

# Information Overload

## ACA Reporting Compliance for Multiemployer Plans

Multiemployer plans and contributing employers have a year before they must report information required by the Affordable Care Act (ACA) but should start immediately on the complicated process. The authors recommend seven steps toward compliance.

by | **Mitchel D. Whitehead** and **M'Alyssa Mecenas**

**N**ow that the Affordable Care Act (ACA) rules on the individual mandate and employer shared responsibility (ESR) are in place, group health plan rules for multiemployer plans are upon us and the exchanges are up and running, federal regulators are presented with the mind-numbing task of attempting to enforce this brave new world of health care reform.

Toward that end, the Internal Revenue Service (IRS) recently issued a raft of new forms and instructions designed to implement ACA's reporting requirements and navigate the tsunami of data needed to make certain that plans, participants and employers are all playing by the new rules (and penalize those that don't). The first round of reports for 2015 aren't due until early 2016 (unless IRS delays implementation of the reporting rules),<sup>1</sup> but it is essential to begin preparing now for compliance with the new reporting requirements.

ACA will require two types of annual information reports: The first requires plans providing minimum essential coverage (MEC) to report on that coverage under Section 6055 of the Internal Revenue Code; the second requires large employers subject to ACA to report on compliance with the ESR rules under Code Section 6056.

ACA reporting procedures are similar to the Form W-2 and Form W-3 procedures employers follow annually. For

each type of ACA report, the reporter must issue a separate information statement to each individual recipient, bundle all individual information statements for the year and file them with IRS along with a transmittal form. In an attempt to clarify how reporters can accomplish all of this, the IRS issued final regulations in March 2014,<sup>2</sup> draft forms in July and August 2014,<sup>3</sup> and draft instructions to both the MEC reporting forms and ESR reporting forms in August 2014.<sup>4</sup> The nature and extent of the information requested on these forms has led even IRS to concede:

[T]he unique structure of many multiemployer plans means that some of the information relevant to the [ESR report], such as the employee contribution (if any) for the lowest-cost self-only coverage providing minimum value, is held by the multiemployer arrangement. On the other hand, some of the information relevant to the [ESR report], such as whether a participant is a full-time employee for a particular month, is held by the [contributing employer]. As noted by commenters, this may make the preparation, filing, and furnishing of the [ESR] returns challenging.

### Transition Rule for Multiemployer Plans

To its credit, IRS has tried to simplify reporting for multiemployer plans and contributing employers. A special

transition rule under ACA (the “multiemployer plan transition rule” or “multiemployer interim rule relief”) applies where an applicable large employer “is required by a collective bargaining agreement or an appropriate related participation agreement to make contributions, with respect to some or all of its employees, to a multiemployer plan that offers, to individuals who satisfy the plan’s eligibility conditions, coverage that is affordable and provides [minimum value], and that offers coverage to those individuals’ dependents.”<sup>5</sup> Those employers automatically satisfy their ESR obligations with respect to the full-time union employees on whose behalf the employer contributes. They can use a time-saving code on ESR forms that streamlines the amount of information that must be tracked and reported and generally may skip certain other information requirements. It remains to be seen whether these special rules will create more problems than they solve. At this point, one thing is clear: Because ACA reporting rules are complex and potentially burdensome, it will be important for each plan and contributing employer to assess whether ACA reporting rules apply to them and, if so, whether they will have appropriate systems in place before January 1, 2015 (or as soon as possible thereafter) to capture required data and prepare timely reports.

This article provides a high-level overview of the basic rules for each type of ACA report that apply to multiemployer plans and contributing employers, identifies key compliance challenges and outlines a suggested approach for dealing with these issues. This analysis is subject to the important caveat that as of early November, existing IRS guidance is in draft form; further regulatory clarification is inevitable.<sup>6</sup>

### MEC Reports—Code Section 6055

MEC reports provide information statements needed to establish that individuals enrolled in MEC do not owe the ACA individual mandate tax. MEC information statements (Form 1095-B) are furnished to each *responsible individual*, defined as “a primary insured, employee, former employee, uniformed services sponsor, parent, or other related person named on an application who enrolls one or more individuals, including him or herself, in minimum essential coverage” (not to dependents and other beneficiaries).<sup>7</sup> All MEC information statements for the year are bundled together

and filed, along with an MEC transmittal form (Form 1094-B), with IRS.

