



ERISA Roundup

A quarterly recap of recent publications
from BDO's ERISA Center of Excellence

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BDO

A Note from BDO's ERISA Practice Leaders

With summer in full swing, it's the perfect time to pause, reflect, and stay current on the issues impacting employee benefit plans. Mergers and acquisitions, participant account management, and emerging regulatory guidance continue to shape the retirement plan landscape.

In this edition of the ERISA Roundup, you'll find practical insights and timely resources to help you understand the implications of these developments and strengthen your plan governance efforts.

Staying current on ERISA topics is simplified with BDO: Follow along with our regular insights at our [BDO ERISA Center of Excellence](https://www.bdo.com/erisa). We welcome your feedback on our content at BDOTalksERISA@BDO.com.



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2026 Deadlines and Important Dates

Sponsors of defined benefit and defined contribution retirement plans should keep the following deadlines and other important dates in mind as they work toward ensuring compliance for their plans in 2026. Dates assume a calendar year plan. Some deadlines may not apply, or dates may shift based on the plan sponsor's fiscal year. For additional support, please contact your BDO representative.

JULY

- ▶ **14 / Action:** 401(k) plans with publicly traded employer stock that requested a 15 calendar day extension (SEC Form 12b-25) for the SEC Form 11-K must file the SEC Form 11-K with the Securities and Exchange Commission by July 14.
- ▶ **15 / Fund:** Possible second quarter 2026 contribution due for defined benefit pension plans by July 15.
- ▶ **31 / Action:** File IRS Form 5500, Annual Return/Report of Employee Benefit Plan, and IRS Form 8955-SSA, Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits, for the 2025 plan year by July 31.
- ▶ **31 / Action:** To request an extension of time to file IRS Form 5500, file IRS Form 5558 by July 31.

SEPTEMBER

- ▶ **15 / Fund:** If an extension was filed, September 15 is the deadline to fund employer contributions for Partnerships and S-Corporations.
- ▶ **15 / Fund:** Last date to make 2025 contributions for single and multiemployer defined benefit pension plans.
- ▶ **30 / Action:** September 30, Distribute Summary Annual Report (SAR) to participants if the Form 5500 was filed on July 31.

OCTOBER

- ▶ **3 / Action:** Distribute annual notices to participants no earlier than October 3 and no later than Dec 2, including notices for: 2027 401(k) Plan Safe Harbor Match, Automatic Contribution Arrangement Safe Harbor, Automatic Enrollment and Qualified Default Investment Alternatives (QDIA).
- ▶ **15 / Fund:** Possible third quarter 2026 contribution due for defined benefit pension plans by October 15.
- ▶ **15 / Action:** October 15 is the extended deadline for filing IRS Form 5500 and IRS Form 8955-SSA.
- ▶ **15 / Action:** October 15 is the extended deadline for filing individual and C-Corp tax returns.
- ▶ **15 / Action:** If an extension was filed, October 15 is the deadline to fund defined contribution employer contributions for C-Corporations and Sole Proprietors.
- ▶ **15 / Action:** Send annual funding notice to participants of single and multi-employer defined benefit plans with 100 or fewer participants by October 15.
- ▶ **15 / Action:** October 15, defined benefit plan PBGC Premium filings and payments due.
- ▶ **31 / Action:** Single-employer defined benefit plans that are less than 60% funded or are 80% funded and have benefit restrictions triggered must inform participants by October 31 or 30 days after the benefit restriction applies.

DECEMBER

- ▶ **2 / Action:** Distribute annual participant notices no later than December 2 for the 2027 upcoming calendar year plan year. These include notices for: 401(k) Plan Safe Harbor Match, Automatic Contribution Arrangement Safe Harbor, Automatic Enrollment and Qualified Default Investment Alternatives (QDIA).
- ▶ **15 / Action:** December 15 is the extended deadline to distribute Summary Annual Report (SAR) when the Form 5500 was filed on October 15.
- ▶ **31 / Action:** December 31 is the final deadline to process corrective distributions for failed ADP/ACP testing; a 10% excise tax may apply.
- ▶ **31 / Action:** Ongoing required minimum distributions (RMDs) for 5% business owners and terminated participants must be completed by December 31.
- ▶ **31 / Action:** Amendments to change traditional 401(k) to safe harbor design, remove safe harbor feature or change certain discretionary modifications must be completed by December 31. Amendments to change to safe harbor nonelective design must be completed by Dec 1 of given plan year for 3% or by Dec 31 of the following year for 4% contribution level.
- ▶ **31 / Action:** Plan sponsors must amend plan documents by December 31 for any discretionary changes made during the year.
- ▶ **31 / Action:** Deadline for plan amendments for CARES Act, SECURE 1.0 and SECURE 2.0 here for qualified plans, excluding governmental plans or union plans. [Read this article for more information.](#)

