

International Grantmaking: Navigating the Challenges of Legal and Regulatory Barriers

A *Community Conversations* webinar recorded on July 12,
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NATIONAL CENTER FOR
FAMILY PHILANTHROPY

Featuring:



Jessie Krafft
CAF America

Transcript of the *Community Conversations* webinar, *International Grantmaking: Navigating the Challenges of Legal and Regulatory Barriers*. Recorded on July 12, 2023.

Nicholas Tedesco:

Hi everyone, welcome, we'll get started in just a moment. Welcome everyone, for those of you who just joined, we'll get started in just a moment. Hi everyone, we'll get started in just a moment, thanks for being on time.

All right, in the interest of time, I think it's best for us to get started. I know some other attendees will join us as the program begins. But happy summer everyone, I hope that you're taking some time to enjoy the season and hopefully get some rest. Welcome again, my name is Nick Tedesco and I'm the president and CEO of the National Center for Family Philanthropy. And we are so grateful that you're joining us today for this Community Conversation. This is our second Community Conversation of the year and the second in our series focused on international grantmaking. As a reminder, 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, they challenge philanthropists in their thinking and practices, and share timely stories and strategies in the family philanthropy community.

Today we're going to be talking about international grantmaking. International grantmaking is critical to the success of supporting a healthy global community. Donors who give to projects and partners outside of the United States have the opportunity to make real and lasting impacts in communities. But when foundations want to make grants to non 501(c)(3)s, the rules governing cross-border funding can be complex. In this webinar, we're going to explore three framing questions. The first, how do you support foreign grantees while managing risk, complying with the regulations governing the work, and protecting your reputation as a funder when working in foreign contexts?

The second, what are the rules in the United States that regulate giving abroad? And the third, what are the complex foreign regulatory systems that govern charitable in-flows in several countries such as India, China, and Mexico?

Before we begin the conversation though, let me briefly share about our webinar technology. We want this webinar to be interactive, so please submit questions for the panelists. To ask a question, please use the question box as indicated on the current slide. When sending in a question if you wish to remain anonymous, please indicate that. As a reminder, this webinar is being recorded and a replay will be made available to all attendees. If you experience any technical issues, please reconnect to the technology or email Daria Teutonico at daria.teutonico@ncfp.org for assistance. You'll see her email address on the slide. As always, you're welcome to chat with us on Twitter about today's webinar using the #NCFPweb. Now on to our programming.

Before we begin, I want to introduce our speaker. Today we're joined by Jessie Krafft, Senior Vice President of External Affairs for CAF America. Jessie began her tenure with CAF America in 2011 and serves as the senior vice president of external affairs for CAF America and CAF Canada. And is on the management committee of the CAF American Donor Fund. She's a leading expert in international grantmaking from the US and Canada, as well as in local community laws on foreign funding. Prior to joining the CAF America staff, Jessie worked for one and a half years as a volunteer visitor coordinator, tutor and child caretaker at an orphanage in Honduras. We're so thrilled to have Jessie joining us, and I'll invite Jessie to come on camera and turn it over to her. Jessie, thank you so much for leading our conversation today.

Jessie Krafft:

Thank you so much, Nick, we really appreciate the opportunity.

Excellent, if you could go to the next slide please. So I'm just going to start with a very brief intro on CAF America, so you have an understanding of who we are and where our expertise comes from and what we do on a day-to-day basis. So firstly, CAF America, we actually are CAF America Group, we have two subsidiaries. So CAF America itself, essentially we're a US public charity and we work with all types of donors in the United States that want to give internationally. So we work with a combination of corporations, foundations, and individuals. And then we do have two subsidiaries, one is CAF Canada, that does the same type of work with Canadian donors, under the Canadian legislative environment. Which we won't talk about today, it's actually much more complex in a lot of ways. And is a changing regulatory environment for international grantmaking actually, regulations are changing this year. So I won't be talking about that today, but that is another piece of work that we do.

And we have a second subsidiary called The CAF American Donor Fund, which is actually based in the UK. And it is a dual registered charity, registered under both UK and US regulations as a charity in both countries. And so it primarily works with donors that are dual tax paying citizens. So either in the US or in the UK that have tax obligations in both countries, so they can receive their tax benefits in both of those jurisdictions. Go to the next slide please.

So CAF America, in our grantmaking and charity due diligence in all of the charitable work that we do globally. The basic framework that we use is what we call the three Rs, where our services guarantee regulatory compliance, which we'll be primarily focusing on today. And how we achieve regulatory compliance and giving you the tools that you need as grantmakers to ensure that your grantmaking is compliant. Risk management and reputation protection, so those are our three Rs. You can go to the next slide please.

