

NEW UPDATE | October 13, 2020

On October 13, 2020 the Indian Government issued a [public notice](#) outlining the procedure for opening and operating the designated “FCRA Account” as provided under the amended Section 17(1) of The Foreign Contribution (Regulation Act), 2010.

- The Government allows for a grace period until **March 31, 2021** for existing FCRA Account holders to open their new FCRA Account at the State Bank of India, New Delhi Main Branch (NDMB)
 - ◆ Existing FCRA Account holders are eligible to receive foreign funding in their current FCRA Accounts until March 31, 2021 or the date of opening their FCRA Account at the State Bank of India, NDMB whichever is earlier.
 - ◆ After the date of opening their FCRA Account at the State Bank of India, NDMB or March 31, 2021 they are not eligible to receive foreign funding in any other bank account than the FCRA Account at the State Bank of India, NDMB
 - ◆ Existing FCRA Account holders are at complete liberty to retain their current FCRA Account in any branch of a scheduled bank of its choice (“other FCRA Account”). These accounts can be linked with the “FCRA Account” opened at the State bank of India, NDMB. Foreign funding must be received in the FCRA Account at the State Bank of India, NDMB branch but funds can be transferred to the “other FCRA Account”. Transfer charges and fees apply. **Re-granting, transferring foreign funding to other FCRA registered or non-registered entities are prohibited.**
- All new applications for FCRA registration or prior permission under FCRA, 2010 are required to open an FCRA Account at the State Bank of India, NDMB
- The Notice provides the details for the State Bank of India branch where the “FCRA Accounts” have to be opened.
- Applicants (new and existing FCRA Account holders) do not need to visit the NDMB at Delhi. They “may approach either the nearest or any other State Bank of India Branch of their choice for taking action.”
- Starting on **April 1, 2021** all foreign funding must be received in FCRA Accounts at the State Bank of India, NDMB

[Given this new public notice, CAF America is conducting outreach to each of our hundreds of currently validated charities in India to confirm that they feel comfortable with us proceeding in sending new grants to their prior FCRA account until March 31, 2021 and to ensure that they are in compliance with the other provisions of the FCRA Amendment. Please do not hesitate to contact us with any questions at \[info@cafamerica.org\]\(mailto:info@cafamerica.org\).](#)

TIMELINE

October 13, 2020 | The Government of India, Ministry of Home Affairs, Foreigners Division issues [Public Notice regarding Procedure for Opening and operating the designated "FCRA Account" as provided under the amended Section 17\(1\) of The Foreign Contribution \(Regulation Act\), 2010.](#)

September 29, 2020 | [The Indian Foreign Contribution \(Regulation\) Amendment Law 2020](#) takes effect.

September 20, 2020 | [The Indian Foreign Contribution \(Regulation\) Amendment Bill 2020](#) introduced in the Lok Sabha

India's Amended Foreign Contribution Regulations: What You Need to Know

Host: Ted Hart | President & CEO, CAF America

Guest: Jessie Krafft | Senior Vice President of External Affairs

[00:00:30] Speaker 2: Learn how to take your caring and giving farther with the Caring and Funding Podcast powered by CAF America. CAF America, America's leader in cross border philanthropy helps corporations, foundations, wealth advisors, and individuals who wish to give internationally and with enhanced due diligence in the United States. Through its industry leading grants management program and philanthropic advisory services, CAF America helps donors amplify their impact and ensure their gifts are made in a safe and effective manner.

[00:01:00] This Caring and Funding Podcast is dedicated to these donors and the charities they support. Our guests are leaders in their fields who join us to share tips for success and stories that inspire. Our host is Ted Hart, the CEO of CAF America. After the show, you can find all our podcasts @cafamerica.org on iTunes. Now just say Alexa, play CAF America to tune in. Now, welcome to the host of CAF America's Caring and Funding Podcast, Ted Hart.

[00:01:30] Ted Hart: Thank you for joining us here today. Just one week ago on September 28th, India's Foreign Contributions Regulation Amendment Act was signed into law. The new law amended provisions of the Foreign Contributions Regulation Act, FCRA, India's law regulating the flow of foreign funding nonprofits. The amendment outlines a number of requirements and significant restrictions that need to be met by all Indian nonprofits and public servants looking to receive foreign funding.

