



Shared Services and Mergers

Strategies for Strength and Sustainability

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CAPLAW Resource

An illustration showing several stylized human figures in various colors (teal, purple, orange) working together to assemble large puzzle pieces. The background is light blue with faint leaf patterns. A white banner is overlaid on the puzzle pieces.

Working Better Together

CAPLAW's Guide to Mergers and Shared Services

[Introduction](#)

[Mergers](#)

[Shared Services](#)

[Resources](#)

Introduction

Increasingly, Community Action Agencies (CAAs) are exploring shared services and mergers as strategies to improve their sustainability and enhance their efficiency and effectiveness. CAPLAW has prepared this guide to help CAAs and other Community Services Block Grant (CSBG) organizations better understand these arrangements. The guide includes questions and answers on shared services and mergers, as well as additional resources, including case studies, sample agreements, information on books and online publications on these topics, and more. Review the various Q&A in this guide to get an overview of shared services and mergers, or click on the particular topic and questions that are of interest to you. Stay tuned for future updates; as CAPLAW gathers more information about these topics, we will add additional Q&A and resources to this guide.

Why consider sharing services or merging?



- Why Share Services or Merge?
- Considerations Before Moving Forward
- Key Points: Shared Services and Mergers
- Government Funding Issues
- Key Players and Their Roles
- Lessons Learned

Question #1

1. Has your CAA ever:

- a. Shared administrative (e.g., Executive Director, HR, fiscal, IT) services with another organization?
- b. Shared other types of services (e.g., programs) with another organization?
- c. Discussed sharing services but ultimately decide not to do so?
- d. Been involved in a merger with another organization?
- e. Considered merging with another organization?

Why Share Services or Merge?

Motivating Factors

- **Cuts in government funding** and intensified competition for funding
- Increased funding source expectation for effectiveness, efficiency and oversight
- Strengthen financial position
- **Increase exposure** within community
- Expand service programmatic offerings
- Executive/leadership **transitions**

Definitions

Definition of Shared Services

- Arrangements between multiple organizations to share **administrative** or **programmatic** functions or **physical resources**

Definition of Merger

- General term used to describe a transaction in which **two or more organizations become one**

Benefits

Efficiency

- Reduce duplication & operational \$
- Standardize process

Economies of Specialization

- Access specialized services
- Raise sophistication level

Sustainability & Investment

- Expand donor base
- Preserve institutional knowledge

Purchasing Power

- Bulk purchasing discounts

Keep identity & autonomy (if share services)

- While minimizing costs



**ISSUES TO
CONSIDER BEFORE
MOVING FORWARD**

Issues to Consider

When should we start?

- **Before it is necessary** (i.e., before there is a crisis/before programs have been damaged)
- Often **leadership transitions** can be a good time to initiate conversations internally and externally

Issues to Consider

What is the first step?

- **Start with self-assessment**
 - Motivations
 - Desired goals
 - Critical issues
 - Organizational obstacles and red flags
 - Financial position

Issues to Consider

What are some ways of identifying potential partners?

- **Existing** alliances and collaborations
- Board or ED contacts/relationships
- Working with a consultant
 - E.g., state CSBG office or CAA state/regional association

Issues to Consider

What should we look for in a partner?

- May, but need not necessarily be, another CAA or Head Start grantee
- Both organizations bring strengths (e.g., resources, relationships, experience, skills) to the table
- Compatible missions, services, organizational cultures
- Strategic service fit
- Geographic fit

