

Client Alert Applies To: Self-Funded, Fully-Funded, and Large Group

October 7, 2021

## Draft 2021 ACA Reporting Forms Released

The IRS has released draft Affordable Care Act (ACA) information reporting forms and instructions for 2021. As a reminder, Forms 1094-B and 1095-B are filed by minimum essential coverage providers (insurers, government-sponsored programs, and some self-insuring employers and others) to report coverage information as required by the ACA, while forms 1094-C and 1095-C are filed by applicable large employers (ALEs) to provide information that the IRS needs to administer the employer shared responsibility penalties and eligibility for premium tax credits.

The draft forms are essentially unchanged from 2020, but the draft Form 1095-C and its instructions reflect two new codes (1T and 1U), originally announced in February of this year, for affordable ICHRA coverage offered to an employee, with coverage for the employee's spouse but not the employee's dependents. The draft instructions do not identify any other changes to the information reported on the forms. However, the instructions no longer mention an automatic extension to furnish the Form 1095-C to individuals, noting the normal January 31, 2022 due date and explaining how to request a discretionary 30-day extension. References to relief from the requirement to automatically furnish Forms 1095-B and 1095-C to certain individuals have been removed; the relief was available in 2019 and 2020 and stemmed from the reduction of the individual shared responsibility penalty to zero. The instructions also remove references to penalty relief for reporting incomplete or incorrect information if the filing entity made good-faith efforts to comply. Although the per-failure penalty remains at \$280, the maximum annual penalties reflect indexed increases. The threshold for mandatory electronic filing with the IRS remains at 250 returns, applied separately to each type of return and to original and corrected returns.

The end of certain forms of relief is unsurprising and consistent with a previous announcement that such relief would be eliminated. However, the 250-return threshold for electronic filing differs from the recently proposed regulations reducing the filing thresholds and suggests that the IRS may not finalize its proposed regulations in time for the March 31, 2022 electronic filing deadline. Keep in mind that additional changes are possible in the final forms and instructions.

Draft Form 1094-B:

<https://www.irs.gov/pub/irs-dft/f1094b--dft.pdf>

Draft Form 1095-B:

<https://www.irs.gov/pub/irs-dft/f1095b--dft.pdf>

Draft Form 1094-C:

<https://www.irs.gov/pub/irs-dft/f1094c--dft.pdf>

Draft Form 1095-C:

<https://www.irs.gov/pub/irs-dft/f1095c--dft.pdf>

Draft B Form Instructions:

<https://www.irs.gov/pub/irs-dft/i109495b--dft.pdf>

Draft C Form Instructions:

<https://www.irs.gov/pub/irs-dft/i109495c--dft.pdf>

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