



January 27, 2021

Comments to the Internal Revenue Service in response to Notice 2020-76 regarding extension of due date for furnishing statements to individuals under Section 6056

Submitted online: (<https://beta.regulations.gov/docket/IRS-2020-0037/document>)

As the largest professional association for Certified Public Accountants in Florida, the Florida Institute of Certified Public Accountants (FICPA) represents the interests of the more than 19,500 individuals. The FICPA Federal Taxation Committee, comprised of members who practice in the area of Federal tax issues, respectfully requests your consideration of the following comments regarding Notice 2020-76.

The reporting requirements under Section 6056 are met by applicable large employers issuing Form 1095-C to their full-time employees and preparing Form 1094-C to report employer-level data such as the number full-time employees each calendar month, etc. Under Section 6056(c)(2) employers are required to furnish Form 1095-C (or a substitute statement that contains the required information) to their employees on or before January 31 of the year following the calendar year for which the return was required to be made.

In order to properly prepare Forms 1095-C, employers must first determine which of their employees were full-time for purposes of the Affordable Care Act (ACA) for the reporting year. If an employer uses the look-back measurement method, they must evaluate the hours of service for each employee during the preceding year. Once each employee's hours have been totaled, the employer must determine the stability period for each employee when they will be treated as full-time or not-full-time based upon the lookback measurement method. If an employee should be treated as full-time for any month in a reporting year, then the employer must prepare a Form 1095-C for that employee.

If an employer prepares its payroll "in-house" (i.e., it does not use a third-party service provider), determining the hours of service and full-time status for each employee is a manual and often time-consuming process.

Next, the employer must determine which of its full-time employees have been offered insurance. Often, a large number of employees decline the coverage offered, so the employer must review records which substantiate the employees that declined coverage to compile and report all insurance offers made. Since offers of coverage can only be reported on line 14 of Form 1095-C for months in which coverage was available to the employee on each day of that calendar month, the employer must then determine whether or not the employee was

terminated during the reporting year and then be sure to omit offers of coverage for months where the employee did not work for the employer.

All of these calculations and determinations noted above are very time consuming if an Applicable Large Employer is preparing Forms 1095-C itself.

While the safe harbor codes on line 16 of Form 1095-C are not required, it is in the best interest of the employer to provide a safe harbor code for as many months as possible to minimize exposure to the Employer Shared Responsibility Payments under Section 4980H. Determining the applicability of the eight safe harbor codes is a significantly time-consuming task. The safe harbor codes include three affordability safe harbors, months during which the employee was enrolled in the insurance coverage offered, limited non-assessment periods during which the employer was not required to offer insurance to the employee (e.g., waiting period for benefits for new hires that become eligible for coverage within prescribed time limits), months during which an employee did not work for the employer for any day of the month (e.g., months preceding hire date and months succeeding termination date).

One of the affordability safe harbors that can be reflected on line 16 when applicable is the Form W-2 safe harbor. As you are aware, Form W-2 is also required to be issued to employees on or before January 31 of the year following the reporting year. Since box 1 wages from Form W-2 are used to evaluate this affordability safe harbor, it is very challenging to perform this analysis in order to have Form 1095-C available for distribution to employees by the same January 31 deadline.

If an employer retains the services of a third party to prepare their Forms 1095-C, they must still provide significant amounts of data to the service provider to accomplish this reporting task. As noted above, compiling information about insurance coverage offered to employees who declined the coverage is particularly time-consuming, as there are no invoices from the insurance company that include these employees.

One of FICPA's member firms that provides services preparing and e-filing Forms 1095-C and 1094-C polled its clients regarding the compliance burden and learned the following:

- Depending upon the number of employees, it takes employers anywhere from two days to two weeks to compile the information necessary to prepare Forms 1095-C.
- Most clients that use a third-party payroll service provider receive their Forms W-2 the third week of January or later.

There are a number of other information returns that must be furnished and filed by employers on or before January 31 each year, many of which cannot be extended unless extraordinary circumstances apply:

- Forms W-2
- Form 1099-NEC

- Form 1099-MISC
- Fourth quarter Form 941
- Form 940
- Form 945

It is important to note that unlike Forms W-2 and 1099, Form 1095-C is not required for employees to prepare and file their individual income tax returns.

Optimally, the statutory requirement under Section 6056(c)(2) to furnish these information statements on or before January 31 of the year following the calendar year for which the return is required to be filed should be amended to extend this deadline to February 28. Barring a legislative “fix”, the continuation of the Service’s administrative relief extending the distribution deadline by 30 days from January 31 each year is necessary to ensure that all applicable large employers will continue to be able to meet this deadline.

Thank you for your consideration of these comments.

Respectfully,

A handwritten signature in cursive script that reads "Carol Vance".

Carol Vance, CPA, Esq
Chair
FICPA Federal Taxation Committee