



IRS Permanently Extends Deadline for Furnishing Forms 1095-C and 1095-B to Individuals

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On December 15, 2022, the Internal Revenue Service (IRS) issued final regulations that permanently extend by 30 days the deadline for furnishing Form 1095-C and Form 1095-B to individuals. The forms will now be due on March 2 (March 3 in a leap year), or the next business day if the due date falls on a weekend or holiday. The proposed regulations were issued in November 2021.

Under the Affordable Care Act (ACA), applicable large employers and employers providing minimum essential health coverage are required to file Form 1095-C (for applicable large employers sponsoring self-funded health plans) or 1095-B (for insurance companies who offer fully insured health coverage) with the IRS. These forms must also be provided to full-time employees and employees receiving minimum essential coverage. Prior to the final regulations, the forms were generally required to be furnished to these individuals by January 31 of each calendar year, and the IRS issued annual notices extending the due date for each reporting year.

The final regulations ***do not extend the deadline for transmitting the forms to the IRS***. For 2023, the due dates for transmitting the forms to the IRS are February 28, 2023 (if filing on paper) and March 31, 2023 (if filing electronically).

The final regulations also include the following provisions:

- **Alternative Method of Compliance.** The final regulations provide an alternative manner for furnishing Form 1095-B or C to individuals. In order to use the alternative method, a “clear and conspicuous notice” must be provided on the insurer’s website stating that an individual can receive a copy of the form on request. The IRS indicates that this alternative was proposed in order to recognize the reduction in the amount of the individual shared responsibility payment to zero by the Tax Cuts and Jobs Act of 2017 (TCJA). Large employers may also use the alternative method of compliance by posting the notice on their websites; however, **the alternative method only applies to “non-full-time employees and non-employees” enrolled in the employer’s self-insured group health plan. It does not apply to the employer’s full-time employees.** The preamble to the final regulations states the position of the Treasury Department and IRS that full-time employees still need Form 1095-C to determine their eligibility for federal premium tax credits, which was not affected by the TCJA.
- **Medicaid Coverage Clarification.** The final regulations also make permanent IRS Notice 2020-66, which provides that Medicaid coverage that is limited to COVID-19 testing and diagnostic services is not “minimum essential

coverage.” As a result, an individual’s eligibility for this type of coverage will not affect their eligibility for the premium tax credit under the ACA.

- **Elimination of Transitional Good-Faith Relief.** The final regulations confirm that 2020 was the final year of the extension of good-faith relief from penalties for incorrect or incomplete information, as provided in [Notice 2020-76](#). The regulations provide that the relief, which began in calendar year 2015, was intended to be transitional and is no longer appropriate.

WINSTON TAKEAWAY

The final regulations are effective December 15, 2022. Although the final regulations make the 30-day extension for issuing individual Form 1095s permanent, it is still important to report and file these forms on a timely basis, and to correct any errors. This is particularly important in light of the elimination of the transitional good-faith relief after 2020. Employers should work to ensure proper document and reporting protocols are implemented to avoid ACA non-compliance penalties (currently, up to \$280 per incorrect form).

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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