2024 Annual Employee Benefits Compliance Checklist
Plan Administrators

Considerations for Plan Administrators

Plan administrators should review the following actions to be taken before the end of 2024 and focus on what to expect for 2025. The following checklist addresses plan amendments, notices, and other considerations for qualified retirement plans (pages 1 through 4), welfare plans (pages 4 through 7), and stock-based and nonqualified plans (pages 7 through 9). A chart showing benefit and contribution limits for 2025 is on page 10.

Amendments and Considerations for All Qualified Retirement Plans

☐ **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.*** 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.

☐ **Determination Letter Procedures**: The Internal Revenue Service (IRS) determination letter program permits determination letter requests only for initial plan qualification, plan termination, or in the case of a merged plan. The application for determination on a merged plan must generally be submitted before the end of the plan year following the year of the plan merger. For instance, if a merger occurred in 2023, the determination letter request must be submitted ***no later than December 31, 2024***, for a calendar year plan.

☐ **Determination Letter Procedures for 403(b) Plans**: The IRS expanded its determination letter program and will now issue determination letters on individually designed 403(b) plans. The IRS will accept determination letter applications for initial review based on the last digit of the plans sponsor's EIN as follows:

Last digit of plan sponsor EIN:	Determination letter application may be submitted starting:
1, 2, or 3	June 1, 2023
4, 5, 6, or 7	June 1, 2024

8, 9, or 0	June 1, 2025

☐ **Changes to Form 5500 – Action required in 2025**: The IRS, Department of Labor (DOL), and Pension Benefit Guaranty Corporation (PBGC) announced changes to the Form 5500 Annual Return/Report effective for plan years beginning on or after January 1, 2023. The key revisions, which include changes related to provisions in the SECURE Act, include:

- The addition of selected compliance questions to improve tax oversight and compliance of tax-qualified retirement plans;
- A consolidated Form 5500 reporting option for certain groups of defined contribution retirement plans – defined contribution group (DCG) reporting arrangements;
- Improved reporting by multiple-employer plans (MEPs), including pooled employer plans (PEPs);
- A change in the participant-counting method for determining eligibility for simplified reporting for small plans;
- A breakout of reporting of administrative expenses paid by the plan on a plan's financial statements;
- Further improvements in financial and funding reporting by PBGC-covered defined benefit plans; and
- Technical and conforming changes as part of the annual rollover of forms and instructions.

☐ **Fee Disclosure – Action Required Annually**: Certain retirement plan service providers must provide an ERISA section 408(b)(2) fee disclosure to plan fiduciaries. The disclosure allows plan fiduciaries to determine if fees paid from plan assets are reasonable, as required by ERISA. Plan fiduciaries must provide annual fee disclosures to participants. Information on fees deducted from participants' accounts also must be provided in quarterly statements.

☐ **Fiduciary Procedures**: Best practice is for retirement plan fiduciaries responsible for selecting and monitoring plan investments to meet on a regular basis (preferably quarterly) to review the performance of the plan's 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 and approved by the committee. Such fiduciaries should report annually to the corporate board or its delegate.

☐ **Safe Harbor Plans**: Generally, safe harbor 401(k) amendments must be adopted before the beginning of the plan year. An employer that wishes to add or amend an existing safe harbor matching or nonelective contribution in a calendar year 401(k) plan for the 2025 plan year should adopt an amendment ***by December 31, 2024.*** Under the SECURE Act, however, an employer may adopt the 3% nonelective contribution safe harbor at any time before the 30th day before the close of the plan year.

☐ **Forfeiture Accounts**: The IRS issued proposed regulations in February 2023 to address the timing and use of forfeitures that accumulate in a retirement plan, as follows:

- Forfeitures arising in a **defined contribution plan** may be used to pay plan administrative expenses, reduce employer contributions, or increase benefits to other participants' accounts. The regulations generally require that plan administrators use forfeitures no later than 12 months after the close of the plan year in which the forfeitures are incurred. The plan document must provide for the treatment of forfeitures. It is recommended that the plan provide more than one use of forfeitures, in the event that the amount of forfeitures exceeds the need under one option.

- Forfeitures arising in a **defined benefit plan** cannot be used to increase the benefits of any employees. However, the anticipated amount of forfeitures can be used in determining funding under the defined benefit plan.

