

	ASSET SALE	STOCK SALE
Plan Sponsorship	Plan sponsor remains the same.	Buyer generally becomes the plan sponsor by operation of law.
Plan Termination	The plan sponsor can choose to terminate or continue to run the plan (plan sponsor should evaluate whether a partial plan termination exists if plan continues – generally, if 20% or more of the participants are terminated in the plan, they must be 100% vested).	If the buyer wishes to terminate the plan being acquired this must be done by the seller prior to the acquisition date via a board resolution/ plan amendment. Participants must be vested 100% at the time of plan termination.
Plan Merger/Spinoff	Plan sponsor can also choose to partially or entirely transfer plan sponsorship to the buyer of company assets or spinoff and transfer plan assets to the buyer's plan.	If the plan is not terminated prior to the acquisition date, the new plan sponsor can choose to operate the plan separately, merge the plan into an existing plan, or freeze the acquired plan. Maintaining separate plans can generate additional costs, additional form 5500 filing and non-discrimination testing implications.
Compliance/ Fiduciary Considerations	<p><u>Plan Termination</u> If the prior plan is terminated and no transfer of sponsorship or merger/spinoff occurs, the buyer does not assume compliance liability as a result of prior issues that may have occurred in the plan. <u>However, this does not ensure full retention of assets from acquired participants that may assist the buyer's plan when considering plan pricing concessions for recordkeeping services in the future.</u> In addition, the plan sponsor (seller) should consider filing a final determination letter with the IRS prior to terminating the plan.</p> <p><u>Plan Merger/Spinoff</u> A plan merger or spinoff <u>will ensure full retention of plan assets that are intended to transition during a transfer.</u> However, if sponsorship is transferred or a plan merger occurs, the buyer will assume compliance liability for the prior plan. In addition, a plan comparison analysis will be required in order to identify grandfathered provisions that need to be adopted/maintained as a result of a plan merger. Therefore, it is important to evaluate previous plan provisions and compliance prior to completing a plan merger. Also, in order to assist in maintaining average account balances (for plan pricing purposes in the future), the plan sponsor (buyer) may want to have mandatory small balance cash-outs occur in the acquired plan prior to the plan merger.</p>	<p><u>Plan Termination</u> Plan termination needs to occur prior to acquisition date, via a board resolution/plan amendment, and implementing the full plan termination process.</p> <p>If the prior plan is terminated and no transfer of sponsorship or merger/ spinoff occurs, the buyer does not assume compliance liability for prior errors that might have occurred in the plan. <u>However, this does not ensure full retention of assets from acquired participants that may assist the buyer's plan when considering plan pricing concessions for record-keeping services in the future.</u> In addition, the plan sponsor (seller) should consider filing a final determination letter with the IRS prior to terminating the plan.</p> <p><u>Plan Merger/Spinoff</u> A plan merger or spinoff will ensure full retention of plan assets during a transfer. However, if sponsorship is transferred or a plan merger occurs, the buyer will assume compliance liability for the prior plan. In addition, a plan comparison analysis will be required in order to identify grandfathered provisions that need to be adopted/maintained as a result of a plan merger. Therefore, it is important to evaluate previous plan provisions and compliance prior to completing a plan merger. Also, in order to assist in maintaining average account balances (for plan pricing purposes in the future), the plan sponsor (buyer) may want to have mandatory small balance cash-outs occur in the acquired plan prior to the plan merger.</p>

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Transition Rule	The IRS provides relief from minimum participation and coverage requirements during a transition period in which separate plans are being maintained by a plan sponsor as a result of an acquisition. The relief is permitted over a transition period extending from the effective date of the transaction until the last day of the first plan year beginning after the date of the transaction. This special transition rule is available provided that coverage testing has been satisfied for the plans involved prior to the transaction and there has been no significant change in plan provisions or coverage following the transaction (with the exception of terminations, hiring or transfers that may occur as a result of the acquisition). Please note that if the acquired plan is not terminated, merged or frozen prior to the end of the transition rule period, additional compliance testing will be required.	Same as Asset Sale.  Although it is important to note that if the employer intends to have a plan terminated, that will be acquired via a stock acquisition, it will need to be terminated prior to the acquisition date by having a board resolution drafted.
Service Recognition	Buyer's plan requires an amendment to recognize prior service for acquired participants.	Prior service recognition is automatic (required).
Employee Participation	The employee can also participate if he/she is or becomes a direct employee of the buyer/plan sponsor.	Can participate if hired as a new employee of the buyer's company.
Transition Options	<p><u>Plan is not being terminated (not a merger or spin-off)</u> Acquired participants can have the option of rolling assets over to the buyer's plan or maintaining assets in the prior plan as long as their account balance does not meet the mandatory small balance cash out threshold.</p> <p><u>Plan Termination</u> Acquired participants can have the option of rolling over assets into the buyer's plan or to an IRA at the time of plan termination. Plan participant accounts must be 100% vested at the time of plan termination.</p> <p><u>Plan merger/spin-off</u> Participant assets transition via a trustee to trustee transfer. Blackout period will apply. In addition to protected benefits/grandfathered provisions, investment mapping, participant fund election or QDIA considerations should also be evaluated when transferring assets. *Please note it is important to remain consistent in the manner that all participants transition during a merger or acquisition in order to avoid possible non-discrimination testing implications.*</p>	Same with an Asset Sale.

