



Frequently Asked Questions on New ACA Reporting Laws

Background

On Monday, December 23, 2024, President Biden signed into law two bills, [H.R. 3797](#) (the Paperwork Reduction Act) and [H.R. 3801](#) (the Employer Reporting Improvement Act), which will positively impact applicable large employers (ALEs) and other entities required to furnish Forms 1095-B or 1095-C to individuals. These laws were quite short in length, and it is anticipated that the Internal Revenue service (IRS) and/or Department of Labor (DOL) will issue guidance or regulations to assist in the implementation of these laws.

Summary of the New Laws

The Paperwork Reduction Act considers employers to meet their requirement to furnish Form 1095-B or 1095-C to employees if the following conditions are met:

- The employer or reporting entity (e.g., insurance carrier) provides a clear, conspicuous and accessible notice that any individual who is otherwise required to receive the Form 1095-B or 1095-C can request a copy.
- The employee can request a copy of the form, which the employer or reporting entity must provide no later than the later of:
 - January 31 of the year following the calendar year for which the return was required to be made;
 - 30 days after the date of such request.

The Paperwork Reduction Act is effective for calendar year 2024 forms that are required to be furnished to employees in 2025. Given the timing of this new law, employers who were already prepared to mail these forms out in 2025 can continue forward with that process; employers are still permitted to provide employees these forms if they wish to do so. It is anticipated that many employers will follow the “old” process in the 2025 calendar year and stop sending forms out in the 2026 calendar year, once vendors and reporting systems are updated accordingly.

The Employer Reporting Improvement Act allows employers to provide Form 1095-B or 1095-C to individuals electronically if they have consented to receive it electronically. It also allows employers to use an individual’s date of birth, in lieu of a Social Security number, if the Social Security number is not available when completing the forms, except when reporting the employee on Form 1095-C.

In addition, the Employer Reporting Improvement Act provides employers more time to respond to IRS employer shared responsibility payment (ESRP) letters. In many cases, employers are given approximately 30 days to respond to an initial ESRP letter from the IRS; however, the new law requires the IRS to give employers 90 days to respond to the initial letter before the IRS can take any action against the ALE. This gives employers significantly more time to review Letter 226J and gather the necessary data to prepare an appeal.

FAQ

When are these new rules effective?

The Paperwork Reduction Act is effective for calendar year 2024 forms that are required to be furnished to employees in 2025.

The Employer Reporting Improvement Act applies to assessments proposed in taxable years beginning after the enactment of the law, i.e. initial Letters 226J sent after December 23, 2024. It will not extend the deadline for Letters 226J already sent to employers before December 23, 2024.

Which employers do the new laws apply to?

The law applies to employers who are required to issue 1095-C’s or 1095-B’s based on either their size or the fact that they sponsor a self-funded (including level-funded) health plan. Under the Affordable Care Act, ALEs (i.e., employers who have employed an average of 50 or more full-time equivalent employees in the prior year) must file Forms 1094-C and 1095-C with the IRS and furnish Forms 1095-C to full-time employees. In addition, sponsors of self-funded plans must furnish forms to covered individuals. The furnishing deadline is generally March 1 of each year.

Does the Paperwork Reduction Act impact the filing for the 2024 Forms due out in March 2025?

Yes, this is in effect for calendar year 2024 forms due in March 2025. Employers will still need to submit all the 1095-C's or 1095-B's to the IRS, but will not have to send them to employees if they have provided notice of availability of the forms (unless the employee requests a copy).

Will the Paperwork Reduction Act apply to prior years if we forgot to mail out forms?

No, this will only impact calendar year 2024 forms due in March 2025 and later.

Will this reduce the penalty I owe the IRS for not sending out Form 1095-C to some employees for the 2023 tax year?

No, the Paperwork Reduction Act only applies to calendar year 2024 forms due in March 2025 and subsequent years.

How long into the future does the employer have to offer copies of the Form 1095-C?

The IRS has not provided guidance on that at this time. Until the IRS issues guidance, best practice would be to follow standard ERISA and IRS record-keeping requirements and retain copies for seven years.

What does it mean to post a “clear, conspicuous, and accessible notice”?

The IRS has not provided guidance on this at this time. Until the IRS issues guidance, best practice would be to follow ERISA notice requirements, which are industry standard for almost all notice requirements relating to employee benefits. Including the notice in an annual notice packet provided to employees is recommended, pending additional guidance.



What language needs to be included in the notice?

The IRS has not provided a model notice at this time. Alera Group will have a template notice available prior to the reporting deadlines.

Where can the notice be posted?

The IRS has not provided guidance on that at this time. Until the IRS issues guidance, best practice would be to follow ERISA notice requirements, which are industry standard for almost all notice requirements relating to employee benefits. Including the notice in an annual notice packet provided to employees is recommended, pending additional guidance. In addition, the employer may choose to send an email or other written communication to employees or post the notice online, such as on an intranet site or benefit portal. If the employer posts the notice online or in a benefit portal, it should also send a communication (electronically via email or on paper) that notifies participants that the notice has been posted, how they can access it and why the notice is important to them. The communication should also contain instructions on how to obtain a paper copy of the notice and/or the applicable ACA forms.

A number of states require employees to provide proof that they have health insurance when they file their state tax returns. Will employers with employees in those states still need to send out the forms?

It depends on the state law. As of now, we are not aware of any states indicating they will be changing their state notice or reporting requirements. Some states required no additional actions to be taken by employers as long as they were furnishing forms to employees pursuant to federal law. Because the federal law does not require forms to be furnished, the employer would be required to default to any state law that does require such forms to be furnished and furnish the forms accordingly to employees in those states.

Can the notice be furnished electronically?

The IRS has not provided guidance on that at this time. Until the IRS issues guidance, best practice would be to follow ERISA notice requirements, which are industry standard for almost all notice requirements relating to employee benefits. ERISA allows for electronic distribution to all employees who use computers in their day-to-day job. For any employee who does not use computers, the employer must receive written consent to distribute notification to that employee electronically. Please contact your local Alera Group office for additional information on ERISA distribution requirements.

What needs to be included in an employee's consent to receive the notices electronically?

The IRS has not issued guidance on this at this time, so employers should rely on ERISA's standing guidance for affirmative consent to receive notices electronically (which only applies to employees who do not use computers in their day to day job). Further, employers may be able to rely on prior IRS regulations (Treas. Reg. 301.6056-2), which address how employers may obtain consent from employees to receive forms electronically.

If an employee has already agreed to receive our Wrap Document electronically, does that employee need to complete a separate consent to receive Form 1095-C electronically?

Employers have been permitted to provide 1095-C's and 1095-B's electronically for a number of years, as long as employees provided consent. The new law is codifying prior regulations (Treas. Reg. 301.6056-2). Employers can continue (or begin) to provide requested forms electronically as long as the consent the employee signs specifically lists that it would apply to a 1095-C or 1095-B.

Can we have a mega consent form where employees agree to receive a list of documents electronically all at once?

Under ERISA, prior to providing consent, employees must be given a clear statement that explains the following:

- The types of documents to which the consent will apply;
- That the consent may be withdrawn at any time, without charge;
- The procedures for withdrawing consent and for updating the address used for receipt of electronically furnished documents;
- The right to request and obtain a paper version of an electronically distributed document, and whether the paper version will be provided at no charge;
- The hardware or software needed to access and retain the documents delivered electronically. After providing consent, the individual must provide a working email address. The consent should be provided in a way that shows an employee has access to electronic devices, so providing this consent electronically is recommended.

Alera Group will continue to monitor any information released by federal agencies and will update this FAQ as new information becomes available.

