



# AMERICAN BENEFITS COUNCIL

February 1, 2021

Submitted via [www.regulations.gov](http://www.regulations.gov)

Internal Revenue Service  
Attn: CC:PA:LPD:PR (Notice 2020-76)  
Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

**Re: Comments Regarding Notice 2020-76, Transition Relief Related to Health Coverage Reporting Required by Sections 6055 and 6056 for 2020**

Dear Sir or Madam:

We write on behalf of the American Benefits Council (“the Council”) to provide comments in connection with Notice 2020-76, Transition Relief Related to Health Coverage Reporting Required by Sections 6055 and 6056, issued by the U.S. Treasury Department and the Internal Revenue Service (IRS). Specifically, due to ongoing administrative issues and burdens, we request that Treasury and the IRS continue the relief provided under Notice 2020-76 for reporting under Sections 6055 and 6056 of the Internal Revenue Code, in some cases permanently and in some cases for the duration of the COVID-19 crisis.

The Council is dedicated to protecting employer-sponsored benefit plans. The Council represents more major employers – over 220 of the world’s largest corporations – than any other association that exclusively advocates on the full range of employee benefit issues. Members also include organizations supporting employers of all sizes. Collectively, Council members directly sponsor or support health and retirement plans covering virtually all Americans participating in employer-sponsored programs.

As you are aware, the ACA imposed substantial reporting requirements on employers. More specifically, Section 6055 of the Code requires employers and other providers of minimum essential coverage to annually report to the IRS and furnish to

individuals forms showing coverage for the year, primarily to enforce the individual mandate, the penalty for which was reduced to \$0 beginning in 2019. Section 6056 of the Code requires applicable large employers annually to report to the IRS and to furnish to full-time employees forms showing whether coverage was offered and information about that coverage, to enforce the employer mandate. Treasury and the IRS have spent years providing guidance, forms and instructions implementing these requirements, including the relief described later in this letter.

Employers have worked diligently for the past several years to implement these requirements and have expended countless hours and dollars on complying with the Affordable Care Act (ACA) reporting requirements, and also to implement analogous state-level reporting requirements. This is in part because of the need to modify benefit and payroll systems and to coordinate with third party recordkeepers and tax return preparers. Employers have also had to engage in significant training of human resources, benefits, and tax personnel and implement changes to existing recordkeeping practices and procedures. During that same time, the Council has worked with Treasury and the IRS to raise issues for employers, request clarifying guidance and request relief where needed and appropriate.

We greatly appreciate all the efforts by Treasury and the IRS over the years on ACA reporting, including the relief that has been provided to date. Although it has been several years since these provisions first applied, we write now to explain why some of the transition relief previously provided should be made permanent and why other forms of relief should be extended through the COVID-19 crisis.

### **30-DAY FURNISHING DELAY**

Under Code Sections 6055 and 6056, employers and other providers of minimum essential coverage must furnish statements of coverage, or statements regarding offers of coverage, as applicable, to employees by January 31 of the year following the year to which the statement relates. However, the regulations implementing these Code sections allow the IRS to grant an extension of up to 30 days to furnish Forms 1095-B and 1095-C for good cause shown.<sup>1</sup>

Every year since these requirements have been in effect, Treasury and the IRS have issued guidance providing an automatic extension of the furnishing due date, and for the last several years the extension has been for 30 days.<sup>2</sup> The rationale has been that Treasury and the IRS have determined that a substantial number of employers, insurers and other reporting entities need additional time beyond the January 31 due date and

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<sup>1</sup> See Treas. Reg. 1.6055-1(g)(4)(i)(B)(1) and 301.6056-1(g)(1)(ii)(A).

<sup>2</sup> See Notice 2016-4, Notice 2016-70, Notice 2018-06, Notice 2019-63, and Notice 2020-76.

so, instead of Treasury and the IRS handling requests for 30-day extensions on a one-off basis, as allowed by the regulations, for the sake of efficiency and in acknowledgment of the substantial number of employers and others that would seek extensions, Treasury and the IRS have issued an automatic extension, obviating the need for each individual employer and insurer from having to request a 30-day delay.

In Notice 2020-76, Treasury and the IRS indicated that unless comments are received that explain why this relief continues to be necessary, it will not be provided for future years. We thank Treasury and the IRS for the chance to submit comments on this important issue, and we write now to urge that the 30-day furnishing delay be made permanent. We understand that in some instances the need for relief from new requirements dissipates with time, as familiarity with the requirements grows and processes for compliance are completed and fine-tuned. However, we understand from discussions with employers that has not been the case with the ACA furnishing requirements. Rather, the reasons that necessitate the 30-day furnishing delay are permanent issues which merit a permanent delay.

