

**IDAHO HEALTH INSURANCE EXCHANGE  
SHOP SUBCOMMITTEE  
MINUTES  
May 1, 2013**

Idaho Health Insurance Exchange SHOP Subcommittee convened at:  
PacificSource Health Plans  
408 E. ParkCenter Blvd., Suite 100  
Boise, Idaho 83706

**SUBCOMMITTEE MEMBERS PRESENT**

Dave Self  
Zelda Geyer-Sylvia  
Karen Vauk  
Kevin Settles

**TELECONFERENCE**

Margaret Henbest, Chairperson  
Tom Shores

**OTHERS PRESENT**

Woody Richards  
Jim Williams  
Ken Stoltz  
Wes Trexler  
Amanda Stange  
Tom Donovan  
Kathy McGill  
Eileen Mundorff  
Randy Tan  
Colby Cameron  
Marnie Packard  
Connie Witt

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**CALL TO ORDER**

Following proper notice in accordance with Idaho Code, Section 67-2343, and pursuant to call by the Chairperson, the Subcommittee meeting of the Idaho Health Exchange was called to order by Margaret Henbest, Chairperson of the Subcommittee, at 11:00am Wednesday, May 1, 2013, at PacificSource Health Plans, 408 E. ParkCenter Blvd., #100, Boise, Idaho.

## **ROLL CALL**

Margaret Henbest called the roll. Roll call showed **four (4)** members present, **two (2)** members present by teleconference. With **six (6)** voting members present, Chairperson Henbest declared a quorum.

## **AGENDA AMENDMENTS**

Chairperson Henbest opened the floor for any amendments pertaining to the agenda. There being none, the Subcommittee advanced to the next order of business.

## **SCOPE OF WORK**

Review of SHOP memo from Department of Insurance. Tom Donovan, Deputy Director for Idaho Department of Insurance (DOI), was in attendance to provide guidance in understanding the Department of Insurance material.

- Subcommittee discussed limit of employees enrolled in a small business plan. ACA states at least 1 employee and no more than 100. A state may elect to define a small employer as 1 to 50 employees beginning prior to January 1, 2016. Idaho code defines a small employer as no more than 50 employees, and in all public discussions the Department of Insurance has indicated that it will operate with that view. For plan years starting January 1, 2016 a small employer will be 1 to 100 employees. Kevin Settles asked if that was an area that the Exchange Board could weigh in on as he viewed expanding definition of small employer up to 100 employees could be of benefit to him and similarly situated employers. Zelda Geyer-Sylvia and Dave Self noted some logistical issues given that rate and form filings are being done now and that the ACA requires carriers to treat all small group coverage in a single risk pool. The subcommittee asked the DOI to look into the issue further and provide additional feedback.
- Subcommittee also discussed the issue of employees aggregated vs. disaggregation (also known as level of coverage). This issue follows the announcement in March by proposed rule by HHS that the Federally Facilitated Exchange would not offer or meet one of the

stated requirements for SHOP during 2014, but rather defer meeting that requirement until Jan. 1, 2015. The requirement is that an employer be allowed to select a particular level of coverage at a given metal level with the employer agreeing to contribute a specific amount and the employees being allowed to select any plan by any carrier at that particular metal level. This requirement would add increased cost and complexity by necessitating the SHOP exchange to handle billing for the small employer groups that select this option by collecting the premium contributions from the qualified employer and qualified employees and forwarding the payments to the QHP issuers (carriers). Additionally, the proposed regulation indicated that any State Based Exchanges (SBEs) also need not meet this requirement until January 2015.

Motion: Dave Self moved this subcommittee to make a recommendation to the full board that the Idaho SHOP exchange not seek to exercise the voluntary option of providing this level of coverage option to small employers, which would require the SHOP to handle premium billing functions, but rather have employees be aggregated for 2014 due to the difficulty of managing the disaggregation. Subcommittee will present to the Exchange board on Thursday, May 9, 2013.

Second: Zelda Geyer-Sylvia

Vote:

Ayes: All board members, (**Margaret Henbest, Chairperson, Dave Self, Zelda Geyer-Sylvia, Karen Vauk, Kevin Settles, and Tom Shores**)

Nays: None

Motion Carried.

- Tom Shores noted that he is concerned about cost and complexity of having SHOP Exchange handle billing, and would like to see carriers be able to handle billing in the first year. Dave Self indicated that was his understanding for first year, and Tom Donovan agreed.
- Discussion about possible use of federal vendor SHOP utility for 2014. This issue is related to possible similar use the IT Subcommittee is exploring on the individual eligibility piece. Zelda Geyer-Sylvia will discuss this with and at the next IT Subcommittee meeting on May 2, 2013, including ability to seek SHOP functionality in any RFP issued.
- Discussion of participation rate requirements and Kevin Settles' desire to keep that low to permit flexibility for employers.
- Tom Donovan to return to next subcommittee meeting with eligibility/participation rates and if states will have any flexibility such as the issue if Idaho goes with the federal SHOP tool, then is Idaho bound to a 70% participation rate.

- Some discussion on interaction and options for employees as between SHOP and individual exchange. The DOI will seek to also address this as part of discussions at next subcommittee meeting.

### **SUBCOMMITTEE MEETING DATE**

May 7, 2013 from 2:00-4:00pm.

### **ADJOURNMENT**

The next meeting of the Idaho Health Insurance Exchange Marketing/Outreach Subcommittee is scheduled to be held May 7, 2013. There being no further business to come before the Subcommittee, Chairperson Henbest adjourned the meeting at 12:08pm.

Respectfully signed and submitted by:

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Margaret Henbest, Chairperson

IDAHO HEALTH INSURANCE EXCHANGE BOARD  
SHOP SUB-COMMITTEE  
Minutes – May 7, 2013

**Members Present:**

Margaret Henbest – Chairman  
Dave Self  
Zelda Geyer-Sylvia  
Karen Vauk  
Kevin Settles  
Tom Shores

**Also Present**

Tom Donovan – Deputy Director, Department of Insurance  
Bill Roden  
Marnie Packard – Pacific Source  
Kathy McGill – DOI  
Wes Trexler – DOI  
Eileen Mundorff – DOI  
Bret Busaker – Hawley Troxell  
Gabe Hamilton – Hawley Troxell  
Colby Cameron – Sullivan, Reberger  
others

The Chairman called the meeting to order at 2:05 p.m.

The Chair asked that the minutes of 4/23 be approved, and that the reference to minutes of 4/23/2013 be deleted from the minutes of 5/1/2013. .

**MOTION:** Mr. Shores moved that the minutes of 4/23/2013 be approved, and that the minutes form 5/1/2013 be approved with the deletion of the approval of the minutes from 4/23/2013, since no minutes were actually reviewed at that time. .

Mr. Self seconded the motion. MOTION carried by voice vote.

**Follow up Report: Department of Insurance – Tom Donovan, Deputy Director**

Mr. Donovan began his presentation by thanking the DOI staff who had worked hard to gather pertinent information for the Committee.

Mr. Donovan presented materials (Memo from Donovan to SHOP Sub-Committee) relevant to item #3 on the agenda for today (these materials are attached). He noted that the first 5 pages of the document are primarily new information, the remaining 8 are information the Committee has seen before. He also presented an Excel spreadsheet outlining the various SHOP functions and important dates (a copy is attached). He also noted an Executive Summary, compiled by Deft Research (a copy is attached), and a Design Review and Criteria for Assessment (a copy is attached).

He addressed the state's decision to define SHOP-eligible employers as those businesses employing 50 employees or less. He noted that Idaho had chosen to define this group as 50 or less, in contrast to PPACA's default definition of 100 or less employees. He said that Idaho statute provided for this definition, and the Department of Insurance believed that it was logical and reasonable to rely on this definition, and was further validated by the submission of the Blueprint which constituted an election by the state to use that limit. He noted that this definition could be changed by Idaho legislative action. However, all small employers would be defined as 100 or less employees starting in 2016 per the ACA.

