

January 26, 2023

Understanding the CRA Guidance on Grants to Non-Qualified Donees





Housekeeping Notes

- Your microphones are muted and your cameras are off.
- There will be an opportunity for questions at the end of the presentation. **Please use the 'Q&A' function at the bottom of your screen** to share your questions.
- The session is being recorded. We will share the recording of this webinar within the next few days.
- **Please note:** The information provided in this webinar does not, and is not intended to, constitute legal advice; this is for general informational purposes only, and you should consult with your legal counsel before acting on this information, particularly since this is DRAFT Guidance.



Ted Hart, ACFRE, CDE® CAP®

President & CEO at CAF Canada and CAF America

Founder ePhilanthropy Foundation and Green Nonprofits

Host: The Caring and Funding Podcast powered by
CAF America (cafamerica.org)

Nonprofit Coach (tedhart.com)

Author:

- Cross-Border Giving: A Legal and Practical Guide
- Internet Management for Nonprofits
- People to People Fundraising
- Nonprofit Guide to Going Green
- Nonprofit Internet Strategies
- Major Donors: Finding Big Gifts in your Database and Online



Jessie Krafft

Senior Vice President of External Affairs at CAF Canada and CAF America

In her current role, Jessie manages the External Affairs Donor Services, and Thought Leadership teams and coordinate strategy and operational management with the Business Development and Grant Services teams.

Jessie also plays a management role with CAF America's two subsidiaries, serving on the Management Committee of the CAF American Donor Fund and overseeing CAF Canada's program operations. She is a leading expert in international grantmaking from the U.S. and Canada as well as in local country laws on foreign funding.

About CAF Canada

CAF Canada (Charities Aid Foundation Canada) is a registered Canadian charity working to expand the culture of giving by making it easy, reliable and effective for Canadians to give both internationally and domestically.

Our mission is to help donors make strategic and focused philanthropic decisions which have a lasting, positive impact on the individuals and communities they support, throughout the world

Our Services and Support Guarantee

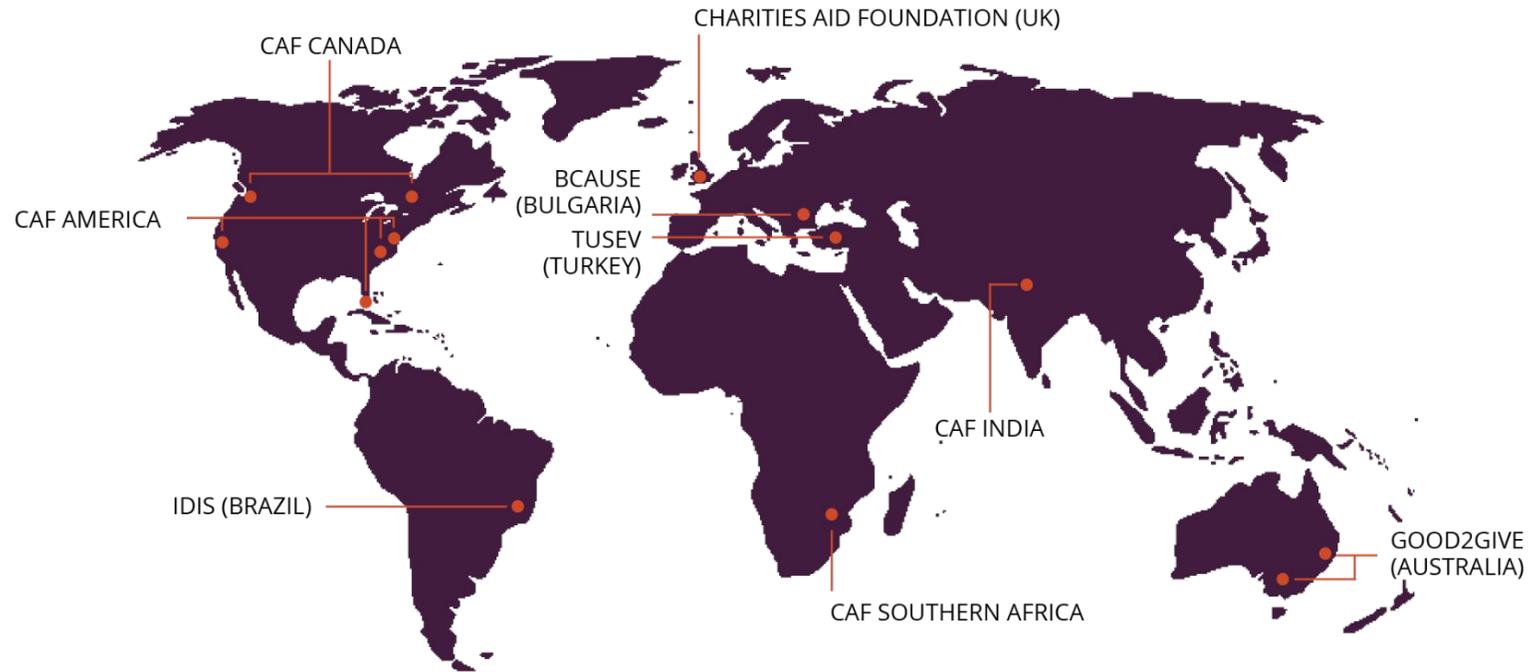
- Regulatory Compliance
- Risk management
- Reputation protection



