

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER
OFFICE OF TAX AND REVENUE



March 31, 2020

OTR NOTICE 2020-04

UPDATED GUIDANCE FOR APPLICABLE ENTITIES
PURSUANT TO THE INDIVIDUAL TAXPAYER HEALTH INSURANCE
RESPONSIBILITY REQUIREMENT AMENDMENT ACT OF 2018

The District of Columbia enacted legislation that requires all District residents to have minimal essential health care coverage, have a coverage exemption or pay a tax penalty for tax years ending on or after December 31, 2019. [See Individual Taxpayer Health Insurance Responsibility Requirement Amendment Act of 2018, effective October 30, 2018 \(D.C. Law 22-168\)](#). Those requirements are codified in a new Chapter 51 to Title 47 of the D.C. Official Code.

The purpose of this notice is to give guidance to insurance companies, businesses providing insurance to their employees, and other applicable entities and third-party service providers that provide minimum essential coverage. These entities are required to file returns consistent with D.C. Official Code § 47-5105 as well as other information required by the Office of Tax and Revenue (OTR).

1. What is the DC Individual Responsibility Requirement, and why is it relevant to employers and insurance companies?

Beginning in 2019, most District taxpayers must maintain qualifying health coverage, get an exemption, or pay a penalty. This is modeled on the federal individual shared responsibility requirement that was in effect prior to 2019.

The District law also requires every “applicable entity that provides minimum essential coverage to an individual during a calendar year” to submit an information return regarding such coverage to OTR. It also requires the applicable entity to furnish a statement about the coverage to the individual covered.

2. What is an “applicable entity”?

An “applicable entity” means an employer or other sponsor of an employment-based health plan or an insurance issuer or carrier licensed to or otherwise authorized to offer minimum essential coverage. “Applicable entity” also includes the District of Columbia Department of Healthcare Finance (DHCF).

3. Which applicable entities are required to file information returns with OTR?

Applicable entities that are required to file information returns (Form 1095-B or Form 1095-C) for a particular tax year with the IRS must also file information returns with OTR for that same tax year. For example, the following applicable entities are required to file information returns with OTR:

- All employers who sponsor self-insured group health plans that covered at least one employee who was a District resident during the applicable calendar year;
- Employers or other sponsors of fully-insured employment-based health plans, including governmental agencies, that covered at least fifty full-time employees, including at least one employee who was a District resident, during the applicable calendar year;
- Persons or entities, including governmental agencies, who provided minimal essential coverage to a District resident during the applicable calendar year;
- An insurance issuer or carrier licensed to or otherwise authorized to offer minimum essential coverage in the District during the applicable calendar year; and
- DHCF.

4. If an applicable entity is a governmental unit or any agency or instrumentality thereof, who is responsible for filing information return with OTR?

The officer or employee of the governmental unit, agency or instrumentality who enters into the agreement to provide coverage (or his or her designee) shall file the information return(s) with OTR.

5. How should applicable entities determine if an individual is a resident of the District for purposes of reporting?

For purposes of reporting health insurance coverage to OTR, an individual is deemed to be a resident of the District as follows:

- For employers or other sponsors of employment-based health plans, if that individual is an employee for whom wages were withheld and paid to the District for any period during the applicable calendar year;
- For persons who provided minimal essential coverage to an individual, if that individual had a home or mailing address in the District at any time during the applicable calendar year;

- For insurance issuers and carriers that provided minimum essential coverage to an individual, if the insured individual or other person obtaining coverage under a policy had a home or mailing address in the District at any time during the applicable calendar year; and
- For DHCF, all individuals enrolled at any time during the applicable calendar year in the Medicaid Program, the Children’s Health Insurance Program or the Immigrant Children’s Program.

6. Does the District require applicable entities to furnish an additional annual statement of health coverage to employees and covered individuals in addition to the forms sent to those individuals pursuant to federal law?

No. Compliance with the IRS requirement to furnish an annual statement of health coverage to employees or covered individuals (Form 1095-B or Form 1095-C) is sufficient.

7. What is the deadline for entities to furnish coverage statements to recipients?

OTR follows the same deadline as the IRS. For tax year 2019, the due date for furnishing Form 1095-C to employees was extended by the IRS from January 31, 2020, to March 2, 2020.

8. What coverage information returns are applicable entities required to file with the OTR?

Applicable entities should file the same information returns that they file with the IRS including:

- **Form 1094-B**, *Transmittal of Health Coverage Information Returns*
- **Form 1095-B**, *Health Coverage*
- **Form 1094-C**, *Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns*
- **Form 1095-C**, *Employer-Provided Health Insurance Offer and Coverage*

All information returns must be filed electronically with OTR by uploading files through MyTax.DC.gov using OTR’s prescribed layouts and file formats. All files must be a delimited file with an extension of .txt. For additional information, please refer to “Specifications for Electronically Filing DC Health Care Information Returns for Software Developers and Applicable Entities” at <https://otr.cfo.dc.gov/node/1447081>.

