



IRS Delays Employers' Deadline to Distribute ACA Reporting Form 1095 to Employees

Deadlines for filing Affordable Care Act forms with IRS remain intact

By Stephen Miller, CEBS

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In a move that caught many in the benefits community by surprise, the IRS issued Notice 2016-70 (www.shrm.orghttps://www.irs.gov/pub/irs-drop/n-16-70.pdf) on Nov. 18, giving employers subject to the Affordable Care Act's (ACA's) 2016 information-reporting requirements up to an additional 30 days to deliver these forms to employees.

The notice affects upcoming deadlines for ACA information reporting as follows:

- **The IRS extended the deadline to deliver ACA reporting forms to employees from Jan. 31, 2017 to March 2.** The extended deadline applies to furnishing to individuals the 2016 Form 1095-C (www.shrm.orghttps://www.irs.gov/uac/about-form-1095-c) (*Employer-Provided Health Insurance Offer and Coverage*) and Form 1095-B (www.shrm.orghttps://www.irs.gov/uac/About-Form-1095-B) (*Health Coverage*).

The Treasury Department and the IRS determined that a substantial number of employers and other insurance providers needed additional time "to gather and analyze the information [necessary to] prepare the 2016 Forms 1095-C and 1095-B to be furnished to individuals," Notice 2016-70 states.

- **This extension applies for tax year 2016 only**, and does not require the submission of any request or other documentation to the IRS.
- **The IRS did not change the deadline for filing Forms 1094 and 1095 with the agency.** This means there is likely to be no automatic extension to file the 2016 Form 1094-B (www.shrm.orghttps://www.irs.gov/uac/About-Form-1094-B) (*Transmittal of Health Coverage Information Returns*) along with copies of Form 1095-B, and Form 1094-C (www.shrm.orghttps://www.irs.gov/uac/About-Form-1094-C) (*Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns*) along with copies of Form 1095-C.

Employers filing these forms by mail will still need to do so by Feb. 28, 2017. Employers filing electronically (as those

submitting 250 or more forms are required to do) must do so by March 31. While the date for filing with the IRS was not extended, employers can obtain a 30-day extension by submitting Form 8809 (www.irs.gov/pub/irs-pdf/f8809.pdf) (*Application for Extension of Time to File Information Returns*) by the due date for the ACA information returns.

	Previous IRS Due Date	New IRS Due Date
Deadline to distribute ACA reporting forms to employees and covered individuals	Jan. 31, 2017	March 2, 2017
Deadline to file ACA reporting forms with the IRS	Feb. 28, 2017 (paper) March 31, 2017 (electronic)	No change

"The IRS announcement is welcome news to many employers still struggling to interpret and apply the IRS instructions to their reporting obligation," said Marcus Wilbers, a compliance attorney at benefits brokerage J.W. Terrill in St. Louis.

"This deadline was especially challenging because it coincided with Form 1099 and W-2 processing schedules," said Mike Downey, executive vice president of BenefitScape, a Boston-based benefits services firm. "A 30-day extension, while short, moves the printing and distribution to a more opportune time."

*[SHRM members-only toolkit: Complying with and Leveraging the Affordable Care Act
(www.shrm.org/resourcesandtools/tools-and-samples/toolkits/pages/complyingwithandleveragingtheaffordablecareact.aspx)]*

A Second Year of Distribution Relief

Last December, the IRS gave employers subject to the ACA's 2015 information reporting requirements (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/ACA-reporting-extension.aspx) extra time to give these forms to employees and file them with the government. At that time, the IRS indicated it did not anticipate any additional extensions regarding ACA information reporting for future years.

Most employers and practitioners will now take advantage of the extended relief for distributing reporting forms to employees, Downey predicted.

Like last year, the guidance provides that employees can file their personal income taxes without having to attach the relevant Form 1095 to their tax returns. Taxpayers, however, should keep these forms with their other tax-year documents, as the IRS will request to view them if the taxpayer is audited.

Good-Faith Relief for Errors

The IRS also extended "good faith transition relief" for another year. In 2015, the IRS announced it would not penalize employers for incorrect or incomplete forms if they could show they made good-faith efforts to comply with the reporting requirements. No relief was available to employers who did not timely file the forms at all. Notice 2016-70 extends that good-faith relief to the 2016 reporting year.

The notice clarified that the relief includes "missing and inaccurate taxpayer identification numbers and dates of birth."

"After repeatedly warning that last year's 'good-faith compliance' standard would not be available for 2016, the IRS has now reversed course," said benefits attorney Ken Mason, a partner at Spencer Fane in Overland Park, Kan. "Coverage providers and employers that can show good-faith efforts to comply with these ACA-reporting requirements may avoid the substantial penalties that would otherwise apply. As with the relief granted for 2015, however, this relief does not apply to missing or late filings. So coverage providers and employers should continue to work toward meeting these filing deadlines."

ACA Reporting Is Still Required

Applicable large employers—those with 50 or more full-time or equivalent employees—are subject to the ACA's employer mandate and its related tracking and reporting requirements (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/ACA-reporting-tips.aspx).

President-elect Donald Trump has made repealing and replacing the ACA a top priority, although the extent to which his administration and the GOP Congress can accomplish that goal is subject to debate. And while even short of full repeal the employer mandate is seen as a likely, early, target (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/ACA-mandate-repeal.aspx), "the ACA is still the law of the land," said Scott Behrens, an ERISA compliance attorney at Lockton Companies, a benefits brokerage based in Kansas City, Mo. "Prudent employers will want to continue to comply with the ACA, including the play-or-pay mandate and reporting requirements until formal guidance relieves them of those compliance obligations."

Small employers with fewer than 50 full-time employees are exempt from some, but not all ([www.shrm.orghttps://www.irs.gov/affordable-care-act/individuals-and-families/self-insured-employers-must-file-health-coverage-information-returns](https://www.irs.gov/affordable-care-act/individuals-and-families/self-insured-employers-must-file-health-coverage-information-returns)), of the ACA's reporting requirements. For example, those with a self-insured health plan must complete and file Forms 1095-B and 1094-B with the IRS, as well as provide employees with a copy of Form 1095-B. Small employers also are required to file Forms 1095-C and 1094-C if they are members of a controlled or affiliated service group that collectively has at least 50 full-time employees.

[SHRM members only toolkit: Communicating with Employees About Health Care Benefits Under the Affordable Care Act (www.shrm.org/resourcesandtools/tools-and-samples/toolkits/pages/communicating-about-health-care-benefits-under-aca.aspx)]

Late-Filer Penalties Left Intact

Notwithstanding the extension, the IRS encouraged employers to furnish the 2016 statements as soon as they are able. Employers that do not meet the extended deadlines will remain subject to penalties.

"The IRS stated in Notice 2016-70 that it would apply a reasonable cause analysis when determining the penalty amount for a

late filer," said Damian Myers, a benefits attorney with Proskauer in Washington, D.C.

"According to the IRS, this analysis will take into account such things as whether reasonable efforts were made to prepare for filing"—such as an employer's gathering and transmitting data to an agent or testing its own ability to transmit information to the IRS—"and the extent to which the filer is taking steps to ensure that it can comply with the reporting requirements for 2017," Myers noted.

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