2026 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.

  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 of qualified plans should carefully review any administrative changes implemented under the SECURE Act, CARES Act, and SECURE 2.0 to ensure that amendments adopted in 2026 accurately reflect administration for all prior years. Plan administrators of governmental plans should carefully document changes implemented under the SECURE Act, CARES Act, and SECURE 2.0 so that amendments adopted later will accurately reflect administration. Qualified plans that have not yet adopted required amendments should prioritize completion before the year-end deadline.

- ☐ **SECURE 2.0 Act Changes Effective in 2026**: Highlights of the SECURE 2.0 retirement plan provisions that became effective in 2026 include:

  - ***Roth Catch-Up Requirement***. Beginning in 2026, participants whose prior year FICA wages from the plan sponsor exceeded $150,000 (as indexed for inflation) may make catch-up contributions only on a Roth basis. Plan sponsors should coordinate with recordkeepers and review payroll systems to ensure compliance with this new requirement for 2026 and future years. Plan sponsors may wish to consider adding a Roth feature to their plan if one does not currently exist.

  - ***Requirement to provide paper statements for plan years beginning after December 31, 2025 (ERISA-covered plans only)***. Beginning with the 2026 plan year, for defined contribution plans, paper benefit statements must be provided to participants at least once annually, unless certain conditions are satisfied. For defined benefit plans, unless a participant elects otherwise, the statement that must be provided once every three years must be a paper statement.

- ☐ **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, 2026, for a calendar year plan). Examples of discretionary changes include an increase in benefits, the addition of a new participating employer, and the addition of a new type of contribution. 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.

- ☐ **Cybersecurity and Data Privacy**: Plan sponsors should review (or adopt, if necessary) cybersecurity policies and procedures, confirm that plan service providers maintain adequate data security protocols, conduct periodic risk assessments, and provide timely breach notification. Department of Labor (DOL) cybersecurity guidance provides best practices for protecting participant data.

- ☐ **Service Provider Benchmarking**: Plan fiduciaries should periodically benchmark plan recordkeeper, investment management, and other service provider fees and services against the market. It is a best practice to engage in a formal request for proposal (RFP) process every three to five years.

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 2026 to confirm timing of income inclusion and applicable FICA and income tax withholding. Action should be taken ***by December 31, 2026,*** in consultation with legal counsel.

- ☐ **For Churches* Offering Deferred Compensation That Vests in 2027 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 2027 or later years, to ensure that there are no Code section 409A violations. If employers identify the violation ***before the end of 2026***, then documentary violations with respect to unvested amounts generally can be corrected by ***December 31, 2026***, without penalties. Code section 409A corrections should correspond to methods described in formal guidance and should be reviewed by legal counsel.

- ☐ **FICA Taxation of Nonqualified Deferred Compensation**: Amounts deferred under nonqualified plans are generally taken into account for FICA when first vested. Employers have until ***December 31, 2026***, to withhold and pay FICA taxes on 2026 vested amounts. Carefully assess proper year of taxation with legal counsel.

  *Churches, conventions or associations of churches, and elementary and secondary schools that are controlled, operated, or principally supported by a church, or convention or association of churches, are not eligible to maintain Code section 457(f) arrangements.

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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