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## Logistics of Filing and Providing Forms 1094-B, 1095-B, 1094-C, and 1095-C, Including Extensions and Waivers

In late 2021, the Internal Revenue Service (IRS) issued final 2021 Instructions for Forms 1094-B, 1095-B, 1094-C, and 1095-C. The IRS also issued final Forms 1094-B, 1095-B, 1094-C, and 1095-C. As a reminder, these Forms will generally be used by applicable large employers, self-insured employers, and health insurers for their reporting and disclosure of offers of health coverage made during the 2021 calendar year as required under Sections 6055 and 6056 of the Patient Protection and Affordable Care Act (ACA).

The 2021 C-series forms now include new codes and coding instructions for employers that offered Individual Coverage Health Reimbursement Accounts (ICHRA) during the 2021 coverage year.

### Substitute Forms and Employee Statements

Instead of using IRS Forms 1094-B, 1095-B, 1094-C, and 1095-C, employers may develop and use substitute forms that may be used for IRS reporting as well as providing copies to employees and other covered individuals (collectively responsible individuals). Substitute forms must meet the format and content requirements set forth in IRS Publication 5223. According to Publication 5223, the proposed substitutes must be exact replicas of the official IRS Forms in terms of both layout and content. Substitute forms that do not adhere to specifications in Publication 5223 may be subject to penalties. Forms reported to the IRS must be in landscape format; however, copies to employees may be in portrait format.

### How to Provide Forms 1095-B, 1095-C, or Simplified Statements to Employees

Copies of Forms 1095-B and 1095-C (or substitute forms) must be furnished annually to responsible individuals on or before January 31 of the year immediately following the calendar in which health coverage was offered.

The Social Security Number (SSN) or Taxpayer Identification number (TIN) of the employee and/or covered individuals may be truncated on any Form 1095-B, 1095-C, or simplified statement provided to individuals. However, employers are prohibited from truncating SSNs or TINs on any Forms filed with the IRS. When truncating, the first five digits should be replaced with asterisks or Xs and only the last four digits of the SSN or

TIN may be shown (e.g., XXX-XX-1234 or \*\*\*-\*\*-1234). Note that the employer's identification number (EIN) or filer's TIN may not be truncated on the copies of the forms provided to employees and/or covered individuals.

Copies of the Forms or simplified statements must be provided on paper by mail or hand delivery. If mailed, the statement must be sent to the responsible individual's last known permanent address or, if no permanent address is known, to the employee's temporary address.

Alternatively, statements may be provided electronically by email or through the employer's website if the employee consents. (Note that Forms reporting coverage under an expatriate plan can be furnished electronically unless the employee refuses consent or requests a paper statement.) Consent may be made electronically in any manner that reasonably demonstrates that the employee can access the statement in the electronic format in which it will be furnished. Consent to receive the statement electronically may be done on paper so long as the consent is then confirmed electronically. The rules for electronic consent are very specific. For more information about the requirements for electronic consent, please see our article, [IRS Releases Final Regulations on Employer and Issuer 6055 and 6056 Reporting Requirements](#), and sample electronic consent forms, [Sample Employee Communications for Sections 6055 and 6056 Purposes](#).

## **Deadline Extensions to Provide Forms 1095-B, 1095-C, or Simplified Statements to Responsible Individuals**

The deadline and process for requesting an extension of time to provide employee statements is the same for both Forms 1095-B and 1095-C. Employers may request additional time to provide Forms 1095-B, 1095-C, or simplified statements to employees by sending a letter to the IRS. If granted, employers will generally receive a maximum extension of 30 days to furnish employee statements. To receive an extension, the letter must be postmarked by the date on which statements are due to responsible individuals (generally January 31, unless that date falls on the weekend).

However, employers will not be able to obtain an extension of time to provide statements to responsible individuals for 2021 reporting. The IRS has already extended the deadline to furnish statements to individuals until March 2, 2022. Entities seeking a 30-day extension will not receive a formal response from the IRS as to their requests.

Deadlines for reporting to the IRS using Forms 1094-B, 1095-B, 1094-C, and 1095-C remain the same and must be done by February 28, 2022 if reporting using paper or March 31, 2022 if reporting electronically. An employer could be exposed to penalties if it provides responsible individuals statements after the deadline without receiving an extension of time from the IRS.

## **Filing Forms 1094-B, 1095-B, 1094-C and 1095-C with the IRS**

The IRS requires electronic filing of Forms 1094-B, 1095-B, 1094-C, and/or 1095-C when 250 or more Forms are required to be filed. The 250 or more requirement applies separately to each type of Form as well as to both original and corrected returns. For example, if a self-insured applicable large employer is required to file 500 Forms 1095-C and 100 Forms 1095-B, then the employer is required to file Forms 1095-C electronically but the 1095-B may be filed on paper. In addition, if an employer files 250 or more corrected returns, then the employer must file electronically. But if an employer must file fewer than 250 corrected returns, then the employer may file those in paper format, even if the employer was required to file the original returns electronically. However, employers who filed electronically may still wish to file corrections electronically even if not required to do so. For more information regarding how to file electronically (and not through a vendor), please see [Publication 5165](#) that outlines the communication procedures, transmission formats, business rules, and validation procedures.