- The proposed regulations will be effective after the IRS issues final regulations but can be relied on now. It is anticipated that final regulations will be effective on or after January 1, 2025. The proposed regulations offer a transition rule so that forfeitures incurred prior to January 1, 2025, are treated as having occurred in the first plan year on or after January 1, 2025.

☐ **PBGC Premium Increase**: The PBGC per-participant flat-rate premium for ***plan years beginning in 2025*** is $106 for single-employer plans.

Notices for Defined Contribution Plans

☐ **Discretionary Matching Contributions Notice – Annual Notice**: Adopters of pre-approved 401(k) plans that provide for **discretionary** matching contributions must notify participants that are eligible to receive the matching contribution. If the employer funds matching contributions annually, then the employer must provide the employee notice within 60 days after the matching contribution has been made to the plan. If the employer funds matching contributions less than annually (such as with every payroll, monthly, or quarterly), then the employer must provide the employee notice within 60 days after the last matching contribution has been deposited for the plan year. This is a new requirement that is part of the "Cycle 3" restated pre-approved plans that sponsors adopted on or before July 31, 2022. The notice requirement does not apply to sponsors of individually designed plans but may be considered a best practice.

☐ **QDIA Notice – Annual Notice *and* Action required 30 Days Before Initial Investment**: The DOL Qualified Default Investment Alternative (QDIA) safe harbor regulations shield plan administrators from fiduciary liability with respect to default investments. Plans using QDIAs must provide notices to participants and beneficiaries that satisfy the regulations. An initial notice must be provided to newly eligible plan participants at least 30 days before such participant's first investment in the QDIA. Plan administrators must also provide an annual notice at least 30 days in advance of each subsequent plan year. For calendar year plans, the annual notice must be provided ***by December 1, 2024***.

☐ **401(k) Plan Notices – Action Required 30 Days Before Plan Year**: Sponsors of 401(k) plans are required to notify participants at least 30 days before the beginning of the 2025 plan year if the following features will apply to the 401(k) plan for the 2025 plan year. The following notices must be issued to participants ***by December 1, 2024***, for a calendar year plan:

- **401(k) Safe Harbor Notice**: Plan sponsors that intend to make safe harbor matching contributions for 2025 must provide a safe harbor notice to participants. The SECURE Act eliminated the notice requirement for plans that satisfy the safe harbor by making a nonelective contribution (*e.g.*, a flat 3% of compensation contribution to all eligible plan participants).

- **QACA Notice**: A Qualified Automatic Contribution Arrangement (QACA) is an automatic contribution 401(k) plan that is deemed to pass nondiscrimination testing. The QACA safe harbor requires annual increases to the automatic enrollment amount and safe harbor employer contributions.

- **EACA Notice**: An Eligible Automatic Contribution Arrangement (EACA) is another automatic enrollment plan that specifically permits a participant to withdraw automatic contributions made within 90 days after the first automatic contribution.

☐ **Diversification Notice – Action Required 30 Days Before Direction**: Defined contribution plans that permit participants to elect to invest in publicly traded employer securities (*e.g.*, a company stock fund) must provide participants with a notice of diversification rights. Plan administrators must distribute the notice at least 30 days before the first date on which a participant may direct the investment of the proceeds of employer securities.

Notices for Defined Benefit Plans

☐ **Benefit Statements – Action Required in 2025**: Defined benefit plans are generally required to furnish participants with a pension benefit statement at least once every three years. A permissible alternative notice requires an ***annual notice*** notifying the participant of the availability of the pension benefit statement and how to obtain it.

☐ **Annual Funding Notice – Action Required in 2025 for 2024 Plan Year**: ***Within 120 days after the end of the plan year (April 30 for calendar year plans***), defined benefit plans must provide the PBGC, participants, beneficiaries, unions, and contributing employers with detailed information about: (1) the funded status of the plan; (2) the plan's investments; (3) the group covered by the plan; and (4) a description of the rules for terminating the plan. Plans with fewer than 100 participants must provide the notice by the due date for filing the plan's annual return (Form 5500). Additional notice requirements apply if the plan is subject to benefit restrictions for being underfunded.

