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Deadline Extended for 2019 Forms 1095-C

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On December 2, 2019, the IRS issued Notice 2019-63, which provides:

- An extension of time, until **March 2, 2020**, for employers to provide Forms 1095-C to their full-time employees and other individuals; and
- An extension of relief from penalties for the 2019 reporting year for employers and other entities that make good-faith efforts to comply with the reporting requirements.

Notice 2019-63 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 2019.

However, the Notice provides an alternative furnishing method for Form 1095-B (and in some cases Form 1095-C), with relief from the 2019 Section 6055 reporting penalty, for:

- Insurance carriers that are otherwise required to furnish Form 1095-B to covered individuals for calendar year 2019;
- Employers with self-funded health plans that are otherwise required to furnish Form 1095-B to covered individuals for calendar year 2019; 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 2019.

Briefly, the alternative furnishing method allows carriers (and in some cases employers) to avoid 2019 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?

2019 Forms 1095-C must be furnished to FTEs and other individuals by **Monday, March 2, 2020** (rather than by January 31, 2020).

This extension of time also applies to insurance carriers providing 2019 Forms 1095-B to individuals covered under an insured plan, and to employers providing 2019 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, 2020, will not be further extended by the IRS.

Q2: Were The Deadlines For Reporting To The IRS Extended?

No, the 2019 Form 1094-C and all supporting Forms 1095-C (and the 2019 Form 1094-B and all supporting Forms 1095-B) must be filed with the IRS by Tuesday, March 31, 2020, if filing electronically (or by Friday, February 28, 2020, 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, 2018, 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 2019 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):

- **Website posting.** The reporting entity posts a notice prominently on its website stating that responsible individuals may receive a copy of their 2019 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.
- **Provide form within 30 days.** The reporting entity furnishes a 2019 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 2019 Form 1094-B and all 2019 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 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.

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ALEs are still required to provide Forms 1095-C to employees who were full-time for any month of calendar year 2019. Nothing has changed with respect to this requirement, aside from extending the deadline to March 2, 2020. 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.

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 2019, the employer must still submit completed Forms 1094-C and 1095-C to the IRS by the required deadline.

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

The Notice does provide relief to ALEs required to furnish 2019 Forms 1095-C to individuals covered under a self-funded group health plan **who were not FTEs for any month of calendar** year 2019. In this limited instance, ALEs may use the alternative furnishing method and will not face 2019 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 2018 or earlier.
- Individuals covered under a self-funded retiree medical plan who retired in 2018 or earlier.

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 2019. 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.

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.

Q7: Our Employees Reside In States With An Individual Healthcare Mandate. Are There Other Things To Consider?

A handful of states (including the District of Columbia) have enacted individual healthcare mandates that apply to residents. As part of this requirement, carriers and employers must 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. States have either adopted (or are expected to adopt) the federal forms, 1095-B and 1095-C, to satisfy this requirement. While there may be limited federal relief with respect to furnishing these forms, carriers and employers may want to continue to provide these forms to covered employees

and other individuals who are subject to a state mandate.

The following is a list of states (including the District of Columbia) with an individual healthcare mandate and effective dates for compliance.

| State or Jurisdiction | Effective Date of Individual Healthcare Mandate | Employer Reporting Begins in 2020 | Employer Reporting Begins in 2021 |
|-----------------------|---|-----------------------------------|---|
| California | January 1, 2020 | | X |
| New Jersey | January 1, 2019 | X | |
| Rhode Island | January 1, 2020 | | X |
| Vermont | January 1, 2020 | | X (however, employers may not be required to report coverage to the state) |
| Washington, DC | January 1, 2019 | X | |

Massachusetts established an individual mandate in 2007. Reporting to individuals is provided via Form 1099-HC. Employers with at least 6 employees who are residents of the state must file an HIRD. As the Massachusetts requirement predates these recent healthcare mandates and uses different reporting forms, it is not included on this list.

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. There is information in the Notice on how taxpayers may submit comments.

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Q9: Have Revised Forms 1094/1095-C And 1094-1095-B Been Released For 2019?

Yes. The IRS recently released draft Forms 1094/1095-C and 1094/1095-B information returns and instructions for calendar year 2019, but they have very few changes from the prior year's versions. Since they were released so late, there was much that there might be significant modifications to the forms and reporting requirements, perhaps related to the fact that beginning January 1, 2019, the penalty for an individual not maintaining MEC was reduced to zero. However, at least based on the 2019 draft forms and instructions, this is not the case. There were relatively few changes made from the prior year, as detailed below.

- **Draft 2019 Form 1094-C:** No changes.
- **Draft 2019 Form 1095-C:** No changes to the form itself.

Identifying the "Plan Start Month" in Part II remains optional for 2019, although it may become mandatory for 2020.

The Instructions for Recipient on the back of the form had a few changes to reflect the elimination of the individual mandate penalty, and to underscore that information reported on the form is relevant to determining if an individual qualifies for subsidies through the Marketplace/Exchange. Changes include:

- deleting a statement that the information is reported on the form "to assist you in completing your income tax return"
- adding a statement that "[i]f you or your family members are eligible for certain types of minimum essential coverage, you may not be eligible for the premium tax credit"

Draft 2019 Instructions for Forms 1094-C and 1095-C:

In addition to routine updates to the furnishing and filing deadlines, and the dates used in examples, the following changes were made:

- deleting a reference that individuals reported to have MEC under a self-insured plan "are not liable for the individual shared responsibility payment for the months that they are covered under the plan"
- adding a statement that "[e]ligibility for certain types of minimum essential coverage can affect a taxpayer's eligibility for the premium tax credit"
- updating the calendar year penalty caps for the failure of an ALE to (1) file correct information returns, or (2) provide correct payee statements, to \$3,339,000 each (from \$3,275,500 in 2018)
- updating the applicable percentage for affordability safe harbors and the Qualifying Offer Method to 9.86% for plan years beginning in 2019 (from 9.56% in 2018)

Changes to the draft 2019 Forms 1094-B, 1095-B, and applicable instructions are similar to the changes described above.

Q10: What Should Employers Do Next?

Employers should consider the following:

- Employers should take note of the extended deadline, March 2, 2020, to furnish 2019 Forms 1095-C to full-time employees and other individuals.

- Final versions of the 2019 Forms 1094-C and 1095-C, along with relevant instructions, should be released soon. Hopefully, the final versions include additional guidance on the relief announced in this Notice.
- 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.
- Employers with fully insured plans should be aware that their carriers may not issue Forms 1095-B directly to covered employees for 2019. 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, USI has identified a few administrative reasons why ALEs may be reluctant to adopt this new furnishing method for 2019:
 - 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 2019, 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.
- Given the timing of Notice 2019-63, vendors or other third parties that assist in preparation and distribution of 2019 Forms 1094-C and 1095-C may not be able to accommodate this new process.
- 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.

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