MEC reporting rules apply to every plan (or other entity) that provides MEC to an individual during a calendar year; current guidance suggests this would include retiree-only plans. In the multiemployer plan context, “[t]he association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan for a self-insured group health plan or arrangement that is a multiemployer plan” will be responsible for MEC reporting.<sup>8</sup>

This checklist summarizes what the plan must file on its MEC transmittal forms and information statements:

- Name, address and Employer Identification Number (EIN) of the MEC reporter (the board need not report the EIN of all participating employers)
- The name and phone number of a contact person responsible for answering questions
- The responsible individual’s name, address and Social Security number (SSN)
- Each covered individual’s name and SSN (including dependents). Oddly, the MEC reporting rules do not define the term *covered individual*, but we understand it to refer to each individual (e.g., spouse, domestic partner or dependents) enrolled in MEC under the responsible individual.
- The calendar months for which each responsible individual or covered individual was enrolled and entitled to coverage for at least one day, or a checkbox indicating that such individual was covered for all 12 months of the year
- The total number of Forms 1095-B submitted to IRS
- A letter code identifying the “origin of the policy” (letter code E for multiemployer plans)
- Any other information specified in forms, instructions, or published guidance.

The plan is **not** required to report on coverage offered to individuals who do not enroll, coverage that is not MEC or supplemental coverage that is provided in addition to a health plan or arrangement that constitutes MEC. Additionally, the plan generally may disregard certain MEC form fields that do not apply in the multiemployer plan context (e.g., items that apply only to coverage purchased through

the Small Business Health Options Program or insured group health plans).

### ESR Reports—Code Section 6056

ESR reports provide information needed to determine whether an applicable large employer (as defined under ACA) owes tax under Code Section 4980H for failing to offer affordable MEC that provides minimum value (the “employer mandate”) and whether full-time employees appropriately claimed an ACA premium tax credit.

ESR information statements (Form 1095-C) must be furnished to each “full-time employee,” as defined in ACA (not to dependents and other beneficiaries). All ESR information statements for the year are bundled together and filed with IRS with an ESR transmittal form (Form 1094-C).

ESR reporting rules of Section 6056 apply to all large employers<sup>9</sup> that are subject to the ESR rules. Contributing employers that are large employers may prepare their own ESR reports. To do so, employers would need to obtain information from their multiemployer plan regarding coverage of their employees.

Alternatively, a multiemployer plan may prepare ESR reports on behalf of a contributing employer. Current guidance suggests the plan may do so only with respect to that employer’s plan-eligible (e.g., collectively bargained) full-time employees. The employer would prepare the ESR reports for its other full-time employees (e.g., non-bargained employees and employees in other guilds or unions covered under other multiemployer plans).

We note four important issues with this approach:

1. The contributing employer remains responsible with respect to all of its full-time employees for any potential liability for failure to properly file reports or furnish statements, even if a multiemployer plan reports on its behalf.
2. There must be one ESR statement (IRS Form 1095-C) only for each full-time employee of an employer.
3. In all cases, the employer will need to file an “authoritative” ESR transmittal form that reports **aggregate** employer-level data for all full-time employees.<sup>11</sup> Some sections of the ESR transmittal form (Form 1094-C), such as controlled group information, will be completed on the authoritative ESR transmittal form only. Current guidance suggests that, as a practical matter, each contributing employer always would prepare its own authoritative ESR transmittal form, and a multiemployer plan could not do so on its behalf.
4. Whether or not the multiemployer plan reports on behalf of any employers, the plan administrator may need to file ESR reports or statements with respect to its own full-time employees if the plan is itself a large employer.

See Step 2 of “Compliance Recommendations” below for factors to consider in determining whether a plan should agree to handle ESR reporting for contributing employers.

The ESR rules provide for a standard reporting method and four optional alternative methods, all described in detail by the ESR Form Instructions. This article highlights only a few key issues under the standard reporting method and explains how employers eligible for multiemployer interim rule relief can streamline reporting under the standard rules.

