January 3, 2022

IRS Issues ACA Reporting Guidance

Guidance includes automatic extension of time to provide Forms 1095 to individuals

The IRS recently released proposed regulations providing relief and related guidance for Affordable Care Act ("ACA") Forms 1094/1095-B and C reporting. This Alert focuses on the guidance related to employer-sponsored health coverage, including:

- A permanent automatic extension of time to provide forms to individuals;
- An alternative delivery method to individuals under certain circumstances; and
- Confirmation that transition relief for good faith reporting errors is no longer available.

The IRS followed up with its Forms 1094/1095-B and C instructions, which incorporated the relief from the proposed regulations.

Effective date

The public comment period for the proposed regulations ends on February 4, 2022. The IRS will likely publish final regulations sometime after this date and may (or may not) make certain revisions based on feedback received during the comment period. In the meantime, the proposed regulations indicate employers may rely on the automatic extension and alternative delivery method guidance as a safe harbor, meaning this relief will at least apply to 2021 reporting.

Automatic extension of time to provide Forms 1095 to individuals

By statute, covered entities[1] must provide Forms 1095-B or C (as applicable) for a given calendar year to individuals by January 31st of the following year. IRS regulations allow covered entities to request extensions of up to 30 days for good cause. In practice, the IRS consistently exercised its discretionary authority to grant automatic extensions until March for 2015 – 2020 and did not allow further extensions for cause.

In 2019 and 2020,[2] the IRS requested comments on whether there was still a need for blanket extensions to provide the forms to individuals. Based on considerable feedback, the proposed regulations include a permanent 30-day automatic extension. This pushes the due date for providing forms from January 31st to March 2nd for most years (March 1st in a leap year). Covered entities may rely on this relief for at least the 2021 reporting year. The proposed regulations also eliminate the availability of additional extensions for good cause as unnecessary.

[1] Covered entities include ACA applicable large employers (including members of aggregated ALE groups), smaller employers offering self-insured coverage, insurance carriers, and boards/committees administering multiemployer health plans.

[2] Please see IRS Notice 2019-63 and IRS Notice 2020-76.

However, the automatic extension of the deadline to furnish forms to individuals does not affect the due date to file forms with the IRS, which remains March 31st for electronic filers (February 28th for paper filers). Covered entities may continue to use IRS Form 8809 to request an automatic 30-day extension for this filing requirement.

State Individual Mandates: The 30-day automatic extension from the IRS's proposed regulations does not automatically apply to the due date to provide required forms to individuals under the state individual mandates in California, the District of Columbia, New Jersey, Rhode Island, or Vermont. We expect most or all of the states will adopt this relief, and each will separately announce its intentions. Unless and until this occurs, each state's existing deadline remains in effect. Please note that New Jersey's due date to deliver 2021 forms to individuals is already March 2, 2022, and it may not extend this date further. The Massachusetts individual mandate is separate and distinct, and we do not expect Massachusetts to adopt a revised due date.

Alternative method to provide Forms 1095 to individuals

The proposed regulations provide an alternative method to provide Forms 1095 to individuals under certain circumstances, making earlier relief from IRS Notice 2020-76 permanent. The alternative delivery method is available for a calendar year as long as the ACA's individual mandate penalty for that year was $0.

Large employers

An ACA applicable large employer (ALE)[3] must still automatically deliver forms to individuals who were ACA full-time employees during any month of the calendar year. However, the proposed regulations excuse an ALE from automatically delivering forms to covered individuals who were not ACA full-time employees for any month during the calendar year – without penalty – as long as it complies with all of the following:

1. The employer posts a clear and conspicuous notice on its website stating that an individual may receive a copy of their form upon request, accompanied by:

   a. An email address and physical address to send requests, and
   b. A telephone number that individuals may contact with questions.

   The proposed regulations state:

   > *…a reporting entity's website provides a clear and conspicuous notice if it includes a statement on the main page—or a link on the main page, reading "Tax Information", to a secondary page that includes a statement—in capital letters, "IMPORTANT HEALTH COVERAGE TAX DOCUMENTS"*

2. The employer maintains the notice *in the same location on its website* until October 15th of the following year. In other words, a notice applicable to 2021 must remain in the same location on an employer's website until October 15, 2022 (adjusted for weekends, etc.).

3. The employer provides a form to an individual within 30 days of receiving a request. The individual may consent to electronic delivery.

Note: Covered individuals who were not ACA full-time employees for any month during a calendar year may include part-time employees as well as COBRA participants and retirees in the year following their COBRA qualifying event or retirement.

[3] This includes a member of an aggregated ALE group.

Small employers, insurance carriers, and multiemployer plans

Similar relief is available to small employers, insurance carriers, and the boards/committees administering multiemployer plans. Unlike the limited relief for ALEs, this relief applies to delivering Form 1095-B to any covered individual.

Elimination of transition relief for good faith reporting

The IRS granted penalty relief for good faith reporting errors for incomplete or inaccurate information from 2015 – 2020, but in IRS Notice 2020-76 it warned that this relief would no longer apply after 2020. In the preamble to the proposed regulations, the IRS confirmed this relief no longer applies beginning with 2021 reporting.

The guidance is not clear what effect this may have with respect to making corrections to Form 1095-C, Part II coding errors when appealing proposed employer shared responsibility penalty assessments from an IRS Letter 226J. Will the IRS review proposed corrections on Form 14765 with greater scrutiny and reject corrections for coding errors it considers unreasonable?

We strongly recommend employers review their forms for mistakes before delivering to individuals or filing with the IRS. If an employer uses a vendor to perform reporting, we recommend employers also review their vendor contract to determine whether there is any liability protection for errors.

Forms 1094/1095-B and C instructions

The IRS was obviously waiting to publish its proposed regulations before releasing the 2021 Forms 1094/1095-B and 1094/1095-C instructions, because they appeared shortly afterward. The instructions include the automatic extension of time to provide forms to individuals (to March 2, 2022) and the alternative method of delivery described above.

The Form 1094/1095-C instructions include a pair of new reporting codes for use in Form 1095-C, Part II. New Code 1T applies when an employer offers an individual coverage HRA (ICHRA) to an employee + spouse and relies on the employee's primary residence for affordability determinations. New Code 1U applies when an employer offers an ICHRA to an employee + spouse and relies on the employee's primary work location for affordability determinations. An offer of employee + spouse ICHRA coverage means the ICHRA includes an additional employer contribution for married participants. There is little else of note in the instructions.

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