There was some discussion of the impact of increasing the definition to 100 or less. Would there be other consequences, e.g. would this change how premiums are calculated? Mr. Self noted that this would contract the rate bands for employers with 51-100 employees. Mr. Donovan noted that the rate bands would apply to all individual and small group plans. Mr. Settles pointed out that there might not be an advantage for employees of a large group employer to go into the exchange if the average age is young. A compression of 3:1 instead of 5:1 would indicate a substantial increase in rates. An in-depth study of the implications of increasing the number would be helpful in predicting future impact on the market. Ms. Geyer-Sylvia interjected that whatever form the SHOP takes, the Health Insurance Exchange in general will cause enormous changes in the marketplace. The implications to the rate structure alone will be far-reaching.

Mr. Shores pointed out that 84% of Idaho employers have less than 20 employees and the average Idaho business has 7 employees or less. The cutoff at 50 employees will affect few Idaho businesses.

There was some discussion about which employees would be counted in the determination of a small employer group. 50 or less full time employees is the definition. A full time employee is defined as working 30 hours a week or more; however, part-time employees are also included in a formula to determine an employer's total number of eligible employees.

Mr. Donovan pointed out the definition of a small employer on pages 2-3 of his materials to be used. Mr. Settles asked if the formula used to determine penalties will be the same formula used to determine SHOP eligibility. He asked if the number of actual full time employees will be used instead of FTE's. Mr. Donovan said that for the first 2 years, Idaho will use 30 hours or more full time employees, unless the carrier and the employer agree on allowing employees

who work 20 to 30 hours to participate in a small employer health plan. It would be on a case-by-case basis. Mr. Shores pointed out that this was a difference between using the number of actual employees or FTE's. Mr. Busacker noted that using FTE's and part time employees will add up faster and be more likely to disqualify the business from SHOP qualification –under the rules which take effect in 2016.

Ms. Geyer-Sylvia noted that there is some flexibility for the carrier for the first two years, specific to the definition of a full-time employee. She emphasized that education about these aspects of the SHOP is imperative.

Mr. Donovan confirmed that, on the issue of full time employee definition, there is some flexibility between the carrier and the small business, at least for the next 2 years. Mr. Donovan noted that these provisions are in the State Code, for 2014-2015. Mr. Trexler said that a small employer could form an agreement with a carrier so that employees under 30 hours a week could be considered for inclusion in the SHOP, but that would increase the number of employees and the employer could be risking disqualification from the SHOP. The Chairman asked if the Committee should bring this issue before the Board as a potential recommendation to sidestep state law for the purposes of the Exchange. Mr. Settles said that compression of rate band would make this a moot point. His point is not to exclude a provision that would be needed at a later date. Ms. Vauk inquired if this flexibility in the employee number would provide an employer the opportunity to opt out of the SHOP. Mr. Self felt that this is an employer by employer decision. This provision was included so employees working less than 30 hours a week would not be precluded from accessing health insurance through the SHOP. Th

Ms. Geyer-Sylvia agreed that this is employer dependent. One of the first decisions an employer will make is whether to provide health insurance at all. That would depend on the cost. Each employer will decide based on what is best for him/her. The cost of health insurance in the SHOP is an important component, since most employers want the lowest possible rates. Cost and resources for modeling impact to businesses is being addressed by the Outreach and Education Sub-Committee. The Chairman pointed out that one of the requirements of the Blueprint was to provide clarity and transparency around this issue.

### **Sole Proprietors**

Mr. Donovan noted that a sole proprietor or the spouse of a sole proprietor is not included in the employee count for purposes of the exchange, as noted on page 4 of his memo.

### **Participation Rates**

Mr. Donovan directed the Committee to page 4-5 of his memo concerning participation rates. His memo cited decisions by Maryland and Washington to set the minimum participation rates at 75%. Idaho has not yet determined a minimum participation rate. An employer who would qualify for the SHOP (less than 50 full time employees), must achieve the minimum participation rate percentage to participate in the SHOP. A group that does not reach the

minimum threshold, would have the option buy insurance outside the SHOP. There is also the “grace period” offered to employers to allow them to “true up” their participation rate – an open enrollment of sorts once a year. Mr. Self noted that this provision exists, but he wasn’t sure if that was a function of the federal exchange or left to the state. The Chairman asked if this was a question to be addressed by the state or others. Mr. Donovan said that he believed this was a decision to be made by the state exchange, specifically by the SHOP. He noted that the carriers traditionally require a 75-90% participation rate, depending on the size of the group. Ms. Geyer-Sylvia suggested that an actuarial presentation on the pros and cons of a higher/lower participation rate would be very beneficial. She pointed out that participation rate is a method for avoiding adverse selection. The Chairman posed the question that if Idaho chooses to use the guidelines for the federally-facilitated exchange, would that mean that a 70% participation rate is mandatory? The Exchange Board should be made aware of this element of the SHOP. Another question posed was if there was a difference in required participation rates inside and outside of the SHOP. Mr. Donovan said that this was possible. That would be up to the exchange and to the individual carriers. Mr. Self agreed with Ms. Geyer-Sylvia that a presentation on this issue would be very beneficial to help determine what the “sideboards” would be for the SHOP. The important issue is that Idaho maintain as much flexibility as possible, whether the state uses FFE technical assistance or not. Mr. Shores emphasized that provisions of the SHOP must be as simple as possible. It must be easy to explain to agents, employers, and employees. The point is to encourage the employers to offer insurance to their employees on a group basis. It was pointed out that a state Exchange has some flexibility to develop rules and procedures to make the process fairer and easier.

#### **Potential for FFE vendor tool for SHOP**

Ms. Geyer-Sylvia asked if the vendor must be selected by 5/30/13. It appears to be confusing issue, and should be brought before the full Board. It would be helpful to make a list of the tasks the Board would ask the vendor to accomplish. The Chairman pointed out that the Board is scheduled to meet on 5/9/13, and this topic could be raised at that time. She suggested this Committee consider the requirements for the vendor. Ms. Geyer-Sylvia stated that the IT committee had reviewed the option of using federal infrastructure to assist in being ready for the 10/1/2013 open enrollment period. Mr. Self asked what the structure of this supported state-based exchange (SSBE) would mean in terms of design flexibility to the SHOP. Once that determination has been clarified, that would allow the SHOP to maneuver between the state legislation and any federal platform requirements. The cost of the SSBE is as yet undetermined. He based his opinion on a supported state-based exchange i.e. an FFE platform on the back end and Idaho’s rules on the front end. The option of using a FFE as the back end has not yet been decided. The full board would be learning more about the option at the coming board meeting.

Mr. Shores wished to clarify that the Exchange has not collected any monies from employers to fund this SHOP at this date. The Chairman concurred that this was the case. Mr. Shores pointed out that this appears to make the FFE unnecessary. Carriers are already billing these clients for this service. It appears that Idaho could already do this since they are performing



these duties with small group insurance. The Chairman questioned whether compatibility with Medicaid eligibility is an issue, in addition, employers with less than 25 employees will be eligible for a tax credit which will be administered by the SHOP. Mr. Self said this is basically to assist federal regulators to have visibility into an employer's business and hold them accountable via tax or penalty. Mr. Donovan noted that if the employee is eligible for and chooses the Medicaid option, there is no penalty to a small employer. The Chairman clarified that the mechanics of the IT system made it necessary to look at a FFE platform solution on the back end.

