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CGA Manual

The Complete Guide to Gift Annuities

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None

Contents of Prototype Materials

Accompanying this manual are prototype materials formatted in Microsoft Word for Windows, along with PDF files containing annual filing materials for certain states as referenced in Chapter 14. (For users of the print version of this manual, a link to the prototype materials appears in the Update Summary and Instructions sheet included with each update.) The Word and PowerPoint materials may be adapted, personalized, and reproduced for use by your institution. They are made available to you with the understanding that the authors are not engaged in the practice of law, nor in rendering legal or other professional advice. Accordingly, you are advised to have your own legal counsel review and approve the documents, including any modifications, before using them.

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Sample Charitable Gift Annuity Policies	policies.docx	5.29
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Applicable Federal Midterm Rate Election	tax-CMFR election.docx	9.11
Other Documents		
Gift Annuity Agreement with Reinsurance Paragraph	agreement-reinsurance.docx	10.13
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Sample Letter Cashing out a CGA	Cash out-CGA interest.docx	20.49

Directory

Annuity Agreements File

The annuity agreements (agreements-base.docx), New York annuity agreements (NY agreements.docx), flexible deferred annuity agreements (flex dga-agreements.docx), and New York flexible deferred annuity agreements (NY flex dga-agreements.docx) files contained among the prototype materials are formatted with each agreement as a new section. A complete list of the agreements in agreements-base.docx is set out below.

The easiest way to go to a particular agreement within an agreements file is by use of the section number. In Microsoft Word:

1. Press Ctrl-f.
2. Click the down icon at the far right of the Search document field.
3. Click the Go To tab, then choose Section.
4. Enter the applicable section number, then click the Go To button.

If you wish to print a particular agreement, click File, then Print, then in the Pages field enter the applicable section number(s) you wish to print (e.g., s1, s5). You may also highlight a particular section for printing (or copying as a new document). When doing this, be sure to highlight through the ending section break, or the footers will not appear.

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Acknowledgments

This manual has evolved over many years of concentration on gift annuities. Much of the material accrued from PG Calc's work in starting gift annuity programs, speaking at conferences, assisting charities in complying with state regulations, developing software, administering gift annuities, and responding to numerous donor situations.

The production of this 2025 updated and revised manual was truly a team effort of various individuals at PG Calc.

Bill Laskin, Vice President, Product Management at PG Calc, has served as editor of the manual updates for a number of years. This 2025 update continues his careful review and constructive suggestions that have helped assure the accuracy and consistency of the text. He has been assisted by **Patty Arnold**, a contractor for PG Calc, who has been responsible for applying all of the changes.

Edith Matulka regularly helps charities comply with state regulations, which means becoming certified in some states and qualifying for an exemption in others. The chapters in the manual that describe state regulations regarding the issuance of gift annuities and state requirements for gift annuity agreements are largely her work. "Edie" has also been responsible for compiling a complete set of gift annuity agreements for practically every possible variation and she has contributed updates to other chapters as well. Assistance was provided by **Julie Goldenberg Hay**, who offered input on state regulation content.

Craig Wruck is a welcome new contributor to this manual. In 2024, he greatly revised and improved Chapters 2 and 3. In 2025, he has rewritten Chapter 22. With his singular talent for clarity, he has made every section he's touched more coherent and readable.

Julia Boerth wrote much of the content in Chapter 22 on gift administration best practices added in the 2023 update. She also helped with revisions to Chapter 5 that year.

Ann McPherson contributed significantly to a major revision of Chapter 15, the chapter on marketing gift annuities, in the 2017 update.

Before he left PG Calc in June 2015, **J. William Zook**, for many years, had been primarily responsible for the chapters dealing with transferring various kinds of assets, meeting disclosure requirements, and providing tax information to donors. "Bill" has contributed significantly to the book in its current form.

Separately, I am grateful for the assistance in years past of **Rhona Kwiram, CPA**, with the Bellevue, Washington accounting firm Clark Nuber P.S., who reviewed the financial accounting content in Chapter 5.

Besides the aforementioned persons, I want to acknowledge in particular three persons who were technical reviewers of either the entire manual or sections of it during the

year we first produced it. Although they have not reviewed the annual updates since the manual was first published, and bear no responsibility for them, their willingness to respond to questions is greatly appreciated.