Sharing Services: Key Points

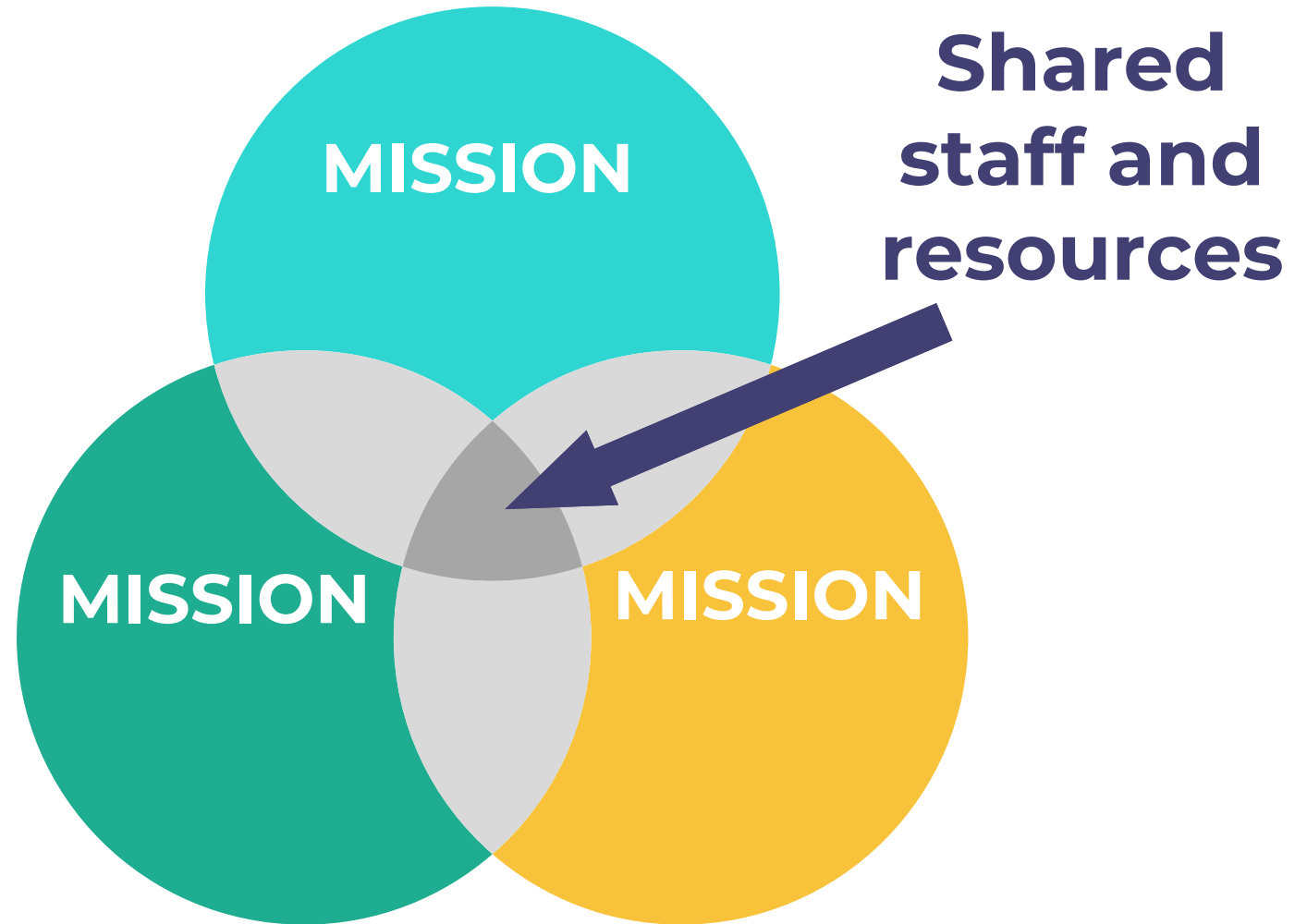
Why Share Services?

When organizations **share staff and tasks**, more time, money, and energy is available to **feed the mission**.

WHAT DO WE GAIN?

Capacity

- Through scale
- Through specialization



Services That Can Be Shared

Physical Resources/Co-Locating

- Workspaces, libraries, kitchens, conference rooms, offsite storage and servers
- Buses, transportation systems
- Copiers/printers/fax machines
- IT, hardware, software, servers, cloud applications
- Communications systems, phones, video conferencing

Easiest to Share

- easy to value, divide, monitor
- pay rental or usage fee
- does not require high level of trust
- upfront investment and decisions about features/amenities
- in-kind/match

Services That Can Be Shared

Staffing

Financial &
Administrative

Data collection &
analysis

Human resources

Group Purchasing

Fundraising &
Development

Facilities
management

Executive Director

Services That Can Be Shared

Programs

- Client intake
- Program operation
- Curriculum research, development and delivery
- Community events
- Advocacy campaigns

**More difficult
to share**

Requires high level of trust and
commitment among participating
organizations

Structuring Arrangements

- **Program collaboration agreement**
 - Jointly applying to grants
 - Collaborating on aspects of implementing a project
- **Management/administrative services agreement**
 - Sharing staff or physical resources
 - Jointly operating a program
- **Fiscal sponsor agreement**
 - A nonprofit organization acts as a “fiscal sponsor” for another entity (typically one that does not have its own 501(c)(3) tax-exempt status)

Examples of CAA Shared Services Arrangements

- **CAA #1** manages the administrative and fiscal functions of **CAA #2** as well as **CAA #2's** programs (but **CAA #2** continues to employ program staff).
- **CAA #1** engages another nonprofit to provide it with an executive director and chief financial officer.
- **CAA #1** provides a fiscal director to **CAA #2**.
- **CAA #1** provides fiscal and HR services to **CAA #2**.
- **CAA #1** provides an entire weatherization department, including the weatherization director, crews and inspectors, to **CAA #2**.

