

# What plans are exempt from the ACA?

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On Dec. 16, 2014, President Obama signed into law a \$1.1 trillion [omnibus spending bill](#) that includes important relief from the Affordable Care Act for certain health plans provided to expatriate employees. The spending bill incorporates the Expatriate Health Coverage Clarification Act (the “Act”), which broadly exempts “expatriate health plans,” employers that sponsor such plans, and “expatriate health insurance issuers” with respect to coverage under such plans from most otherwise applicable provisions of the ACA.

Some important highlights of the Act are:

- Expatriate health plans are exempt from most of the ACA insurance market reforms.
- Expatriate health plans are exempt from the transitional reinsurance fee and the Patient Centered Outcomes Research Institute (“PCORI”) fee.
- After 2015, expatriate health plans are exempt from the health insurer fee (with special transition rules applying in 2014 and 2015).
- Employer-sponsored coverage for expatriates generally is exempt from the Cadillac tax, except for coverage provided to certain expatriates who are “assigned” to work in the U.S.
- The employer “shared responsibility” mandate rules continue to apply, but expatriate health plans with respect to certain foreign employees working in the U.S. and certain U.S. expatriates working abroad are treated as “minimum essential coverage” under an “eligible employer-sponsored plan” for purposes of the employer and individual mandates.
- The Code sections 6055 and 6056 reporting requirements continue to apply (with certain relief from the electronic delivery consent rules for individual statements).

Unless otherwise specified, the Act is effective on the date of enactment and applies only to expatriate health plans issued or renewed on or after July 1, 2015. The agencies have not yet issued generally applicable guidance on the Act. However, on March 30, the IRS issued Notice 2015-29, which gives guidance on the Act solely for purposes of the HIF calculations for the 2014 and 2015 fee years.

## **Expatriate health insurance issuer**

An “expatriate health insurance issuer” means a health insurance issuer that issues expatriate health plans. “Health insurance issuer” is defined by reference to PHSA section 2791, which requires that the issuer be licensed to engage in the business of insurance in a U.S. state and be subject to state law that regulates insurance.

An earlier version of the legislation (H.R. 4414) passed by the House of Representatives earlier last year defined the term health insurance issuer to also include a foreign insurer subject to tax

under subchapter L of chapter 1 of the Code as if it were a domestic corporation, but this provision was not included in the final version in the Act.

Thus, the provisions of the Act that apply to “expatriate health insurance issuers” generally will only apply to issuers that are licensed in a U.S. state (except see below under the ACA section 9010 health insurer provider fee section with respect to the 2014 and 2015 fee calculations).

### **Expatriate health plan**

To be an “expatriate health plan” eligible for the relief, the plan must be: 1) a group health plan, 2) health insurance coverage offered in connection with a group health plan, or 3) health insurance coverage offered to certain groups of similarly situated individuals (and their spouses and dependents or other individuals enrolled in the plan) that meets each of the following requirements:

— Substantially all of the primary enrollees must be “qualified expatriates.” In applying this test, a primary enrollee does not include an individual who is not a national of the United States (defined as the 50 states, D.C., and Puerto Rico) and resides in his/her country of citizenship.

- **Qualified expatriates means:**
- Certain employees transferred or assigned to the U.S. for a specific and temporary employment purpose or assignment (“Inpats”);
- Individuals working outside of the U.S. for a period of at least 180 days in a consecutive 12-month period that overlaps with the plan year (“Expats”); and
- Individuals who are members of a group of similarly situated individuals that is formed for the purpose of traveling or relocating internationally in service of one or more of the purposes listed in Code section 501(c)(3) or (4) or similarly situated organizations or groups (e.g., students or religious missionaries) and meets certain other requirements (“Other Expats”).

— Substantially all of the benefits provided under the plan or coverage must not be excepted benefits.