David Newman of Mitchell Silberberg & Knupp in Los Angeles was given the daunting task of conducting a technical review of the entire manual. He and his associates did the review systematically and thoroughly, and they suggested a number of clarifications and technical corrections that have been incorporated in the text. I always marvel at the lucidity of David's mind, and he is a friend from whom I continue to learn. David regularly responds to questions about updates of the manual.

Terry Simmons of Thompson & Knight in Dallas was a valued friend and colleague in this field for a quarter century. It was a great loss to me and to all gift planners when Terry died in 2017. Terry, more than anyone else, saved gift annuities for the charitable community. When they were seriously threatened by a class action lawsuit, it was Terry who led the successful effort to enact legislation that formed the basis for the dismissal of the lawsuit. Without his total commitment and political astuteness, gift annuity programs might have been so damaged that there would have been no cause to write this book. I am also indebted to Terry for his wise counsel on a number of technical issues discussed in the book.

Emil Kallina of Kallina and Associates, LLC in Baltimore combines an encyclopedic knowledge of the Code and Regulations with an in-depth understanding of the mathematics of planned giving. I asked him to review some of the more technical sections, and he did not stop with the citations but also checked the numbers. His quantitative mind is accompanied by a caring soul. I am grateful for his insightful comments.

In addition to the three reviewers, I want to thank the following four other persons who agreed to look at the manual before it was initially completed and comment on the work as a whole. Although these persons were not asked to review or comment on updates, their initial review was most helpful.

André Donikian, the Founder of Pentera, Inc. was a dear friend for almost the entire 44 years I have been in this business. His death in 2019 was a great loss to the profession and to me personally. His generosity of spirit knew no bounds, and I am grateful that he allowed me to expose his seminar participants to my thoughts on gift annuities through the years.

Conrad Teitell of the Philanthropy Tax Institute, who deserves the title, "Man of the Century in Planned Giving," who has been mentor to thousands of us, and who not only teaches us but also helps us to see the humor in our work.

Tal Roberts formerly with the Baptist Foundation of Texas, who died in 2021, led the American Council on Gift Annuities with distinction for more than a decade, guided the Council through its darkest days, was a true friend and always a gentleman.

Robert F. Sharpe, Jr. one of the most influential leaders in the planned giving field, an innovator and strategic thinker, helped us see trends and how to respond to them. Robert died early in 2022 and is greatly missed by his many followers.

I am indebted to these friends and associates. They have clearly improved the quality of the manual and made my work more fulfilling.

Finally, I want to acknowledge the many other readers of the manual, friends, and associates who have made helpful suggestions and asked questions that caused us to deal with new issues. During the course of the year we file your questions and suggestions and then respond to them in the next update. We appreciate the role you have played in contributing to the evolution of the manual, and we continue to welcome your feedback.

Frank Minton
Consultant to PG Calc

Foreword

From 1999, when *Charitable Gift Annuities: The Complete Resource Manual* was first published, through 2023, it included a lovely Forward written by Terry Simmons about his friend, Frank Minton. In honor of Frank's final year of involvement with the *CGA Manual* – he stepped aside when he was about to turn 90 years young - I asked Frank if I could write a new Forward to replace Terry's. He graciously said, "Yes." And so, I wrote what follows.

The *CGA Manual* was Frank's idea. He was its principal author and he marshalled whatever help he thought he needed to make sure it was the most comprehensive and authoritative resource on charitable gift annuities to be found anywhere. For the nearly 25 years since it was first published, Frank has continued to be deeply involved in the annual updating of its content so that it would remain comprehensive and authoritative to this day.

I have had the privilege to work closely with Frank as the editor of the *CGA Manual* for the past ten years. My role has given me a front row seat from which to admire and appreciate Frank's comprehensive knowledge of gift planning and gift annuities in particular, his dogged pursuit of the best answer, his attention to detail, and his absolute dependability for delivering edits on time. Whenever an answer has not been obvious, his background as an academic has come to the fore as he eagerly solicited the opinions of other experts so that he could formulate the best answer for his readers. You would be amazed, and I hope more than a little impressed, at the effort Frank has exerted over the years to make the *CGA Manual* as good as he could make it.

