

## Best Practices: Equivalency Determination

Host: Ted Hart

Guest: Jessie Krafft – CAF America

**Announcer:** Welcome to the *CAF America Radio Network* a production of the Charities Aid Foundation of America. As the leader in global giving, CAF America offers more than 20 years of experience and expertise to corporations, foundations and individuals who wish to give internationally and with enhanced due diligence in the United States. Through its industry leading grant management programs and philanthropic advisory services CAF America helps donors amplify their impact. This show is dedicated to these donors and the charities they support.

CAF America is uniquely positioned to serve as the bridge between these important partners and transforms vision into meaningful action. Guests on a *CAF America Radio Network* are our leaders in their field who share tips for success and stories that inspire. Our host is Ted Hart, the CEO of the Charities Aid Foundation of America. This is a live call in show, add your voice by calling 914-338-0855. After the show you can find all of our podcasts at [Cafamerica.org](http://Cafamerica.org), don't forget to dial 9-1-4-3-3-8-0-8-5-5. Now, welcome the host of the *CAF America Radio Network* Ted Hart.

**Ted Hart:** Welcome here to the latest edition of the *CAF America Radio Network*, this is Ted Hart and I'm coming to you live from the global headquarters of CAF America. Today's topic is one of the hottest topics in international philanthropy and that is equivalency determination. Today on the show is one of the leading experts here at CAF America Jessie Krafft. She serves as our manager of Donor Advised and grant services, she is one of our experts as I said she's a leadership force moving through the ranks here at CAF America on up to the manager of Donor Advised and grant services.

She's a strong philanthropic activist and has been accepted to the Masters of Arts in international development program at American University, having graduated summa cum laude with honors-- from the Honors College rather at Virginia Commonwealth University. She has a BA in Spanish and in anthropology with a minor in Latin American Studies. She will also complete her certificate nonprofit executive management at Georgetown University. So, not only is she one of our brightest stars here at CAF America but quite an accomplished woman herself, welcome here to the *CAF America Radio Network* Jessie Krafft.

**Jessie Krafft:** Hey Ted it's great to be here.

**Ted:** Jessie we've got such an important topic today. Usually I like to keep these things pretty conversational, but I actually produced several questions to make sure that we cover all the aspects of equivalency determination. If you don't mind I'm going to jump right in and ask you what is equivalency determination.

**Jessie:** Yes. So in very basic terms, it's the process by which we collect information on foreign organizations nonprofit organizations to make what we call a good faith determination that

making either expenditure, responsibility or equivalent to determination are required to make a grant to a foreign grantee outside of the US. So, that it would be considered a qualified distribution rather than a taxable expenditure.

Again we have to do either expenditure responsibility or equivalency determination. Equivalency is much more detailed and stringent than expenditure responsibility and the IRS Internal Revenue procedure 9294 gives a layout for the procedures that we need to follow to make the determination.

**Ted:** This is the expertise that Cafamerica brings to the table for foundations corporations and individuals who want to be philanthropic internationally but also want to make sure that they're compliant. You mentioned expense responsibility for our listeners today, we also have produced a podcast on expenditure, responsibility and encourage all of our listeners to listen to that. Our topic today is equivalency determination and we have created a special website ngoamerica.org, again that's N, as an name, G, as in George, O as an Oscar ngoramerica.org, that gives a lot of information on each of these topics.

This is fairly complicated Jesse and is a lot of work that your team does, what are the documents and applications that are required from a foreign charity in order to perform equivalency determination

**Jessie:** Basically there's three main components of what we are looking for from our applicants. First we have an internal application that we send to them just getting basic general information then we require a list of supporting documents. That would mean governing documents, the list of their board members and trustees, their proof of registration as a nonprofit and then they're audited financials. Along with their application these documents we also require an affidavit and this is to us the most important piece of the equivalency, because this is basically a document that they have to complete and have notarized.

