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Final 2021 Instructions for Forms 1094-C and 1095-C Issued

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

The IRS released final Instructions for Forms 1094-C and 1095-C for calendar year 2021 reporting.

Background

Applicable large employers (“ALEs”) must furnish Form 1095-C to full-time employees and file Form 1094-C and all 1095-Cs with the IRS. ALEs offering a self-insured group health plan must also furnish Forms 1095-C to covered employees or other primary insured individuals in the self-funded health plan (e.g., covered part-time employees, COBRA qualified beneficiaries).

ALEs, in coordination with their payroll or other reporting vendors, should have records to determine each employee’s status as an ACA FTE or not an ACA FTE for each month during 2021 in preparation to complete, furnish and file these forms for 2021.

As previously reported, the IRS issued a proposed rule that:

- Makes permanent an automatic extension of 30 days to furnish IRS Forms 1095-C to individuals. Therefore, for calendar year 2021, the due date to furnish Form 1095-C to full-time employees and other individuals is March 2, 2022.
- Eliminates the good faith relief from reporting penalties associated with incorrect or incomplete reporting.

The instructions generally reinforce what is set forth in the proposed rule, with some new information as it relates to an individual coverage health reimbursement arrangement (“ICHRA”).

What’s New?

Other than what was previously announced, the changes included in the 2021 instructions are minimal.

New Codes for ICHRAs

If an ALE offers an ICHRA for 2021, the Form 1095-C has been modified to add new codes 1T and 1U for ICHRAs offered to the employee and spouse but not dependents.

2021 Penalties

The instructions reiterate that all ALEs and other employers that sponsor self-funded group health plans that fail to comply with the information reporting requirements may be subject to the general reporting penalty provisions for failure to file correct information returns and failure to furnish correct payee statements. Good faith relief is no longer available. However, penalties may be waived if the failure is due to reasonable cause and not willful neglect.

For 2021, the following penalties may apply:

- Failure to file a correct return is \$280/statement (total calendar year penalty not to exceed \$3,426,000).
- Failure to furnish a correct statement is \$280/statement (total calendar year penalty not to exceed \$3,426,000).

An employer that fails to both file and furnish a correct statement is subject to a combined penalty of \$560/statement with a maximum penalty of \$6,852,000.

Employer Action

Employers should begin preparing and ensure that statements are furnished to full-time employees and other individuals by March 2, 2022. If you are an employer with employees residing in a state with an individual mandate (e.g., California, the District of Columbia, Massachusetts,

New Jersey, Rhode Island, and Vermont) the deadlines may be different than what is required by the IRS. Many states are still reviewing their policies in light of the recently announced federal delay.

Employers should be certain the statements are complete and accurate since the good faith relief is no longer available.