NOVEMBER 30, 2021

IRS Proposes to Permanently Extend Form 1095-B and -C Deadline for Individuals

On November 22, 2021, the IRS released a draft version of proposed regulations that have been submitted for publication to the Federal Register (but not yet formally published) which would permanently extend the annual deadline for furnishing Forms 1095-B and C to individuals by 30 days (*i.e.*, generally to March 2 of the year after the year in which health coverage is provided). The proposed regulations also provide an alternative method for furnishing Forms 1095-B (and in limited circumstances, Forms 1095-C) by posting a website notice.

The ACA requires applicable large employers who provide health insurance to full time employees ("ALEs") to report certain information to the IRS on or before February 28 (March 31 if filed electronically) and to furnish a statement to the covered individuals containing the same information on or before January 31 of the next year (using Form 1095-C in the case of an ALE). Employers who fail to comply with these reporting obligations can be assessed significant tax penalties.

Existing regulations permit filers to receive an automatic 30-day extension by submitting Form 8809. However, the IRS has consistently issued (see our prior blog post) a series of annual notices from 2015 through 2020, each extending the January 31 deadline by at least 30 days, generally to March 2 (or the next business day if March 2 is a weekend or holiday). The proposed regulation would make this 30-day extension permanent. However, plan sponsors would not be able to obtain additional deadline relief by filing Form 8809.

Further, the IRS has previously issued and repeatedly extended special transitional reporting relief for entities that make a good faith effort to comply with these reporting requirements but nonetheless report incorrect or incomplete information. The IRS confirmed that it will not be extending this relief to the reporting that is due in 2022. However, entities that operate in good faith may still argue that a more general reasonable cause exception to any reporting penalties may apply.