

Mergers and Acquisitions: How They Impact Retirement Plans

A merger or acquisition can create significant retirement plan issues, even when the business transaction itself seems straightforward. The buyer, seller, and their advisors should address retirement plans early, because the deal structure may determine whether a plan is maintained, merged, terminated, spun off, or left behind.

Why Deal Structure Matters. In a stock purchase or merger, the target company usually remains the employer, so its retirement plan and plan liabilities often remain in place unless the parties take affirmative action. In an asset purchase, the buyer usually does not assume the seller's plan but still needs to decide how newly hired employees will be treated under its plan. Those decisions affect eligibility, service credit, coverage testing, payroll setup, participant communications, and whether the buyer is inheriting or avoiding any plan problems.

Due Diligence. Before the deal closes, the parties should identify every retirement plan maintained by the buyer, seller, target, and any controlled-group or affiliated-service-group member; review plan documents, amendments, determination or opinion letters, Form 5500 filings, testing results, correction history, late deposits, funded status; and any other relevant documents to determine what plans and liabilities will be assumed by the buyer or left with the seller.

Compliance Issues. M&A transactions require coordination under several Code and ERISA provisions, including Section 410(b) coverage testing, Section 401(a)(4) nondiscrimination, Sections 401(k) and 401(m) ADP/ACP testing, and Section 411(d)(6) protected benefits. Section 410(b)(6)(C) may provide temporary coverage-testing relief after certain acquisitions or dispositions, but only if the plans satisfied coverage before the transaction and there is no significant change in the plan or its coverage other than the transaction. Before terminating a 401(k) plan, the parties should consider the impact of the

successor-plan rule, which can prevent distribution of assets from a 401(k) plan on account of plan termination.

On-Going Administration Matters. When a transaction occurs, TPAs and recordkeepers may need to coordinate payroll feeds, deferral elections, loan repayments, investment mapping, blackout notices, vesting service, compensation definitions, eligibility classifications, controlled-group status, Form 5500 reporting, and other on-going plan administration matters.

Where TPAs Can Help. TPAs are often in the best position to spot retirement plan issues before they become closing or post-closing problems. Early TPA involvement can help the parties identify plan defects, decide whether to merge or terminate a plan, preserve transition relief, coordinate testing, and avoid payroll and eligibility mistakes after closing. A well-planned transition can make the retirement plan component of a transaction almost invisible to participants; a poorly planned transition can create missed deferrals, failed testing, uncollected loans, participant complaints, and expensive correction work.

Reminders:

- June 30: For a 2025 calendar-year 401(k) plan that qualifies for the EACA six-month correction period, corrective distributions or forfeitures of ADP/ACP excess amounts generally must be completed by this date to avoid the 10% excise tax under Code §4979.
- July 31: Calendar-year retirement plans generally must file the 2025 Form 5500 and, if applicable, Form 8955-SSA by this date, unless an extension applies.

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