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IRS Releases Proposed Regulations on ACA Reporting and Other Issues

Seth Bracelin | Millenium Insurance Group | (717) 354-4774 | sbracelin@millig.com

On November 22, 2021, the Internal Revenue Service (“IRS”) released proposed regulations that provide some relief with respect to ACA reporting requirements.

The proposed rule:

- Makes permanent an automatic extension of 30 days to furnish IRS Forms 1095-C (and 1095-B) to individuals. Effectively, this moves the due date for furnishing these forms to full-time employees and other individuals from January 31 to March 2 each year (or, if March 2nd falls on a weekend or holiday, the next business day).
- Eliminates the good faith relief from reporting penalties associated with incorrect or incomplete reporting.
- Creates an alternative method for furnishing individuals with IRS Form 1095-B (and, in some cases, IRS Form 1095-C) as proof of minimum essential coverage (MEC).

Therefore, with respect to Forms 1095-C for calendar 2021, applicable large employers (“ALEs”) have until March 2, 2022 (rather than January 31, 2022) to furnish these forms to full-time employees and other individuals.

It is important to note that the proposed rule does not extend the deadline to file completed Forms 1094-C and 1095-C (and Forms 1094-B and 1095-B) with the IRS. The due date remains March 31, 2022 (or February 28, 2022 for paper filing if filing fewer than 250 forms).

Please note, while the 2021 Forms 1094-C and 1095-C have been finalized, the instructions are not yet available. Once published, the instructions should be available on this website: <https://www.irs.gov/forms-pubs/about-form-1095-c>.

Below you will find additional details.

Automatic Extension of Time for Furnishing ACA Statements

Under the ACA, January 31 is the deadline to furnish IRS Forms 1095-C and 1095-B to certain individuals (such as full-time employees, in the case of IRS Form 1095-C) with respect to the preceding calendar year. The proposed regulations grant an automatic extension of 30 days in which to furnish these statements to individuals. The extension is automatic; employers or other reporting entities are not required to file a request with IRS, or to demonstrate reasonable cause to justify the extension.

Employers may rely on this relief for calendar year 2021 filings. This means Wednesday March 2, 2022 is the deadline to furnish individuals with a 2021 Form 1095-C or 1095-B.

While the IRS has provided the automatic extension of time to furnish the Form 1095-C (or Form 1095-B), if operating in a state with an individual mandate the timing to furnish proof of coverage to covered residents may be different.

Elimination of Transitional Good Faith Relief

Since 2015, the IRS provided reporting entities with relief from penalties if those entities could show they made good faith efforts to comply with the information reporting requirements. This relief has been extended each year,

with the IRS announcing that 2020 would be the last year that transitional good faith relief would be available.

The proposed rule confirms that the good faith relief from penalties for reporting incorrect or incomplete information on Forms 1094-C, 1095-C, 1094-B and 1095-B is no longer available after 2020. For 2021, penalties for incorrect or incomplete forms furnished to individuals can be \$280/return. Additionally, incomplete or incorrect forms filed with the IRS may trigger a \$280/return penalty.

While the reasonable cause exception remains available and may provide relief from penalties for entities that can show a reasonable cause for failing to timely or accurately complete their reporting requirements, with the elimination of the good faith relief employers will want to take steps to ensure the accuracy of their forms and filings.

Alternative Method for Furnishing ACA Statements

Under the ACA, IRS Forms 1095-C and 1095-B must be sent by first class mail to the last known permanent address of the individual. If no permanent address is known, the statement must be sent by first class mail to the individual's temporary address. The statement may also be furnished electronically if certain requirements are met.

The proposed regulations would make permanent an alternative method for furnishing IRS Forms 1095-B (and, in some limited cases, IRS Forms 1095-C) to individuals, for as long as penalties under the ACA's individual shared responsibility rules remain zero. The alternative method would be available to the following reporting entities:

- Health insurance carriers and plan sponsors (other than ALEs) that are using IRS Form 1095-B to provide proof of MEC

- ALEs with a self-funded group medical plan that are using IRS Form 1095-B or 1095-C to provide proof of MEC to individuals who are not considered “full-time” under the ACA for any month of the calendar year (i.e., non-full-time employees and non-employees covered under the plan during the calendar year)
- Small employers (not ALEs) with a self-funded health plan that are using IRS Form 1095-B to provide proof of MEC

- IRS Form 1095-B (or, in some cases, IRS Form 1095-C) must be furnished to the requesting individual within 30 days after the request is received; the ACA statement may be furnished electronically if certain requirements are met.

If the proposed regulations are finalized without change, the alternative method would be available to reporting entities that are furnishing IRS Forms 1095-B (and, in some cases, IRS Forms 1095-C) for calendar year 2021, as well as for future calendar years.

The alternative method is not available to ALEs that are furnishing IRS Form 1095-C to employees considered “full-time” under the ACA for one or more months of the calendar year. Further, the alternative method may not be available if operating in a state with an individual mandate where Forms 1095-C or 1095-B must be furnished to covered residents. Keep in mind, if the alternative method is used, the reporting entity must still file the Form 1095-B with the IRS.

Employer Action

Employers should continue to monitor the status of the proposed rule.

- With respect to furnishing Forms 1095-C for CY 2021, employers may rely on the proposed rule and must furnish these statements no later than March 2, 2022 (versus January 31, 2022).
- Employers should take extra care that Forms 1094-C and 1095-C are complete and accurate as the transitional good faith relief is no longer available with respect to calendar year 2021 filings (and thereafter).
- Determine whether your carriers will take advantage of the alternative furnishing method with respect to Forms 1095-B they issue.
- If operating in a state with an individual mandate (California, District of Columbia, Massachusetts, New Jersey, Rhode Island and Vermont), and required to furnish covered residents with proof of coverage during the calendar year, ensure you continue to comply with state rules.

The following steps must be followed by a reporting entity that elects to use the alternative method:

- A clear and conspicuous notice that meets certain technical requirements must appear on the reporting entity’s website
- The notice must state that covered individuals may receive a copy of IRS Form 1095-B (and, in some cases, IRS Form 1095-C) upon request, and informs them how the request may be made
- The notice must appear in the same website location through October 15 (or the next business day) following the end of the calendar year