Those of us who have been in the gift planning world for a while know that Frank's contributions to our profession extend far beyond the *CGA Manual*. Over his nearly 50 years in planned giving, he has served as President of what is now the National Association of Charitable Gift Planners, was for many years a board member of the American Council on Gift Annuities, has chaired a national conference and led numerous research projects for both organizations, and given countless presentations on planned giving topics at gatherings throughout the U.S.

Let's see, what else? He pursued the IRS Private Letter Rulings that gave rise to the flexible gift annuity and affirmed the tax benefits of funding a testamentary gift annuity with retirement plan assets. He co-authored *Planned Giving for Canadians*, the seminal work on gift planning in Canada, where he also directed for many years a comprehensive planned and major gifts course for Canadian fundraisers. He helped draft and then secure the adoption of the Model Standards of Practice for the Charitable Gift Planner. He has done all of this, and so much more, to advance our profession and the people in it so that charities can attract the resources they need to pursue their missions. Many have noticed. Not only have several planned giving groups honored Frank for his many achievements, but you can receive the Frank Minton Professional Achievement Award from the Washington Planned Giving Council.

Terry summed up Frank beautifully at the end of his Forward. He wrote:

Frank is a gift planner, an academician, a teacher, an author, a mountaineer, and an adventurer. But more than anything, he has mastered the fine art of true friendship. If I metaphorically think of myself as dangling over one of the bottomless crevasses of life, there is no one that I would rather have holding the rope for me than Frank Minton. More often than we can count, and more times than most people know, he has held the rope for all of us in the charitable world. We owe him a debt of gratitude for all that he has done, and a new debt for this incredibly useful manual which he has produced for all of us.

This manual isn't new anymore, but it remains incredibly useful. Thanks, Frank. For everything.

Bill Laskin
Cambridge, Massachusetts
September 2023

Chapter 1

THE AMERICAN COUNCIL ON GIFT ANNUITIES

History

Gift annuities, in one form or another, have been in existence for a long time. Ronald Brown, a former member of the Board of Directors of the American Council on Gift Annuities, has done extensive research on the history of gift annuities. In his book "A History of Charitable Gift Planning; How Gift Annuities Shaped American Philanthropy (1830 – 1959)" (which can be found at www.giftplanninghistory.org), Mr. Brown notes that the first charitable gift annuity was issued by Yale University in 1831, in exchange for a contribution of paintings. Relatively few annuity agreements were written until after World War I, but during the 1920s the gift annuity became a popular method of fundraising among church boards and a few other charities that began actively promoting them.

During this period, each organization developed its own set of gift annuity rates, which normally meant incurring the expense of professional actuarial advice. Moreover, organizations that, in their zeal to issue annuities, offered excessively high rates sometimes discovered that a particular annuity left little or no charitable residuum.

In an effort to deal with these problems, the Federal Council of Churches convened a Conference on Financial and Fiduciary Matters, held in Atlantic City, March 22-24, 1927. From this meeting emerged an ongoing Committee on Gift Annuities which was instructed:

> *to study and recommend the proper range of rates, the form of contracts, the amount and type of reserve funds and the nomenclature to be used, to ascertain and advise as to the legislation in the United States and the various states regarding annuities, their taxability, etc. This committee is requested to make an immediate study in the matter of rates and to call a conference of interested parties on this matter at the earliest possible date. This committee should be guided in its study by an early determination as to what is the primary motive in the writing of annuity contracts.*

The Committee's report was presented to the first Conference on Gift Annuities, held on April 29, 1927, in the New York offices of the Federal Council of Churches. The gathering was attended by representatives of 47 organizations (referred to as sponsors then, now known as members) offering gift annuities.

The Committee continued to hold conferences approximately every three years and to fulfill its original purposes with regard to annuity rates, management, taxation, and related legislative and regulatory matters. Over the years, the ACGA has expanded its services to its members to include research projects, publications, and professional training seminars in connection with its conferences.

Effective January 1, 1994, the name of the Committee on Gift Annuities was changed to the American Council on Gift Annuities and it was incorporated in Texas. Previously, it had operated simply as a committee of volunteers, and its headquarters had been in New York City. The incorporation occurred after its offices were relocated to Dallas, Texas.