9. Are multi-jurisdictional employers required to remove data pertaining to non-District residents from their IRS forms and data before filing with OTR?

No. OTR will accept the same Form 1095-C forms filed with the IRS. However, if an employer elects to remove non-District residents for its filing with OTR, it must also file a revised Form 1094-C to reflect the revised Form 1095-C submission.

10. Why are *fully insured* employers required to file Forms 1094-C and 1095-C with OTR?

If a fully insured employer fails to file an information return as required, that employer's account with OTR will be delinquent and could subject the employer to certain adverse consequences. Therefore, rather than subjecting fully insured employers to a new informational return, fully insured employers are only required to file with OTR the same Forms 1094-C and 1095-C that they file with the IRS. Further, the information reported on Parts I and III of Form 1095-C will inform OTR whether the employer was fully insured and will identify employees who were provided minimal essential coverage by an applicable entity that may not be required to file Forms 1094-B and 1095-B with OTR.

11. Other than uploading electronic files through MyTax.DC.gov, will there be any other filing options such as using Web Services or SFTP or filing paper information returns?

No. The only option for uploading files is through MyTax.DC.gov.

12. Is an applicable entity permitted to contract with a third-party service provider to file information returns on its behalf for the purposes of reporting whether an individual had minimum essential coverage?

Yes. Third-party service providers may file information returns on behalf of applicable entities. If the applicable entity is a DC taxpayer, the applicable entity must authorize the third-party service provider to make such filing through MyTaxDC.gov. In the alternative, the third-party service provider may register with OTR through MyTaxDC.gov as a bulk filer.

13. How does an applicable entity or third-party service provider sign up with OTR to upload files through MyTax.DC.gov?

- If the applicable entity or third-party service provider is currently a DC taxpayer with a MyTax.DC.gov login, no additional sign up is required. Your MyTax.DC.gov login will be used to upload files.
- If the applicable entity or third-party service provider is currently a DC taxpayer without a MyTax.DC.gov login, a login must be created before files can be uploaded.
- If the third-party service provider is not a DC taxpayer and wants to upload files as a bulk filer, the entity must sign up to the MyTax.DC.gov portal as a bulk filer and from the "Home" screen, click on "More" under "I want to" and click on "Request to bulk file."

14. Is there an acknowledgement that applicable entities or third-party service providers can retrieve from MyTax.DC.gov to ensure the files were received and processed successfully?

MyTax.DC.gov does not generate an acknowledgement like IRS's Affordable Care Act (ACA) Information Returns (AIR) System. Instead, applicable entities and third-party service

providers will be notified if there are errors when they attempt to upload a file. If there are no errors, the bulk file upload will indicate “processing” until “accepted.”

15. Will there be an error correction process available to applicable entities and third-party service providers?

Yes. Applicable entities and third-party services providers can upload a correction file. However, only one correction file can be filed per business day. No files will be accepted after December 31 of the filing year.

16. Is there a process available for applicable entities and third-party service providers who will upload bulk files to send test files prior to uploading a file with live data?

Yes. Bulk filers may send an email to bulkwhsutesting@dc.gov with the attached file.

17. When should applicable entities and third-party service providers sign up with MyTax.DC.gov?

Applicable entities may sign up immediately. Applicable entities must complete this process before the deadline for filing the required information returns.

18. What is the filing deadline for uploading the information returns?

For tax year ending December 31, 2019, the deadline is June 30, 2020. For tax years beginning after December 31, 2019, the deadline is 30 days after the IRS deadline for submitting 1095-B or 1095-C forms, including any extensions granted by the IRS.

19. What is the penalty for failure to file the required informational returns with OTR?

The Individual Taxpayer Health Insurance Responsibility Requirement Amendment Act of 2018 did not adopt the penalty provisions set forth in Sec. 6721. Rather, the District’s penalties for failure to file any return are set forth in D.C. Official Code § 47-4213. For all returns, the amount of the penalty is a formula based on “the amount of tax required to be shown on the return.” Since “no amount of tax is required to shown” on the informational returns, no penalty is imposed for failure to file the informational returns.

20. Is OTR extending the same Sec. 6722 penalty relief as the IRS regarding the failure to furnish statements to certain employees enrolled in self-insured health plans who were not full-time employees for any month in 2019 (See IRS Notice 2019-63)?

No. The Individual Taxpayer Health Insurance Responsibility Requirement Amendment Act of 2018 did not adopt the penalty provisions set forth in Sec. 6722.

21. What do I do if I have questions?

If you have questions about how to register with OTR or how to file returns, please contact OTR’s Customer Service Center at e-services.otr@dc.gov or (202) 759-1946. If you have questions about whether you are required to file returns, please contact the Office of General Counsel at (202) 442-6500.