

IRS Extends Due Dates for ACA Reporting and Renews Penalty Relief

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Earlier this month, the Internal Revenue Service (IRS) issued [Notice 2020-76](#), which has once again extended the due date for certain reporting requirements under Internal Revenue Code (Code) §§ 6055 and 6056, as added by the Affordable Care Act (ACA). This guidance *only* applies to Form 1095-B for insurers and Form 1095-C for employers. The original deadline to provide these Forms to insureds/employees was January 31, 2021; however, the relief provides an extension to March 2, 2021. The other reporting obligations under Code §§ 6055 and 6056 *were not* provided an extension. Thus, insurers must still file the Form 1094-B with the IRS by March 31, 2021, and employers will need to file their Form 1094-Cs by March 1, 2021* (if paper), or March 31, 2021 (if electronic), with the IRS (see chart below).

FORMS	ORIGINAL DUE DATE	NEW OR SAME DUE DATE
1095-B	January 31, 2021	March 2, 2021
1095-C	January 31, 2021	March 2, 2021
1094-B	March 31, 2021	March 31, 2021
1094-C	March 1, 2021* (if paper) or March 31, 2021 (if electronic)	March 1, 2021* (if paper) or March 31, 2021 (if electronic)

** Because the paper filing due date falls on a weekend (Sunday, February 28), the due date extends to the next business day (Monday, March 1).*

This extension applies automatically and does not require the submission of any request or other documentation to the IRS. However, because of this automatic extension, the rules allowing the IRS to grant requested extensions of time of up to 30 days to furnish Form 1095-B will not apply to the extended due date. If you already submitted an extension request to the IRS, the IRS has stated that it will not formally respond to those requests. Since the extension relief granted by the IRS through Notice 2020-76 does not extend the due date for filing the 2020 Forms 1094-B, 1095-B, 1094-C, or 1095-C with the IRS, filers may still request an extension of time for good cause, and the automatic extension remains available under the normal rules for filers who submit a Form 8809 on or before the due date.

Additionally, penalty relief under Code §§ 6721 and 6722 is again being provided to insurers. The IRS will not assess penalties against insurers for failing to issue a Form 1095-B to insureds, as long as the insurer both (i) posts a notice on its website indicating how and where an insured can obtain a copy of the Form 1095-B, and (ii) furnishes a copy of the Form 1095-B within 30 days of receiving a request for a copy from an insured. Note that this penalty relief still does not apply to employers.

Background

Under the ACA, large employers (those with 50 or more full-time employees or full-time equivalent employees in the previous year (FTEs)) and health insurance insurers have certain filing obligations under the Code. Code § 6055 requires health insurance issuers, employers that sponsor self-insured health plans, government agencies, and other providers of minimum essential coverage to file and furnish annual information returns and statements regarding coverage provided. The IRS has generally designated Form 1094-B, Transmittal of Health Coverage Information Returns, and Form 1095-B, Health Coverage, to meet the section 6055 reporting requirements. However, a large employer that self-insures its health plan coverage must complete the reporting required under Code § 6055 (that is, information about each individual enrolled in the self-insured health plan) using Form 1095-C, Part III, rather than Form 1095-B.

Code § 6056 requires large employers (or a member of an aggregated group that is determined to be a large employer) to file and furnish annual information returns and statements relating to the health insurance, if any, that the employer offered to its full-time employees. The IRS has designated Form 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns, and Form 1095-C, Employer-Provided Health Insurance Offer and Coverage, to meet the section 6056 reporting requirements.

Penalty Relief

Traditionally, the regulations under Code §§ 6055 and 6056 have “good cause” provisions. They allow the IRS to grant an extension of time of up to 30 days to furnish Forms 1095-B and 1095-C to employees/insureds if a filer provides “good cause.” Given the automatic extension already provided by the IRS through Notice 2020-76, the IRS will not formally respond to requests for Form 1095-B and 1095-C extensions to provide these notices to employees/insureds.

Traditionally, filers of Forms 1095-B, 1094-C, and 1095-C may receive an automatic 30-day extension of time to file these Forms with the IRS if they submit an IRS Form 8809, Application for Extension of Time to File Information Returns, on or before the due date for filing those forms. In limited situations, filers who submit the IRS Form 8809 before the automatic 30-day extension period expires may also receive an additional 30-day extension of time to file Forms 1095-B, 1094-C, and 1095-C with the IRS. As mentioned above, since the extension relief granted by the IRS through Notice 2020-76 does not extend the due date for filing with the IRS the 2020 Forms 1094-B, 1095-B, 1094-C, or 1095-C, filers may still request an extension of time for good cause, and the automatic extension remains available under the normal rules for filers who submit a Form 8809 on or before the due date.

Penalty relief, as in prior years, is also available under Code §§ 6721 and 6722 to those reporting entities that report incorrect or incomplete information on the return they file with the IRS or the statement they provide to individuals, as long as the reporting entity shows that it made good-faith efforts to comply with the information-reporting requirements under Code §§ 6055 or 6056 for 2020. Importantly, Notice 2020-76 confirms that 2020 will be the final year the IRS will provide this good-faith effort penalty relief for incomplete or incorrect reporting information. However, if the ACA is overturned by the Supreme Court in November, this reporting obligation will be eliminated.

Winston Takeaway

An employer that fails to comply with the ACA reporting requirements is subject to penalties for failure to file an information return and failure to furnish payee statements. It is best to report and file these forms on time, and to correct any errors, rather than to not timely meet your reporting and filing obligations. Moreover, because the IRS has indicated that it will not renew its good-faith effort penalty relief after 2020, employers should work to ensure proper document and reporting protocols are implemented to avoid ACA reporting non-compliance penalties (of up to \$280 per incorrect form). Finally, the IRS has also indicated that it is considering whether an extension of the due date for furnishing statements to individuals under Code § 6055 remains necessary after 2020. Employers and reporting entities who wish such extensions to remain in place for future years are encouraged to submit comments electronically at www.regulations.gov.

Please contact a member of the Winston & Strawn Employee Benefits and Executive Compensation Practice Group or your Winston relationship attorney for further information.

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