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Proposed regulations extend ACA individual statement due dates

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Proposed [IRS regulations](#) provide an automatic 30-day extension of the deadlines for employers and insurers to furnish Affordable Care Act (ACA) individual statements on health coverage and/or offers of coverage to ACA full-time employees (Forms [1095-B](#) and [1095-C](#)). The proposed regulations would also allow an alternative method for furnishing individual statements related to minimum essential coverage (MEC), as long as the penalty for failing to meet the individual mandate remains zero. While these provisions, if finalized, would take effect for the 2022 calendar year, employers and insurers may rely on the proposed regulations for the reports due in 2022 for the 2021 calendar year. Therefore, the deadline for 2021 ACA individual statements is automatically extended by 30 days from Jan. 31, 2022, to March 2, 2022.

Automatic extension for individual statements

IRS has repeatedly extended the deadlines to furnish individual statements, most recently in [IRS Notice 2020-76](#). The proposed regulations would permanently allow a 30-day automatic extension of the Jan. 31 deadline for furnishing Forms 1095-B and 1095-C. The preamble to the proposed rules clarifies that when the extended due date falls on a Saturday, Sunday or legal holiday, the deadline for furnishing statements is the next business day. IRS will not grant additional extensions.

Background on ACA requirement

Internal Revenue Code Section [6055](#), added by the ACA, requires MEC providers to furnish by Jan. 31 an annual statement to covered individuals, indicating each month in which they had coverage during the previous calendar year. MEC providers — such as insurers, multiemployer plans and small self-funded employers — use IRS Form 1095-B to comply with this requirement.

Code Section [6056](#), also added by the ACA, requires applicable large employers (ALEs) to furnish by Jan. 31 an annual statement relating to their offers of health coverage to ACA full-time employees, reporting information about the previous calendar year. ALEs use IRS Form 1095-C for this employer shared-responsibility (ESR) reporting requirement. ALEs sponsoring self-funded group health plans can comply with both the MEC and ESR reporting requirements by furnishing a Form 1095-C to ACA full-time employees covered by the group health plan. An ALE can provide either Form 1095-B or 1095-C to covered individuals who are not full-time employees, such as retirees, COBRA participants or part-time employees.

IRS filing deadlines unchanged. Sections 6055 and 6056 also require MEC providers and ALEs to file 1095 reports with IRS. Reporters still must meet the Feb. 28 deadline for paper filings or March 31 for electronic submissions, accompanied by the appropriate 1094 transmittal form. However, an automatic 30-day extension of the IRS filing deadline is available by submitting [Form 8809](#) before the relevant due date.

Alternative method for furnishing MEC individual statements

Because the Tax Cuts and Jobs Act (Pub. L. No. [115-97](#)) reduced the shared-responsibility payment for individuals without MEC to zero beginning in 2019, most individuals no longer need Form 1095-B or 1095-C to demonstrate health coverage. Accordingly, IRS proposes an alternative method for furnishing MEC individual statements, similar to the method first allowed in Notice 2020-76.

Who can use the alternative method? Insurance carriers and small employers (with fewer than 50 ACA full-time employees) sponsoring self-funded plans will not be penalized by IRS for failure to furnish a Form 1095-B if they use the alternative method for furnishing individual statements. ALEs with self-funded plans may also use the alternative method, but not for full-time employees. ALEs may use the alternative method to furnish a MEC statement — either Form 1095-B or 1095-C — to covered part-time or former employees, for example.

What does the alternative method require? An insurer or employer can take the following steps to furnish individual statements under the alternative method:

- The insurer or employer must post a clear, conspicuous notice on its website. The website notice — either on the main page or through a link on the main page — must inform individuals that they can obtain a statement on request, provide an email and a physical address for these requests, and supply a telephone number for questions.

Example. Healthy Food Inc. sponsors a self-funded plan. Its website includes a link on the main page that says “Tax Information.” This links to a secondary page that includes a statement entitled in capital letters “IMPORTANT HEALTH COVERAGE TAX DOCUMENTS” that explains how retirees, COBRA participants or part-time employees may request a copy of Form 1095-B or Form 1095-C, as applicable. The notice also includes Healthy Food’s email address, postal mailing address and telephone number.