So just to give you a sense of some of our reach, and actually this is a growing network, but we are also part of CAF International. So our head office in the UK works to bring together a group of global partners, which together we're called CAF International. And these are the countries where we're currently located. However, we're actually working on this year adding several new partners to this list, so more to come. But CAF America itself, we do have offices and presence in D.C., New York, Miami, San

Francisco, Toronto, Vancouver, and London, alongside of these other partners. You can go to the next slide please.

Okay, great. And of course, if there are any other questions about CAF America, please let me know, but I just wanted to briefly give you that overview as a starting point about who we are. So as many of you know and probably given that you're attending this webinar, you know that cross-border grantmaking is challenging. There are a number of challenges that have to be navigated, and this is just an initial snapshot of some of those challenges. Firstly, a lot of countries don't have IRS-like databases of approved charitable organizations, but actually, I'd say there are an increasing number of countries that do. However, just because they have that type of government registry, it doesn't mean we can rely on it specifically for direct international grantmaking. And actually in most cases it means that we cannot, so it's helpful as a due diligence tool, but really it ends there. So that's sort of challenge number one.

Regulatory compliance and validation is complex and can be quite costly. And it can be difficult for organizations to undertake this work if you only have a few international grants each year, because of course significant resource and expertise needs to be included within that. So it can be quite complex in that regard.

Reputation protection is challenging as there are a lot of local considerations that need to be considered when making a grant to ensure that we are protecting reputations of our donors and ourselves. And mitigating any risks that might be inherent in any of the grants that we make.

And then the final one, which we'll talk a lot about later in this presentation is that local regulations for making foreign grants into certain countries, and an increasing number of countries are becoming stricter. And so that's of course another challenge that has to be navigated to ensure that the organizations themselves on the ground are receiving funds in a compliant manner. And that we're not getting them into any trouble by sending charitable funds to them. You can go to the next slide please.

Great, so just diving straight into the tax code, the good old IRS tax code, and the regulations that we can use as a charitable organization to make international grants. So we do have two tools in the United States to give internationally, which is actually fairly unique on a global scale. And I can tell you from managing and overseeing CAF Canada's operations that we wish we had regulations like this in Canada. We're fortunate to have these two options and I'll talk about how to navigate both of those and which ones we use when. But one of them is called equivalency determination, and in a nutshell, this is really looking at the organization as a whole and determining that the organization can be deemed equivalent to a US public charity. So that can be quite complex. It's easier for charities in certain countries where that country's legislation might be pretty similar to the US, but in some countries it can be quite challenging if they don't have those same regulatory requirements. So I'll talk through a little bit more on that.

And then the second tool is expenditure responsibility, which is really focused on the charitable project itself. We do also conduct due diligence on the organization as a whole, but not necessarily to determine that it's equivalent of a US public charity. Because the primary requirement is ensuring that the project itself is charitable, that we have faith that the organization will be completing that project, and has the

capability to do so. And so there are several steps and requirements within that to comply with the ER rules. So just this note at the bottom, there is some misconception sometimes that equivalency determination is the only route. And some donors prefer to use that route, but expenditure responsibility is possible and is actually a much more flexible tool in some ways. And I'll explain why that is later. You can go to the next slide please.

So equivalency determination in a lot more detail. So basically as I mentioned, what we're doing in an equivalency determination is ensuring that a foreign charity can be deemed equivalent to a US public charity. And there are a lot of requirements for what needs to happen and what the organization needs to have in place both in their governance and their activities and their forms of income in order to be determined equivalent. So there are several documents that we need to collect in this process. And what's important to understand about equivalency is that it's not just about sending a questionnaire and them checking boxes and saying, "Yes, we're prohibited from political activity." And "Yes, we're a public and not a private foundation." We actually have to substantiate the responses that they give us with documentation.

So for example, we have to have the substantiated evidence from their governing documents that show how the board is managed and the ways that they can use funds, for example. So are they distributing dividends to their board? Which would not be a nonprofit activity, right? That would demonstrate that they might have a for-profit aim. We actually have to show that substantiated evidence in that review process. Which means that we're really collecting quite a long list of documents, which is listed here at the bottom. So we do some general due diligence through our general eligibility application, where we collect some basic information about the organization. We also collect an ED affidavit, which is part of the requirements under this IRS Revenue Procedure. Which asks a number of questions and then within itself they refer to the documents where you can find evidence to support the responses that are being provided in the affidavit.