An ESR reporter may be able to streamline reporting further by applying the alternatives (which require less information than the standard reporting method regarding certain demographic subsets). Pending final IRS guidance, it is not clear whether one particular alternative will be most appropriate in most multiemployer plan contexts, as the criteria for the alternatives appear to be fact-specific and best assessed case by case.<sup>12</sup>

This checklist summarizes the information the ESR reporter must file on IRS Forms 1095-C and 1094-C under the standard reporting method:

- The calendar year for which the information is reported (pre-printed on IRS forms)
- The large employer’s name, address and EIN
- The name and phone number of a designated contact person for the large employer
- For **each** full-time employee employed during the calendar year:
  - The full-time employee’s name, address and SSN
  - The months during the calendar year for which MEC was available to the full-time employee

- The full-time employee’s share of the lowest cost monthly premium for self-only coverage, by calendar month, entered as a dollar amount (including cents). This is required only if MEC providing minimum value was offered to the employee, employee plus spouse, employee plus dependents or employee plus spouse and dependents, and the coverage offer was not a *qualifying offer* (defined in detail in the ESR Form Instructions, p. 11).
- The months, if any, during which the full-time employee was covered
- The total number of Forms 1095-C submitted with the ESR transmittal form
- Certain information that must be reported only on the “authoritative” ESR transmittal (e.g., the Form 1094-C that reflects all of an employer’s aggregate data):
  - A certification of whether the large employer offered its full-time employees (and dependents) the opportunity to enroll in MEC under an eligible employer-sponsored plan, by calendar month
  - The number of full-time employees for each calendar month
  - The number of total employees for each calendar month
  - If the employer is a member of a controlled group under Code Section 414, the names and EINs of other members of the

controlled group that were members at any time during the calendar year.

- Whether the employer is eligible for Section 4980H Transition Relief (see ESR Form Instructions, pp. 11-12).

*Note:* Preparers of an authoritative ESR transmittal form should note several special transition relief rules for 2015 only that may affect reporting. (See ESR Form Instructions, pp. 12-13.)

- Any other information specified in forms, instructions or published guidance.

Additional information (e.g., specifying, month-by-month, the type of MEC offered or that MEC was not offered, an employee’s employment and enrollment status, and whether certain ACA safe harbors relieving the employer of ESR penalties apply) will be reported using *indicator codes* on lines 14 and 16 of draft Form 1095-C. These are alphanumeric codes for information specific to each line item. Deciphering and reporting these codes will present some challenges (a discussion of which is beyond the scope of this overview).

Detailed rules give employers eligible for the multiemployer plan transition rule the opportunity to streamline ESR reporting.<sup>13</sup> For example, such employers are not required to report the names and SSNs of covered individuals, such as dependents, who are not full-time employees or the calendar months for which MEC was available to such individuals. There are also

certain fields on the forms that can be disregarded altogether, such as questions relating to government employers or self-funded single employer health plans.

Employers eligible to use the multiemployer plan transition rule will generally report using indicator code 2E on line 16 of Form 1095-C (under current guidance, there are some exceptions where other indicator codes may apply). The draft ESR form instructions include confusing language that does not clearly explain how such contributing employers should report on lines 14 and 15 of Form 1095-C—if at all.<sup>14</sup> At least two comments have been submitted to IRS on the draft forms and instructions asking IRS to clarify that such contributing employers can skip lines 14 and 15 entirely whenever they are eligible to use indicator code 2E on line 16. As this article goes to press, it is not clear how this issue will be resolved. Employers and plans will need to make their own decisions about how to proceed.

Unless IRS excuses multiemployer plan reporters from completing lines 14 and 15 of Form 1095-C (which it should), a contributing employer that intends to complete lines 14 and 15 likely will need some information from the plan (e.g., the applicability of multiemployer interim rule relief, employee enrollment, etc.) to select the appropriate ESR indicator codes. Conversely, plans preparing forms on behalf of employers likely will need information from employers (e.g., an employee’s month-to-month employment status) to determine which codes to use.

Under current guidance, multiemployer plan reporters preparing ESR forms on behalf of contributing employers generally may disregard items that must be completed only on the employer's "authoritative" ESR transmittal form; we expect the authoritative ESR transmittal form will be prepared by each contributing employer itself—whether or not it has delegated ESR reporting to a multiemployer plan—because it requires aggregated employer data.

