BANK OF AMERICA

FINANCIAL LIFE BENEFITS®

Managing benefits through a merger or acquisition

In this paper, you will find:

- An overview of the challenges benefits administrators may face during a merger or acquisition
- The four steps to a successful combined benefits program evaluation and rollout
- Key actions benefits administrators may want to take during the process
- Ways Bank of America can help enhance a company's workplace benefits, including:
  - Retirement
  - Equity
  - Health Savings
  - Employee Banking

The impact of a merger or acquisition on retirement and benefit plans can be substantial. Navigating the transition successfully requires careful planning and strategy — with a need to evaluate and understand all the implications of the deal in terms of benefits strategy, plan design, cost and compliance.

Start the process early

Given the complexities that could arise, the process for effectively managing the transition or combination of benefit plans begins well before the merger or acquisition is final.

The entire process should be guided by the benefits philosophy of the company. This philosophy might be a well-established playbook, a collection of guidelines or a blank page, but is meant to guide how to deal with the pros and cons associated with different levels of benefits. Having this kind of documented "north star" in place can help with decisions that may have different impacts on different groups of employees. It might also dictate that the acquisition will adopt all of the company's benefit plans immediately or lead to a combination of the best aspects of each plan.

Once an organization has decided on a benefit and compensation strategy, it is a team effort to implement the strategy. Human resources, finance, accounting, internal counsel and audit staff will often have to dedicate substantial resources to plan for, complete and document the new benefit plan structure, features and requirements. But the team doesn't have to go it alone. During this time, the team should look to their benefits service provider, ERISA attorney and payroll provider who may be able to offer additional support and expertise at each step of the process.

Workplace benefits discovery

A comprehensive understanding of the existing benefits programs of the company being acquired serves as the basis for a smart transition strategy. The identification of protected benefits is an important first step in understanding the options available for managing acquired retirement plans.

Benefits administrators should compare retirement plan provisions and pay special attention to potential differences in:

- Eligibility provisions
- Matching contributions
- Vesting provisions
- Investment menus

One population may have automatic provisions and a high participation rate while the other might not utilize automatic enrollment and have relatively lower participation rates.

When an acquisition target has a defined benefit plan, even if it is frozen, an organization should pay special attention to the plan, its structure and beneficiaries in the discovery process. Defined benefit plans can create meaningful balance sheet and income statement impacts.

Non-qualified plans and individual employment agreements can impact the terms of the acquisition. The discovery process should pay special attention to 'change in control' provisions that might be triggered by the acquisition or merger.

Administrators need to look beyond retirement plans. Evaluating the types of plans, availability of additional benefits like Flexible Spending Accounts or Health Savings Accounts is critical to bringing two sets of benefits together.

Equity plans vary widely. It is important to understand equity plan design and any provisions that might be triggered in a transaction. Plan sponsors need to be able to quickly administer the plan, educate employees and develop a consolidated equity plan that retains talent and creates a common culture between the new organizations.

Key discovery actions

- Identify any protected benefits that are subject to "anti-cutback" rules that prohibit employers from reducing or eliminating benefits already earned by participants
- Create side-by-side of plan provisions across all benefit plans — including retirement, healthcare and equity compensation
- Analyze cost impact of various design options

Compliance

Once discovery is complete, administrators should take a thorough look at the legal and regulatory requirements that may impact a plan. Benefit laws are complex, and there are a myriad of compliance considerations across the spectrum of benefit plans during a merger or acquisition. The most immediate defined contribution retirement plan compliance considerations are the possibility of sponsoring multiple plans and the impact of an acquired plan on discrimination testing.

The possibility of maintaining multiple qualified retirement plans is dependent on the coverage of different employee groups — and the differences between how highly and non-highly compensated employees are treated. In general, a company has until the end of the first plan year beginning after the date of an acquisition or merger before the requirements to balance the treatment of varying employee groups must be addressed.

During this process administrators will also want to look for any qualification or compliance issues of a plan that may make merging plans less attractive. In these instances, it may be best to operate the legacy plan separately or terminate it, noting that the ability to terminate a 401(k) plan at a target company ends on the day of acquisition.

Finally, every plan should be examined for situational compliance issues. Some examples may include:

- Non-qualified plans that may need to be amended
- Health Savings plans that could be regulated by ERISA
- Equity plans that are impacted by the impact of the merger or acquisition on a company's shares

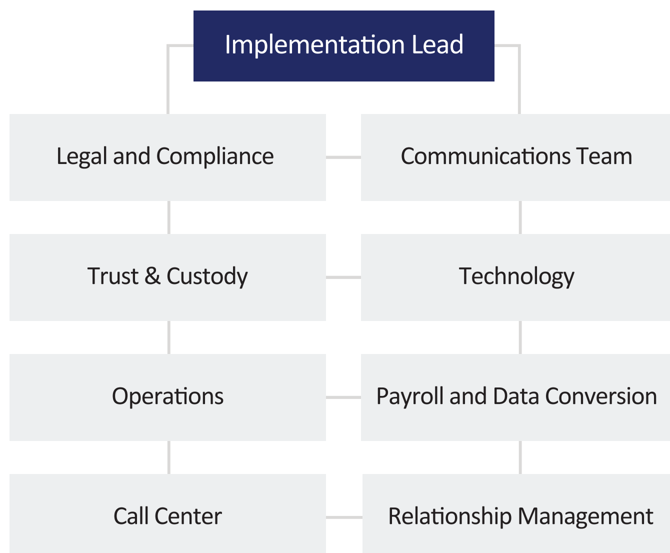
Key compliance actions

- Consult with counsel and service providers across all benefit plans

Transition planning

When the discovery process is complete and the compliance impacts have been examined, it is finally time to start transition planning. When merging retirement plans, an organization will have to decide which features to keep, and these choices can impact ongoing benefit costs and employee morale during the merger process. Depending on the transition plan, there will be winners and losers and the company needs to consider the implications to each.

