

Mergers and Acquisitions (M&A): Retirement Plan Due Diligence and Best Practices



Retirement Plan
Consulting

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Gallagher

Insurance | Risk Management | Consulting

An organization in the process of acquiring or merging with another institution has already identified key financial and business objectives in proceeding with the transaction. But many firms do not consider the employee benefits implications of the deal until the transaction is well underway.

Organizations generally have one of two main concerns with respect to the retirement plan, to either minimize plan costs or minimize plan disruption.

For any organization acquiring or merging with another, it's important to enlist legal counsel, plan advisors and plan providers early in the process to determine how to accomplish the overall objectives, recommend alternatives and help avoid pitfalls. Plan sponsors will have more options prior to the transaction than afterward. As a result, plan sponsors — particularly plan sponsors who engage in corporate transactions regularly — should address plan-related questions as part of their deal-planning process and should explicitly state the resolution of those issues in the transaction documents if possible. A plan sponsor should consult with an attorney who has specific benefits experience to address retirement plan issues.

It's important to consider whether the current provider is up to the task. If the incumbent plan provider lacks significant experience with plan conversions, it would be worthwhile to consider other providers that do have the required knowledge. Gallagher can help identify key considerations, evaluate prospective plan providers, and help ensure that the chosen solution will meet all rules and regulations necessary to maintain compliance.

The Gallagher team has significant experience working with organizations that are active in the merger and acquisition space. We are accustomed to working with clients on pre-close due diligence, transition and onboarding processes. Our ability to consult on defined benefit, defined contribution, nonqualified and equity plans is extremely useful for our clients before, during, and after a merger and acquisition.

Gallagher has developed a multiple-phase process for managing merger and acquisition due diligence. Specifically, our three-phase approach with respect to retirement plans is as follows.

PHASE 1

During this initial phase, we will conduct a review of available plan documents and data. Items that could be of concern from a financial liability and integration challenge perspective are our first focus. This review and analysis will include an evaluation of those items that may have financial importance during the negotiations. We look at all potential retirement plans and programs including but not limited to defined contribution, defined benefit and nonqualified deferred compensation plans. Our goal in this phase is to determine any significant liabilities or concerns that could jeopardize the contemplated transaction.

PHASE 2

This phase will continue the analysis found under phase 1. We take an in-depth look at all retirement programs and executive arrangements with additional information and plan documents such as but not limited to Form 5500s, summary of material modifications, SPDs, collective bargaining agreements, financial statements (plan and corporate) and any other such documents that are available and pertinent. While a thorough review of plan-specific documents is important, it is paramount that the data in those documents reconciles with present company financials. Specific items or deliverables will be:

- A comparison of the Seller's and Buyer's retirement plans with an emphasis on those provisions that are potential employee relations or financial concerns, or which are protected benefits that must be preserved
- A pro-forma cost/benefit analysis
- A review of statutory compliance results from the prior year with a view toward current- and future-year implications
- A full report of all our findings and analysis documenting potential issues and opportunities

PHASE 3

After performing the necessary due diligence, Buyers must decide how to treat any plans for which they may now be responsible. During this phase we will work with the Buyer to assist in the harmonization of retirement plans and executive arrangements. This process will look at the implementation of those recommendations documented under phase 2. It is here that we consider the options relative to trustee-to-trustee transfers, plan mergers and outright plan termination. Furthermore, we will work with current record keepers to help ensure that plan participants experience a smooth and uninterrupted transition.

Processes and outcomes

Gallagher deploys a thorough approach to assisting clients who are faced with the challenge of integrating benefit programs post-merger and acquisition. Immediately following are some representative examples of the process and outcomes.

A large international publicly traded organization recently went through a complex asset purchase with a like organization that included a defined benefit plan. The Buyer did not operate a defined benefit plan and chose not to assume the continuation of the Seller's defined benefit plan, or the liabilities. Gallagher helped the Buyer establish a new defined contribution plan for acquired employees. Gallagher's actuary team provided detailed calculations to quantify the perceived lost benefits for the continuation of the existing defined benefit participants' lifetimes, and provided a benefit offset per participant. This gave the Buyer the ability to fund future liability or lost benefits over a three-year earn-out provision added to the asset purchase agreement. This provided for continuation of coverage, added benefits to the affected employee base and a harmonization of benefits for both employers.