It includes a number of statements about the governance and the structure of their organization that they need to verify our true in order for them to pass the equivalency determination test. They also need to support these statements with documentation. These includes statements on what the IRS would be looking for if they were determining a 501C3 status such as limitations on political activities, a dissolution clause, no improper private benefit their proprietary interest and then a conflict of interest to policy and things of that sort.

**Ted:** All that information comes in and then it needs to be analyzed and as I understand one of the important aspects of the intense review that you and your team does for each and every charity that a donor through CAF America wishes to give to is something known as a public support test. What is that?

**Jessie:** Yes, that's a great question and this is also included within our affidavit. Basically this public support test asks organizations to give a history of five years back of their contributions that they've received and this is trying to determine whether or not they're a public

organization versus a private foundation. It looks to see if they're receiving substantial support from the general public. That would mean government or individuals or any other than a single private donor.

**Ted:** What is some a charity that donor wishes to give to them have five years history are they're just out?

**Jessie:** No, not necessarily they're there would be other things that we would need to ask for them-- ask of them and it becomes a more difficult situation if they don't have that history but certainly we would work with an organization to see how we could work with them being a new organization.

**Ted:** This is where the years of experience of CAF America come into play and in trying to work with that charity as best as we can, but still making sure that the very high standards of CAF America are adhered to because that's what donors expects CAF America to not only meet the IRS criteria, but to bring additional value add to that review. CAF America does it's review for charities all over the world, I imagine that you receive documents and all sorts of different languages. How do you handled that?

**Jessie:** That's a great question because this is a very difficult part of what we do sometimes. We speak a few languages in office but certainly not all the languages in the world. The IRS law requires that the documents we received from organizations be translated into English and certainly we couldn't do very much with these documents they weren't translated. The key thing to remember here is that they don't need to be official or notarized translations, we don't want the charities spending a lot of money on these translations and we do tell them that Google Translate sometimes is okay.

It's not perfect but for some documents it does work fairly well and we can get the just-in and a full understanding of what the document is saying even though the wording isn't perfect.

**Ted:** They have specific parts translated, but maybe not the entire document at that point.

**Jessie:** Exactly, it really just depends on the document, but it is the translations are a very important part of what we do and it is a hurdle that we have to get through its most organizations that we work with.

**Ted:** Jessie, you mentioned earlier our topic today of course is equivalency determination and you mentioned earlier the another protocol known as expenditure responsibility of which we do have a separate podcast prepared with lots of information regarding that. Specific to those two are the documents that are required under equivalency determination different in terms of what charities are required to submit Visa V expenditure responsibility?

**Jessie:** Yes. We're very risk averse and thorough in our reviews here, so

really, the only difference in what we require from an organization between expenditure responsibility and equivalency determination is the affidavit and the financial support test the public support tests that we give sent to them. Really, if we receive an application for an organization and then we decide that it does need to move into an equivalency review. The only things that we require in addition would be the affidavit and the public support test.

**Ted:** That's fairly unique to the Cafamerica's approach and even under expenditure responsibility it's a very high standards.

**Jessie:** Yes absolutely.

**Ted:** I'm thinking are there any situations in which you would maybe need further documentation from a charity than those that you've already mentioned here?

**Jessie:** Yes, there are a few situations when you're talking about churches or schools or hospitals, there are separate affidavits that we've created and drawn up with our legal counsel who answer some of the questions that we would have in addition if they were a school or a hospital such as for schools certain non-discrimination requirements, as well as for a hospital. There are particular questions that we would need to ask of a church. So, those would be separate documents that we would send out.

Then of course through our reviews will always have different questions that come up that may require documents outside of what I listed before, but we're always in communication with the charities and letting them know if we need more information or if what we have is sufficient.

**Ted:** I know you and your staff receive an awful lot of training and you're constantly looking to stay on top of all the nuances around the world that couldn't necessarily be an easy job. I know that's the job that you do, how difficult is it to make sure that you are staying on top of all of the various aspects of charity work around the world?