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WEBCAST ON DEMAND

ERISA: Accounting, Audit, and Regulatory Updates Impacting Retirement Plans

Join BDO and our thought leaders for a timely update on the most important developments affecting retirement plans. This webinar will explore recent changes in accounting standards, employee benefit plan audit considerations, and regulatory guidance that plan sponsors and fiduciaries need to understand. Attendees will walk away with practical insights to help navigate complexity, manage risk, and stay compliant in a rapidly evolving environment.

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Defined Contribution Plans in an M&A: What Plan Sponsors Need to Know

Should ERISA retirement plans be part of early merger and acquisition (M&A) discussions? Ideally, yes, given their complexity and the financial and regulatory implications of the plan's final disposition. However, amid the competing priorities that sellers and buyers face during an M&A, tax-qualified retirement plans can become an afterthought.

This article highlights key issues that may arise in a business transition and offers guidance for plan sponsors.

WHAT CAN HAPPEN TO A DEFINED CONTRIBUTION RETIREMENT PLAN DURING AN M&A?

Scenario

Company A is negotiating the terms of an M&A with Company B, which has maintained an ERISA-related defined contribution retirement plan for some years. What are Company A's options for the eventual disposition of the plan? Who should be at the table during M&A planning, and what sort of issues should they discuss?

It is important to [include stakeholders](#) knowledgeable about each organization's retirement plans in the earliest discussion and decision-making stages of an M&A. The transaction structure can affect how the plan is handled; for example, the plan might be treated differently in an asset sale than in a stock sale. Assumptions and expectations can change throughout negotiations, but the plan most likely will be treated in one of the ways listed below.

- ▶ **Termination:** The seller terminates its plan before closing (typically contingent on and effective immediately before the formal deal closing date). Participants receive distributions or rollovers from the seller's plan and then usually join the buyer's plan.
- ▶ **Merger:** The buyer merges the seller's plan into its own, paying close attention to eligibility rules, vesting, and communications, including sending required notices. Unlike a plan termination, there is no distributable event for participants.
- ▶ **Continuation:** The seller's plan operates side by side with the buyer's plan with no significant changes to either plan for an agreed time to provide continuity of coverage for the seller's employees. This might be a short-term solution put in place until the buyer provides a more permanent solution. Generally, separate plans can be maintained until the last day of the plan year after the year when the corporate transaction occurred. Beyond that time frame, aggregated testing of the plans would generally be required.
- ▶ **Acceptance:** The buyer adopts the seller's plan, possibly because it contains more favorable terms than the buyer's current plan or because the buyer does not have a defined contribution retirement plan.

There's a lot of "if this, then that" involved in M&As: If both parties have benefit plans, then it is important to identify plan differences and similarities. If Company A keeps its benefit plan, then careful steps must be taken to bring in Company B's employees.

Plan sponsors must stay on top of myriad interconnected issues during an M&A. [Recordkeepers and third-party administrators](#) can help evaluate the plans and offer practical advice. Accepting or merging plans that carry unresolved issues can increase risk for the buyer.

WHAT IF THE BUYER TERMINATES A DEFINED CONTRIBUTION RETIREMENT PLAN DURING AN M&A?

Scenario

As part of its preacquisition due diligence, Company A thoroughly reviewed Company B's employee benefits, including its defined contribution retirement plans. Company A decided to keep its own plans, which fit well with its business strategies, and required Company B to terminate its plan.

Timing is critical. It is best to consider all issues that surround terminating a defined contribution plan before the transaction closes. Terminating the plan after the close can trigger IRS successor plan rules that could result in the plan not being considered fully terminated, invalidating full vesting, and distributions being treated as impermissible or premature. Plan sponsors might also face plan disqualification if ongoing compliance items, such as required plan amendments and filing Form 5500, are not met.

Fiduciaries' responsibilities to participants continue while the terminated plan winds down and all plan assets are fully distributed, creating additional administrative and fiduciary risks. As a best practice, plan sponsors should provide timely notice of the plan termination and details on distribution options.

WHAT ARE SOME KEY CONCERNS WHEN MERGING BENEFIT PLANS?

