

2024 Annual Employee Benefits Compliance Checklist

General Counsel of Tax-Exempt & Governmental Entities

Considerations for General Counsel
of Tax-Exempt and Governmental Entities

The following checklist highlights key issues for general counsel with respect to employee benefit plans and executive compensation arrangements.

Amendments and Considerations for All Qualified Retirement Plans

- Prudent Fiduciary Procedures:** Any entity sponsoring a retirement plan is a fiduciary of the plan and a co-fiduciary with other fiduciaries named in the plan, such as the plan administrator or the investment fiduciary. Best practice is for investment fiduciaries responsible for selecting and monitoring plan investments to meet on a regular basis (preferably, quarterly) to review the performance of such investments and the reasonableness of investment-related fees that are paid directly from plan assets. Minutes of such meetings recording the fiduciaries' decisions should be maintained. Such fiduciaries should report annually to the board or its delegate.

General counsel should determine that the applicable plan fiduciaries have met during the year, maintained minutes, and reported on their activities to the appropriate board, individual, or committee.

- SECURE, SECURE 2.0 and CARES Act Amendments:** Amendments to conform to the SECURE Act of 2019 (SECURE Act), the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act), and the SECURE 2.0 Act of 2022 (SECURE 2.0) must be adopted by **December 31, 2026, for qualified plans or by December 31, 2029, for governmental plans.** Plan administrators should carefully document changes implemented under the SECURE Act, CARES Act, and SECURE 2.0 so that amendments adopted later will accurately reflect administration.
- Discretionary Plan Amendments:** Plan amendments reflecting discretionary changes that became effective in the current plan year (other than the SECURE Act, CARES Act, and SECURE 2.0 changes discussed above) must be **adopted by the last day of the plan year** (e.g., December 31, 2024, for a calendar year plan). An increase in benefits, the addition of a new participating employer, and the addition of a new type of contribution are examples of discretionary changes that would need to be documented in plan amendments adopted by the end of the year. For defined benefit plans, advance participant notice may be required if an amendment significantly reduces the rate of future benefit accruals, such as a pension plan freeze.

Executive Compensation

- For Tax-Exempt and Governmental Entities That Have Code section 457(f) Arrangements:** Such employers should review all employment agreements and Code section 457(f) arrangements for deferrals of compensation that vest in 2024 to confirm whether such amounts have been included in the employee's wages for 2024 and whether applicable FICA and income tax withholding occurred. If inclusion and withholding for any deferrals of compensation that vested in 2024 (or prior years) have not already occurred, action should be taken **by December 31, 2024**, in consultation with legal counsel.

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If you have any questions regarding this checklist, please contact any member of the Employee Benefits & Executive Compensation Section at Williams Mullen.

Marc Purintun	mpurintun@williamsmullen.com	804.420.6310
Brydon M. DeWitt	bdewitt@williamsmullen.com	804.420.6917
Nona K. Massengill	nmassengill@williamsmullen.com	804.420.6569
Allison J. Carlon	acarlon@williamsmullen.com	804.420.6268
Jordan E. Douglas	jdouglas@williamsmullen.com	804.420.6328