Charitable Gift Annuities and State Registration

VIEWS FROM OUR PLANNED GIVING TEAM

The appropriate level of compliance with state regulations for Charitable Gift Annuities (CGAs) can be a complex decision for charities. Do you want to go through the time and expense of registering in all states? Do you only want to register in the state in which you are located? Is the answer somewhere in the middle? The reality is that each charity will need to make that decision for their organization based on their donor base and their comfort level.

However, the trend we have been seeing is that charities are looking at this issue again with the desire to become as compliant as makes sense. But they recognize that they need to pursue other options for donors in states where registration does not make sense.

State regulation for Charitable Gift Annuities broadly can be categorized into four levels:

1. Silent States
2. No Registration or Notification Required
3. Initial Notification or Registration Required
4. Highly Regulating States

1. Silent States

This is currently the smallest of the categories with five states represented (Delaware, the District of Columbia, Ohio, Rhode Island, and Wyoming).

These silent states lack regulations on CGAs and do not enforce charities’ compliance with insurance laws. Therefore, most charities feel comfortable issuing CGAs in these states.

2. No Registration or Notification Required

This is the largest category with twenty states represented (Arizona, Colorado, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Nebraska, Oregon, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, Vermont, and Wisconsin).

For these states, charities do not need to formally register or notify the state insurance departments to issue CGAs, but they do need to meet certain criteria. These criteria can include: registration with another state agency (for example to do business or solicit funds), a minimum number of years in operation as a charity, a minimum level of total assets as a charity, or specific disclosure language in the annuity agreements.

3. Initial Notification or Registration Required

This category has fifteen states (Alaska, Connecticut, Georgia, Idaho, Iowa, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Mexico, North Carolina, Oklahoma, Texas, and West Virginia).

Like the “No Registration or Notification Required” states, these states require charities to meet the same type of criteria regarding registration with other state agencies, minimum years in operation, minimum level of assets, and disclosure language on annuity agreements. However, this category also requires that charities register with the state insurance department. But, the paperwork is minimal, and importantly, it can be done concurrently with the issuance of the first CGA in that state. For these states, notification is essentially equal to registration.

4. Highly Regulating States

While this group is relatively small at eleven states, the requirements are significantly higher than the other categories. States in this category are: Alabama,
Arkansas, California, Florida, Hawaii, Maryland, New Jersey, New York, North Dakota, Tennessee, and Washington.

The common theme for these states is that registration can be complex, time consuming, and potentially expensive. Importantly, it also must be done before entering into any CGA agreements with donors from the states.

Once registration is granted by the states, charities must continue to maintain compliance. These highly regulating states will assess compliance through a number of requirements. These can include:

• An annual filing which may be complex depending on the state
• A segregated gift annuity reserve account (the gift annuity program cannot be co-invested with the endowment or any of the other pools of money)
• A minimum market value on the reserve account (based on the present value of the payouts to the income beneficiaries within the CGA program)
• Investment restrictions (most states have gone to the Prudent Investor standard for CGAs, but in particular, California and Florida have retained their specific investment restrictions as the only option)

Interestingly, we have heard from some of our clients that registering in a highly regulating state was actually a “bonus” for marketing to some donors. These donors took comfort that their life income gift was regulated and reviewed by an outside authority. It lent more credence to the likelihood of receiving that income for life.

For these highly regulating states, charities should look at their pool of donors and prospective donors and determine if it makes long-term sense to register. Charities who register in highly regulating states face not only an initial registration process, but ongoing compliance. In many states, that includes an annual filing. Both the initial registration and annual filing can be expensive in terms of time and money. For example, to initially register in California, out of state charities are assessed a filing fee of over $3,500. And the annual filings for California and New York are complex enough that most charities opt to outsource the completion of these filings at an additional expense. In terms of time, it can be months from initial filing to hearing back from the insurance commissioner. Be cautioned that the process can be lengthened if you have CGAs in existence for that state.

For specific information on each state’s requirements and contact person, visit the American Council on Gift Annuities website at www.acga-web.org. Additionally, there are a variety of consultant resources that can assist in the registration process.

Finding the right balance of states in which to register for CGA compliance is a unique process for each charity. For further information on gifting options for donors in states where your charity opts not to register, please see our paper titled “Charitable Gift Annuities – Options and Alternatives When State Registration Doesn’t Appeal.”

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