

## **Answers to Questions Not Responded to During PG Calc's CGA Regulations and Compliance Q&A Webinar (Presented 6/29/23)**

- 1. After paying a fine, I imagine that states expect a charity to register. Is there usually a time frame associated with that?**

The fine is levied after review of a charity's application, which will need to include information about the existing annuities issued in that state. In most instances the application (and thus revealing of non-compliance) is prompted by the charity's proactive decision to register. However, there have been instances where the non-compliance was discovered by the state agency, prompting a cease and desist order directing the charity to stop its activity in the state and submit its application. Currently only two states have been assessing fines if a charity has existing annuities in that particular state – Maryland and Washington.

- 2. What about states that require minimum assets held in that state?**

While there are a number of states with a minimum asset requirement, only one has an in-state component. That is Hawaii, which requires a charity to have a net worth in the state of at least \$200,000 in cash, cash equivalents, or publicly traded securities, exclusive of the assets funding the gift annuities. This requirement is one reason that most mainland-based charities do not issue/register in Hawaii. Often it is viewed as too burdensome a requirement when weighed against the potential (usually viewed as small) for CGA contributions.

- 3. Is the issuance of a college annuity/commuted term annuity the issuance of a commercial annuity requiring registration as a commercial insurer?**

Often referred to as a college annuity, a commuted gift annuity is a deferred gift annuity where life payments are commuted (exchanged) for payments for a certain number of years. It is still a gift annuity and if a charity issues such annuities they fall within the CGA-specific registration. However, the New York Department of Finance Services will not approve agreement forms for commuted gift annuities, and as such a charity would not be authorized to issue them to New York residents.

- 4. When it states that the CGA account needs to be in a "segregated account," is it acceptable to have that amount be a line item within a larger endowment? Or does it need to be a completely separate account?**

The account is to be legally and physically segregated from other assets of the organization, and solely contain assets related to gift annuities. The requirement is designed to secure those assets for the benefit of the gift annuitants and make them unreachable by other creditors of the organization.

**5. Can a donor create a CGA with a third party, similar to a DAF?**

It is possible for a donor to establish a gift annuity with one charity that will ultimately benefit another charity. The issuing charity receives the contribution, holds the assets and carries the payment obligation, and is responsible for compliance with any CGA state registration requirements. When the annuity terminates, distributions would be made by the issuing charity to the charity/ies named as the recipients. This arrangement is sometimes done by connected entities, e.g., national organization to state affiliate, or entities within a shared religious denomination. It can also involve a community foundation that may make distributions on a small (local, state) or broad (national) scale. The policies of the issuing charity will determine how fees are charged and how the residuum is determined for distribution.

**6. Do you have a list of the State Agencies and their addresses should I need to contact them on a matter?**

The American Council on Gift Annuities maintains state-by-state information on its website, and PG Calc includes contact information in its publication *Charitable Gift Annuities: The Complete Resource Manual*. Contact information can also be found by searching on the website of the applicable state agency, though some sites are easier to navigate than others. For many states, the preferred method of communication is via email, particularly since Covid.

**7. Is it possible to terminate your registration with a particular state?**

Sometimes a charity determines it will no longer be issuing gift annuities in a particular state. If that state only required a one-time notification, the charity can simply stop issuing; there's no need to advise the state or seek to terminate its registration. If, however, an annual filing is required, the charity will need to communicate its intention to the applicable state agency. The process will be more formal in some states than others. It will also typically require that the charity no longer have active CGAs issued in that state. Terminating the registration would also terminate the annual filing, and states are reluctant to give up oversight on a charity that still has payment obligations to its residents, although it may be possible if a charity reinsured any remaining CGAs issued in the state.

**8. Are the QCD Federal regulations final?**

The law governing qualified charitable distributions (QCDs) from IRAs to fund outright gifts to public charities was made permanent by the Protecting Americans from Tax Hikes Act of 2015 (PATH Act). Provisions in the Consolidated Appropriations Act, 2023 extended the QCD to allow funding immediate payment gift annuities and charitable remainder trusts, albeit with significant restrictions. These restrictions include allowing such gifts in one tax year only, limiting total transfers to \$50,000 per taxpayer, and allowing only donors and their spouses to be beneficiaries. The provisions of the Consolidated Appropriations Act, 2023 do not have an expiration date, so these rules are final subject to the possibility of Congressional repeal or revision in the future.

Practitioners have raised questions with the IRS regarding proper application of some of the new QCD provisions. Can a husband and wife with separate IRAs each make a QCD to fund the same CGA or CRT, for example? We think the answer is yes. Does the requirement that the income interest be nonassignable mean that it cannot be assignable even in favor of the charity? Again, we think the answer is yes. We hope clarification on these questions will be forthcoming from the IRS.