So then we're attaching to that affidavit an overview of the organization's programs and activities. So really to look at everything that they're doing and make sure that they would all be considered charitable activities under the IRS regulations. If they're undertaking activities like political activity for example, that would not be considered charitable or allowable under IRS rules. Unfortunately, that means that they wouldn't pass the equivalency determination. So that's why it's important for us to look at those overall programs. And then we're also including within that a public support test, which is a complex spreadsheet that we have and that we utilize for this purpose that basically requires the organization to input certain information about their income. And what we're looking for through the fancy calculations that the spreadsheet is doing for us, what we're looking for is an understanding of whether the organization is publicly supported.

So do they have a broad number of donors and income sources from the general public or from government that would lead them to be a publicly supported charity? Or are they receiving the majority of their funding from one or a few major donors? Which might mean that they're a private foundation, which would not qualify them as equivalent because equivalency determination is looking for public charity status, not private foundation. So that's a really important piece of the process. And then the

rest of this list is really... again, the list of documents is substantiating the information that's asked for in the affidavit itself. And I'll talk a little bit more later about what we do with this list of board of directors. And we also include senior staff in that, and that's important for sanctions compliance and anti-terrorism, anti-money laundering legislation, things like that. So I'll talk a little bit more about that later. You can go to the next slide please.

Great, so there was new guidance that was released by the IRS in 2015 that really helped to clarify some major questions that were out there around equivalency determination and how to manage it. So really some of the primary updates that came from this were, one, that qualified tax practitioners can provide opinions on this. So it expanded some of the definitions of who can provide these opinions. And that specifically affidavits are no longer required... oh sorry, are no longer considered sufficient to establish equivalency. So they are required, but you can't... As I sort of alluded to earlier, you can't just collect that affidavit that has yes, no questions on it, and say that, "Okay, the organization is equivalent." You actually have to substantiate all of that information. And the last thing that's not listed here, but was also really important in the 2015 guidance is the fact that, previously checking for sanctions compliance was not part of the equivalency determination requirement.

But now the guidance does specifically focus on that and requires that input. And to ensure that we're not funding specially designated nationals or sanctioned entities in any way. And that's really an important addition because what we were seeing previously is that some donors having an equivalency determination in hand just thought that they could go ahead and give. When actually there were other regulations that they still needed to comply with. And there's still a bit of that and I have a list of those that I'll share with you all later. But that was another important update in the 2015 guidance that has to be included now in that process. You can go to the next slide.

So there are a few key considerations for equivalency, and as I mentioned, CAF America does utilize both equivalency determination and expenditure responsibility. And one of the overarching benefits of equivalency determination specifically is when you determine that an organization is the equivalent of a US public charity, it enables you to work with them as if they were a US charity. With the exception of some of the anti-terrorist and money laundering regulations that I alluded to. But you really can grant to them in an unrestricted way, you don't have to collect reports on the use of the funds. Although, in most cases it's still considered best practice to do so, but it's not a legal requirement. You don't have to have specific grant agreement in place that restrict them on how they can use the funds. So you can purely support operations, make unrestricted grants that they can use for any purpose.

So that is a really nice benefit of it, is that you don't have to think about that sort of the long arm of compliance on the backend of collecting reports and things like that. So for that reason, it's really useful in certain scenarios. So for example, two of the big reasons that we would specifically use ED are for grants for capital assets and grants that are supporting endowments. And the reason for that is one of the key requirements of expenditure responsibility, which is the alternative rule to ED, is that we have to collect reports on the life of the grant. Which in the case of a capital asset, for example, if we were purchasing a vehicle or building a hospital or something like that. Really means the useful life of that

asset, which for a vehicle could be 10 years that it sits on your financial statements and that it is considered within its useful life, or with a hospital about 50 plus years.

We really don't want to collect reports for 50 years, and we don't recommend that. Of course, if it's a short term asset, sometimes that's the best way to go. And you can certainly do that, but it is much easier to do it under equivalency. So in these cases we do, as I mentioned, in a lot of these cases, still collect reports as a best practice, but we won't collect it for the full life of that asset. And similar for an endowment, funds could sit in an endowment and earn interest in perpetuity. So we really don't want to have to keep track of money that's sitting in an account and maybe just they may just be spending the interest off of that. Which means we'll be collecting reports indefinitely under ER rules. So that's one of the key benefits is just a lot more flexibility in what you can do with the organization.