It was pointed out that Idaho may have few employers who would choose the SHOP option. A question was raised if there was a "plug and play" option available. The Chairman pointed out that the IT Sub-Committee was charged with studying this matter. Mr. Self noted that the SHOP has 3 choices for an IT portion: Idaho could build it from scratch, Idaho could buy it from another entity, or Idaho could partner with another entity to develop/fine tune it. Building it from the ground up at this point, given the deadlines rapidly approaching, is simply not feasible. Partnering with another entity is the most viable at this point. He pointed out that Idaho's Medicaid system has already been given conditional federal approval. The federal government has been very transparent in their desire that Idaho use the FFE to develop its own system. Mr. Shores expressed concern over Idaho's flexibility in adopting the FFE system. Could Idaho use just parts of the system, or would it be bound to take the entire package? Would there be a cost? The Chairman noted that the degree of flexibility is important and she plans to address that at a later meeting. Ms. Vaultk asked if other states have developed an IT system that could be viable. Ms. Geyer-Sylvia replied that the IT Sub-Committee is tasked with exactly this question. She believes that the SHOP Sub-Committee concern itself with learning what is available, what options does Idaho have, and do we even understand what our options are?

Mr. Settles commented that the Idaho Department of Health and Welfare had worked hard to develop a system that was sympathetic to the federal Medicaid requirements. However, he pointed out that the Medicaid component would probably not be a major factor in the SHOP, because the Legislature had not voted to expand Medicaid. He said that the Committee has an obligation to investigate private options, but keep in mind that the federal piece promises the best solution. The Chairman pointed out that the Department of Health & Welfare had based their Medicaid IT system on the assumption that Idaho would have a Federal Exchange, which looked likely at the time.

It was pointed out that there is no premium tax credit in the SHOP and that the initial entry into the Exchange will be the same for all those who apply. There will be an individual eligibility determination and the employer must be verified as eligible for the SHOP.

There is no penalty to the employer if an employee qualifies for the Medicaid option. There is no income threshold for the employer. SHOP eligibility is solely based on the number of qualified employees.

Mr. Self suggested that the Committee request information on the impact of Medicaid-eligible employees on the eligibility requirements of the employer in application for the SHOP.

### **Overview of requirements**

Mr. Donovan highlighted pages 5-13 to answer to any questions about the requirements for SHOP. This is information from CCIIO. The Chairman inquired if these general requirements would present a picture of the decisions that have to be made by the Idaho SHOP to comply with the 5/30/13 deadline. Mr. Donovan said that he thought this was the case. He suggested that member(s) of the Committee participate in a conference call with CCIIO to clarify this point. Mr. Self pointed out that there is a conference call scheduled with CCIIO to deal with exactly this issue. His impression is that CCIIO is interested in a roadmap and Idaho's intent concerning the SHOP. .

The Chairman reiterated important points brought up by the Committee.

- A recommendation to the Board that the Idaho SHOP not choose to exercise the voluntary option of allowing disaggregation prior to 2015.
- Idaho has statutory authority to set the employee limit for SHOP eligibility at 50 until 2016, unless legislative action changes this authority.
- A recommendation to the Board that the Committee schedule a presentation on participation thresholds by an actuary.
- A request that this Committee receive a report from the IT Committee, especially regarding any recommendation it might have regarding use of the FFE in whole or part.
- Presentation of some sort of "org chart", indicating where all the Sub-Committees are in the process of resolving their individual responsibilities.

Mr. Self pointed out that the number of employers who choose the SHOP may be small and due to the ability to maintain current coverage until renewal date in 2014, it is likely that employer groups will be making that decision throughout 2014. This may provide Idaho has some leeway in migrating from the SSBE to an SBE. He offered to do some independent research for data on sizing the market, etc.

Mr. Self noted that the carriers have very little time to file their rates. In all likelihood, he imagines that carriers will file by the 5/31/13 deadline, and then re-file an amended rate at a later date when the details have become clearer. He noted that the smaller the employer-group, the greater participation percentage is preferred. The Chairman noted that rate filing will be affected by whatever participation rate is selected. If the FFE platform is selected for IT, then the participation rate may be 70%. Another selection might mean a different participation rate. The Chairman agreed it might be beneficial to research why other states have chosen a different participation rate percentage. Mr. Self suggested that the research be based on states of a similar composition to Idaho.

There was a recommendation from the Committee that a list be compiled with all of the requirements of the SHOP. This might help the Committee in its decisions. HHS has issued a lengthy list for SHOP implementation.

(Duplication)

Mr. Settles clarified that as an employer, he is obligated to offer coverage to the employee and allow dependent children to receive coverage, but can exclude spouse coverage from plans

Penalties – every employer with over 50 employees must cover 95% of his employees, and provide eligibility for their dependents (but not the spouse). If the employer does not fulfill this obligation, he incurs a penalty of \$2000 per employee. An employer of 50 or more incurs a \$3000 per employee penalty for each employee that the plan is determined to be unaffordable for or does not meet the minimum value standards.

The next meeting for this Sub-Committee is scheduled for Tuesday, 5/14/13 at 3:00 p.m. in the offices of Hawley Troxell.

**The meeting adjourned at 4:17 p.m.**

Teresa Jones

Idaho Department of Insurance

**May 7, 2013**

**To: Idaho HIX - SHOP Sub-Committee – Q & A**

**From: Tom Donovan and other Dept. of Insurance Staff**

Definitions:

Qualified Employee – an individual employed by a qualified employer who has been offered health insurance coverage by such qualified employer through the SHOP

Qualified Employer – a small employer that elects to make, at a minimum, all fulltime employees of such employer eligible for one or more QHPs in the small group market offered through a SHOP. Beginning in 2017, if a state allows large employers to purchase coverage through the SHOP, the term Qualified Employer shall include a large employer . . .

SHOP – Small Business Health Options Program operated by an Exchange through which a qualified employer can provide its employees and their dependents with access to one or more QHPs

As it relates to small employers:

1.a. What is the applicable size of small employers that are eligible for SHOP, who makes the decision and how, and does this vary depending on whether the Idaho Health Insurance Exchange (HIX) might use federal vendor tools initially?

At this time Idaho will treat the small employer market as no more than 50 employees pursuant to the definition of small employer in Idaho code section 41-4703(28); and unless a different decision is made by the Governor or Legislature, this will remain the case up until 2016.

As noted in the regulation (45 CFR 155.20) and the statute (ACA § 1304, 42 USC 18024), a state may elect to keep the small employer definition below 51 employees until Jan. 1, 2016. State is a defined term (one of 50 states plus DC), as is Exchange. Hence, the Exchange, which is not the State, does not have the power to elect to the lower number to define small employer. The election must be made by the state.

It appears that there must be an affirmative election made by the state. We cannot rely merely on the existence of the Idaho small employer definition within the statute (IC § 41-4703(28)) because it predates PPACA. The next question is how is this election made?

Director Deal submitted and attested to the election of Idaho to keep the maximum number of employees at 50 in the initial blueprint for the state pursuant to the authority and directive from Governor Otter in December 2012 as part of the Governor's decision to submit the initial blueprint and election to pursue a SBE. The election to keep the small employer definition at no more than 50 employees appears in section 6.1 of the Blueprint. Additionally, as noted in the May 1, 2013, meeting, the DOI and Governor's Office have indicated the intent to keep the small

group market maximum number of employees at 50 in various public forums, including before legislative committees.

Finally, the term “small employer” is used in section 41-6104 concerning the establishment of the exchange and the board. Four board members are authorized to represent small employer business interests. While the term is not specifically defined in the Idaho Health Insurance Exchange Act, the most reasonable interpretation of that term would be in light of the definition at Idaho Code § 41-4703(28), which is also in the Insurance Code, Title 41, Idaho Code. While the Legislature could have specified that the small group market should be expanded to 100 employees prior to 2016, it did not.

1.b. How is the employer size determined for purposes of classification as a small employer and eligibility on the SHOP?