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New CRA Regulations

Timeline and Current State

June 1, 2022

The CRA released the Budget Implementation Act of 2022, which proposed new rules for qualifying disbursements from Canadian qualified donees.

November 30, 2022

DRAFT guidance was released on how to comply with the new rules.

January 31, 2023

This is the end of the public comment period.

April 1, 2023

Provisional target date for the release of final guidance.

Current “Own Activities” Rule

Prior to June 2022, there were two options for using charitable resources outside of Canada (and both of these options still remain):

OPTION 1

“Own Activities” rule: a qualified donee can carry out its own charitable activities, under their own discretion and control. This could be through:

1. Activities undertaken by the charity’s own personnel or volunteers
2. Through an intermediary such as a consultant or a contractor
 - a. *This is the option that CAF Canada has always utilized.*

OPTION 2

It can make gifts to qualified donees that themselves undertake their own activities outside of Canada. There are also a few foreign entities that have qualified donee status, such as:

1. Registered universities outside of Canada
2. A registered charitable organization outside Canada to which Her Majesty in right of Canada has made a gift
3. The United Nations and its agencies

Budget Implementation Act of 2022

NEW definition (**text in orange is new**) of “qualifying disbursements” in the Income Tax Act (Canada) (the “Act”) to:

“A disbursement by a charity, by way of a gift or by otherwise making resources available,

(a) subject to subsection (6.001), to a qualified donee, or

(b) to a grantee organization, if

(i) the disbursement is in furtherance of a charitable purpose (determined without reference to the definition charitable purposes in this subsection) of the charity,

(ii) the charity ensures that the disbursement is exclusively applied to charitable activities in furtherance of a charitable purpose of the charity, and

(iii) the charity maintains documentation sufficient to demonstrate:

(A) the purpose for which the disbursement is made, and

(B) that the disbursement is exclusively applied by the grantee organization to charitable activities in furtherance of a charitable purpose of the charity.”

How do these new rules differ from the “own activities” rule?

1. The grantee retains autonomy to carry out its own programs (not controlled by a project agreement nor through a hierarchy with the charity in charge). This enables a PARTNERSHIP, rather than top-down control;
2. Grants can now support existing activities of the grantee that may be supported by other donors;
3. Grant agreement instead of contractor agreement/relationship
4. A charity is not required to provide ongoing instructions to the grantee.
5. A charity does not need to otherwise “direct and control” the grantee as it would if this were the charity’s own activities.
6. Granting focuses on risk and accountability, rather than the charity’s “own activities”.



What Remains the Same?

