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IRS extends deadline for 2020 employer ACA disclosures

The IRS has extended the ACA deadline for furnishing Forms 1095-B and 1095-C to individuals — from January 31, 2021 to March 2, 2021. The deadline for filing the forms with the IRS electronically has not been extended and remains March 31, 2021.

Background

The Affordable Care Act (ACA) added two significant reporting requirements to the Internal Revenue Code (Code) that were effective for medical coverage provided on or after January 1, 2015.

- **Code Section 6055 reporting.** Intended to support IRS enforcement of the individual mandate
- **Code Section 6056 reporting.** Intended to support 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 — Form 1095-B, which is used exclusively for Code Section 6055 reporting purposes, and Form 1095-C, which employers subject to the employer mandate use to satisfy both their Code Section 6055 and Code Section 6056 obligations. Under regulations, employers and coverage providers must furnish Forms 1095-B or 1095-C to individuals for a calendar year by January 31 of the following calendar year. They must also submit these forms to the IRS (along with transmittal forms) by March 31 of the following calendar year, if filing electronically. The

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Is ACA reporting still required after nullification of the individual mandate?

Yes. The tax bill that nullified the individual mandate penalties did not repeal the ACA reporting requirements. ACA reporting is used by the IRS to enforce the employer mandate and to determine eligibility for premium subsidies to purchase ACA marketplace coverage, neither of which were changed by the tax bill.

regulations permit the IRS to grant extensions of up to 30 days to furnish the statements to individuals and authorize an automatic 30-day extension for filing forms with the IRS. Earlier this year, the IRS released [draft forms](#) for 2020 ACA reporting.

Extension of deadline for furnishing forms

As in prior years, the IRS has recognized that many employers, insurers, and other health coverage providers may need additional time to comply with the ACA reporting requirements. On October 2, it issued [Notice 2020-76](#), which extends the due date for furnishing 2020 Forms 1095-B and 1095-C to individuals to March 2, 2021. The IRS will not grant any requests for extensions beyond that date.

Buck comment. Last year, in Notice 2019-63, the IRS asked for comments on whether an extension of the January 31 deadline for furnishing forms would be necessary for future years. Notice 2020-76 states that the IRS received very few comments. The IRS again requested comments and stated that if no comments are submitted, the relief will not be granted in future years. The comment deadline is February 1, 2021.

The IRS did not extend the deadline for filing the statements, along with the 1094-C and 1094-B transmittal forms. That deadline is March 31, 2021.

Buck 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 of the need for an extension is required.

State individual mandates

California, New Jersey, Rhode Island, and Washington D.C. have individual mandate requirements in 2020. These states allow employers and employees to use the IRS ACA forms for satisfying reporting requirements. Note that the IRS deadlines (and extensions) for filing and furnishing ACA forms may not apply to the state reporting requirements.

Relief from penalties

Notice 2020-76 extends relief from the Code Section 6722 penalty imposed on entities that fail to timely furnish individuals with complete and correct information statements, such as Forms 1095-B and 1095-C. Noting that individuals no longer need the information on the Form 1095-B to determine their individual mandate liability (since the penalty has been reduced to \$0), the IRS states that it will not assess the penalty for failing to furnish a Form 1095-B for 2020 if the following two conditions are met:

- The entity posts a notice prominently on its website advising responsible individuals that they may receive a copy of their 2020 Form 1095-B upon request. The notice must provide relevant contact information (email, physical addresses, and telephone numbers) for requesting the form and obtaining answers to any questions.

- The entity furnishes a 2020 Form 1095-B to the individual within 30 days of a request.

This relief does not extend to the furnishing of Forms 1095-C to full-time employees enrolled in self-insured employer health coverage. However, it does apply to the furnishing of Form 1095-C to any individual enrolled in self-insured coverage who is not a full-time employee. The relief also does not apply to the filing of either Form 1095-B or Form 1095-C with the IRS. Health coverage providers and employers continue to be subject to penalties consistent with current enforcement policies as discussed below if they fail to furnish correct and complete forms in a timely manner.

The notice also provides a final extension of the relief from penalties provided in past years to 2020 reporting. Reporting entities that can show they made a good-faith effort to comply with the reporting requirements — both for furnishing Form 1095-C to full-time employees and for 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 states that this is the last year that this relief will be provided.

Determining “good faith”

The notice states that in determining good faith, the IRS will consider whether the employer or coverage provider made reasonable efforts to prepare for reporting information to individuals and the IRS, 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.

Draft 2020 forms and instructions

The IRS released draft 2020 forms earlier this year. Draft instructions have not yet been released. Other than the Form 1095-C, the forms are largely unchanged from last year. With the elimination of the ACA individual mandate, Part III of the Form 1095-C was moved from page 1 to page 3.

Part II of the Form 1095-C includes several changes to accommodate reporting for individual coverage health reimbursement accounts (ICHRA). Starting in 2020, employers can offer employees an ICHRA instead of a traditional group health plan. (See our [August 12, 2019 FYI](#).) The following changes are included in Part II of the draft:

- A space for inserting the employee’s age as of January 1
- Line 14 includes eight new codes for reporting offers of coverage for ICHRAs
- A new line 17 has been added for the employee zip code

We assume that the instructions will clarify that these new items do not apply to employers who do not offer an ICHRA.

Form 1095-C	<u>Employer-provided health insurance offer and coverage</u>
Form 1094-C	<u>Transmittal of employer-provided health insurance offer and coverage information returns</u>
Form 1095-B	<u>Health coverage</u>
Form 1094-B	<u>Transmittal of health coverage information returns</u>

In closing

Despite the extension in the due date for furnishing Form 1095-C to March 2, 2021, employers should continue efforts to comply with the ACA reporting requirements.

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