The organization's headquarters remained in Dallas until January 1998, when it moved its operations to the offices of the National Committee on Planned Giving (NCPG), now known as the National Association of Charitable Gift Planners (CGP), in Indianapolis, Indiana. Shared operations with CGP ended in 2010. The ACGA is run by its volunteer Board of Directors with outsourced administrative support.

Purpose

As set forth in its corporate documents and mission statement, the ACGA exists to foster the success of charitable gift annuity programs at charities nationwide by:

- Developing actuarially sound suggested maximum annuity rates
- Providing high quality education and training
- Conducting research and publishing materials on matters pertaining to gift annuities and other planned giving methods
- Working with regulators and legislative bodies on issues affecting the charitable community

Gift Annuity Rates

Suggesting gift annuity rates has always been a primary role of the ACGA. It makes these available as a service to member organizations and software vendors, but it neither requires nor enforces their use. Most charities, whether or not they are members of the ACGA, follow the suggested rates.

In the past, rates were generally reviewed every three years, and proposed changes would be presented to and approved by participants in triennial conferences. Now the rates are reviewed on an on-going basis, and any changes are approved by the ACGA Board.

See Chapter 3 for a discussion of historical and current rates and an explanation of the assumptions underlying the calculation of the rates.

Lawsuit

At the end of 1994, a lawsuit was filed in the U.S. District Court for the Northern District of Texas naming the ACGA as a defendant. The defendant class was subsequently enlarged to include organizations affiliated with board members of the ACGA, and then to all charities that had issued gift annuities using rates recommended by the ACGA. The plaintiff contended that the ACGA's adopting and publishing suggested rates, and the use of those rates by charities, was a violation of federal and state antitrust laws. The plaintiff also charged that charities serving as trustee of charitable remainder trusts, charitable lead trusts, and revocable living trusts and investing trust assets in internal funds that were not registered securities had violated federal and state securities laws.

At the request of charities, and in response to the pending lawsuit, Congress passed and the President signed into law the Charitable Gift Annuity Antitrust Relief Act of 1995 and the

Philanthropy Protection Act of 1995. The former declared that no state or federal antitrust law prohibits two or more charities from agreeing on common gift annuity rates. The latter exempts commingled funds in which charities invest trust and gift annuity assets from securities registration requirements (though certain restrictions apply to revocable living trusts), and exempts certain fundraising representatives of such charities from classification as brokers or dealers. These exemptions are not available if a person who is not an employee of a charity is paid to solicit funds on behalf of the charity or if any person - whether an employee of the charity or not - receives a commission based on the value of donations received.

The plaintiff subsequently alleged that the Gift Annuity Antitrust Relief Act did not afford protection to the ACGA because for-profit organizations as well as IRC Sec. 501(c)(3) charities were present at the conferences where rates were determined. To provide the protection originally intended, Congress in 1997 passed, and the President signed into law, the Charitable Donation Antitrust Immunity Act of 1997. This act provides a blanket exemption of gift annuities from antitrust legislation.

The lawsuit ended in 1998. All claims relating to federal law were dismissed by the U.S. Court of Appeals for the Fifth Circuit. State law claims were dismissed following the enactment of legislation in Texas that gives charities retroactive immunity against charges that they violated Texas law in issuing annuities and acting as trustee of charitable trusts.

Organization

As a charitable, nonprofit corporation with 501(c)(3) status under the Internal Revenue Code, the ACGA is governed and managed by a self-perpetuating board of directors with up to 25 members. The directors meet regularly to review such matters as annuity administration, rates, promotion, proposed state and federal legislation, and new state regulation, as well as to plan for the conferences.

Additional Information

Information about becoming a member, attending an ACGA conference, or obtaining ACGA publications is available on its website: https://www.acga-web.org

Chapter 2

DESCRIPTION & TAX ASPECTS

DESCRIPTION OF A GIFT ANNUITY

A gift annuity is a contract under which a charity, in return for a transfer of cash or other property, agrees to pay a fixed sum of money for a period measured by one or two lives. A person who receives payments is called an *annuitant* or *beneficiary*. The contributed property becomes part of the charity's assets, and the payments are a general obligation of the charity. The annuity is backed by the charity's entire assets, not just by the property contributed.