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Loans	<p><u>Loan rollovers</u> Buyer may wish to have loans rolled into their plan in order to keep acquired participants from defaulting on loans if loan balances are not paid in full prior to plan termination. In order to do this the seller's plan document must allow for loans to roll out of the seller's plan into the buyer's plan. The buyer's plan must include a provision that accepts loan rollovers into the plan.</p> <p>Participants must rollover total account balances in order to rollover loans into the buyer's plan.</p> <p><u>Block Loan Rollover Transition</u> Some providers allow for loans to rollover at one time as a group wire. The participants with loans receive communication and forms that allow them the opportunity to rollover their loans and total account balance by a certain time (prior to the loan defaulting). All forms are collected by the deadline date and the transfer of the block of loans is established between the providers on a specific date.</p> <p><u>Plan Merger/Spinoff</u> Loans can be transferred to the buyer's plan during plan merger/spinoff. Buyer's plan may need to be amended to permit this.</p> <p><i>*Please note it is important to remain consistent in the manner that all participants transition during a merger or acquisition in order to avoid possible non-discrimination testing implications.</i></p>	Same with an Asset Sale.
Employee Communication	<p>Once a transition process has been established, a communication strategy and employee meetings should be set up in order to ensure acquired participants understand how retirement benefits will continue and how prior account balances will be transferred. Education meetings are important for the retention of plan assets, if merger/spinoff is not being considered, to ensure to the greatest extent possible rollover of plan assets to the buyer's plan.</p> <p>Plan sponsors and plan educators should review plan fees and important provisions of prior plan in order to answer possible participant questions that may arise as a result of plan differences (buyer's plan match vs. prior plan match, etc.) and as part of fiduciary best practices due diligence.</p>	Same with an Asset Sale.

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Final Filings/ Non -Discrimination Testing	<p><u>Plan termination</u> During a plan termination, the plan sponsor/seller typically distributes any remaining participant benefit assets to Individual Retirement Plans in order to complete the plan termination and distribution process, in the event there are missing participants or participants who fail to respond by making distribution or rollover elections (buyer may also provide an option to have acquired participants rollover their accounts into their plan). The plan sponsor/seller should consider filing a determination letter with the IRS for plan termination. Furthermore, the final Form 5500 is due seven months from the end of the month that all plan assets were distributed.</p> <p>In addition, final non-discrimination testing must be completed as well. It is important for the plan sponsor to remain in contact with the terminated plan service provider(s) and have access to the plan website after plan termination in order to ensure this occurs.</p> <p>Late Form 5500 filings and non-discrimination testing completion can cause the plan sponsor to incur penalties and also jeopardize the tax status of participant accounts.</p> <p><u>Plan Merger</u> A final Form 5500 return/report should be filed for the plan year (12 months or less) that ends when all plan assets were legally transferred to the control of another plan [this language is from the 5500 instructions].</p> <p>In addition, the final non-discrimination testing must be completed as well. It is important for the plan sponsor to remain in contact with the terminated plan service provider(s) and have access to the plan website after plan termination in order to ensure this occurs.</p> <p>Late form filings and non-discrimination testing completion can cause the plan sponsor to incur penalties and also jeopardize the tax status of participant accounts in both plans.</p>	<p>Same as Asset Sale. In both cases, a buyer may have to ensure the termination process and final compliance tasks are completed.</p>

## Mergers & Acquisitions Checklist

Important information to acquire and note for plans being considered during an acquisition (if possible, please provide this information to aid further discussions):

- Purchase agreement – asset or stock sale
- Acquisition date – Please provide acquisition date – \_\_\_\_\_. Please note, under a stock sale, the plan for the acquired company will need to be terminated prior to the acquisition date. If not, the plan will need to be frozen or merged within the transition rule period to avoid additional testing.
- Plan Document, Adoption Agreement and All Amendments – Please provide all plan documents since inception of the plan (including any amendments adopted). This is especially helpful if the acquired plan is expected to merge and not terminate as protected benefits would need to be evaluated.
- Fund breakdown – Please provide a breakdown of assets by fund, participant count and average account balance.
- Loans (in cases where plan mergers are not occurring) – Do the acquired participants have loans? \_\_\_\_\_
  - If so, does the acquiring plan sponsor wish to have loans rollover into their plan? \_\_\_\_\_
  - If so, do both plans have provisions that allow for loan rollovers? \_\_\_\_\_
  - Does the plan sponsor wish to have a block rollover of loans if the plan recordkeepers can accommodate this? \_\_\_\_\_
  - If loan rollovers are desired, has a list of participants with loans been provided? \_\_\_\_\_
- List of HCEs – Please provide a list of HCEs along with census data provided for non-discrimination testing.
- Compliance – Please provide non-discrimination testing and form 5500s for prior years.
- IRS Determination Letter - If the plan is going to terminate, will an IRS determination letter be requested prior to termination? \_\_\_\_\_
- Legal Advice – Has there been any legal advice provided regarding the retirement plans involved in the acquisition/merger and can it be shared with your USI consultant? Do you have a sales agreement that you can provide? USI can only provide guidance pertaining to these matters and strongly encourages plan sponsors to also seek legal advice.

Please Advise: \_\_\_\_\_

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