1. Importance of charitable objects in any initiatives of a Canadian Qualified Donee
2. Prior “own activities” rule is still in place as an option for Qualified Donees undertaking projects outside of Canada
3. The standard definitions of being a qualified donee/charity and the type of activities that can be undertaken as a charity. This includes maintaining the public benefit status requirements.
4. Monitoring and Reporting: reports will still need to be collected from non-qualified donee
5. Separately Tracked Funds



Maintaining Grant Accountability

The charity must **maintain documentation** to demonstrate:

- the purpose for which the grant is made (these are not unrestricted grants)
- there is an exclusively charitable purpose of the grant (aligned with charitable objects of the Canadian grantor).

The CRA specifically outlined this process for grantmaking (which they call “**accountability tools**”):

a. a due diligence review of the grantee,	b. a description of grant activity,	c. a written agreement,	d. monitoring and reporting,	e. a transfer schedule,	f. separately tracked funds,
which does not necessarily apply to existing relationships.	including its intended outcome and charitable purpose.	including minimum standards, milestones, outcomes, and budgets.	including final reports, and interim reports if suitable.	for longer-term or higher-risk grants.	such as a separate ledger.

- The CRA provides additional accountability tools in their guidance, but they’re not stated as **requirements**, just suggested methods for maintaining accountability
- Overall, they advocate for a **risk-based approach**

CRA Reporting Requirements

- As always, Canadian charities must keep adequate books and records in Canada, which allow the CRA to determine whether the charity is operating in accordance with the Income Tax Act.
- In the case of grantmaking to non-qualified donees, documentation must clearly demonstrate:
 - the charity's grants meet the accountability requirements
 - the grantee's use of resources can be verified
 - the grantee continues to use the grant's resources on the purposes and activities set out in the grant's terms
- Information on these grants is also required to be reported on the public information return (T-3010)
 - the name of the grantee
 - the purpose of each grant made to the grantee
 - the total amount granted to the grantee in the taxation year



“Anti-Directed Giving”

What does the CRA mean by this, and why is it important?

We are still waiting on **final guidance** to be certain about the implications. Here’s what the draft guidance says, for now:

- The Canadian charity must avoid acting as a conduit, where the donor is making a gift to the charity with the requirement/condition that it be re-granted to a specific organization
- Even where a grant may be ***advised*** or ***recommended*** by a donor, it’s very important that the Canadian charity still retains ***full discretion and control*** over the use of the funds. There are a few important ways to do this:
 - a. Clear disclosure on donor correspondence/interfaces/website
 - b. Charity cannot return funds to donor if recommendation cannot be fulfilled.
- These requirements align with CAF America’s and CAF Canada’s Donor Advised Fund requirements in both the United States and Canada.

Cross-Border Giving: Legal and Operational Considerations

In this guidance, the CRA acknowledged the need to not only comply with Canadian regulations, but also the local regulations in the country of the grantee. ***This is an incredibly important principle that CAF Canada already follows closely.***

Outflow regulations (Canada)

- Canadian Charity regulations covered in this presentation
- Anti-terrorist, Anti-Money Laundering, Anti-Bribery regulations

Inflow considerations (foreign country)

- Prior Approval
- Stigmatization
- Restricted Activities
- Funds routed through government channels
- Notification and reporting requirements
- Taxation and FX

Navigating financial institutions

- Bank de-risking
- Canadian Sanctions
- Bank compliance procedures
- Local banking requirements for foreign funds

Anti-terrorism

- As mentioned on the previous slide, CAF Canada's due diligence process also focuses on Anti-terrorism, Anti-Money Laundering, and Anti-bribery.
- This Guidance specifically calls out the need for Canadian charities to ensure that they're following the CRA's "**Checklist for charities on avoiding terrorist abuse.**"
- Multiple touch-points in our due diligence process focus on this, along with Anti-money laundering and Anti-bribery. For example:
 - a. Background checks on board members, senior staff, and the organization (to uncover any sanctions, criminal activity, Politically-Exposed Persons [PEP]).
 - b. Negative media review
 - c. Possible bribery concerns in the grant purpose or donor/charity relationship
- Need to document your due diligence process, findings, and decisions made.

