

FREQUENTLY ASKED QUESTIONS

Immigrants & Exemptions from the ACA Individual Mandate

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The Patient Protection and Affordable Care Act (ACA) generally requires people living in the United States to obtain health insurance or pay a tax penalty called a “shared responsibility payment.”¹ The penalty increases each year and is assessed for every uninsured member of a person’s tax household who is not exempt from the so-called “individual mandate.”² Here are some answers to questions about the exemptions that are most commonly available to low-income immigrants and their families.

- **I am not eligible to buy insurance through the ACA marketplace because of my immigration status. Am I exempt from the individual mandate?**

Yes. People who are ineligible to buy insurance through the ACA marketplace because they are not classified as lawfully present for ACA purposes are “exempt noncitizens” and are not subject to the individual mandate.³ This exemption includes people who received deferred action (temporary protection from being deported and authorization to work in the U.S.) through the Deferred Action for Childhood Arrivals (DACA) program.⁴

- **Do I have to disclose my immigration status to claim that I am an exempt noncitizen?**

No. The exemption is claimed by filing IRS Form 8965 with your taxes. The instructions for Form 8965 provide letter codes that indicate the basis for the exemption. The instructions provide a single code, “C,” for U.S. citizens living abroad, residents of other countries, and people who are not lawfully present in the U.S. People claiming the exemption are indicating only that they fit one of those three categories.

- **I am a DACA recipient. How do I claim an exemption?**

The ACA regulations treat DACA recipients as not lawfully present.⁵ Therefore, people who have DACA also file a Form 8965 and indicate code C as the basis for their exemption.

- **I am lawfully present, but I can’t afford to buy insurance. Will I have to pay the penalty?**

Generally, no. There are several exemptions that relate to household income or the affordability of health plans.

First, for any year that a person’s household income is so low that the he or she is not required to file a tax return, all members of the household will be exempt from the requirement to have coverage. Consumers are not required to file anything to claim this exemption, but they can claim it on their tax returns if they choose to file taxes.⁶

An annual exemption also applies if the lowest-cost health plan available to a consumer costs more than 8 percent of the consumer’s household income.⁷ Since the price of coverage depends on an individual’s age and other factors, eligibility for this exemption needs to be determined separately for each member of the household. The exemption is claimed by filing Form 8965 with the household’s tax return.

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Another exemption is available to people who experience hardship in obtaining health insurance. Hardship exemptions are available to people in a variety of circumstances related to economic difficulties, including those who are homeless or facing eviction or foreclosure, and to people whose utilities are being shut off.⁸ Hardship is determined individually for each member of a household, and the exemption may be granted for less than a full year.

■ **How can I claim a hardship exemption?**

To claim a hardship exemption, a person needs to obtain a certificate from the state or federal healthcare marketplace⁹ and provide the certificate number on IRS Form 8965 when filing his or her tax return.

■ **I read that my income would make me eligible for Medicaid if I lived in another state, but my state did not expand its Medicaid program. Am I required to buy health insurance?**

No. Hardship exemptions are also available to people who would have been eligible for Medicaid if their state had expanded Medicaid eligibility under the ACA.¹⁰ (See the information about claiming the hardship exemption under the previous question.)

■ **I tried to apply for coverage, but I couldn't complete the application or my coverage was terminated after I was asked to provide additional documentation. Am I exempt?**

Maybe. Many immigrants have come up against barriers when applying for coverage through the state and federal health care marketplaces. These include difficulty completing the identity verification process, problems submitting documents to verify immigration status, and, for some, the requirement to obtain a Medicaid denial before submitting a marketplace application. In addition, some immigrants who began receiving coverage had it terminated after they were asked to submit or resubmit verification of their immigration (or naturalized citizenship) status.

While there is no specific exemption available for people who experienced problems in the application or verification process, people who experienced a “hardship in obtaining insurance” can apply for a hardship exemption. As noted above, application for a hardship exemption is made at the state or federal healthcare marketplace.

■ **If I have an exemption, could I be subject to the penalty if my family members don't have coverage?**

Maybe. Most exemptions, including the exemption for not being lawfully present, are assessed individually for each member of a household. Therefore, a tax filer who has an exemption could be assessed a penalty if nonexempt family members are uninsured. For example, an undocumented parent who has U.S. citizen children could be subject to a penalty if the children are uninsured.

In contrast, the exemption based on household income applies to all members of the household. Hardship exemptions are assessed for each individual but are often based on factors, such as homelessness, that affect the entire household.

