434 pilot program contribution to their Trump accounts (other than certain excludible classes of employees), and on the same terms and conditions for all eligible employees.

Excess contributions

Contributions to a Trump account are allocated first to being section 128 contributions, meaning only employer contributions in excess of the $2,500 annual limit (as indexed) are allocated to other source contributions (such as employee after-tax contributions).

Employers can make contributions in excess of the $2,500 annual limit (as indexed), but these contributions are not excluded from employee compensation and are subject to the overall $5,000 annual limit (as indexed). The employer must treat the excess contribution as gross income and wages to the employee subject to withholding and reported on Form W-2.

Nondiscrimination requirements

A section 128 program cannot discriminate in favor of a highly compensated employee (HCE) or his or her dependents. Classification of an employee as an HCE is determined under section 414(q), which generally defines an HCE based on annual compensation ($160,000 for 2026). A non-highly compensated employee (NHCE) is any employee who is not an HCE. The proposed regulations elaborate on the nondiscrimination testing for eligibility and benefits.

Contributions and benefits

A plan cannot discriminate in favor of HCEs as to contributions and benefits, meaning the program cannot provide more favorable terms to HCEs. A program satisfies this test if the plan is designed to provide contributions and benefits on the same terms for all eligible employees, even if employees receive different amounts based on different elections or different utilization of the plan.

Eligibility

The employer’s classification must be reasonable and nondiscriminatory in operation. Based on the facts and circumstances, eligibility classification must be reasonable and established under objective business criteria that determine the category of employees eligible. Reasonable classifications include specific job categories, nature of compensation (salaried or hourly), geographic location, or other bona fide criteria using the standard under Reg. Sec. 1.410(b)-4(b) for qualified retirement plans.

The proposed regulations provide that an employer’s eligibility rules are nondiscriminatory for a plan year only if the group of employees made eligible satisfies either a facts and circumstances test or a numerical safe harbor. The greater the business justification, the more representative the classification across salary ranges, and the smaller the difference between the plan’s ratio and the employer’s safe harbor percentage, the more likely the eligibility classification is nondiscriminatory.

The safe harbor is met if the plan’s ratio percentage is greater than or equal to the safe harbor percentage of the employer. The employer’s safe harbor percentage is 90% reduced by ¾ of a percentage point for each whole percentage point by which the NHCE concentration percentage exceeds 60 percent. The NHCE concentration percentage is the percentage of all of the employer’s employees who are NHCEs.

Excluded employees are not taken into account under the eligibility rules. For purposes of eligibility and the average benefits tests, an employer excludes employees who have not attained age 21 and one year of service, as well as any employee who was excluded from the program and subject to a collective bargaining agreement.

Average benefits

This nondiscrimination test is satisfied if the average benefits provided to NHCEs under all Trump account contribution programs of the employer are at least 55 percent of the average benefits provided to HCEs. For this calculation, an employee is taken into account in the denominator only if the employee receives a contribution to his or her account during the plan year. For contributions through a salary reduction, employees with compensation less than $25,000 can be disregarded from this test. Compliance is determined on the last day of the plan year, but takes into account any individual employed during the year who is not an excluded employee.

KPMG observation

The exclusion of employees who do not elect to make a contribution and who do not otherwise receive an employer contribution during a year is helpful in satisfying the average benefits test. However, for many employers this may still be a difficult test to pass, which employers with dependent care assistance programs already understand. In particular, employers may want to consider plan designs that may lower, if not eliminate, the potential to result in discriminatory contributions.

Failure to satisfy nondiscrimination tests and remediation

The proposed regulations address the impact of failing the nondiscrimination requirements and when a program can take remedial action. If a plan fails nondiscrimination requirements, the plan continues to be treated as satisfying those requirements for all NHCEs. If the program fails the average benefits test, the program is still treated as satisfying the requirements for the HCEs as to the contribution amount that would have met the average benefits test if on or before the Form W-2 deadline for the year the benefits are provided, the employer includes in the gross income of the HCEs the amount of the excess benefits. If all HCEs have benefits in excess of the amount that would satisfy the average benefits test threshold, then the excess benefit amount for each HCE is determined by that threshold. If not all HCEs have excess benefits, then an employer can allocate the aggregate excess benefit and required reduction among HCEs in any reasonable manner.

KPMG observation

Employers may also need to consider methods to report the income on a regularly-timed Form W-2 to meet the remediation requirements of the proposed regulations. Although the preamble to the proposed regulations concludes that additional time is not needed beyond that deadline, based on the addition of the income to the Form W-2 being relatively straightforward, the proposed regulations are subject to comment and this issue may inspire commentary.

Applicability of proposed regulations

The regulations are proposed to apply to plan years beginning on or after the date final regulations are published. However, taxpayers may rely on the proposed regulations for plan years beginning before the final regulations are published.

Contact us

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