



AMERICAN BENEFITS COUNCIL

May 8, 2013

Submitted via email to e.ohpsca-expat.ebsa@dol.gov

U.S. Department of Labor
Employee Benefits Security Administration
200 Constitution Ave., NW
Washington, DC 20210

Re: FAQs About Affordable Care Act Implementation (Part XIII) - Expatriate Health Plans

Sir or Madam:

We write on behalf of the American Benefits Council (“Council”) to provide comment in connection with the FAQs about Affordable Care Act Implementation (Part XIII) (“FAQs”) issued by the Departments of Labor, Health and Human Services, and the Treasury (collectively, the “Departments”) on March 8, 2013. The FAQs provide subregulatory guidance regarding the treatment of expatriate health plans for purposes of certain provisions of the Patient Protection and Affordable Care Act (“ACA”), including with respect to the extent to which an expatriate health plan must satisfy the market reforms set forth in subtitles A and C of Title I of the ACA and whether an expatriate health plan constitutes a form of minimum essential coverage under Internal Revenue Code (“Code”) section 5000A.

The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council’s members either sponsor directly or provide services to health and retirement plans that cover more than 100 million Americans.

INCLUSION OF THE GUIDANCE REGARDING MINIMUM ESSENTIAL COVERAGE IN RULEMAKING

As we noted in part in comments submitted to the Department of the Treasury and the Internal Revenue Service (collectively, “Treasury”) on May 2, 2013,¹ we appreciate the sub-regulatory guidance in the FAQs providing that an expatriate health plan is eligible for certain transition relief with regard to the ACA market reforms and further providing that an expatriate health plan constitutes minimum essential coverage for purposes of the individual shared responsibility requirement.

We urge the Departments to include in final rulemaking the guidance set forth in the FAQ that provides that expatriate health plans constitute minimum essential coverage for purposes of Code section 5000A (and, by cross-reference, Code section 4980H). Many United States citizens and residents spend a significant portion of the year working outside of the United States but do not satisfy the requirements of Code section 911(d)(1)(A) or (B) (*e.g.*, a citizen that is not a bona fide resident of a foreign country for an uninterrupted period of at least an uninterrupted taxable year, or a citizen or resident who, during any period of 12 consecutive months, is present in a foreign country or countries during at least 330 full days in such period) and thus are generally subject to the individual shared responsibility requirement imposed by Code section 5000A. The FAQs provide assurance that such individuals (and their covered dependents) will be considered to satisfy the individual shared responsibility requirement for periods during which the individuals work outside of the United States and are covered by an expatriate health plan. As provided in our May 2, 2013 comments, we urge Treasury to include the aforementioned guidance regarding expatriate health plans in final regulations regarding Code section 5000A.

CLARIFICATION THAT SELF-INSURED PLANS, AS WELL AS COVERAGE ISSUED BY FOREIGN INSURERS, ARE EXPATRIATE HEALTH PLANS FOR PURPOSES OF THE FAQs

The FAQs define “expatriate health plan” to mean “an insured group health plan with respect to which enrollment is limited to primary insureds who reside outside of their home country for at least six months of the plan year and any covered dependents, and its associated group health insurance coverage.”

We urge the Departments to make clear in final rulemaking that the same result applies with respect to expatriate coverage regardless of whether it is insured or self-

¹ See Council letter dated May 2, 2013, available at http://www.americanbenefitscouncil.org/documents2013/hcr_shared-mec_irs-letter050213.pdf

funded. Many multinational employers self-insure health coverage that they provide to their employees, including expatriate coverage for employees working abroad. A contrary rule would unnecessarily disadvantage those employers that choose to self-fund their expatriate coverage for their employees.

Additionally, we request that the Departments clarify in any final rulemaking that expatriate coverage can qualify as an expatriate health plan and thus be eligible for the transition relief and treated as minimum essential coverage for purposes of Code section 5000A regardless of whether such coverage is issued by a domestic or foreign issuer. It is our understanding that many companies provide expatriate health plan insurance through foreign issuers sited in the country in which employees work. It is not clear based on the text of the FAQs whether foreign issuers are included in considering whether a plan is an expatriate health plan for purposes of the FAQs.

CLARIFICATION THAT AN EXPATRIATE PLAN DOES NOT FAIL TO BE AN EXPATRIATE HEALTH PLAN FOR PURPOSES OF THE FAQs MERELY BECAUSE IT COVERS SOME INDIVIDUALS WORKING IN THEIR HOME COUNTRY.

In order to constitute an expatriate health plan, a plan must, among other things, limit enrollment to “primary insureds who *reside outside of their home country* for at least six months of the plan year” and their covered dependents (emphasis added). Employers often offer coverage under a single health plan to not only their employees working abroad in a particular country, but also to employees who permanently reside in such country. Expanding the definition of expatriate health plan to allow plans that cover certain “local” individuals to continue to constitute expatriate health plans would enable employers to offer a valuable benefit to their employees without compromising the Departments’ intent of not allowing a plan that commonly covers employees working in the United States to be considered an expatriate health plan.

CLARIFICATION THAT THE SIX-MONTH RESIDENCY REQUIREMENT IS NOT TIED TO THE PLAN YEAR

A plan is an expatriate health plan only if, in addition to satisfying other criteria, it is limited to “primary insureds who reside outside of their home country *for at least six months of the plan year*” and their covered dependents (emphasis added). Thus, under the FAQs’ definition of expatriate health plan, a calendar-year expatriate health plan would not appear to be able to cover an individual who is transferred abroad for six months beginning in November, because the individual would not have been residing outside of his or her home country for six months in a plan year. Under the FAQs, an employer would be able to cover one employee working abroad for six months within a single plan year (*e.g.*, January through June in the case of a calendar year plan) under an

expatriate health plan. However, the employer could not cover a different employee working in the same foreign office under the same expatriate health plan if his or her six-month tenure abroad crosses plan years (e.g., November through April in the case of a calendar year plan). In order to streamline an employer's ability to provide coverage to its expatriate employees, we urge the Departments to allow an expatriate health plan to cover individuals without regard to whether at least six months of their tenure abroad falls within a single plan year.

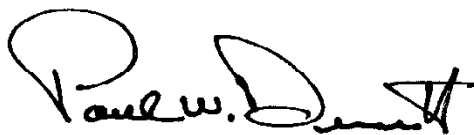
EXTENSION OF TRANSITION RELIEF REGARDING MARKET REFORMS

The FAQs state that the transition relief provided for purposes of satisfying the market reforms is only available for plans with plan years *ending* on or before December 31, 2015. Given the complexity of the market reforms and the ongoing compliance efforts of issuers and employers to bring both insured and self-funded expatriate health plans into compliance with the market reforms, we urge the Departments to extend the availability of the transition relief to plan years *beginning* on or before December 31, 2015.

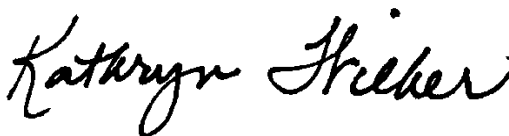
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Thank you for considering these comments submitted with regard to the FAQs. If you have any questions or would like to discuss these comments further, please contact us at (202) 289-6700.

Sincerely,



Paul W. Dennett
Senior Vice President,
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