UBIT Issues

- Exempt organizations are subject to a tax on **unrelated business income**
- Identifying UBI:
 - Is it a “trade or business”?
 - Is it regularly carried on?
 - Is it substantially related to the CAA’s exempt purpose?

UBIT Issues

Providing Administrative Services

- **Fees** generated from performing administrative services for other non-profit organizations are likely to be deemed to be UBI
- Factors the IRS will consider:
 - Relationship of service provider to the recipient
 - Fee charged for services
 - Nature of services (commercial?)
 - Recipients of the services

Mergers: Key Points

Mergers

Preconditions for Success

- ✓ Trust
- ✓ Clear strategic planning and vision
- ✓ Merger champion
- ✓ Experienced leadership (executive director)
- ✓ Board and staff buy-in
- ✓ Thorough due diligence
- ✓ Attention to organizational culture and integration

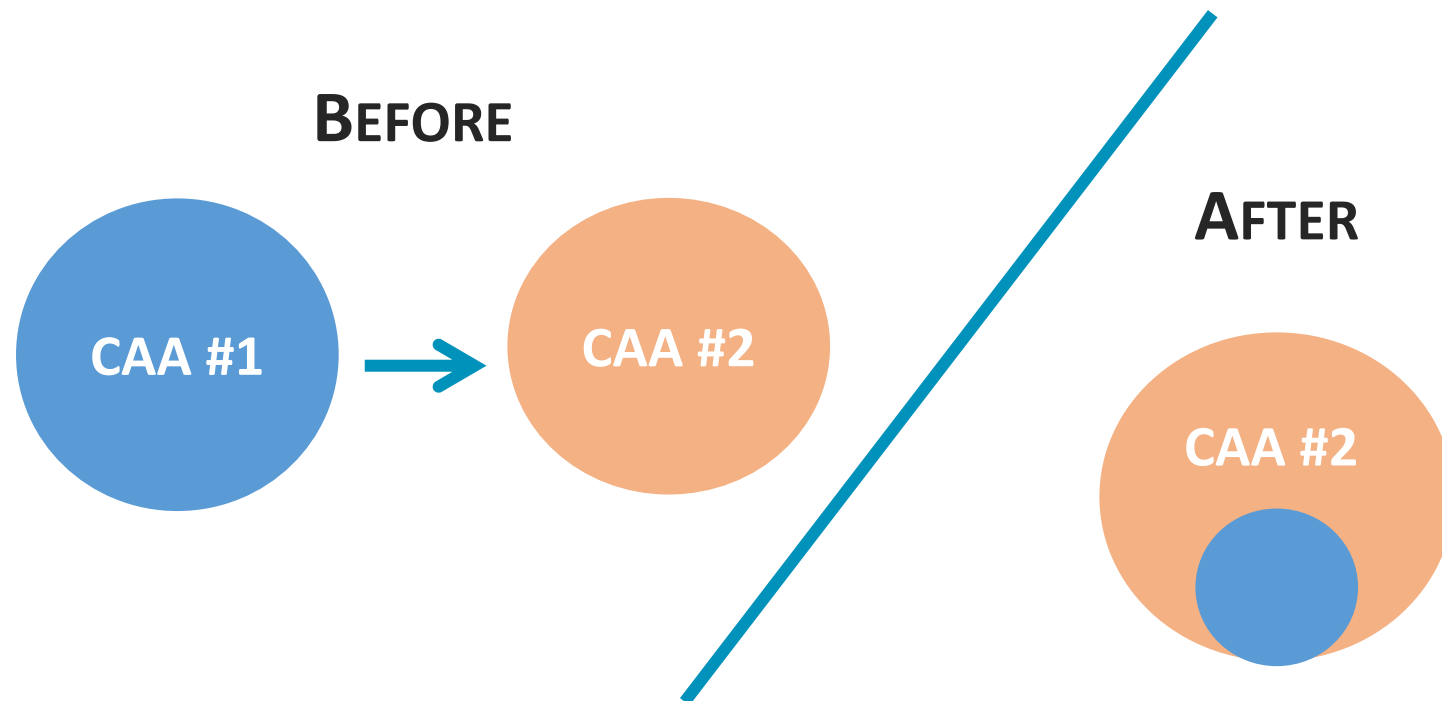
Mergers

Key part of the process: **Conduct Due Diligence**

- Each org conducts thorough investigation to ensure it understands the **operations, assets, and liabilities (actual and potential)** of other org
- Satisfies directors' **fiduciary duties** to respective orgs
- Categories of info to inspect:
 - Corporate structure & records
 - Contracts
 - Finances/debts
 - Existing or threatened lawsuits
 - Intellectual property
 - Employment matters
 - Compensation arrangements

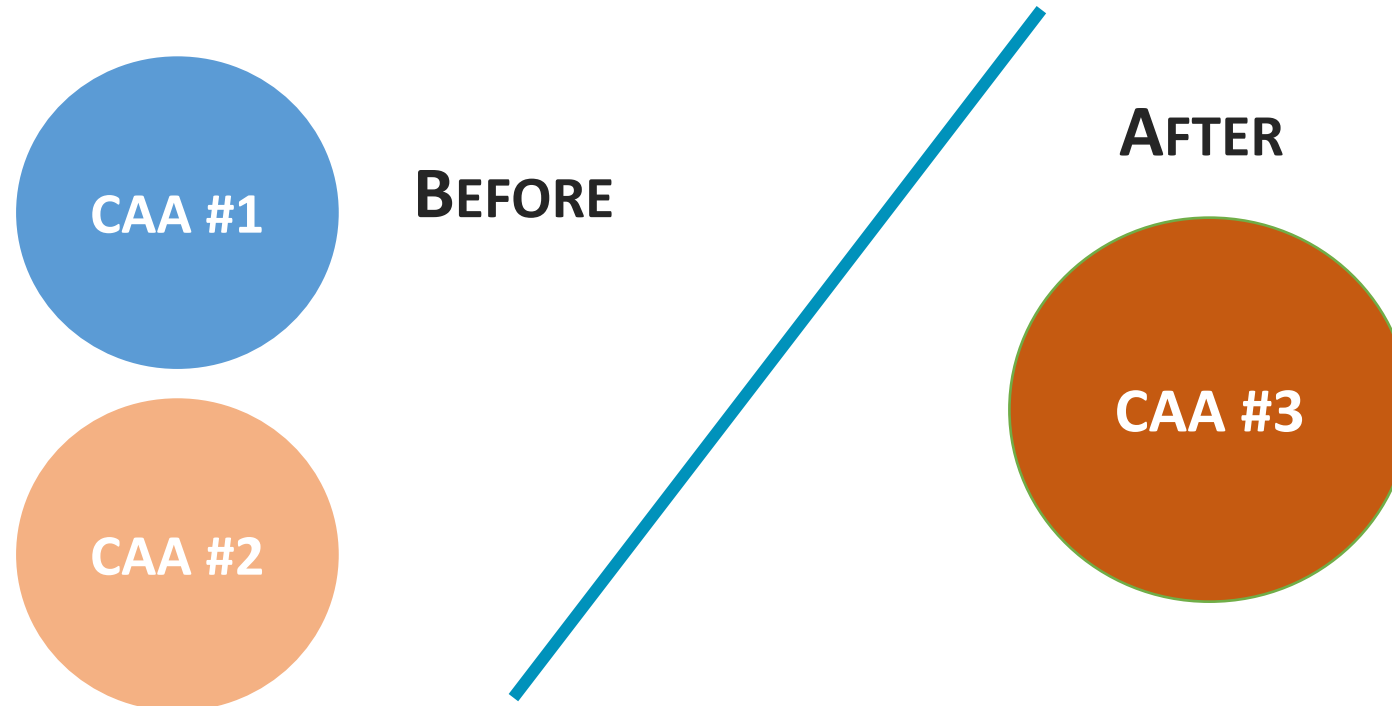
Structure: Acquisition Merger

Surviving corporation assumes assets and liabilities of one or more corporations, which then cease to exist (non-surviving corporations)



