

# IRS Extends Form 1095 Distribution Deadline to March 2

Employers may still want to give employees their ACA forms by Jan. 31

By Stephen Miller, CEBS

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**O**n Oct. 2, the IRS announced it would extend the deadline for employers to provide employees with a copy of their 1095-C (<https://www.irs.gov/pub/irs-pdf/f1095c.pdf>) or 1095-B (<https://www.irs.gov/pub/irs-pdf/f1095b.pdf>) reporting form, as required by the Affordable Care Act (ACA), from Jan. 31, 2021, to March 2, 2021. In addition, the IRS again extended "good-faith effort" transition relief to employers for plan year 2020 reporting.

The deadlines were not extended for filing 1095 forms with the IRS, and they are still Feb. 28 for paper filing or March 31 for electronic filing.

The relief was announced in IRS Notice 2020-76 (<https://www.irs.gov/pub/irs-drop/n-20-76.pdf>). The IRS has extended the Jan. 31 deadline for distributing ACA information reporting forms for the past four years, although the COVID-19 pandemic—and the strain it has put on HR resources—may make the extension particularly welcome this year.

The IRS said it will not grant an additional 30-day extension beyond this deadline for distributing forms and encouraged employers to send the forms to employees as soon as possible.

## ACA Requirements

By filing Forms 1095-C with the IRS and providing employees with copies, employers with 50 or more full-time or equivalent employees, known as applicable large employers (ALEs), show they offered eligible employees health coverage that was compliant with the ACA. At smaller organizations, Forms 1095-B are filed and distributed by self-insured employers or insurance companies.

ALEs are required to provide full-time workers with coverage that meets affordability ([www.shrm.org/resourcesandtools/hr-topics/benefits/pages/irs-raises-2021-affordability-threshold-for-employer-health-plans.aspx](http://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/irs-raises-2021-affordability-threshold-for-employer-health-plans.aspx)) and minimum essential coverage ([www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/ACA-coverage-terms.aspx#minimum-essential-coverage](http://www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/ACA-coverage-terms.aspx#minimum-essential-coverage)) requirements, and they face penalties for failing to do so. Smaller employers are not required to provide health care coverage, but if they choose to do so, then the coverage must meet requirements under the ACA.

Recently, the IRS published draft forms and instructions ([www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/IRS-issues-draft-form-1095-C-for-ACA-reporting-in-2021.aspx](http://www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/IRS-issues-draft-form-1095-C-for-ACA-reporting-in-2021.aspx)) to help employers prepare for next year's reporting on the health coverage they offered employees in 2020.

## Filing Deadlines

The critical filing deadlines for 2020 coverage are as follows:

ACA Requirement	Deadline
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1095 forms delivered to employees	Jan. 31 (extended to March 2)
Paper filing with IRS*	Feb. 28
Electronic filing with IRS	March 31

\*Employers that file 250 or more information returns with the IRS must file the returns electronically.

Source: IRS.

"Employers should not count on any additional extensions and should work diligently to complete their reporting forms on time," said Danielle Capilla, Chicago-based director of employee benefits compliance at Alera Group, an insurance and financial services firm.

Many employers may prefer to distribute the 1095 forms alongside the W-2 tax forms by Jan. 31, she noted. "Employers that are ready to go by the original deadline should not hesitate to go ahead, once the final reporting forms are released by Treasury," Capilla advised.

Ryan Moulder, a Los Angeles-based partner at Health Care Attorneys PC and general counsel at Accord Systems LLC, an ACA-compliance software firm, noted, "Employers are dealing with a lot of issues as the COVID-19 crisis continues to impact almost every employer in the country. However, it is important for employers to remain compliant with the always-evolving ACA rules and regulations."

#### 'Good-Faith Efforts'

The IRS may impose penalties of up to \$280 per form for failing to furnish an accurate Form 1095-C or 1095-B to an employee. A separate \$280 per-form penalty may be imposed for failing to file an accurate form with the IRS.

"As in prior years, the IRS indicated in Notice 2020-76 that it would not impose these penalties for incomplete or inaccurate forms for the 2020 calendar year (<https://millerjohnson.com/publication/irs-delays-aca-reporting-again-announces-final-extension-of-good-faith-reporting-relief/>) (due in 2021) if the reporting entity can show that it 'made good-faith efforts to comply with the information-reporting requirements,'" wrote Tripp VanderWal and Brett N. Liefbroer, attorneys with Miller Johnson in Grand Rapids, Mich. "What may come as a surprise to some, the IRS announced that this extension will be the final extension of the good-faith reporting relief," they noted.

