Published: October 26, 2020

Final 2020 Forms 1094-C and 1095-C Issued and Deadline Extended for 2020 Forms 1095-C

Laurie Bracelin | Millenium Insurance Group | (717) 354-4774 | lbracelin@millig.com

On October 2, 2020, the IRS issued Notice 2020-76, which provides:

- An extension of time, until March 2, 2021, for employers to provide Forms 1095-C to their full-time employees and other individuals; and
- A final extension of relief from penalties for the 2020 reporting year for employers and other entities that make good-faith efforts to comply with the reporting requirements.

Notice 2020-76 does not, however, extend the deadline to provide completed Forms 1094-C and 1095-C (and Forms 1094-B and 1095-B) to the IRS (as described in Q/A-2 below). Nor does it provide any relief from providing Forms 1095-C to full-time employees ("FTEs"). This means that all Applicable Large Employers ("ALEs") must continue to provide Form 1095-C to any employee that was full time for any month of 2020.

However, the Notice provides an alternative furnishing method for Form 1095-B (and in some cases Form 1095-C), with relief from the 2020 Section 6055 reporting penalty, for:

- Insurance carriers that are otherwise required to furnish Form 1095-B to covered individuals for calendar year 2020;
- Employers with self-funded health plans that are otherwise required to furnish Form 1095-B to covered individuals for calendar year 2020 (generally employers with fewer than 50 employees with a self-funded plan); and
- Employers with self-funded health plans that are otherwise required to furnish Form 1095-C to covered individuals who were not full-time employees in any month of calendar year 2020.

This document is designed to highlight various employee benefit matters of general interest to our readers. It is not intended to interpret laws or regulations, or to address specific client situations. You should not act or rely on any information contained herein without seeking the advice of an attorney or tax professional. ©2020 Emerson Reid, LLC. All Rights Reserved. CA Insurance License #0C94240.

Briefly, the alternative furnishing method allows carriers (and in some cases employers) to avoid 2020 Section 6055 penalties associated with a failure to furnish the applicable form to covered individuals by posting information to a website and timely providing the completed applicable Form upon request.

The following FAQs provide additional details.

Q1: What was extended?

2020 Forms 1095-C must be furnished to FTEs and other individuals by Tuesday, March 2, 2021 (rather than by January 31, 2021).

This extension of time also applies to insurance carriers providing 2020 Forms 1095-B to individuals covered under an insured plan, and to employers providing 2020 Forms 1095-B to individuals covered under a self-funded health plan (but see Q/A-3).

The Notice states that the new deadline of March 2, 2021 will not be further extended by the IRS.

Q2: Were the deadlines for reporting to the IRS extended?

No, the 2020 Form 1094-C and all supporting Forms 1095-C (and the 2020 Form 1094-B and all supporting Forms 1095-B) must be filed with the IRS by Wednesday, March 31, 2021, if filing electronically (or by Monday, March 1, 2021, if filing by paper). These deadlines were not extended as part of the announced relief.

As a reminder, employers that file at least 250 Forms 1095-C with the IRS must file electronically. The IRS encourages all filers to submit returns electronically.

Q3: With the individual mandate reduced to zero after December 31, 2019, is there any relief when furnishing a Form 1095-B?

Yes, but it is generally limited to Forms 1095-B (except as described in Q/A-4 below).

Because the individual shared responsibility penalty is reduced to zero for 2019, an individual does not need the information on Form 1095-B in order to compute his or her federal tax liability or file an income tax return with the IRS. (But see Q/A-7 below regarding individual healthcare mandates in certain states.)

The IRS will not assess a 2020 Section 6055 reporting penalty against reporting entities for failing to furnish Form 1095-B to covered individuals in cases where the following two conditions are met (Alternative Furnishing Method):

1. **Website posting.** The reporting entity posts a notice prominently on its website stating that responsible individuals may receive a copy of their 2020 Form 1095-B upon request, accompanied by an email address and a physical address to which a request may be sent, as well as a telephone number that they can use to contact the reporting entity with any questions.

2. **Provide form within 30 days.** The reporting entity furnishes a 2020 Form 1095-B to any responsible individual upon request within 30 days of the date the request is received.

Insurance carriers (and employers with self-funded plans) that take advantage of this relief must still provide the 2020 Form 1094-B and all 2020 Forms 1095-B to the IRS by the required deadline. In other words, while the carrier (or employer) will not be penalized by the IRS for

This document is designed to highlight various employee benefit matters of general interest to our readers. It is not intended to interpret laws or regulations, or to address specific client situations. You should not act or rely on any information contained herein without seeking the advice of an attorney or tax professional. ©2020 Emerson Reid, LLC. All Rights Reserved. CA Insurance License #0C94240.

not supplying covered individuals with Forms 1095-B with respect to their coverage (subject to the two conditions set forth above), the carrier (or employer) must still create Forms 1095-B and provide them to the IRS by the required deadline.

