



# Complying with Gift Annuity Regulations



Date: February 28, 2013

Time: 1:00 – 2:30 Eastern Time

Presenter: Edie Matulka  
Senior Consultant  
PG Calc Incorporated





## Agenda

- Becoming compliant
  - Different levels of regulation
  - Criteria to meet
  - Action required
  
- Staying compliant
  - Criteria that requires monitoring
  - Annual filings - timeline





## No Notification – Most Common Criteria:

- Years in operation
  - Ranges from 3 – 20 years
- Unrestricted assets
  - Ranges from \$100,000 to \$2 million
- Disclosure language
  - Agreements
  - Marketing materials (SD)



## No Notification – Other Criteria:

- Non-gift annuity registration
  - Foreign corporation
  - Charitable solicitation
  
- Disclosure statement
  - Philanthropy Protection Act
  - State-specific content
  
- Segregated reserve fund



## No Notification – Action Required

- Indiana, Kansas, Louisiana, Massachusetts, Michigan, Minnesota, Utah
  - **Nothing** (no additional criteria)
- Nebraska, South Carolina
  - **Confirm operation for requisite period of time (3, 5)**
- Illinois
  - Confirm operation for requisite period of time (20)
  - **Determine sufficiency of unrestricted assets (\$2M)**
  - **If don't meet both criteria, can issue if reinsure**



## No Notification – Action Required

- Colorado
  - Confirm operation for requisite period of time (3)
  - **Ensure applicable disclosure language used**
  
- Virginia, Vermont
  - Confirm operation for requisite period of time (3)
  - Determine sufficiency of unrestricted assets (\$100k, \$300k)
  - Ensure applicable disclosure language used



## No Notification – Action Required

- Arizona
  - Confirm operation for requisite period of time (3)
  - Determine sufficiency of unrestricted assets (\$300k)
  - **Create state-specific disclosure statement**
  
- Maine
  - Confirm operation for requisite period of time (5)
  - **Registration as foreign corporation**





## No Notification – Action Required

- Kentucky
  - Registration as charitable organization (if not exempt)
  
- SD
  - Confirm operation for requisite period of time (10)
  - Determine sufficiency of unrestricted assets (\$500k)
  - Ensure applicable disclosure language used (agreement **and marketing materials**)
  - Registration as foreign corporation



## No Notification – Action Required

- Oregon
  - Confirm operation for requisite period of time (5)
  - Determine sufficiency of unrestricted assets (\$300k)
  - Ensure applicable disclosure language used
  - **Segregated gift annuity reserve fund**