### ACA Reporting Deadlines

The first mandatory ACA filings are for the 2015 calendar year. MEC and ESR reporting statements must be furnished to the individual recipients by January 31 of the year after the calendar year reported. A reporter may apply to IRS (e.g., by letter) for an extension of up to 30 days to furnish the individual information statements on a showing of good cause on or before the deadline.

For both MEC and ESR reports, all individual information statements for the year must be bundled and filed with IRS with the corresponding transmittal forms by February 28 if filing by paper (except that the paper filing deadline is February 29, 2016 for the 2015 year) or, if filing electronically, March 31 of the year after the year being reported (e.g., March 31, 2016 for the 2015 year).

### Penalties for Failure to Comply With ACA Reporting Rules

The failure to timely furnish correct MEC and ESR individual information statements and/or to timely file correct MEC and ESR reports with IRS may result in significant penalties—generally, \$100 for each defective statement, up to a cap of \$1.5 million for all such failures of each type during any calendar year. There is also a catchall penalty provision for violations of "other information reporting requirements."

Penalties generally may be reduced or waived for failures that are due to reasonable cause or that are timely corrected. Additional transition relief, available for a limited time, also may minimize penalties. For example, penalties will not be assessed for 2015 ACA reports as long as the entities responsible for reporting show they made good faith efforts to comply with the new reporting requirements. The avenues for penalty relief generally are not available—and more sig-

nificant penalties could be imposed—if the reporting failure is due to intentional disregard of the reporting requirements.

### Recommendations

Multiemployer plan sponsors and contributing employers may be able to minimize the operational impact of ACA reporting compliance by planning ahead. We suggest the following steps:

#### ***Step 1: Review IRS Guidance***

IRS has not yet released its final forms and instructions for ACA reporting under Sections 6055 and 6056 but has made draft instructions and drafts of Forms 1094-B, 1095-B, 1094-C and 1095-C available. These documents are a useful starting point for reporters, though they are subject to change.

#### ***Step 2: Determine Who Will Handle ESR Reporting—The Multiemployer Plan or Contributing Employers***

The multiemployer plan may, but is not required to, submit ESR reports and statements on behalf of contributing employers. At this juncture, plan trustees and administrators must decide whether one approach is preferable to the other.

Multiemployer plan administrators should consider determining the number of contributing employers that fall in the following categories and the compliance rules that apply to each:

- Employers with fewer than 50 full-time employees (e.g., employers that are not "applicable large employers" and have no obligation to prepare ESR reports)
- Employers with 50-99 full-time employees (e.g., employers that would be subject to an alternative ESR reporting method in 2015. See ESR Form Instructions, p. 11.)
- Employers with 100 or more full-time employees.

Among the many important factors to consider in determining whether a plan should agree to report on behalf of an employer are:

- Can the plan capture and assemble the required information with its existing software?
- How will the plan determine whether an employer wants to delegate reporting responsibility, and what

communications need to take place in that regard?

- What agreement should the plan have with employers regarding reporting, and should it release the plan from all liabilities and provide for indemnification of the plan?
- Do employers need to be charged for the costs of reporting?
- Will the plan provide reporting on an employer-by-employer basis (reporting for some employers but not others)?
- What procedures and time frames need to be established in order to meet required deadlines for employers?
- What indicator codes will apply with respect to coverage under the plan, and how will decisions on those codes be made?

Employers that will handle their own ESR reporting will need to determine what information and assistance the plan will provide and how (for example, will the plan have a standard format for providing information or reports to employers?).

### ***Step 3: Reporters (for Each Type of Report) Should Designate Their Contact Person***

Each multiemployer plan will need to determine who will serve as its designated contact person for MEC reporting purposes. The contact phone number may provide an automated response to inquiries as long as the caller is able to reach a person during the call, and the reporter may designate a third party to be the contact person.

If a plan must file ESR returns and furnish ESR statements with respect to the plan's own employees under the ESR reporting rules, the plan also will need to designate a contact person. The ESR reporting regulations and draft ESR forms require the name and telephone number of the large employer's contact person, which suggests that only one individual or entity may serve as the ESR reporter's contact for such purposes. However, this issue is not entirely clear from IRS guidance.

Of course, contributing employers likewise will need to determine who will serve as their designated contact for ESR reporting purposes.