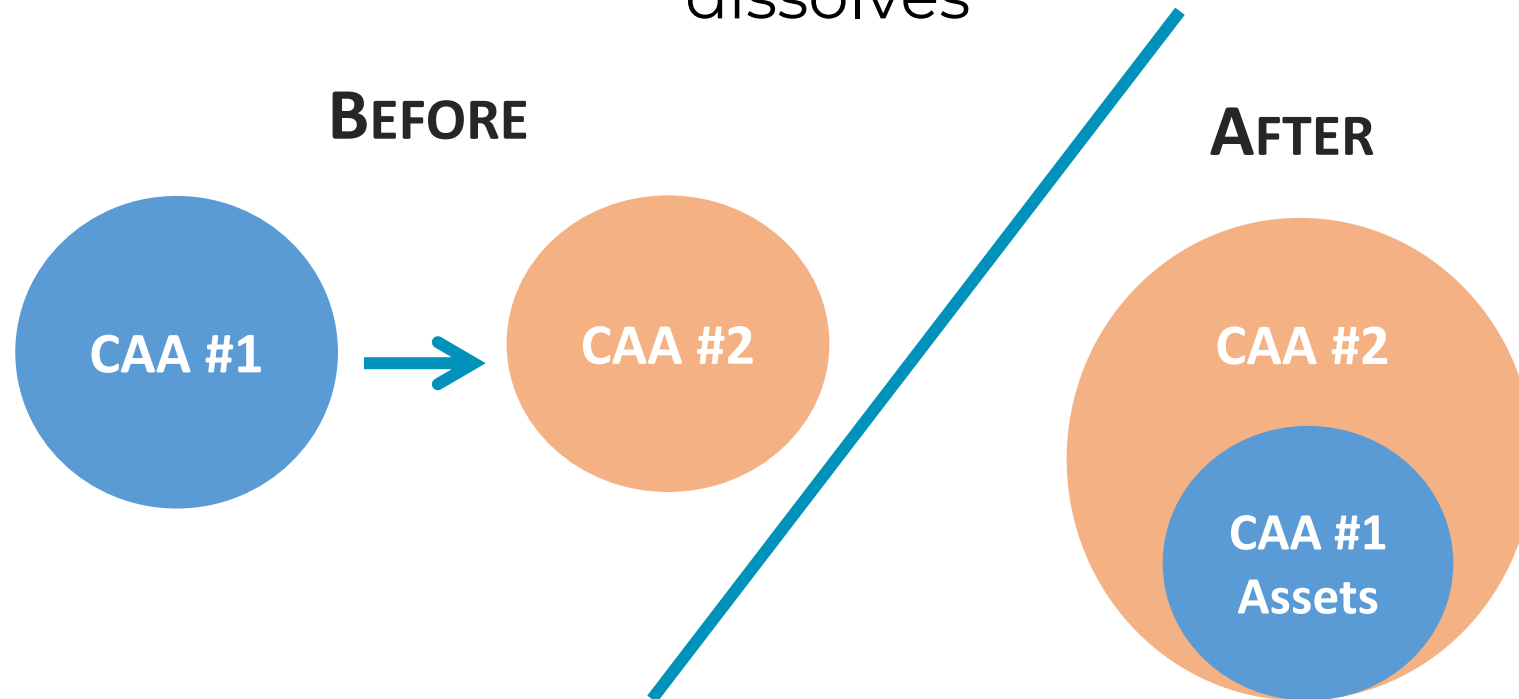
Structure: Consolidation

A new corporation is created, which assumes assets and liabilities of two or more other corporations, which cease to exist