**Jessie:** Yes, there's a lot going on and with an international grant making not just following the laws within our own country, but also making sure that we're keeping up to date with the laws all over the world. We have a few different resources that we regularly use to make sure that we're understanding the nonprofit laws of the countries that we're reviewing and we're working in. Definitely we always for US those regulations and changes that may be happening, we work very closely with legal counsel on a regular basis to make sure that our protocols are still following what the US IRS law would require of us.

**Ted:** This is the value add of an organization like CAF America for foundations corporations and individuals who are looking to be a philanthropic, want to do the right thing and support important causes around the world, but just the complexity of knowing all of the details of not only US law and the details there, but if you're in this case our topic today looking to do equivalencies determination. Local customs and laws can oftentimes come and play as well.

**Jessie:** Yes absolutely activated part of what we do.

**Ted:** We're going to take a very quick break here on the CAF America radio network, our guest today is, Jessie Krafft, one of the leaders here at CAF America and our topic today is equivalency determination. When we come back from the break I'm going to ask Jessie to help us understand how CAF America working on behalf of its clients would decide to use equivalency determination on a review instead of the other protocol which is expenditure responsibility and we'll be right back after this break.

**Announcer:** Remember our podcast and archives are always available 24 hours a day at [cafamerica.org](http://cafamerica.org). If you're listening today, our phone lines are open. Call in and ask a question by dialing 914-338-0855. Now, back to the *CAF America Radio Network*, and our host, Ted Hart

**Ted:** We're back here live on the *CAF America Radio Network* with Jessie Krafft the manager of Donor Advised and grant services. Our topic today is equivalency determination, but Jessie that's not always used, but how does CAF America help work with its donor clients in advising and utilizing these two different protocols?

**Jessie:** There's two different situations where we would definitely want to use an equivalency determination instead of expenditure responsibility. One of the scenarios would be if we were aware that the grant was being used to purchase capital assets of any sort, to buy land or a building or any sort of capital asset. The other reason would be, if they were going to be using it for an endowment fund and we would really use equivalency in these two cases that we would have more flexible reporting procedures as well as be able to do a deeper dive into the organization to make sure that they would be managing these assets and our funding in a responsible way.

Another reason would be, if we were expecting a very long term relationship or a large long term grant with an organization, we would want to do a deeper dive in this instance as well. These are just a few reasons but we do consider each application on a case by case basis and sometimes they'll come to us knowing that-- A donor will come to us knowing that they'll need an equivalency, but sometimes we'll find it through our review and we'll make a recommendation that that's the route we take this the review.

**Ted:** Does the donor always know all of the details and nuances or as part of your work helping advise them as to the best way to accomplish what they would like to do?

**Jessie:** Yes, definitely a huge part of what we do is donor education and helping them to understand it's that's often a difficult part of what we do because sometimes they don't understand why a review an equivalency review is taking so long, or why it's so detailed and strict because it we really are requiring a lot of the organizations, but it's really just based on what the IRS is requiring of us. Education is a really important but sometimes difficult piece when we're communicating with donors about equivalency.

**Ted:** This can take a while to be able to accomplish this?

**Jessie:** It can yes, it depends on a lot of things, it depends primarily on the responsiveness of the organization and how willing they are to get us these documents on a timely basis. If we

have everything in office it shouldn't take a very long time, but sometimes gathering everything, and then going back, and forth with questions and things of that sort it can take a while.

**Ted:** Just counterintuitive if a donor wants to give money to a charity that the charity wouldn't comply. What might be some of the reasons why it might take a while to meet their standards?

**Jessie:** Well, sometimes it is you know that we need to educate the charity as well because they don't understand the process and that's the connection that we have to really try to make in the beginning of why we're doing this review and how we're connected to the donor. That's really a piece of it, there are other pieces that sometimes they don't have these documents and they don't have the statutes in their bylaws or that that we're looking for and it takes them a while to gather things on there and make sure that they are compliant with equivalency.

**Ted:** What if someone doesn't have the requisite documents or they don't have the requisite policies in place, can they go through a process to formally adopt those and then qualify or they are blocked?