Gallagher is fortunate to have an actuarial team at the ready to assist in reviewing potential plan liabilities for traditional defined benefit plans along with other post-employment benefits (OPEB) and supplemental executive retirement plans. During a recent merger due diligence, we were able to successfully negotiate the retention of the unfunded liabilities by the selling company by placement of a collar of reasonable assumed growth. In other words, the acquiring company assumed the defined benefit plan, but only after unfavorable plan design features were carved out and retained by the Seller.

Gallagher recently assisted a large publicly traded financial institution in the divestiture of its banking operations. We were engaged to determine the least disruptive approach for employees while maintaining equitable programs for each successor company. Furthermore, since this was a settlor function, it was important to assure that fiduciary issues that could foster litigation such as increased fees were managed appropriately. We also had to navigate the inclusion of employer securities and subsequent split shares of two new entities being held in both successor plans.

Our experienced team has worked with many for-profit organizations that have acquired tax-exempt entities. We have successfully integrated retirement programs only available to governmental entities such as 403(b) and 457(b) plans into a for-profit program and with minimal disruption to existing employees.

At the Outset of Due Diligence

- Locate and review plan documents, including any amendments.
- Determine needed revisions to existing plan documents.
- Review service agreements and contracts to identify any discontinuation periods, contract terms or surrender penalties that may apply if a provider or investments are removed from the plan.
- Identify any notifications that must be communicated in writing to providers that are no longer going to be providing services to the plan, and determine deadlines for delivering these notices.

M&A Pre-Acquisition Due Diligence Worksheet (Information to Obtain and Review)

IDENTIFY

COMPANIES INVOLVED

ENTITY AND CORPORATE STRUCTURE OF SELLER

CORPORATE STRUCTURE OF BUYER

NAMES/OWNERSHIP OF ALL ENTITIES RELATED TO SELLER

TRANSACTION TYPE

ASSET PURCHASE, STOCK PURCHASE OR MERGER

WHAT WILL HAPPEN TO SELLER'S RETIREMENT PLANS BEFORE AND/OR AFTER CLOSING? OR IS IT STILL BEING DETERMINED?

WHAT WILL HAPPEN TO SELLER AND ITS EMPLOYEES AFTER CLOSING?

RETIREMENT PLANS

TYPE AND NAME OF EACH RETIREMENT PLAN OF SELLER AND ALL RELATED ENTITIES:

- | | |
|--|--|
| <input type="radio"/> Contact at Seller responsible for plan | <input type="radio"/> Retirement committee members |
| <input type="radio"/> Trustee | <input type="radio"/> Fund holder |
| <input type="radio"/> Third-party administrator | <input type="radio"/> Investment advisor |
| <input type="radio"/> Auditor | <input type="radio"/> Actuary |

OBTAIN

PLAN DOCUMENTATION—FOR EACH PLAN, OBTAIN:

- | | |
|--|--|
| <input type="radio"/> Plan document | <input type="radio"/> Amendments |
| <input type="radio"/> IRS favorable determination letter
(or advisory/opinion letter for preapproved plans) | <input type="radio"/> Board of directors resolutions |
| <input type="radio"/> Loan policies | <input type="radio"/> QDRO policies |

AGREEMENTS:

- | | |
|---|--|
| <input type="radio"/> Service provider agreements | <input type="radio"/> Trust agreements |
| <input type="radio"/> Custodian agreements | |

PROOF OF REPORTING AND DISCLOSURE—FOR EACH PLAN, OBTAIN:

- | | |
|---|---|
| <input type="radio"/> Most recent Form 5500 | <input type="radio"/> 5500 attachments |
| <input type="radio"/> Summary plan description/SMMs | <input type="radio"/> Summary annual report |
| <input type="radio"/> Sample communications/notices | <input type="radio"/> PBGC filings (for DB plans) |