More specifically, the administrative process that it takes to produce complete and accurate Forms 1095-B and 1095-C takes more time than is allowed by the January 31 deadline, due to the complexity of the process and the importance of validating the data before it is sent to employees. Employers must gather accurate enrollment and offer information, oftentimes from multiple service providers and/or data systems, verify this information, and transmit it to their vendors with sufficient time to prepare and distribute the forms. The reporting requires information from multiple data sources for a great number of employees, which takes much time to process. While information is tracked all year, employers cannot meaningfully front load this work to earlier in the applicable year because the reporting must include data through December and so the data aggregation and verification process requires substantial work after the close of the applicable year.

Our understanding is that many employers have implemented robust data verification processes to ensure that the data being provided, which is often aggregated from several data streams, is accurate and complete, for employees and the IRS. Employers have found that the time they take to verify the data, before furnishing the forms to employees or providing them to the IRS, substantially reduces errors on the forms and the need to correct the forms. As such, we are concerned that, without a delay, employers will be forced to cut down on these very worthwhile data verification processes in order to meet the January 31 due date, which would be detrimental to employees, employers and the IRS.

In addition, as a practical matter, the burden of attempting to prepare these forms in early January is compounded by the fact that the end of December and beginning of January are also very busy times for employers because they have year-end

amendments to make to their benefit plans and because they need to prepare Forms W-2 that are due to employees by January 31. More generally, we have heard that the extensive effort and time it takes to complete the forms is due to the fact that the forms are dependent on the assessment of detailed employer and employee activities and behavior. In some cases a day-by-day, person-by-person assessment is required, which may yield varied individual results in the applicable codes. This is meaningfully distinguishable from other informational returns that accumulate dollar amounts for the year without regard to day-by-day activity during the year (like the Form W-2).

Further, as an example of timing challenges building on the Form W-2 context, employers intending to use the Form W-2 affordability safe harbor, generally must finalize the W-2 forms in order to reliably use the Box 1 wages to calculate whether the W-2 safe harbor is available for them to indicate on the Form 1095-C. This can result in not being able to determine the affordability safe harbor for the year until well into or towards the end of January each year. The dependencies inherent in the production of the 1095-C forms often require the various data source timelines to run consecutively rather than concurrently, which result in frequent delivery delays beyond the January 31 deadline.

It is also important to note that employers involved in mergers and acquisitions experience even more complexity when accounting for newly integrated or divested entities or operations, necessitating as much time as possible to complete the required forms.

Taking all of this together, employers will continue to need an extra 30 days to prepare the forms and so the rationale for the automatic 30-day extension will hold on a permanent basis – that is, due to the substantial number of employers that we expect to seek 30-day extensions for good cause, as allowed under the regulations, it would be much more efficient, and provide more certainty and clarity for employers, to provide the 30-day extension on an automatic, permanent basis.

Moreover, we emphasize that a permanent 30-day extension will not negatively affect employees. In Notice 2020-76, the IRS stated that “[b]ecause the individual shared responsibility payment is zero in 2020, an individual does not need the information on Form 1095-B to compute his or her federal tax liability or file an income tax return with the IRS.” The same is true for the information on Part III of the Form 1095-C. And, while the information in Part II of the Form 1095-C is theoretically relevant to show an employee whether or not he/she had an offer of affordable, minimum value employer-sponsored coverage to determine premium tax credit eligibility, we understand that most employees for whom this would be relevant already know whether this is the case (*i.e.*, because they applied for the advance payment of the premium tax credit during enrollment in Marketplace coverage) and many employees are not eligible for the premium tax credit in any event, by virtue of their income. Thus, practically speaking,

employees do not use the Form 1095-C to help them complete their tax return. However, even if in a rare circumstance an employee wished to use the form to confirm their premium tax credit eligibility, they would still receive the form well before the April 15 due date of their tax return.