Scenario

As Company A moved toward finalizing its acquisition of Company B, questions arose about how to handle each company's defined contribution retirement plans. On the surface, the two defined contribution plans seemed similar enough that Company A considered merging them. However, during due diligence, Company A conducted a thorough review of each plan's provisions. That deeper dive revealed significant differences in benefits, eligibility and vesting, and treatment of participant loans, factors that complicated the decision of whether to merge.

Failing to uncover incomplete documentation, operational errors, or regulatory noncompliance can increase the buyer's fiduciary, tax compliance and audit risk. **Plan sponsors that consider consolidating retirement plans must carefully evaluate myriad factors, including those listed below:**

- ▶ **Regulatory and ERISA compliance:** Have both plans been operating in compliance with ERISA and the Internal Revenue Code? Noncompliance and operational failures can transfer to the surviving plan. During the transition, plan sponsors must continue to follow rules governing plan amendments, protected benefits, nondiscrimination testing, and fiduciary responsibilities.
- ▶ **Eligibility and vesting differences:** When the plans merge, will employees be eligible for the same benefits and vesting schedule? Merging the plans without considering those important issues can create additional risk and raise concerns for participants in both plans.
- ▶ **Treatment of accrued benefits in the seller's plan:** Is there a process to manage participant accounts accrued under the seller's plan? Careful review of plan documents and clear communication with participants can help avoid unintended taxable events.
- ▶ **Participant loans:** Loan policies vary from plan to plan and should be addressed early. The buyer should determine the status of participant loans in the seller's plan and how they will be handled in the surviving plan. With careful planning, outstanding loans in the seller's plan often can be rolled over into outstanding loans in the buyer's plan instead of triggering a loan default or taxable deemed distribution. Differences in maximum loan amounts, repayment terms, and treatment of loans on termination can create administrative and compliance challenges for the surviving plan.

Merging retirement plans after an M&A involves strategic, well-informed choices. Engaging a third-party advisor or leveraging existing providers can help the buyer identify risks and make informed decisions.

CAN OPERATING SIDE-BY-SIDE DEFINED CONTRIBUTION RETIREMENT PLANS AFFECT THE BUYER'S RISK?

Scenario

The acquiring organization, Company A, began comparing its employee benefit plan to the seller's plan late in the M&A negotiation period. Lacking time for deep analysis that could unveil serious issues — including unresolved regulatory tasks and operational failures — Company A elected not to merge the plans at closing. Instead, it chose to run the two retirement plans simultaneously while it determined a better long-term strategy.

Continuing to operate the seller's plan after the merger can operate as a temporary risk-management measure that allows the buyer time to identify and resolve benefit issues and noncompliance before finding a more permanent solution. It also helps avoid interruption of benefits for the seller's employees.

However, maintaining two separate retirement plans, even for a short time, can increase administrative burdens and fiduciary responsibilities. Third-party administrators, recordkeepers, and interim staffing resources could help the buyer with the additional workload. After closing, people often lose track of time and might not realize that the special M&A transition period that allows each plan to be tested separately has expired. Plans have only until the last day of the plan year after the plan year when the transaction occurred to treat the grandfathered plans as separate plans. Thereafter, aggregated testing is required and frequently fails, causing technical disqualification for both plans.

CAN THE BUYER ACCEPT AND OPERATE THE SELLER'S DEFINED CONTRIBUTION PLAN?

Scenario

Because it did not currently sponsor a defined contribution plan, Company A formally adopted Company B's employee retirement plan after the M&A closed. As a result, Company A became the new plan sponsor and its employees became participants in the acquired company's plan, which seemed to be a positive outcome for the employees. However, before plan operations began, Company A needed to fully understand its fiduciary responsibilities.

As the new plan sponsor, the buyer needs to seek answers to critical questions, including the following:

- ▶ Are plan documents and amendments current?
- ▶ Who serves as fiduciaries for the plan, and will those roles continue?
- ▶ Have new participants received all mandatory communications and been properly enrolled in the retirement plan?
- ▶ Did the seller file timely and accurate Forms 5500 and complete any required audits?

That list is by no means comprehensive. Plan sponsors must adhere to strict laws and regulations governing the operation of defined contribution plans. Failure to do so can result in regulatory investigations, penalties, and potential plan disqualification. External third-party providers can help identify and mitigate the risks involved in accepting and operating a retirement benefits plan.

ARE EMPLOYEE BENEFIT PLANS A CRITICAL PART OF M&A DUE DILIGENCE?

