



HSAs Get the Q & A Treatment

Thought a Health Savings Account (HSA) was simple? On October 27, 2006 the U.S. Department of Labor (DOL) issued Field Assistance Bulletin (FAB) number 2006-02. In a question and answer format, they addressed recurring questions posed to the Department on the application of the Employee Retirement Income Security Act of 1974 (ERISA) and prohibited transaction legislation to Health Savings Accounts (HSAs).

ERISA

1. Employers may open and contribute to an HSA for an employee without violating the “completely voluntary” rule of HSAs. However, HSA account holders must have control over their expenditures and retain authority to move their individual HSA. An HSA opened by an employer without the employee’s affirmative consent does not deprive the owner of their rights to the account, nor does it generally escalate it to an ERISA-covered plan.
2. The employer may offer a single HSA option to its employees without making the HSA part of its ERISA-covered group health plan in one of two ways. 1) The employer does not contribute to the HSAs, or 2) The employer does not “endorse” the HSA provider and represents that the HSA is not an employee welfare benefit plan established or maintained by the employer. Offering only one HSA option is not considered an “endorsement” of the HSA provider, nor is the distribution of general information pertaining to the HSA.
3. An employer’s decision to have their HSA offer some or all of the investment options available to the employees in their 401(k) plan does not constitute an ERISA-covered plan, so long as employees are afforded a reasonable choice of investment options and employees are not limited in moving their funds to another HSA. On the other hand, presenting a single HSA provider that offers a single invest option would not allow employees a reasonable choice of investments.
4. Employer FICA and FUTA tax savings derived from HSA contributions made through a cafeteria plan would not be considered payment or compensation in connection with an HSA. Employer tax savings does not subject the HSA to ERISA.
5. The employer may pay the fees associated with an HSA without triggering ERISA. Just the fact that the employer contributes to an individual’s HSA does not result in the HSA being an ERISA-covered plan.
6. An HSA vendor may offer their own employees a product that the HSA vendor offers to the public and not trigger ERISA. This practice would not mean the HSA provider maintains an employer benefit to it employees.

Prohibited Transactions

1. The employer that limits the number of HSA vendors cannot also receive a discount on other products offered by the HSA vendor. This practice would give rise to fiduciary and prohibited transaction issues and be considered “payment” or “compensation” in connection with the HSA.

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2. HSAs are subject to the prohibited transaction provisions of section 4975 of the Internal Revenue Code. Employers who fail to promptly transmit participants' contributions may be seen to have the use or benefit of income or assets of a plan by a disqualified person.
3. The class prohibited transaction exemptions for owners of IRAs do not apply to HSA owners. That means the HSA custodian may not provide HSA accountholders reduced fees for other services without violating the prohibited transaction rules.
4. HSA providers may offer a cash incentive for establishing an HSA if the provider deposits the cash directly into the HSA. A cash contribution generally would not be considered a "sale or exchange of property" or "a transfer of plan assets" for purposes of the prohibited transaction provisions.
5. An HSA vendor may provide a line of credit to an HSA accountholder. Whether a credit card arrangement between a vendor and owner of an HSA results in a prohibited transaction would depend on specific facts and circumstances. Although an HSA accountholder may not borrow or pledge the assets of an HSA, a "prohibited transaction" would not result in the simplest form of a credit arrangement. This would be where the HSA accountholder pays their credit card balance from their HSA. ■

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