TESTING:

- | | |
|---------------------------------|--|
| <input type="radio"/> ADP/ACP | <input type="radio"/> Minimum coverage |
| <input type="radio"/> Top heavy | <input type="radio"/> Annual additions |

DETERMINE

- | | |
|---|--|
| <input type="radio"/> Are there any pending or threatened lawsuits against the plan, fiduciaries or trustees in relation to the plan? | <input type="radio"/> Have any representations been made to participants regarding plan benefits or vesting in the event the plan sponsor is acquired? |
| <input type="radio"/> Are there any pending or threatened claims against the plan that could lead to future litigation? | <input type="radio"/> Does the Seller have any union employees? If yes, obtain copy of collective bargaining agreement(s) and determine benefits. |
| <input type="radio"/> Are there any Voluntary Correction Program filings with the IRS or Voluntary Fiduciary Correction Program filings with the DOL? | <input type="radio"/> Does the Seller use leased employees or independent contractors? |
| <input type="radio"/> Are there accrued but unpaid contributions? | <input type="radio"/> Are there entities that provide at least 50% of their services to the Seller? |
| <input type="radio"/> Have there been any prohibited transactions in the last six years? | <input type="radio"/> Has the plan been audited by the IRS or the DOL? |

WHAT TO DO WITH THE SELLER'S PLAN?

Sponsors may want to consider additional opportunities that the merger and acquisition process presents, such as changing plan providers, revising the investment menu, outsourcing certain administrative tasks or changing plan design.

If considering moving to a new provider, sponsors should:

- **Request** a contractual discontinuation quote from the providers of both the Buyer and Seller. Your Gallagher consultant can be instrumental in negotiating this quote.
- **Collect** current plan documents, 5500 forms and nondiscrimination test results, as these materials will help familiarize any prospective providers with the status of the plan's testing and financials.
- **Consult** with your Gallagher representative and legal counsel to assess any contractual obligations to the current provider, and obtain terms for disengagement in writing. Your Gallagher consultant should be the buffer in working with the current provider to determine how to best transition the plan to a new provider.



Sponsors must first identify the requirements that impact their specific situations and their resulting responsibilities. When one organization acquires or merges with another, the options available may be dictated by the transaction type. For example, a stock acquisition requires that the Buyer must automatically assume ownership of the Seller's retirement plan unless, if permitted and possible, the Seller's retirement plans are terminated prior to the close date. In an asset acquisition situation, however, plan acquisition is open to negotiation. In an asset acquisition, the agreements reached through collective bargaining with unions may also impact decisions about plan features, benefits and employee eligibility.

Additionally, the Seller's plan may include protected benefits that cannot be taken away from participants — such as vesting schedules, withdrawal provisions and the definition of normal retirement age. If these protected benefits are more generous than those of the Buyer's existing plan, further analysis is necessary to determine whether it makes sense to merge the plans and create carve-outs for groups of employees. If the carve-outs are too extensive, keeping separate plans may be simpler due to the complexities involved in the administration of a plan with multiple carve-outs. Once an informed decision is made to maintain separate plans or create carve-outs in a merged plan, nondiscrimination testing is required.

A special transition rule under Internal Revenue Code Section (IRC §) 410(b)(6)(C) applies for meeting employee coverage testing requirements. Under this rule, the plan will continue to be considered in compliance with minimum coverage testing requirements during a transition period.

The transition period is the period that begins on the date of the transaction and ends on the last day of the first plan year beginning after the date of the transaction. For example, for an acquisition that takes place on September 1, 2021, the transition period that would apply for a calendar year plan would last until December 31, 2022.

The transition rule is only available if (1) both plans satisfy the coverage rules immediately before the acquisition, and (2) there are no significant changes in either the terms or the coverage of the plans following the transaction.