**Jessie:** Yes, we'll definitely work with an organization if there are certain things that we're seeing that definitely-- that we can say for sure that they're not going to qualify with an equivalency determination, qualify as a public charity, we would definitely go back to them and let them know exactly what was missing, what they need to do. If they don't have something specific within their governing documents that we're looking for. We'll also look into the laws of their country because oftentimes we find that based on their registration status within the country that they will--they have those laws built into their nonprofit laws. If we do find that their country is requiring those things of them that is also okay for us that just takes-

**Ted:** Required by local laws, so that again coming back to the expertise of your team and the ability to help advise the donor that there's multiple ways to be able to accomplish this very high and intense review?

**Jessie:** Mm hmm, yes.

**Ted:** If an organization verifies in their affidavit that they abide by the name standards that would be required of them, if they were public charity in the United States which is essentially what equivalency determination seeks to accomplish. Is that enough to be considered a good safe determination?

**Jessie:** No, not really. If they are just signing a note arising a document saying that they have what we're looking for, that's really not enough. We need to see it backed up with documentation and like I said before that might either be in the local laws of their country or that might do hopefully, the better scenario would be within their own governing documents and their own registration and everything like that.

This can be a difficult piece of it, because some countries don't require certain laws that we would in the United States. Some countries don't put any restrictions on political activities. For example, that might be something that's common practice that they don't-- that non-profit in their country don't follow, don't take part in-- excuse me political activities, but that doesn't necessarily mean that it's written in their laws and that we need to see it documented somewhere.

**Ted:** I suppose the charity themselves might not even be aware of their own company or country's laws enough to say that they have those rights in place. So, sometimes working with an organization like Cafamerica, the value add is information that not even the charity has.

**Jessie:** Exactly, yes.

**Ted:** How long does an equivalency determination and equivalency termination affidavit is valid? I mean, is that something that episodic or does it does it have a little bit more shelf life?

**Jessie:** We currently we're maintaining that it is valid for a year after the organization previous fiscal year. Still waiting on specific ruling from the IRF on a very set time period but that's how we base it. Any ED certificate that we generate here and that we issue would have the expiration date on it.

**Ted:** This is a fee for service, service of Cafamerica as you've outlined very articulately here. There is a lot of work that goes into this but if a corporation were to have a donor advised fund hack Cafamerica, it's true that the equivalency termination would be free for up to 12 charities?

**Jessie:** Yes, definitely. If you have a donor advised fund with us we will work with you and we do have a promotional feature right now where we do have 12 free equivalencies.

**Ted:** That's great, but what if someone wants to make the grant themselves does Cafamerica provide a service where an equivalency termination certificate can be granted?

**Jessie:** Yes, absolutely. We do Ed certificates as well with the help of outside legal counsel, but that would not fall within the donor advised fund permission you just mentioned.

**Ted:** Our listeners should definitely call 7-0-3-5-4-9-8-9-3-1 the cafamerica office for information on those specific details because obviously there's a lot out there in the marketplace right now and that's why we're having this show today. Is there a renewal process that's possible with the initial equivalency process and is that as difficult or?

**Jessie:** Yes, there is a renewal process and it's not quite as difficult under the assumption that there have been no major changes to the organization. We have a renewal affidavit that asks them whether or not anything has changed and of course they'll have to, back that up with

documentation. And if nothing has changed and they attest to this in their renewal affidavit it should be a fairly simple process. It's not hopefully nearly as involved as the first ED.

**Ted:** What's the reporting like, I mean does the donor receive reports are there requirement for reporting?

**Jessie:** Yes. One of the beauties of equivalency determination is that no we're not repack-- required to send and keep track of the funds that are given out during an equivalency determination, or after all that happens, but we are like as I said before, we're very risk averse and we like to keep everything close. We still do require reporting on an annual basis from all of the organizations that we grant to.

**Ted:** Again, this is value out of working with an organization like Cafamerica is that certainly we're going to keep you in compliant with all federal regulations and laws, but there's also a reputation factor that Cafamerica is going the extra mile, adding additional steps for the charity to comply with, because we believe that in the grant making process those are just really important steps.