- The insurer or employer must retain the website notice until Oct. 15 of the year after the calendar year to which the statement relates.
- The insurer or employer must supply the individual MEC statement (Form 1095-B or 1095-C) within 30 days of receiving a request. The insurer or employer may furnish the statement electronically if certain requirements are met.

The alternative method is available only for years in which the individual shared responsibility payment is zero.

Implications for ALEs with fully insured group health plans

The alternative method of furnishing individual statements has no effect on a fully insured ALE's obligation under Section 6056 to furnish Form 1095-C to ACA full-time employees and submit those statements with a 1094-C transmittal form to IRS. Employers sponsoring fully insured group health plans also may want to determine their carrier's plans for furnishing 1095-B statements. The obligation to provide Form 1095-B lies with carriers, and carriers may use the alternative method of furnishing the statements. However, employers may receive questions from employees who haven't received a statement from the carrier. Accordingly, employers may want to ask their carrier where they should direct employees for more information about the individual statement and how to request a copy.

Implications for ALEs with self-funded group health plans

ALEs offering self-funded health plans to ACA full-time employees can't use the alternative method to provide statements to full-time employees. Any failure by ALE members to furnish Form 1095-C, including Part III, to ACA full-time employees enrolled in self-funded health plans will continue to trigger a penalty. But if a self-funded health plan covers part-time staff, COBRA enrollees or retirees, the plan can use the alternative method to furnish individual statements to any enrollees who did not qualify as ACA full-time employees for any month during a particular year.

No more penalty relief for good-faith reporting mistakes

The proposed regulations do not extend transitional penalty relief for filings that, despite good-faith efforts to complete correctly, have "missing and inaccurate taxpayer identification numbers and dates of birth, as well as other information required on the return or statement." This change has been expected, as IRS stated in Notice 2020-76 that 2020 was the last year of transitional relief for reporting mistakes. Nevertheless, employers and insurers that fail to meet the reporting requirements may still be eligible for penalty relief if IRS determines the failure satisfies the standards for a reasonable-cause waiver under IRC [Section 6724](#).

Coordination with state laws

Five states — California, Massachusetts, New Jersey, Rhode Island and Vermont — and Washington, DC, have implemented or enacted individual health coverage mandates. Reporting entities with health

plan participants living in these jurisdictions may need to provide Form 1095-B or an alternative form to responsible individuals, despite the federal relief.

Affected employers should consult with their carriers, third-party administrators and reporting vendors to develop a plan for the specific jurisdiction's reporting obligations. Employers also should watch for additional guidance from relevant state or city agencies. For example, [Rhode Island](#) has not extended the deadline for the individual statements but will make a public announcement if they decide to do so.

Comments requested

IRS requests comments on the proposed rules (as well as on [2016 proposed regulations](#) addressing other MEC reporting issues) within 60 days after publication of the proposed regulations in the Federal Register.

Related resources

Non-Mercer resources

- [Proposed regulations](#), Information reporting of health insurance coverage and other issues under §§ 5000A, 6055 and 6056 (IRS, Nov. 22, 2021)
- [Notice 2020-76](#) (IRS, Oct. 2, 2020)
- [About Form 1095-B](#), Health coverage (IRS, July 8, 2021)
- [About Form 1095-C](#), Employer-provided health insurance offer and coverage (IRS, July 8, 2021)
- [Form 8809](#), Application for extension of time to file information returns (IRS, August 2020)
- [Information reporting by applicable large employers](#) (IRS, Nov. 23, 2021)
- [Proposed regulations](#), Information reporting of catastrophic health coverage and other issues under Section 6055 (Aug. 2, 2016)

Mercer Law & Policy resources

- [States increase group health plan reporting obligations](#) (Nov. 20, 2020)
- [ACA individual statement due date, good-faith relief extended for 2021](#) (Oct. 13, 2020)
- [Massachusetts employers need to gear up for health coverage reporting](#) (Oct. 1, 2019)
- [DC details employer reporting for individual health coverage mandate](#) (Aug. 20, 2019)
- [California individual coverage mandate includes employer health plan reporting](#) (July 16, 2019)

- [New Jersey posts update on health-coverage reports due in 2020](#) (April 16, 2019)

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