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When it comes to state **regulation** of **gift annuities**, the specific requirements of the most regulated states garner the most attention. But there are only 10 of those states. A charity can satisfy the regulatory requirements of the 40 other states with relative ease and speed. Working from the least regulated to the most regulated, the states can be broken down as follows:

State law does not specifically address gift annuities (4 states and DC)

While it is unclear whether the departments of insurance would view the lack of regulation as requiring charities to comply with the insurance laws, states have not been enforcing the law in that manner. Consequently, most charities feel comfortable with issuing gift annuities in these silent states. States/jurisdictions in this category are: Delaware, District of Columbia, Ohio, Rhode Island, and Wyoming.

Statutory criteria to meet, but no notification required (20 states)

A charity may be required to meet certain years of existence and/or minimum asset requirements, and to provide donors with specific disclosures, but no gift annuity-specific registration is required in these states. In a few instances, however, in order to fall under the exemption from insurance regulation provided by the state's gift annuity law, a charity may need to be registered as a foreign corporation, or to be registered for purposes of charitable solicitation. States in this category are: Arizona, Colorado, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Nebraska, Oregon, Pennsylvania, South Carolina, South Dakota, Utah, Vermont, Virginia, and Wisconsin.

Notification to the state insurance department (16 states)

In all of these states a charity must meet years of existence and minimum asset requirements, and must include specific disclosure language in annuity agreements issued to state residents. In addition, a filing with the state insurance department is required, though it involves minimal paperwork, and can be completed concurrent with entering into the first annuity in the state. Because they are a notification rather than an application, they are in essence complete upon submission. States in this category are: Alaska, Connecticut, Georgia, Idaho, Iowa, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Mexico, North Carolina, Oklahoma, Tennessee, Texas, and West Virginia.

Note that while an organization might want to be able to offer gift annuities in as many states as possible, there may be reasons to stay out of certain states. For example, a charity may reasonably choose to avoid a given state if the burden of registration requirements of the state outweighs the possible benefits from the potential donors there. Similarly, a charity that serves a community within a single state, or in just a few states, would need to be able to issue in just that one state, or in those few states, in order to have a successful program.

A charity that has supporters in a large region or across the country may still prefer to be selective where it issues. For example, say a charity counts residents of 20 states among its supporters, with only a few of those states being heavily regulated, and is considering starting a gift annuity program. This charity might elect to "roll out" its program in stages, focusing first on prospective donors living in less-regulated states and opting not to issue initially in the few more-regulated states (thereby avoiding a costly registration process). This approach will enable the charity to minimize the degree to which it's subject to regulation while it launches its program. Though an organization that is national in scope is unlikely to be able to avoid all of the more-regulated states, it still may be preferable for it to stay out of a few states where it determines that the cost of complying with the specifics of state regulation outweighs the potential for gifts in those states.

Changes in regulation

While in 2014 there was a significant change in Wisconsin's legislation, eliminating both the registration requirement and the ongoing annual reporting, since then things have been quiet with respect to gift annuity state legislation.

Prospects for a uniform state law: What about the possibility of a uniform state law governing issuance of gift annuities? Is that on the horizon? State regulators have commented on this issue at past ACGA Conferences, indicating that the more-regulated states would likely be interested in a uniform law only if the degree of regulation matched its current law - they are not inclined to have the regulatory bar lowered. We also know that many of the notification states enacted their gift annuity law based on a model act put forth by the National Association of Insurance Commissioners and, almost without exception, modified the law in some way. It

seems apparent, then, that the likelihood of a uniform gift annuity law is remote at present. There is, however, also good news. Over the last decade most legislative or administrative changes have resulted in an easing of regulation, whether it be a removal of the filing requirement as with Wisconsin, or a lessening of investment restrictions imposed on the gift annuity reserve fund by states enacted by California, New Jersey, and New York in prior years.

PG Calc will continue to monitor state regulatory matters so that we can keep you up-to-date on changes as they occur. If you would like help complying with the gift annuity regulations of any state or states, please contact Edie Matulka at ematulka@pgcalc.com.

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