

Trump Accounts are Exempt from ERISA: Should Employers Celebrate by Making Contributions?

July 4, 2026, marks America's 250th birthday, and the first day when contributions can be made to Trump Accounts ("Accounts"). The Department of Treasury and the Department of Labor ("DOL") have dedicated considerable resources in preparation for the big day. Most recently, the Department of Labor issued [Technical Release 2026-02](#), announcing that the Accounts will—generally—be exempt from ERISA. This article will explore Technical Release 2026-02, what it means for employers, and what to watch for on the horizon.

What are Accounts?

The One, Big, Beautiful Bill Act ("OBBBA") amended the Internal Revenue Code ("Code") to add provisions governing the establishment of, and contributions to, the Accounts. As discussed in our [February 2026 article](#), the Accounts are essentially individual retirement accounts ("IRAs") established for "eligible individuals" who will not turn 18 before the end of the calendar year when the election to open the Account is made. Unlike regular IRAs, the Accounts are subject to special rules until the year when the account holder turns 18 (e.g., restrictions on investments).

If the Accounts are just IRAs for kids, why does everyone care?

The short answer—"free" money! (For some).

The longer, but still short, answer—an "eligible individual" who meets certain requirements is considered an "eligible child." If an election is made to open an Account for an "eligible child," the federal government will make a \$1,000 seed contribution through the pilot program. As discussed in our [May 2026 article](#), millions of Americans elected to open an Account during the 2026 tax filing season and claim the pilot program contribution. This seed contribution can grow tax-free until the Account holder is able to withdraw it at age 18. [Trumpaccounts.gov](#), estimates the pilot program contribution alone will grow to \$6,000, \$15,000, and \$243,000, when the Account holder turns 18, 27, and 55, respectively. So, understandably, astute parents are excited to take advantage of the seamless election to open an Account for their child—even if only to claim the federal government's seed contribution.

What does this have to do with employers?

Employees can make tax-free contributions to Accounts.

Employees can also make pre-tax Account contributions for their *dependents* via a salary reduction election under a cafeteria plan. Employers interested in offering this option to employees will need to consult with their advisors and amend their cafeteria plans. Additional guidance regarding the integration of Account contributions into employers' cafeteria plans is anticipated.

Employees can make taxable contributions to Accounts.

Employees cannot make pre-tax contributions to their *own* Accounts via a salary reduction election under a cafeteria plan because it would result in a prohibited deferral of compensation. Employees can, however, make taxable contributions to their own Accounts through a salary deferral process as explained in further detail below.

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Further, OBBBA added Section 128 which governs *employer* contributions to the Accounts. Code Section 128 allows employers to contribute to an employee's Account or an employee's dependent's(s') Account(s) each year on a tax-free basis. The amount employers can contribute each year is capped at \$2,500 (indexed for inflation after 2027) *per employee*—not per dependent. To make these contributions, employers must adopt a separate written plan which meets requirements that are similar to a dependent care assistance program (e.g., nondiscrimination, eligibility, notification of eligible employees, etc.). Employees—particularly those who recently elected to open Accounts for their children—are likely to inquire whether their employers have integrated an Account contribution program into their benefits offerings.

If employers allow employees to make contributions to Accounts, or make contributions to Accounts for employees or their dependents, does ERISA apply?

Probably not according to Technical Release 2026-02.

First, and foremost, ERISA applies to plans established by employers to provide retirement income to *employees*. Contributions made by employers to the Accounts of employees' *dependents* therefore do not fall within ERISA's scope.

Second, if an employer contributes to an *employee's* Account, the DOL takes the position that the Accounts still (most likely) fall outside of ERISA's scope. There will be limited circumstances where an employer may make contributions to an *employee's* Account (e.g., when an employee is 16 or 17). In these limited circumstances, the employer's contribution program could fall within ERISA's scope. The DOL, however, has determined that an employer's contributions will not result in an ERISA-covered plan if the following requirements are all met:

1. Employee participation is completely voluntary.
2. There are no conditions on the use of Account funds other than those permitted by the Code.
3. The employer does not make or influence the investment decisions with respect to funds contributed to the Account.
4. There are no representations that the Accounts or contributions to the Accounts are an employee pension benefit plan or an employee welfare benefit plan established or maintained by the employer.
5. The employer does not receive any payment or compensation in connection with an Account.

Third, the employers may allow *employees* to make *taxable* contributions to their *own* Accounts outside of a Code Section 128 contribution program. Some employers offer payroll deduction programs to employees to allow them to make contributions for IRAs. Allowing employees to utilize these programs to make contributions to their own Accounts during the growth period will not result in an ERISA-covered plan if all the following requirements are met:

1. The employer does not contribute to the Employee's Account.
2. The employee's participation in the program is voluntary.
3. The employer receives no consideration in connection with the program, other than reasonable compensation for administrative services actually provided in connection with payroll deductions.
4. The employer does not endorse the program.

Technical Release 2026-02 focused on the last requirement of this safe harbor and explained what activities an employer can engage in before it rises to an "endorsement" of the program. "Employer neutrality" is the key to avoid running afoul of this requirement and falling out of the safe harbor into ERISA's scope. Drawing from the principles of the safe harbor when applied to IRAs, the DOL has determined the following will not be considered an "endorsement": (i) placing Account information provided by IRA sponsors or a link to the official Account website on their intranet; or (ii) providing neutral information to employees about the benefits of using payroll deduction arrangement to purchase these benefits. In sum, employers must be careful not to vouch for or put "their stamp of approval on . . . the quality of any specific product or provider."

Interestingly, the foregoing safe harbor is substantively identical to the safe harbor which applies to voluntary participation in employee welfare plans. That safe harbor's scope is currently being tested in the new wave ERISA class action lawsuits that were first filed in late December 2025. We explored these cases in an [article](#) earlier this year, and motions to dismiss in these cases are currently pending. Employers will want to continue to keep an eye on this set of cases to ensure they're dialed in when it comes to avoiding the application of ERISA to both voluntary benefits and Account contribution programs.

If you have questions regarding Accounts or your other employee benefits programs, please contact your Boutwell Fay attorney.