The charity may spend a portion of the contribution immediately, provided it retains sufficient reserves to satisfy the requirements of certain regulated states where it may be registered. Most charities, however, keep the entire contribution (increased by earnings and decreased by annuity payments and expenses) in reserve until the sole or surviving annuitant dies. The remaining portion of the contribution is called the *residuum*.

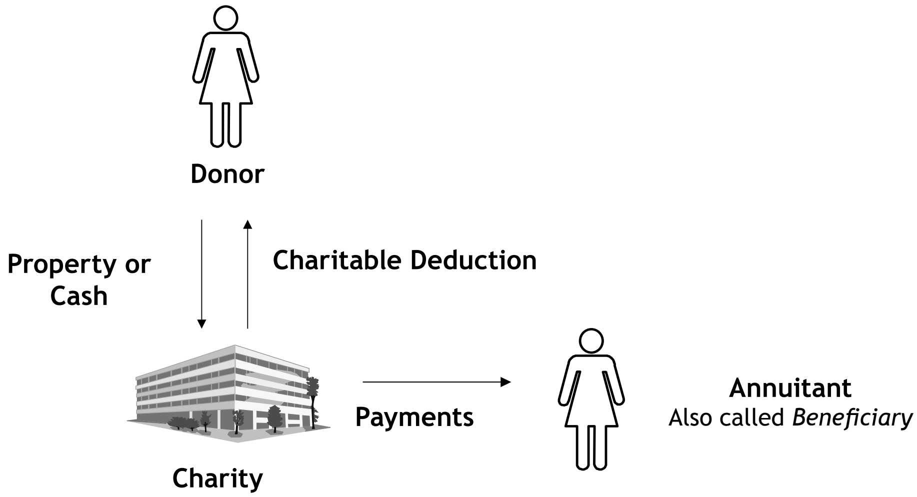
Immediate Gift Annuity

With an immediate gift annuity the annuitant(s) start(s) receiving payments at the end (or beginning) of the payment period in which the contribution is made. Payments can be made monthly, quarterly, semi-annually, or annually. The most common arrangement is quarterly payments at the end of the quarter. The first payment is customarily prorated from the date of the contribution to the end of the first period, and thus is smaller than subsequent payments, but it is possible to stipulate that the first payment be for the full amount. If the payments are at the beginning rather than the end of the period, the charitable deduction will be somewhat smaller.

The annual annuity is determined by multiplying the amount contributed by the annuity rate. For example, if a person, whose nearest age is 70, contributes $10,000 and the charity follows the American Council on Gift Annuities (ACGA) suggested rate of 6.3 percent for that person, the annual annuity would be $10,000 × 6.3 percent = $630. If quarterly payments have been selected, the annuitant would receive $157.50 for each full quarter.

Figure 2.1

Charitable Gift Annuity



- A contract between one or more persons and the charity, under which cash or other valuable property is contributed by the donor(s) in exchange for a specified amount paid at stated intervals (no less often than annually) for the life of one or two individuals.
- Charitable deduction allowed for difference between amount contributed and present value of annuity payments.
- *Immediate annuity*—payments begin immediately following contribution.
- *Deferred annuity*—payments begin at a designated time more than one year in the future.
- Annuity rates based on nearest age(s) of beneficiary(ies).

Deferred Gift Annuity

With a deferred gift annuity the annuitant(s) start(s) receiving payments at a future time. As with immediate gift annuities, payments can be made monthly, quarterly, semi-annually, or annually.

The method recommended by the ACGA for determining the annual annuity payable in the future is demonstrated in Figure 2.2.

The annuity starting date would be one month prior to the first payment, in the case of monthly payments; three months prior to the first payment, in the case of quarterly payments; six months prior to the first payment, in the case of semi-annual payments; and twelve months prior to the first payment, in the case of annual payments. This assumes, in every instance, that payments are at the end of the period.

To determine the deferred annuity rate, multiply the compound interest factor by the ACGA rate (or other rate used by the charity) for the annuitant's(s') nearest age(s) on the annuity starting date.

According to IRC Sec. 72(u), an immediate annuity means an annuity "(A) which is purchased with a single premium or annuity consideration, (B) the annuity starting date (as defined in

Figure 2.2

Determining Future Payments from a Deferred Gift Annuity

On July 1, 2024, Jorge O contributes $10,000 for a deferred gift annuity, and will receive quarterly payments beginning on September 30, 2034. Jorge's date of birth is April 14, 1969.

