IRS Releases Final Forms for Next Round of ACA Reporting

Insights
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The Internal Revenue Service recently released final 2021 forms for Affordable Care Act (ACA) reporting under relevant Internal Revenue Code sections – and while not much is changing in terms of information you'll need to report, the stakes have been raised for non-compliance. Applicable large employers (ALEs) and self-funded plan sponsors should review the new versions to get a jump on understanding what will be different for 2021 ACA reporting and how the differences could affect them.

Background

The ACA added Code Sections 6055 and 6056 which require certain employers to provide information to the IRS about the health plan coverage they offered to their employees during the prior calendar year. Self-funded employers who are not ALEs must file annually with IRS a Form 1095-B for each individual covered under the plan and a transmittal Form 1094-B. ALEs must file annually a Form 1095-C for each full-time employee, and a transmittal 1094-C. Forms 1094-B and 1094-C summarize all the returns filed for a calendar year by a reporting entity.

Reporting entities also must provide individual statements (typically a copy Form 1095-B for self-funded employers who are not ALEs, or 1095-C for ALEs) to full-time employees by January 31 of the year immediately following the calendar year to which the statements relate. Reporting entities then must file Forms 1095-B or 1095-C, along with a transmittal Form 1094-B or 1094-C, as applicable, with the IRS by February 28 if filed by paper, and by March 31 if filed electronically.

The IRS has traditionally granted an automatic 30-day extension to all reporting entities for providing individual statements. However, the IRS has announced that there will be no such extension this time around. Therefore, reporting entities should be prepared to meet an earlier deadline than they might have grown accustomed to in past years.

Further, the IRS also has announced that it does not plan to extend its annual good faith filing compliance relief this cycle. That guidance has allowed employers to avoid hefty penalties for errors and omissions on their ACA reports, if the reports were timely filed in good faith. Employers facing penalty assessments have long been able to have them reduced by pointing out simple errors, and IRS was not enforcing other provisions that carry penalties for such mistakes. Barring a last-minute IRS announcement, employers will have to exercise far more caution this cycle to be sure there are no mistakes in their filing, since we expect it to be harder to get penalties reduced or waived going forward.

2021 Changes

First, the draft instructions for Forms 1095-B and 1095-C conspicuously omit references to the automatic individual statement filing deadline extension as well as the good faith compliance standard relief for filing errors. This underscores the likelihood that the IRS will be less lenient in reducing or waiving ACA filing penalties and means reporting entities should be well-versed in the changes to the 2021 forms and instructions. The draft instructions also note that the maximum penalty for failure to file a correct information return has increased to $3,426,000, as has the maximum penalty for failure to provide a correct individual.

Form 1095-C contains two new codes for reporting entities to report on individual coverage health reimbursement arrangements (ICHRA). Employers who have adopted an ICHRA should understand when they should use new codes 1T and 1U to denote such coverage. Code 1T designates that the employer offered an individual coverage HRA to employee and spouse (no dependents) with affordability determined using employee's primary residence ZIP code. Code 1U designates that the employer offered an individual coverage HRA to employee and spouse (no dependents) using employee's primary employment site ZIP code affordability safe harbor.

Conclusion

Though not much is changing in the technical information required on 2021 ACA reports and individual statements, what is changing is the stance of the IRS when it comes to reporting enforcement. That means there is a significantly greater risk of facing larger penalties that will be harder to refute or avoid in future years. If there ever were a time to be more diligent and more aware of ACA filing obligations, now is that time.

We will monitor developments and provide actionable updates as events warrant, so make sure that you are subscribed to Fisher Phillips' Insights to get the most up-to-date information direct to your inbox. If you have further questions, contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our Employee Benefits and Tax Practice Group.

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