

## Publications

# DOL Guidance Provides Further Clarification on HSAs and ERISA

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**SERVICES**

On October 27, 2006, the Department of Labor (DOL) issued Field Assistance Bulletin 2006-02, addressing frequently asked questions that DOL has received concerning the application of ERISA to Health Savings Accounts (HSAs) since the release of FAB 2004-01 in April, 2004. The guidance is helpful to employers because it identifies several ways in which an employer can assist employees with setting up an HSA without causing the HSA to become subject to ERISA. Particularly significant is that DOL has clarified that the prohibition on employer “endorsement” that applies under other DOL safe harbor guidance relating to group or group-type insurance *does not* apply to an HSA as long as the employer satisfies the specific requirements of FAB 2004-01. However, the guidance also serves as a reminder that the prohibited transaction rules apply to HSAs, and provides some examples of when the prohibited transaction rules may be implicated when an employer makes available HSAs to employees.

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