

# DOL Auditing Healthcare Plans for ACA Compliance

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**In the short time following the U.S. Supreme Court's decision upholding the Affordable Care Act, the U.S. Department of Labor's Employee Benefits Security Administration (EBSA) Los Angeles Regional Office has been busy sending employers (including some community banks of which we are aware) notices of examination of their healthcare plans. The examinations cover compliance with the Affordable Care Act provisions that became effective in 2010 and with other recent legislation, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Newborns' and Mothers' Health Protection Act, the Women's Health and Cancer Rights Act, the Mental Health Parity and Addiction Equity Act, and the Genetic Information Nondiscrimination Act.**

EBSA appears to be using a standardized document request list that includes plan documents, service provider agreements, mandated policies and notices, and evidence of dissemination and delivery of such policies and notices. The required policies and notices pertain to a wide variety of matters, such as HIPAA creditable coverage, dependent coverage to age 26, grandfathered plan status, preexisting condition and lifetime benefit limitations, emergency and preventive care services, wellness programs, mandated coverages, and preauthorization requirements.

It is not yet clear whether EBSA will be seeking substantial penalties from employers failing to comply with the various laws or will be using this primarily as part of its "external outreach and compliance assistance activities" and its compliance reporting to Congress.

Employers should consider undertaking their own compliance audits of their healthcare plans, using the EBSA request list, in order to be prepared before any examination notice arrives. We at Manatt can assist employers both in meeting the requirements of the various laws and in responding to any examination requests that may come from EBSA.