

Answers to Questions Not Responded to During PG Calc's CGA Regulations and Compliance Q&A Webinar (Presented 5/30/2024)

Note:

There were a few questions posed that weren't directly related to CGA state filing compliance, and thus are not answered in this follow-up. If such questions remain, please reach out to our Client Support team at support@pgcalc.com or 888-474-2252.

1. What is the difference between "governing law" vs "regulatory law" : e.g. FL contract with disclosure language but NY governing law?

The regulatory law relates to the gift annuity-specific statute in a given state, which provides for what a charity needs to do in order to be compliant in issuing in that state (i.e. applicable initial and annual submissions to the state). Governing law relates to what state's contract law would be used to resolve any dispute that arose between the parties involving the gift annuity agreement. There are some states that as part of their regulatory law require that their law be named as governing law, but most states do not specifically address the governing law.

2. Are there specific regulations regarding funding a CGA with real estate?

No state prohibits real estate as a contributed asset, though New York does not allow a CGA to be funded with a retained life estate. However, accepting real estate may require shifting other assets of the organization into the gift annuity reserve account; California prohibits and Florida limits the use of real estate as an investment in that account, and in general it might be difficult to title the real estate as being held within the account.

3. Is there a separate guide to the protocols for faith-based organizations?

There is no categorical exemption for religious organizations relative to the CGA-specific state regulations, so they are subject to the same registration requirements as other non-profits.

4. What actions have states taken against charities as a result of them being in violation of their gift annuity regulations?

To date, Maryland and Washington have been the only two states imposing fines. This is on charities that register having already issued in the state, as well as (for WA) charities that submit their annual report late, are not holding adequate reserves, or do not meet the minimum asset requirement. WA has also suspended registrations for failure to meet ongoing requirements. Most states have the authority to levy fines or suspend/revoke permits for violations, and some have become increasingly vocal about noting that authority even when they have not taken action. There have also been instances where a state becomes aware of a charity's

unauthorized activity, resulting in issuance of a cease and desist order directing that the charity bring itself into compliance.

5. Does PG Calc’s calculation software (*Planned Giving Manager/PGM Anywhere*) have a pop up that lets you know about filing requirements based on the state of the donor as you are creating a CGA agreement within the system?

You can create state-specific agreements out of our software, with content dictated by the selected donor state. But the software does not highlight registration or annual filing requirements.

6. What is the difference between minimum asset requirements and reserve requirements?

Some state CGA statutes require a charity to hold a certain amount of assets (often phrased as “cash, cash equivalents, or publicly traded securities”). These are general assets of the organization and cannot include assets held specific to issued CGAs. In general these assets simply need to exist, i.e. they do not have to be set aside as meeting CGA minimum asset requirements (the exception being Hawaii, which requires these general assets to be held in the state.) Assets held to meet state reserve requirements, on the other hand, are to be held in a separate account labeled as such, and cannot be commingled with other assets of the organization.

7. Is there a chart that we can follow as a compliance checklist?

There were several charts included in the webinar materials, including calendars set for a fiscal year end of either 6/30 or 12/31. Those can be found at:

<https://www.pgcalc.com/events/6n0akl>.

8. What is a prototype agreement?

This is the gift annuity agreement a charity will be using, but with variables reflecting where gift-specific information will be inserted, i.e. [donor name], [gift date], [contribution amount].

Certain states require a charity to submit a set of prototype agreements when registering to issue CGAs in the state. In such states a charity is authorized to issue only variations of CGAs (immediate, deferred, one life, two lives) for which it has submitted a prototype agreement. See also link provided in answer to question #9.

9. What is the process for submitting updated agreements or new agreement types to states for approval of use?

We wrote a blog post about this in the context of new agreement variations to allow QCD agreements, but it provides info applicable for any filing of new/updated agreements:

<https://info.pgcalc.com/gift-annuity-contracts-and-the-legacy-ira-act>

10. What states require CGA marketing materials to include disclosure language (and if so, to what extent) and/or also require a disclaimer stating that no legal advice is provided and individuals should seek advice of their own counsel?

California, Oklahoma, and South Dakota require the state-specific disclosure included in annuity agreements issued in their state to also be included in marketing materials. California is the only state that specifically requires inclusion of the “not legal advice” disclaimer, though the use of such language is common even without a requirement.

11. What documents must be sent to a donor who is considering a gift annuity?

The Philanthropy Protection Act of 1995 (PPA) requires that a charity that pools its gift annuity assets into a single account (as opposed to investing each contribution separately) must provide the donor with a disclosure statement. There is no mandated language, but a sample disclosure statement can be found within *Planned Giving Manager/PGM Anywhere*. Beyond the PPA disclosure, Alabama and Arizona have specific content that is required to be disclosed to a prospective donor. Within our software we have PPA disclosures that are specific to AL and AZ, so that a single disclosure can be given to donors in those states, but it would be acceptable to give those donors 2 disclosure statements: PPA and a state-specific statement.