Overlooking defined contribution plans during business transitions increases fiduciary risk and costs — whether administrative or as a result of regulatory noncompliance. Our [Global Employer Services](#) and [Employee Benefit Plan Audit](#) teams can assess your plan, provide actionable guidance, and help your organization be prepared for the increased scrutiny during the [M&A process](#). Please contact us to learn more.

How Lost and Missing Defined Contribution Plan Participants Affect Mergers and Acquisitions

During mergers and acquisitions (M&A), one important issue could be hiding in plain sight: the treatment of tax-qualified defined contribution retirement plans and plan participants. While the parties negotiate deal terms, plan sponsors must evaluate the plan's eventual disposition and maintain compliance with ERISA and the Internal Revenue Code (IRC). Generally, the plan sponsor's fiduciary responsibilities to participants continue throughout the transaction and beyond — including to those designated as lost or missing participants. That group comprises former employees or their beneficiaries or alternate payees who cannot be located by the plan sponsor or have failed to respond to benefit-related communications. A proactive approach to managing lost and missing participants can help reduce fiduciary, regulatory, and financial risks during an M&A.

In 2021, the Department of Labor (DOL) issued sub-regulatory [guidance related to lost and missing participants](#) in defined contribution retirement plans. Although that guidance is not law, the DOL expects plans to follow it and includes questions about it in most enforcement actions. For more background and best practices, see our Alert: "[Missing Participants: What Plan Sponsors Need to Know About the DOL's Latest Guidance](#)."

HOW DO PLAN SPONSORS GENERALLY IDENTIFY AND ADDRESS LOST OR MISSING PARTICIPANTS?

Before considering specific implications, it is important to understand how defined contribution plan participants become lost or missing. **Communication between plan sponsors and participants can break down, often in the following common ways:**

- ▶ Statements, checks, and notices sent to the participant are returned as undeliverable.
- ▶ Participants fail to respond to emails, voicemails, and other types of messages.
- ▶ Contact information has not been maintained and is no longer valid.
- ▶ The participant's account has fallen inactive for an extended period of time.
- ▶ Benefit checks have not been cashed.

When it becomes clear that the participant is unresponsive and potentially not receiving benefits, defined contribution plan sponsors — often working with third-party administrators and recordkeepers — typically begin a structured search process. Reviewing all returned mail and uncashed checks is a starting point, but a plan sponsor's data maintenance, regular reviews, and periodic outreach are also key to locating participants and reducing fiduciary exposure, compliance risk, and finance and accounting pitfalls. Plans should keep records of their efforts to locate missing participants, including how often the search was undertaken, what was done, and how long the search continued. The DOL guidance notes that more significant efforts should be made for higher account balances (taking a cost-benefit approach).

HOW CAN MISSING PARTICIPANTS AFFECT DUE DILIGENCE DURING AN M&A?

The buyer typically conducts due diligence to determine key factors, including the seller's overall financial condition, regulatory compliance, liabilities, and employee benefit plans.

Finding lost or missing plan participants during due diligence introduces additional concerns to be addressed, including those listed below.

- ▶ **Fiduciary risk:** Plan sponsors must take good faith steps to locate missing participants. When due diligence reveals a large number of missing participants, buyers might suspect there are other problems, such as weak controls, poor administration, and hidden liabilities.
- ▶ **Regulatory compliance:** Defined contribution retirement plans must comply with laws such as ERISA and the IRC, as well as IRS and DOL regulations. Noncompliance can result in fines, penalties, and plan disqualification.
- ▶ **Plan disposition:** Decisions about whether to merge, terminate, or otherwise transition a tax-qualified defined contribution retirement plan are typically part of deal negotiations. Missing participants can complicate rollover and distribution processing and could result in unexpected liabilities and costs.
- ▶ **Uncashed checks and held balances:** The handling of uncashed checks, forfeitures, and other participant balances can raise questions about overall plan administration.
- ▶ **Deal consequences:** The risks associated with lost and missing plan participants can have a significant impact on negotiations, resulting in additional costs and further due diligence activity.

Missing participant issues can emerge during the early stages of a business transaction but they do not end once the deal is done.

WHAT HAPPENS WITH MISSING PARTICIPANTS POST-TRANSACTION?

