

Dec. 22, 2022

Extension of time to furnish ACA statements to individuals made permanent

The IRS has finalized the proposed regulations released at the end of 2021, granting a permanent 30-day extension to the Jan. 31 deadline for furnishing Affordable Care Act (ACA)-related Forms 1095-B and -C to individuals who, at any point in the prior year (the reporting year), were ACA full-time employees or covered under the employer group healthcare plan.

Executive summary

- The Jan. 31 deadline to furnish ACA-related forms to individuals has been permanently extended by 30 days.
- The IRS also released its final 2022 ACA reporting forms and instructions, which include information related to the 30-day extension to provide Forms 1095-B and -C to employees. Links to the applicable forms can be found here:
 - [Form 1094-C](#)
 - [Form 1095-C](#)
 - [Filing instructions for 1094-C and 1095-C](#)
- The deadline to file with the IRS, however, remains unchanged.
- Last, the good faith effort standard with regard to these filings has been eliminated.

Background

Employers subject to the ACA employer mandate were required to furnish ACA full-time employees a Form 1095-B or -C by Jan. 31 to reflect the employer's offer (or failure to offer) of coverage to the ACA full-time employee and, if applicable, enrollment of individuals into the plan. Historically, the IRS would provide a reprieve, deferring that deadline 30 days meaning those Forms 1095-B or -Cs would typically be required by March 2. These rules now make that deferral permanent. Moving forward, employers have an automatic 30-day extension from the Jan. 31 date to provide the Forms, typically to March 2, or if this date falls on a weekend day or legal holiday, the following business day.

It is important to note that this furnishing deadline is different from the deadline for filing Forms 1095-B and -C *with the IRS*. That filing deadline remains Feb. 28 for filings on paper or March 31 for e-filings. Employers can ask for an automatic 30-day extension for filings submitted to the IRS by filing Form 8809.

Lockton comment: Although the IRS regulations were released as proposed regulations in 2021, the IRS stated those proposed regulations could be relied on for those 2021 ACA forms that were due in early 2022.

Say goodbye to “good faith efforts”

Additionally, the IRS is eliminating its “good faith effort” standard for ACA-related filings. Note, the “good faith effort” standard insulated insurers and employers from penalties for their errors and omissions on their ACA filings, as long as the insurer or employer acted in good faith. That standard was first eliminated for 2021 ACA-related filings and will continue to not apply for 2022 ACA filings and beyond.

In response to commentors wanting the standard to continue, the final regulations emphasize that the reporting requirements have been in place now for more than six years. Moral of the story, check your forms! The elimination of the “good faith effort” standard means, more than ever, employers will want to ensure that the forms submitted are accurate and correct.

Alternate method for furnishing Forms 1095-B and -C for certain covered individuals

The IRS regulation also makes permanent (for as long as the ACA individual mandate penalty is \$0) a simplified way for self-funded employers to provide Forms 1095-C to individuals who had coverage under the self-funded plan during the reporting year but were not ACA full-time employees of the employer at any point in the reporting year.

With respect to individuals covered under an insured plan, the insurance carrier only needs to make the individual’s Form 1095-B available, rather than furnishing the form automatically, provided certain requirements were met.

Self-insured employers are allowed the same accommodation with respect to furnishing Forms 1095-C, but only with respect to individuals who had coverage under the self-funded plan during the reporting year but were not ACA full-time employees at any point during that year.

Specifically, with respect to these individuals, a self-insured employer is deemed to meet the furnishing requirement if it:

- Provides clear and conspicuous notice, in a location on its website that is reasonably accessible, stating that individuals may receive a copy of their Form 1095-C upon request. The notice must include an email address, a physical address to which a request for the form may be sent, and a telephone number that an individual may use to contact the employer or carrier with any questions. The notice must be written in plain, non-technical terms and with letters of a font size large enough (including any visual clues or graphical figures) to call to a viewer’s attention that the information pertains to tax statements reporting that individuals had health coverage. For example, a clear and conspicuous notice titled, “IMPORTANT HEALTH COVERAGE TAX DOCUMENTS.”
- Explains how individuals may request a copy of Form 1095-C.
- Includes the self-funded employer’s email address, mailing address and telephone number.
- Provides the form within 30 days of the date the request is received. With the individual’s consent, the form may be provided electronically.

The self-funded employer must retain the website notice in the same location on its website through Oct. 15 of the year following the calendar year to which the forms relate.

Rory Akers, J.D.
VP, Senior ERISA Attorney
Compliance Consulting

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Lockton People Solutions | 444 West 47th Street | Suite 900 | Kansas City | MO | 64112