

Trump v. UTMA v. 529 Accounts

Quick-Take: While getting a ‘free’ \$1,000 check from the federal government is something everyone should take advantage for on behalf of a newborn child by opening a Trump Account, it would be better for discretionary contributions to be made to a 529 account, not the Trump Account.

Background: With the One Big Beautiful Bill Act creating the ‘new’ Trump Account, questions are now beginning to be asked about what is the best device for saving on behalf of a child: a Trump Account, a Uniform Transfers to Minor’s Account (UTMA) or a 529 higher education account? Each savings device has its own benefits and drawbacks, but as a generalization, a 529 account might be the best option if funds are set-aside for a child’s education or retirement.

UTMA: In the past, saving for a child usually took the form of opening a Uniform Transfer to Minors Act (UTMA) account for the child. [MCL 554.521 et seq.] Any amount can be transferred to a UTMA, but that transfer could be subject to the federal gift tax. A transfer to a UTMA account is irrevocable, with the title to its assets indefeasibly vested in the minor, not the custodian. The UTMA account can specify the age of 21 as the maximum duration that assets can be held in the account before the child has access to the account assets, which is a major drawback to an UTMA. Another drawback is that the income earned by a UTMA is subject to the *kiddie tax*, which in 2025 provides that the first \$1,350 of unearned income is typically tax-free, and the unearned income above \$2,700 is generally taxed at the parent’s marginal income tax rate. Yet another drawback is that the UTMA assets are owned by the child, which means that they must be reported as the student’s assets on the FAFSA, which significantly reduces the child’s eligibility for financial aid, in contrast to parent-owned assets or 529 plans. While there is no limit on how much wealth can be held in a UTMA account, the concern is that the wealth held in the account becomes fully controlled by a 21 year old individual, and what the child does with the assets at that time is up to them- lots of heartburn for parents and grandparents who contemplate funding a UTMA.

Minor’s Trust: A minor’s trust, as an alternative to a UTMA, is a statutory exception to the normal federal gift tax annual exclusion rules. A gift of a *future interest*, a beneficial interest in an irrevocable trust, does not satisfy the *present interest* requirement for an annual

exclusion gift by the donor. Consequently, a gift to an irrevocable trust is a gift of a *future interest*, not a *present interest*. However, a gift in trust will qualify for the federal gift tax annual exclusion if it meets the requirements of IRC 2503(c). Those requirements are: (i) the trust property and the income from the property must be expended by the trustee only to or for the minor's benefit; (ii) any trust income and principal that is not expended must be paid to the minor at age 21, just like the UTMA; and (iii) if the minor dies prior to attaining age 21, the trust principal and trust income must be distributed to (and taxed) to the minor's estate. [Regulation 25.2503-4(a).] The only other limitation on a minor's trust is that the trust distributions cannot be used to defray a parent's legal obligation to support their child. So, \$19,000 could be given to the Minor's Trust each year without any gift tax consequences to the donor. The drawback with a minor's trust, just like with a UTMA, is that the child has access to all Minor's Trust assets when he/she attains the age 21. This 'risk' is often mitigated, though, with the trust instrument providing that the child-beneficiary is given notice of his/her withdrawal right prior to attaining age 21, with the instrument also specifying that if the child-beneficiary does not exercise his/her withdrawal right within a specified period, e.g., 60 days after the written notice is given to the child, the funds thereafter remain in the trust for a much longer period of time, such as until the child-beneficiary attains the age of 30 years.

529 Account: If the goal is to set aside funds for a child's higher education, a 529 account provides many tax advantages over a UTMA or a Trump account. [IRC 529.] A 529 account not only provides tax-deferred earnings, but if its accumulated earnings are later used to pay for qualified higher education expenses, the earnings are tax-free. And with the SECURE 2.0 Act, unused 529 account funds (if the account is held for at least 15 years) can be rolled over, up to \$35,000, to a Roth IRA for the child's retirement savings. Moreover, the amount that can be contributed to a 529 account can be significant, if the 5-year pre-funding of the account is used, [$\$19,000$ annual exclusion amount \times 5 years = $\$95,000$ one-time 529 contribution.] The principal drawback to the 529 account is that if the funds are distributed and not used for qualified higher education purposes, the earnings are taxed along with a 10% excise tax. Fortunately, as the years have progressed since 529 accounts were first created, Congress has periodically expanded what constitutes a qualified education expense, which means that it is highly unlikely that income tax and the 10% excise tax will ever be incurred.

Trump Accounts: Any child under the age of 18 with a valid social security number can open a Trump Account starting on July 4, 2026. A Trump Account can be opened by a parent

or guardian, but with an annual deposit limit of \$5,000 for individuals (in the aggregate), and \$2,500 for employers (towards the \$5,000 maximum annual contribution.) For a child born between January 1, 2025, and December 31, 2028, the U.S. Treasury will make a one-time deposit of \$1,000. However, funds contributed to a Trump Account cannot be withdrawn before the child turns age 18, unlike a UTMA or 529 account. Once the child turns age 18, the Trump Account functions pretty much like a traditional IRA, with taxes on distributions along with the 10% excise tax for any 'early' distribution. While most newborn parents should consider opening a Trump Account to access the 'free' \$1,000 federal 'seed' gift, the other limits on a Trump Account, including the dollar limit on annual contributions (\$5,000), on how the funds are invested (U.S. mutual funds), and the inability to access the funds until the child turns age 18 are all major drawbacks to a Trump Account when compared to the other child-savings options.

Observation: It would seem that other than opening a Trump account to obtain the 'free' \$1,000 government contribution, available funds would be better contributed to a 529 account because of the flexibility, eligibility, and contribution limits which are all more favorable with the 529 account. Also, there is more flexibility with investment options with either a UTMA or a 529 account, along with several tax advantages for the 529 account.

Conclusion: Obtaining a 'free' \$1,000 contribution to a Trump Account cannot be overlooked as an enticement to open a Trump Account for a newborn. But if flexibility in access and investments, and the opportunity to avoid all taxation on earnings is an important motivation for a donor, then contributions to a 529 account is probably a much better long-term 'investment' that can be made on behalf of a child, since unlike a Trump Account, or a UTMA account, or a Minor's Trust, the creator of the 529 account always remains in control of the account along with distributions from the 529 account, until the 'excess' 529 funds are later rolled into a Roth IRA for the child-beneficiary.

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