The annuity starting date, for purposes of computing the amount of payments, is July 1, 2034, which is three months prior to the date of the first payment. Interest is credited for the total period from the date of the contribution to the annuity starting date, which is 10.0[(1)] years. Interest is compounded during this deferral period at the rate of 4.75%[(2)]. Thus, the compound interest factor is:

$$1.0475^{10} = 1.5905$$

The deferred gift annuity rate (rounded to the nearest tenth of a percent) is:

1.5905 x 5.7% (the ACGA rate for a person age 65, which is the annuitant's nearest age on the annuity starting date) = 9.1% (rounded to the nearest .1%).

The annual payment from the annuity will be 9.1% × $10,000 = $910.

(1) Some software programs may make the annuity starting date, in the case of quarterly payments, 91.25 days (rounded to the nearest whole day) prior to the first payment because that is the average number of days in a quarter.

Also, different software programs may use different methodologies for calculating the number of whole and fractional years, but in most cases the difference will be too slight to affect the size of the payment.

(2) Interest is compounded at a 4.75% rate, whatever the length of the deferral period.

subsection (c)(4)) of which commences no later than 1 year from the purchase of the annuity, and (C) which provides for a series of substantially equal periodic payments (to be made not less frequently than annually) during the annuity period." By this definition, a gift annuity is not a deferred gift annuity unless payments begin more than one year after the contribution date. Thus, an annuity with quarterly payments is not a deferred gift annuity if the contribution is on August 10, 2023 and the first payment is on March 31, 2024. However, there is no legal reason why the first quarterly payment could not be made six months or nine months after the date the annuity was established and funded. The annuity agreement should be clear as to what period is being covered by the first payment, which may necessitate modifying the standard language. For example, in the example given, the Payment of Annuity paragraph, as shown in the agreements found in Chapter 6, would be modified by removing "from the date of this agreement" and substituting "from January 1, 2023" so that the paragraph for a one- life immediate annuity would read as follows:

> *"In consideration of the property transferred by the Donor, Charity shall pay an annual annuity of $___________ from January 1, 2023 and shall pay such amount to the Donor so long as [he/she] is living."*

There is also no legal limit to the number of years that payments can be deferred. However, deferral for a period longer than the annuitant's life expectancy would not make sense.

Flexible Deferred Gift Annuity

With a flexible deferred gift annuity the annuitant does not have to choose the annuity starting date at the time of the contribution. Instead, the annuitant can make that choice later based on retirement plans and other circumstances. The older the annuitant when payments begin, the larger the payments will be. See Chapter 18 for a detailed discussion of flexible deferred annuities.

Tax Aspects of Gift Annuities

Allowance of Charitable Deduction

A gift annuity is a form of bargain sale, for the present value of the annuity is less than the value of the property transferred to the charity. The donor is entitled to an income tax, gift tax, and/or estate tax charitable deduction for the difference or "overpayment." See Reg. Secs. 1.170A-1(d)(1), 20.2055-2(f), and 25.2522(c)-3(d).

Determination of the Charitable Deduction for Immediate Annuities

The amount of the deduction or overpayment is determined as follows:

1. Multiply the applicable annuity rate by the amount transferred to the charity. This is the annual amount paid to the annuitant(s).
2. Multiply this result by the value of a $1 annual annuity based on the appropriate table (S for a single life, R(2) for two lives) for the nearest age(s) of the annuitant(s), and for the Charitable Midterm Federal Rate* (CMFR). These tables are found in IRS Publication 1457.

   **Some planned giving publications refer to this rate as the IRS discount rate, Applicable Federal Rate (AFR), or "Sec. 7520 rate," since it is described in that section of the Internal Revenue Code. In this manual, the term CMFR is used throughout.*

3. Multiply this result by the adjustment-for-payment-frequency factor, also found in Publication 1457. (Use the adjustment factor in Table K for payments made at the end of the period, Table J for payments made at the beginning of the period.)
4. The result, after completing steps 1-3, is the present value of the annuity. The amount of the charitable gift, or deduction, is determined by subtracting the present value of the annuity from the value of the property transferred.