Does it happen very often that you find throughout the ED process of the organization is not the equivalent of a US public charity? I mean, they just cannot make that standard work?

**Jessie:** Yes. We have found that and that's very difficult thing to communicate to the organization and to the donor. But like I said we don't just say, no. We'll go back to the organization and let them know exactly where they were having issues and what the issues we found in their application were so that they can work through them on their own or come back to us in a few months once they've amended the issues that we had found. We'll definitely-- we also we advise donors but we also advise charities throughout this review process. We don't just close the door on them will help them hopefully get a second chance.

**Ted:** It sounds like there's a lot of moving pieces to this processes this isn't just an issue of okay charity XYZ, submit these documents we go into a black box and come out and tell you whether or not you comply. It sounds like there's a lot of donor communication, there's a lot of charity communication and then there's communication after the grant?

**Jessie:** Yes absolutely. It's really we're building relationships with charities. We're not just reading proposals or just a onetime application process. We're really remaining communication with the charity throughout the lifecycle of the grant and throughout their eligibility with us, as well as through the entire application process which can take a lot of going back and forth with different questions and everything like that. We really are building relationships, as well as doing the making the grants that we do around the world.

**Ted:** I would imagine that that provides a lot of comfort and peace of mind to the donor who is trying to be philanthropic many, many thousands of miles away, but it's also just really good business isn't it?



**Jessie:** Yes, absolutely. Our donors really do appreciate the extra lengths that we go through to make sure that we build strong relationships that are really understanding where their money is going. Then making sure that it's going there in a safe and effective way.

**Ted:** There's some that others might view as sort of doing this process and in a very light way and not being quite a stickler to every detail, for donors at Cafamerica it seems that the detail is something that people really appreciate checking all those boxes and making sure that the entire processes is met, it's quite a long process as you put charities through?

**Jessie:** Yes, it is. It is quite a long process and really requires the cooperation of the charity as well which can make a review, take a bit longer if they're not understanding why they have to send us their all of their very important information like their governing documents and financial, that's an important communication piece we have to get through in the beginning.

**Ted:** I would imagine that there's some benefit to the charity, if they receive that initial grant and have gone through that process and that now they've accomplished something of real value in terms of approaching the American philanthropic market.

**Jessie:** Yes, absolutely and that's a really important thing that we communicate to them as well, is that usually we are approaching them because of the suggestion from one donor but we always let them know that because they're becoming eligible with Cafamerica it also means that any other US donors that have an interest in giving to their organization have a very easy way of doing so and we'll still get their tax receipts and everything of that sort, because we're a nonprofit ourselves, the donors are donating to us and we've been granting throughout the world.

That's a very exciting piece for organizations when they find out that they're not just applying for one grant, but they're applying for an outlet away for any American donors they may have connections list to give to them as well.

**Ted:** We imagine that there is a benefit again in working with an organization like Cafamerica and the American donor can make the donation right away and to a donor advised fund at Cafamerica and even though the vetting process which is a long and very important process here at Cafamerica can take some time, the donors not going to be disadvantaged in terms of possibly lose it or missing out on a tax deduction, because they're going to receive that tax deduction at the time of a gift to Cafamerica not if it takes a while for the organization to be properly vetted.

**Jessie:** Yes, exactly. That is a great benefit and if ever there is an instance where the grant to the organization they had originally suggested doesn't work out for whatever reason, the organization doesn't qualify, anything we find throughout the review we will always contact the donor and let them know and then ask for an alternate suggestion.

**Ted:** That's great. Very quickly if a charity doesn't meet the standard, can it get a second chance?

**Jessie:** Yes, definitely. I mean, will we wait three months and then if the organization wants to reapply or if the donor wants to suggest them again. We will definitely open up their file.

**Ted:** Jessie Krafft manager of Donor Advised and grant services here at charities AIDS Foundation of America terrific job today on a very complex topic. Our topic today was equivalent to determination. Thank you for joining us here on the *CAF America Radio Network*.

**Jessie:** It's been a pleasure.

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