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## IRS Lowers Required E-Filing Threshold

On February 23, 2023, the IRS issued [final regulations](#) lowering the mandatory electronic filing threshold from 250 forms down to 10 for many tax and information returns filed by businesses with the IRS beginning in 2024.

Although the new requirement will not take effect until next year, it has the potential to cause substantial disruption—especially for small employers who were more likely to file using paper forms. This Alert summarizes the new filing requirements that are applicable to employer sponsors of group health plans and provides an overview of action items.

### Background

The Taxpayer First Act (the “Act”) became law in 2019, and it directed the IRS to lower the mandatory electronic filing threshold to 100 forms beginning in 2021 and to 10 forms for subsequent calendar years. The IRS moved more slowly than the Act directed, delaying the implementation of this change.

In 2021, the IRS issued proposed regulations that would have gone into effect for any filings with a deadline after July 31, 2022. Those proposed regulations would have gradually decreased the filing threshold from 250 to 100 in 2022 and then to 10 for subsequent calendar years. A delay in finalizing these regulations kept this proposed timeline from going into effect.

Due to the delay, the IRS decided to skip the intermediate 100 form threshold, and the final regulations instead drop immediately down to mandatory electronic filing for employers filing 10 or more specified forms beginning in 2024.

### Affected returns

The new regulations contain a list of returns (“forms”) that will be affected by the lower electronic filing threshold. Although employers will want to take note of all of the listed forms<sup>1</sup> that may apply to them, of particular note for employer group health plans are Forms 1094/1095 (both “B” and “C” versions).

The rules also require businesses to aggregate the number of certain types of forms to determine whether the 10-return threshold has been met for the year, rather than applying it to each type separately. For example, the number of Forms W-2, 1094 and 1095 must be aggregated. So, an employer with 5 W-2 employees, 4 of which are enrolled in a [self-insured] level-funded plan, would file a total of 10 forms (5 Forms W-2, 1 Form 1094-B, and 4 Forms 1095-B), and thus would need to file all those forms electronically.

Any corrections to forms filed electronically will also need to be submitted electronically.

**Note:** The new regulations only affect returns submitted to the IRS and not forms issued to employees/plan participants. The electronic distribution rules for providing forms to individuals were not affected, and the usual rules for electronic delivery apply.

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<sup>1</sup> These include Forms W-2, 1094/1095-B, 1094/1095-C, 1099, 3921, 3922, 5498, 8027, 1042 and 5500.

## Exceptions

There are no blanket exceptions that apply to the mandatory electronic filing requirement, and the small employer exemption (for those with less than \$10 million in assets) was removed.

An employer may be granted a waiver if the employer can demonstrate the electronic filing requirement would cause an undue hardship due to financial and/or technology concerns. The IRS will allow employers to request waivers through the IRS.gov website, but the IRS has not finalized the waiver procedures as of the date of this Alert.

## Action items

More employers will need to file Forms 1094 & 1095 electronically using the IRS's ACA Information Return (AIR) system, which can be complicated. First-time electronic filers will likely need help from their payroll providers or another vendor to submit these on their behalf.

Employers have several months before the new requirements will go into effect, but finding a vendor and getting a new system set up may take some time. We recommend affected employers begin exploring electronic filing solutions sooner rather than later.

## About the authors



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