

UBA
Compliance Advisor

What every HR leader should know about compliance



Compliance Recap

June 2021

Read time: 5 minutes

June 2021 was not a busy month in the benefits industry, largely due to the summer vacation season and the Independence Day holiday. Importantly, however, the U.S. Supreme Court upheld the constitutionality of the Patient Protection and Affordable Care Act (ACA). Additionally, the IRS unveiled a tool to assist families in taking advantage of the monthly Advance Child Tax Credit payments and issued a revised 2021 version of Form 941, Employer's Quarterly Federal Tax Return, to in part reflect the tax credit in connection with 100% COBRA subsidy under the American Rescue Plan Act (ARP). The Department of Labor (DOL) also issued guidance on the information to be disclosed pursuant to a participant's request during a claims dispute. We continue to monitor and advise on the Blue Cross Blue Shield Association (BCBSA) Antitrust Settlement as the claim deadline nears.

The ACA Upheld

On June 17, 2021, the U.S. Supreme Court upheld the constitutionality of the ACA by a 7-to-2 vote. The Court heard oral arguments in the case, *California v. Texas*, on November 10, 2020, which was a consolidation of 20 cases filed by state attorneys general and governors. The Court ruled that the plaintiffs did not have standing, or a legal right to sue, in order to challenge the constitutionality of the ACA. The Court did not address the merits of whether the individual mandate was constitutional. Accordingly, there is a possibility that additional constitutionality challenges will be made in the future. For now, the ACA remains intact and unchanged. Please review our [Compliance Advisor](#) for more on this topic.

IRS Tool for Advance Tax Credit

On June 14, 2021, the IRS issued IR-2021-129 which unveiled an online [Non-filer Sign-up tool](#) designed to help eligible families who don't normally file tax returns register for the monthly



Advance Child Tax Credit payments, scheduled to begin July 15. The tool is also designed to help eligible individuals who don't normally file income tax returns register for the \$1,400 third round of Economic Impact Payments (also known as stimulus checks) and claim the Recovery Rebate Credit for any amount of the first two rounds of Economic Impact Payments they may have missed.

The expanded and newly-advanceable Child Tax Credit was authorized by the American Rescue Plan Act (ARP), enacted in March of this year. The ARP increased the maximum Child Tax Credit (CTC) and allows taxpayers to receive an advance of the CTC. For 2021, the CTC is increased to \$3,600 for children under the age of 6 and to \$3,000 per child for children between ages 6 and 17. On May 17, 2021, the IRS and Department of Treasury [announced](#) that the increased CTC payments will be made on the 15th of each month unless the 15th falls on a weekend or holiday. Please review our [Compliance Advisor](#) for more on this topic.

IRS Draft Form 941

The COBRA subsidy is required to be provided to eligible individuals who experience an involuntary termination of employment or reduction in hours and that have not exhausted the maximum COBRA coverage period as of April 1, 2021. [Form 941](#) must be used by employers in connection with the payment of quarterly federal income tax, Social Security tax, and Medicare tax withheld from employees' wages, in addition to the employer's portion of Social Security and Medicare. Please review our [Compliance Advisor](#) for more on this topic.

DOL Says Audio Recordings Subject to Disclosure

The DOL issued [Information Letter 06-14-2021](#) in which it opined that audio recordings of a conversation between a participant and plan representative, and transcripts thereof, are subject to disclosure during claims adjudication process under ERISA Section 503. The DOL's position is not surprising based upon the transparency theme that has dominated recent legislation. Typically, when a participant appeals an adverse benefit determination, copies of documents related to the decision-making process are requested by the claimant in order to identify any possible errors in the plan's review of the appeal. The facts presented in the Information Letter, however, involved whether recordings made for quality insurance purposes, and not plan related purposes, were subject to disclosure as well. Please review our [Compliance Advisor](#) for more on this topic.

BCBSA Antitrust Settlement Classes Eligible for Proceeds

November 5, 2021, is the deadline for filing a claim in connection with the BCBSA \$2.67 billion dollar settlement reached in October 2020. The class action lawsuit filed was more than eight years ago by subscribers seeking injunctive and compensatory relief arising out of BCBSA's alleged violation of federal antitrust laws. Although final court approval for the settlement has not been granted, the official administrator of the BCBSA has established a [website](#) to provide information and instructions for filing claims online and by mail. Payment of the settlement



proceeds will be distributed to the settlement classes from the settlement fund after final court approval of the settlement.

Eligibility for settlement proceeds extends to individuals, insured groups (and their employees) and self-funded arrangements (and their employees) that purchased or were enrolled in a Blue Cross or Blue Shield (BCBS) health insurance or administrative services plan during one of the two settlement class periods. Please review our [Compliance Advisor](#) for more on this topic.

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