We note that draft Form 1094-B and draft Form 1094-C (the MEC and ESR transmittal forms to the IRS) require the signature and title of an individual certifying that he or she has examined the return and accompanying documents and that they are true, correct and complete to the best of his or her knowledge. Current IRS guidance does not specify who may provide these certifications on the MEC and ESR transmittal forms.

### ***Step 4: Develop an Initial Plan for Communicating Information to Employers About ACA Reporting***

Though not required by MEC or ESR reporting regulations, multiemployer plan administrators might consider whether they should prepare communications to contributing employers that (1) confirm the fund administrator's responsibility for MEC reporting and solicit information and responses on the issues noted above in Step 2 and (2)

provide information on the contributing employers' options for compliance with ESR reporting obligations.

Ideally, such communications will list the information needed from affected employers (if the fund is reporting on their behalf) or that will be provided to affected employers (if they decide to handle their own ESR reporting).

Multiemployer plan administrators should be prepared to answer employer inquiries about whether they offer MEC that is affordable and of minimum value, along with a number of other questions concerning new hire eligibility coverage and other information relevant to the required forms. While IRS recognized that it has no authority to require a multiemployer plan to transfer information to contributing employers "in a timely manner and form,"<sup>15</sup> we are not aware of any practical upside to withholding coverage information in response to reasonable requests.

### ***Step 5: Verify Information Collection Capabilities With Staff, Vendors and Contributing Employers***

The multiemployer plan office should consult with the plan's administrator to determine what information must be obtained or provided under MEC and ESR reporting rules.

**Determine whether any alternative methods for ESR reporting may apply for some or all employees.** It is not yet clear which alternative reporting method would be most useful to most multiemployer plans. In light of comments submitted to IRS on the draft ACA reporting forms and instructions, we hope IRS will issue further guidance on

this matter. We recommend that ESR reporters consult legal counsel and their plan's administrators to evaluate whether any of the streamlined ESR reporting alternatives may be available in light of the coverage the plan offers.

**Develop an annual protocol for obtaining SSNs.** ACA reporters should design an annual protocol for obtaining SSNs, soliciting SSNs at the appropriate times and before regulatory deadlines, and recording successful and failed attempts to solicit SSNs (including verbal solicitations). Note that while some health plans have moved away from requiring SSNs on enrollment forms in recent years, that practice may need to change to help ACA reporters meet their obligations.

ACA reporting rules impose very detailed requirements. Generally, ACA reporters need to provide SSNs of certain individuals, as described above. Reporters can provide truncated SSNs showing only the last four digits on MEC and ESR reporting statements furnished to individuals, but not on forms provided to IRS.

For a reporter to avoid penalties for failing to provide SSNs for all covered individuals, it must make certain specified "reasonable efforts" to collect SSNs; the regulations define specific solicitation procedures that will establish "reasonable efforts." If the SSN is not available after reasonable efforts, the reporter may instead use a date of birth. However, reporting a date of birth in one year does not eliminate the need to make reasonable efforts to obtain an SSN in later years.

Note that the final regulations do not authorize a reporter to terminate coverage if a person does not provide an SSN. The solicitation of SSNs is subject to existing privacy rules, such as those issued by the Department of Health and Human Services, to protect consumer information.

**Begin recording coverage and eligibility on a monthly basis.** ACA reporting rules require certain month-by-month information to be reported on the annual reports and statements. ACA reporters will need to consult their service providers to determine whether any system changes are needed in order to track this information.

**Develop a plan for exchanging information between employers and the plan.** The information to be exchanged between a multiemployer plan and its contributing employers will depend on whether the employers decide to prepare their

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own ESR reports for all of their own full-time employees, and on whether IRS ultimately decides to require contributing employers eligible for the multiemployer plan transition rule to complete lines 14 and 15 on Form 1095-C. Even if IRS ultimately decides to excuse contributing employers from reporting lines 14 and 15, however, ESR reporters in the multiemployer plan context may still need to exchange information in order to enable employers to complete Form 1094-C.

Contributing employers also will need to be mindful of the information they need to collect to prepare the authoritative ESR transmittal forms (such as the total number of employees and full-time employees and any required EINs for all of the employer's controlled group members).

