

IRS extends 2016 Affordable Care Act reporting deadlines

In [Notice 2016-70](#) the Treasury (Treasury) and the Internal Revenue Service (IRS) provide an automatic extension of the due dates to comply with the Affordable Care Act (ACA) reporting requirements. The due date to furnish individuals the 2016 Form 1095-B, *Health Coverage*, and the 2016 Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage*, is extended for 30 days from January 31, 2017 to March 2, 2017. Like the automatic extension granted for the 2015 information returns, the IRS will not entertain any requests for further extensions of this new, blanket deadline.

Unlike last year, the due date to file with the IRS the 2016 Form 1094-B, *Transmittal of Health Coverage Information Returns*, and the 2016 Form 1094-C, *Transmittal of Employer-Provided Health Insurance Offer*, has not been extended. Those dates remain February 28, 2017, for those filing less than 250 forms on paper, and March 31, 2017, for those filing electronically. Filers may, however, request an automatic 30-day extension to those filing deadlines.

In addition, the IRS has stated that penalties would not be imposed on health insurers and employers that make a good faith effort to comply with the reporting requirements, provided statements were furnished to individuals and filings were made with the IRS on a timely basis. This announcement automatically extending the ACA information reporting due dates provides welcome relief to employers and health insurers that are working diligently to comply with the reporting requirements, but have found it challenging to collect the volume of data to be reported and imported into the systems by the statutory due dates. Moreover, the application of the good faith standard to the 2016 information returns is also welcome relief to filers that have found it difficult to keep up with changes in this emerging area of information reporting.

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Background

Large employers, health insurers, and other coverage providers must furnish statements to employees and covered individuals and file returns with the IRS with information regarding the employees' and individuals' health care coverage and the offer of coverage. Section 6056 requires large employers (generally those with 50 or more full-time equivalent employees) to furnish and file annual information statements and returns regarding the health care coverage offered (or not offered) to full-time employees. This information is furnished to full-time employees on the Form 1095-C and is filed with the IRS with the Form 1094-C transmittal. Section 6055 requires health insurance issuers, employers that self-insure, government agencies and other providers of minimum essential coverage (MEC) to furnish and file annual information statements and returns regarding the coverage in which the individual was enrolled. This information is furnished to covered individuals by health insurance issuers and other providers on the Form 1095-B, and is filed with the IRS with the Form 1094-B transmittal. For large employers that provide self-insured coverage, the information is furnished on Form 1095-C, and is filed the IRS with the Form 1094-C transmittal.

The information on these forms is used to administer certain tax provisions of the ACA - the so-called individual and employer mandates as well individual eligibility for subsidies for coverage obtained through the marketplaces in the form of premium tax credits.

The Forms 1095-B and 1095-C information statements were due to be furnished to employees and covered individuals on January 31, 2017. Section 6721 imposes a penalty for failing to timely file an information return or filing an incorrect or incomplete information return. Section 6722 imposes a penalty for failing to timely furnish an information statement or furnishing an incorrect or incomplete information statement. Section 6721 and 6722 penalties are imposed with regard to information returns and statements listed in Section 6724(d); Section 6724(d) lists the information returns and statements required by Sections 6055 and 6056.

From the initial proposal of regulations on the ACA information reporting provisions in 2013, the IRS stated that it would not impose penalties under Sections 6721 and 6722 on employers or health insurance issuers that make a good faith effort to comply with the reporting requirements for the calendar-year 2015 returns, provided the reporting was made on a timely basis. Employers or insurers that failed to timely report could seek relief from any penalties assessed under Section 6724 if they could demonstrate that they had "reasonable cause" for missing the due date.

In addition, IRS officials stated verbally that they would be applying a “light touch” in the assessment of penalties for these calendar-year 2015 information returns. More recently, BNA's *Daily Tax Report* (210 DTR G-1 (2016)) quoted IRS Commissioner John Koskinen as saying, “My view, and our view, has been we’re not looking for foot faults. We’re not trying in fact to generate a lot of money out of penalties. We’re trying to simply work with people to get compliance, because we need the information in the most efficient format and on a timely basis for our own use. We don’t need a lot of penalties.” Prior to the issuance of Notice 2016-70, however, the IRS had not given any indication that it would extend the good faith relief to the calendar-year 2016 information returns.

Transition relief

The Notice provides an automatic extension of the due date to furnish the 2016 Forms 1095-B and 1095-C from January 31, 2017, to March 2, 2017, but does not extend the due date to file with the IRS the 2016 Forms 1094-B and 1094-C. Those filing due dates remain March 31, 2017, if filing electronically, and February 28, 2017, if not filing electronically. The 30-day automatic extension, however, remains available to filers.

As was the case last year, Notice 2016-70 reminds taxpayers that they can file their individual tax returns before receipt of Forms 1095-B and 1095-C but may rely on other information received from employers and insurers for purposes of determining eligibility for the premium tax credit under Section 36B and confirming they had minimum essential coverage for purposes of Sections 36B and 5000A. Once again, individuals are reminded that the Forms 1095-B and 1095-C are not attached to their tax returns, but are maintained for their tax records.

As was the case for the 2015 ACA information returns, the IRS stated that it would not impose penalties under Sections 6721 and 6722 on employers or health insurance issuers that make a good faith effort to comply with the reporting requirements, provided the reporting is made on a timely basis. Employers or insurers that fail to timely report may seek relief from penalties under Section 6724 if they can demonstrate that they had “reasonable cause” for missing the due date. Finally, the Notice indicates that this relief will only apply for the 2016 returns and similar relief should not be expected for 2017.

Implications

The Notice provides a welcome extension of ACA information reporting due dates for employers, health insurers and other coverage providers that may have found it challenging to furnish statements based on the January 31 deadline. Despite this relief, employers and coverage providers should continue to work diligently to comply with the reporting requirements as soon as possible.

The extension of the furnishing due dates is automatic and is not conditioned on making any filing with the IRS or providing employees and covered individuals with any specific information. Nevertheless, the employers and coverage providers that will be providing the Form 1095-C or Form 1095-B on a delayed basis would be advised to communicate with employees and covered individuals to indicate when they may expect to receive the statements and the information on which they may rely as evidence of coverage and the offer of coverage so that they may complete file their tax returns as soon as they are ready to do so.

Moreover, the Notice is silent on the previously announced waiver of accuracy penalties, which was conditioned on the timely furnishing and filing the returns. Accordingly, it appears that large employers, health insurers, and other coverage providers will have the protection of that penalty waiver if they furnish and file their returns by the newly extended due dates.

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