In today’s ever-changing business marketplace, is there an employee who has not been affected by a merger or acquisition? Is there a human resources (HR) professional who has not felt the strain of implementing and communicating benefit plan changes due to a change in ownership?

Unfortunately, the business decision makers that execute a merger or acquisition are not always those primarily concerned with employee morale and company benefits. Too often, the impact of merger and acquisition (M&A) activity on a company’s benefits structure is an afterthought.

What can you do to successfully transition employees to new retirement plans due to a merger or acquisition? The following process can give you the structure to create and execute a successful implementation strategy.

**Stage 1: Planning**

*Mapping your route*

During the pre-merger or preacquisition stage, you will lay the foundation for the entire transition process. You’ll notice that this section is the longest and most detailed … that’s because planning is the most important phase of a successful transition.

Before a transaction is announced, you should review and evaluate the benefit plans, identify any potential liabilities, and resolve any outstanding compliance issues. Once the merger or acquisition is public knowledge, employees will feel an immediate sense of anxiety. Questions will come fast and furious. Your attention to detail during the planning stage is a good indicator of the future success of the transaction.

**Conduct due diligence**

One of the most important phases of the planning process is pre-merger due diligence. It is during this phase that an acquirer should investigate the implications of various courses of action (plan merger, plan termination, or leaving the plan with the seller), and make preliminary decisions. Thoroughly investigating the acquired company’s benefit plans is key to protecting your company’s financial interests. While an initial review will take a broader look at the benefit plans, due diligence is a more in-depth review used to uncover any liabilities that could change the value of the transaction. It’s important to do this review whether the benefits are proactively or reactively involved in the merger and acquisition process. Here are items to consider:

- Review the acquisition prospect’s benefit plans to identify liabilities and to estimate future contribution and expense requirements.
- Determine whether the acquired plans contain protected benefits, such as early retirement provisions and distribution options, which must be preserved.
- Review plans for compliance with regulatory requirements.
- Investigate financial opportunities arising from the acquisition of defined benefit plans.
- Determine how the acquired plans fit into your benefits strategy and develop recommendations regarding merger or termination of the plans.
- Prepare all required IRS filings and plan document amendments related to the merger or termination of the acquired plan for review by your legal counsel.

**Review existing benefit plans**

A key step in any M&A activity is reviewing and comparing the current employee benefit plans of both companies (the two companies in a merger or the acquirer and the “acquired” in an acquisition). Creating a detailed side-by-side comparison will easily highlight major differences in the plans — differences that could lead to administration and communication issues.

In addition to comparing the details of the benefit plans today, step back and take a big picture look as well. Are the retirement plans competitive within your industry? Do they meet your company’s benefit objectives? Are you satisfied with the administrative requirements and the pricing? Are the investment options and fund performance consistent with your investment policy statement?
A merger or acquisition presents an opportunity to redesign your retirement benefits package. You can look for creative solutions to existing problems and perhaps offer an all-around better package of retirement benefits to all employees. Long term, a few enhancements in certain areas will help to offset the “takeaways” that will otherwise become the focus of acquired employees.

Think proactively … this is one of those areas where you can plan for the unexpected. If you keep an updated overview of your plan and a current state of the plan in comparison to the marketplace (such as a benchmarking comparison), you’ll be ready to plug in the information of the merging company much more quickly and begin your analysis.

Remember, you do not need to tackle this challenge alone. Ask your vendors to conduct a review and create a comparison of the plans they administer. That leaves you time to manage the overall process instead of the details. Vendors can offer an objective viewpoint, plus they bring valuable experience in working on other clients’ mergers and acquisitions.

You can use the high-level benefits comparison and more detailed due diligence to formulate a recommendation for how to proceed with the benefits plan transition — its design, options, and features.

Develop your M&A benefits strategy

Where do employee benefit plans fit into your company’s overall M&A strategy? Has management recognized their importance and included relevant HR staff as part of the planning process? Or can you expect a call in the middle of the night saying the deal is done and it’s now time to figure out the impact on employees and their benefit plans?

If you do not have an M&A benefits strategy, you need to develop one. Try to convince your company’s M&A team that HR in general — and benefits in particular — play a major role in the success of a merger or acquisition. Ask to be a part of the transition planning as early in the process as possible.

