
COMPLIANCE ALERT



EMPLOYEE BENEFITS | March 13, 2023

Most Employers Are Required to File Electronic Information Returns Beginning in 2024

On February 21, 2023, the IRS released Final Rules amending the existing requirements related to mandatory e-filing of information returns, including Forms 1094-C and 1095-C, among others. The final rules are effective for all applicable returns due on or after January 1, 2024. While the final rule requires electronic filing for a number of different information returns, such as Forms W-2 and 1099, which were previously allowed to be paper filed by employers of a certain size, this alert addresses the changes applicable to Forms 1094 and 1095, which must be filed by applicable large employers (ALEs) as well as non-ALEs that sponsor self-funded health plans.

Under the final rules, employers filing 10 or more returns must file Forms 1094 and 1095 (and their other applicable returns) electronically. The 10-form threshold is determined based on the total number of forms the employer must file with the IRS, including the Forms 1094 and 1095, as well as other information returns, such as Forms W-2 and Forms 1099, income tax returns, excise tax returns, and employment tax returns, including those that are not required to be e-filed, such as forms 940 and 941. Previously, employers that filed less than 250 of the same ACA reporting forms were allowed to choose whether to file their applicable Forms 1094 and 1095 (either the B or C forms, as applicable) by paper or electronically.

The final rules allow employers to seek a waiver in cases of undue hardship. Per the final rules, a key factor in determining whether hardship exists is whether the cost for filing the returns

electronically exceeds the cost of filing the return on paper. Entities seeking a waiver must specify the type of filing to which the waiver applies, the period to which it applies, and the entity must follow any applicable procedures, publications, forms, instructions, or other guidance, including postings to the IRS.gov website, when requesting the waiver. Further, the final rules allow the IRS to grant exemptions from the requirements in certain instances.

Conclusion

All ALEs and many non-ALEs (that report due to sponsoring a self-funded health plan) will be impacted by these changes and will be required to file their tax year 2023 Forms 1094 and 1095 electronically unless they seek and are granted a hardship exception by the IRS. Impacted entities should take the time between now and next year to engage a filing vendor that can assist them with their electronic filing obligations.

This alert was prepared for Woodruff Sawyer by Marathas Barrow Weatherhead Lent LLP, a national law firm with recognized experts on the Affordable Care Act. Contact Stacy Barrow or Nicole Quinn-Gato at sbarrow@marbarlaw.com or nquinnгато@marbarlaw.com.

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