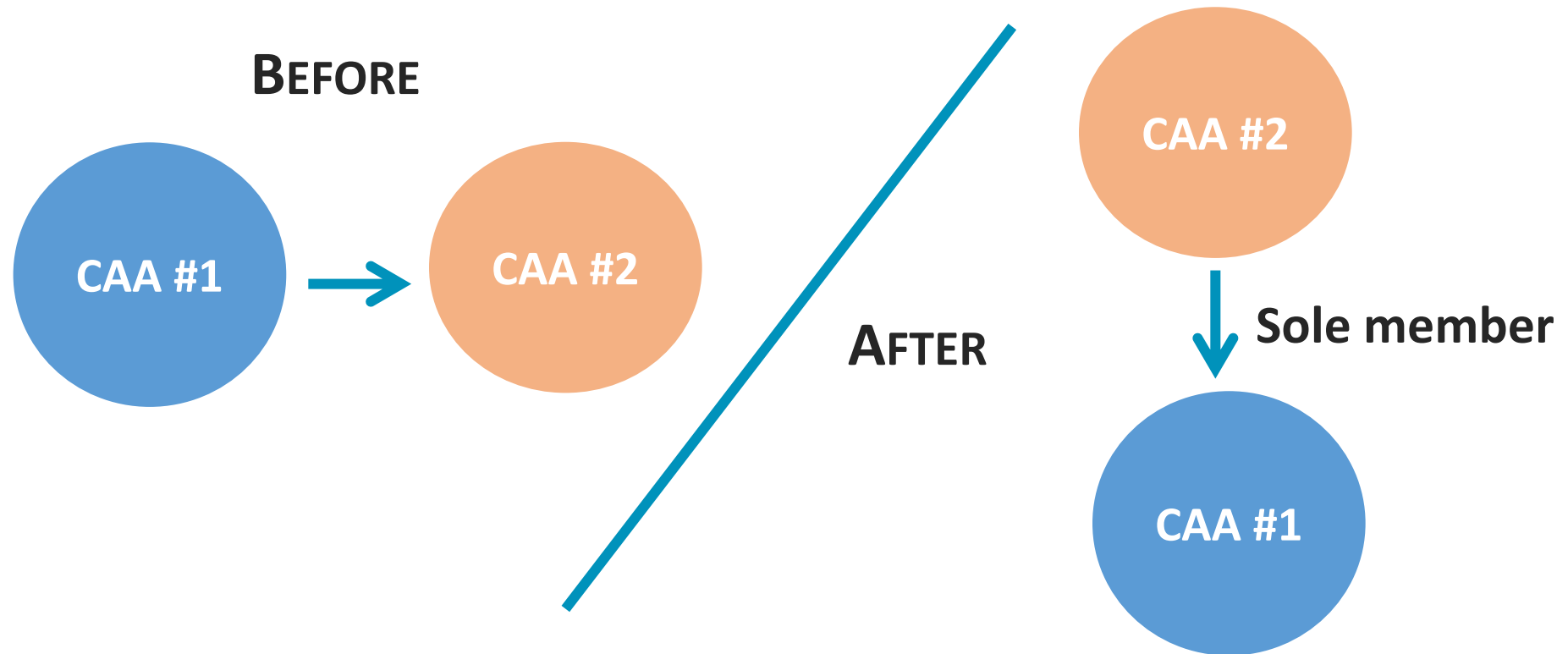
Structure: Asset Acquisition/Transfer

One corporation transfers all or a portion of its assets
(but usually not liabilities) to another and then
dissolves



Structure: Parent-Subsidiary

One corporation becomes a subsidiary of another corporation (parent)



CAPLAW Resource



Combining Forces: A Merger Manual for CAAs

- 📁 Collaboration, Mergers
- 👤 Board of Directors, Executive Director, Finance Director
- 📅 2020

Now more than ever, CAAs are exploring mergers as a strategy to improve their sustainability and enhance their efficiency and effectiveness. This new tool and the [accompanying webinar](#) can help CAA leaders understand the risks and benefits associated with merging, identify and evaluate potential merger partners, prepare for and approach the merger process, and learn from the experiences of CAAs that have merged in the past. Whether or not your agency is currently contemplating a merger, this tool will help you understand what may be gained by and what should be considered in the pursuit of a strategic merger transaction.

[View Tool](#)

[View Appendices](#)

COMBINING FORCES:

**A MERGER
MANUAL FOR
COMMUNITY
ACTION AGENCIES**

Government Funding Issues

Funding Source Rules

CSBG

- **Get state CSBG office on board**
 - Will new designation be required?
- For mergers, be aware of tripartite board composition requirements

Funding Source Rules

Head Start

- **Need OHS approval** of change in “key personnel” (45 C.F.R. § 75.308(c)(ii))
- **Need OHS approval** of change in use of real property or facilities subject to a federal interest (45 C.F.R. § 1303.48(b))

Funding Source Rules

Head Start

- If Head Start grantee's "**legal status**" changes, HHS will require recompetition (45 C.F.R. § 1304.5(a)(2)(ii))
 - Recompetition not required if Head Start grantee survives the merger
- **Need to notify OHS** of name change

Funding Source Rules

Cost Allocation

- Need to **properly allocate costs** of services performed under shared services arrangement
- Include an appropriate allocation of **indirect costs**

