



**TOPIC: Planning and Establishment of State-Level Exchanges; Request for Comments Regarding Exchange-Related Provisions in Title I of the Patient Protection and Affordable Care Act**

**COMMENT CODE:** OCIIO-9989-NC

**AGENCY:** Office of Consumer Information and Insurance Oversight, Department of Health and Human Services

**Overview:** This document is a response to the request for comments regarding the Exchange-related provisions of the Patient Protection and Affordable Care Act (the Affordable Care Act), enacted on March 23, 2010. The Department of Health and Human Services (HHS) invites public comments in advance of future rulemaking and grant solicitations.

**Solicitation of Comments**

Section 1321(a)(2) of the Affordable Care Act requires the Secretary to consult with stakeholders to ensure balanced representation among interested parties. HHS is inviting public comment to aid in the development of standards for establishment and operation of the Exchanges, to address other Exchange-related provisions in Title I of the Affordable Care Act, and to inform for the awarding of grants to the States to assist them in planning and developing Exchanges. The Department is interested in comments from all interested parties. To assist interested parties in responding, this request for comments describes specific areas in which the Department is particularly interested.

In response, these comments represent the viewpoint of the Small Business Coalition for Affordable Healthcare (the Coalition). Representing the country's largest, oldest and most respected small business associations, the Small Business Coalition for Affordable Healthcare has spent more than a decade working to increase access to and affordability of private health insurance. The coalition's membership includes small business organizations in the agricultural, construction, food service, floral, manufacturing, wholesaler, retail, rental, entertainment and houseware communities. As the nation's leading small business coalition, our members actively participated in the healthcare debate and advocated for solutions that would increase choice, enhance competition for private insurance and increase the overall affordability of health insurance for America's job creators: small business.

Specific areas outlined in the Request for Information in which the Small Business Coalition for Affordable Healthcare are particularly interested focus on the employer participation aspects of the exchange. The responses below reflect the question pattern outlined in the initial Request for Information.

**K. Employer Participation**

**1. *What Exchange design features are likely to be most important for employer participation, including the participation of large employers in the future? What are some relevant best practices?***

A well-structured exchange can provide small businesses with an easier way to shop for insurance and expand the number of choices available when buying private insurance plans.

Constructing a responsive and sustainable exchange is critical for two reasons. First, it must be built so that it can be a marketplace that attracts and caters to small businesses, their employees and families who greatly need access to more plans, greater transparency and above all, affordable options. Second, since the PPACA is intended to be made available to a broader group of consumers over time, it is imperative that the foundation of the exchange is strong – otherwise, there is a greater risk that it will fail as the size of the exchange grows in future years. At a minimum the exchange must:

1. Provide opportunities to purchase quality health insurance that is affordable for the consumers accessing the exchange – small businesses,
2. Provide small business and their employees with helpful information about their healthcare and healthcare financing options, including information on aggregating premiums from multiple employers for a single employee,
3. Provide a mechanism for employers and employees to compare and choose a health insurance policy that meets their needs (including voluntarily using an agent/broker throughout the process),
4. Provide a standardized application, and
5. Provide all small businesses with an easy “one check” option to pay for the health insurance for multiple employees, policies and carriers.

## ***2. What factors are important for consideration in determining the employer size limit (e.g., 50 versus 100) for participation in a given State's Exchange?***

It is critical that all small employers have the ability to purchase private health insurance through the exchange. The PPACA recognizes that need by making coverage immediately available to employers that currently define the fully-insured small group market (e.g, 2-50 employees). However, it is important to keep in mind that small and large employers have different needs and that broadening the size of employers allowed to access the exchange may have the unintended effect of growing the exchange so fast that it fails under its own weight.

**Recommendation:** The Coalition believes that it is premature to draw a conclusion without an examination of how changing size limits will affect the small businesses in a particular state. More research and data must be provided before making any recommendation about the size limits in an exchange. At a minimum, those data needs include:

- The size of the small group market in each state,
- The risk profile of the existing small group market,
- The size of the marketplace in that state that is greater than 50 (e.g, 51-100),
- Whether or not those larger employers are self-insured or fully-insured, and
- A comparison of how the risk profile will change for both marketplaces if the size limit is changed.

## ***3. What considerations are important in facilitating coordination between employers and Exchanges? What key issues will require collaboration?***

The greatest consideration to be made is how to structure an exchange so that employers providing coverage to their employees can ensure the needs of their workforce are being met in the most efficient and least burdensome way possible.

