

CLIENT ALERT

IRS Proposes Permanent 30-day Extension to ACA Reporting Deadline

On November 22, 2021, the IRS filed a [Notice of Proposed Rulemaking](#) (“Proposed Rule”) that among other things, provides for an automatic 30-day extension of the deadline for applicable large employers (“ALEs”) to furnish annual Forms 1095-C to individuals for calendar years beginning after December 31, 2021. Further, the Proposed Rule allows ALEs to voluntarily adopt this extension for calendar years beginning after December 31, 2020, which means this would apply to calendar year 2021 Forms 1095-C, which are due in 2022.

Generally, the deadline is January 31 each year, and current regulations allow the IRS to grant an extension of time of up to 30 days to furnish Forms 1095-B and 1095-C to individuals for good cause shown; however, recognizing the current January 31 deadline is difficult to meet, the Proposed Rule eliminates the good cause shown standard and simply allows for an automatic 30-day extension to March 2, 2022. In years where the deadline falls on a weekend or holiday, the forms are due the next business day.

The deadline to file the Forms 1094-B or C and 1095-B or C with the IRS are not extended and will remain February 28 for paper filings and March 31 if filed electronically, though pursuant to current regulations, companies may receive an automatic 30-day extension of time to file the forms with the IRS by submitting Form 8809, Application for Extension of Time to File Information Returns, on or before the due date for filing the forms.

Additionally, because the penalty for the individual mandate is currently \$0, for any calendar year in which it remains \$0, the Proposed Rule provides relief (consistent with relief provided for tax years 2019 and 2020) from furnishing Forms 1095-B to individuals, if the responsible reporting entity:

1. Posts a clear and conspicuous notice in location on its website that is reasonably accessible to individuals stating that individuals may receive a copy of their 1095-B upon request, accompanied by an email address, phone number and a physical address the request can be sent;
2. Furnish an individual with a Form 1095-B within 30 days of a request; and
3. Retain the notice in the same location of its website until October 15 – or the first business day following October 15 if October 15 falls on a weekend or holiday – of the next calendar year. This would be October 15, 2023 for the tax year 2021 Form 1095-B.

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The website notice must be written in plain, non-technical terms and with letters of a font size large enough, including any visual clues or graphical figures, to call a viewer's attention that the information pertains to tax statements reporting that individuals had health coverage. Per the IRS a statement or link on the company's main page reading "Tax Information", which takes users to a secondary page that includes a statement in capital letters such as "IMPORTANT HEALTH COVERAGE TAX DOCUMENTS", would meet this requirement. This relief from providing the B-series forms typically applies to insurance companies (who are required to file and furnish Forms 1095-B to participants in their fully insured plans), non-ALEs with self-insured plans, and ALEs who provide coverage under a self-insured plan to individuals who were not full-time employees during any part of the year (e.g., part-time employees, or retirees or COBRA participants in the year following retirement or termination of employment).

ALEs are still required to furnish Form 1095-C to their full-time employees. They must also complete Part III if the employee is enrolled in self-insured coverage. Further, the relief from furnishing Form 1095-B does not extend to IRS reporting. Forms 1095-B must still be submitted to the IRS, as applicable.

Finally, consistent with Notice 2020-76, per the Proposed Rule, the IRS intends to eliminate the good faith effort to comply relief that was in effect from tax years 2015-2020. The good faith effort to comply provided reporting entities relief from accuracy-related penalties if they could show a good faith effort to comply. However, for calendar year 2021 reporting and beyond, reporting entities will no longer have this relief available and must ensure accurate information is reported. Employers who are penalized for accuracy-related errors may have an opportunity to appeal under the "reasonable cause" standard, which is stricter than the good faith standard.

Conclusion

Based on the Proposed Rule, ALEs have until March 2, 2022 to furnish Forms 1095-C to individuals, but still must meet the February 28 (paper filing) or March 31, 2022 (electronic filing) deadlines to file Forms 1095-C with the IRS. Moreover, as long as the individual mandate penalty remains \$0, insurance carriers, non-ALEs with self-funded plans, and ALEs with self-funded plans who provide coverage to part-time employees or non-employees, are not required to furnish Forms 1095-B to individuals if they meet the requirements for posting information regarding how individuals may receive copies of their Form 1095-B.

Further, because there is no longer good faith relief from reporting errors, it is important for employers to review the Forms 1094-B or C or 1095-C before they are filed with the IRS to ensure information is accurate and correct any inaccurate information as soon as possible after discovery of the error.

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