The exchange rule definition of small employer was revised in the March 11, 2013, final rule amendments applicable to the Establishment of Exchanges and Qualified Health Plans. The amendment provides that:

*Small employer* means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 1 but not more than 100 employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year. In the case of plan years beginning before January 1, 2016, a State may elect to define small employer by substituting “50 employees” for “100 employees.” The number of employees shall be determined using the method set forth in section 4980H(c)(2) of the Code, effective for plan years beginning on or after January 1, 2016, except for operations of a Federally-facilitated SHOP for which the method shall be used for plan years beginning on or after January 1, 2014 and in connection with open enrollment activities beginning October 1, 2013.

For plan years on and after January 1, 2016, a State Based Exchange must use the following method provided for in Section 4980(H)(c)(2) of the Internal Revenue Code provides:

**(c) Definitions and special rules**

For purposes of this section—

**(2) Applicable large employer**

**(A) In general** The term “applicable large employer” means, with respect to a calendar year, an employer who employed an average of at least 50 full-time employees on business days during the preceding calendar year.

**(B) Exemption for certain employers**

**(i) In general** An employer shall not be considered to employ more than 50 full-time employees if—(I) the employer’s workforce exceeds 50 full-time employees for 120 days or fewer during the calendar year, and (II) the employees in excess of 50 employed during such 120-day period were seasonal workers.

**(ii) Definition of seasonal workers** The term “seasonal worker” means a worker who performs labor or services on a seasonal basis as defined by the Secretary of Labor,

including workers covered by section 500.20(s)(1) of title 29, Code of Federal Regulations and retail workers employed exclusively during holiday seasons.

**(C) Rules for determining employer size** For purposes of this paragraph—

**(i) Application of aggregation rule for employers** All persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as 1 employer.

**(ii) Employers not in existence in preceding year** In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is an applicable large employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

**(iii) Predecessors** Any reference in this subsection to an employer shall include a reference to any predecessor of such employer.

**(D) Application of employer size to assessable penalties**

**(i) In general**

The number of individuals employed by an applicable large employer as full-time employees during any month shall be reduced by 30 solely for purposes of calculating— (I) the assessable payment under subsection (a), or (II) the overall limitation under subsection (b)(2).

**(ii) Aggregation** In the case of persons treated as 1 employer under subparagraph (C)(i), only 1 reduction under subclause (I) or (II) [of i] shall be allowed with respect to such persons and such reduction shall be allocated among such persons ratably on the basis of the number of full-time employees employed by each such person.

**(E) Full-time equivalents treated as full-time employees** Solely for purposes of determining whether an employer is an applicable large employer under this paragraph, an employer shall, in addition to the number of full-time employees for any month otherwise determined, include for such month a number of full-time employees determined by dividing the aggregate number of hours of service of employees who are not full-time employees for the month by 120.

[Calculation for plan years starting on and after January 1, 2014 through December 2015, Idaho Code § 41-4703\(28\) defines a small employer as :](#)

any person, firm, corporation, partnership or association that is actively engaged in business that employed an average of at least two (2) but no more than fifty (50) eligible employees on business days during the preceding calendar year and that employs at least two (2) but no more than fifty (50) eligible employees on the first day of the plan year, the majority of whom were and are employed within this state. In determining the number of eligible employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of state taxation, shall be considered one (1) employer.

[An Eligible employee is defined in Idaho Code § 41-4703\(13\) as:](#)

an employee who works on a full-time basis and has a normal work week of thirty (30) or more hours or, by agreement between the employer and the carrier, an employee who works between twenty (20) and thirty (30) hours per week. The term includes a sole proprietor, a partner of a partnership, and an independent contractor, if the sole proprietor, partner or independent contractor is included as an employee under a health benefit plan of a small employer, but does not include an employee who works on a part-time, temporary, seasonal or substitute basis. The term eligible employee may include public officers and public employees without regard to the number of hours worked when designated by a small employer.

It is the view of the DOI that, not only does the 50 employee limit for employees as elected by the Director in the Blueprint filing, but also the method of calculating employees by using only employees working 30 hours or more a week (unless a carrier and employer agree to include employees who work 20 – 30 hours per week).

The Exchange and QHP Certification Final Regulation, provides that a sole proprietor and a sole proprietor's spouse would not qualify as an employee, and thus in order to be eligible for small employer coverage (in and out of a SHOP) a small employer that is a sole proprietor would have to have one other non-spouse employee.

A sub-part of this question is how employees and individuals as well as employers may interact or be treated on the exchange.

A small employer does not have a risk of a penalty for failing to offer affordable and minimum value coverage. Only “applicable large employers” face the risk of a penalty for not offering employees affordable coverage.

If an individual is an employee, he or she may be able to acquire group coverage via the employer. Only individuals who are employed by a qualified employer (i.e. small employer who elects to offer coverage to at least all fulltime employees) and a “qualified employee” are eligible for SHOP coverage.

If an individual is employed by an employer who offers minimum value coverage (at least 60% AV) that is affordable (individual not required to pay > 9.5% of income for self-only coverage), then that individual is not eligible for a premium subsidy (Advance Premium Tax Credit) or Cost Sharing Reductions on the Exchange.

#### 1.c. Participation rates -

CCIIO is looking into our inquiry re: participation rates. Here's some discussion of other state activity taken from [statereform.org](http://statereform.org):

[Robert Gottfried](#)

District of Columbia

Re: SHOP Participation Threshold Percent

Some states are addressing the issue of participation rates in the SHOP exchange. Here are some examples we've seen from materials posted on State Refor(u)m:

In a presentation on SHOP exchange policy recommendations, the Maryland Health Connection recommends the state require that at least 75 percent of employees of a group enroll into SHOP QHPs for the employee choice option. The presentation notes that current Maryland law allows carriers to specify a minimum employee participation rate of up to 75 percent. See

[http://www.statereform.org/sites/default/files/md\\_shop-recommendations-...](http://www.statereform.org/sites/default/files/md_shop-recommendations-...) at page 5.

North Carolina has not yet set a participation rate requirement, but last spring, its Technical Advisory Group ("TAG") recommends a minimum participation requirement in the SHOP exchange. The TAG suggests the Exchange Board, in consultation with the Department of Insurance, be granted the authority to determine the participation rate in a North Carolina statute. See

<http://www.ncdoi.com/lh/Documents/HealthCareReform/ACA/Issue%20Brief%201...> at page 1.

Washington's SHOP director noted that the state has a 75 percent participation rate at a December 2012 exchange board meeting. See [http://wahbexchange.org/wp-content/uploads/HBE\\_STAC\\_121217\\_Meeting\\_Notes...](http://wahbexchange.org/wp-content/uploads/HBE_STAC_121217_Meeting_Notes...) at page 3.

#### 1.d. Is there any potential to use a federal vendor tool for SHOP initially?

Perhaps, the most recent information we have is that it would have to be done in conjunction with use of the supported federal vendor application, verification, eligibility, market place, and repository functions. Just as a question exists as to whether the Idaho Exchange could vary participation rules if it uses the federal vendor platform or tool, a similar question would arise for the method of calculating the size of an employer if Idaho HIX used a federal vendor tool or platform for SHOP.

#### 1.e. What are the general requirements for SHOP?

In addition to the information previously put together and set forth below, please find attached an Excel spreadsheet with the requirements and applicable deadlines that Kathy McGill assembled, which is a little easier format. We also have available the section 6 provisions of the Blueprint as well as a copy of that section of the Blueprint submitted in December 2012. A link to the initial Blueprint submitted is here:

<http://www.doi.idaho.gov/HealthExchange/SBEBlueprint.aspx>

The SHOP section is in pages 67 – 76 under the Blueprint language link.