Procurement

- Entity receiving services must follow its procurement policy and comply with the Uniform Guidance's procurement standards (2 C.F.R. §§ 200.318 – 200.326)

Other Issues

- Ability to transfer other government grants/contracts
- Merger costs likely to be unallowable charges to federal grants, except with prior approval
 - See Uniform Guidance, 2 C.F.R. § 200.455
- **Keep your funding sources informed!**
- Accreditation/licensing
- Union issues

Key Players and Their Roles

Board Members

Roles

- Analyzes **pros and cons** of options, whether and how it will fulfill mission (especially for mergers)
- **Board committee**
 - Explores options and partners, including meeting with potential partners and overseeing negotiations
 - Oversees due diligence
 - Keeps full board informed

Board Members

Votes

- **Full board votes on:**
 - Creating committee and scope of its authority
 - Whether to merge
 - Shared services or merger agreement
 - Corporate merger documents (plan of merger and articles of merger, etc.)

Board Members

Documenting the decision

- Important to **document** board and committee **discussions** and **votes** in minutes
 - Include the basis for board/committee decision(s)
 - Attach reports, other documents on which board/committee relied

Board Members

Fiduciary duties

- **Duty of Care:** In overseeing the organization, nonprofit board members must act with “the care an ordinarily prudent person in a like position would exercise under similar circumstances”
 - Possible personal liability if board members don't carefully examine potential merger partner

Board Members

Business judgement rule

- Under the “**business judgment rule**,” nonprofit board members who exercise good faith judgment will usually be protected from liability to the corporation
 - Even if the corporate action turns out to be unwise or unsuccessful

Board Members

Duty of care

- **Board members must make informed decisions**
 - Obtain and consider written reports and professional advice before making important decisions
 - Ensure that a full, deliberative process is conducted and that directors are able to ask hard questions and get answers

Board Members

Sample Merger Decision Matrix

Variable	Value	Priority	Scores Based on 100 Total Points
Decisionmakers	Board leadership, Sr. Staff	H	
Timeframe	3-6 months	M	
Program/Mission Fit	X100	H	
Operations Fit	X75	M	
Culture	X75	M	
Relative fit of Board	X55	M	
Systems	X35	L	
Public Relations/Fundraising	X95	H	
Is there a need?	X55	H	
Economically Feasible?	X100	H	
Impact on other programs?	X55	M	
Can we provide a quality service?	X100	H	
Assets	X90	M-H	
Current Assets/Liabilities	X90	M-H	
Leases Obligations	X50	L	
Pending Litigation Issues	X100	H	
Other benefits the merger brings?		H	

Management

Role

- The executive director or interim executive director, chief financial officer, chief operating officer (program or operations directors), other staff
- **Due diligence**
 - Programs and activities
 - Financial strength and viability
 - Sustainability
 - Staff culture and roles
- **Plan for integration (merger)**

Advisors

Role of outside professionals

- **Attorneys** – involve early in process; initially each partner should work with its own counsel
 - CAPLAW is available to consult with CAAs on CSBG-, Head Start- and other government-grant specific issues
- **Consultants** – help identify partners and facilitate merging or other partnership
- **Accountants** (especially for mergers) – tax filings, impact on financial statements, due diligence

Lessons Learned

Lessons Learned

- Have a **strong advocate** for arrangement
 - CEO, board/board chair
- Build **trust** and **familiarity** with the other org
 - Good relationship prior to sharing services or merging is essential
- Be clear about how arrangement enables each org to achieve overall goals
- Conduct thorough **due diligence**
- Keep funding sources informed
 - Involve major funding sources (government/private) early in process

Lessons Learned

- **Communicate** with and involve **staff** members
 - Communicate early and often to get staff buy-in
 - Clarify new roles
- Don't overlook **organizational culture issues**
 - Address integration issues from the outset
 - Anticipate future issues and concerns
- Engage **outside experts**
 - 3rd parties offer outside perspective
 - Rely on experts who are familiar with the merger process

Lessons Learned

- Ensure arrangement is **properly structured**
- Exercise effective oversight over arrangement
 - Boards of organizations must exercise fiduciary duties
 - E.g., ensuring compliance with terms of government grants and contracts, monitoring financial transactions
- Keep organizations separate and **observe corporate formalities**
 - Separate board meetings, bank accounts, tax ID numbers

QUESTIONS?



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