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Nonprofits in Crisis: Alternatives to Closing (Part Two)

02.23.21 | Linda J. Rosenthal, JD

The pandemic has "inspired us to be more agile, to pivot and approach issues more innovatively, and challenged us to look at our work differently going forward."

That was the observation of one of the respondents to a survey late last spring on how COVID-19 was affecting nonprofits. Another executive noted that "…it's been very difficult in many ways but also very positive in adapting our culture to be more fluid, nimble, and paperless."

In *Nonprofits in Crisis: Alternatives to Closing (Part One)* (February 16, 2021), we continued our early-2021 discussions of how nonprofits might approach navigating the next few months. The COVID-19 chaos and disruption have continued far longer than we all had hoped last March. It's not necessarily going to be a smooth or even ride to a finish line.

And we will not – and *should not* – be returning to "normal." Normal wasn't that great for many people, and it's not sustainable. The pandemic has not only highlighted the problem of economic inequality, it's made it worse. See *On the Need for Thorough Restructuring after COVID* (December 4, 2020) Martin Levine, *The Nonprofit Quarterly.*

"Given the current circumstances faced with the pandemic," wrote Deirdre Osei late last summer in *The Nonprofit Quarterly*, "organizations need to find new ways to work together—both to survive and deliver on their mission." See *Spontaneous Collaboration a Go-to Move in the Midst of Disaster* August 21, 2020.)

The pandemic has been "… a worrying time. But it's also a time of opportunity," according to Steve Zimmerman, Principal of Spectrum Nonprofit Services, specializing in nonprofit sustainability and strategy. "It might well be the time to reimagine who you are and what you do and to make your organization better in the process." See *Reimagine Your Nonprofit to Survive the Crisis* (June 1, 2020), *Harvard Business Review*.

But before we reimagine and get ready to spontaneously collaborate, let's first take a quick look at the myriad options traditionally open to nonprofits looking for a change, whether because of financial troubles or the desire to move forward on a solid footing.

Traditional Arrangements

David La Piana has been in the nonprofit field for decades. He heads a consulting firm bearing his name that helps the "social sector navigate change."

In 2010, just after the worst of the Great Recession a decade ago, Mr. La Piana wrote *Merging Wisely*, a long but well-written (in plain English) article published in the prestigious *Stanford Social Innovation Review*. A "merger," he explained, "is the fusion of separate boards, management, and legal entities into a new, single organization. While it's the most well-known and popular way that organizations can combine, it's "just one choice on a continuum of strategic restructuring options." He added: "Instead of reflexively pulling out the biggest gun in the partnership arsenal, nonprofits should consider a variety of ways of working together."

In this helpful essay, Mr. La Piana discussed the broader strategic-restructuring menu.

In addition to formal mergers, there are "three other forms of corporate integration" that "change parties' legal structures so that they can share their strengths":

- Management services organizations: combine only administrative functions of partners;
- Joint venture corporations: combine a subset of nonprofits' programmatic functions; and
- Parent-subsidiary partnerships: blend both administration and programs (usually when a merger is desired but is not technically possible).

Next up are "strategic alliances." Under this approach, organizations can "unite programs and cut costs while remaining somewhat independent." There is no new corporation formed; instead, the arrangement is made by contract. There are two distinct categories. First is an "administrative consolidation," comprising two or more organizations that want to reduce costs. Second is "joint programming," which is "quite common in the nonprofit sector" and that combines programs instead of administrative functions while remaining separate entities.

"Collaborations" are the "least intense form of partnership among nonprofits" but the most common. They are informal and "appropriate when the need that brings the parties together is either narrowly defined, time limited, or … both."

Mr. La Piana offers specific examples of actual cases in the nonprofit sector that illustrate each of these categories. Of course, since all of them occurred on or before 2010, none are equivalent to our current once-in-a-century circumstances. Nevertheless, each illustrates the details and purposes of the particular strategic restructuring model described.

More Options

There are a number of other ways – not specifically mentioned in David La Piana's *Merging Wisely* article – that a nonprofit organization can ally itself for a specific purpose with another nonprofit or with a for-profit business.

For instance, the "fiscal sponsorship" option may be available in certain circumstances. It's an arrangement for saving a program even when a financially distressed group that has been operating the program cannot itself be kept going. See *Nonprofits in Trouble: The Fiscal Sponsorship Option* (August 30, 2020) Gene Takagi, Esq., *NEO Blog*. There is no specific definition in law and it can be set up in a variety of ways. "In a comprehensive fiscal sponsorship arrangement, an experienced fiscal sponsor typically delegates management to the program leadership and very rarely intervenes in the programmatic activities so long as they are compliant with law, the fiscal sponsorship agreement, and the fiscal sponsor's policies."

Another option involves a collaboration between a nonprofit and a for-profit business. Often referred to as "cause-related marketing" it is more formally referred to as a "commercial co-venture," particularly in state laws that regulate these arrangements. "A commercial co-venture typically features a charity teaming up with a for-profit company to promote a product in conjunction with a charitable cause." A typical example is a promotion by the business that for every [product name] a customer buys, the business will donate $X to a designated charity.

Conclusion

Under normal circumstances, there may be time and money to do the research and due diligence to determine whether a proposed strategic-restructuring option is workable and will succeed.

But as the COVID-19 pandemic swept rapidly across the United States (and around the world), there was no time for the usual and prudent thinking and planning.

As we'll see in Part Three, many nonprofit organizations have been remarkably adept at emergency pivots and informal collaborations.

— Linda J. Rosenthal, J.D., FPLG Information & Research Director