The wage threshold for subsidies

Subsidies – aka Advance Premium Tax Credits – are only available through the purchase of an individual policy on the exchange – not a small employer policy via the SHOP exchange. They are available to individuals based on FPL (federal poverty line/level) ranging from 100% to 400%. I did not locate the 2014 FPL guidelines, but here are the 2013 FPL Guidelines:

Persons in family/household	100%	133%	150%	200%	250%	300%	400%
1	\$11,490	\$15,282	\$17,235	\$22,980	\$28,725	\$34,470	\$45,960
2	15,510	20,628	23,265	31,020	38,775	46,530	62,040
3	19,530	25,975	29,295	39,060	48,825	58,590	78,120
4	23,550	31,322	35,325	47,100	58,875	70,650	94,200
5	27,570	36,668	41,355	55,140	68,925	82,710	110,280
6	31,590	42,015	47,385	63,180	78,975	94,770	126,360
7	35,610	47,361	53,415	71,220	89,025	106,830	142,440
8	39,630	52,708	59,445	79,260	99,075	118,890	158,520
For each additional person, add	4,020	5,347	6,030	8,040	10,050	12,060	16,080

Premium tax credits / subsidies are available to individuals, who purchase only through the Exchange, and that subsidy can be paid in advance to the health carrier, or if the individual pays the entire premium, he or she can receive it lump sum from the IRS as a tax refund. A person buying a policy outside the Exchange will not be able to receive any tax credit subsidy to help pay premium. The applicable premium credit is calculated as applicable to the 2<sup>nd</sup> lowest cost silver plan, but a person can select a different plan. Those with incomes between the federal poverty line and four times the poverty level (\$45,960 for a single person and \$94,200 for a family of four in 2013) are eligible for tax credits that reduce the premiums they have to pay as reflected in this chart.

Income Range (as % of Federal Poverty Level)	Credit Equals Cap on Insurance as% of Income
Up to 133%	2%
133-150%	3-4%
150-200%	4-6.3%

200-250%	6.3-8.05%
250-300%	8.05-9.5%
300-400%	9.5%

There are also reductions to the normal limits on cost sharing (the amount the individual is required to pay beyond premium, i.e. deductible, copayments, and coinsurance percentage) available based on income when an individual purchases a silver plan through the Exchange per § 1402 of the ACA.

These cost sharing reductions are available to folks with incomes between 100% of the poverty line and 250% or 2.5 times the poverty level (about \$28,700 for a single person and about \$58,700 for a family of four). The cost-sharing subsidies are based on the idea of actuarial value. As you know a "silver" plan in the ACA – means that for a standard population, the plan will pay 70% of their health care expenses, while the enrollees themselves will pay 30% through some combination of deductibles, copays, and coinsurance. The higher the actuarial value, the less patient cost-sharing the plan will have on average. Exchange enrollees with incomes up to 1.5 times the poverty level receive cost sharing amounting to coverage with an actuarial value of 94%, those with incomes 1.5 to 2 times the poverty level receive coverage with a value of 87%, and those with incomes 2 to 2.5 times the poverty level can enroll in a plan with a 73% value.

That is represented as follows:

Income Range (as % of Federal Poverty Level)	Limit on Cost Sharing
100-150%	94%
150-200%	87%
200-250%	73%

1. The requirements for employer contributions

No particular requirements for small employers with less than 50 employees, except that an individual will not be eligible for a subsidy if an employer provides coverage with a minimum 60% actuarial value and the employee is not required to pay more than 9.5% of income for self-only coverage.

2. Any requirements and thresholds for employee contributions

See No. 3 above

### 3. How businesses count employees, full time vs part time

For purposes of Exchange participation – it is open to small employers. Small employers are defined in the ACA at § 1304(b) as employers who employ an average of at least 1 but not more than 100 employees. A state may elect to define a small employer as 1 to 50 employees for plan years beginning prior to Jan. 1, 2016. Because Idaho Code § 41-4703(28) defines a small employer as no more than 50 employees, and as alluded to in No. 1 above, we are operating under the view that Idaho would treat small employers as between 1 and 50 employees initially. For plan years starting after Jan. 1, 2016, a small employer will be one with up to 100 employees. The calculation for determining employer size refers to all employees including full-time and part-time. There is guidance on how to compute seasonal employees as well.

For purposes of exchange eligibility, a “qualified employer” is a small employer that elects to make [at least] all of its full-time employees eligible for 1 or more QHPs through the exchange. Starting in 2017, a state may elect to allow health carriers in the large group (101 or more employees) market to offer QHPs to large employers.

Section 4980H of the Internal Revenue Code of 1986, which was added by Section 1513 of PPACA, defines a full-time employee as one who works at least 30 hours per week, or 130 hours in a calendar month. Hours of paid work, as well as paid vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, or leave of absence, are counted in the determination.

### 4. What are any tax implications for employers using the exchange

Purchasing employer-sponsored coverage through the SHOP will also qualify certain small employers to receive a small business tax credit for up to 50 percent of the employer’s premium contributions toward employee coverage pursuant to section 45R of the Code.

For tax years 2010 through 2013, the maximum credit is 35 percent for small business employers and 25 percent for small tax-exempt employers such as charities. An enhanced version of the credit will be effective beginning Jan. 1, 2014. Additional information about the enhanced version will be added to IRS.gov as it becomes available. In general, on Jan. 1, 2014, the rate will increase to 50 percent and 35 percent, respectively. *See also* response to No. 10 below.

As it relates to the Federal govt;

### 5. Requirements as it relates to offer of QHP before and after 2015

Under the Patient Protection and Affordable Care Act (ACA), starting in 2014, small businesses in each state will have the option of purchasing coverage through a Small Business Health Option Program (SHOP) exchange. The SHOP exchange was supposed to include several health coverage options for employees of small businesses. However, on March 11, 2013, Department

of Health and Human Services (HHS) issued a proposed regulation extending the SHOP premium aggregation requirement from Jan. 2014 to Jan. 2015.

Previously, HHS had required that SHOP exchanges allow employers the option to offer employees all qualified health plans (QHPs) at whatever level of coverage the employer would choose (bronze, silver, gold, or platinum), and that a SHOP may also allow employers to offer one or more QHPs to qualified employees by other methods.

Now, the proposed rule would provide a transitional policy for plan years beginning on or after January 1, 2014, and before January 1, 2015. During this first plan year, a SHOP would not be required to permit qualified employers to offer employees a choice of QHPs at a single level of coverage. While a State Based Exchange could elect to start in 2014 it is not required to do so. But for plan years starting Jan. 1, 2015, a SHOP will be required to allow a qualified employer to select a metallic level of coverage (bronze 60%, silver 70%, gold 80%, or platinum 90% actuarial value level) and then make all plans at that level available to its employees. ACA § 1312(a)(2) and 45 CFR 155.705(b)(2). An employer of course does not have to choose that option, an employer can choose to simply make 1, or more than one, specific plan(s) available to its employees. A SHOP Exchange may, but does not have to, provide for even greater employer choice (e.g. multiple levels of plans by multiple carriers). This of course would be more complicated to administer for both the Exchange and carriers.

Cost sharing limits applicable to all small employer plans starting in 2014 as part of the Essential Health Benefits Package limit deductibles to \$2,000 for individual coverage and \$4,000 for any other plan.

#### 6. For the application design

Note, HHS just issued simplified versions of applications on April 30, 2013, for individuals and families in the FFE Exchange (not SHOP specific) available here under Forms:

<http://cciio.cms.gov/resources/other/index.html#hie>

#### 7. For the open enrollment

From the NAIC summary of the rule:

The SHOP must adhere to the start of the initial open enrollment period for the Exchange and ensure that enrollment transactions are sent to QHPs and that issuers adhere to coverage effective dates in accordance with §155.260. The initial open enrollment period for SHOP begins on October 1, 2013 for coverage effective January 1, 2014. Because of the rolling enrollment in SHOP, there is no end date for the open enrollment period.

Employers may begin participating in SHOP at any time during the year, though qualified employees may only enroll or change plans once a year unless they qualify for a special enrollment period. Plan years inside SHOP must consist of a 12 month period beginning with the employer's effective date of coverage.

