

International Grantmaking: Navigating the Challenges of Legal and Regulatory Barriers

Community Conversation
July 12, 2023

Featuring:

- **Jessie Krafft**, Senior Vice President of External Affairs, CAF America



NATIONAL CENTER FOR
FAMILY PHILANTHROPY

Community Conversations



Community Conversations are topical webinars on issues and trends in family philanthropy and are available to the field at large. These events lift up experts in the field, challenge philanthropists in their thinking and practices, and share timely stories and strategies in the family philanthropy community.



Framing Questions

1

How do you support foreign grantees while managing risk, complying with the regulations governing this work, and protecting your reputation as a funder when working in foreign contexts?

2

What are the rules in the United States that regulate giving abroad?

3

What are the complex foreign regulatory systems that govern charitable in-flows in several countries, such as India, China, and Mexico?





Jessie Krafft

Senior Vice President of External Affairs

CAF America and CAF Canada

Jessie is a leading expert in international grantmaking from the U.S. and Canada as well as in local country laws on foreign funding. In her current role, she:

- Manages the External Affairs, Donor Services, and Thought Leadership teams
- Coordinates strategy with the Business Development and Grant Services teams
- Serves on the Management Committee of the CAF American Donor Fund
- Oversees CAF Canada program operations

Education

- Masters in International Development, American University
- Nonprofit Executive Management certificate, Georgetown University
- Anti-Money Laundering (AML/CFT) certification, Society of Trust and Estate Practitioners (STEP)



CAF America

CAF America streamlines global and local donations for individuals, foundations, and corporations, **reducing risk, burden & boosting impact.**

CAF America (Charities Aid Foundation America) is a **US public charity.**



CAF Canada

CAF Canada boosts giving, making it easy for Canadians to donate globally & locally. **Canadians can now make a lasting, positive impact worldwide!** CAF Canada is **a registered Canadian charity.**



CAF American Donor Fund

The CAF American Donor Fund (CADF) enables dual taxpayers, filing tax returns in the UK and the US, **to make tax-effective charitable donations.** CADF is both a US registered charity (CAF America) and a UK charity, able to tax receipt for both governments.

Framework for Charity Due Diligence

CAF America is a trusted partner for international philanthropy. Donors can give anywhere safely thanks to our commitment to the three principles of cross-border grantmaking:

Our Services and Support Guarantee

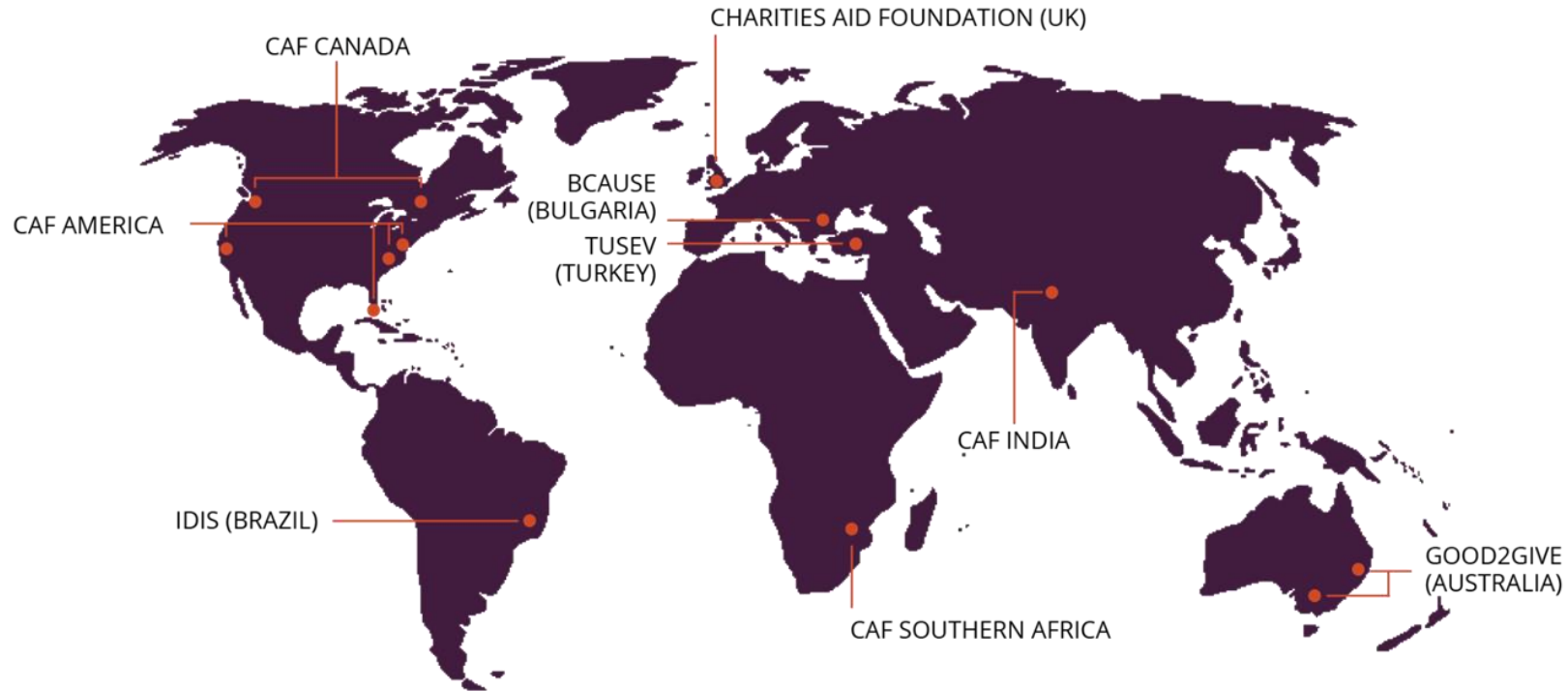
- **Regulatory** Compliance
- **Risk** Management
- **Reputation** Protection



