

Two New Laws Provide Employer Relief for ACA Reporting

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On December 23, 2024, President Biden signed two bills intended to ease the burden of reporting under the Affordable Care Act (“ACA”) for health plan sponsors and health insurance providers.

The new laws also give employers more time to respond to proposed penalty assessments for ACA coverage failures, and establish a statute of limitations for the IRS to make such assessments.

The Paperwork Burden Reduction Act

For more than a decade, insurers of fully-insured plans and Applicable Large Employers (“ALEs”) (as defined under the ACA) sponsoring self-insured plans have been required to provide their employees with Forms 1095-B or 1095-C, respectively. These Forms report whether the recipient was offered minimum essential health insurance coverage for the prior year. Insurers and ALEs were required to deliver these documents to each employee by March 2 (or the next business day) of each year, and had to provide employees with a paper copy of the applicable Form, unless the employee affirmatively consented to electronic delivery. Unsurprisingly, this created a significant administrative burden for employers each year.

The Paperwork Burden Reduction Act (H.R. 3797) (“PBRA”), passed by the 118th Congress on December 11, 2024, aims to ease the strain of this requirement by providing the following:

- ***Employers are no longer required to send employees a Form 1095-B or 1095-C***, unless the employee requests a copy of the applicable form.
- **Notice of Availability.** In order to take advantage of this new process, however, employers must provide a “clear, conspicuous, and accessible notice” to employees informing them that they can request a copy of the Form 1095-B or 1095-C. (The PBRA states that the IRS may publish regulations relating to the time and manner of this notice.)
- If an employee requests a Form 1095-B or 1095-C, the employer must provide the applicable

Form by the later of (1) January 31, or (2) 30 days after the date of the request.

The PBRA is effective for Forms 1095-B and 1095-C applicable to calendar year 2024 and beyond, so employers can implement the new process this year for forms that otherwise would have been due by March 3, 2025 for the 2024 year.

Important Note! The PBRA will not change the distribution requirements for states with individual health insurance mandates (California, Massachusetts, New Jersey, Rhode Island, and Washington D.C), where paper distribution may still be required.

The Employer Reporting Improvement Act

On December 11, 2024, Congress also passed the Employer Reporting Improvement Act (H.R. 3801) ("ERIA"), which codifies certain IRS regulations designed to make ACA reporting easier for employers.

- **DOB May Substitute TIN** - The ERIA codifies IRS guidance allowing employers to substitute an employee's date of birth ("DOB") for their Tax Identification Number ("TIN") for purposes of ACA-related returns, if the employee's TIN is unavailable.
- **Electronic Delivery of Requested Form** - The ERIA also codifies the IRS's electronic delivery rules with respect to Forms 1095-B and 1095-C, allowing employers to furnish those Forms electronically to participants who consent to electronic delivery. The ERIA makes these changes effective for all statements with due dates after December 31, 2024.

Beyond codifying these IRS regulations, the ERIA makes two major modifications to the existing rules governing ACA penalty assessments:

- **Extension of Response Time to Penalty Letter** - Employers now have **90 days (rather than the previous 30-day deadline)** to respond to an initial letter from the IRS regarding a proposed penalty assessment for an ACA coverage failure under Internal Revenue Code Section 4980H (known as an IRS Letter 226-J). A Letter 226-J explains why the IRS believes the employer owes an ACA-related penalty, and describes what actions the employer must take if the employer agrees or disagrees with the proposed assessment. The new 90-day response deadline will apply to all Letters 226-J sent to employers on or after January 1, 2025.
- **Adding a Statute of Limitations on Penalty Assessments** - The ERIA establishes **a six-year statute of limitations** for penalty assessments related to Section 4980H coverage failures. The statute of limitations begins to run on the later of: (1) the due date of the filing of an employer's Form 1094-C and 1095-C with the IRS, or (2) the date such returns were actually filed. Prior to the ERIA, the IRS took the position that there was no statute of limitations with respect to Section 4980H penalties, so employers could be found liable for such penalties indefinitely. Importantly, the new statute of limitations applies for returns that are due after December 31, 2024. Because this does not appear to apply retroactively, employers may still receive penalty assessments beyond the six-year statute of limitations for coverage failures occurring prior to December 31, 2024.

Next Steps

ALEs must still file Forms 1094-C and 1095-C **with the IRS** by March 31, 2025, if filing electronically (February 28, 2025, if filing by paper).

ALEs that want to take advantage of the relief allowing them to provide a copy of Form 1095-C only to employees who request one will need to provide “clear, conspicuous, and accessible notice” to employees informing them that they can request a copy. There is no model notice yet, but employers can likely make a good-faith effort to prepare such a notice while they monitor for guidance from the IRS on what that notice should contain and how employers can provide the notice.

ALEs, especially those with employees in states with individual mandates, should work with their ACA vendors to determine the best approach for compliance. Depending on the employer’s work locations, it may be less administratively burdensome to continue furnishing paper forms to all employees.

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