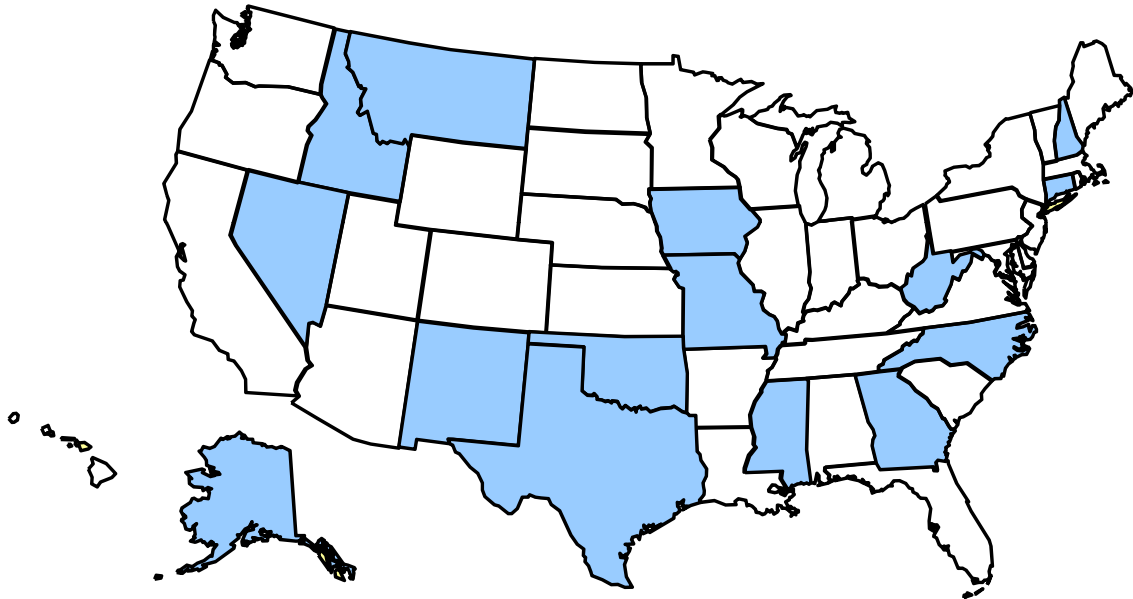


## No Notification – Action Required

- Pennsylvania
  - Confirm operation for requisite period of time (3)
  - Determine sufficiency of unrestricted assets (\$100k)
  - Ensure applicable disclosure language used (longer than most)
  - Gift annuity reserves (segregation not specified; one-half principal value of issued CGAs )
  - Registration for charitable solicitation (if needed to be “qualified organization”)



## Notification Required





## Notification – Most Common Criteria:

- Years in operation
  - 3 years
- Unrestricted assets
  - Either \$100,000 or \$300,000
- Disclosure language
  - Agreements
  - Marketing materials (OK)



## Notification – Other Criteria:

- Non-gift annuity registration
  - Charitable solicitation
- Segregated reserve fund
- Gift annuity rates
  - Cannot exceed ACGA rates (NH)



## Notification – Action Required

- Filing to the state
  - State prescribed form or notification letter
  
- Supporting documentation
  - IRS tax-exempt letter
  - Audited financials
  - Sample gift annuity agreement
  - Gift annuity application form
  - Sample marketing materials
  - Proof of other applicable registrations



## Notification – Action Required

- Alaska, Connecticut, Georgia, Idaho, Iowa, Missouri, Nevada, New Mexico, North Carolina, Texas, West Virginia
  - Operation for requisite period of time (3)
  - Sufficiency of unrestricted assets (\$100k or \$300k)
  - Ensure applicable disclosure language used





## Notification – Action Required

- Oklahoma
  - Operation for requisite period of time (3)
  - Sufficiency of unrestricted assets (\$100k)
  - Ensure applicable disclosure language used (agreement **and marketing materials**)



## Notification – Action Required

- Mississippi
  - Operation for requisite period of time (3)
  - Sufficiency of unrestricted assets (\$300k)
  - Ensure applicable disclosure language used
  - **Registration as charitable organization**



## Notification – Action Required

- Montana
  - Operation for requisite period of time (3)
  - Sufficiency of unrestricted assets (\$100k in unrestricted or \$300k in net worth)
  - Ensure applicable disclosure language used
  - **Segregated gift annuity reserve fund**

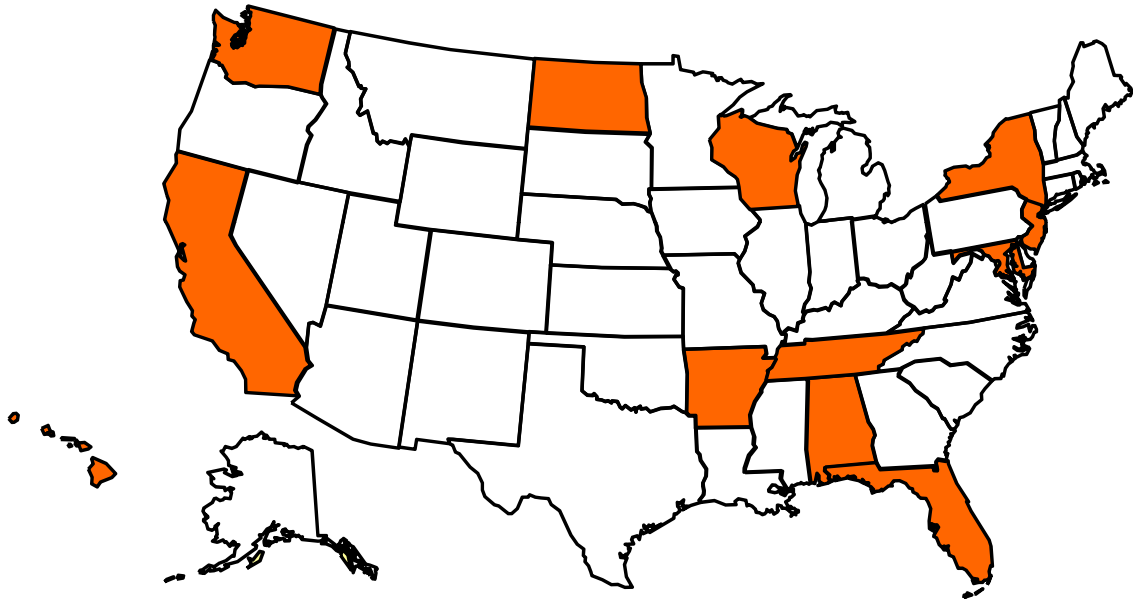


## Notification – Action Required

- New Hampshire
  - Operation for requisite period of time (3)
  - Sufficiency of unrestricted assets (\$300k)
  - Ensure applicable disclosure language used
  - **Registration as charitable organization**
  - **Segregated gift annuity reserve fund**
  - **Gift annuity rates cannot exceed those of ACGA**