A SHOP must provide for an annual employer election period in advance of the annual open enrollment period, during which time a qualified employer may modify its contribution and plan offerings. A SHOP must notify participating employers that their annual election period is approaching.

A SHOP must establish an annual employee open enrollment period for qualified employees. This period must occur prior to the end of the plan year and after the employer's election period.

A SHOP must ensure that a qualified employee hired outside of the initial or annual open enrollment period would have a specified window set by SHOP to seek coverage in a QHP beginning with the first day of employment, which would continue through the end of the employer's plan year, at which point the employee could renew or change coverage.

A SHOP must establish effective dates of coverage for qualified employees consistent with those described in §155.720.

A qualified employee enrolled in a QHP through SHOP will remain enrolled in that plan in the next plan year unless:

- The employee terminates coverage in accordance with §155.430;
- The employee enrolls in another QHP if that option exists; or
- The QHP in which the employee was enrolled is no longer available.

#### 8. For allowable tax credits by date and amount

The following is a good description of the tax impacts to employers taken from p. 8 of "Critical Employer Issues in the Patient Protection and Affordable Care Act" by the U.S. Chamber of Commerce.

[http://www.uschamber.com/sites/default/files/100426\\_critical\\_employer\\_issues\\_ppaca.pdf](http://www.uschamber.com/sites/default/files/100426_critical_employer_issues_ppaca.pdf)

#### *Penalty for Employers Depending on Whether Coverage is Offered*

Beginning in 2014, employers that employed an average of 50 full-time employees during the previous calendar year must offer health coverage that meets minimum essential coverage requirements or pay a fine. The one exception is for firms with more than 50 employees that have no employees receiving a tax credit for health insurance. For employers with more than 50 employees that offer coverage and have even one employee access a tax subsidy or cost reduction benefit for health insurance, penalties are \$3,000 per employee who receives the tax credit. Employers that do not offer coverage and have one employee receiving the tax credit in an exchange must pay \$2,000 per full time employee after exempting the first 30 full-time equivalents.

Regarding the small employer tax credit, here is a good explanation from pp. 25 to 26 of the "Critical Employer Issues in the Patient Protection and Affordable Care Act" by the U.S. Chamber of Commerce.

Beginning in 2010, employers with no more than 25 full-time employees and average wages of less than \$50,000 purchasing health insurance for their employees and covering at least 50% of total premium costs are eligible for a tax credit. The full amount of the credit is available only to employers with 10 or fewer full-time employees and whose employees have average annual fulltime-equivalent wages of less than \$25,000.

For years 2010–2013 (Phase I), the tax credit equals up to 35% of the employer’s premium cost based on the average premium contribution in the small-group market. Tax-exempt employers would receive up to a 25% credit. For years 2014 and beyond (Phase II), when exchanges are established, the tax credit equals up to 50% of the lesser of the employer’s premium contribution toward insurance purchased through an exchange, or the average premium contribution in the small-group market. Tax-exempt employers would receive a credit up to 35%.

In determining full-time equivalents for this credit, the employer calculates the total number of hours of service for which wages were paid, divided by 2,080. No more than 2,080 hours may be counted for any individual employee.

The size of the credit is phased out based upon the number of employees and average wages. Beginning in 2014, the credit is available only for two years. An employer could qualify for the credit for a total of six taxable years—four years in the first phase and two years in the second phase.

The credit is available only to offset actual tax liability and is claimed on the employer’s tax return. It is not payable in advance or refundable, so the employer must pay the employee premiums during the year and claim the credit at the end of the year.<sup>xvi</sup>

There are major concerns with the credit:

- The self-employed are excluded from the credit, yet they represent 78% of all small businesses in the United States. The earliest that the self-employed can receive assistance with affordability is 2014. However, they would qualify for the individual/family premium assistance only if they make below certain income levels (less than \$43,320 for an individual or \$88,200 for a family of four) *and* they purchase health coverage through the newly created exchanges.<sup>xvii</sup>
- Only businesses with 10 or fewer employees that have average taxable wages of less than \$25,000 *and* pay 50% of the cost of health coverage for their workers will qualify for the full credit. Those businesses with between 10 and 25 employees, with average taxable wages less than \$50,000, and paying 50% of the cost of coverage for their workers will receive only a portion of the credit.

As of 2014, to continue to receive a tax credit for an additional two more years, small-business owners would have to drop their existing group coverage and purchase coverage in the newly created exchanges.

## 9. For employers to estimate eligibility of subsidies for their employees

There is no duty for employers to estimate eligibility of subsidies. Small employers less than 50 would not likely have any incentive to do so. “Applicable large employers” with more than 50

employees would have an incentive to do so in calculating the affordability of any coverage the employer chooses to provide, because the employer could protect itself from a potential penalty for not offering affordable coverage. An employer can presume that regarding the test of affordability for an employee, that the employee's family modified adjusted gross income (MAGI) is equal to the w-2 wages for that employee. So long as the employee is not required to pay more than 9.5% of his or her income for the employer coverage, then the employer should not be subject to the penalty if that coverage is provided at that level to all full time employees.

#### 10. For the participation rate requirements

45 CFR 155.700 and 155.705(10) – the SHOP may provide for minimum participation rates of employers' employees, but if so, it must be for the entire SHOP and not relative to any particular Qualified Health Plan; the FFE will have a minimum participation rate of 70% of an employer's qualified employees (absent a state law or common practice in that particular state). (Note, Idaho's Small Employer rule provides that a carrier may impose a reasonable minimum participation requirement per IDAPA 18.01.69.046.03.)

#### 11. Consequences of employees enrolling in Medicaid

No consequences to employer or SHOP – if an employee is eligible for Medicaid, they are to be enrolled there -

#### The SHOP itself:

12. Essential functions: accept applications, disperse payments, retain records, determine eligibility etc.

See also Excel Spreadsheet prepared by Kathy McGill. Maintain records for 10 years.

#### Minimum Functions of an Exchange:

- maintain internet website with standardized info.;
- Service / call center via toll free hotline
- Implement procedures for certification, recertification, and decertification of health plans (goal would be to have DOI fulfill this role as part of its review of rates and forms)
- Assign a rating to each plan
- Utilize standardized format for presenting options
- Inform individuals of eligibility for Medicaid, CHIP or other public options
- Certify exemptions from the individual mandate
- Transfer to Treasury list of individuals exempt from mandate and employees eligible for tax credit
- Provide employers names of employees eligible for tax credit
- Regarding outreach and education, establish a Navigator program – grants, training, certification; recent proposed reg. provides for Application Counselors or Application Assistants – training and certification but no funding (providers etc.)

Per §155.705(a) a SHOP need not :

- Perform the requirements related to individual eligibility,
- requirements related to enrollment of qualified individuals,
- requirement to issue certificates of exemption, and requirements related to payment of premiums by individuals and Indian tribes.

- 

Per § 155.710A SHOP must:

- • permit qualified employers to purchase coverage for qualified employees through the shop

### 13. As a SBE vs a FFE

Idaho is a SBE and will continue as such, not a FFE or FFM (federally facilitated marketplace), even if Idaho Exchange uses federal vendor platform(s) or tool(s). It could be termed a “supported” State Based Exchange.

### 14. If a SBE uses a FFE for purposes of SHOP, how do the rules and flexibility potentially change?

TBD

### For the private payors (insurance companies)

### 15. Essential responsibilities

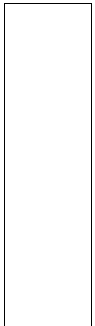
Provide QHPs that are certified, interact w/ exchange as necessary and in accordance with SHOP exchange policy and applicable law.