So that's one of the things that we look at is when making the determination of which tool to use is how does the organization intend to use those funds? And then we'll make some decisions based on that. A few other key considerations is that, so sometimes equivalency can be a lot more difficult with new organizations. And one of the key reasons for that is because the public support test looks at five years. And we have under certain circumstances gone by a couple, two or three years of activity. And then projections on the out years, on the outer two years, but it's not as clear cut. And if the organization is brand new and you really have nothing to go by, it's going to be pretty hard to make that statement and determination that they are publicly supported when you might not even see any of their financial income to date. So typically with new organizations, we'll work with expenditure responsibility.

Level of public support can vary over time, so I have seen situations where an organization is qualified... actually is qualified as a private foundation because of one large grant that they received in one year that really tipped the scales. But then over time their public support sort of increases because that's not really how... they are fundraising through other public sources, so that can vary over time. So an organization that does pass an ED one year, might not the next. Just depending on the sort of balance and the percentage of public versus private support that they're receiving.

One really important caveat here that could take a whole another presentation on how we manage this is foreign government entities and international organizations. So international organizations means UN entities or other related entities that have the privileges and immunities that are designated to international entities such as International Federation of Red Cross and some other similar organizations. They're already deemed equivalent under executive order, so you can't do an ED on them because they're already deemed equivalent. However, what's really important to note is that you have to still ensure that there is a charitable purpose. So while you could... You don't need to go through the full ER process, you do need to make sure that you're still funding a charitable purpose. So for example, of course not all foreign government activities would be considered charitable, but sometimes foreign governments do charitable work.

So a great example that we've worked with in the past is a local township that's planting trees and supporting environmental rehabilitation. That's a good example of a government project that we could fund. So that's important to note and again, has its intricacies and complexities. We actually have a blog

on our website about this as well if you have more questions about it. And then of course the level of documentation required for ED is higher than ER. You can go to the next slide. Okay, so that's ED in a nutshell.

Expenditure responsibility is the alternative. And as I mentioned, this is really focused on the charitable purpose of the project and not the organization as a whole. So what's listed at the top of this screen is actually called Enhanced Expenditure Responsibility, which is sort of CAF America's version of this because as I mentioned, we do still undertake due diligence on the entirety of the organization. And that's part of our step number one, which is listed here. That's part of our pre-grant inquiry, where we really are looking at the overall organization. We read the governing documents, we look at their programs and activities because we as an organization want to know if we're working with what would be at least close to a charity, right? Making sure that they're nonprofit and that we don't have any concerns about our funds generally being used for profit or non-charitable purposes.

And we'll shift the due diligence review and the expenditure responsibility review based on what we find. So if we find, for example, that we're working with a for-profit, which is possible under ER, and I'll talk about that in a little bit. We will not read the governing documents or we'll discontinue the review of the governing documents because we're not going to like what we see, it's not going to qualify as a charity. And we'll sort of shift some of the other requirements accordingly and really focus in on can we make sure that our funds aren't going to be used for a for-profit purpose? But instead specific designated charitable purpose. So we do look at the organization as a whole and take a risk-based approach to how we manage our expenditure responsibility grants. So we still look at governing documents, proof of registration, financial statements, and the list of directors and staff members as part of our pre-grant inquiry, which is a required step under expenditure responsibility.

The second major step under ER is executing a written grant agreement. And there are certain terms that the IRS requires that to be included within this. And those terms aren't listed here, but I can share them separately if you need them or they're on the IRS website. But for example, one of the requirements is that if the charity dissolves and they still have remaining funds from the grant, that the funds need to be returned to the grantee entity. So just as an example, there are some really specific requirements of what needs to be in this grant agreement. And these days there are actually a bunch of templates for the ER grant agreement online that can be found if you're looking for some guidance on that.

And then the third requirement for expenditure responsibility is the reporting, as I talked about earlier. We collect an annual report on all grant expenditures and must continue collecting that report until the funds have been fully expended. And so again, if we see a long arm of expenditure, we might end up going toward equivalency so we don't have to collect reports for an excessive number of years. You can go to the next slide.

So when is expenditure responsibility required? So really firstly, it's for any grant to an organization that is not a US public charity and that cannot pass an equivalency determination. So we do see a lot of situations where an organization doesn't pass an ED, but it doesn't mean that they're a bad organization

or they're doing anything wrong. It just means that they don't fit the specific standards that the IRS holds for a US public charity. And there are several different scenarios where an organization is likely or almost guaranteed not to pass an ED. And a few of those are social enterprises, a lot of social enterprises. Even though they have some charitable activities and even might be nonprofit, might be a LLC nonprofit entity. They in many cases wouldn't pass an ED because some of them have some for-profit activities or activities that wouldn't be considered charitable.