## Application (Most Highly Regulated)





## Application – Requirements:

- Years in operation
  - Ranges from 3 – 10 years
  - In-state activity in Hawaii and Maryland
  
- Unrestricted assets
  - \$500,000 for Washington
  - \$200,000 held in-state for Hawaii
  - Even if unspecified amount, states looking at financial condition



## Application – Requirements:

- Annuity agreement content
  - Disclosure language
  - Specific provisions (e.g., payment correction, age or DOB of annuitant, governing law)
  
- Schedule of maximum gift annuity rates
  - May require actuarial support if higher than ACGA
  - Addendum if lower than submitted schedule (CA)



## Application – Requirements:

- Segregated reserve fund
  - Minimum fund balance
  - Varying calculation methodologies and surplus requirements
  - State-specific fund(s)
  
- Investment restrictions
  - Prudent investor
  - Specific requirements (CA and FL)





## Application – Requirements

- Filing of gift annuity rate schedule
- Registration with other state agencies
- Board resolutions
- Appointment of in-state agent
- Disclosure statement – state-specific content
- Information from individuals



## Application – Action Required

- Filing to the state
  - One or more state prescribed forms
- Supporting documentation
  - Organizational: IRS tax-exempt letter, articles of incorporation, by-laws, listing of board/officers, certificate of good standing
  - Financial: audited financials, Form 990, reserve fund information, investment policy statement
  - Programmatic: prototype agreement forms, disclosure statement, marketing materials



## Application – Action Required

- Alabama
  - Disclosure language/annuity agreement content
  - **State-specific disclosure statement**
  - Segregated gift annuity reserve fund
  - Gift annuity rate schedule
  - **Appoint state agency as agent for service of process**
  - **Information from individuals (Form U-4)**



## Application – Action Required

- Arkansas
  - Operation for requisite period of time (5)
  - Annuity agreement content
  - Segregated gift annuity reserve fund (minimum fund balance - \$50k)
  - Investment per prudent investor or specific limitations
  - Gift annuity rate schedule
  - Adoption of board resolution



## Application – Action Required

- California
  - Operation for requisite period of time (10)
  - Disclosure language/annuity agreement content
  - **Disclosure in marketing materials**
  - Segregated gift annuity reserve fund **(CA-only)**
  - **Investment per specific limitations**
  - Gift annuity rate schedule **(addendum if lower)**
  - **Adoption of board resolution**
  - **Appoint in-state agent for service of process**
  - **Information from individuals (Individual Affidavit)**



## Application – Action Required

- Florida
  - Operation for requisite period of time (5)
  - Disclosure language in agreement (not submitted to state)
  - Segregated gift annuity reserve fund (option for FL-only)
  - Investment per specific limitations



## Application – Action Required

- Hawaii
  - Operation for requisite period of time (10), with **need for activity in-state**
  - Sufficiency of unrestricted assets (\$200k, **held in Hawaii**)
  - Disclosure language in agreement (**not submitted to state**)
  - Segregated gift annuity reserve fund (**minimum surplus requirement - \$100k**)
  - Investment per prudent investor



## Application – Action Required

- Maryland
  - Operation for requisite period of time (10), with **need for activity in-state**
  - Disclosure language/annuity agreement content
  - Segregated gift annuity reserve fund
  - Investment per prudent investor
  - Gift annuity rate schedule





## Application – Action Required

- New Jersey
  - Operation for requisite period of time (10)
  - Annuity agreement content
  - **Registration as charitable organization *and* as foreign corporation**
  - Segregated gift annuity reserve fund (**minimum surplus requirement - \$100k**)
  - Investment per prudent investor
  - Gift annuity rate schedule
  - **Adoption of board resolution**