There is no relief from the penalties associated with a failure to file completed forms with the IRS.

Q4: Will the alternative furnishing method apply to ALEs with a self-funded health plan?

No, except in one situation.

ALEs are still required to provide Forms 1095-C to employees who were full-time for any month of calendar year 2020. Nothing has changed with respect to this requirement, aside from extending the deadline to March 2, 2021. ALEs offering self-funded group health plan coverage must continue to furnish Forms 1095-C to their FTEs, with all applicable parts (I, II and III) of Form 1095-C completed.

Some ALEs who offer self-insured health plan coverage to individuals who are not FTEs (e.g., part-time employees) may consider using the alternative furnishing method with respect to Form 1095-C.

Furnishing Form 1095-C to Individuals Who Were NOT Full-Time Employees

The Notice does provide relief to ALEs required to furnish 2020 Forms 1095-C to individuals covered under a self-funded group health plan who were not FTEs for any month of calendar year 2020. In this limited instance, ALEs may use the alternative furnishing method and will not face 2020 Section 6055 penalties, provided the ALE meets two conditions (outlined in Q/A-3):

- Post a prominent notice on website stating the Form 1095-C (or 1095-B) is available by request; and
- Provide the Form 1095-C (or Form 1095-B) within 30 days of a request.

In most cases, the individuals targeted for this relief are those who receive Form 1095-C with Code 1G in line 14 of Part II. Examples of covered individuals who are not full-time employees for any month of the calendar year, but who may receive coverage under the employer's self-funded group health plan, include:

- Part-time employees covered under the plan.
- A spouse or child receiving COBRA coverage.
- A former employee receiving COBRA coverage who had a COBRA qualifying event in 2019 or earlier.
- Individuals covered under a self-funded retiree medical plan who retired in 2019 or earlier.

This document is designed to highlight various employee benefit matters of general interest to our readers. It is not intended to interpret laws or regulations, or to address specific client situations. You should not act or rely on any information contained herein without seeking the advice of an attorney or tax professional. ©2020 Emerson Reid, LLC. All Rights Reserved. CA Insurance License #0C94240.

Even if an ALE takes advantage of this alternative furnishing method with respect to an individual covered by the self-insured group health plan who was not a full-time employee in any month of 2020, the employer must still submit completed Forms 1094-C and 1095-C to the IRS by the required deadline.

Q5: Is the good faith penalty relief extended?

Yes, penalty relief is extended for employers and other reporting entities that report incorrect or incomplete information on Form 1094-C or Forms 1095-C, when these entities can show that they made good-faith efforts to comply with the information reporting requirements for 2020. This relief applies to missing and inaccurate taxpayer identification numbers and dates of birth, as well as other information required on the return or statement.

The guidance indicates this is the last year this good faith relief will be provided.

Q6: What if the submissions are late?

Employers that do not comply with the due dates for providing a return or statement to an individual or the IRS are subject to penalties (except as described in Q/A-3 and Q/A-4). Employers and other reporting entities should still furnish and file the forms, and the IRS will take such furnishing and filing into consideration when determining whether to abate penalties. Failure to furnish a correct Form 1095-C may result in penalties of $280/form with an annual calendar year maximum of $3,392,000. As stated in Q5, there is good faith penalty relieve available with respect to incorrect or incomplete information on the applicable Forms. Additionally, penalties may be waived if the failure was due to reasonable cause and not willful neglect.

Q7: Our employees reside in states with an individual healthcare mandate. Are there other things to consider?

In response to the reduction of the Affordable Care Act's ("ACA") individual mandate, a handful of states have enacted individual healthcare mandates that apply to residents. Many of these state mandates require carriers and employers to provide statements to residents and reporting to the states to demonstrate minimum essential coverage and enable covered employees and other individuals to avoid state penalties. Some states (including California, the District of Columbia, and New Jersey) have adopted the federal forms, 1095-B and 1095-C, to satisfy this requirement. Therefore, carriers and employers with employees in these states will likely need to continue to provide these forms to covered employees and other individuals to comply with the state mandate.

Q8: What about future relief?

The Notice asks for comments as to whether an extension of the due date to furnish Forms 1095-C (and Forms 1095-B) and continued extension of the good faith relief will be necessary for future years and why. The Notice states that very few comments were submitted in the prior year, indicating that this relief may no longer be necessary. Unless the IRS receives comments that explain why this relief continues to be necessary, no relief related to the furnishing requirements under sections 6055 and 6056 will be granted in future years. There is information in the Notice on how taxpayers may submit comments.

This document is designed to highlight various employee benefit matters of general interest to our readers. It is not intended to interpret laws or regulations, or to address specific client situations. You should not act or rely on any information contained herein without seeking the advice of an attorney or tax professional. ©2020 Emerson Reid, LLC. All Rights Reserved. CA Insurance License #0C94240.

