

Eye on Washington Regulatory Update

IRS Extends 2020 Form 1095 Furnishing Deadline and Other Relief

On October 2, 2020, the Internal Revenue Service (IRS) announced an extension of the due date to furnish 2020 health coverage information forms to employees in Notice 2020-76. Applicable Large Employers (ALEs) now have until March 2, 2021, to provide 2020 Forms 1095-C to individuals.

The IRS also extended transition relief from penalties for incorrect or incomplete information under Sections 6721 and 6722 to ALEs that can demonstrate that they made good-faith efforts to comply with the Form 1095-C reporting requirements under Section 6056 for 2020; both for furnishing to individuals and for filing with the IRS.

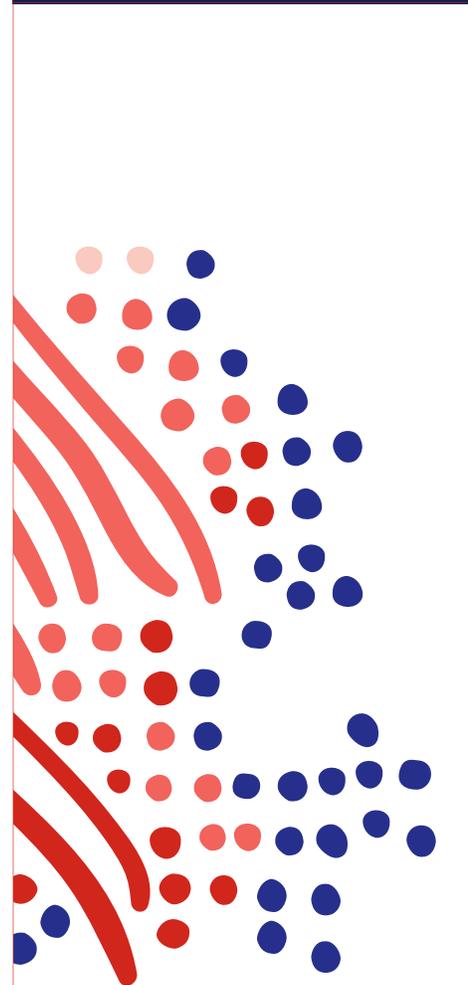
IRS Notice 2020-76 provides additional relief from penalties under Section 6722 to providers of minimum essential coverage (MEC) that fail to furnish Form 1095-B or Form 1095-C to individuals that were not full-time employees for any month of the year, under certain conditions.

Background

Internal Revenue Code (IRC) Section 6056 under the Affordable Care Act (ACA) requires ALEs to report to the IRS whether they offer their full-time employees and their employees' qualified dependents the opportunity to enroll in minimum essential coverage (MEC) under an eligible employer-sponsored plan. An ALE is an employer that employed (any combination of workers within a controlled group) an average of at least 50 full-time employees (including full-time-equivalent employees) during the preceding calendar year. Employees are considered full-time in any month that they are credited with at least 30 hours of service per week, on average, or 130 hours of service in the month.

ALEs must furnish Forms 1095-C to employees or covered individuals regarding the health insurance coverage offered to them. Individuals may use this information to determine whether, for each month, they may claim the premium tax credit on their individual income tax returns. Form 1095-C is to be furnished and filed for each employee who was full-time for one or more months of a year and includes details of any health insurance coverage offered to the employee, reported on a monthly basis. For self-insured plans, Form 1095-C must also be provided to individuals who enrolled in qualified coverage, which may include non-full-time employees and any covered spouses and dependents.

The January 31 deadline to furnish Forms 1095-C to employees was also extended for 2015 (Notice 2016-4); 2016 (Notice 2016-70), 2017 (Notice 2018-06); 2018 (Notice 2018-94) and 2019 (Notice 2019-63).



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Extended Deadline to Furnish 2020 Forms 1095-C to Employees

IRS Notice 2020-76 announced an extension of the deadline to furnish Forms 1095-C to employees until March 2, 2021, but employers are encouraged to furnish such statements as soon as possible. The extension is automatic and does not need to be requested. The deadline for filing Forms 1095-C is not extended and remains February 28 (March 1, 2021 as February 28 falls on Sunday) for paper filers, or March 31 for electronic filers. Electronic filing is required for parties filing 250 or more forms.

