Retirement Planning

How Mergers and Acquisitions Impact Retirement Plan Participants

Mergers and Acquisitions Can be Stressful

It's not that uncommon these days for a company to purchase or merge with another organization or be taken over by one. Corporate mergers and acquisitions can be stressful. Employees are often caught by surprise when they hear that their company is part of such a deal. Instinctively the first worry most employees have is whether they will keep their job. The next concern is likely about benefits programs and if they will change.

While retirement plans, such as 401(k)s, may be a significant part of discussions during these transactions, participants must often wait until after the deal is done to understand the impact the change has on their retirement savings.

Some common questions employees raise about their retirement savings programs when their company merges with another or is acquired are:

- Who makes the decisions about my retirement plan?
- Will the plan change?
- What protections do I have?
- How long does it typically take to receive information about my retirement savings?

Who Makes the Decisions About My Plan?

When companies merge or are purchased by another company, one of the entities involved in the transaction likely will no longer exist independently. If the company you worked for sponsored a retirement plan and is the one that will no longer

exist, the new entity will have to decide if that retirement plan will be continued, be merged with their own retirement plan, be frozen to new contributions or be terminated and assets distributed. The newly created or acquiring entity usually assumes the responsibilities of the former employer—along with any potential retirement benefit programs.

Will My Retirement Plan Change?

The answer to that question will depend on the strategy used for the retirement plan(s). Here are some possible approaches that might be taken:

The Surviving or Acquiring Company Becomes the Plan Sponsor of the Former or Acquired Company's Retirement Plan

If only the former company in the merger or acquisition had a retirement plan, the surviving company may elect to become the plan sponsor of the existing retirement plan. Generally, a new plan sponsor would not significantly change the terms of the retirement plan and, therefore, it would have little impact on existing plan participants.

In this scenario, the individuals most affected are the employees of the surviving or acquiring company in the merger, who previously did not have access to a retirement plan. These employees would likely have the opportunity to join the retirement plan as long as they meet the plan's eligibility requirements.

One Company Merges Their Retirement Plan with That of the Other

In most situations, if both companies maintained retirement plans prior to the merger or acquisition, only one retirement plan will survive. If the plans merge, this results in the surviving company having only one retirement plan covering all employees of both companies. As part of the transaction they will likely compare both plan's investment menus, features, and benefits, and keep the plan that best fits the needs of all employees going forward. When plans merge, the assets of the discontinued plan are generally transferred into the plan that will be retained.

Either One or Both Companies May Terminate Their Retirement Plans

In some cases, one or both retirement plans may be terminated. This can result in:

- no retirement plan for the surviving company;
- one company in the merger or acquisition terminating its retirement plan; or
- both companies terminating their existing retirement plans and the surviving company starting a new one.

When a plan is terminated, employees will have a "triggering event" which gives them the option to distribute or roll over their retirement savings. A rollover preserves the tax-deferral of the assets and could be made to the retirement plan sponsored by the surviving employer or to an IRA.

What Protections Do I Have?

Plan Mergers

Generally, the merger of two or more retirement plans cannot violate the anti-cutback rule. This means that the merger cannot reduce or eliminate protected benefits, such as:

- accrued benefits;
- early retirement benefits;
- retirement-type subsidies; and
- optional forms of benefit.

That doesn't mean investments or investment providers cannot change. Merging two plans together generally results in a change of administrative services to a retirement plan.

For example, your current investments may no longer be available. When that happens, your current investments would typically be mapped into similar investments in the surviving plan.

In addition, plan features may change, such as plan loan availability, eligibility, or maximum deferral rates, but unvested benefits are not lost when retirement plans merge. Special rules may apply to mergers of multi-employer defined benefit plans.

Terminating a Retirement Plan

If a company decides to terminate its retirement plan, it will:

- notify all plan participants; and
- distribute the plan's assets to the plan participants as soon as administratively feasible (generally, within one year).

When a plan is terminated, all participants are 100% vested. This means they are entitled to all of a defined benefit pension plan's accrued benefits or all of a defined contribution plan's account balance (such as 401(k) plans and profit-sharing plans), regardless of the plan's stated vesting schedule.

Because plan termination is considered a triggering event, a plan participant can receive a distribution, even though they may still be employed. Retirement plan distributions are generally taxed as income for the year unless the distributed assets are rolled over to another retirement plan, such as through a direct rollover to the surviving company's retirement plan or to an IRA. Otherwise, in addition to being taxed as income, a 10% early withdrawal tax penalty may also apply on the taxable amount of the distribution if the employee is younger than age 59 ½.

In the case of either a plan merger or plan termination, make sure you revisit your beneficiary designations. Unless you are a participant in the retirement plan that will survive the merger or acquisition and that plan is not changing, you will need to make sure you name beneficiaries who will inherit your retirement savings if you should die. Unlike investments that are mapped when assets are moved over, beneficiary designations do not ordinarily transfer to the surviving retirement plan. To ensure your wealth transfer goals remain intact, complete a new beneficiary designation as soon as you are able.

How Long Does It Typically Take to Receive Information About My Retirement Savings?

Merging retirement plans takes time. If your company goes through the process, expect it to take months for the new plan's details to be known. Your retirement plan could also experience what is sometimes referred to as a "blackout period". This is when all transactions within the retirement plan, including contributions, distributions, and investment changes, cannot be made so the plan's administrator may transfer all necessary historical records from one plan to the other.

Take the Next Steps

No matter what your new employer chooses, they should keep you informed. When you receive your packet of information don't set it aside to review later. Take some time to understand what happens next and consider these issues:

- If you are provided with more than one alternative, make sure you understand the key dates for making decisions and what happens if you fail to take action by that

date. Transition timetables should be part of the employer's notice to you about the plan's merger or termination. Compare the investments offered under both plans. If the plans are being merged, review how the new plan's administrator maps your existing investments to those of the new plan. If you want to change investments from those pre-selected through the mapping process, make note of when the blackout period ends and when you can re-allocate your investments.

- Compare the surviving plan's features and benefits to your current retirement plan. Are enhancements to plan design being offered that weren't available in your current plan? For example, look for features such as plan participant loans, hardship withdrawals, in-service withdrawals, new vesting schedules or deferral rates.
- If you have an outstanding loan balance from the retirement plan that will not survive the merger or acquisition, make sure you find out if the new plan offers plan loans and if the loan's balance can transfer into the new plan. If not, it could put you in a bind, forcing you to pay off the outstanding loan balance.

You also may want to consider visiting with your tax and financial advisors to discuss a plan for your retirement savings' future. Your financial advisor can help you review the alternatives that your company provides. ■

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