Note: Internal Revenue Code Sec. 7520 requires the use of a set of actuarial tables, as well as an interest rate announced monthly, to calculate the charitable deduction for gift annuities and certain split-interest gifts. The actuarial table used to determine the charitable deduction for these gifts is prescribed by the Secretary of the Treasury. During the transition period beginning May 1, 2019 and ending June 1, 2023, the determination of the charitable deduction could be based on either the 2000CM mortality table or the new 2010CM mortality table. Beginning with gifts completed on June 2, 2023 and later, the 2010CM table, based on 2010 census data, must be used.

Because the 2000CM table generally predicted shorter life expectancies than the 2010CM table, the charitable deduction for gift annuities and certain split-interest gifts, such as charitable remainder trusts, were slightly larger when based on the 2000CM table in most cases. However, the tax-free portion of payments from a gift annuity will be a little larger in these cases when they are based on the 2010CM table. Contrary to the general pattern, the charitable deduction based on the 2010CM table can be slightly larger than the charitable deduction based on the 2000CM table for annuitant ages over 90.

See Chapter 4 for a detailed explanation of charitable deduction calculations.

The CMFR referred to above is 120 percent of the annually compounded AFR for federal mid-term obligations, rounded to the nearest .2 percent. The donor has the option of using the CMFR for the current month or either of the two preceding months. See IRC Sec. 7520(a). The higher the rate used, the larger the charitable deduction. On the other hand, a lower rate results in more of the annuity payment being a return of capital.

The PG Calc planned giving software for gift annuities and split-interest gifts defaults to the CMFR that would result in the largest charitable deduction. In the case of gift annuities, this is the highest CMFR for the month of the gift or for either of the two immediately preceding months. If the donor itemizes deductions, it would ordinarily be advantageous to maximize the amount of the deduction and the resultant up-front tax savings. However, with the increase of the standard deduction fewer people are itemizing deductions. Those who would derive no benefit from a larger deduction because they don't itemize should generally elect the lowest possible CMFR in order to increase the tax-free portion of their payments. Thus, a gift planner should determine whether a donor will be itemizing deductions and, if not, then in calculations presented to that donor override the default to the highest CMFR and select the lowest CMFR. The process for electing a CMFR for a month other than the month of the gift is shown in Appendix 3 of Chapter 9.

See Appendix 1 for charts showing the relationship between the CMFR and the charitable deduction.

The Regulations dealing with determination of the present value of the annuity are Reg. Secs. 1.101-2(e)(1)(iii)(b)(2), 1.170A-1(d)(2), 20.2031-7, and 25.2512-5.

Note: Reg. Sec. 1.101-2(e)(1)(iii)(b)(2), read in conjunction with Reg. Sec. 20.2031-7 and Reg. Sec. 20.7520-3(b)(3) and (4), as well as in conjunction with Reg. Sec. 1.7520-3(b)(3) and (4), requires that if an annuitant "is known to have an incurable illness or other deteriorating physical condition" and "if there is at least a 50 percent probability that the individual will die within 1 year," the present value of the annuity must be calculated using a "special factor." Such factors can be obtained from the IRS, per information found on page 7 of IRS Publication 561.

Determination of the Charitable Deduction for Deferred Annuities

For deferred gift annuities, as well as for immediate gift annuities, the charitable deduction is the amount by which the contribution exceeds the present value of the future payments. However, the method for determining that present value is more complicated for deferred annuities because both earnings during the deferral period and the probability of death occurring prior to the first payment must be taken into consideration. This entails the use of additional applicable tables from IRS Publication 1457, namely Table H for Dx factors and Table 2010CM for Lx factors. See Chapter 4 for an explanation of the calculations. Although payments from a deferred gift annuity are delayed, the donor receives a charitable deduction in the year the gift is made.

Gifts Resulting in a Reduced Deduction

If either ordinary income property or unrelated-use tangible personal property is contributed for a gift annuity, the income tax charitable deduction will be limited to the cost basis of the gift portion.

See IRC Sec. 170(e). For an example of a reduced deduction, see Figure 2.3.