[00:02:00] Non-compliance of the law can lead to severe consequences ranging from suspension of the organization's FCRA certificate, to freezing of funds in the FCRA account, to an obligation to surrender "the foreign contribution and assets created out of a foreign contribution", which will be transferred to an authority as may be prescribed.

[00:02:30] The amendment did not provide for a transition period. Indian nonprofits and donors have already begun to see the impact of this law. Charities on the ground in India may not be fully informed about the details of this amendment. There can be a lot of misinformation. It is important to remain objective and to stay focused on compliance and the mission and goals of your grant-making. Failure to stay well informed, failure to understand the details we will share with you today could lead to regulatory problems for the charities you wish to support in India. It could lead to funds you have donated being confiscated by the government.

[00:03:00] Detailed rules of implementation have yet to be released and therefore, the exact steps for maintaining compliance are unclear. Today, we will provide you with a road-map to navigate this current situation and then on to full compliance as the rules are issued. It is clear the provisions of this amendment will greatly impact cross border giving to India. CAF America is committed to keeping abreast of the changing regulatory environment and to maintaining full regulatory compliance with Indian laws. This is not the first time CAF America has been confronted with this type of challenge.

[00:04:00] One of our core commitments to our donors is regulatory compliance. This includes compliance with the local country laws of our grantee partners. For example, in 2017, we had what was then the new China overseas NGO management law, which sent many grant-makers into a tailspin because they were unable to find a way to continue their programs in China. During this time, CAF America immediately reached out to our network of charity partners and resources on the ground to gain an understanding of the new law. Working within the law, we were able to receive one of the very first temporary activity licenses approved by the Chinese government.

[00:04:30] Last week, we activated the same methodology in India, and the guidance and advice that we will share today will provide a road-map for managing the amended FCRA while the world awaits a full set of rules to be released by the Indian government. We are here today with Jessie Krafft, Senior Vice President of External Affairs of CAF America to discuss how the new regulations and restrictions affect US donors interested in supporting the work of nonprofits in India.

[00:05:00] Our goal is to provide you with guidance on how to navigate the new provisions to ensure the grantees are in compliance with the law so that you can continue to support their work, their important work on the ground. Jessie, welcome here and before we discuss the new amendment in detail, let's briefly revisit what the FCRA is and how it's relevant to US donors.

[00:05:30] Jessie Krafft: Hi, Ted and hey, everyone who's joining. Thanks for coming online. To start, the FCRA, the Foreign Contributions Regulation Act is India's law regulating the foreign funding into nonprofits on the ground in India. In other words, Indian nonprofits must register with the federal government to receive foreign funding and donors in the United States cannot give directly to these Indian nonprofits and receive a tax deduction in the US. These laws really encompass what we need to do in order to make grants to Indian nonprofits on the ground.

[00:06:00] Ted: Jessie, by giving through a 501(c)(3) public charity like CAF America, US donors can make a tax effective donation to any successfully-vetted foreign charity.

Jessie: That's right, if you give through a US public charity like CAF America, US donors can make donations to nonprofits on the ground in India by using a 501(c)(3) intermediary.

Ted: What happens if you give to a non FCRA compliant organization?

[00:06:30] Jessie: There can be significant legal risks for the donors if they give to a non FCRA compliant organization, but more significant for the charity partners, which of course you don't want if they're an organization that you're intending to support financially, you don't want to get them in trouble with the Indian government locally.

Ted: There are several changes in the new law. There are five that are particularly consequential that were introduced by the September 28th approved amendment to FCRA. Let's review each one individually so that our listeners can understand the details and the significance of each.

[00:07:00] First, there's a new prohibition on regrating funds received from foreign donors by one FCRA registered nonprofit to another FCRA registered nonprofit. This is arguably the provision that has the most far reaching implications. Jessie, explain what this new restriction is, and its practical impact on grant-makers and the NGO sector in India.

[00:07:30] Jessie: Prior to the amendment that went into effect on September 28th, FCRA-registered organizations were able to transfer funds to any other FCRA-registered Indian nonprofit. With prior approval of the ministry, they were also able to transfer funds to non FCRA registered organizations. However, under this new law, FCRA-registered organizations are prohibited from regrating to other entities whether or not they have FCRA. This will of course have a significant impact on Indian organizations that served as intermediaries on the ground prior to this law as well as many grassroots organizations.

[00:08:30] Small organizations that relied on the regrating from larger, more established organizations that were able to more effectively secure funding for their programs. Because this law was introduced and passed so quickly and without warning, we've already heard from organizations that have already been collecting funds to regrant and they're now in a position where they must regroup and determine how to utilize those funds that they've already collected.