## Application – Action Required

- New York
  - Operation for requisite period of time (10)
  - Annuity agreement content
  - Segregated gift annuity reserve fund (minimum fund balance - \$100k; two levels of surplus)
  - Investment per prudent investor
  - Gift annuity rate schedule
  - Adoption of board resolution



## Application – Action Required

- North Dakota
  - Annuity agreement content
  - Segregated gift annuity reserve fund
  
- Tennessee
  - Disclosure language/annuity agreement content
  - Segregated gift annuity reserve fund (TN-only no longer required)
  - Investment per prudent investor
  - **Appoint state agency as agent for service of process**



## Application – Action Required

- Washington
  - Operation for requisite period of time (3)
  - Sufficiency of unrestricted assets (\$500k)
  - Annuity agreement content
  - **Registration as charitable organization**
  - Segregated gift annuity reserve fund
  - Investment per prudent investor
  - Gift annuity rate schedule
  - **Appoint state agency as agent for service of process**



## Application – Action Required

- Wisconsin
  - Operation for requisite period of time (10)
  - Disclosure language/annuity agreement content
  - Segregated gift annuity reserve fund (**minimum surplus requirement - \$100k**)
  - Investment per prudent investor
  - Gift annuity rate schedule
  - **Appoint in-state agent for service of process**



## Staying Compliant

- Years of operation
  - Activity in Maryland and Hawaii
  - Separate Foundation
  
- Minimum assets (24 states)
  - At time of issuance
  - Annual reporting (HI, WA)
  - Self-suspension



## Staying Compliant

- Rates
  - Filed: AL, AR, CA, MD, NJ, NY, WA, WI
  - Notify when change
  - Addendum to agreement if offer lower (CA)
- Agreement forms
  - Filed: AL, AR, CA, MD, NJ, NY, ND, TN, WA, WI
  - New forms need approval
  - Disclosure language (in 23 states where forms not submitted)



## Staying Compliant

- In-state agent
  - Individual or firm (CA, WI)
  - State agency (AL, TN, WA)
- Marketing
  - Disclaimer and disclosure (CA, OK, SD)
  - No testimonials in Alabama





## Staying Compliant

### Monitoring reserve fund

- Fund balance
- Investment allocation
- Not just at FYE or CYE





## Staying Compliant

### Annual filings

- What:
  - Renotification, audited financials
  - Detailed reporting
- When:
  - FYE vs. CYE; tickler system
- Who:
  - PGO or business/finance





## Stay Compliant – Annual Filings

For a charity with a 12/31 FYE

- January 30
  - CA: 4<sup>th</sup> quarter reporting of new CGAs; agreement attestation (quarter end + 30)



## Stay Compliant – Annual Filings

- March 1
  - AL: audited financials (FY + 60)
  - CA: renewal fee
  - FL: on-line attestation (FY + 60)
  - MT: re-notification
  - NY: annual report
  - TN: letter re: intent to renew and fee
  - WA: annual report and fee (FY + 60)
  - WI: annual report and fee



## Stay Compliant – Annual Filings

- March 15
  - HI: annual report
  
- March 31
  - MD: annual report (FY + 90)
  - TN: annual report; financials (if verified) (FY + 90)



## Stay Compliant – Annual Filings

- April 30
  - CA: annual report (CY/FY + 120);  
1<sup>st</sup> quarter reporting of new CGAs
  - NJ: annual report; audited financials  
(CY/FY + 120)
  - WA: audited financials (FY + 120)
  
- May 15
  - NH: renotification (part of charitable organization  
renewal) (FY = 4 months, 15 days)



## Stay Compliant – Annual Filings

- May 30
  - TN: financials (if audited) (FY + 150)
- June 29
  - AR: annual report (FY + 180)
- July 30
  - CA: 2<sup>nd</sup> quarter reporting of new CGAs



## Stay Compliant – Annual Filings

- October 30
  - CA: 3<sup>rd</sup> quarter reporting of new CGAs
- December 31
  - AL: renew “restricted agents” (fee of \$60 per agent)
- Additional info (once available)
  - AFS: GA, ND (+ 15 days), OK (+ 90 days)
  - 990: WA (+ 15 days of submission to IRS)





## Staying Compliant

- Staff Transition
  - Maintain files
  - Color coded map
  - Tickler system





# Questions?





## Still Have A Question?

**Contact:** Edie Matulka  
Senior Consultant  
PG Calc Incorporated

**E-mail:** [ematulka@pgcalc.com](mailto:ematulka@pgcalc.com)