12. What are the correct reports to run for the NY Annual Report on beginning # of gifts and end # of gifts?

The figure for number of gifts at the beginning of the year should be the end of year figure from the prior year. The end of year figure should match the number of CGAs on the reserve calculation that will accompany the filing. Run a report listing gifts received during the year and another report listing terminations. Ideally adding the new gifts and subtracting the terminations from the prior year figure will give you a number that matches the number of CGAs on the reserve report. However, keep in mind that sometimes you learn of an annuitant’s death well after the fact, which can affect the accuracy of a terminations report (i.e. a death in 2022 that you didn’t learn of until mid-2023 would have been included on your 2022 NY annual statement, but wouldn’t show up as a 2023 termination. So often the terminations figure is backed into by using the prior year end, new gifts, and current year end figures.

13. For the Washington annual filing, what should we do if the required asset/income/expense figures are not available, even in unaudited form, by the filing deadline?

Since WA will not grant extensions on the filing due date, there are just two options in this situation: 1) file late, which generally will result in a fine, or 2) utilize prior year figures as the current year’s unaudited figures. While the filing instructions specifically note that use of prior year figures is not allowed, WA has been accepting filings that follow option 2.

14. It seems like New Jersey accepts the New York annual filing. Correct?

Yes, if you are registered in both states, you can file a copy of the NY annual statement form with NJ, assuming that you are filing with NJ on a calendar year basis (which NY requires) rather than fiscal year basis. It does not work in reverse (NY does not accept NJ's form), and for the initial registration you must go through the application process in each state.

15. Can you provide more information on the background checks you mentioned being required by some states?

There are just two states that have this requirement: California and Alabama. Though the questions asked are similar, there are differences between the states on who needs to complete the applicable form and when. For Alabama, it is to be completed by those at the charity that sign the annuity agreement on behalf of the organization and those that market CGAs in Alabama (think those who have donor interactions). Every organization must have at least 1 individual who completes this "restricted agent" registration, and it must be renewed each year. If a previously registered "agent" leaves the organization a new person would have to register. For California, the background checks are viewed as part of the investigation into the integrity of the organization. Those completing the applicable form will include individuals who make decisions regarding operation of the CGA program, those who have access to the CGA reserve account, and those who interact with donors. This is done only as part of the application; there is no annual renewal or need to have people new to the organization complete a form later.

16. Can you share the site that was mentioned where you can discreetly see if your organization is registered?

Links are shown below for states that have an on-line listing/searchable database for looking up whether an organization is registered in the state to issue gift annuities. Most states seem to do pretty well in keeping their list current, with the notable exception of NJ. Also, NY's list is only of organizations that hold a permit; charities that registered and obtained the exemption do not appear.

Arkansas: https://sbs.naic.org/solar-external-lookup/#_ga=2.151202751.7041721.1515437963-760304224.1515437963

Select Arkansas for "Jurisdiction", Company for "Search Type". Use the "Company name" field to search for a specific organization, or select "Charitable Annuity" under "Company Type" to get a list of all

California: https://interactive.web.insurance.ca.gov/apex_extprd/f?p=144:1 (searchable)

<https://www.insurance.ca.gov/0250-insurers/0300-insurers/0100-applications/financial-filing-notices-forms/GrantsAnnuities/upload/GA-Company-List-11-30-2023.pdf> (listing, currently as of 11/30/23)

Georgia: <https://oci.georgia.gov/company-search>

New Jersey: https://sbs.naic.org/solar-external-lookup/#_ga=2.151202751.7041721.1515437963-760304224.1515437963

Select New Jersey for “Jurisdiction”, Company for “Search Type”. Use the “Company name” field to search for a specific organization, or select “Charitable Annuity” under “Company Type” to get a list of all

New York: <https://myportal.dfs.ny.gov/web/guest-applications/ins.-company-search>
Search by name under “Basic Search” or see a list of all under “Enhanced Search” by selecting “Charitable Annuity Societies” as the “Org Type”

North Dakota: https://sbs.naic.org/solar-external-lookup/#_ga=2.151202751.7041721.1515437963-760304224.1515437963

Select North Dakota for “Jurisdiction”, Company for “Search Type”. Use the “Company name” field to search for a specific organization, or select “Gift Annuities” under “Company Type” to get a list of all

Oklahoma: https://sbs.naic.org/solar-external-lookup/#_ga=2.151202751.7041721.1515437963-760304224.1515437963

Select Oklahoma for “Jurisdiction”, Company for “Search Type”. Use the “Company name” field to search for a specific organization, or select “Charitable Gift Annuity” under “Company Type” to get a list of all

Tennessee: <https://access.cloud.commerce.tn.gov/portal/public> Click on “Verify”

Washington: <https://fortress.wa.gov/oic/consumertoolkit/Search.aspx>

Under Company Search, either search using the Name field, or select “Charitable Gift Annuity” as the Coverage Type to get a list of all

West Virginia: https://sbs.naic.org/solar-external-lookup/#_ga=2.151202751.7041721.1515437963-760304224.1515437963

Select West Virginia for “Jurisdiction”, Company for “Search Type”. Use the “Company name” field to search for a specific organization, or select “Charitable Gift Annuity” under “Company Type” to get a list of all