	Asset Acquisition	Stock Acquisition
WHO IS THE PLAN SPONSOR AFTER THE TRANSACTION CLOSES?		
Plan Sponsor: Who Sponsors Seller's Plan After Closing?	Unless affirmatively assumed by the buyer in the asset purchase agreement, the Seller remains the plan sponsor of the Seller's plan. The Buyer is merely purchasing the assets of the Seller's corporate entity.	Since the Buyer is purchasing the stock of the Seller, the Buyer will become the plan sponsor of any of Seller plans sponsored by the Seller as of the transaction date.
OPTIONS FOR DISPOSITION OF ASSETS OF SELLER'S PLAN AND OTHER CONSIDERATIONS		
Severance From Employment	In an asset acquisition, the Buyer buys the assets of the Seller, and sometimes also hires some or all of the Seller's employees. In this case, those acquired employees would have severed employment with the Seller and been re-hired by the Buyer, thus giving rise to a distributable event, entitling them to take a distribution from the Seller's plan. This is not true of any employees who remain with the Seller.	In a stock sale, the Seller typically becomes part of the Buyer's controlled group, and the Buyer maintains the Seller's plan unless action is taken prior to closing to terminate the plan. As a result, there is no severance from employment for the Seller's employees, and the Seller's employees cannot take a distribution from the Seller's plan.
Plan Termination	The Seller remains the sponsor of the Seller's plan. As a result, it is the Seller's responsibility to terminate the plan if it chooses to do so coincident with or after the closing. Note: When a plan is terminated, participants are required to be fully vested in their account balances. In addition, all distributions must be made in the form of a lump-sum payment.	Timing is extremely important. In order to allow for distribution of 401(k) elective deferrals on plan termination, the sponsoring employer cannot establish or maintain another defined contribution plan other than an ESOP for two years. These are known as the successor plan rules. Since the Buyer becomes the plan sponsor at closing, action must be taken to terminate the Seller's plan prior to the closing date.
Rollovers	Assuming a participant experiences a distributable event, the participant has the option to take a taxable distribution or roll over his account into another eligible retirement plan or IRA. If the account is over \$5,000, the participant also has the right to leave the funds in the Seller's plan. The terms of the Buyer's plan must accept rollovers if that is the Buyer's intention.	If the Seller's plan is terminated prior to the transaction, the participant has the option to take a taxable distribution or roll over his account into another eligible retirement plan or IRA. The participant does not have the option to leave the account in the terminating plan. The terms of the Buyer's plan must accept rollovers if that is the Buyer's intention.
Trust-to-Trust Transfer	The Seller and Buyer can agree to transfer the assets attributable to the acquired participants via a trust-to-trust transfer, such as a spinoff. Each participant's account balance would have to remain the same. In this event, participants in the Seller's plan do not experience a distributable event.	If the Seller does not terminate their plan prior to the transaction, the Buyer can decide to merge the Seller's plan with its own plan after the transaction. Each participant's account balance would have to remain the same.

	Asset Acquisition	Stock Acquisition
OPTIONS FOR DISPOSITION OF ASSETS OF SELLER'S PLAN AND OTHER CONSIDERATIONS		
Continue Seller's Plan	The Seller can continue its plan for its remaining employees, or the Buyer can take some affirmative action to assume sponsorship of the Seller's plan if it hires a large number of the Seller's employees. If the Buyer already had its own plan prior to closing, the old Buyer and new Seller plans would have to be aggregated for purposes of coverage and nondiscrimination testing. For the Seller, a large decrease in its participant population could result in a partial termination which would require immediate vesting for impacted participants.	If the Buyer decides to continue the Seller's plan, the Buyer will have to satisfy IRC § 410(b) minimum coverage requirements by aggregating all of the plans it maintains or passing coverage testing independently. However, there is a transition period after a merger — if certain requirements are met, the plan acquired during the acquisition will be treated as satisfying the minimum coverage requirements beginning on the date of the change and ending on the last day of the first plan year following the change.
Freeze Seller's Plan	Since the Seller's plan remains with the Seller after closing, it is the Seller's decision whether or not to continue its plan. If the Seller cannot immediately terminate the plan, it could freeze the plan for remaining employees so as not to incur additional contribution liabilities. However, the frozen plan would remain subject to plan document compliance issues, top-heavy rules, annual reporting and disclosure requirements, and fiduciary obligations.	If the Buyer does not want to continue the Seller's plan but cannot immediately terminate the plan, the Buyer can freeze the Seller's plan. The plan sponsor would have to amend the plan to disallow future contributions. A frozen plan remains subject to plan document compliance, top-heavy rules, annual reporting and disclosure obligations, and fiduciary obligations.
Merge Seller's Plan Into Buyer's Plan	This is not generally an option in an asset acquisition since the Seller retains sponsorship of its plan after closing (unless the Buyer accepts sponsorship of the Seller's plan in the asset purchase agreement).	Merger allows the Buyer to consolidate multiple plans into one, thus eliminating some administrative expense. Also, unlike plan termination, participants do not need to be fully vested on merger. However, the Buyer's plan would be required to grandfather certain benefits from the Seller's plan that cannot be eliminated so as not to violate the IRC's anti-cutback rules. In addition, there is a chance that any defects that exist in the Seller's plan will taint the qualified status of the Buyer's plan.