■ **I live and work in the U.S. for a few months per year, with a nonimmigrant visa. Will I be subject to the penalty if I don't have health insurance?**

Maybe. If you do not live in the U.S. year round, you may be considered a “nonresident alien” for tax purposes.¹¹ Nonresident aliens are considered “exempt noncitizens” and are not required to file taxes or buy health insurance. Some nonresident aliens (as defined by tax

law) can choose whether to apply for health insurance through the marketplace or to claim an exemption from the individual mandate.

If you are a nonresident alien who wishes to claim an exemption from the individual mandate, you can claim the exemption by filing form 8965 with your taxes. If you do not have a tax-filing obligation (for example, if you have no income or are below the income threshold for filing), you do not need to do anything to claim the exemption.

■ **I visit my family in my home country for at least one month every year. Am I required to have health insurance during that time?**

It depends. You are allowed to have one short gap in coverage, of less than 3 months, each year. If you experience more than one gap in coverage during the year, the exemption will only apply to the first one.

Any months that you are eligible for another exemption will not be included in the coverage gap.¹² For example, a household may receive a hardship exemption for three months, and not regain coverage for two months after it ends. For purposes of the individual mandate, they will be treated as having been covered during the three-month hardship exemption and having a coverage gap of two months.

However, it is important to understand that you may not be able to get coverage following a coverage gap, unless the gap ends during an open enrollment period or you are eligible for a Special Enrollment Period (SEP). A SEP is generally available if you relocate to a new exchange area, experience a change in family composition, or lose comprehensive coverage, among other changed circumstances.¹³ Returning to your residence after an absence from the U.S. will not qualify you for a SEP.

■ **Can I qualify for more than one exemption?**

Yes. A person can qualify for multiple exemptions. For example, an undocumented person who was facing eviction and had an income below the tax-filing threshold would qualify for three exemptions: exempt noncitizen, hardship, and income below the tax filing threshold.

A person with multiple exemptions only needs to claim one. In determining which exemption to claim, he or she should consider whether the exemption lasts for the full year and is available to all members of the household, as well as the relative ease of claiming the exemption. So it would be best for the undocumented person in the above example to take the exemption for being below the tax-filing threshold, because that exemption lasts for the year, extends to all members of the household, and does not require any filing.

■ **Are there other exemptions?**

Yes. There are several additional exemptions, including exemptions for people who are incarcerated, members of Indian tribes, and people who have religious objections to health insurance.¹⁴ To find out more about other exemptions, visit <https://www.healthcare.gov/fees-exemptions/>.

¹ 26 USC § 5000A, 26 CFR § 1.5000A-1. For more information, see *Questions and Answers on the Individual Shared Responsibility Provision*, www.irs.gov/Affordable-Care-Act/Individuals-and-Families/Questions-and-Answers-on-the-Individual-Shared-Responsibility-Provision.

² A tax household is comprised of tax filers and their dependents. See www.healthcare.gov/income-and-household-information/household-size/.

³ 26 CFR § 1.5000A-3(c). For information about which immigrants are lawfully present, see *Immigrants and the Affordable Care Act*, www.nilc.org/immigrantsshr.html.

⁴ 45 CFR §§ 152.2, 155.20, 155.305(a)(1).

⁵ *Id.*

⁶ 26 CFR § 1.5000A-3(f).

⁷ 26 CFR § 1.5000A-3(e).

⁸ 45 CFR § 155.605(g). See also *Application for Exemption from the Shared Responsibility Payment for People Who Experience Hardships*, <https://marketplace.cms.gov/applications-and-forms/hardship-exemption.pdf>.

⁹ You can find out which marketplace your state uses by going to www.healthcare.gov.

¹⁰ 45 CFR § 155.605(g)(4).

¹¹ It is important to remember that “resident alien” and “nonresident alien” mean very different things for immigration purposes and for tax purposes. With respect to tax definitions, a non-U.S. citizen is generally classified as a “resident alien” if he or she is either (a) a lawful permanent resident (LPR), in which case s/he is considered a resident for both tax and immigration purposes, or (b) meets the “substantial presence” test (more information on this test can be found at www.irs.gov/Individuals/International-Taxpayers/Substantial-Presence-Test). Any other noncitizen will be classified as a “nonresident alien.” For more information on tax issues affecting immigrants under the ACA, see *Frequently Asked Questions: Immigrants, Taxes and the ACA*, www.nilc.org/taxes.html.

¹² 26 CFR § 1.5000A-3(j).

¹³ For more information, see <https://www.healthcare.gov/coverage-outside-open-enrollment/special-enrollment-period/>.

¹⁴ 26 CFR § 1.5000A-3. See also *Questions and Answers on the Individual Shared Responsibility Provision*, www.irs.gov/Affordable-Care-Act/Individuals-and-Families/Questions-and-Answers-on-the-Individual-Shared-Responsibility-Provision.