CAF International

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The Challenges of Cross-Border Giving



- Most countries do not have ***IRS-like databases*** of approved charitable organizations, and even if they do, we cannot rely on it like we do for grants to US charities
- **Regulatory compliance & foreign nonprofit validation** is more complex and costly than when issuing grants in the United States
- The barriers to ensuring that a donor's **reputation will be protected** are much higher
- Local regulations for making foreign grants into many countries are becoming **stricter**

IRS Regulations



The two protocols the IRS has approved that provide for tax effective international giving

Equivalency Determination (ED)

Foreign nonprofit deemed equivalent to a US 501(c)(3)

Expenditure Responsibility (ER)

Verifies that the project is charitable

Contrary to some misconceptions grants CAN be made from DAFs using both ED and ER!

Equivalency Determination (ED)

Equivalency determination (ED) is the method by which we collect detailed information on a foreign charitable organization in order to make a “good faith determination” as to whether or not it is the equivalent of a United States public charity described in sections 501(c)(3) and 509(a) of the Internal Revenue Code (the “Code”).

IRS Revenue Procedure 92-94 provides a specific procedure for making this determination, including a list detailing information that must be obtained from the foreign charitable organizations.

To complete this review CAF America collects the following (list is not exhaustive):

- General Eligibility Application
- An ED Affidavit
- Overview of Programs & Activities
- A Public Support Test
- Governing Documents
- Audited Financial Statements
- List of Board of Directors
- Registration/Formation Document



ED | 2015 IRS Guidance

The Process should be focused on the Grantee organization as a whole. The grantmaker must make a reasonable judgment/a good faith determination that their grantee meets US standards.

- Operational Test
- Organizational Test
- Public Support Test

Other Updates in 2015 Guidance:

1. Qualified Tax Practitioners can provide opinions to third parties
2. Affidavits **are no longer considered sufficient** to establish equivalency



ED | Key Considerations

- Grants for capital assets and endowments
- Ability to make truly unrestricted grants
- EDs are more difficult for newly formed organizations (under 3 years of financial information)
- Level of public support can vary over time particularly when a small organization receives a large grant.
- Foreign government entities and international organizations (UN entities) are already equivalent under Executive Order - just need to ensure charitable purpose.
- Level of documentation required for ED is higher than ER

Enhanced Expenditure Responsibility

Although our exact process is proprietary, some of the enhanced features of CAF America's Enhanced Expenditure Responsibility method entail the following steps:

- 1. Making a “pre-grant inquiry”** — All foreign charitable organizations applying for eligibility must complete a Grant Eligibility Application (GEA). In addition, applicants for Enhanced ER vetting must submit:
 - Governing documents
 - Proof of registration
 - Audited financial statements
 - List of current directors and/or trustees and senior staff members

- 1. Executing a written grant agreement** — Grantees must enter into a grant agreement with CAF America containing specific terms that limit and restrict how grant funds may be spent and monitored.

- 1. Grantee Reporting** — Grantees must submit an annual report on all grant expenditures.



Expenditure Responsibility

When Is Expenditure Responsibility Required?

- For any grants to organizations that cannot pass an Equivalency Determination and are not a registered U.S. public charity
 - Social enterprises
 - For-profit entities
 - Very new organizations
 - Small local organizations
- Anytime the full ED process is not preferable or if a grant needs to be made more quickly or flexibly

Violations of ER Requirements



In case of improper use of funds, the grantor must:

- Take all reasonable and appropriate steps either:
 - To recover the grant funds, or
 - To ensure the restoration of the diverted funds and the dedication of any other grant funds held by the grantee to the purposes for which the grant was intended; and
- Withhold any further payments to the grantee until it has:
 - Received the grantee's assurances that future diversions will not occur, and
 - Required the grantee to take extraordinary precautions to prevent future diversions from occurring.