Before the merger or acquisition takes place, it's imperative to consider the retirement plans and their respective benefits, as options may be limited after the transaction is completed. A checklist of key features of the plans such as the following due diligence worksheet can be used to do side-by-side comparisons, and a compliance review should be completed on both plans.

Plan Comparison Due Diligence Worksheet

PLAN PROVISION	PLAN 1	PLAN 2	COMMENTS/ISSUES
BASIC PLAN INFORMATION			
Plan Name			
Plan Type			
Plan Sponsor			
EIN			
Participating Employers			
Three-Digit Plan Number			
Original Plan Effective Date			
Plan Amendment Date(s)			
Plan Year			
Plan Trustee(s)			
Trust ID			
Administrative Signing Authority			
ELIGIBILITY			
Eligible Employees			
Inclusions			
Exclusions			
Eligibility Service Calculation			
Method			
Computation Period			
Eligibility Requirements			
Minimum Age			
Minimum Service			
Other			
Entry Date(s)			
COMPENSATION			
For Contributions			
For HCE Determination			
For Annual Additions Testing			
For Key Employee Determination			

Plan Comparison Due Diligence Worksheet

PLAN PROVISION	PLAN 1	PLAN 2	COMMENTS/ISSUES
CONTRIBUTIONS			
Automatic Enrollment			
Percentage			
Automatic Escalation			
Elective Deferral 401(k) Contributions			
Minimum			
Maximum			
Changes to 401(k) Contributions			
Matching Contributions			
Mandatory/Discretionary			
Eligibility			
Amount			
Safe Harbor Contribution			
Employer Profit-Sharing Contribution			
Eligibility			
Allocation			
QNEC			
QMAC			
After-Tax Contributions			
Rollover Contributions			
BENEFIT ACCRUAL AND FUNDING (DEFINED BENEFIT PLANS)			
Benefit Accrual Method			
Funding Method			
VESTING			
Schedule(s)			Potential protected benefit
Matching Contributions			
Employer Contributions (Other Than Match)			
Vesting Year of Service			
Vesting Computation Period			
Hour of Service Counting Method for Vesting			
FORFEITURES			
Forfeiture Use			
RETIREMENT			
Normal Retirement Age			
Early Retirement Age			Potential protected benefit
Early Retirement Subsidy			Potential protected benefit

Plan Comparison Due Diligence Worksheet

PLAN PROVISION	PLAN 1	PLAN 2	COMMENTS/ISSUES
DISTRIBUTIONS			
Plan Distributions			
Form of Distributions			Potential protected benefit
Automatic Distributions			
In-service Distributions			
Source(s)			
Hardship Distributions			
Source(s)			
Reason			
Suspension Period			
Spousal Consent			
Loans			
Minimum Dollar Amount			
Maximum Dollar Amount			
Maximum Number			
Repayment Term			
Interest Rate			
Spousal Consent			
INVESTMENTS			
Participant Directed			
ERISA 404(c)			
Investment Changes			
Fund Transfers			
TESTING			
Limit HCEs to top 20%			
Year: Current or Prior			
415 Limitation Year			
ADP/ACP Correction Method			
Borrowing Allowed			

CONDUCT A COMPLIANCE REVIEW

Qualified retirement plans cannot retain their qualified status if they don't comply with various laws and regulations. There can also be significant financial implications for plan participants if a plan becomes noncompliant. Compliance reviews should be conducted on existing plans of both the Buyer and the Seller. The review will allow for comparison of the plan designs, provisions, objectives, investments, administration, communication, education and contribution amounts. It will also identify potential obstacles to compliance before a course of action is determined.