- **Payment Aggregation**  
America's workforce is not static. Unlike the 1950's when many households were single-income households and full-time work might have been characterized by a 9-to-5 Monday through Friday schedule, today's workforce is a dynamic and ever-changing kaleidoscope of people, hours and industries. Some work full-time, full-time and part-time and still others work multiple part-time jobs. In response to those diverse workforce challenges, the newly formed Utah exchange provides a mechanism in its exchange construction that permits multiple sources to make contributions to an employee/individual's health insurance premium. Administration action to enable the aggregation of premium

payments from multiple sources is critical to ensuring that the exchange is built with the flexibility necessary to adapt and respond to the changing complexion of the American workforce.

- **Payment Simplicity**

According to a National Federation of Independent Business (NFIB) Small Business Poll only 12 percent of all employers with fewer than 250 employees have at least one employee whose exclusive task is personnel or human resources. The finding serves as a strong reminder that employer participation in the exchange must be responsive to the demographics of the consumer itself - in this case, small business. The lack of human resource support reinforces the need for simplicity so that small businesses are not absorbed by administrative and time-consuming processes. For example, of the approximately half of small employers with fewer than 50 employees offering health insurance, more than 80 percent of small employers only offer one plan option to their employees. In an effort to make a greater choice in plans available, Section 1312 of the PPACA provides a framework to allow an employee to choose among multiple plans offered at the level of coverage their employer elects to subsidize (e.g., if their employer elects silver-level coverage each employee can select any plan on the silver level). While the option provides a choice that employers and employees have long sought, it can present administrative challenges for employers if they are forced to send multiple checks to different carriers for different plans. The administration and officials constructing the exchange can aid in the success of this option by working with employers to construct a simple way for employers to make a single payment so that those dollars are seamlessly distributed throughout the exchange to cover the cost due to different carriers for different plans.
- **Small Business Representation**

Small employers are keenly aware of the importance of conducting research so they can better understand the needs of their customers. After all, if you are in the construction business and you built a mansion for a client who wanted a small two-bedroom home, you did not meet the needs of your customer. This is also the case with the exchange. In order to meet the needs of small business, small business must have a seat at the table and a voice in the discussion. The Coalition believes the administration must take action to ensure that any exchange board consist of a professionally and geographically diverse group that includes employees, small businesses and the self employed, health insurance regulators, and others with appropriate expertise.

#### ***4. What other issues are there of interest to employers with respect to their participation in Exchanges?***

A number of factors will affect the overall success or failure of the exchange for the small business community. While there will be greater opportunity in the future to comment on specific regulatory proposals affecting the exchange, the small employer community remains focused on the following needs:

- **Affordable Options Must Be the Premiere Focus of Exchange Construction**
  - In spite of PPACA's passage, the cost of health insurance remains a significant concern for small business. In the spirit of "if you build it they will come," it is imperative that the architects of the exchange understand that small businesses are consumers and cannot survive unless they are smart shoppers who systematically seek out the best ratio of value to cost with respect to virtually every good or service they pay for, including health coverage. So, if the ultimate goal of those same architects is to build an exchange marketplace in which small business consumers will shop, the products must, above all, be affordable. Small businesses, on average, pay about 18 percent more for health insurance than their larger counterparts for the same group of services.<sup>1</sup> Therefore, affordability must remain an

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1 Commonwealth Fund, Benefits and Premiums in Job-Based Insurance, May 2006.

exchange's principal focus in order to help small business achieve its ultimate goal – lower costs.