The strategy chosen for the retirement plan will determine the next steps for all participants, including those who are lost or missing. **For example, any of the outcomes below is possible.**

- ▶ **Continuation:** The seller's plan remains in place for an agreed period of time to provide continuity of coverage. This might be a short-term solution put in place until the buyer provides a more permanent solution.
- ▶ **Consolidation:** The buyer merges the seller's plan into its own, paying close attention to eligibility rules, participant notices, and participant vesting.
- ▶ **Termination:** The seller terminates its plan pre-close (typically contingent on and effective immediately before the formal deal closing date). Participants receive distributions or rollovers and then typically transition to the buyer's plan.
- ▶ **Spin-off or carve-out plan:** Some portion of the seller's plan, as well as its assets and liabilities, spins off to support a related organization. This practice might be chosen in, for example, partial acquisitions, newly formed entities, and corporate divestitures.

In each scenario, plan sponsors must continue to comply with applicable laws and satisfy their fiduciary obligations to participants.

HOW CAN PLAN SPONSORS MITIGATE LOST AND MISSING PARTICIPANT RISK?

Perhaps the best answer to this question is that plan sponsors should always be prepared for the heightened scrutiny they will experience during due diligence. **The following practical steps can help:**

- ▶ **Maintain accurate records:** Records will be scrutinized during due diligence, audits, and regulatory investigations. Keep plan records — including participant contact information — complete, organized, and ready for review.
- ▶ **Leverage recordkeepers and third-party providers:** Coordinate with all service providers to confirm the use of every available tool to locate lost and missing participants.
- ▶ **Address uncashed checks promptly:** Uncashed checks could reflect delivery issues, participant confusion, outdated contact information, or the participant's death or incapacity. Establish consistent follow-up processes, make reasonable attempts to reach out to participants, and document all actions taken.

IS YOUR DEFINED CONTRIBUTION RETIREMENT PLAN READY FOR AN M&A?

Lost and missing plan participants can complicate plan administration and add significant challenges during an [M&A](#). Our [Global Employer Services](#) and [Employee Benefit Plan Audit](#) teams can assess your plan, provide actionable guidance, and help your organization be prepared for the increased scrutiny. Please contact us to learn more.



4 Critical Actions for Effective M&A Communications

Effective communication is the linchpin of successful mergers and acquisitions (M&A), yet many leaders underestimate the profound impact their words and actions have on team performance during these pivotal transitions. In times of uncertainty, every message — or missed opportunity for communication — can galvanize a team or erode its engagement.

In addition, research on sustaining employee engagement during times of great change suggests that mid-level managers and supervisors are the fulcrum: the pivot point of support upon which teams rely. [Forbes](#) points to mid-level managers as one of the most important drivers of merger success, and data from Gallup concludes that managers are responsible for [70% of the variance in employee engagement](#).

This article outlines the critical business case for strategic communications before, during, and after your merger or acquisition, and offers four actionable strategies managers can adopt along the way to help leaders foster a resilient, high-performing team

Download the full PDF and discover four manager-ready communication actions to guide employees through the deal lifecycle.

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DOL Clarifies That Trump Accounts Generally Are Not ERISA Plans: Key Tax Considerations for Employers

The Employee Benefits Security Administration (EBSA) of the U.S. Department of Labor (DOL) recently issued [Technical Release 2026-02](#), providing important guidance on the treatment of newly created Trump accounts under the Employee Retirement Income Security Act of 1974 (ERISA). The guidance specifies that Trump accounts established under Internal Revenue Code Section 530A and related employer contribution programs under IRC Section 128 generally will not constitute ERISA-covered employee pension plans.

For employers considering whether to offer Trump account contributions as an employee benefit, the guidance provides welcome clarity and could create an opportunity to offer a tax-favored benefit without the administrative burden typically associated with ERISA-covered retirement plans.

BACKGROUND

The One Big Beautiful Bill Act of 2025 established Trump accounts as a new type of tax-favored savings account for eligible individuals under age 18. In December 2025, the IRS issued [initial guidance on the accounts](#). During the account's "growth period" (which generally ends on December 31 of the year before the beneficiary turns age 18), special contribution, investment, and distribution rules apply. After that period, Trump accounts generally operate under the same rules applicable to traditional IRAs.

Account funding can come from several sources, including:

- ▶ Government-funded pilot program contributions;
- ▶ Qualified general contributions from governmental and charitable entities;
- ▶ Employer contributions under IRC Section 128;
- ▶ Qualified rollover contributions; and
- ▶ Contributions from parents, beneficiaries, and other individuals.

DOL CLARIFICATION

The DOL's analysis specifically focused on whether Trump accounts, and employer contribution arrangements supporting them, create ERISA-covered pension plans.

Under ERISA Section 3(2), a pension plan generally exists when an employer establishes or maintains a program that provides retirement income to employees or defers employee income until termination of employment or beyond.