[00:09:00] The prohibition itself on regrating has important implications for grant-makers and donors who will need to review and assess their current grantee relationships and potentially amend their grant agreements with them to prohibit regrating of funds that they provide to organizations on the ground. We also know that there are many donor organizations that rely on intermediaries within India to manage their local grant-making. For example, they would only need to conduct the equivalency determination or expenditure responsibility on one entity in

India. Then that entity regrants and manages the local due diligence and grant making of those funds to other local charities in India.

[00:09:30] For grant makers that are relying on that mechanism, this will require them to completely rethink their model of grant making in India. Fortunately for CAF America, the majority of our grant making has always gone directly to the intended recipients, so this will not have a huge impact on our grant-making in India once we're able to continue under the new rules. We currently have hundreds of organizations in India that are validated under expenditure responsibility and equivalency determination and ready to receive funds from us at any time.

[00:10:00] Ted: Jessie, let's just make sure that our listeners understand the impact that you're noting here is those who have not traditionally validated each and every charity as the end recipient of a grant. In other words, they've worked through some intermediary who has regranted, and that has been the prevalent model. That's no longer going to work. That's no longer going to be allowed.

[00:10:30] Jessie: Yes, it seems very clear. While we're still waiting on the rules to be released as you've noted, it seems absolutely crystal clear that within this amendment, regranteeing between FCRA entities is going to be prohibited moving forward .

[00:11:00] Ted: The next area that I'd like to discuss with you, Jessie, is amendment section eight of the FCRA law. This amendment places restrictions on charitable organizations' ability to use foreign funds to offset their administrative costs. What has changed and how does the new administrative cap impact Indian nonprofits and what must most US donors and grantmakers understand about this new restriction and the amendment specifically to section eight of FCRA?

[00:11:30] Jessie: There are a couple of things here. First of all, before we go on to the amended change, there's often a lot of questions around what is considered an administrative expense and we're expecting that there may be clarifications or amendments to this definition when the rules are released, but the current definition that can be used as a starting point is taken from rule five of the 2011 FCRA rules.

[00:12:00] Included in this definition of administrative expenses currently is any first salaries and wages or travel expenses realized by members of the executive committee or governing council, all expenses around hiring of personnel or management of activities so general management expenses of the organization, all expenses related to consumables, so electricity, water, utility charges, generally repairs, all of those types of things would be under administrative costs. Accounting costs, report writing costs, legal and professional charges, rent, things like that would all be considered administrative, but we are hoping for some further clarification to that.

[00:12:30] Ted: There's a lot that goes into administrative costs and under this amendment law, those are now going to be restricted to a smaller percentage. What did get changed?

Jessie: What we know that has definitely changed is that before, under FCRA, organizations were not to exceed 50% of their total FCRA contribution funds that they received. They were not able to spend more than 50% of that amount on these administrative costs as defined. However, this new amendment restricts it to 20%.

[00:13:00] Organizations can still request prior permission from the central government if they wish to exceed that cap. However, that process is difficult and can take time. So for all of these organizations, they need to focus on that 20% cap. As I noted, some of our charity partners have said that the standards and definitions are a bit unclear. We're hopeful that the new rules will clarify that. It doesn't leave them open to scrutiny if the government decides to take a liberal definition of what administrative expenses are included.

Ted: Potentially a very different definition of what counts and what doesn't so you might be counting something towards that, that the government no longer will allow and therefore, you're out of compliance for the 20%.

[00:14:00] Jessie: Right, exactly. It's a fine and difficult line that they're walking right now in terms of trying to figure out what they need to include and exclude from that expense line to make sure they're in compliance. From a grantmakers' perspective, this new rule has important implications because we may need to work with our currently eligible charities to amend our existing grant agreements with them to remove some of these expenses so that we can comply with this new reduced cap.

[00:14:30] Because this is focused on all of the foreign contributions that each organization receives, we don't have insights into how they're spending all of that money. We really must rely on our partners on the ground to ensure that they're not exceeding these new limits. It will take some conversations and potentially amendments and grant agreements to be in compliance with this.

[00:15:00] Ted: The next topic, Jessie, the third of five significant amended changes in India's FCRA law, involves amendments specifically to section 17 of the FCRA law. This is speaking specifically to the establishment of the FCRA account itself. We're going to take a very quick break and when we come back, we're going to talk about the changes to section 17 and the changes to the establishment of the FCRA account itself. We'll be right back.

