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When M&A Occurs, Don't Forget a Retirement Plan Review

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In recent years, the banking industry has had its share of mergers and acquisitions (M&A). In fact, in 2017, there were 247 bank M&A transactions representing a total value of $154.6 billion. And through April of this year, the numbers are on par with last year's numbers, as 75 bank M&A transactions totaling $137.2 billion have been announced. * And as many industry experts have predicted, a more benign regulatory environment, rising interest rates, and economic growth spurred by corporate tax reform may combine to further accelerate bank M&A deals in 2018 and beyond.

If your bank is contemplating acquiring another organization, the following considerations may prove helpful when evaluating another bank's retirement plan.

Start by Analyzing the Structure of the M&A Transaction

Understanding whether the M&A transaction is a stock sale or an asset sale can help in determining next steps and identifying any issues involved.

What You Need to Know About Stock Sales

If the transaction is a stock sale, the acquirer purchases another bank in its entirety. The acquiring employer becomes the employer and, therefore, the sponsor of the seller's qualified retirement plan. Key considerations of a stock sale include:

If both the acquiring and selling employers have a 401(k) plan at the time of the transaction, the successor plan rules prevent the acquirer from terminating the 401(k) plan of the purchased company once the sale is complete.

An acquiring employer may decide during the planning stages that the two 401(k) plans will be merged. Once the stock sale transaction is complete, the new owner can then merge the two plans together.

If the acquiring employer does not want to keep the selling employer's 401(k) plan, the purchase agreement needs to be crafted to include a requirement that the seller terminate its plan before the business transaction occurs. If the resolution to terminate the seller's plan is passed by the board and takes effect prior to the transaction, the seller is responsible for distributing all plan assets.

When a stock sale takes place, the acquired employees typically continue working for the acquiring company. Therefore, the acquired employees do not incur a severance from employment and there is no distributable event. The years of service the employees have with the seller will count toward eligibility and vesting credit under the acquiring employer's plan.

What You Need to Know About Asset Sales

If the transaction is an asset sale, the acquiring bank purchases only the assets or, for example, divisions of the seller. The following outcomes, with respect to the retirement plans, will occur:

- The seller continues to exist and maintains its own

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qualified plan while employees of the purchased divisions or bank move to the acquirer.

- Participants who become employees of the acquirer are generally treated as having severed service with the seller and can take a distribution from the seller's retirement plan.
- However, the entities may agree to transfer the retirement assets of the relocated participants from the seller's plan to the acquiring employer's plan. This would not be considered a distributable event as the acquiring employer would be seen as maintaining the seller's plan.

Evaluating and Comparing Retirement Plans is Key

Once you understand the nature of the transaction and the potential issues involved, the next step is to review both organizations' retirement plans. Creating a detailed comparison will enable you to identify differences that may need to be addressed as you move forward.

Key Considerations Include:

- Does the surviving plan(s) meet your bank's benefit objectives and comply with all regulatory requirements?
- Are plan investment options and performance consistent with your investment policy statement?
- Is plan pricing in line with industry standards and your bank's expectations?
- Do you have the information needed to identify liabilities and estimate future contribution and expense requirements?
- Does the acquired plan contain any protected benefits, such as, early retirement provisions and distribution options?

With M&A Comes an Opportunity to Improve Your Plan

A merger or acquisition can also present an opportunity to update and refine your retirement plan. Your retirement plan provider should be available to help evaluate plans in terms of investment options, pricing, participant engagement, and more.

To learn more, contact Mark Hogan, at mark.hogan@pentegra.com or call 513.259.9222.

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