PUBLICATION

Trump Accounts Are Imminent: Employee Benefit Considerations

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Trump Accounts, a new tax-advantaged individual retirement account (IRA) intended for the benefit of minor children, were established under Internal Revenue Code (Code) Section 530A as part of the One Big Beautiful Bill (OB3) Act of 2025. These new accounts may be established for the benefit of children under age 18 with a valid social security number, and contributions can begin as early as July 4, 2026. Accounts can be opened by an authorized individual (generally a parent or legal guardian) by filing IRS Form 4547. Electronic completion of the Form 4547 will also be available through a new "trumpaccounts.gov" portal.

The intent behind Trump accounts is to provide an early-start long-term savings vehicle for children, and to provide parents, guardians and employers a tax-advantaged vehicle for investment in the child's future. Trump Accounts are intended to supplement existing savings vehicles such as Section 529 accounts. As part of a pilot contribution program, The United States Treasury will make a one-time $1,000 contribution for eligible children with an established Trump Account born between 2025 and 2028. Prior to January 1 of the year the child turns 18 (known as the "growth period"), investments are restricted to U.S. stock index funds, and distributions are generally prohibited.

Notably, parent/guardian contributions made to Trump Accounts during the growth period are generally not tax deductible, but they do grow tax-deferred (similar to a Roth structure). Contributions from all sources are subject to a current aggregate annual limit of $5,000 per account. However, a significant exception is that pre-tax contributions advantages may be available through an employer sponsored program, as described below.

Benefits of Employer Involvement

Under new Code Section 128, introduced by OB3, an employer may sponsor a Trump Account Contribution Program (TACP) to provide contributions to the Trump Accounts of employees and their dependents. Employer contributions are capped at $2,500 per employee per year (subject to cost-of-living adjustments after 2027). Importantly, Code Section 128 employer contributions are excluded from the employee's W-2 gross income, but they do count toward the $5,000 aggregate annual cap. Furthermore, the $2,500 limit applies per employee, not per child. For example, if an employee has two or more children that have Trump Accounts, an employer with a TACP may only contribute up to $2,500 in the aggregate for 2026 to those Trump Accounts.

Employees also may be offered the opportunity to make pre-tax Trump Account contributions through the employer's Code Section 125 cafeteria plan, provided that the contributions are only made to the Trump Accounts of dependents and not the Trump Accounts of employees. Note: We are waiting for further guidance

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from the IRS regarding the coordination between TACPs and Section 125 cafeteria plans.

On June 18, 2026, the Department of Labor (DOL) issued a long-awaited Technical Release 2026-02, clarifying that Trump Accounts with Code Section 128 employer contribution programs generally will not constitute "employee pension benefit plans" under Title I of ERISA. This is significant because the DOL concluded Trump Accounts actually fall outside of ERISA's pension plan definition and statutory scheme—even when funded by employer contributions. The DOL reached this conclusion by reasoning that, under ERISA, a "pension plan" must be designed to provide retirement income or result in a deferral of income to an *employee*. Because Trump Accounts are established for employees' minor *child* or *dependents*—not for the employees themselves—the benefit belongs to the child, not the employee. As such, even employer contributions to Trump Accounts under Code Section 128, if made properly, do not transform the accounts into employer-sponsored pension plans subject to ERISA.

Technical Release 2026-02 also addresses the less common situation of where the employee themselves is a minor and the beneficiary of the TACP benefit. In other words, what if the employer's TACP provides benefits to a 16 or 17 year old *employee*? The DOL concluded that such accounts will generally not create an ERISA plan if participation is voluntary and the employer does not (i) control the investments, (ii) restrict account use beyond Code requirements, (iii) represent the arrangement as an ERISA plan, or (iv) receive compensation for providing the TACP.

Employer Actions

Employers have significant flexibility to design their Code Section 128 programs. Nevertheless, employers should undertake the following considerations and practices in designing a TACP:

- **Develop a contribution structure.** Employers must decide whether to make contributions from company assets, offer pre-tax salary reduction contributions through a Section 125 cafeteria plan, or potentially both. Based on current guidance, it appears that Employers have the flexibility to make employer contributions contingent on Section 125 contributions (similar to a matching contribution in a 401(k) plan), and they may also choose to implement eligibility requirements (such as a service requirement). All such contributions are subject to the $2,500 cap.
- **Draft and adopt a plan document.** While not subject to ERISA, Code Section 128 requires employers to maintain a "separate written plan" for their TACP. The plan must comply with rules in line with those governing Code Section 129 dependent care assistance programs (e.g., nondiscrimination, eligibility, notification and benefits statement requirements). Plan provisions should include (i) a contribution formula, (ii) any applicable eligibility requirements, (iii) the process for enrolling, (iv) the timing and frequency of contributions, and (v) a statement that program is not an ERISA plan. Importantly, the plan should be timely communicated to eligible employees. An employer may satisfy its Code Section 128 "notice requirements" by distributing a copy of its written plan document to employees.
- **Structure the program to avoid ERISA coverage or claims of fiduciary liability.** While Technical Release 2026-02 provides that TACPs are generally exempt from ERISA, employers should nonetheless (i) refrain from controlling the investment of any Trump Account, (ii) steer clear of recommending or endorsing IRA providers, (iii) not label or describe their program as an employer-sponsored retirement plan, (iv) avoid restrictive account use, and (v) decline any compensation from any party related to the accounts. This is particularly critical where the TACP is for the benefit of a minor employee.
- **Conduct annual nondiscrimination testing.** TACPs must satisfy nondiscrimination testing rules similar to those for dependent care assistance programs covering contributions, benefits and eligibility. In other

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words, TACPs may not discriminate in favor of highly compensated employees with regard to eligibility or benefits. We are still waiting for further guidance from the IRS regarding the discrimination testing requirements that will apply to TACPs.

- **Review payroll systems.** Payroll systems should be configured to track Code Section 128 contributions separately from wages, and also the contribution limit (currently $2,500 per employee until indexed). Furthermore, when making a contribution, an employer must affirmatively inform the Trump Account trustee that it is a Code Section 128 employer contribution.
- **Consult vendors.** Employers should contact their vendors, or explore potential vendors, to determine their ability to administer TACPs and related administrative and legal compliance obligations.

Trump Accounts represent a meaningful new addition to the tax-advantaged savings landscape offered by employers, and a real opportunity to enhance benefits packages with a unique child-focused benefit. Technical Release 2026-02 provides welcome clarity that Trump Accounts can avoid ERISA coverage, reducing administrative burden and fiduciary risk, but they must be structured carefully.

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