

compliance ALERT

IRS Proposes Substantial Changes to ACA Information Reporting Requirements

August 6, 2021

Action Required:

- Review the proposed regulations.
- Monitor for developments or finalized rules.

The IRS recently issued [proposed regulations](#) that, if finalized, would substantially expand mandatory electronic filing of information returns, including Forms 1094-C and 1095-C for purposes of Affordable Care Act (ACA) information reporting for groups under the current 250-return threshold.

The proposed rules do not change the law since they are merely proposed regulations.

If finalized as written, they would lower the threshold for mandatory electronic filing of Forms 1094-C/1095-C from 250 to 100, and would require employers to aggregate the number of different returns they file when determining whether the return threshold has been met.

The proposed rules would also establish lower thresholds for mandatory electronic filing of the returns affecting other employee benefit plans.

The proposed requirement to aggregate returns when calculating electronic filing thresholds, combined with the lower thresholds themselves, will likely result in almost all applicable large employers (ALEs) electronically filing these forms in 2022.

Accordingly, all ALEs should monitor this development carefully, as mandatory electronic filing could be coming as soon as March 31, 2022 for the 2021 calendar year.■

↓ **Full Explanation Follows** ↓

IRS Proposes Substantial Changes to ACA Information Reporting Requirements

The IRS recently issued [proposed regulations](#) (the “Proposed Rules”) that, if finalized, would substantially expand mandatory electronic filing of information returns, including Forms 1094-C and 1095-C for purposes of Affordable Care Act (ACA) information reporting for groups under the current 250-return threshold.

How do the Proposed Rules Change the Law?

The Proposed Rules do not change the law since they are merely proposed regulations, but if finalized as written, they will result in two major changes to the law affecting employers’ ACA information reporting requirements:

- 1) The current 250-return filing threshold for the filing of Forms 1094-C/1095-C (that is, the requirement that employers must file these forms electronically with the IRS if they’re filing “250” or more) would be reduced to a threshold of “100” for returns due in calendar year 2022, and to a threshold of “10” for returns due in 2023 or later years.
- 2) Additionally, the Proposed Rules would require employers to aggregate the number of different returns they file when determining whether the return threshold has been met. For example, when determining if the 100-return threshold has been met, the employer would have to aggregate all Forms W-2, Forms 1095-C, and Forms 1094-C to determine a total amount. If that amount equals 100 or more, these forms must be transmitted and filed electronically with the IRS.

In addition to the Forms 1094-C/1095-C, the Proposed Rules would establish lower thresholds for mandatory electronic filing of the following returns affecting employee benefit plans:

- The Forms 1094-B/1095-B,
- The Form 1099 series,
- The Form 5498 series,
- The Form W-2,
- The Form 5330 (effective for taxable years ending on or after the date final regulations are published), and
- The Form 8955-SSA (effective for plan years beginning on or after January 1, 2022, but only for filings due after July 31, 2022).

The Proposed Rules also clarify that any corrected return would have to be filed in the same paper or electronic format as the original return to which the correction corresponds.

When would the Proposed Rules go into effect?

If finalized, the Proposed Rules’ return threshold change from 250 to 100 would be required for all returns filed in calendar year 2022, and the change from 100 to 10 would be required for all returns required to be filed during calendar years after 2022.

Do the Proposed Rules also Require “Perfect” Compliance with the ACA Information Reporting Rules?

No. There is no requirement in the Proposed Rules that requires “perfect” compliance with ACA information reporting. The reports and alerts that came out from reporting vendors indicating this were likely referring to IRS guidance issued in late 2020 (discussed in our eAlert [here](#)) pertaining to the end of “good faith” penalty relief. As we noted in that eAlert, the IRS indicated in that guidance that this “good faith” relief from reporting penalties would not apply to reporting for the 2021 calendar year (the filings due in early 2022).

What Should Employers and Plan Sponsors Do Next?

The proposed requirement to aggregate returns when calculating electronic filing thresholds, combined with the lower thresholds themselves, will likely eliminate paper filings for all but the smallest of employers. The Proposed Rules are likely to have the greatest impact on smaller applicable large employers (ALEs), who have been able to file Forms 1094-C and 1095-C on paper when completing their ACA information reporting. If finalized, the Proposed Rules will result in almost all ALEs electronically filing these forms in 2022 (since ALEs, by definition, have at least 50 full-time-equivalent employees, they are likely to pass the 100-return threshold when taking into account Forms W-2 and 1095-C). Accordingly, all ALEs should monitor this development carefully, as mandatory electronic filing could be coming as soon as March 31, 2022 for the 2021 calendar year. ■

**If you have any additional questions,
please call your Corporate Synergies
Account Manager or 866.CSG.1719.**