Q9: When will the final 2020 Forms 1094-C and 1095-C be issued?

The final 2020 Forms 1094-C and 1095-C (and applicable instructions) were recently released by the IRS. Due to the COVID-19 pandemic and challenges to business operations, ALEs may have variations to their reporting for 2020 due to furloughs and/or layoffs. ALEs, in coordination with their payroll or other reporting vendors, should have records to determine each employee's status s an ACA FTE or not an ACA FTE for each month during 2020 in preparation to complete, furnish and file these Forms for 2020. There are some notable changes to the Forms for 2020, specifically addressing individual coverage health reimbursement arrangements ("ICHRAs"). For employers that do not sponsor an ICHRA, much of the reporting remains the same.

- On Form 1095-C, Part II the "Plan Year Start Month" is a required field. An ALE must enter a two-digit number to reflect the plan year start month (e.g., for January 2020, use "01," for June 2020, use "06."). In previous years, this was optional.

- To accommodate reporting associated with ICHRAs:
  - In Part II, there is a new reference to the "Employee's Age on January 1" and "Line 17 Zip Code." If an ICHRA is not offered do not complete these fields.
  - In Part II, there are new Codes (used in Line 14) used to report offers of ICHRAs. The new Codes are 1L, 1M, 1O, 1P, 1Q, 1R, and 1S. If an ICHRA is not offered these new codes should not be used.

- There is also information in the instructions on how to calculate the amount reported on Form 1095-C, Line 15 for an ICHRA offer of coverage.

- Part III must be completed with respect to coverage through an ICHRA.

While small employers are not subject to reporting for purposes of the employer mandate, if offering a self-insured group health plan or ICHRA, reporting under Section 6055 to the IRS and to covered employees or other primary insured individuals who have coverage provided through a self-insured group health plan is required. If a non-ALE is offering an ICHRA, that coverage is considered a self-insured health plan and is subject to this reporting requirement. According to the instructions, a new code "G" must be entered on Form 1095-B, line 8 to identify an ICHRA.

Employer Action

Employers should consider the following:

- Employers should take note of the extended deadline, March 2, 2021, to furnish 2020 Forms 1095-C to full-time employees and other individuals.

- Employers should review the final versions of the 2020 Forms 1094-C and 1095-C, along with relevant instructions.

- Small employers offering ICHRAs should comply with the reporting.

- ALEs should complete Form 1095-C (including all relevant parts) and timely furnish the statements to full-time employees. ALEs should also timely transmit form 1094-C along with all Forms 1095-C to the IRS.

This document is designed to highlight various employee benefit matters of general interest to our readers. It is not intended to interpret laws or regulations, or to address specific client situations. You should not act or rely on any information contained herein without seeking the advice of an attorney or tax professional. ©2020 Emerson Reid, LLC. All Rights Reserved. CA Insurance License #0C94240.

- Employers with fully insured plans should be aware that their carriers may not issue Forms 1095-B directly to covered employees for 2020. Individuals asking for a copy should be directed to the carrier. Employers should anticipate that covered employees residing in a state with an individual healthcare mandate may need to contact the carrier to obtain a Form 1095-B before filing a state income tax return.

- ALEs with self-funded health plans that extend coverage to individuals other than full-time employees should decide whether to continue to furnish Forms 1095-C as done in prior years, or to take advantage of the new alternative furnishing method with respect to those covered individuals. Below are several administrative reasons why ALEs may be reluctant to adopt this new furnishing method for 2020:
  - While the Notice offers limited relief with respect to furnishing a Form 1095-C to covered individuals who were not full-time employees for any month of calendar year 2020, the ALE must ensure that Form 1095-C (including Part III) is completed and submitted to the IRS on behalf of these individuals. As the information must be included in the final submission, it is unclear whether taking advantage of the Section 6055 penalty relief makes any practical or administrative sense.
  - Employers looking to take advantage of this relief will need to post the required notice on a website and provide the completed Form 1095-C within 30 days of a request. Failure to do so could subject to the employer to associated penalties.
  - Employers with employees who reside in states with an individual healthcare mandate will want to work with vendors to ensure forms are provided and reported to the state in a timely and complete manner.

- While good faith penalty relief was extended under the Notice, be aware that the IRS is actively assessing fines associated with failures to file Forms 1094-C and 1095-C with the IRS by the deadline (as described in Q/A-2 above). Timely reporting remains an area of active IRS enforcement.

This document is designed to highlight various employee benefit matters of general interest to our readers. It is not intended to interpret laws or regulations, or to address specific client situations. You should not act or rely on any information contained herein without seeking the advice of an attorney or tax professional. ©2020 Emerson Reid, LLC. All Rights Reserved. CA Insurance License #0C94240.