The DOL determined that Trump accounts generally do not meet that definition because:

- ▶ Initial accounts are established by the U.S. Treasury rather than the employer;
- ▶ Employers generally have no authority over investments, distributions, or account administration;
- ▶ Many Trump accounts are established for employees' dependents rather than employees themselves; and
- ▶ Account control resides with the designated responsible party rather than the employer.

As a result, employer involvement through IRC Section 128 contributions generally will not cause a Trump account arrangement to become an ERISA-covered pension plan.

IMPORTANT TAX BENEFITS FOR EMPLOYERS

IRC Section 128 allows employers to contribute up to \$2,500 annually per employee (subject to future inflation adjustments) to a Trump account maintained for an employee or the employee's dependent. Those contributions generally are excluded from the employee's taxable income.

That creates a potentially attractive recruitment and retention tool that can provide tax advantages to employees while expanding employer-sponsored financial wellness programs.

BDO Insight

Although the DOL guidance does not address deductibility directly, employer contributions made under an authorized employee benefit program would, absent a statutory limitation, generally be expected to qualify as ordinary and necessary business expenses. Employers should monitor forthcoming IRS guidance for additional clarification regarding reporting and deduction requirements.

Perhaps the most significant practical consequence of the DOL's guidance is what employers can avoid. **Because Trump accounts generally are not treated as ERISA pension plans, employers ordinarily would not be subject to ERISA requirements, including:**

- ▶ Form 5500 annual reporting requirements;
- ▶ Fiduciary duties;
- ▶ Claims procedures;
- ▶ Disclosure obligations; and
- ▶ Trust and plan administration requirements.

That distinction might make Trump account programs significantly easier to administer than many traditional employer-sponsored retirement arrangements.

NONDISCRIMINATION REQUIREMENTS STILL APPLY

While ERISA compliance might be limited, IRC Section 128 contribution programs are not entirely free from compliance obligations.

Technical Release 2026-02 notes that Trump account contribution programs are subject to rules similar to those applicable to dependent care assistance programs under IRC Section 129. That includes requirements relating to nondiscrimination, eligibility, average benefits testing, employee communications, and benefit reporting.

Employers should therefore expect that contribution programs will require some level of annual testing and compliance review to help ensure benefits are not disproportionately provided to highly compensated employees.

CAFETERIA PLAN CONSIDERATIONS

The guidance also notes that Treasury has said IRC Section 128 contributions can be offered through a cafeteria plan under IRC Section 125 when contributions are made to the Trump account of an employee's dependent. However, cafeteria plan treatment is generally not available when contributions are made to a Trump account established for the employee.

Employers contemplating implementation should work closely with benefits counsel and payroll providers to properly structure contribution programs.

MAINTAINING EMPLOYER NEUTRALITY

The DOL has emphasized that employers should maintain a limited role in connection with Trump accounts. **To preserve the account's non-ERISA status, employers generally should not:**

- ▶ Influence investment decisions;
- ▶ Control distributions;
- ▶ Impose restrictions beyond those required by the IRC;
- ▶ Represent the arrangement as an employer-sponsored retirement plan; and
- ▶ Receive compensation related to the accounts.

At the same time, the DOL guidance confirms that employers can engage in various educational and administrative activities without creating ERISA concerns. **That includes:**

- ▶ Providing retirement savings education;
- ▶ Posting information on company intranets;
- ▶ Facilitating payroll deductions;
- ▶ Distributing neutral educational materials; and
- ▶ Linking employees to official Trump account resources.

ERISA RELIEF DOES NOT ELIMINATE OTHER TAX RULES

The DOL has also cautioned that Trump accounts remain IRAs for federal tax purposes. Accordingly, prohibited transaction rules under IRC Section 4975 remain applicable, and some prohibited transactions could result in the loss of favorable tax treatment under existing IRA rules.

Key Takeaways

Technical Release 2026-02 provides employers with important clarity regarding the treatment of Trump accounts under ERISA. The DOL's conclusion that Trump accounts and related IRC Section 128 contribution programs generally are not ERISA-covered pension plans could allow employers to offer a tax-advantaged savings benefit while avoiding many of the compliance burdens associated with traditional retirement plans.

As employers evaluate whether to incorporate Trump account contributions into their employee benefit programs, attention should still be paid to IRC Section 128 requirements, nondiscrimination testing, payroll administration, and maintaining the neutrality necessary to preserve the arrangement's non-ERISA status.

Please visit [BDO's Global Employer Services](#) page for more information on how BDO can help.





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