Most employees will not need Form 1095-C to prepare their income tax return. Prior to 2019, some employees may have referenced Form 1095-C, Part III, to determine whether a health insurance coverage shared-responsibility payment applied. However, as of January 1, 2019, the individual health coverage mandate penalty was reduced to zero as a result of the 2017 Tax Cuts and Jobs Act. Accordingly, the "Full-year health-care coverage or exempt" box has been removed from Form 1040. Health coverage information is still relevant for residents of California, the District of Columbia, New Jersey or Rhode Island, which have individual health coverage mandates in effect. Taxpayers may also rely on other information received from their employer or coverage provider for purposes of filing their returns.

2020 is the Final Year for "Good-Faith" Transition Relief From Penalties for Incorrect or Incomplete Information

The IRS also extended transition relief from penalties for incorrect or incomplete information under Sections 6721 and 6722 to ALEs that can demonstrate that they made good-faith efforts to comply with the Form 1095-C reporting requirements; both for furnishing to individuals and for filing with the IRS. Section 6721 of the IRC imposes a penalty for failing to timely file an Information Return or for filing an incorrect or incomplete Information Return (e.g., with an incorrect name and/or Social Security Number). Section 6722 of the Code imposes a penalty

for failing to timely furnish an information statement or for furnishing an incorrect or incomplete information statement.

The IRS previously provided transition relief from penalties under Sections 6721 and 6722 to ALEs that could show that they made good-faith efforts to comply with the ACA information-reporting requirements for 2015 through 2019. Notice 2020-76 extends this relief to 2020 Forms 1094-C/1095-C, however, it states "as this good-faith relief was intended to be transitional relief, this is the last year the Treasury Department and the IRS intend to provide this relief." ALEs will be eligible for relief if they can show that they made good-faith efforts to comply with the reporting requirements for correct and complete information. No relief is provided for failure to file or to furnish a statement by the due dates (as extended by Notice 2020-76). In determining good faith, the IRS will take into account whether an employer made reasonable efforts to prepare for reporting the required information and furnishing it to employees. The IRS will also consider the extent to which the employer is taking steps to ensure that it will be able to comply with the reporting requirements for 2020.

Penalty Relief for Failing to Furnish Form 1095-B and Some Forms 1095-C

Due to the elimination of the individual shared-responsibility payment beginning after 2018, Form 1095-B is no longer required for a taxpayer to compute federal tax liability or file an income tax return, although the requirement to furnish Form 1095-B remains. The IRS will not assess a penalty under Code Sec. 6722 for failing to furnish a Form 1095-B if: (1) the reporting entity posts a notice on its website stating that individuals may request a 2020 Form 1095-B and that the individual must provide an email and physical address to mail the statement and a phone number where they can be contacted; and (2) the reporting entity furnishes the statement within 30 days of the request. This penalty relief does not apply to furnishing Form 1095-C to full-time employees. Penalty relief will cover any penalties related to furnishing Form 1095-C to any employee who is not a full-time employee for any month in 2020.

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"Good-Faith" Efforts May Require Action

As noted, no relief will be provided in the case of reporting entities that do not make a good-faith effort to comply with the regulations. With respect to the accuracy of information reported, such as names and Social Security Numbers (SSNs), these regulations are reflected and explained in IRS Publication 1586. This publication specifies the actions needed to avoid penalties for Information Returns (e.g., Forms 1095-C and W-2) that are filed or furnished with missing or incorrect SSNs, or with names that do not match the corresponding SSNs.

Accuracy penalties can be up to \$280 per return for failure to file and failure to furnish accurate and timely Information Returns, up to an annual cap of \$3,392,000 (\$1,130,500 for employers with gross receipts under \$5,000,000). Separate penalties under Sections 6721 and 6722 may apply to filing and furnishing, so the aggregate penalty could be \$560 per statement, up to \$6,784,000 per year. The IRS has generally not asserted such penalties systemically for Forms 1095-C or Forms W-2, but enforcement policy may change in the future.

To avoid such penalties, employers may need to follow Publication 1586 guidance to check with employees if they become aware of a name/SSN error. For example, the IRS electronic filing system for Forms 1095-C notifies employers of any errors in names and SSNs. These error notices are not an IRS Notice 972CG; i.e., do not require a specific solicitation, but it may be reasonable under the circumstances to check the employer's records to confirm that the information provided by the employee was transcribed correctly; and, if so, to ask affected employees to verify that the information provided matches the name and SSN on their Social Security card. For example, people may forget to notify the Social Security Administration (SSA) regarding marriages, divorce, etc.

For more information, see [IRS Notice 2020-76](#) or [IRS Publication 1586](#).

ADP Compliance Resources

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