For-profit entities certainly wouldn't pass an ED. Very new organizations wouldn't. And then also small local organizations sometimes tend not to have the infrastructure in place, but not always, to enable them to pass an ED. Sometimes they can pass it easily, but it can be more challenging, particularly because of the documentation requirements being so significant for an equivalency. So really any time that the ED process is not preferable or if a grant needs to be made more quickly or flexibly is really when expenditure responsibility is needed. And would be your alternative tool for granting to a non US charity. We can go to the next slide.

So of course, when we're working with the IRS, there are always penalties or other fun things that happen if you get this wrong. And if it's truly egregious, of course it could put your charitable entity at risk. At risk of losing your 501 status if you're making grants to organizations and not substantiating the charitable nature and not documenting your process to show that you're ensuring there's a charitable purpose. The IRS really sees that as supporting initiatives that are not charitable, which as a charity you can't do that, it's prohibited. So there are always times in international grantmaking, so what I always say is every grant we make has a level of risk to it. There's never a no risk grant, right? But there are varying degrees of risk and there are ways of mitigating those risks. And there are always scenarios where an organization uses the funds improperly. So we make thousands of grants every year, we are consistently dealing with compliance issues here and there. Some small, some more concerning, and the process we have in place really mitigates a lot of that risk.

But what we see happening in certain circumstances for example is maybe a charity shifts, something happens, COVID is a great example. We had a lot of charities that received grants from us and just couldn't complete the projects that we had in initially intended for them to complete. And mostly because they were incapable of doing so because of the lockdown and other complications that came from that. So we really during that period to ensure compliance, we were reaching out to those organizations and to our partners and letting them know, "Hey, if you do have any changes, that's absolutely fine. You just need to let us know so we can amend your grant agreement."

So we do a lot of grant agreement amendments through the course of working with a particular organization. Which is important to remain flexible because things change, and so we do have that mechanism. But if we really find that an organization has spent the funds improperly and perhaps has spent them on a non-charitable purpose, we have to make sure that we're taking steps to recover those grant funds or to ensure that those diverted funds are restored to what was initially intended. And so we have a lot of steps that we take in those scenarios to resolve those issues because we need to show that we're making that good faith effort. Fortunately, major issues don't really arise because we do a lot

of due diligence, but there are always things here and there when we make the number of grants that we do around the world.

And it's also important if there's non-compliance, for example, if an organization doesn't submit their grant report on time or if they were reporting on expenditures that weren't approved. You really need to pause any future grantmaking to them until you're able to get them into a compliant position. Or perhaps if the situation is severe, you might never be restoring your ability to make further grants to them, so it really depends. So we have a number of options that we work with if there are different situations that we run into. You can go to the next slide please.

So how do we navigate this ED and ER scenario? So one, and actually there were a few questions that were raised through the registration for using ED and ER that I'll address right now as well. But here's kind of a breakdown of some of the considerations that we take when we're using ED or using ER and some of the ways that we make that decision. But there was one question that came in during the registration process that asked, what are the risks and benefits to grantmakers of accepting equivalency determination for non-US organizations? So I talked a lot about the benefits and you can see some of the beneficial areas on the left-hand side here of when you would use ED. But I think one important risk to consider here is that ED is not necessarily a license to give. So you do have to make sure that other regulations are complied with both from a US standpoint and from a local country standpoint, which I'll talk about later in this presentation.

But there is a risk there of just a grantmaker getting an ED, perhaps purchasing it from an external source or doing it themselves and thinking they've checked a box, it's done, good to go, when actually that's not the case. So I think that's one of the risks, so that's one of the reasons we educate on this is to make sure grantmakers know that there are other considerations they need to make.

And another question that came in in the registration, there were a few questions about advocacy, which I'll sort of combine into one umbrella. So the questions were really about how you can support advocacy work versus education and outreach in your grantmaking to international organizations. And whether you can support advocacy in international grantmaking. And of course, as many of you might know, there are varying definitions of advocacy and sort of where that line is between advocacy and lobbying. So one, supporting foreign government is not considered a charitable purpose under IRS rules. So that's something you have to be careful of in this consideration.

