

**From:** [Jennifer Banzhof](#)  
**To:** [E-OHPSCA1251.EBSA](#)  
**Subject:** Comment on 29 CFR Part 2590 Status as a Grandfathered Health Plan  
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Section (g)(1)(v)(B) specifies that a group health plan shall cease to be a grandfathered health plan if the employer or employee organization decrease its contribution rate based on a formula by more than 5 percent below the contribution rate for the coverage period that includes March 23, 2010. While the definition of contribution rate for a rate that is based on cost of coverage would allow the rate to decrease by more than 5% of its previous dollar value if the cost of coverage also decreased, contribution rates based on a formula do not appear to have the same flexibility to react to the cost of coverage. For example, if the contribution rate in a self-insured plan for the coverage period including March 23, 2010 is \$5.00 per hour and the cost of coverage (minus the employee contributions toward the total cost of coverage) for that same period is \$5.00, this produces a contribution rate equal to 100% of the cost of coverage. If the cost of coverage for a subsequent period drops to \$4.50 per hour (without a change to the benefits that otherwise could cease grandfathered status), it would seem equitable that the contribution rate based on a formula should also be able to drop to \$4.50, as it would still represent 100% of the cost of coverage. By limiting the reduction to 5% of the actual rate, the self-insured plan whose contributions are based on a formula are being treated less favorably than a plan who pays in a monthly contribution amount per coverage unit. The regulations should recognize that in a self-insured plan, contribution rates based on a formula are still meant to be contribution rates that are based on cost of coverage.

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