ED or ER?

When to Use ED?

- Flexibility in reporting
- Capital Assets
- Endowments
- Many gifts over multiple years
- Unrestricted grants

When to Use ER?

- Not all organizations can meet ED requirements
- Funding a charitable project at a social enterprise or for-profit entity
- Easier for grassroots organizations



Outflow Restrictions | Additional Regulations

Cross-border charitable giving needs to follow US laws and provide for additional compliance checks

- USA PATRIOT Act
- Executive Order 13224
- HR4 (the Pension Protection Act)
- US Treasury Department Voluntary Guidelines for International Grantmaking
- Foreign Corrupt Practices Act (FCPA)
- Office of Foreign Assets Control (OFAC)

United Nations Sanctions and General Licenses

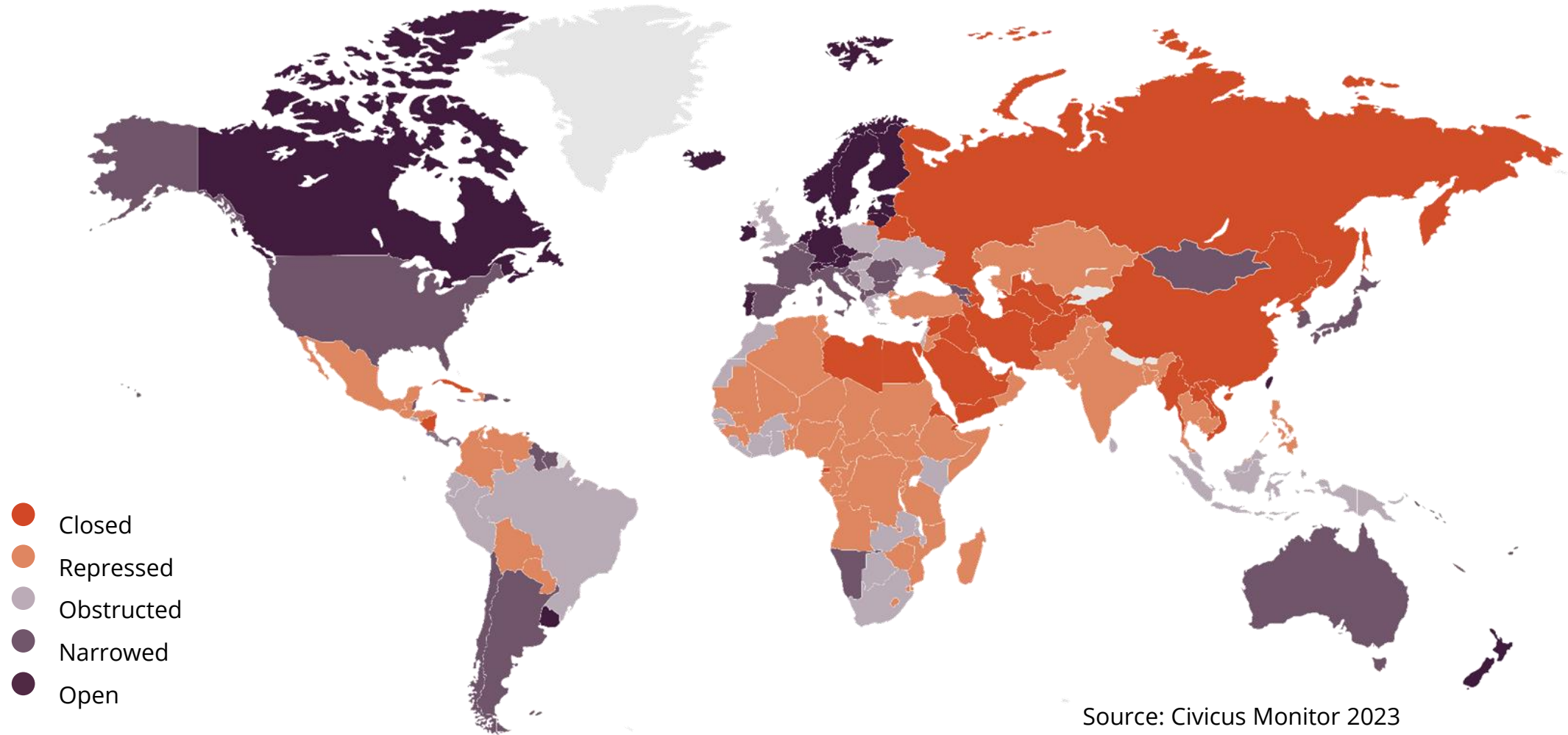


Navigating Sanctions and Licenses

- Need to ensure no association with designated persons or entities (Specially Designated Nationals — SDN List)
- Humanitarian crises and sanctioned countries often have some form of General License for humanitarian relief
- Challenges and considerations in Afghanistan, Syria, Venezuela, Russia, etc.
- Bank de-risking and barriers from financial institutions