- **Recommendation:** We recommend that as the exchange is constructed, significant discussions, input and data-driven research be conducted to design a package of benefit options. That “base” or “minimum” threshold will be where you start, and there will be a specific price tag attached to such a plan. While seeking to expand coverage for small employers, it is critical to understand both what those small employers spend and the value of those services that are purchased. It cannot be overstated that since cost is the number one concern of small business, cost must be the number one focus of the administration if the intent is to construct a successful exchange for its customer – small business.
- **Use the Exchange to Develop and Broaden Consumerism**
    - Embedded in the exchange framework of the PPACA are the seeds of consumerism that, if structured properly, can yield increased flexibility and predictability for employers and portability for individual employees. Those seeds are planted in Section 1312 where qualified employers who purchase coverage through an Exchange are permitted to select a level of coverage (bronze, silver, gold, or platinum) and then permit an employee to choose among any plan offered at that level of coverage within an Exchange. Small employers view this as a significant first step toward providing freedom to individual employees to select the healthcare coverage of their choice within a specified range of plans. That freedom means they'll be on the pathway toward greater knowledge and experience that will allow them to become better-informed and educated consumers with their healthcare dollars.
    - **Recommendation:** We urge HHS/OCIIO to reaffirm its support for individual choice so those employers have the option to provide their employee with a wider range of choices for their health plans. Ensuring that this remains an integral part of the exchange foundation serves as a winner for both employers and employees. It will maximize consumer choice by allowing each employee to choose the plan that is best for that employee and his or her family, and ensuring the portability of that plan as they move both across the workforce or transition from employer-based to individual coverage. Employers also benefit because, rather than being forced to limit their employees to a single plan, they will be able to make a range of choices available and be free to run their business – rather than running their insurance plan.
  - **Construct Outreach and Enrollment Options that Serve All Small Businesses**
    - Enrollment ought to be easy and require little paperwork and administrative burden and, above all, must be structured to serve all business owners – regardless of whether or not they use a computer. For instance, an NFIB Small Business Poll on information technology issues facing the small employer community revealed that 88 percent of small employers have a stand-alone computer or a computer connected to a network. While that provides a good segment of the small employer population with access to internet-based portals so they can retrieve educational and outreach materials, it still leaves more than 1 in 10 without those services – a challenge that will only be mirrored in other communities where access to computers is also limited.
    - **Recommendation:** In planning for outreach and education, consider the audience of potential consumers that you will need to reach. Diversify outreach and enrollment vehicles so that a variety of communication and response tools can be utilized so consumers can use the phone, fax, public kiosks and in-person visits to facilitate entry into the exchange.

- **Minimize Regulatory Reporting Burdens**
  - The new healthcare law mandates a number of reporting requirements for employers including, but not limited to, 1099 information reporting, attestations on the offer of health insurance and W-2 information reporting. Individually, these may not appear burdensome, but in totality they represent a significant paperwork and regulatory burden for small employers. A recent study released by the Small Business Administration (SBA) Office of Advocacy titled *The Impact of Regulatory Costs on Small Firms* finds, “Small businesses still face higher costs when they encounter government regulations compared to larger firms...on a per employee basis it costs small firms \$2,830 more than larger firms to comply with government regulations.” As the SBA Chief Advocacy Counsel contended, “That is a 36 percent difference and that is an unfair burden to place on American small business.” In previous years, there has been a movement in Congress to increase awareness about the “one-size fits all” approach to legislation and regulation. In response, the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) was enacted so that Congress can more closely examine the impact of regulation on smaller entities. Specifically, under Section 609 (b) procedures are set forth so that “covered agencies” (the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA)) can convene a Small Business Advocacy Review Panel prior to the agency proposing a rule that will “significantly impact a substantial number of small entities.”
  - **Recommendation:** We strongly recommend that all agencies with jurisdiction over exchange construction and regulation development governing the exchange convene some form of a Small Business Advocacy Review Panel prior to the agency finalizing the rules so that it can determine whether these regulations will “significantly impact a substantial number of small entities.” Acquiring this small business input is critical to understanding the impact on small business and the best way to mitigate any unintended consequences. If the impact is found to be significant, we further recommend that the agencies halt all rules until alternative arrangements can be proposed, examined and finalized so that small employers will not be adversely and disproportionately harmed.

### **Conclusion**

As the administration works to develop additional guidance related to the exchanges, one thing is clear – small business owners remain committed to working as partners to develop an insurance marketplace that is simple, efficient and responsive to their consumer needs. We deeply believe that the input of small business will be critical to ensuring that the foundation of the exchange can address the needs of employers – both today and in the future. Please consider those small business voices as you continue this process so that together, we can construct a marketplace where small businesses can get the coverage they need – at a price they can afford.

Sincerely,

Associated Builders & Contractors  
Associated General Contractors of America  
Commercial Photographers International  
Independent Office Products & Furniture Dealers Association (IOPFDA)  
International Franchise Association  
International Housewares Association  
National Association of REALTORS  
National Association of Wholesaler-Distributors  
National Club Association  
National Federation of Independent Business  
National Office Products Alliance (NOPA)

National Retail Federation  
National Roofing Contractors Association  
Office Furniture Dealers Alliance (OFDA)  
Petroleum Marketers Association of America  
Professional Photographers of America  
Service Station Dealers of America and Allied Trades  
Society of Sport & Event Photographers  
Specialty Equipment Market Association (SEMA)  
Stock Artists Alliance  
Tire Industry Association  
Women Impacting Public Policy