CONSIDER ALTERNATIVES

It's likely that one of three scenarios will come into play for the Buyer.

1. **The Buyer has a retirement plan in place while the Seller does not.** In this situation, new employees can be absorbed into the existing plan after several decisions have been made. For example, will prior service of new employees be counted toward eligibility and vesting requirements? Will benefits for this group be the same as for all other employees? It's important to consider that having different benefits for different groups of employees can add complexity and cost, and will require additional nondiscrimination testing. Therefore, it's important to identify potential compliance issues before making a decision.
2. **Both the Buyer and Seller have retirement plans in place, and the Buyer is obliged to take sponsorship of the Seller's plan.** In this situation, the Buyer must decide between maintaining separate plans and consolidating into one plan. Maintaining separate retirement plans for employees can be the costliest option, as the administrative burden will be greater. A cost-benefit analysis can help determine whether to maintain separate plans or merge plans. Coverage testing will be conducted to help ensure that plans can stand alone, or the plans will be required to be aggregated. If there are different benefits provided under each of the plans, additional nondiscrimination testing may be required to help ensure that a plan does not disproportionately favor highly compensated employees.

3. **Both the Buyer and Seller have retirement plans in place, and the Buyer is not required to take ownership of the existing plan.** There are two options under this scenario.
 - The Buyer can negotiate to not take ownership of the Seller's plan. In general, this would lead to the plan being terminated, with the termination being the previous sponsor's responsibility. In this scenario, employees can be brought into the Buyer's plan after decisions about crediting prior service and benefit structures. In addition, employees may be able to roll over their accounts from the terminating plan.
 - Through negotiation, the Buyer decides to take ownership of the Seller's plan, and either maintains two separate plans or merges the plans. Maintaining separate plans (after ensuring that certain nondiscrimination tests are passed — this will need to be continually monitored) generally is not the most cost-efficient solution. Merging the plans requires careful analysis of plan design to evaluate protected benefits. Separate benefit structures will trigger certain nondiscrimination testing.

If a plan is terminated, all participants become immediately vested regardless of vesting criteria in the plan document. Employees often choose to take plan distributions from a terminated plan as a taxable lump sum rather than rolling their assets into another retirement plan or IRA. This is known as leakage and means the employees will lose a portion of their retirement savings to taxes. Employers who are actively involved in helping employees save for retirement will want to avoid leakage, as it may not be in the best interest of the employees.

Once a decision has been made and a strategy is in place, it's important for plan sponsors to complete and sign the appropriate plan documents, corporate resolutions, and administrative and investment agreements.

CONTROLLED GROUP CONSIDERATIONS

A controlled group exists if there is a certain amount of controlling interest between the Buyer and the Seller. The amount of controlling interest needed to determine if a controlled group exists varies based on the relationship between the organizations. If a controlled group does not exist, nondiscrimination testing issues generally do not come into play.

If a controlled group exists, both plans must be reviewed together to determine whether highly compensated employees are treated more favorably. Testing may indicate that similar plan provisions may need to apply to all employees to not be discriminatory. If either of the existing retirement plans does not pass minimum coverage testing as disaggregated (or tested separately), there are two options:

1. Expand the coverage under the plan that failed the testing — a potentially costly approach.
2. Aggregate the plans, creating a new single plan for testing purposes. This is extremely complicated, so it's important to consult with the plan's consultants and providers to weigh options, analyze costs and determine a strategy that will make the most sense for the plan sponsor and the employees.

