

# COMPLIANCE UPDATE

## Q2, 2020

### [High Court to Hear Democrats' Obamacare Appeal as Election Nears](#)

**Status:** The U.S. Supreme Court (“SCOTUS”) will hear arguments next term, beginning October, 2020, with a ruling expected in early 2021.

**What it is:**

SCOTUS agreed to take a case whereby the Plaintiffs hope to reaffirm the constitutionality of the Affordable Care Act (“Obamacare” or the “ACA”), which, along with the government and nation’s response to Coronavirus Disease-2019, all but guarantee healthcare will be a central issue in the upcoming Presidential election.

**What you need to know:**

- The Justices will review 5th Circuit decisions that found the individual mandate, which originally required people to acquire health insurance or pay a tax penalty, unconstitutional. President Donald Trump’s administration is largely backing efforts to invalidate the law, arguing Obamacare’s unconstitutional provisions render it (including its pre-existing condition protections) entirely unconstitutional.
- In 2012, Chief Justice John Roberts found the individual mandate to be a legitimate use of Congress’s taxation power. However, a Republican-controlled Congress later joined with Trump to pass the Tax Cuts and Jobs Act (“TCJA”) and reduce the penalty to zero, and in doing so has placed the remainder of Obamacare in jeopardy.

### [In Surprising Memo, IRS Concludes There is No Statute of Limitations on Affordable Care Act “Pay or Play” Taxes](#)

**Status:** Currently in effect.

**What it is:**

The IRS’ Office of Chief Counsel unexpectedly concluded that the filing of ACA returns does **not** start [Employer Shared Responsibility Payments](#) (“ESRP”) statute of limitations. ESRP, commonly referred to as the “pay or play” tax or the employer mandate, is owed by Employers with 50 or more full-time (or equivalent) employees who fail to offer adequate, affordable, minimum essential coverage (“MEC”) to a required percentage of employees.

For more information about ESRP, visit: <https://fas.org/sgp/crs/misc/R45455.pdf>.

**What you need to know:**

- The [Internal Revenue Code](#) generally provides for a 3-year statute of limitations that starting running from whichever is later: the date a return is filed or the return’s due date.
- Considering the IRS’ position results in an evergreen option to assess ESRP, Employers should consider the following action to limit liability:
  - **Keep indefinitely records of status, determinations, waiting periods, and offers of coverage.**
  - **Ensure Forms 1094-C and 1095-C are timely filed with the IRS and that Form 1095C is timely furnished to employees.**
- Be prepared to fight ESRP penalties beyond three years.

# COMPLIANCE UPDATE

Q1, 2020

## [DOL Updates SBC Templates, Effective for Plan Years Beginning on or After 1/1/2021](#)

**Status:** The updated SBC materials are for use in plan or policy years beginning on or after January 1, 2021.

**What it is:**

The Department of Labor (“DOL”) has issued updated Summary of Benefits and Coverage (“SBC”) templates, instructions, and related materials for use in completing SBCs, as required under the ACA. The updated materials reflect the TCJA’s reducing the penalty for violating the ACA’s individual mandate to zero. HHS also updated its SBC-related documents, which (like the DOL’s updates) must be used for plan or policy years beginning on or after January 1, 2021.

**What you need to know:**

- The DOL’s updated SBC materials include sample completed and non-completed versions of the SBC templates.
- A section of the updated templates addressing MEC:
  - Describing the types of plans and coverage that may constitute MEC; and,
  - Noting that individuals who are eligible for certain types of MEC may not be eligible for a premium tax credit (“PTC”).
- The updated templates include other relatively minor changes, and can be accessed via the [DOL’s website](#).