The good-faith reporting relief applies only to incorrect or incomplete information reported on 1095-C or 1095-B forms, and not to a failure to timely furnish or file the forms.

"Even with this relief, employers should focus on making sure reporting is accurate and timely, especially given that this is the last time the good-faith relief is expected to be extended (<https://www.hubinternational.com/products/employee-benefits/compliance-bulletins/2020/10/aca-reporting-and-good-faith-relief/>)," according to an alert by compliance firm Hub International. "While the deadline extension and good-faith relief will help an employer avoid penalties, the only way to do so is to make sure the forms are filed on time. Late or inaccurate forms could lead the IRS to issue a Letter 226J (<https://www.irs.gov/individuals/understanding-your-letter-226-j>) a year or two down the road, creating additional headaches at that time."

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

#### ACA Penalties and State Mandates

The ACA's individual coverage mandate, which required adults in the U.S. to show they had ACA-compliant coverage, was effectively repealed as of January 2019, when tax legislation reducing the penalty for not having health insurance to zero took effect. The elimination of the penalty led to a challenge to the constitutionality of the ACA itself, and that case will be heard by the U.S. Supreme Court ([www.shrm.org/resourcesandtools/hr-topics/benefits/pages/how-the-supreme-court-could-rule-on-the-affordable-care-act.aspx](http://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/how-the-supreme-court-could-rule-on-the-affordable-care-act.aspx)) in November.

The requirement to furnish employees with 1095 forms annually was not eliminated, and employers that fail to do so could be subject to the \$280 per form IRS penalties.

Even without the ACA's individual mandate, there are other reasons why providing employees with proof of employer coverage remains important.

Employees are eligible to receive subsidies for health coverage purchased on an ACA marketplace exchange only if their employer does not provide coverage that meets ACA requirements for affordability and minimum essential coverage, as reported on forms 1095-C or 1095-B.

In addition, five states—California, Massachusetts, New Jersey, Rhode Island and Vermont—along with Washington, D.C., have enacted individual health coverage mandates (<https://www.tangohealth.com/complete-guide-state-healthcare-mandates/>) that mirror the former federal requirement and could require taxpayers to show proof of ACA-equivalent coverage or be fined by their states.

### Exceptions to Distribution Requirement

Notice 2020-76 states that the IRS will not penalize small employers for failing to furnish a Form 1095-B to employees if two conditions are met:

- The employer prominently posts a notice on its website that an individual may receive a copy of his or her 2020 Form 1095-B on request. The notice must include an e-mail address and a physical address to which the request may be sent and a phone number that employees can call with questions.
- The employer provides a Form 1095-B within 30 days to any individual who requests it.

"A similar transition-relief provision was not extended to the Form 1095-C except in an extremely limited circumstance (<https://accord-aca.com/articles/irs-releases-its-annual-transition-relief-notice-for-aca-reporting-but-warns-this-could-be-the-last-year/>)," Moulder noted. If a self-insured ALE extended coverage to an individual who was not a full-time employee for any month during 2020, the IRS will not assess a penalty against the employer with respect to that employee so long as the two conditions discussed above are satisfied.

"Given the conditions required to not provide a Form 1095-C to an individual and how few Forms 1095-C are provided to individuals who are not full-time employees for any month during the calendar year, it is probably simplest just to provide a Form 1095-C to every required individual," Moulder said.

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IRS Issues Draft Form 1095-C for ACA Reporting in 2021 ([www.shrm.org/resourcesandtools/hr-topics/benefits/pages/irs-issues-draft-form-1095-c-for-aca-reporting-in-2021.aspx](http://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/irs-issues-draft-form-1095-c-for-aca-reporting-in-2021.aspx)), *SHRM Online*, July 2020

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ACA Reporting Checkup: What Employers Need to Know ([www.shrm.org/ResourcesAndTools/hr-topics/benefits/pages/aca-reporting-checkup-for-employers.aspx](http://www.shrm.org/ResourcesAndTools/hr-topics/benefits/pages/aca-reporting-checkup-for-employers.aspx)), *SHRM Online*, March 2020

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