Interesting Observations

- Guidance was much more detailed than expected!
- Anti-terrorism was addressed within the guidance, but not anti-bribery or anti-money laundering, which are principles that we also include in our due diligence process.
- Provisions for granting for capital assets/real property are included.
- In many ways, the approach is very similar to U.S. regulations on cross-border giving set by the Internal Revenue Service (IRS)
 - Great news for CAF Canada, as a subsidiary of CAF America!



Case Study

Contractor Agreement

CAF Canada Charitable Object: To promote the welfare of animals for the benefit of the public by providing assistance, protection, rescue or rehabilitation to animals in need of human assistance;

- CAF Canada contracted with a charity in Mexico to rescue 78 abused and neglected farm animals through the provision of food, transportation, and medical assistance.
- This project was **designed with the contractor** and **funded entirely by CAF Canada** (with the generous support of CAF Canada's donors)
 - As this was **CAF Canada's OWN project**, no other donors were involved or able to contribute to the project.
- **Contractor agreement** makes it clear that CAF Canada has **oversight and control** over the project, and sets **timelines, deliverables, and strict reporting requirements**.

vs.

Grant Agreement

CAF Canada Charitable Object: To promote the welfare of animals for the benefit of the public by providing assistance, protection, rescue or rehabilitation to animals in need of human assistance;

- CAF Canada contacts a grantee in Mexico to make them aware of a possible charitable grant for their animal welfare activities.
- Grantee completes application with a proposal for a grant purpose (**decided by the grantee**) and provides information for CAF Canada to complete due diligence.
- CAF Canada reviews the grant purpose to determine if it is **charitable and fits within approved charitable objects**
- Grant agreement is signed, including a reporting schedule. This is not CAF Canada's own project, and other, non-CAF Canada donors can contribute to it.

Considerations for Charities Outside of Canada

(who have Canadian donors)

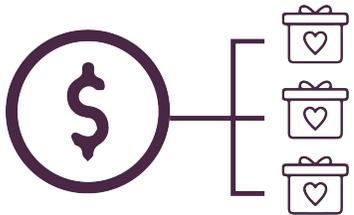
- Final Guidance is not expected until at least the end of April, so nothing is changing yet.
- Even when final guidance has been released, the current project/contractor agreements will remain in place and will not have immediate changes.
- Depending on the final guidance, the goal is for CAF Canada to move to the new grantmaking model with our charity partners where feasible.
 - This will primarily apply to future grant agreements
 - This will require us to overhaul our application templates and grant agreements, which is already underway.
- **We will host another webinar at a later date** specifically catered to our charity partners to make the next steps clear.
- Reporting on the use of the funds will still be required

CAF Canada's Services



International Project Gift (IPG)

The IPG is an easy way for Canadian donors to support a single project without entering into a long-term funding commitment. IPGs can be advised in support of an existing project agreement with CAF Canada, or we can create a new project with an organization advised by the donor (as long as it passes our validation protocols).



International Project Fund (IPF)

Creating an IPF with CAF Canada allows donors to coordinate ongoing relationships and/or multiple projects with a single customer service relationship.



Friends Funds

By establishing a Friends Fund with CAF Canada, your organization is agreeing to become a contractor for a charitable project run by CAF Canada. This allows us to maintain the required control and discretion over the use of funds and to ensure that funds are supporting CAF Canada's approved charitable objects.

A Canadian flag is shown waving in the foreground, partially overlapping a dark purple banner at the top. In the background, a Gothic-style building with a tall spire is visible against a clear blue sky.

Q&A Session

- To ask a question, **please use the 'Q&A' function at the bottom of your screen** to share your questions.
- If you have any questions after today's webinar, **we encourage you to contact us at info@cafcanada.ca** and our team of experts will follow up with you.



HQ

401 Bay Street | Suite 1600
Toronto, ON M5H 2Y4

West Coast Office

100 Park Royal South | Suite 200
West Vancouver, BC V7T 1A2

www.cafcanada.ca