Secondly, as a charity, you have to make sure that it's only an insubstantial amount of your activities is focused on lobbying. So there's that consideration as well, and as long as those pieces are taken under the context of your question. While charities can participate in insubstantial lobbying, it's better to try to avoid those direct lobbying activities internationally for a number of reasons. One of which is it can be pretty sensitive in local country contexts, where if you as an organization were seen as meddling in politics from a local country perspective, you might be banned from working in that country. There are several very sensitive countries, actually, I'll talk about two of them later, that you need to try to sort of be cautious in your navigation of that. But what I always say and the way that we try to approach this work is instead focusing on research and education. So advocacy, sort of let's say you were advocating

for climate policies or something like that. There's a lot of research and background work and public education that has to happen around that as well.

So public education activities are absolutely fine, research. So there are sort of sideline activities around lobbying that aren't direct lobbying for specific legislation or things like that, that we really steer toward. We as an organization don't support any lobbying, and then of course political activity is prohibited as a charity. But we don't take that sort of insubstantial, we just don't do it at all. And that's of course part of the risk-based approach. You just have to make some decisions as an organization of what risks you want to take in that area, but it can be very sensitive locally.

Great, so I think you could go on to the next slide. Yes, okay. Oh, sorry, the text is a little bit muddled, but you can still read it. So for the rest of the presentation I'm going to focus... now that we've gotten ED and ER out of the way, focus more specifically on some of the other regulations that you have to comply with both from a US and foreign country perspective. So as I've alluded to a few times, there are other what we call outflow restrictions or regulations. So money outflow out of the US, what do we have to pay attention to? So one is the USA PATRIOT Act, which is really focused on anti-terrorism. And executive orders that are focused on anti-terrorism and anti-money laundering.

There are voluntary guidelines on international grantmaking from the US Treasury Department that are a good resource to review and kind of live by. They're quite old now, but they still stand and they're still helpful in certain contexts, so they are voluntary. We also have the Foreign Corrupt Practices Act, which is looking at anti-bribery that you need to make sure you're considering. And then of course sanctions compliance under the US Department of Treasury's Office of Foreign Assets Control. So really the number one way that we manage all of these regulations together is one of the things that we do in a due diligence process is we do background checks on the board members and senior staff. And we actually use a few different... we subscribe to different global criminal watch lists that include a number of lists within them. So we can just search those names and the organization name and make sure we're not granting to any specially designated nationals under OFAC sanctions.

Or we can flag any politically exposed persons we might be working with and determine level of risk of potential bribery. And then look at general criminal activity of any of those individuals that might be associated with the organization. Which is of course looking at money laundering and terrorism requirements. So that's how we in a nutshell comply with these regulations, but it's really important to consider on top of the ED and ER requirements. You can go to the next slide.

And actually, so I talked about this mostly, but one other thing I will note here is that, so there are broad-based sanctions regimes, particularly in countries with different crises. There are sanctions in Syria and Venezuela and Russia, Ukraine for example. But there are also general licenses often in these countries that enable you to support humanitarian relief efforts in those countries. They can be very challenging to navigate, and it is complex for a number of reasons. We actually released a white paper last year about navigating sanctions and some of the operational considerations of working with a general humanitarian license.

And one of the big considerations and challenges that we ourselves run into is that even where there are general licenses and the US Department of Treasury is saying, "If you're sure you're working in humanitarian relief and you're not working with a terrorist entity or individual, you can do this work." A lot of banks are saying, "Actually no, we will not make any grants into Russia." Even though there's a license, or Syria, they just don't want to take on the risk. And frankly, a lot of nonprofit work to them, it's not worth the risk versus the benefit for them. So that is one of the biggest challenges is even where you're actually able to work in these crisis areas that banks just won't support you in that work. So lots of considerations there again, and a whole other presentation topic, but we do have a white paper on our website that might be useful. If you go to the next slide.

So as I've mentioned a few times, and I have about five more minutes and then I'm going to jump into questions. So I'm going to run through some of the next few slides a little bit more quickly. So outside of all those US regulations that I shared with you, there are also local country regulations. And not just regulations but local influences on civil society that could be prohibitive or make your grantmaking more challenging into that country. And it's really important to be understanding of some of those dynamics to make sure we're either ensuring compliance or being sensitive in the work that we're doing locally. So this is actually a map from the CIVICUS Monitor, which is an excellent resource if you don't know it. CIVICUS releases this report every year that shows some of the changing dynamics in local countries on the ways that civil society can operate and one of those parameters is specifically foreign funding.

So it's an excellent resource and it's one of the primary guides that we use in our work. But you can really see the number of countries that are closed or repressed or obstructed in their civil society activities in some way. And very few that are considered open actually. Great, if you could go to the next slide.

