



CLIENT ALERT

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2021 ACA INFORMATION REPORTING UPDATE: EXTENDED “FURNISHING” DEADLINE BUT NO MORE “GOOD FAITH” RELIEF

by Cynthia A. Moore

In its most recent set of proposed regulations on the Affordable Care Act (“ACA”) information reporting issued on November 22, 2021, the IRS included a mixed bag of good news and bad news for employers and other reporting entities.

Extended “Furnishing” Deadline for Employers

An applicable large employer (“ALE”) that is required to prepare Form 1095-C for its full-time employees now has an automatic 30-day extension to furnish copies of those forms to employees. The 30-day extension applies for the 2021 reporting year (and future years) even though the regulations are not yet in final Form. Therefore, the deadline for furnishing 2021 Forms 1095-C to employees has been extended from January 31, 2022, to March 2, 2022.

Extended “Furnishing” Deadline for Other Reporting Entities

Under the proposed regulations, health insurers and other reporting entities also have an automatic 30-day extension to furnish Forms 1095-B to responsible individuals. This deadline is extended from January 31 to March 2 of the year following the year to which the Form relates, beginning with the 2021 reporting year.

Filing Deadline is Not Extended

The proposed regulations do not change the deadline for filing Forms 1095-C/1094-C or Forms 1095-B/1094-B with the IRS. That deadline remains February 28 (March 31 if filed electronically) of the year following the year to which the Forms relate.

Alternative Method of Furnishing

Rather than mailing Form 1095-B to a responsible individual, a reporting entity may instead post a notice on its website stating that a responsible individual may receive a copy of his/her Form 1095-B upon request. The notice must include an e-mail address, a physical address to which a request for a statement may be sent, and a telephone number that responsible individuals may use to contact the reporting entity with any questions. The reporting entity must furnish the statement to a requesting individual within 30 days of the date it receives the request. The notice must be retained in the same location on the reporting entity’s website through October 15 of the year following the year to which the statements relate.

An ALE with a self-insured health plan may not use this alternative method of furnishing Forms 1095-C to its full-time employees. However, an ALE may use the alternative method for furnishing Forms 1095-C

to any part-time employees or non-employees who are covered by the employer’s self-insured group health plan.

The IRS has relaxed the rules for furnishing Forms 1095-B as individuals no longer need the information on the Form to complete their individual income tax return. Therefore, the relief applies only so long as the individual’s shared responsibility payment for the calendar year is zero (as it has been since 2019).

Elimination of Transitional “Good Faith” Relief

The IRS announced in the preamble to the proposed regulations that it will no longer apply a “good faith” standard to ACA reporting, beginning with the 2021 reporting year. Therefore, any errors in reporting or failures to timely file and/or furnish Forms 1095-C or 1094-C will potentially be subject to a penalty under Internal Revenue Code (“Code”) Section 6721 (failure to file) and/or Section 6722 (failure to furnish), unless the employer can establish reasonable cause for the failure.

The penalty amounts under Code Sections 6721 or 6722 for Forms filed in 2022 are as high as \$280 per day, with a maximum limit of \$3,426,000. The penalties are even greater if the failure to file or furnish is due to intentional disregard of the filing requirement.

Therefore, an ALE should not solely rely on its reporting provider but should proactively review Forms 1095-C and 1094-C before they are filed to ensure accuracy and monitor the filing process to make sure that the filings are timely made and any filing errors are promptly addressed.

If you have any questions about ACA reporting, please contact Cynthia A. Moore or any other member of Dickinson Wright’s Employee Benefits and Executive Compensation Group. Cyndi can be reached at (248) 433-7295 or cmoore@dickinsonwright.com.

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