

FYI[®] Alert

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IRS Delays Employer ACA Reporting

In welcome relief for many employers, the IRS has automatically extended by 30 days — from January 31, 2017 to March 2, 2017 — the ACA reporting deadline for furnishing the Forms 1095-C and 1095-B to employees. However, the deadline for filing the forms with the IRS has not been extended, and remains March 31, 2017 for electronic submissions.

Background

The ACA added two significant reporting requirements to the Internal Revenue Code (Code) that are effective for medical coverage provided on or after January 1, 2015:

- **Code Section 6055 reporting.** Supports IRS enforcement of the individual mandate
- **Code Section 6056 reporting.** Supports IRS enforcement of the employer shared responsibility provisions (“employer mandate”) and the premium tax credits for coverage purchased in the public marketplace

The IRS developed two sets of information returns that employers and coverage providers use to satisfy their ACA reporting obligations — the 1095-B and 1095-C. Under regulations, employers and coverage providers must furnish Forms 1095-B and 1095-C to individuals for the 2016 calendar year by January 31, 2017. They must also submit these forms to the IRS (along with transmittal forms) by March 31, 2017, if filing electronically.

Final 2016 Forms and Instructions

Earlier this year, the IRS released final forms and instructions for 2016 ACA reporting. The 2016 forms and instructions are largely unchanged from 2015. Changes include the addition of the statement “Do not attach to your tax return. Keep for your records” to the top of Form 1095-C as a clarification to recipients, and a new code for reporting an offer of conditional coverage to an employee’s spouse. Following are the 2016 forms and instructions:



Form 1095-C	Employer-Provided Health Insurance Offer and Coverage
Form 1094-C	Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns
1094-C and 1095-C Instructions	Instructions for Forms 1094-C and 1095-C
1095-B	Health Coverage
1094-B	Transmittal of Health Coverage Information Returns
1094-B and 1095-B Instructions	Instructions for Forms 1094-B and 1095-B

Transition Relief

Recognizing, as they did last year, that many employers, insurers and other providers of health coverage need additional time to implement the ACA reporting requirements, on November 18, 2016, the IRS issued [Notice 2016-70](#), which automatically extended the due date for furnishing Forms 1095-C and 1095-B to individuals by 30 days — from January 31, 2017, to March 2, 2017. With this automatic extension, the IRS will not grant any additional extensions beyond March 2, 2017.

The IRS did not extend the deadline for filing the statements, along with the 1094-C and 1094-B transmittal forms, to the IRS. That deadline remains March 31, 2017, if filing electronically.

Comment. While the date for filing with the IRS was not extended, filers can obtain an automatic 30-day extension by submitting Form 8809 (Application for Extension of Time to File Information Returns) by the due date for the ACA information returns. Form 8809 may be submitted on paper or electronically, and no explanation for the extension is required.

Since the extension is automatic, there appears to be no downside in requesting the extension even if it ends up not being needed. Additionally, under certain conditions, filers may request an additional 30-day extension. These requests are not granted automatically, but instead only where it is shown that extenuating circumstances prevented filing by the due date.

Relief from Penalties

Notice 2016-60 also extends to the 2016 reporting the transition relief from penalties that was provided for 2015 reporting. Reporting entities that can show they made a good faith effort to comply with the reporting requirements — both for furnishing statements to individuals and filing statements and returns with the IRS — will not be subject to penalties. The relief applies to missing and inaccurate taxpayer identification numbers, dates of birth and other required information. However, no relief is provided for reporting entities that do not make a good faith effort to comply or that fail to meet the furnishing and filing deadlines.

The notice does include a number of factors that the IRS will consider in determining good faith:

- Whether a reasonable effort was made to prepare for reporting, such as gathering and transmitting necessary data to an agent to prepare for data submission, or testing its ability to transmit information to the IRS
- The extent to which the employer or coverage provider is taking steps to ensure compliance with the 2017 reporting requirements

Impact of Extension on Individual Taxpayers

Some individual taxpayers may be affected by this extension because the information included on the 1095-C or 1095-B is needed to complete their 2016 tax return. For example, individuals use the information on these forms to confirm that they (and their dependents) had minimum essential coverage during 2016. Similar to last year, the notice states that individuals who do not receive these forms before they file their tax return can rely on other information received from their employer when completing their returns. The IRS instructions for completing the 1095-C and 1095-B also confirm that these forms are not attached to the individual's tax return.

Will Employer Reporting Requirement Continue in 2017 and Beyond?

During 2017, a key focus of the Trump administration and the Republican-controlled Congress will be repealing and replacing the ACA. Does that mean that the ACA reporting requirements will be repealed as well? If yes, when?

As discussed above, the ACA reporting supports IRS enforcement of the employer mandate, the individual mandate, and eligibility for premium tax credits for lower-income individuals to purchase marketplace coverage. As long as any of these three provisions remains in place, there is likely a need for employer reporting to support the IRS enforcement. Repealing the employer mandate could be the easiest and first of the ACA provisions to be repealed. But that repeal would only eliminate one reporting need.

With the open enrollment period for 2017 ACA marketplace coverage currently underway, under any likely Republican alternative, the marketplaces will remain in place for the coming year. While Congress could repeal the ACA premium tax credits during 2017, that would cause a significant disruption to millions of individuals currently receiving subsidies. According to a [CMS release](#) in the first half of 2016, 10.4 million customers had coverage through an ACA marketplace, and 8.8 million were receiving a premium tax credit, or subsidy, to help pay marketplace premiums. Repealing the subsidies in 2017 would leave millions without an alternative to obtain affordable coverage. And if the individual mandate is repealed in 2017, it could cause marketplace disruptions as healthy individuals drop coverage leading to a "death spiral" in the marketplaces. Even an ACA alternative program designed to be implemented several years from now could cause the current carrier exit from the marketplaces to turn into a flood if the individual mandate and subsidies will be repealed in the future, or not enforced by the IRS. Maintaining insurer support of the marketplaces during a transition to a replacement program will be a significant challenge.

So, even if the employer mandate is repealed for 2017, it still appears that at least some form of employer reporting requirement would remain in place. What about 2018?

If an ACA alternative program is effective in 2018, it could eliminate the need for the current ACA reporting needs. However, insurance carriers would almost certainly remain a key component of any ACA replacement plan. To set rates for coverage to be offered in 2018 under an ACA replacement program, insurers and state insurance departments would need guidance by the spring of 2017 (and certainly no later than November 2017) — a seemingly impossible task since such a program would likely need support from the Democrats as well to be enacted. Remember that while the ACA was enacted in early 2010, it took until 2014 to implement the exchanges and most of the marketplace reforms. So it could be several years before an alternative to ACA can be implemented, and until then, some or all of the current ACA reporting requirements may need to continue.

In Closing

Despite the extension in the due date for furnishing the 1095-C forms to March 2, employers should continue their efforts to comply with the ACA reporting requirements.

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