Considerations for Health and Welfare Benefit Plans

☐ **Gag Clause Prohibition Compliance Attestation due December 31**: Group health plans may not enter into an agreement with a third-party administrator, a provider, a network of providers, or an entity offering access to a network of providers that includes a "gag clause." A "gag clause" is a contractual term that restricts a health plan from sharing specific information with another party. Generally, plans may not enter into agreements that would prevent the disclosure of data or cost, quality of care, or certain other information to active or eligible participants, beneficiaries, enrollees, plan sponsors, or referring providers, or would restrict the plan from sharing such information with a business associate. Plans must submit an annual attestation of compliance with this requirement to the Departments of Labor, Health and Human Services, and Treasury. The attestation is due ***by December 31*** of every year. The attestation is made online here.

☐ **Cafeteria Plan Amendments**: Amendments to Code section 125 cafeteria plans must be prospective. Any changes to a calendar year plan for the 2025 plan year, such as benefit options, must be adopted by December 31, 2024.

☐ **Nondiscrimination Testing**: Nondiscrimination testing should be performed. Such testing includes:

- Code section 125 testing for cafeteria plans;
- Code section 129 testing for dependent care assistance flexible spending arrangements; and
- Code section 105(h) testing for self-insured health plans.

☐ **Mental Health and Substance Use Disorder Benefit Parity**: The Departments of Labor, Treasury, and Health and Human Services recently finalized regulations under the Mental Health Parity and Addiction Equity Act of 2008. Action is required by group health plans offering mental health and/or substance use disorder benefits to comply with the regulations in 2025. Significant changes include the following:

- Plan fiduciary certification that the fiduciary prudently selected and monitored the service provider performing the plan's nonquantitative treatment limitations (NQTL) analysis.
- Revision of the NQTL analysis requirements, including a requirement to collect data to identify any material differences in access to mental health and substance use disorder (MH/SUD) benefits as compared to medical and surgical benefits. Immediate action is required to ensure that plans comply with the NQTL analysis requirement in 2025.
- Requirement that plan definitions of MH/SUD be consistent with the most current World Health Organization's International Classification of Diseases adopted by the Department of Health and Human Services and/or the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders.
- New standard for "meaningful benefits" for MH/SUD conditions.

☐ **Prescription Drug Data Collection (RxDC) and Health Care Cost Reporting**: Pharmacy Benefit and Drug Costs Reporting (RxDC Reporting) is a reporting requirement implemented under the Consolidated Appropriations Act, 2021 (CAA). Group health plans and health insurance issuers offering group, individual, and self-funded health insurance coverage, as well as student health plans, must report information about prescription drugs and healthcare spending to the Departments of Labor, Health and Human Services, and Treasury. Reporting instructions are found here.

☐ **Reporting Health Plan Coverage to the IRS and Employees**: Code section 6056 requires Applicable Large Employers to report information about employer-sponsored health coverage to the IRS and employees. An Applicable Large Employer is an employer that employs at least 50 full-time employees, including full-time equivalent employees. In addition, sponsors of self-insured health plans that provide minimum essential coverage must file an annual return with the IRS and provide statements to employees. Returns are due to the IRS ***by March 31, 2025,*** and **must be filed electronically**. Statements to employees are generally due January 31, 2025 (no later than March 1, 2025).

☐ **Patient-Centered Outcomes Research Institute (PCORI)**: The PCORI fee applicable to health insurers and self-insured health plan sponsors is paid using IRS Form 720 and is due by July 31 of the calendar year following the last day of the plan year.

☐ **Transparency in Coverage**: Group health plans and issuers must disclose (i) cost-sharing information for a covered item or service from specific providers to participants and beneficiaries through an internet self-service tool, and (ii) pricing information to the public through three machine-readable files. Disclosure must include payment rates between plans or issuers and providers, the unique allowed amounts a plan or issuer used and associated billed charges for out-of-network providers, and pricing information for prescription drugs. Sponsors of self-insured plans should coordinate compliance with their third-party administrators.

☐ **Fee Disclosure**: Under the CAA, “covered service providers” to group health plans must disclose to the plan’s fiduciary the direct and indirect compensation that the covered service provider expects to receive from providing services to the plan. Covered service providers include persons who provide “brokerage services” or “consulting” to ERISA-covered group health plans and reasonably expect to receive $1,000 or more in direct or indirect compensation in connection with providing those services. Before entering into, extending, or renewing a service agreement with a covered service provider, plan fiduciaries should ask to see the ERISA section 408(b)(2) disclosure.

