



## The Vita Viewpoint Important Information for Decision Makers

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### **DOL Clarifies HSA Rules On Employer Involvement**

#### **Overview**

Health Savings Accounts (HSAs) generally will not constitute "employee welfare benefit plans" covered by Title I of the Employee Retirement Income Security Act of 1974 (ERISA) where employer involvement with the HSA is limited.

In Field Assistance Bulletin (FAB) 2004-01, the Department of Labor (DOL) specifically indicated that employer contributions to HSAs would not give rise to an ERISA-covered plan where the establishment of the HSA is completely voluntary on the part of the employees and the employer does not:

- Limit the ability of eligible individuals to move their funds to another HSA or impose conditions on utilization of HSA funds beyond those permitted under the Code.
- Make or influence the investment decisions with respect to funds contributed to an HSA.
- Represent that the HSA is an employee welfare benefit plan established or maintained by the employer.
- Receive any payment or compensation in connection with an HSA.

#### **New Legal Clarifications**

- Employers may not receive a payment or discount from an HSA vendor for directing employees to that vendor. Receiving a discount on another product from an HSA vendor selected by the employer would constitute the employer receiving a "payment" or "compensation" in connection with an HSA. In the Department's view, the arrangement would also give rise to fiduciary and prohibited transaction issues.
- Employers must "transmit promptly" HSA contributions that a participant has withheld from his wages. Employers who fail to promptly transmit participants' HSA contributions may be violating the prohibited transaction provisions of the Code.
- An HSA provider may offer a cash incentive to individuals for establishing an HSA as long as the cash contribution is deposited into the HSA and not directly given to the HSA account holder.
- Employers can pay employees' HSA fees by contributing to their HSA accounts without making the HSA subject to ERISA.
- FICA and FUTA tax savings that benefit the employer, through a cafeteria plan, will not be considered "payment or compensation received in connection with an HSA" and will not subject the HSA plan to ERISA.
- Employers may choose HSA investment options that replicate their 401(k) plan without being viewed by the DOL as "making or influencing" employees' investment decisions and subjecting the plan to ERISA.
- Employers may open and contribute employer funds toward an employee's HSA account without violating the condition that HSA accounts be "completely voluntary" as long as the employee maintains control of the account and may move the funds to another HSA.

***For questions or additional information, please contact Vita Benefits Group at (650) 968-8811.***