[music]

[00:15:30] Speaker 1: Remember, our podcast and archives are always available 24 hours a day at @cafamerica.org on iTunes or just say, Alexa, play CAF America on tune in. Now, back to the caring and funding podcast and our hosts, Ted Hart.

[00:16:00] Ted: We're back here with Jessie Krafft, Senior Vice President, External Affairs of CAF America. Jessie, before that quick break, we were talking about the third of five significant changes

to India's FCRA law specifically the change to section 17 and this is about the creation of the FCRA account itself. Now, Jessie, the requirement to open and use a designated bank account was already part of the law prior to the September 28th amendment going into effect. How did this amendment to section 17 change and why is it reportedly and likely to be more restrictive to charities in India?

[00:16:30] Jessie: Until now, India nonprofits receiving foreign funding had to create a bank account at any government approved bank and then their donors in turn needed to ensure that they were sending funds to that account and to that account only. Now, these organizations are required to create and solely use a new account with the State Bank of India, specifically, and even more specifically than that, they have to open that in the New Delhi branch.

[00:17:00] That bank then is required for reporting those contributions and the intended use to the central government. Similar to the impact I mentioned earlier, all grantmakers and donors will have to conduct outreach to their current grantees and collect the information and proof of an FCRA bank account at the State Bank of India, to be able to continue funding.

[00:17:30] It's unclear at this stage whether the government will allow for a transition period or whether funding can continue to be sent to the prior FCRA account. At this point, what we're hearing from our partners on the ground and others is that we should just discontinue all grant-making into these accounts before they're set up at the State Bank of India until the rules are released and until there's some more clarity on this account.

[00:18:00] Ted: It's not worth the risk, right Jessie, because there was no implementation period for the law and the amendment is very clear in its language so while the rules could provide some leeway in this, the rules are not out yet. Sending money to a bank account that may in fact, no longer be an actual FCRA bank account could open that account up to be confiscated. I'd like to now focus on the fourth change, brought about by this amendment to the FCRA law. This too has wide implications. Specifically, I'm talking about changes to charity FCRA registration and the FCRA certification process. What are some of the new requirements impacting those who apply for FCRA registration or renewal?

[00:19:00] Jessie: One of the amendments is that organizations applying for FCRA or renewal under FCRA have to provide the Aadhaar number of all of their office bearers. This is a specific identification within India and this is basically a copy of their identification, which contains personal information and allows the government to track those who are affiliated with the organization receiving foreign funding.

[00:19:30] Further to that, the amendment prohibits public servants specifically from receiving foreign funding. Moving forward, public servants as individuals can't receive foreign funding under FCRA provisions are principally impacting the Indian nonprofits and their leaders. Grantmakers

also need to be aware of this so they can ensure that their grantees are able to comply with these requirements moving forward.

[00:20:00] Ted: We've covered a lot already today but there is a fifth and final change that we need to address before concluding our podcast today. The new law strengthens restrictions around non-compliance. An amendment to section 13 of the FCRA provides for the possibility to suspend FCRA registration of an organization, which means that foreign contributions can not be received or utilized by a person for up to 360 days. Moreover, organizations that have their FCRA registrations canceled or forfeited will have to surrender "the foreign contribution and assets created out of the foreign contribution", which will be transferred to an authority, "as may be prescribed". What are the implications of these changes?

[00:20:30] Jessie: Yes, previously, the FCRA registration of an organization that was in violation of FCRA provisions could be suspended for a period of possibly 180 days, as may be specified. The new law allows for the Ministry of Home Affairs to implement a suspension that exceeds six months and may even reach up to a year. This provision creates a lot of uncertainty for our charity partners, especially those that are concerned about getting into compliance under this new regulation because many grantors and grantees may find it very difficult to plan their activities or may find themselves in situations where a planned project becomes obsolete due to extended suspension period.

[00:21:30] It creates a lot of unknowns for an organization that has a lot of beneficiaries waiting to receive their services. These grantors or donors will also have to make sure that their grantees are aware of the serious consequences of losing or even forfeiting their FCRA registration because any projects or assets that were previously created with these foreign funds.