Failing that, create your strategy assuming you will not be involved until late in the game. How can you be prepared for what you will need to accomplish on short notice? Checklists such as the one at the end of this paper can help. Think of other proactive ways you can prepare for a change and streamline your workload. Can you draft templates for employee communications? Can you put your vendors on alert that their help will be needed — perhaps with only a short turnaround time? Take time now to understand the support each of your retirement plan vendors will provide during a merger or acquisition.

While you are not always given the best scenario to do your job, you can still create a strategy for whatever scenario is put in front of you. Plan ahead, even if you will not be included in the M&A strategy sessions.

Build a transition team

Once decisions are made as to what the retirement plans will look like after the merger or acquisition, you will need a team of individuals to make it happen. While there is probably a larger implementation team related to the corporate merger or acquisition, be sure to consider your needs for specifically transitioning the retirement plans and build your own team as well.

The transition team will manage all aspects of your plan transition, including establishment of participant records, asset transfer, and employee communications. Benefits personnel from both companies may work closely with the recordkeepers, trustees, payroll providers, and investment managers to ensure a seamless transition.

Your transition team will consist of internal and external members. Internally, you’ll want experienced people with time to devote to the project. Externally, your vendor contacts should be considered a part of the team. Make sure your team is comprised of specialists dedicated to mergers, acquisitions, and other significant plan changes. Put a strong project manager with experience coordinating multiple tasks in charge of keeping the team on track.

Analyze investments

During this step you should analyze the funds available in both plans. Your plan provider will be a valuable resource for you and can probably complete this analysis for you. You will want to balance quality of options, with cost and participant satisfaction.

As part of your fiduciary duties, consider the number of funds and asset classes offered. Analyze any gaps that exist and discuss whether now is the time to fill them.

From the spectrum of funds available, you should receive information from your fund provider to assist you in fund selection for your plan, along with mapping information for assets moving from discontinued funds to new funds.

In conducting this analysis, you should follow your established investment policy statement. This formal document spells out the plan sponsor’s objectives, the method used to structure the investment array, criteria for selecting funds, the method for monitoring fund performance, and the objective, style, and performance benchmarks for each fund.

Stage 2: Transition

Managing the plans

The transition stage is the time to execute and communicate your new benefits plan strategy. Your goals should include ensuring that your conversion to new benefit plans (or termination and liquidation of prior plans) is accomplished with minimal disruption to work flow and optimal employee understanding and satisfaction.
Develop your detailed plan

Many transition issues will be identified in the due diligence process. As you go through your detailed plan, these issues will be addressed and solutions suggested.

Your detailed plan will have several parts. At a minimum, consider administration, payroll, investments, and employee communications. Depending on the size of your team and the scope of the changes, each one of these parts may require a separate project plan.

Plot your action steps on a detailed timeline to make sure you reach your objectives and avoid missed deadlines (self-imposed and regulatory). In addition to action steps and deadlines, identify clear responsibility for each action and identify authority for decision-making.

Prepare participant communications

Employee morale, productivity, and support of the merger or acquisition may hinge on the way changes in retirement benefit plans are communicated. If you do not plan to maintain your existing plan until the new plan begins, then the time to begin communicating with plan participants is after plan design and fund selection are completed and prior to the official transition to a new plan.

Before getting into the details and specific action steps, conduct a comprehensive communications audit. This audit will help determine your needs, identify your goals, and set a strategy. Additionally, ERISA or other laws may require employees be notified of certain events or receive specific information with regard to changes in their benefits. Identifying any applicable requirements and the prescribed timing for each early in the process is important.

Your communications strategy should:

• Address sensitivities employees may have about their benefits as well as the change in company culture.
• Leverage communications as opportunities to educate and increase awareness and appreciation of employer-sponsored benefits.
• Utilize a graphic or visual approach to reinforce the message and appeal to the primary employee demographic group.

In a merger or acquisition, it is important to remember there are two audiences: employees of the acquiring company and employees of the acquired company. Determine whether the same message will work for both or if different messages are needed.

Your communications strategy should emphasize the enhancements while also addressing all changes being made to the plan. The last thing participants need is to be surprised about changes after the transition takes effect. Be creative in looking for the enhancements. Even small items such as extended customer service hours, additional fund choices, or bilingual telephone support can make a difference to employees.