☐ **Notice for No Surprises Act**: Group health plans and insurers were required to provide the initial notice regarding patient rights under the No Surprises Act by January 1, 2022. The annual notice must be made publicly available, posted on the plan’s website, and included in explanations of benefits. The government provided a model notice to meet the disclosure requirements that can be used to ensure good-faith compliance with the disclosure requirement. The model notice can be found here.

☐ **ACA Affordability Requirements**: The IRS increased the ACA affordability percentage for 2025 to 9.02%. To meet the ACA affordability requirement in 2025, Applicable Large Employers must offer at least one health plan option where employee-only coverage is less than 9.02% of the employee’s household income.

☐ **Medicare Part D Notices**: Employers offering group health plans providing prescription drug coverage to individuals who are eligible for Medicare must provide a notice of creditable or noncreditable coverage to such individuals ***before October 15*** of each year. Such employers are also required to disclose to the Centers for Medicare and Medicaid Services (CMS) whether their prescription drug coverage is creditable within ***60 days after the beginning of the plan year***. Disclosure to CMS is made through the CMS creditable coverage disclosure webpage.

☐ **Student Loan Repayment Plans**: The CAA included a provision allowing employers to make tax-free payments on their employees' student loans of up to $5,250 per year through January 1, 2026. This is a five-year extension of a provision originally enacted in the CARES Act. The student loan repayment plan must be operated pursuant to a written plan document.

☐ **Summary of Benefits and Coverage**: Insurers and group health plans must provide a Summary of Benefits and Coverage (SBC) for each coverage option offered by the insurer or plan. Participants who enroll mid-year must be provided an SBC within 90 days of enrollment. Calendar year plans have already complied, or are in the process of complying, with this requirement. The SBC should be provided at the beginning of open enrollment each year if renewal is not automatic or at least 30 days before the beginning of each plan year if renewal is automatic. Plans also must provide 60 days' notice of changes to the content of an SBC.

☐ **Annual Notices for Group Health Plans**: In addition to the notices described above, employers must continue to provide participants with the following annual group health plan notices:

- Children's Health Insurance Program Reauthorization Act Notice
- Women's Health and Cancer Rights Act Notice
- Newborns' and Mothers' Health Protection Act Notice
- Primary Care Provider Patient Protection Notice
- ADA Wellness Program Notice
- HIPAA Special Enrollment Notice

Stock-Based, Executive, and Director Compensation

☐ **ISO Exercises and ESPP Share Transfer Reporting**: Employers whose employees exercised an incentive stock option (ISO) in 2024 or made an initial transfer in 2024 of shares acquired under an employee stock purchase plan (ESPP) within the meaning of Code section 423, are subject to information reporting. Employers will report information to employees and the IRS relating to ISO exercises and initial transfers of ESPP shares on IRS Forms 3921 and 3922. The ***IRS filing deadline is February 28, 2025*** (paper filing), or ***March 31, 2025*** (electronic filing). Employers must ***provide this year's employee statements by January 31, 2025***. Note that these filings apply to all companies offering ISOs or an ESPP, not just publicly traded employers.

☐ **FICA Taxation of Nonqualified Deferred Compensation Plans**: Nonqualified deferred compensation plans are subject to special rules on the timing of Federal Insurance Contributions Act (FICA) taxation. In general, amounts deferred are taken into account in the year those amounts are first vested, rather than at the time of payment. This rule often results in a smaller portion of the deferred benefit being subject to Social Security and (depending on plan design) Medicare taxes than would be the case if taxes were withheld and paid upon distribution. A number of factors affect the amount of compensation taken into account for a given year, and the proper year of taxation must be carefully assessed in the case of defined benefit-type nonqualified plans. Employers have until ***December 31, 2024,*** to withhold and pay FICA taxes on compensation deferrals that are subject to this rule in 2024.

☐ **Nonqualified Plan Deferral Elections for 2025 Compensation**: Elections to defer compensation earned in 2025 must be completed by ***December 31, 2024***, absent very limited exceptions. If a company plans to rely on any exception to the December 31, 2024, deadline, legal counsel should be consulted before year end.