EVALUATE THE INVESTMENT MENU

Before moving forward with any plan conversion, sponsors should examine the investment options offered to participants. An appropriate range of options is critical to the ability to build a diversified portfolio. Employees of the Seller may have a different risk tolerance and therefore different investment needs than employees of the Buyer. Those different needs must be addressed as part of a fiduciary's responsibility. In a sensitive situation such as a merger or acquisition, participants may feel as if they are forced to give up investments with which they have been satisfied, or they may be confused about what to do with their current and future investments. Avoiding such sentiment may be especially important if a plan is being terminated. Sponsors may wish to help ensure that appropriate substitutes are offered within the existing plan to replace the options new employees are losing.

As part of an investment review, sponsors should compare the investment options available to participants in both organizations (the Buyer and the Seller), and identify the asset classes and types of options that will be available to all participants. Sponsors should leverage their plan's investment advisors to discuss current and prospective investment options to fully understanding the advantages each option may represent. In evaluating the plan's investment needs, the following questions should be answered.

- 1 Is the investment lineup sufficient for all plan participants?
- 2 Are there important differences in the types of investments being used by the Seller's employees that need to be accommodated in the new plan?
- 3 What share classes are used in the plans? Are lower-cost alternatives warranted?
- 4 Will any investments impose a withdrawal charge if transferred? If so, how will the situation be handled, and who will bear the cost?
- 5 Are participants getting enough guidance and advice to make informed decisions? Could they benefit from having more prepackaged or managed solutions, such as target date funds, managed accounts or other solutions that help them build their investment portfolios?

If any funds in the Seller's plan are scheduled to remain on the menu, sponsors need to know whether their current provider can maintain those funds on its platform. Additionally, the plan advisor and provider can assist in developing a strategy to map current holdings to similar investments under the new plan.

Mapping existing assets into similar investment options within the retirement plan platform can often simplify the conversion process. A Gallagher advisor can propose an appropriate mapping strategy or, alternatively, the provider should be able to transfer investment options in kind to its platform to help avoid liquidation of plan assets during the transition. Both solutions don't require participants to take any action unless they want to make new investment selections. If investments can be mapped to the plan sponsor's satisfaction and offer an appropriate range of solutions for handling investments, the transition will be smoother and communications to plan participants will be simpler.

HANDLING EXISTING PLAN ASSETS IN A TERMINATED PLAN

If a plan is to be terminated, participants' assets may move from one provider to another during the conversion process. Participants are generally given the option to roll over their assets to the new provider (and choose from the available options under the new plan, roll the assets into an IRA or withdraw their assets subject to applicable tax requirements).

In certain situations, it may be beneficial to work with the current and new providers to develop a rollover strategy that will allow for bulk rollovers, where all rollover requests are combined and the assets are moved in bulk. This strategy may also include a mapping strategy, as previously discussed. Bulk rollovers are especially helpful for plans that offer participant loans, when participants from the terminating plan would like to continue repaying the loan they have taken from their plan. Handling conversions in this manner makes the rollover process much easier for participants and can help reduce retirement plan leakage.

Considerations when converting a 403(b) plan

Organizations must be classified as nonprofit under 501(c)(3) to be eligible to offer a 403(b) plan. A 501(c)(3) letter must be obtained from the IRS.

Investigate whether the plan investments include institutionally or individually owned assets. Institutional ownership of assets empowers the employer to initiate the transfer of plan assets from one provider to another on behalf of plan participants. If investments are individually owned (as are some annuity contracts), participants will be individually responsible for deciding whether to transfer to a new provider or maintain their assets with the former provider. Fees may be associated with moving assets from the former provider.

A new provider can help evaluate these costs and decide how they should be handled, if applicable.

Transferring participant account information and assets from one provider to another requires the former and new provider to share information.

Sponsors will need to assess how best to facilitate this step and establish monitoring guidelines.