Once your strategy is set, develop a detailed communications plan. The communications plan will guide you through the implementation. It specifies communication elements, vehicles, and timing. At a minimum, your plan should include the following elements:

• A general announcement of plan changes to come (and possibly a Sarbanes-Oxley notice).
• Multiple conversion communications detailing specifics of the new fund selection, mapping from discontinued funds to new funds, transition time table, and key dates.
• Communications to beneficiaries, retirees, and terminated employees still participating in the retirement plans — these may generally be the same communications that go to current employees.
• A Summary of Material Modifications distributed within 210 days of the end of the plan year in which plan changes occur.
• An ERISA 204(h) notice (a notice of benefits reduction), if required.

Execute your transition plan

You’ve laid the ground work with planning, now the execution should be easy. Keep these items in mind when the days get long and hectic:

• Use your vendors to help whenever possible.
• Keep employees informed: Tell them what you’re going to tell them, then tell them, and then tell them what you’ve told them.
• Be flexible, but be prepared. Plans may change and you’ll need to adjust based on events happening at all times. Readjust your plan as necessary and keep employees apprised of any changes.
• Allow for employee questions. Consider offering employee forums, an anonymous question box, or a weekly email. Respond to all employee questions promptly and honestly, even those you hear of indirectly. In this way you can acknowledge the grapevine and squelch any rumors that are untrue while making sure employees have a continual stream of accurate information.

Stage 3: Integration

Becoming one company

Once the merger or acquisition is complete, the work begins on integrating the new plan and/or participants into the routine flow of your day-to-day administration and communication. After the initial rush of the transition is complete, you’ll find ways to streamline your process flow, improve some aspects of your administration, and encourage participants to become better prepared for the future. In some cases, you may even need to start planning for the next acquisition!
Develop ongoing employee communications

After the initial transition is complete, you will still face employee challenges related to the after-effects of the merger or acquisition. You should plan a continuous flow of information promoting your new retirement plan to make sure employees value the benefits provided. Ideas for ongoing communication include: statement stuffers with the quarterly statements reminding participants of new plan features and how to read the new statement, “lunch and learns” to help employees understand more about their new investment options, or a communication that promotes the value of the plan features (i.e. company match).

In each stage of the education process, remember to use a variety of media to reach all employees and suit various learning styles. Address specific issues with your plan, such as participation by location, contribution levels, and asset allocation decisions, with targeted, results-producing communication programs.

Improve ongoing plan administration procedures

Chances are you might have had to do some patchwork to get the transition to happen on time. Some manual processes may have been set up to accommodate a short timeframe. After the transition is completed you’ll want to invest in solutions that are applicable for the long term and do not put undue burden on your staff or other resources.

At the first quarter-end and year-end, you will need to pay special attention to any unique circumstances brought on by the merging or redesign of your retirement plan. In a short time, however, you will soon be operating business as usual, with one, well designed plan.

Review the transition process

Soon after the transition is complete, pull your team together for a “follow-up discussion.” This is the time to review how your team worked together to get the job done — what went right and what went wrong.

For many companies, merger activity is not a one-time project but a philosophical approach to growing the company. In these cases, further analysis is a valuable part of improving business operations. From each acquisition, you learn more about how to manage an effective transition. The next time Stage 1 of an acquisition pops up on your radar screen, you and your team will be better prepared to spring into action.

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Every company is a candidate for a merger or acquisition. Here is a checklist of issues that should be considered prior to any merger or acquisition activity.

**General M&A preparation**

- Strategy in place defining corporate objectives for mergers and acquisitions
- Benefits integration strategy included in general M&A strategy
- Outside advisors in place for M&A issues
- Investigation teams in place, including teams responsible for legal and administrative issues for benefit plans
- Integration teams in place, including teams responsible for benefit plans
- Current chart of corporate ownership with all controlled group members and ownership interests
- Records on compliance tests for all benefit plans in place and up-to-date

**General M&A preparation**

- Consider ramifications of stock transaction vs. asset sale on benefit plans
- Prepare chart of corporate ownership as it would appear after the transaction with all controlled group members
- Verify records are available on all benefit plans of acquisition target
- Determine whether plan provisions or specific plan investments dictate that similar plans cannot be merged
- Determine funding status of any defined benefit plans of acquisition target
- Review any possible “affiliated service groups” and employee leasing arrangements
- Review any collective bargaining agreements affecting benefit plans
- Determine potential for “qualified separate lines of business” after transaction
- Develop communications strategy for potential changes in employee benefits

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