☐ **For Deferred Compensation That Vests in 2025 or Later Years, Review and Correct any Code section 409A Violations**: Employers should review all nonqualified deferred compensation plans or agreements, under which compensation vests in 2025 or later years, to ensure that there are no Code section 409A violations. If employers identify the violation ***before the end of 2024***, then documentary violations with respect to unvested amounts generally can be corrected by ***December 31, 2024***, without penalties. Code section 409A corrections should correspond to methods described in formal guidance and should be reviewed by legal counsel.

☐ **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.

☐ **Identify 2025 Specified Employees Under Code section 409A**: Unless a different identification period has been elected, publicly traded employers must identify individuals who were specified employees in the 12-month period ending on ***December 31, 2024.*** Specified employee status for these individuals applies for the 12-month period beginning April 1, 2025. If an employer intends to change their specified employee determination and effective dates, legal counsel should be consulted.

☐ **Changes to Definition of "Covered Employee" under Code section 162(m)**: Code section 162(m) limits the deductibility of compensation in excess of $1 million paid to certain officers of a publicly traded employer. Significant changes to expand this limitation were made to Code section 162(m) in 2017. The American Rescue Plan Act of 2021 (ARPA) added five additional employees to the group for whom a compensation deduction is limited, reaching any employee (not limited to officers) who is among the five highest-compensated employees for the taxable year, other than individuals already covered under the 2017 legislative changes. ARPA's changes are effective for taxable years beginning after ***December 31, 2026***. In assessing the impact of an expanded Code section 162(m), relevant compensation will include long-term equity awards and cash incentives granted in 2025 that vest or become payable in 2028.

☐ **Evaluate Remaining Share Reserve for Equity Incentive Plans**: A publicly traded employer should determine whether the remaining share reserve under its equity incentive plan is sufficient for grants planned through 2025 and, ideally, 2026. If not, an employer should begin preparing now for share increase and other amendments that may be necessary or desirable. Share increases and certain other changes are required to be approved by shareholders under New York Stock Exchange and Nasdaq Stock Market listing requirements and under tax rules relating to ISOs, where ISOs are offered under a plan. An employer should consider both the timing of its annual meeting and its regular grant schedule as part of this planning.

Contribution and Benefit Limits for 2025		
Description	**2024 Limit**	**2025 Limit**
Compensation Cap	$345,000	$350,000
Elective Deferral Limit for 401(k) plans, SEPs, 403(b) plans, and 457(b) plans	$23,000	$23,500
Catch-Up Contributions for Individuals Age 50 and Above	$7,500	$7,500
Catch-Up Contributions for Individuals Who Attain Age 60, 61, 62, or 63 in 2025	N/A	$11,250
Defined Benefit Maximum Annual Accrual	$275,000	$280,000
Defined Contribution Maximum Annual Addition	$69,000	$70,000
Highly Compensated Employee Threshold	$155,000	$160,000
Key Employee in Top-Heavy Plans Threshold	$220,000	$230,000
ESOP Threshold for determining maximum account balance subject to 5-year distribution period Regular Limit Additional Amount to Lengthen 5-Year Period	 $1,380,000 $275,000	 $1,415,000 $280,000
SEP Compensation Threshold for Participation	$750	$750
SIMPLE IRA Salary Reduction Contribution	$16,000	$16,500
Catch-Up Contributions for SIMPLE IRAs or SIMPLE 401(k) plans for Individuals Age 50 and Above	$3,500	$3,500
Social Security Taxable Wage Base	$168,600	$176,100
Health Flexible Spending Account Maximum (Cafeteria Plans) Carryover Limit	$3,200 $640	$3,300 $660
Health Savings Account Maximum Contribution Self-only Coverage Family Coverage	 $4,150 $8,300	 $4,300 $8,550
Annual Out-of-Pocket Maximum for Marketplace Plans Self-only Coverage Family Coverage	 $9,450 $18,900	 $9,200 $18,400
Annual Minimum Deductible for High-Deductible Health Plans Self-only Coverage Family Coverage	 $1,600 $3,200	 $1,650 $3,300
Annual Out-of-Pocket Maximum for High-Deductible Health Plans Self-only Coverage Family Coverage	 $8,050 $16,100	 $8,300 $16,600

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

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