DETERMINING PROVIDER CAPABILITIES

While fairly straightforward, the conversion process involves several complicated steps. Sponsors should assess their current provider's experience with plan conversions and its ability to determine if it may be advantageous to move to another provider. With any provider, an in-depth analysis should determine the following:

- **Will the provider assign a dedicated conversion project manager and team to facilitate the conversion from beginning to end?** If the provider has not done this in the past, it may be an indication that experience is lacking.
- **How long does the provider expect the conversion to take?** Some providers may try to give the most optimistic estimate. Unless there are unique circumstances, the conversion should realistically take about three months to complete. If a provider estimates a shorter time frame, that provider may not be able to deliver on promises or satisfy expectations.
- **Will the provider furnish a comprehensive specimen project plan that outlines timelines and processes for completing a plan conversion?** Sponsors should have their Gallagher consultant review this document to confirm that all necessary steps have been identified and addressed, and that the timeline is realistic.
- **How closely will the conversion team work with the sponsor's service teams once the conversion is completed?** The provider should be able to describe in detail exactly how the conversion is coordinated with subsequent ongoing service efforts to facilitate administration, participant communications and other aspects of the plan.
- **How will the provider work with other vendors to transfer data and plan assets?** Providers should specifically reference other companies they've worked with in the past and share insights about their experiences. Sponsors should find out what went right and what went wrong, as this knowledge can be invaluable in gaining perspective about what to expect, what to avoid and how to take control of the situation.

DEVELOP COMMUNICATION STRATEGIES

Even during the smoothest of plan conversions, participants will be impacted when the changes occur — especially if a previous plan is terminated and/or a provider that represented a long-standing relationship to the plan is being replaced.

Preparing affected participants in advance by explaining the reasons for action, providing details of any changes and detailing the benefits of the plan is a critical communications message that should be delivered sooner rather than later. There are also legally required communications in the event of a termination. Defined benefit plans require advance notice communications and defined contribution plans generally do not. Communications should be made within the legal time frame for other transactions, such as when plans are merged, there are changes in sponsorship, or participation is ending.

In addition to the legally required notices, sponsors should evaluate the most effective way to connect with employees so they can tailor the communications to fit their needs. The plan provider should have the ability to support this effort with recommendations for a comprehensive communications program. The plan advisor should review the proposed communication strategy.

Once the plan conversion is underway, sponsors will rely heavily on their provider's transition team to help with employee communications. Since the culture of the Buyer may be distinctly different from that of the Seller, the communication strategy will need to be attuned to different needs.

Steps to help develop a communication strategy.

1

Assess the new total workforce to determine best ways to reach them. Consider mobility, work hours and worksite locations. Remember that the Seller's employees may have different expectations and experiences in terms of communication channels. Plan providers can make recommendations that should encompass more than one method of communication to help ensure all announcements are on message and broadly distributed.

2

Verify that communications don't occur during peak production periods for various employees groups. At peak production times, employees may have too much on their plates to properly focus on retirement program changes. Again, this may require being sensitive to the needs of the Seller and its high-volume business patterns.

3

Avoid communicating plan changes during holiday periods. During these periods, employee may be on vacation or inattentive because they are covering for other coworkers. This is especially important if the conversion will involve blackout periods when employees will not have access to their accounts.

4

Evaluate how to distribute important information to employees. Email and internal distribution are more efficient and cost-effective than traditional mail, but employees may be able to give more time and attention to materials they receive and can review at home. In addition, consider using employer-sponsored group meetings or emails to promote interest and enthusiasm regarding changes to the retirement plan. Depending on the workforce, sponsors may want to use digital solutions such as webcasts with flexible meeting times to accommodate employees who may not be able to assemble in a central location.

5

Determine whether it will be effective to engage key employee segments, such as department managers, to serve as advocates for explaining the plan changes to their staff.

6

Endorsements from a trusted source may be extremely helpful in an M&A situation to reassure and engage employees in the process.

CONCLUSION

Building a cohesive organization after a merger or acquisition takes time. Communicating with employees to help ensure that they remain informed and comfortable about their benefits can go a long way toward reducing employee stress during the M&A process.

A seamless plan conversion can ease anxieties and keep employees focused and productive, which should be reason enough to analyze the retirement plan as an overall component of an M&A strategy.



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