MERGERS AS A STRATEGY FOR SUCCESS

# TOOL: HOW TO EVALUATE A NONPROFIT MERGER REQUEST

When nonprofit leaders approach a funder for a grant to support a merger process, it may be difficult to know what questions to ask in order to determine if the request is appropriate or not.

The following list itemizes best practices in a typical merger process. It is divided into the three phases of a merger: pre-merger, merger negotiation, and integration. When interviewing prospective grantees, check off all items that apply. The more checks you have, the stronger the application for funding. You can see the checklist on the following pages.

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# Pre-Merger Checklist

**_____ Both parties are requesting the funding.**
You want to be sure to talk to representatives of all nonprofits involved to ensure that they are equally invested in the strategy.

**_____ The two organizations have a history of positive collaboration with each other (see Tool #7 in the "Me" section).**
Trust is the glue that holds together mergers. Trust is achieved through familiarity, by working together and getting to know each other's cultures and leadership styles up and down the chain of command.

**_____ There appears to be alignment in the missions of the two organizations (see Tool #8 in the "Me" section).**
Mission is what drives a merger. The leaders will draw on mission again and again to get them through the difficult negotiations.

**_____ Both Boards of Directors have been informed of the decision to explore a merger.**
The Boards of Directors are the ones who get to decide whether or not a merger will happen. Sometimes, Executive Directors are afraid to tell their boards that they are exploring a merger and can get out ahead of them a bit too much. They then have to go back to their boards and fill them in. This can be very negative and turn off boards; better to inform them early and get them involved up front.
Similarly, CEOs should also be informed of any merger discussions and should be consulted if not involved in the process.

**_____ The parties have decided to engage a consultant to facilitate their process (see Tool #5 in the "Me" section).**
One of the best practices in nonprofit restructuring is hiring an outside objective third party to assist with the process. In one Minnesota study, 85 percent of nonprofit mergers used a consultant in some capacity[1]. If the parties do not have a consultant to assist with facilitation, do they have a clear, efficient way to get through the merger process? Can they explain their process to you in a way that convinces you they can get it done in a timely fashion?

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[1] [1] *Success Factors in Nonprofit Mergers,* July 2012, MAP for Nonprofits and Amherst H. Wilder Research.

**_____ The parties have completed, or plan to complete, a merger feasibility study or other type of analysis to determine if there is alignment of strategy, finances, and program goals (see Tool #4 in the "Me" section).**
Not all mergers will begin with a feasibility, financial, or other analysis. But increasingly, larger nonprofits are turning to feasibility analysis as a first step. As mergers are increasingly viewed as a strategy to advance business goals and objectives, leaders wish to know up front whether this particular merger can achieve their desired outcomes.

**_____ The parties are or will be taking the time to get to know themselves and each other well (see Tool #6 in the "Me" section).**
It's important to dig down deep into how a potential merger partner operates in order to be able to negotiate successfully. Each organization also needs to know itself well, including its strengths and weaknesses. Have leaders recently completed a SWOT analysis for their nonprofit? Are they spending time job shadowing each other? Are the CEOs talking to their front line staff about how the other nonprofit does business?

**_____ The participants have been researching merger strategies and studying the experiences of other leaders who have gone through mergers (see Tool #3 in the "Me" section).**
Merger participants must do their homework regarding all aspects of the process and become familiar with merger strategy in order to be successful.

**_____ One of the organizations has an interim CEO, a vacancy in the CEO position, or a CEO planning to depart.**
Approximately 80 percent of nonprofit mergers occur when one of the organizations has a vacancy in the CEO position. It is simply easier for a board to consider a merger when the executive leader's position is not at stake.

**Finally, what if you are not convinced that the grantees are ready to explore a merger?**
If, after interviewing the applicants, you are not convinced they are ready to move forward with a merger strategy (that is, you cannot check any of the above best practices), then you may want to suggest that they a) approach Forefront's Mission Sustainability Initiative in order to get some training or coaching on the process or b) engage an attorney or nonprofit restructuring facilitator who can help them move through their process and make the decisions that are best for them before returning to ask for funding again.