And so this is sort of a few of the different categories of things that we're really looking at when we look at local country laws. And the things that we have to navigate on a daily basis. So the first one is really the biggest one for us, and there's an increasing number of countries that require this. But there are a lot of countries where charities are required to get prior approval from their government to receive foreign funding. And sometimes like in the case of India, that's a one-time registration where if they're registered under a certain law, they can receive foreign funding. And then there are other cases where it is a per grant, you have to apply for every grant, which is more the case for countries like Pakistan and Bangladesh and China, for example.

So we support in those applications and our inputs vary depending on the country, but it is usually something that the donor has to help with in some way because their documentation might be needed. The other thing that we look out for is stigmatization. So for example, there are some countries where actually just receiving foreign funds has a stigma. And you might be considered a foreign agent, which in some cases really means spy or has a negative connotation. Sometimes it doesn't have a regulatory component, but it is something that we have to be conscious of. And in some of these cases, if we're just sending a small grant, sometimes the charities themselves will say, "It's really not worth the risk for us." And of course that's something that needs to be respected.

There's some countries that limit the type of activities that can be undertaken. So looking at a lot of human rights work and other similar work can be really limited. Some countries control foreign funds and control charity resources. So there are a lot of specific banking regulations that you might have to comply with or the local org has to comply with, with the foreign funding. There might be additional taxes imposed, and then on top of that there are increasing privacy regulations that we have to comply with. Particularly, because we're collecting names and other personal information. You can go to the next slide.

So I'm seeing that I really won't have time to get through, I have three countries that within this deck are sort of case studies of some of the categories of civil society restrictions that I went through previously. The countries that I've showcased here are India, China and Mexico. India, and just as a brief overview, and then of course I can answer any specific questions about these countries. And of course this is just the snapshot of the countries anyway, it's not all-inclusive, but Indian organizations do have to be registered under the Foreign Contribution Regulation Act, FCRA. Which has itself had a number of amendments over the years and is actually getting more and more complex as time goes on. So we are very cautious about our grantmaking in India, but we do a significant amount of work there.

So if you don't have knowledge of FCRA or some of the local complex challenges in India and you're making grants there, I'd recommend you reach out and ask for further information because it is getting more and more sensitive and we're actually seeing more donors get banned from the country for doing it wrong. Which is significant and not something to be taken lightly. If you go to the next slide.

China is quite complex, there are two ways to give into China. One is actually registering as an overseas NGO or working with an overseas NGO that has that specific registration in China, which is complicated to achieve. Or working with temporary activity licenses for each project, where you're really getting permission for each project to be completed. So we actually use temporary activity licenses, and we actually have a blog on this as well if you need more information on our website.

And the next slide, and before I jump into questions. And in Mexico just as another sort of different piece of legislation is Mexico has anti-money laundering legislation that requires due diligence on donors. Which means in certain cases that donors have to send passports and things like that to the Mexican charity. Which we do, our CEO graciously allows us to share that information, but it is something that has to be considered if you're not willing to take the risk of sending that kind of personal identification internationally. And actually we have a blog on this on our website too, if you have more questions. On all three of these countries, in fact, we have blogs. And I think that's it, and I wanted to make sure I left some time for questions. So I'm just going to pop into the Q and A and see if... So I have a few questions, so one of them, the first question is, what are the minimum legal requirements for a foundation to exist in the United States?

So this is a complex question, really it requires you to register as a 501, and then depending on whether you're trying to register as a public charity or a private foundation, the requirements differ. But actually a lot of what I said about equivalency determination actually answers part of this, is there are certain governance structures and modes of operating that you have to put into place. So it is a more complex

question that I don't have fully the time to answer today, unfortunately, but the ED requirements I shared earlier are a significant portion of sort of what it would take to go through the application process to register as a foundation in the United States.

And if you're asking that from a foreign charity perspective, we do also have services that are... we have a service called the Friends Fund that is designed as an alternative to opening a foundation in the United States for foreign charities that want to fundraise in the US. So I don't know what perspective you're asking from, but if that's the case, we would be happy to talk to you about that to see how we might be able to help you.

The second question is, are there any templates available for grant agreements to foreign charities? Yes, there are, you can definitely search expenditure responsibility grant agreement templates online and things do come up. And there are a number of articles out there about it, but if you do that searching and you can't find anything, feel free to reach out, I'd be happy to help. But I've definitely seen a lot of templates out there. And another follow-up question, are grant agreements not required if giving under an ED? That is correct, grant agreements are not specifically required, you really can just make an unrestricted distribution. However, again, it is sort of like reporting, it is a best practice to have some sort of agreement in place. It doesn't need to be as restricted or have the specific requirements that the ER agreement has.

