ACA Reporting – 2022 Instructions Not Yet Finalized

Reporting for the Affordable Care Act's (ACA) employer mandate is around the corner, and the IRS released draft instructions and finalized forms for the 2022 reporting year in October. Final instructions are anticipated in the next few weeks, but it could be December.

Not much changed between the 2021 final and the 2022 draft instructions. Applicable Large Employers (ALEs) and ALE Members can use the 2022 draft instructions and final versions of the 2022 Forms 1094-C and 1095-C to gain familiarity. Likewise, self-insured (including level-funded) employers who are not ALEs may use the 2021 instructions and final versions of the 2022 Forms 1094-B and 1095-B until the final instructions are released.

Automatic Extension to Furnish Forms; Extension to File Forms Upon Request

Furnishing Forms to Covered Individuals

On November 22, 2021, the IRS issued a proposed rule that provides an automatic 30-day extension for furnishing individuals their Form 1095-B or 1095-C (generally, 1095) thereby removing any additional extensions. The due date for furnishing Form 1095 is automatically extended from January 31, 2023, to March 2, 2023.

Filing Forms with the IRS

It was contemplated that the IRS would lower the electronic filing threshold significantly this year. However, the draft instructions maintain that only those filing 250 or more Forms must file electronically. Those with fewer than 250 Forms are encouraged to file electronically, but they are not required. An employer may request a waiver from the required electronic filing requirement by submitting Form 8508 timely.

The following table highlights the deadlines for furnishing and filing Forms.

1095-C Due to Participants	March 2
1094-C & 1095-Cs Due to IRS (Filing on paper)	February 28
1094-C & 1095-Cs Due to IRS (Filing electronically)	March 31
1095-B Due to Participants	March 2
1094-B and 1095-Bs to IRS (Filing on paper)	February 28
1094-B and 1095-Bs to IRS (Filing electronically)	March 31

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Affordability

To avoid potential tax penalties, the employer mandate requires ALEs to offer minimum value medical coverage to all full-time employees and their dependents (up to age 26) and requires that the employee's cost for the employee-only minimum value plan be "affordable." Since employers are unable to know whether coverage is affordable for any particular employee, the IRS allows employers to use a "safe harbor" which is indexed annually.

Affordability Percentage Indexed	**9.5%***
Plan Years Beginning in 2021	9.83%
Plan Years Beginning in 2022	9.61%
Plan Years Beginning in 2023	9.12%

An employer may defend against a potential penalty triggered based on unaffordable coverage by relying on an affordability safe harbor. There are three:

- **The W-2 safe harbor,**
- **The rate of pay safe harbor, and**
- **The federal poverty level safe harbor**

W-2

Under the W-2 safe harbor, coverage is affordable if the employee's contribution for self-only coverage is less than the indexed affordability percentage of W-2 (Box 1) income for the current year. That means the determination is made after the calendar year ends. Employers cannot make any adjustment for unpaid leaves, which increases the chance the employee's coverage will be unaffordable.

Employers that choose to use this method may not change the employee's contribution level (dollar amount or percentage) during the calendar year or during the plan year if the plan operates on a non-calendar year.

Rate of Pay

Under the rate of pay safe harbor, coverage is affordable for an hourly employee if the hourly employee's contribution for self-only coverage is less than the indexed affordability percentage of the employee's lowest rate of pay during the calendar month, times an assumed 130 hours worked during a month (regardless how many hours the employee actually works). Employers often forget that the 130 hours is the standard multiplier in the formula and cannot be increased if the employee works more than 130 hours in the month. If an employee works one day in a month, he or she is considered to have worked the entire month for purposes of both the employee's share of the premium and assumed income for the calendar month.

For salaried employees, the monthly salary at the beginning of the coverage period is used. If the salaried employee is paid other than monthly, the employer may use any reasonable method to convert a payroll period to monthly salary.

If the salaried employee's monthly salary is reduced during the year (even if due to a reduction in hours) the rate of pay method may not be used.

This method excludes tips and overtime and disregards any pay increase the employee may receive during the year. As a result, this method is often not viable for commissioned or tipped employees, such as salespeople and hospitality workers.

FPL

Under the federal poverty level (FPL) safe harbor, coverage is affordable if the employee's contribution for self-only coverage is less than the indexed affordability percentage of FPL as of the start of the plan year for the state in which the employee lives. The FPL method does not look at the employer's actual hours or pay, so it does not need to be adjusted for leaves of absence.

FPL figures are released near the end of January, an employer may (but is not required) to use the FPL in effect within the six months before the start of the plan year.

Which Methods?

Employers are often left trying to decide which method is right for them and their employees. The W-2 method is the most flexible but least predictable and allows for no adjustments. The requirement to use Box 1 can lead to a significant decrease in an employee's pay if the employee makes large pre-tax contributions. It is also deflated if an employee takes a long unpaid leave of absence.

The rate of pay will underestimate income for full time employees (due to capping at 130 hours) and cannot be used for employees who are tipped or paid on commission due to low base wage. Because it is designed based, it does eliminate the need to track each employee's affordability separately and instead can be calculated based on the rates of pay the employer uses for entire groups of employees.

The FPL is the most conservative method for employers, allows for the easiest reporting, but it is also the most expensive method for employers. The affordability is based solely on the required affordability percentage and the government's set FPL for the mainland for the year.

Employers can change the safe harbor chosen each year. Whatever method is chosen, it is imperative that employers retain a copy of the Forms that were furnished and filed along with supporting documentation (e.g., plan design and contribution structure, employment records, and eligibility provisions) to rebut a proposed penalty.

This document was authored by the Alera Group Compliance team. Alera Group based in Deerfield, IL serves thousands of clients nationally in employee benefits, property and casualty, risk management and wealth management. Alera Group is the 15th largest independent insurance agency in the country.

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