

Tina Yelle - Fri, 4/8/2022 - 15:14

Here's the problem:

The ACGA, in an April 2021 communication, informed its members that the ACGA suggested maximum payout rates exceed the current maximum payout rates allowed by the State of New York at the typical ages of most gift annuitants. While there are a number of states that regulate gift annuities, New York is the only one that issues its own maximum allowable gift annuity payout rates for its residents. Until recently, the ACGA suggested maximum payout rates have been consistently lower than the New York maximum rates.

What we have determined:

Our most recent analysis reveals that the ACGA rates exceed the maximum New York rates applicable to gift annuities funded in April - June 2022 for females at ages 70 through 85 and for males at age 80. Please note, the NY maximum payout rates are published only for 1-life annuities, and they are gender-specific. The state does not currently publish maximum payout rates for 2-life gift annuities, or for any type of deferred gift annuities.

When did this begin?

New York's methodology for determining its maximum rates changed in 2020. The state has also begun updating its maximum rates every calendar quarter, rather than annually. Hence, it appears that gifts made in Q1 2020 and onwards are affected.

What should clients use for 2-life Immediate or deferred annuities?

New York has only published 1-life rates for immediate annuities. So far as we are aware, New York has not published any guidance on rates to use for 2-life immediate or 1-life or 2-life deferred annuities. The good news is that PG Calc has worked with an actuary to determine how to perform these calculations. PG Calc customers may request from us a free calculation of the maximum payout rate for a two-life immediate annuity or one-life or two-life deferred gift annuity issued to New York residents. [Just fill out this form](#) to request a calculation.

What this means right now:

If your organization issues gift annuities to residents of the State of New York, and if you generally use the payout rates suggested by the ACGA, your payout rates for 1-life gift annuities for the age ranges mentioned above will exceed the maximum New York payout rates, and your payout rates for 2-life annuities and deferred annuities may also exceed the New York maximums.

What should a charity do if they have already issued non-compliant gift annuities to NY donors?

So far as we are aware, New York has not published any guidance on this matter. We do not know what to advise other than asking your organization's counsel for guidance.

New York organizations are audited every five years. What happens if non-compliant gift annuities are flagged in an audit?

We are not aware that New York has provided guidance on this topic. However, PG Calc has heard reports that non-compliant gifts have been flagged in audits, but we have not heard of fines being levied or permits revoked. Non-compliance was noted on the audit reports, which had to be circulated and acknowledged by the charity's Board.

Will the software remind users of this issue when they attempt to generate an annuity for someone in New York?

We have added an alert about the situation with NY rates to the *PGM Anywhere* login screen. We have also added to *PGM Anywhere* and *PGM* a notice about the NY rates, which appears when you click Results upon creating a gift annuity agreement or gift annuity disclosure statement for a NY donor. The follow-up questions for these two narratives are the only places where the software asks for the donor's state of residence.

Each client also can edit or add custom Disclaimers to their software. The text could be something like this: "NY rates change quarterly and often are lower than the standard rates we offer; NY donors should contact us for their current rate." Or "These calculations are estimates of gift benefits; your actual benefits may vary. If you are considering a gift annuity and live in New York State, please contact us."

Is PG Calc adding a software feature to calculate maximum rates for New York?

That would require a fundamental change in the way gift annuity rate lookups work in our software. We will look at that if the ACGA is not able to obtain a favorable resolution, but right now the prospects for a resolution appear good.

What should charities issuing gift annuities in New York do?

You have to look up the correct 1-life rate for each New York donor. If it is lower than the rate you would otherwise offer, you must then manually enter it into the software.

Do you have an example of how to determine the proper NY rate for a particular donor? I want to make sure I'm doing it properly.

New York now publishes rates quarterly, with the most recent quarter at the *beginning* of the NY Department of Financial Services PDF:

https://www.dfs.ny.gov/system/files/documents/2022/04/gift3_2022_q2.pdf

NY maximum quarterly rates apply to gift annuities made during that quarter. However, if the rates for the new quarter have not yet been published, the rate from the preceding quarter may be used. Quarterly rates are typically published by the 10th day of each quarter, but the publication date varies.

Example: A female donor, age 80, makes a gift on 10/15/21.

To look up the rate for a gift made on 10/15/2021, which is in Q4 2021, scroll down to find the table labeled "For Issues of 2021 Q4":

**PRESENT VALUES OF IMMEDIATE ANNUITIES AND MAXIMUM INCOMES
PER \$1000 GIFT ALLOWED BY SECTION 1110
FOR ISSUES OF 2021 Q4**

Once you have found the correct quarterly table for your gift date, look for the gender and age of the annuitant, then take the value displayed in the "Maximum Income" column, which is 52.19, and divide by 10. Thus, the NY maximum rate for a female, age 80, making a gift on 10/15/21 is 5.219%.

In *Planned Giving Manager/PGM Anywhere*, manually enter 5.219% instead of the rate that is displayed, including all three decimal places. DO NOT ROUND UP - an

adjusted rate that has been rounded up would exceed the statutory maximum rate; you may, on the other hand, round down or truncate the rate. In our example, for instance, you could offer 5.2%, but not 5.3%.

If the table for issues of Q4 2021 were not yet posted on the NY Department of Financial Services website on 10/15/21, you would use the table for issues of Q3 2021 instead. In that case, the NY maximum rate for a female, age 80, would be 5.424%.

What's Next?

The ACGA Rates and Regulations Committee has been in discussions with actuaries at the NY Department of Financial Services for some time about this issue. The ACGA has now finalized, with their assistance, revised statutory language acceptable to the NYDFS that we believe will effectively eliminate the possibility of NY's maximum annuity rates being lower than the ACGA's suggested maximum rates. The proposed change has been introduced for consideration during the 2022 NY legislative session and is currently awaiting action by the Insurance Committee. We are optimistic that the revised statute will be adopted before the 2022 session ends in June.

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