KUSHNER &COMPANY
HR AND BENEFIT EXPERTS

FOR YOUR BENEFIT

www.kushnerco.com

Employer Contributions to New IRC Section 128 Trump Account Contribution Program

A quick (ok, not-so-quick) overview of Trump Accounts and the employer-based Trump Account Contribution Program (TACP).

The 2025 One Big Beautiful Bill created two new Internal Revenue Code Sections, 530A and 128 for the new Trump Accounts. Section 530A establishes in essence a "starter" traditional IRA for minors, owned by a child but established and managed by an adult until the child reaches January 1st of the year they turn 18. Under IRC Section 128, employers can establish a Trump Account Contribution Program (TACP), contributing up to $2,500 per year pre-tax limit per employee (not per dependent). Trump Accounts and the TACP option for employers were effective July 4, 2026.

How Can an Employer Contribute to a Trump Account?

An employer can only contribute to a Trump Account via a TACP. A TACP is a separate written plan document of an employer, for the exclusive benefit of its employees (which excludes sole proprietors, partners in a partnership, LLC entities taxed as either a partnership or a Sub-S corporation, and 2% or greater sub-S shareholders), and that provides contributions to the Trump Accounts of its employees or dependents of its employees who have not yet reached the year they turn 18.

An employer can establish the plan with one or both options when contributing to the Trump Account of an employee or employee's eligible dependent:

1. The employer may contribute up to $2,500 annually, indexed for inflation after 2027, to the Trump Account of an employee or employee's dependent. These contributions under IRC Section 128 are excluded from an employee's taxable earnings; and/or

2. The employer may also allow an employee to make their own pre-tax contributions of up to $2,500 per year to their dependents' Trump Accounts via an IRC Section 125 cafeteria plan. Contributions via a qualified cafeteria plan may only be made for an employee's dependent and cannot be made to the employee's own Trump Account as doing so would create a

deferred compensation arrangement. Contributions that an employee makes to their dependent's Trump Account outside of a Code section 125 plan are not excluded from the employee's income.

How to Apply the Employer Contribution Limit to a TACP

Contributions made directly by the employer via a TACP and those made by the employee via a Section 125 cafeteria plan are both counted toward the $2,500 maximum pre-tax contribution limit per employee per year. This $2,500 limit is applied per employee, regardless of how many dependents the employee has.

What are the TACP Document and Contribution Notification Requirements?

An employer's TACP must be described in a separate written plan document for the sole purpose of providing the benefit to eligible employees and employees' eligible dependents. The employer is required to communicate the availability and terms of the TACP to eligible participants. When contributing, the employer must notify the trustee of the Trump Account that the contribution is excludable from the employee's gross income. Before January 31 each year, the employer must also provide each employee a written statement showing the amount paid by the employer in contributions to the Trump Account of the employee's dependent(s) in the prior year.

Are There Nondiscrimination Rules for Employers Contributing to a TACP?

Of course there are. While not completely explained by the IRS in regulations just yet, the nondiscrimination rules are like those found in IRC Section 129 for Dependent Care Flexible Spending Accounts. Under those rules, an employer cannot discriminate in favor of highly compensated employees when administering the plan. Under Section 129, there are four nondiscrimination tests:

1. Eligibility Test: Verifies that the plan makes eligibility rules fair and does not disproportionately exclude non-highly compensated employees.

2. Contributions and Benefits Test: Checks that the rights and rules for contributions and benefits do not favor high earners.

3. 5% Owner Test: Limits total benefits given to more than 5% owners (and

KUSHNER &COMPANY
HR AND BENEFIT EXPERTS
2427 West Centre Avenue | Portage, MI 49024 (269) 342-1700
www.kushnerco.com

their families) to no more than 25% of all benefits provided.

4. <u>55% Average Benefits Test</u>**:** Requires that the average benefit received by non-highly compensated employees is at least 55% of the average benefit received by highly compensated employees.

And if the employer allows employee pre-tax contributions via a Section 125 cafeteria plan, all of that Sections rules, including the 25 percent concentration test must also be met.

Thus, unless the TACP offers substantial benefits to its non-highly compensated workforce it is likely to fail the nondiscrimination tests. Further, to-date the IRS has not issued regulations yet on how to correct a TACP plan that fails the nondiscrimination rules (claw-back the excess TACP amounts? How to do that if the employee fails to re-pay those amounts?).

What Don't We Know Yet?

1. Initial guidance suggests that a TACP is not an ERISA plan subject to all of ERISA's requirements, but we need final guidance on this issue. If it's not an ERISA plan, no problem. If it is, there's more that an employer must do.

2. If an employer allows employees to make pre-tax contributions via its Section 125 cafeteria plan, are mid-year changes not allowed since under Section 125 most all elections (with the exception of pre-tax HSA contributions) must be made prior to the start of the year and must be irrevocable throughout the year with very limited exceptions.

3. There is a $5,000 total contribution limit to a Trump Account each year. How is an employer going to monitor if it makes a TACP employer contribution and/or allows its employees to make pre-tax contributions via its Section 125 cafeteria plan that others (charities, philanthropists, grandparents, etc.) don't cause an excess contribution in total?

Bottom Line

While the new Trump Accounts and TACP employer-based program may provide a good head start for minors' savings plans, there are

KUSHNER
&COMPANY
HR AND BENEFIT EXPERTS
2427 West Centre Avenue | Portage, MI 49024 (269) 342-1700 www.kushnerco.com

many considerations that should occur first to ensure compliance with all requirements.

[Kushner & Company](https://www.kushnerco.com)'s mission is optimizing organizational success through HR and benefit expertise and relationships through an outstanding customer experience. Our consulting and administration teams approach every opportunity with that mission in mind. Our specific areas of expertise include HR Strategy and Benefit Design and Administration, including Health Care Reform (ACA), FSA/HRA/HSA/Transit and COBRA Administration, and Retirement Plan Design and Administration.

For Your Benefit *articles are provided as a service by Kushner & Company for the exclusive use of our clients and subscribers and should not be construed as legal or tax advice. If you would like to speak to someone about any of our services for your organization, please contact us at info@kushnerco.com or (269)342-1700 or visit www.kushnerco.com*

KUSHNER &COMPANY
HR AND BENEFIT EXPERTS
www.kushnerco.com
2427 West Centre Avenue | Portage, MI 49024 (269) 342-1700