SHOP Function	Effective Date	Authority
<b>Overview</b>		
Exchanges must establish a SHOP for qualified employers to offer QHPs to their employees.	1/1/2014	45 CFR 155.700
Employers with fewer than 100 employees may participate, although States may limit eligibility to employers with 50 or fewer employees for the first two years.	1/1/2014	45 CFR 155.710(b)(1)
Employer must have an office within the service area of the SHOP	1/1/2014	45 CFR 155.710(b)(3)
Employer must attest to offering all full-time employees coverage through a SHOP.	1/1/2014	45 CFR 155.710(b)(2)
Sole proprietors are considered individuals and will purchase through the Exchange, not through a SHOP.	1/1/2014	IRC 45R
Employees may only be rated against these factors: age; tobacco use, and location of business	1/1/2014	45 CFR 147.102(a)
No annual or lifetime limits on the dollar value of services	1/1/2014	45 CFR 147.126(a)(1)
Out-of-pocket costs are limited to the limits on HSA-compatible plans	1/1/2014	45 CFR.147.126
A qualified employer which ceases to be a small employer solely by reason of an increase in the number of employees of such employer will continue to be treated by the SHOP as a qualified employer until the qualified employer otherwise fails to meet the eligibility criteria of this section or elects to no longer purchase coverage for qualified employees through the SHOP.	1/1/2014	45 CFR 155.710(d)
<b>Employer Choice</b>		
State-Based SHOP MAY allow a qualified employer to make one or more QHPs available to qualified employees: (A) By the method described in paragraph (b)(2) of this section [employer selects a level of coverage (bronze, silver, gold platinum) and makes all QHPs within that level available to qualified employees], or (B) By a method other than the method described in paragraph (b)(2) of this section.	1/1/2014	45 CFR 155.705(b)(3)(ii)(A) proposed
State-Based SHOP MUST allow a qualified employer to select a level of coverage as described in section 1302(d)(1) of the Affordable Care Act, in which all QHPs within that level are made available to the qualified employees of the employer.	1/1/2015	45 CFR 155.705(b)(2)
State-Based SHOP MAY allow a qualified employer to make one or more QHPs available to qualified employees by a method other than the method described in paragraph (b)(2) of this section.	continues in 1/1/2015	45 CFR 155.705(b)(3)(ii)(B) proposed
State-Based SHOP MUST allow an employer to make available to qualified employees all QHPs at the level of coverage selected by the employer as described in paragraph (b)(2) of this section	1/1/2015	45 CFR 155.705(b)(3)(i) proposed
Federally-Facilitated SHOP will only provide a qualified employer the choice to make available to qualified employees a single QHP.	1/1/2014	45 CFR 705(b)(3)(iii) (proposed)
Federally-Facilitated SHOP will provide a qualified employer a choice of two methods to make QHPs available to qualified employees: (A) The employer may choose a level of coverage as described in paragraph (b)(2) of this section, or (B) The employer may choose a single QHP.	1/1/2015	45 CFR 705(b)(3)(iv) (proposed)
<b>Enrollment</b>		
SHOP open enrollment begins October 1, 2013. Coverage begins no earlier than January 1, 2014.	1/1/2014	45 CFR 155.725(a)(1)

Open enrollment occurs on a rolling basis when a qualified employer offers coverage to employees.	1/1/2014	45 CFR 155.725(b)
Plan years are the twelve consecutive months starting at the close of enrollment.	1/1/2014	
<b>Special Enrollment Periods</b>		
Employees & dependents have a 30 day special enrollment period when they:	1/1/2014	45 CFR 155.725(j)(3)(i) proposed
lose minimum essential coverage	1/1/2014	45 CFR 155.725(j)(3)(i) proposed
gain or become a dependent through marriage, birth, adoption or placement for adoption	1/1/2014	45 CFR 155.725(j)(3)(i) proposed
enroll or fail to enroll in a QHP due to error, misrepresentation, or inaction of an offer, employee, or agent of the Exchange or HHS, or its instrumentalities as evaluated and determined by the Exchange.	1/1/2014	45 CFR 155.725(j)(3)(i) proposed
adequately demonstrate that the QHP in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee;	1/1/2014	45 CFR 155.725(j)(3)(i) proposed
gain access to new QHPs as a result of a permanent move	1/1/2014	45 CFR 155.725(j)(3)(i) proposed
are an Indian, as defined by section 4 of the Indian Health Care Improvement Act. They may enroll in a QHP or change from one QHP to another one time per month	1/1/2014	45 CFR 155.725(j)(3)(i) proposed
demonstrate, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide.	1/1/2014	45 CFR 155.725(j)(3)(i) proposed
Employees & dependents have a 60 day special enrollment period when they:	1/1/2014	45 CFR 155.725(j)(3)(ii) proposed
become ineligible for Medicaid or CHIP	1/1/2014	45 CFR 155.725(j)(3)(ii) proposed
become eligible for premium assistance program through Medicaid or CHIP	1/1/2014	45 CFR 155.725(j)(3)(ii) proposed
<b>Premium Payment</b>		
The State-Based SHOP MAY provide each qualified employer with a bill on a monthly basis that identifies the employer contribution, the employee contribution, and the total amount that is due to the QHP issuers from the qualified employer; will deliver a single bill to the employer.	1/1/2014	45 CFR 155.705(b)(4)(ii)(A) (proposed)
The State-Based SHOP MAY collect from each employer the total amount due and make payments to QHP issuers in the SHOP for all enrollees	1/1/2014	45 CFR 155.705(b)(4)(ii)(A) (proposed)
The State-Based SHOP MAY maintain books, records, documents, and other evidence of accounting procedures and practices of the premium aggregation program for each benefit year for at least 10 years.	1/1/2014	45 CFR 155.705(b)(4)(ii)(A) (proposed)
The State-Based SHOP MUST provide each qualified employer with a bill on a monthly basis that identifies the employer contribution, the employee contribution, and the total amount that is due to the QHP issuers from the qualified employer will deliver a single bill to the employer.	1/1/2015	45 CFR 155.705(b)(4)(i)(A) (proposed)
The State-Based SHOP MUST collect from each employer the total amount due and make payments to QHP issuers in the SHOP for all enrollees	1/1/2015	45 CFR 155.705(b)(4)(i)(B) (proposed)
The State-Based SHOP MUST maintain books, records, documents, and other evidence of accounting procedures and practices of the premium aggregation program for each benefit year for at least 10 years.	1/1/2015	45 CFR 155.705(b)(4)(i)(C) (proposed)
Federally-Facilitated SHOP will not perform premium aggregation functions.	1/1/2014	45 CFR 155.705(b)(4)(ii)(B) (proposed)
Federally-Facilitated SHOP will perform premium aggregation functions in plan years beginning or after 2015.	1/1/2015	45 CFR 155.705(b)(4)(ii)(B) (proposed)