### Step 6: Develop a Plan for Filing IRS Reports

Reporters will need to consider whether to use substitute forms, combined forms (e.g., reporting both MEC and ESR information on one form, which we do not expect to be useful in the multiemployer plan context) or electronic filing.

**Substitute forms.** The regulations allow for the use of "substitute forms," as long as they include all the information required on the ACA reporting forms designated by IRS and comply with applicable revenue procedures or published IRS guidance. The role and desirability of using a substitute form is not yet clear, but the regulations appear to allow for the use of



## takeaways >>

- ACA requires plans to report to IRS on their minimum essential coverage and contributing employers to report on compliance with employer shared responsibility.
- Each plan and contributing employers needs to assess whether ACA reporting rules apply to them so that they will be ready by January 1, 2015 or as soon as possible thereafter to capture data and prepare timely reports.
- Contributing employers that prepare their own ESR reports would need to obtain information from their multiemployer plan. Or the plan can prepare ESR reports on the employers' behalf.
- Communication between the plan and contributing employers will be crucial in ensuring each has the information it needs for compliance.

substitute forms without waiting for IRS to publish its final forms. ACA reporters considering such forms should have them reviewed by legal counsel.

**Combined forms.** The IRS Form 1095-C will include a section for MEC reporting information (Part III of Form 1095-C) as well as sections for ESR reporting information. ACA reporters responsible for both MEC reports and ESR reports may use combined forms. Combined reporting does not appear to have much application in the context of multiemployer plans, but advisors and attorneys should be consulted regarding its potential application (e.g., where a plan is a large employer that must prepare ESR reports with respect to its own full-time employees and must report on MEC provided to such individuals under the plan).

**Electronic filing.** MEC reporters must file electronically if they file 250 or more MEC reports. The same rule applies to ESR reporters filing 250 or more ESR reports.<sup>16</sup> Reporters filing fewer returns may, but are not required to, file electronically. ACA reporters should determine whether they must, or would

prefer to, submit electronic reports. If so, they may need to consult with appropriate recordkeeping vendors now to determine what mechanisms they have for transferring data collected over 2015 into the final forms yet to be released by IRS (or the plan's substitute forms).

### ***Step 7: Develop a Plan for Furnishing Individual Information Statements***

**Develop a protocol for mailing paper statements and confirm addresses.** ACA reporters should confirm addresses in December 2015 and January 2016 and retain proof of mailing for individual statements. The MEC reporting statement and the ESR reporting statement must be sent via first-class mail to the recipient's last known address. If the reporter has no address for an individual, the statement should be sent to the address where the individual is most likely to receive it. Note also that a reporter may, but is not required to, mail an MEC reporting statement and/or an ESR reporting statement with Form W-2.


**Develop a protocol for furnishing electronic statements.** A reporter

may furnish MEC or ESR reporting statements electronically only if the recipient affirmatively consents. ACA reporting regulations impose very detailed requirements on electronic statement distribution (which are beyond the scope of this article), but such an approach may help reporters cut costs and streamline the statement delivery process. Reporters that wish to deliver electronically must comply with important rules regarding disclosure, consent and withdrawal of consent, notice of changes in hardware or software requirements, statements delivered via website, delivery of corrections to statements and the circumstances under which the reporter must provide paper copies.

ACA reporters should consider developing disclosure notices, consent forms, website notices (if applicable) and withdrawal-of-consent forms. Reporters should also create a system for recording individual consents (including oral consent), withdrawal of consent (including oral withdrawals) and electronic transmission or receipt.

### **Conclusion**

Nobody ever said that complying with ACA would be easy. Unfortunately, this complicated new law appears to require equally complicated information reporting to ensure compliance. Like all things ACA-related, these rules and forms are relatively new and largely untested; there are many unanswered practical and legal questions, and we can expect further changes, clarifications and developing "compliance customs." There are certain to be disagreements

and debates over various reporting options, approaches and alternatives. It is also possible that there could be further administrative extensions of the reporting deadlines and/or exceptions to all or portions of the MEC and/or ESR reporting rules. Nevertheless, and although the actual filing deadline for 2015 is still a long way away, plans and employers would be well-advised to begin planning for compliance now, based on available guidance, to ensure that the required data can be captured and reported on a timely basis. 