[00:22:00] For example, if they used foreign funds to build a hospital or a school or something to that effect, those assets might then become the property of the government entity, when that nonprofit loses or forfeits their registration. It's something they need to be aware of before they make any decisions around how they want to proceed with their FCRA registrations.

Ted: Jessie, the suspension can come before wrongdoing is proved. It can be on the suspicion of wrongdoing.

[00:22:30] Jessie: That's right, yes. It gives a lot of latitude to the government to suspend organizations and to not provide due process or have specific reasons for that suspension, or allow the charity a period of time to respond. Again, it just does create a lot of uncertainty around the process and what charities might expect moving forward.

[00:23:00] Ted: Perhaps the rules that will be issued will provide more certainty or more guidance, but the reading of the amendment itself does not provide that certainty at this time. What is CAF America's outlook on current grantmaking into India and what advice do you have to offer our

funders that are trying to navigate this period of time before rules for the amended law are actually issued?

[00:23:30] Jessie: Yes, as we mentioned earlier, we are currently holding all of our grants going into India pending confirmation that the intended FCRA account is still active. This is the prudent measure that every grantmaker should be taking at this time. It's really unwise at this point for anyone to send money into an FCRA account in India without first double-checking that it is indeed still valid and open, and then of course, that it's an account with the State Bank of India in particular.

[00:24:00] We've heard mixed messages from some of our grantees about this but the overwhelming request from our grantees at this point has been to halt all grantmaking. They don't want to get in trouble. We don't want them to get in trouble. Until there's more certainty around whether there will be a transition period, we really recommend that no one proceeds in grant-making into India at this time.

[00:24:30] CAF America is comforted by the fact that the majority of our grant making into India has always gone to direct beneficiaries and not through an intermediary as we've noted earlier. Once our grantees are compliant with the new rules, at least we won't need to shift much of what we're doing operationally, we'll just need to ensure that our grantees are educated on the law and in compliance but we're not right now scrambling to find new methods to grant into India. It's just about being patient around the release of new roles and getting our grantee partners in compliance with them.

[00:25:00] For the audience, there are a few steps. If you're in a position of being a direct donor or grantor into India, there are a few steps that I would recommend that you take at this time. The first would be, hold your grantmaking into charities in India, as I just mentioned. Don't proceed with those grants until those accounts have been opened at the State Bank of India.

[00:25:30] The second thing would be, talk to your charity partners and ask them questions. They'll definitely appreciate the outreach from you and the support from you as their donor because they're going through a challenging transition time right now. It's helpful for them to know that you understand their challenges and that you'll not do anything to put their status in jeopardy. This will also ensure that they're aware of the law and educating themselves on this topic.

[00:26:00] Typically, when we see these large shifts in regulations in any country, one of our greatest challenges is making sure that the grantees are informed. In the China case that Ted mentioned earlier, one of the greatest challenges was that very little information was released about this in China in the beginning and organizations were not educated on the law, which meant that we, CAF America, were in a position of helping them understand the new procedures and helping them ensure compliance. Again, just talking and having that communication with your charity partners is important.

[00:26:30] The third thing is that you'll need to look at revising current grant agreements you have in place if you have administrative costs or regranting included in these arrangements, because that of course, is now more regulated or prohibited, as the case may be.

[00:27:00] The fourth thing is that you should look into determining whether public servants are currently serving on their boards of directors, prohibition on granting to public servants is included in the amendment. We're waiting on rules to clarify exactly what that means. For now, we're starting with the step of seeing if there are public servants that are affiliated with our current grantee partners.

The last thing is just to be patient and supportive. Your charity partners need this most from their donors during this challenging time. It's important to be a voice that they can speak to and that will hear them during this challenging time.

[00:27:30] Ted: Jessie, thank you as always, voice of calm, voice of reason. This has been very informative. It's a lot to try to take in and to understand. While this podcast is being produced today to help all grantmakers understand the new FCRA amendment and to bridge the period between the new law taking effect and new rules being issued, we understand that you may have more questions as the situation continues to unfold in India. Please feel free to reach out to your CAF America fund manager or to email your questions to info@cafamerica.org. We will get back to you with answers to your questions and updates as they become available. Thank you again for joining us today.

[00:28:00] Speaker 1: You've been listening to the Caring and Funding Podcast powered by CAF America. Tell all your friends and colleagues to check out our archives, sign up for our free newsletter and download our iPad and iPod friendly podcasts at cafamerica.org. Thanks for listening to the Caring and Funding Podcast.