If filing on paper, the Forms must be sent to the IRS via first-class mail. The mailing should be flat (i.e., not folded) labeled with:

- Your name; and
- The package number, ordered sequentially (if mailing the Forms in multiple packages).

If multiple packages are sent, then copies of Form 1094-C should be included in each package.

Note: On July 1, 2019, President Trump signed the Taxpayer First Act (the Act) into law. The Act lowers the threshold for electronic filing of information returns beginning in 2021 from 250 to 100. Subsequently, the Act decreases the threshold to 10 Forms for calendar years after 2021. However, the IRS issued a statement that the electronic filing threshold will remain at 250 until regulations are issued. As of December 20, 2021, no such guidance had been issued. Note, however, that a waiver from the electronic filing requirement will apply to areas without internet access.

## **Waivers from Electronic Filing**

To request a waiver from electronic filing, which would permit an employer to file paper copies with the IRS, an employer should file Form 8508 at least 45 days before the due date of the return. The waiver is not automatically granted. Should the IRS approve the electronic filing waiver, the waiver applies for that tax year only. An employer should not include a copy of the waiver in the paper filing, but the waiver should be kept for an

employer's records. The waiver will also cover any future corrections for the types of returns listed.

If an employer is required to file Forms 1094-B, 1095-B, 1094-C, or 1095-C electronically, but instead files paper copies without an approved waiver, it could be liable for a penalties. It appears that this penalty may be reduced or even waived if the employer is able to establish "reasonable cause" for failing to electronically file the forms.

## **Extensions to File with the IRS**

Employers who are unable to file Forms 1094-B and 1095-B, or 1094-C and 1095-C with the IRS by the applicable deadline may apply for a 30-day extension by completing Form 8809 to avoid incurring penalties. Employers will not be required to provide an explanation to receive the extension. The extension will be granted automatically when Form 8809 is submitted by the filing deadline of February 28 or March 31, 2021, as applicable; however, it is recommended that Form 8809 be filed as soon as an employer is aware that an extension is needed. Form 8809 may be submitted on paper or through the FIRE System as either a fill-in form or an electronic file. No signature is required. The automatic 30-day extension starts running from the original due date of the Forms.

Under a hardship extension, an employer may request a second 30-day extension that would effectively lengthen the total extension to 60 days. However, this second 30-day extension is not automatic and will generally be granted only when the employer can show that extenuating circumstances prevented filing by the date granted by the first request. To receive the second 30-day extension, an employer must submit a second Form 8809 before the end of the first extension period. The 2021 final Instructions for Forms 1094-B and 1095-B are available [here](#) and the 2021 final Instructions for Forms 1094-C and 1095-C are available [here](#).

## **Penalties**

If an employer fails to timely file complete and accurate returns (i.e., Forms 1095-B or 1095-C) with the IRS, or fails to timely furnish a corrected statement to responsible individuals, then the employer could be subject to an indexed penalty up to a calendar year maximum. For returns filed in 2022 for coverage provided in 2021, the penalty is \$280 per return with a maximum of \$3,426,000. The penalties will be doubled if the failure relates to both an IRS information return (i.e., Forms 1094-B, 1095-B, 1094-C, or 1095-C) and an employee statement (i.e., Forms 1095-B or 1095-C, or a simplified statement, required to be provided to an individual). However, penalties may be reduced if corrective action is taken within 30 days and may even be waived if the failure to file timely or accurately is due to reasonable cause and not due to willful neglect. Additionally, IRS regulations do not require the filing of corrected returns for missing or incorrect TINs if the reasonable cause criteria is met.



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For Forms filed and statements provided in 2022 (for coverage offered in 2021), the IRS will no longer provide “good faith” relief to employers who fail to provide accurate filings or statements, even if the employer made a “good faith” effort to comply.

## **Record Keeping**

Generally, copies of Forms 1094-B, 1095-B, 1094-C, and 1095-C filed with the IRS must be kept for at least 3 years from the due date of the returns. In lieu of keeping copies of the forms, employers may alternatively maintain records that allow them to reconstruct the form data for at least 3 years from the due date of the returns.

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*The intent of this analysis is to provide general information regarding the provisions of current federal laws and regulation. It does not necessarily fully address all your organization’s specific issues. It should not be construed as, nor is it intended to provide, legal advice. Your organization’s general counsel or an attorney who specializes in this practice area should address questions regarding specific issues.*