## Endnotes

1. In comments submitted to IRS on November 3, 2014 regarding the draft forms and instructions, at least one commenter urged IRS to consider whether it may be appropriate to further delay the effective date of the ACA reporting requirements.

2. 79 *Fed. Reg.* 13220 (March 10, 2014); 79 *Fed. Reg.* 13231 (March 10, 2014).

3. For MEC reports, the transmittal form is Form 1094-B and the information statement is Form 1095-B. For ESR reports, the transmittal form is Form 1094-C and the information statement is Form 1095-C. All forms are available at [www.irs.gov](http://www.irs.gov). ACA reporting rules permit the use of substitute (e.g., non-IRS) forms, but for convenience this article refers to the draft IRS forms.

4. MEC Form Instructions are available at [www.irs.gov/pub/irs-dft/i109495b--dft.pdf](http://www.irs.gov/pub/irs-dft/i109495b--dft.pdf), and ESR Form Instructions are available at [www.irs.gov/pub/irs-dft/i109495c--dft.pdf](http://www.irs.gov/pub/irs-dft/i109495c--dft.pdf).

5. 79 *Fed. Reg.* 8544, 8576 (February 12, 2014).

6. Note that many of the terms used in this overview have special definitions under ACA; the MEC Form Instructions and ESR Form Instructions provide detailed information on these definitions.

7. 79 *Fed. Reg.* 13220, 13225 (March 10, 2014).

8. 26 C.F.R. §1.6055-1(c)(2)(B).

9. ACA defines a *large employer* as having an average of at least 100 full-time or full-time equivalent employees for 2015 and an average of at least 50 full-time or full-time equivalent employees for 2016 and thereafter. The Section 414 controlled group rules do not apply for the purposes of determining the “employer” responsible for ACA reporting; each employer remains responsible for filing its own reports.

10. Current guidance suggests that the ESR reporting rules do not apply to retiree-only plans. Note that if a retiree was a full-time employee for any month of the calendar year (e.g., before retiring midyear or after returning to covered employment and earning active coverage), the employer must complete information on that individual for all 12 months of the calendar year.

11. See ESR Form Instructions, page 2, for information on the authoritative ESR transmittal form. An employer could submit multiple packets of ESR information statements for different groups of employees, each with a separate ESR transmittal form, or could submit all ESR information statements at once with one ESR transmittal form.

12. In comments submitted to IRS on November 3, 2014 regarding the draft forms and instructions, at least one commenter requested that IRS clarify how the alternative reporting options apply in the multiemployer plan context, and consider revising the criteria for at least one of the alternatives to categorically include contributing employers eligible for the multiemployer plan transition rule.

13. According to the ESR Form Instructions, ESR reporters reporting on coverage offered to an employee under a multiemployer plan generally will use a special indicator code (2E) on the ESR individual information state-

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ment for any month in which the multiemployer interim rule relief applies for that employee. This streamlines the amount of information that must be tracked and reported on ESR reports for those employees. There are a few exceptions. Current guidance suggests that employers eligible for the multiemployer interim rule relief must use *different* indicator codes for any month in which (a) the employee has enrolled in the health coverage offered, (b) the employee was not employed, (c) the employee was not a full-time employee and did not enroll in the health coverage offered or (d) non-calendar-year transition relief applies to the employee (this issue will be relevant only to parties with non-calendar-year plans; see pp. 12-13 of the ESR Form Instructions for details regarding the rules that apply for this special indicator code). Therefore, this information also will need to be tracked in the multiemployer context.

14. The current ESR Form Instructions state, with respect to line 14 of Form 1095-C: “Enter the code identifying the type of health coverage actually offered by the employer . . . to the employee. Do not enter a code for any other type of health coverage the employer is treated as having offered under the . . . multiemployer arrangement interim guidance (if the employer is contributing on behalf of an employee but the employee is not eligible for coverage under the multiemployer plan) under Form 1094-C, Part III, column (a).” The instruction refers to situations where “the employee is not eligible for coverage under the multiemployer plan.” This is inconsistent with the “multiemployer arrangement interim guidance,” which applies with respect to individuals who *are* plan-eligible.

15. 79 *Fed. Reg.* 13231, 13245 (March 10, 2014).

16. The 250-or-more requirement applies separately to each type of return and separately to each type of corrected return.

