



COBRA Considerations in Corporate Transactions Chart

A Lexis Practice Advisor® Practice Note by
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This chart addresses each key point you should consider when addressing COBRA issues in a business transaction. For more detailed practical guidance on COBRA issues, see [COBRA Considerations in Corporate Transactions](#) and [COBRA Compliance and Enforcement](#).

Question	Instructions and Notes
(1) Does your purchase agreement contemplate an asset sale ?	If “yes,” go to Question 3. If “no,” go to Question 2.
(2) Does your purchase agreement contemplate a stock sale ?	If “yes,” go to Question 3.
(3) Do you know who will be treated as M&A qualified beneficiaries entitled to COBRA rights in connection with your transaction?	<p>If your transaction is an asset sale, the parties should know who will be treated as M&A qualified beneficiaries to properly manage COBRA obligations and responsibilities.</p> <p>If your transaction is a stock sale, a covered employee who continues to be employed by the acquired organization will not be an M&A qualified beneficiary and neither will that covered employee’s spouse or dependent child(ren), even if buyer’s group does not offer a group health plan after the closing of the transaction.</p>
(4) Will the seller “group”—i.e., all groups of companies or trades or businesses that are related by common control to the seller pursuant to Internal Revenue Code (I.R.C.) § 414(b) and (c) —maintain a group health plan after the sale?	<p>If “yes,” then the seller will have the obligation to make COBRA coverage available to M&A qualified beneficiaries regardless of whether it’s an asset or stock sale.</p> <p>If “no,” and (a) the transaction is an asset sale, go to Question 5, or (b) the transaction is a stock sale, go to Question 6.</p> <p>Even if the seller is terminating its group health plan in connection with the transaction, if any member of seller group maintains a group health plan following such transaction, the health plan</p>

	<p>maintained by the seller group is responsible for offering COBRA coverage to M&A qualified beneficiaries.</p> <p>The seller always has the obligation to provide COBRA coverage for those employed by the seller and not treated as M&A qualified beneficiaries.</p>
<p>(5) If the transaction is an asset sale, did the selling group cease to provide any group health plan to any employee in connection with the asset sale and is the buyer a successor employer?</p>	<p>If “yes,” then the buyer group (i.e., all groups of companies or trades or businesses that are related by common control pursuant to I.R.C. § 414(b) and (c)), as a successor employer, will have the obligation to make COBRA continuation coverage available to M&A qualified beneficiaries under its group health plan beginning on the later of (a) the date the selling group ceases to provide any group health plan to any employee, or (b) the date of the asset sale.</p> <p>Determining whether the seller terminates its group health plan “in connection with” the transaction is a facts-and-circumstances determination. See 26 C.F.R. § 54.4980B-9 (Q-8 and A-8; Example 7 (subsection (iv)); and Example 8).</p>
<p>(6) If the transaction is a stock sale, did the selling group cease to provide any group health plan to any employee in connection with the stock sale?</p>	<p>If “yes,” the group health plan maintained by the buyer will have the obligation to make COBRA continuation coverage available to M&A qualified beneficiaries beginning on the later of (a) the date the selling group ceases to provide any group health plan to any employee, or (b) the date of the stock sale.</p>
<p>(7) Can buyer and seller allocate COBRA responsibilities in the purchase agreement?</p>	<p>Yes, the buyer and seller in stock or asset sales are permitted to allocate COBRA responsibilities in the purchase agreement that may be different from what is statutorily required.</p> <p>The buyer may want specific language in the purchase agreement about the seller’s responsibilities and duration of COBRA continuation coverage following the transaction so that it can anticipate any COBRA liability that might arise post-transaction relating to the seller group’s cessation of all group health plans.</p> <p>If the party that has the responsibility for the COBRA continuation coverage pursuant to the purchase agreement fails to perform, the party that has the obligations under the default statutory provision continues to have these obligations with respect to M&A qualified beneficiaries.</p>

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