It is also the case that Treasury and the IRS have the authority to make the 30-day extension permanent, just as there was authority to provide the 30-day extension for good cause shown in the regulations. Code section 7805(a) authorizes the Secretary to prescribe all needful rules and regulations for the enforcement of the Code and provides ample authority to Treasury and the IRS to promulgate rules with relief when necessary. Indeed, the Treasury Department and IRS exercised similar authority in July 2013 when delaying the implementation of the Code Sections 6055 and 6056 reporting until early 2016.<sup>3</sup>

For the reasons described above, we urge Treasury and the IRS to make the 30-day furnishing relief permanent. If instead, it is the case that individual employers will need to request a 30-day extension each year, due to our expectation of the substantial number of employers that will seek such a delay, we request that Treasury and the IRS issue further guidance on how this process will work. Ideally this would include examples of sufficient good cause reasons, and the mechanics of the process, including the due date for the request and the date by which the IRS will respond to requests. In this case, we would request that Treasury and the IRS apply the good cause standard reasonably and with flexibility so that employers that need the extension can receive it.

## **GOOD FAITH RELIEF**

For each year that the ACA reporting requirements have been in effect, Treasury and the IRS have provided that the IRS would not impose penalties under Code sections 6721 (regarding filing of incorrect or incomplete returns) or 6722 (regarding furnishing of incorrect or incomplete statements) on reporting entities that could show that they made good faith efforts to comply with the information reporting requirements. Notice 2020-76 states that this was intended to be transitional relief and that 2020 is the final year that Treasury and the IRS will provide this good faith relief.

We understand that this good faith relief was provided to ease burdens on employers and other reporting entities as a transition matter and that it will not be extended permanently. We also reiterate that the relief has been greatly appreciated during the years it has been provided. However, in discussing the matter with employers, because the COVID-19 crisis is expected to continue for what appears to be a substantial amount of time, we request that the relief be extended for at least one more

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<sup>3</sup> See Notice 2013-45 at <https://www.irs.gov/pub/irs-drop/n-13-45.pdf>.

year. Due to COVID-19 and the related economic crisis, there are many workforce, staffing, and coverage changes that may cause inadvertent errors on the forms and that increase the burden in completing the forms. Thus, at least one more year of good faith relief would be extremely helpful to employers.

For future years, we request that the Treasury Department and IRS not foreclose the possibility of additional good faith relief, but instead take a “wait and see” approach to the conditions and exigencies present at that time. Employers are experiencing a time of unprecedented challenges and change, with very little ability to reliably predict when operational components and circumstances will return to some level of consistency. Given this uncertainty and volatility, it seems reasonable not to foreclose the ability to use the good faith relief beyond 2021.

#### **CODE SECTION 6055 FURNISHING RELIEF**

In response to the fact that the individual mandate penalty was reduced to \$0 effective in 2019, and the Form 1095-B is primarily used to enforce that provision, Treasury and the IRS provided relief from the requirement to furnish the Form 1095-B. More specifically, Notice 2019-63 provided that for 2019 reporting entities need not furnish the Form 1095-B as long as they (1) post a notice prominently on their website stating that individuals may receive a copy upon request, accompanied by an email address and physical address to which a request may be sent, as well as a telephone number for questions and (2) furnish the form to individuals upon request within 30 days of the date the request is received. This relief is not available to large employers that file the Form 1095-C, even though that form also contains coverage information, except in the limited circumstance of reporting for individuals who are not employees or who are not a full-time employee for any month of the year. This relief was extended to 2020 in Notice 2020-76 and Treasury and the IRS asked for comments.

Most of our members sponsor self-insured health plans and, as a result, file the Form 1095-C. As such, the Form 1095-B furnishing relief is not relevant to them. Nonetheless, we note that the relief seems reasonable, and we recommend that Treasury and the IRS make it permanent as it provides an additional option for insurers that could reduce their administrative burden, with no downside for covered individuals. As stated above, as there is no more individual mandate penalty, individuals do not need this information. If the IRS extends this relief, we request that the IRS also continue to permit a self-insured employer to use this relief for employees *and non-employees* who are enrolled in its self-insured plan and for whom the employer reports on a Form 1095-C using the Code 1G, as is allowed under the current relief.

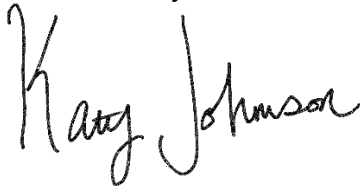
One technical question has been raised to us regarding this relief. Regarding the notice that the reporting entity must post prominently on its website stating that

individuals may request the Form 1095-B, how long must this notice be posted and how prominent must it be? Clarification in future guidance would be helpful.

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Thank you again for working with us over the years on ACA reporting implementation and for considering our comments. If you have any questions or would like to discuss these comments further, please contact us at (202) 289-6700.

Sincerely,

A handwritten signature in black ink that reads "Katy Johnson". The signature is written in a cursive, flowing style.

Katy Johnson  
Senior Counsel, Health Policy