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# COMPLIANCE ALERT

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EMPLOYEE BENEFITS | January 4, 2023

## IRS Releases Final Rules Extending Deadline to Furnish ACA Reporting Forms

On December 12, 2022, the IRS released a [Final Rule](#) providing for, among other things, an automatic 30-day extension of time for applicable large employers (“ALEs”) to furnish annual Form 1095-C to individuals for calendar years beginning after December 31, 2022. The Final Rule is substantially consistent with the proposed rule issued by the IRS in November 2021, which employers were permitted to rely upon for their calendar year 2021 Form 1095-C (which were due in 2022).

Prior to the IRS releasing its proposed rule last year, the IRS could grant an extension of time of up to 30 days to furnish Forms 1095-B and 1095-C to individuals for good cause shown; however, recognizing the January 31 deadline was difficult to meet, the proposed rule eliminated the good cause shown standard and simply allowed for an automatic 30-day extension to furnish the forms to employees. The Final Rule does the same and, consistent with the proposed rule, provides that in years where the deadline falls on a weekend or holiday, the forms are due the next business day.

The deadline to file Forms 1094-B or C and 1095-B or C with the IRS are not extended and will remain February 28 for paper filings and March 31 if filed electronically, though pursuant to current regulations, companies may receive an automatic 30-day extension of time to file the forms with the IRS by submitting Form 8809, Application for Extension of

Time to File Information Returns, on or before the due date for filing the forms.

Additionally, because the penalty for the individual mandate is currently \$0, for any calendar year in which it remains \$0, the Final Rule provides relief (consistent with relief provided for tax years 2019, 2020, and 2021) from furnishing Form 1095-B to individuals, if the responsible reporting entity:

- 1) Posts a clear and conspicuous notice in a location on its website that is reasonably accessible to individuals stating that individuals may receive a copy of their 1095-B upon request, accompanied by an email address, phone number, and a physical address where the request can be sent;
- 2) Furnish an individual with a Form 1095-B within 30 days of a request; and
- 3) Retain the notice in the same location of its website until October 15—or the first business day following October 15 if October 15 falls on a weekend or holiday—of the next calendar year. This would be October 15, 2024, for the tax year 2022 Form 1095-B.

The website notice must be written in plain, non-technical terms and with letters of a font size large enough, including any visual clues or graphical figures, to call a viewer’s attention that the information pertains to tax statements reporting that

individuals had health coverage. Per the IRS, a statement or link on the company's main page reading "Tax Information," which takes users to a secondary page that includes a statement in capital letters such as "IMPORTANT HEALTH COVERAGE TAX DOCUMENTS," would meet this requirement. This relief from providing the B-series forms typically applies to insurance companies (which are required to file and furnish Forms 1095-B to participants in their fully insured plans), non-ALEs with self-insured plans, and ALEs that provide coverage under a self-insured plan to individuals who were not full-time employees during any part of the year (e.g., part-time employees, or retirees or COBRA participants in the year following retirement or termination of employment). The notice on the website must explain how responsible individuals (for purposes of the 1095-B provided by non-ALEs that sponsor self-insured plans or insurance carriers) or non-full-time employees or non-employees enrolled in an ALEs plan (for purposes of the 1095-C) may request a copy of their form.

ALEs are still required to furnish Form 1095-C to their full-time employees. They must also complete Part III if the employee is enrolled in self-insured coverage. Further, the relief from furnishing Form 1095-B does not extend to IRS reporting. Forms 1095-B must still be submitted to the IRS, as applicable.

The Final Rule, which is effective on December 15, 2022, applies for calendar years beginning on or after December 31, 2021 (though pursuant to the proposed rule and Final Rule, employers were permitted to apply the relief for calendar year 2021 forms). Accordingly, the relief applies for upcoming calendar year 2022 forms, which means employers have an automatic extension to March 2, 2023, to furnish the forms.

## Conclusion

Based on the Final Rule, ALEs have until March 2, 2023, to furnish Forms 1095-C to individuals, but still must meet the February 28 (paper filing) or March 31, 2023 (electronic filing) deadlines to file Forms 1095-C with the IRS. Moreover, as long as the individual mandate penalty remains \$0, insurance carriers, non-ALEs with self-funded plans, and ALEs with self-funded plans that provide coverage to part-time employees or

non-employees are not required to furnish Forms 1095-B to individuals if they meet the requirements for posting information regarding how individuals may receive copies of their Form 1095-B.

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