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## Merger Negotiation Checklist

**_____ The organizations have signed a nondisclosure or confidentiality agreement and/or a Letter of Intent (see Tool #9 in the "Me & You" section).**
One way to judge the seriousness of the parties is whether their boards have drafted and voted on a non-disclosure or confidentiality agreement and/or a Letter of Intent (LOI). An LOI would indicate that the conversation has risen to a higher degree of formality and that the two boards have been placed on notice that a merger or some other type of strategic partnership is being negotiated.

**_____ There is a Board Chair or a Board Director advocating for the merger in each organization.**
There is a much higher degree of success in nonprofit mergers when there is a leader on the board advocating for the merger.

**_____ The merger steps have been identified, and there is a timeline set for the entire process.**
At this point, the parties should have a clear idea of the steps going forward to get to a decision. Even if they are not sure if the merger will happen, and they are taking this a step at a time, they should have an estimated date for when they think they might close the merger.

**_____ A Joint Negotiating Committee, composed of the CEO and board representatives from both parties, is in place and has begun negotiating (see Tool #10 in the "Me & You" section).**
After an LOI has been signed, often the boards will designate representatives from both boards along with the CEOs to begin holding discussions on key issues. This is a very positive sign of the seriousness of the parties.

**_____ The parties can explain to you the case for the merger (see Tool #11 in the "Me & You" section).**
It is important to remember that a merger is a strategy, a means to achieve goals and objectives, not an end in itself. Therefore, the parties must be clear about how they would define success through a merger strategy.

**_____ They have a communication plan for staff and the closest stakeholders, including funders (see Tool #15 in the "Me & You" section).**
Every organization is different in terms of when they involve their staff in the merger process. It's generally a good idea to have a plan of some kind about what to say to the staff and close stakeholders. Staff are critical to the success of a merger, particularly mid-level managers.

**_____ They have an agenda for developing a Memorandum of Understanding and know how they will handle legacy issues (see Tool #12 and Tool #13 in the "Me & You" section).**

Who will be the Executive Director/CEO of the consolidated organization? Which organization will be the "surviving" entity? What will be the name going forward? Who will be on the consolidated board? Have they anticipated any of the costs for consolidating the organizations? These are some of the thorniest issues of a merger. Ignoring them until the end of the process can lead to disaster. Review these issues with grantees to determine if they are being addressed with transparency.

## Integration Checklist

**_____ The parties have identified counsel to close their merger.**
It is typical in a nonprofit merger, after the Memorandum of Understanding (MOU) has been negotiated, for the parties to engage a single attorney to prepare the necessary legal documents to close the merger. In such cases, the parties sign a conflict waiver agreement, acknowledging that they are being represented by the same attorney. During due diligence, the parties each have their own legal counsel to review documents, including the MOU. However, once the MOU is signed, the belief is that by maintaining opposing counsel at this point, we run the risk of unraveling the carefully crafted agreement. We are now very close to the merger closing.

**_____ They have a plan for due diligence, including examining cultural alignment (see Tool #16 in the "We" section).**
Due diligence is the close examination of all the financial and legal issues that may cause significant liability and should include review of the cultural alignment between the organizations. The merger will consolidate all the assets and the liabilities of both parties; it is important to be sure that each organization has had an opportunity to examine the potential liability of the other party before integrating assets.

**_____ A plan for integrating the two organizations has been developed (see Tool #17 in the "We" section).**
While the attorney is preparing closing documents, the staff begin the process of preparing the integration plan for the merged operations. Also, fundraising for the integration budget begins in earnest.

**_____ A plan for integrating the Boards of Directors has been created (see Tool #14 in the "Me & You" section).**
The boards have already discussed who will be joining the consolidated board during the MOU phase, but a plan must be put in place to orient the merged Board members, policies and procedures must be updated, and if there are new bylaws, everyone must be familiarized with them.

**_____ There is a plan to create an integrated culture (see Tool #18 in the "We" section).**
As part of the integration plan, the staff will discuss what type of culture they wish to create in the consolidated organization. This can be a combination of the two, or one organization's culture may dominate after the merger.

**_____ There is a method for evaluating the merger.**
A dashboard of key metrics for the merger integration is going to be created and monitored by the Board of Directors and the executive team. These metrics will be updated regularly, but less than monthly. The metrics will be tied to the goals and objectives for the merger.