

# Plan Record Retention Considerations in Corporate Transactions

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As we previously reported [here](#), there are a number of record retention requirements applicable to employee benefit plans. Plan sponsors should be mindful of the impact and application of these requirements in the context of corporate mergers and acquisitions, especially if assets of the target's retirement plan are to be merged into the buyer's plan. When acquiring a company that sponsors (or has sponsored) its own retirement plan, plan sponsors should consider:

- **Protected Benefits**. Though the buyer's plan may be amended to protect certain benefits under the target's plan, as required by the Internal Revenue Code, in many cases the plan sponsor will need to refer to the target's actual plan document to fully understand the specifics of the protected benefits.
- **Missing Participants**. The DOL recently issued a memorandum outlining best practices for pension plans to avoid and resolve missing participant issues (we previously discussed this issue [here](#)). Included in these best practices is the recommendation that, in the context of corporate mergers and acquisitions, buyers specifically should address the transfer of plan information (including participant and beneficiary contact information) and relevant employment and payroll records (e.g., next of kin information and emergency contacts) to the buyer.
- **Participant Communications**. The DOL recommends that sponsors of plans covering individuals previously employed by an entity acquired by or merged into the plan sponsor include the name of the original plan or plan sponsor in correspondence to such individuals.
- **Future Determination Letters**. In determination letter requests, the IRS requires plan sponsors to provide copies of any plan documents and amendments that have been adopted since the last determination letter. If another plan was merged into the plan, these documents will include the plan documents and amendments for the plan that was merged into the plan seeking the determination letter.

Because every corporate transaction is unique, plan sponsors should consult with counsel to determine what documents and information should be acquired to ensure the appropriate recordkeeping requirements are satisfied and that any plan covering employees and prior employees of the acquired entity can be properly administered.