<b>Small Employer Definition</b> (for the purpose of determining whether an employer is considered a small employer eligible to enroll in the SHOP)		
Small employer means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 1 but not more than 100 employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year. In the case of plan years beginning before January 1, 2016, a State may elect to define small employer by substituting "50 employees" for "100 employees." The number of employees shall be determined using the method set forth in section 4980H(c)(2) of the Code, effective for plan years beginning on or after January 1, 2016, except for operations of a Federally-facilitated SHOP for which the method shall be used for plan years beginning on or after January 1, 2014 and in connection with open enrollment activities beginning October 1, 2013.	1/1/2014	45 CFR 155.20
Federally-Facilitated SHOP will count employees using method given in section 4980H (c)(4) of the IRS Code	1/1/2014	45 CFR 155.20
Idaho SBE to count per eligible employee definition	1/1/2014 to 12/31/2015	Idaho Code § 41-4703(13)
State-Based SHOP will count employees using method given in section 4980H (c)(4) of the IRS Code	1/1/2016	45 CFR 155.20
<b>Full-Time Employee Definition</b> (for the purpose of determining which employees the small employer must offer insurance in order to participate in the SHOP)		
For a Federally-Facilitated SHOP, full-time employee has the meaning given in section 4980H (c)(4) of the IRS Code	1/1/2014	45 CFR 155.20
For a State-Based SHOP, full-time employee has the meaning given in section 4980H (c)(4) of the IRS Code	1/1/2016	45 CFR 155.20
<b>Participation Rate</b>		
SHOP must provide calculator, by electronic means, to facilitate the comparison of available QHPs after the application of any applicable employer contribution in lieu of any advance payment of the premium tax credit and any cost sharing reductions.	1/1/2014	45 CFR 155.705(11)
Federally-Facilitated-SHOP will use minimum participation rate of 70%, calculated as the number of qualified employees accepting coverage under the employer's group health plan, divided by the number of qualified employees offered coverage, excluding from the calculation any employee who, at the time the employer submits the SHOP application, is enrolled in coverage through another employer's group health plan or through a governmental plan such as Medicare, Medicaid, or TRICARE.	1/1/2014	45 CFR.155.725 (10)(i)
Federally-Facilitated-SHOP may use a different minimum participation rate in a State if there is evidence that a State law sets a minimum participation rate or that a higher or lower minimum participation rate is customarily used by the majority of QHP issuers in that State for products in the State's small group market outside the SHOP.	1/1/2014	45 CFR.155.725 (10)(ii)
The State-Based SHOP MAY use a minimum participation rate; if so, such rate must be based on the rate of employee participation in the SHOP, not on the rate of employee participation in any particular QHP or QHPs of any particular issuer.	1/1/2014	45 CFR.155.725 (10)
<b>Premium Calculator</b>		
A State-Based SHOP may establish one or more standard methods that employers may use to define their contributions toward employee and dependent coverage.	1/1/2014	45 CFR 155.705(11)(i)



<p>The Federally-facilitated SHOP must use the following method for employer contributions:</p> <p>(A) The employer will select a level of coverage as described in paragraph (b)(2) and (b)(3) of this section.</p> <p>(B) The employer will select a QHP within that level of coverage to serve as a reference plan on which contributions will be based.</p> <p>(C) The employer will define a percentage contribution toward premiums for employee-only coverage under the reference plan and, if dependent coverage is offered, a percentage contribution toward premiums for dependent coverage under the reference plan.</p> <p>(D) Either State law or the employer may require that a Federally-facilitated SHOP base contributions on a calculated composite premium for the reference plan for employees, for adult dependents, and for dependents below age 21.</p> <p>(E) The resulting contribution amounts for each employee's coverage may then be applied toward the QHP selected by the employee.</p>	1/1/2014	45 CFR 155.705(11)(ii)
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**Employer Tax Credits**

<p>Employers with no more than 25 full-time employees and average wages of less than \$50,000 purchasing health insurance for their employees and covering at least 50% of total premium costs are eligible for a tax credit. The full amount of the credit is available only to employers with 10 or fewer full-time employees and whose employees have average annual fulltime-equivalent wages of less than \$25,000. Employers with 11-15 FTE's get parial credit.</p>	as of 2010	IRC 45R
<p>Maximum credit of up to 35% of employer's premium cost; maximum of 25% for tax-exempt employers.</p>	through 12/31/13	IRC 45R
<p>Maximum credit of up to 50% of the lesser of the employer's premium contribution toward insurance purchased through an exchange, or the average premium contribution in the small-group market; maximum of 35% for tax-exempt employers.</p>	1/1/2014	IRC 45R
<p>Full-time employees determined by total of employees who work at least 40 hours per week, plus the annual hours of all part-time employees divided by 2080.*</p>	1/1/2014	IRC 45R

For example, an employer with 10 employees working 40 or more hours per week, and 10 employees working 20 hours per week, would have 15 FTEs. 10 FTEs are from the full-time employees. Annual hours of the 10 part-time employees = 10,040 (20 hrs. per wk \* 52 wks). 10,040/2,080 = 5 FTEs from the part-timers.

Section 4980(H)(c)(2):

(c) Definitions and special rules  
For purposes of this section—  
(2) Applicable large employer  
(A) In general  
The term “applicable large employer” means, with respect to a calendar year, an employer who employed an average of at least 50 full-time employees on business days during the preceding calendar year.  
(B) Exemption for certain employers  
(i) In general

An employer shall not be considered to employ more than 50 full-time employees if—  
(I) the employer's workforce exceeds 50 full-time employees for 120 days or fewer during the calendar year, and (II) the employees in excess of 50 employed during such 120-day period were seasonal workers.

(ii) Definition of seasonal workers

The term "seasonal worker" means a worker who performs labor or services on a seasonal basis as defined by the Secretary of Labor, including workers covered by section 500.20(s)(1) of title 29, Code of Federal Regulations and retail workers employed exclusively during holiday seasons.

(C) Rules for determining employer size

For purposes of this paragraph—

(i) Application of aggregation rule for employers

All persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as 1 employer.

(ii) Employers not in existence in preceding year

In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is an applicable large employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

(iii) Predecessors

Any reference in this subsection to an employer shall include a reference to any predecessor of such employer.

(D) Application of employer size to assessable penalties

(i) In general

The number of individuals employed by an applicable large employer as full-time employees during any month shall be reduced by 30 solely for purposes of calculating—

(I) the assessable payment under subsection

(a), or

(II) the overall limitation under subsection (b)(2).

(ii) Aggregation

In the case of persons treated as 1 employer under subparagraph (C)(i), only 1 reduction under subclause (I) or (II) 1 shall be allowed with respect to such persons and such reduction shall be allocated among such persons ratably on the basis of the number of full-time employees employed by each such person.

(E) Full-time equivalents treated as full-time employees

Solely for purposes of determining whether an employer is an applicable large employer under this paragraph, an employer shall, in addition to the number of full-time employees for any month otherwise determined, include for such month a number of full-time employees determined by dividing the aggregate number of hours of service of employees who are not full-time employees for the month by 120.

Section Section 4980(H)(c)(2):

(4) Full-

time employee

(A) In general

The term "full-time employee" means, with respect to any month, an employee who is employed on average at least 30 hours of service per week.

(B) Hours of service

The Secretary, in consultation with the Secretary of Labor, shall prescribe such regulations, rules, and guidance as may be necessary to determine the hours of service of an employee, including rules for the application

of this paragraph to employees who are not compensated on an hourly basis.

# Notes for Presentation to Idaho Health Insurance Exchange SHOP Subcommittee Meeting

## May 16, 2013

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### **1. Minimum Participation Rates in the SHOP**

Minimum participation rates are intended to:

- Ensure a sufficiently large pool and to spread risk and achieve economies of scale in the small group market.
- Encourage larger employer contributions because participation increases when the cost to employees decreases.
- Reduce the chances of adverse selection in the small group market (i.e. only sicker people are motivated to purchase insurance).

Under current Idaho law, insurers in the small group market can require any reasonable minimum participation rates, subject to approval by the Department of Insurance.

Other SHOPS established under the ACA and pre-ACA SHOP-like exchanges tend to require 70% to 75% minimum participation, and the federally facilitated SHOPS will require 70% minimum participation. Research in other states suggests that participation rates between 70% and 75% are industry norms.

Under existing state law, and in the federally facilitated SHOPS, employees who are covered by another employer's plan, such as a spouse's group coverage, or governmental health program, such as Medicaid, are not included in the calculation of minimum participation rate because there is no risk of adverse selection.

### **SHOP and Medicaid**

The SHOP eligibility determination process does not include coordination QHP selection, tax credit eligibility, cost sharing eligibility, and Medicaid/CHIP eligibility. The SHOP, Exchange, and Medicaid will, however, need to share information because the SHOP rules require special enrollment periods when an employee experiences certain life events, including loss of coverage under Medicaid. The process for coordination between the SHOP, Exchange, and Medicaid is not provided in the regulations and is an issue upon which the Subcommittee may wish to obtain further guidance from CCIIO.