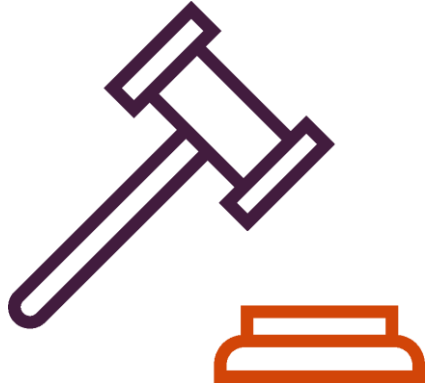
CAF America and the Charity & Security Network released a whitepaper last year on navigating sanctions and licenses.

Inflow Restrictions | Country Laws



Source: Civicus Monitor 2023

Inflow Restrictions | Country Laws



- **Requirement to obtain prior approval (certification)**
 - E.g., China, India, Pakistan, Egypt
- **Stigmatization (foreign agent laws)**
 - E.g., Russia, Hungary, Venezuela
- **Limiting activities and focus-areas (human rights, advocacy etc.)**
 - E.g., China, Venezuela, Indonesia
- **Control of resources (bank account, approval to access funds)**
 - E.g., China, Uganda
- **Additional taxes imposed on foreign funding**
 - E.g., Russia, Hungary, Nicaragua
- **Privacy regulations**
 - E.g., EU GDPR and UK Data Privacy Act

India | FCRA



Foreign Contributions Regulation Act

Amended in 2020 and 2021

- Each charity receiving foreign funds MUST have their FCRA registration
- Foreign donations MUST be sent to an FCRA-approved bank account
- Grantors may no longer rely on Indian intermediaries to further distribute funds
- Required registration renewal every 5 years, 6 months before expiry

HOW IS IT AFFECTING GIVING?

- After April 1, 2021, charitable organizations are no longer allowed to receive foreign funding into their old bank accounts. Only 15% of 21,000 previously FCRA-compliant nonprofits in India have been able to open their account.

China | Foreign NGO Law



“Law of the People’s Republic of China on Administration of Activities of Overseas Nongovernmental Organizations in the Mainland of China” (2017)

Organizations receiving foreign support are **required to register** in 1 of 2 ways:

- “Overseas NGO” registration
- “Temporary Activity Licenses” for each project

HOW IS IT AFFECTING GIVING?

- It requires more effort from donors to ensure the organization is properly registered or to assist them in applying for a temporary activity license in order to receive foreign funds.
- It also affects how grantor organizations operate within the country and whether/how they attempt to register.

Mexico | Anti-Money Laundering Law



“Federal Law for the Prevention and Identification of Operations with Illegally Acquired Funds” (2013)

- High level of burden placed on grantmakers sending funds of \$5,369 USD & greater to organizations within the country

HOW IS IT AFFECTING GIVING?

- The regulations require that comprehensive documentation be provided to the government from beneficiaries about the donor
- The information needed by the Mexican government includes copies of IDs such as passports of the head of the donor organization and other sensitive information
- Failure to understand and comply with these requirements will prolong the grantmaking process & perhaps have more negative consequences

Questions?

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Our next *Community Conversations* webinar

Is Spending Down Right for Your Philanthropy? How to Make the Decision and What to Consider in the Process

September 21, 2023 | 2:00-3:30 pm Eastern

- Determining the lifespan of a philanthropic effort is one of the most important decisions a philanthropy's board, staff, and family members make. Join us for this webinar to hear from family philanthropies who can provide guidance on the critical questions to ask, how to go about making a decision on lifespan, and how to successfully navigate the spend down journey once that decision has been made.

Learning and Action Cohorts

Racial Justice Learning and Action Cohort

The National Center for Family Philanthropy (NCFP) has partnered with Leverage Philanthropic Partners to create a Learning and Action Cohort that will provide an intentional, transformative learning journey and support families in making a deeper commitment to advancing racial justice in a way that is meaningful and grounded in a root cause analysis of injustice pervasive in society today.

APPLICATIONS DUE SEPTEMBER 15



Join a Peer Network

Peer networks are for those interested in connecting to family philanthropy colleagues with similar objectives, challenges, and shared experiences.

**Engaging Youth | Non-family Staff | Strategic Lifespan |
Board Chairs | Emerging Family Leaders | Rural Philanthropy**

Email ncfp@ncfp.org to learn more and join.



Thank you for joining!

NCFP will send a recording and related resources for the webinar to all attendees.

Please complete the webinar evaluation survey that has been dropped into the chat.
You may also send your comments and testimonials to ncfp@ncfp.org.