But you do as a best practice want to have the capability of perhaps retrieving some of those funds if they're not spent appropriately or if the organization dissolves for some reason. To have some sort of recourse to get that money back to put into other programs if they're not going to use it. So they're not required, but are still some best practices that we would recommend.

Let's see, there was another... oh, there's a request to go back to the India slide, so thank you for doing that. And we have a blog on our website, this is actually not that much information, it is just a snapshot. India is incredibly complex, and I'd be happy to answer other questions separately about it if this slide isn't answering your question.

So there's one final question that's come in, feel free to submit any others that might come up. But the question is, sometimes we have emergency grants that we need to send quickly during times of crisis or disaster, but the ED or ER process is a barrier and takes a lot of time. How does CAF America navigate quick grantmaking during disasters? So absolutely, ED and ER can take time. So we actually do a lot in this area and we have some exciting programs coming out on disaster and crisis later this year, so definitely stay tuned. But one of the ways that we navigate this, particularly because we do so much global grantmaking and we know that if a disaster happens in certain regions, that we will have donors that want to support relief and recovery efforts.

So we actually have a network of organizations that we work with on the ground in certain vulnerable regions, that when a disaster happens in a certain country, we have those organizations already eligible with us. So we have a global database of thousands of organizations that we've worked with through ED and ER and that are currently ready to go because we've already done that due diligence on them. And so when something happens, we reach out to those organizations locally and make sure they're okay,

ask them if they're responding to the crisis in any way. And if so, how they're doing so and if they're accepting donations. And we have the capability of, we compile a list from there that we share with donors on those various responses so that donors can then make some decisions about which organizations they want to fund.

So for us that's how we navigate it quickly because we have such a global database of already vetted organizations that we already have a relationship in place. And in some cases, like if it's under expenditure responsibility, the only thing we might need to do is amend our grant agreement with them. So we're including their disaster response, which can be a pretty quick process. Really, they just need to send us a description of how they'd spend funds if they received them from us. And then we sign a quick grant agreement addendum, and that can be done rather quickly, much more quickly than going through the entire due diligence process. So that's how we navigate those challenges on the fly, but we're actually doing a lot more work in that area as well, so stay tuned. And I think those are all of the questions. Oh, actually, I'm seeing a few more.

Daria Teutonico:

Unfortunately, we've run out of time, Jessie, this has been so wonderful, I hate to cut it off.

I know there was a question about how to connect with you all, so this last slide, of course has your contact information. And I'll reiterate that we will be sending all the slides out to all the registrants, so all of you who are here today will get that. So I wish we had more time, this has been so informative, but I wanted to thank Jessie again for sharing. Thank you so much for sharing all your wisdom with the group and also those who registered who will see this recording, it really was quite remarkable. It was a very complicated topic and you made it very approachable. I also wanted to let everyone know that we will be sending a follow-up email, not just with the slides, but also with links to some of the resources that Jessie mentioned, that CAF America has and some other links to some other resources like the CIVICUS Monitor report, things like that. So know that you'll be getting all that information.

So in addition to the thank you, I just want to let you know a couple of upcoming programs we have. NCFP has our next Community Conversations webinar in September, "Is Spending Down Right for Your Philanthropy? How to Make the Decision on What to Consider in the Process." This will be a conversation 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 you've made that decision. So we hope you'll consider joining us for that very important conversation.

We also are welcoming applications for our Racial Justice Learning and Action Cohort. We've partnered with Leverage Philanthropic Partners to create this 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's meaningful and grounded in a root cause analysis of injustice pervasive in society today. So we're taking applications through September 15th. If you have any questions about that, you can reach out to me, Daria Teutonico, director of programs here at NCFP, or through our website, or you can email us at ncfp@ncfp.org.

We also have peer networks that many of you may know about. We hope you consider joining these peer networks for those interested in connecting to family philanthropy colleagues with similar objectives, challenges, and shared experiences, so feel free to reach out to us. We also have lots of information on our website, we hope you'll join a peer network if you'd like.

And then just lastly, thank you again for joining us today, it's been a wonderful presentation. Jessie has just been fantastic, her team, Andrew, Brooks and Meg who have helped us develop this. My teammate at NCFP, Britt Benavidez. Britt's been behind the scenes making sure all the slides and everything works properly, so thank you for your help today.

And again, thank you all for your time, spending it with us today. And please don't hesitate to reach out, we'll be happy to provide additional information. And hope you join us for an upcoming program. Please have a great day, be safe, be well, and we'll see you soon.