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DOL Issues Technical Release Addressing ERISA Status of Trump Accounts

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On June 17, 2026, the U.S. Department of Labor (DOL) issued Technical Release 2026-02, providing its first set of guidance on "Trump Accounts", which were added to the Internal Revenue Code (Code) by the One Big Beautiful Bill Act of 2025 (OBBBA) under new Code Sections 530A and 128. The Technical Release focuses on whether Trump Accounts are subject to Title I of ERISA and provides important considerations for employers that wish to contribute to, or facilitate employee contributions to, these accounts without creating an ERISA-covered plan.

Background

A Trump Account is a new type of traditional IRA that may only be established for the benefit of a minor under the age of 18. Unlike typical traditional IRAs, Trump Accounts are established by the Treasury Department and are subject to certain special rules during a "growth period," which begins when a Trump Account is established and ends the last day of the calendar year prior to the calendar year in which the beneficiary attains age 18. During the growth period, funds in a Trump Account may only be invested in certain eligible investments, a separate contribution limit applies, no distributions are permitted, and different reporting requirements apply to Trump Account trustees as compared to trustees of other IRAs.

During the growth period, Trump Accounts may be funded through contributions made by the account beneficiary, other individuals, and employers. In addition, a child that is born after December 31, 2024, and before January 1, 2029, for whom a Trump Account is established, is eligible for a $1,000 "pilot program contribution" from the Treasury Secretary.

Employer contributions to Trump Accounts are not includible in the gross income of an employee pursuant to Section 128 of the Code (Section 128 Employer Contributions). Section 128 Employer Contributions are generally limited to $2,500 annually during the growth period, and those employer contributions, together with certain other contributions, count toward a $5,000 aggregate annual contribution limit, as adjusted after 2027. According to the Technical Release, Section 128 Employer Contributions must be made in accordance with Code Section 128(c), which contains requirements similar to those that apply to a Code Section 129 dependent care assistance program. Section 128 Employer Contributions may be offered via salary reduction under a Section 125 cafeteria plan only if the contribution is made to the Trump Account of an employee's dependent, but not if the contribution is made to the Trump Account of the employee themselves.

After the growth period ends, most of the special rules applicable to Trump Accounts cease to apply. However, a Trump Account may never receive contributions under a Code section 408(k) SEP arrangement or Code section 408(p) SIMPLE IRA plan even after the growth period ends.

ERISA Treatment of Trump Accounts

The principal question addressed by the Technical Release is whether a Trump Account or a Trump Account contribution program is an "employee pension benefit plan" under Section 3(2) of ERISA. The DOL concludes that Trump Accounts and Code Section 128 Trump Account contribution programs generally will not constitute employee pension benefit plans for purposes of Title I of ERISA. The DOL's analysis focuses first on the fact that ERISA's definition of a pension plan is directed at arrangements that provide retirement income to employees or result in the deferral of income by employees. By contrast, most Trump Accounts will be established for dependents of employees, rather than for the employees themselves. Accordingly, the DOL states that Trump Accounts for dependents, and employer contribution programs that fund those accounts, generally should not be treated as ERISA pension plans, even if funded in whole or in part by Section 128 Employer Contributions.

The DOL also addresses cases in which the account beneficiary is the employee, such as where an employee is age 16 or 17 and their Trump Account is in its growth period. Where this is the case, the usual IRA payroll deduction safe harbor under 29 CFR § 2510.3-2(d) would not apply if the employer makes contributions, because one condition of that safe harbor is that there be no employer contributions. The Technical Release concludes however that Section 128 Employer Contributions to a Trump Account during the growth period will not generally create an ERISA-covered plan due to the unique structure of Trump Accounts, provided certain conditions are satisfied. Those conditions include that participation must be completely voluntary for employees and that the employer must not (1) impose conditions on the use of Trump Account funds beyond those permitted by the Code, (2) make or influence investment decisions relating to Trump Account funds, (3) represent that Trump Accounts or a Trump Account contribution program are established or maintained by the employer, or (4) receive any compensation in connection with a Trump Account.

In addition, an employer could permit an employee to make payroll deduction taxable contributions to the employee's Trump Account without making Section 128 Employer Contributions to the Trump Account. In this case, the payroll deduction safe harbor under 29 CFR § 2510.3-2(d) would be available, provided that no contributions are made by employers, and the remaining conditions of the safe harbor regulation are satisfied. In this situation, the employer must ensure it does not endorse the program in order to remain within the safe harbor and thus not be subject to Title I of ERISA.

Practical Takeaways for Employers

The Technical Release provides helpful practical guidance on what employers may do without crossing the line into endorsement. It states that employers may place Trump Account information provided by IRA sponsors on an employer intranet, provide general educational materials about retirement savings and Trump Accounts, answer employee questions about the mechanics of payroll deductions, and refer other inquiries to the appropriate IRA sponsor. An employer may also include a hyperlink to the official Trump Account website when summarizing the economic benefits of a Trump Account. At the same time, employers should avoid communications that suggest the employer is vouching for, endorsing, or selecting a particular IRA sponsor, investment product, or provider. The employer's role should be framed as facilitating access to a third-party arrangement, not as sponsoring a company benefit plan.