Successful transition planning requires coordination between the teams at the company and each service provider



If either company involved in the deal offers Health Savings Accounts (HSAs), Health Reimbursement Arrangements (HRAs) or Flexible Spending Accounts (FSAs), benefits administrators should understand how a shift to a different health insurer or plan could affect the balances in those accounts. HSAs provided by an independent financial institution are not tied to a specific insurance plan and offer the flexibility to integrate with whatever health provider that is retained in the transaction.

As part of an assessment of employee benefits, benefits administrators should be aware of any employee equity or compensation arrangements that may be affected by the merger or acquisition. Often, a company that is being acquired will seek to protect the assets of these arrangements by triggering vesting provisions or setting up a rabbi trust to ensure that an independent third-party entity is in place to protect the dollars associated with severance and employment agreements.

Key transition actions

- Finalize decision regarding future plan design
- Amend and adopt plan documents as needed
- Capture winners and losers in benefit plan design changes
- Create a comprehensive multi-media communication plan for impacted employees

Execution

Grounded in the insights gathered in the discovery and compliance phases, a benefits administrator is ready to execute the plan across all retirement, health and equity plans. During this process, administrators should work with the recordkeeping partner or partners for each plan to ensure a smooth transition. A transition also offers the opportunity to integrate multiple benefit plans with a single provider, if it makes sense for the firm and the participants.

Each plan transition will include a discovery meeting with the future recordkeeper and a deconversion meeting with the prior recordkeeper. The discovery meeting will communicate the finalized plan design. It will include the development of a comprehensive participant communications strategy and importantly the establishment and testing of data transmission protocols.

The recordkeeper will create and maintain updates to the transition schedule and execute the transition accordingly. The process should include a review of call center knowledge and culture training to best support the needs of the employees.

Key execution actions

- Communicate with employees about the transition and the steps they may need to take
- Coordinate with service providers to ensure every team member is ready to execute the transition
- Explore integration opportunities to identify possible efficiencies

Financial Life Benefits®

Mergers and acquisitions can be complex with constantly changing priorities. Financial Life Benefits® offers traditional workplace benefits and is one of the ways Bank of America is positioned to help corporate clients through the merger and acquisition process.

Financial Life Benefits® is an innovative solution paired with individualized guidance that goes beyond traditional benefits to provide more of what employees need to manage their day-to-day finances and prepare for the future — whether it's creating a budget, saving for healthcare or planning for a steady stream of income in retirement.

- Retirement plans[1]
- Equity compensation plans[1]
- Health and benefit accounts[2]
- Employee banking[2] and investing[1]

To learn more, visit go.bofa.com/financiallifebenefits†

[1] Investment products are available from Merrill Lynch, Pierce, Fenner & Smith Incorporated.

[2] Bank products are available from Bank of America, N.A., and affiliated banks.

† Note: Internet Explorer not supported. Supported browsers are Google Chrome, Microsoft Edge, Safari or Mozilla Firefox.

Contact your trusted partner or Merrill advisor today.

IRS publications are a key source for information about retirement plans. Use the IRS website[3] to find resources on employer mergers[3].

Financial Life Benefits is a registered trademark of Bank of America Corporation.

3. By clicking Continue, you will be taken to a website that is not affiliated with Bank of America or Merrill and may offer a different privacy policy and level of security. Bank of America or Merrill is not responsible for and does not endorse, guarantee or monitor content, availability, viewpoints, products or services that are offered or expressed in other websites.

Retirement and Personal Wealth Solutions is the institutional retirement business of Bank of America Corporation ("BofA Corp.") operating under the name "Bank of America." Investment advisory and brokerage services are provided by wholly owned non-bank affiliates of BofA Corp., including Merrill Lynch, Pierce, Fenner & Smith Incorporated (also referred to as "MLPF&S" or "Merrill"), a dually registered broker-dealer and investment adviser and Member SIPC. Banking activities may be performed by wholly owned banking affiliates of BofA Corp., including Bank of America, N.A., Member FDIC.

Bank of America and its affiliates do not provide legal, tax or accounting advice. You should consult your legal and/or tax advisors before making any financial decisions.

"Bank of America" is the marketing name used by certain Global Banking and Global Markets businesses of Bank of America Corporation. Lending, other commercial banking activities, and trading in certain financial instruments are performed globally by banking affiliates of Bank of America Corporation, including Bank of America, N.A., Member FDIC.

Investment products:

Are Not FDIC Insured	Are Not Bank Guaranteed	May Lose Value

© 2024 Bank of America Corporation. All rights reserved. | MAP6125929| 01/2024 (ADA)