

Don Woodard, CLU  
Blake Woodard, CLU

August 16, 2010

Ms. Phyllis C. Borzi  
Office of Health Plan Standards and Compliance Assistance  
Employee Benefits Security Administration  
Room N-5653  
U.S. Department of Labor  
200 Constitution Ave NW  
Washington, DC 20210

Via E-mail to E-OHPSCA1251.  
EBSA@dol.gov

Attention: RIN 1210-AB42  
Grandfathered Health Plan Rules

Dear Ms. Borzi:

The proposed Grandfathered Health Plan Rules (“Rules”) contain a serious error in Sec. 147.140(a)(ii) in their requirement that an employer who fully insures its health plan must maintain insured health coverage through the same insurer in order to preserve its grandfathered status. A health plan under ERISA is not the same as a health insurance policy. A health plan is a plan (which may or may not be written) sponsored by an employer to provide health benefits to one’s employees and their dependents.

In cases where such a fully-insured health plan has more than 100 participants, an employer is required to assign the plan an ERISA plan number (501, 502, etc.) and file a form 5500. The plan is not the insurance policy, and if the employer changes health insurers, it would not file a final 5500 for the previous insurance policy and assign a new ERISA plan number and file an initial 5500 for the new insurance policy. The plan has not changed; only its funding method has changed.

This flaw in Sec. 147.140(a)(ii) puts smaller employers, who typically fully insure their health plans with group health insurance policies, at a serious disadvantage to larger employers, who typically self-insure their plans and then purchase stop-loss coverage. A self-insured plan could change its stop-loss insurer with no resulting loss in its grandfathered status. Large employers will therefore be more likely than small employers to receive the benefits of grandfathered health plan status.

The PPACA makes no such distinction between fully-insured and self-insured plans when discussing grandfathered health plan status. Sec. 147.140(a)(ii) not only discriminates against small employers, but also works against PPACA’s goal of

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controlling health costs and encouraging competition in the health care and health insurance markets by discouraging small employers from shopping around to find the best value for themselves and their plan participants.

For example, an employer who insures with Insurer X is presented with a 25% rate increase. It finds that by moving its plan with identical benefits to Insurer Y, it can reduce the rate increase to 10%, saving itself and its employees money. However, by moving its plan to Insurer Y, it loses its grandfathered status under Sec. 147.140(a)(ii), even though the benefits have not changed. Some small employers have gone to the effort to document their health insurance plans with plan documents separate from their fully-insured health insurance policies, and for them the unfairness of Sec. 147.140(a)(ii) is even greater.

In summary, Sec. 147.140(a)(ii) is inconsistent with (1) ERISA, (2) PPACA's goals of encouraging competition in the healthcare and health insurance marketplace, and (3) President Obama's oft-stated principle that "you can keep your existing health insurance."

Ms. Borzi, I respectfully request that you eliminate the requirement that employers who sponsor fully-insured health plans maintain their current insured funding arrangements to preserve grandfathered status.

Sincerely,

A handwritten signature in cursive script, appearing to read "Blake", with a long horizontal flourish extending to the right.

Blake Woodard