As used here and throughout the rest of the manual, *ordinary income property* is property which, if sold, would not result in long-term capital gain. It includes:

- Short-term capital gain property (for example, securities owned one year or less),
- Inventory held for sale to customers in the ordinary course of business,
- Recaptured gain, which arises from the sale of certain types of property that has been depreciated, and
- Various other types of property (accounts receivable, certain intellectual property created by the owner, etc.)

In addition, if a donor contributes long-term capital gain property for a gift annuity, he or she can elect under IRC Sec. 170(b)(1)(c)(iii) to have the income tax charitable deduction be calculated with respect to the property's cost basis rather than with respect to its fair market value. Of course, this can have an impact on claiming deductions associated with other charitable gifts made by the donor. Nevertheless, as noted below in this chapter, it does not affect how annuity payments will be taxed.

Unrelated-use tangible personal property refers to property not related to the purpose that constitutes a charity's basis for exemption from income taxation. A gift of a painting to an art museum is for a related use because the museum's purpose is to display art. However, a gift of the painting to a food bank, which immediately sells it, would be unrelated to the charity's purpose.

Figure 2.3

Gift Resulting in a Reduced Deduction

Demetrius N contributes for a gift annuity technology stock which he purchased eight months ago for $20,000, and which is now valued at $100,000. If he had held the stock for more than one year, the charitable deduction, considering all relevant factors, would have been $40,000.

In this instance, however, his charitable deduction is only $8,000, which is the cost basis of the gift element:

($40,000 ÷ 100,000) × 20,000 = $8,000

Taxation of Annuity Payments

Contribution of Cash

When cash is contributed, the portion of the annuity payment that represents a return of the donor's investment in the contract (present value of the annuity) will be tax-free. That portion is determined as follows (see Figure 2.4).

1. Determine the *expected return* by multiplying the life expectancy(ies) of the annuitant(s) by the annual annuity. Use Table V of Reg. Sec. 1.72-9 for a single life, Table VI of Reg. Sec. 1.72-9 for two lives, and make adjustments if payments are made less frequently than monthly or if the first payment will cover a partial period, per Reg. Sec. 1.72-5(a)(2)(i).
2. Divide the present value of the annuity by this expected return. This yields the exclusion ratio.
3. Multiply the annual annuity by the exclusion ratio. The result is the tax-free portion of each payment. The balance is taxable as ordinary income.

The return multiple (life expectancy) is from Table V of Reg. Sec. 1-72-9. In the case of an immediate gift annuity, use the return multiple in effect at the time the annuity is funded to calculate the exclusion ratio (tax-free portion of each payment). In the case of a deferred gift annuity, the exclusion ratio will be based on the return multiple in effect at the time payments begin. This cannot be known in advance because

Figure 2.4

Contribution of Cash

On July 1, 2024 Jasmine S, whose date of birth is June 25, 1950, contributes $100,000 cash for a gift annuity. The charity to which she makes the gift uses the ACGA rate of 6.8%, and she elects the July 2024 CMFR, which is 5.4%. The annual payment is $6,800.

$100,000 Gift Annuity (Cash)

Present Value of Annuity (Investment in Contract) $58,229	**Gift Value (Charitable Deduction) $41,771**
This is the present value of the annuity based on the IRS mortality tables and discount rate. This is the capital that is returned tax free.	This is the amount by which the contribution ($100,000) exceeds the present value of the annuity. This “excess” is the charitable gift.

Jasmine’s life expectancy, per the IRS Expected Return Multiple Tables, is 13.1 years. Thus, total payments over her life expectancy would be $6,800 × 13.1 = $89,080, a number known as the “expected return.”

The present value of the annuity (also known as the “investment in the contract”) divided by the expected return ($58,229 ÷ 89,080 = .654) is the portion of each payment that is excluded from taxation during life expectancy because it is a return of capital. This decimal is known as the “exclusion ratio.” The exclusion ratio multiplied by the annual payment (.654 × $6,800 = $4,447.00) is the portion of each full-year’s payment that is tax-free.

Jasmine will be taxed on her Social Security payments if her income exceeds a certain threshold amount. Fortunately, the tax-free portion of each payment is not added to income. Thus, for some donors a gift annuity is a way to increase cash flow without increasing the portion of Social Security payments subject to taxation.

the return multiple tables may change between the time the annuity is funded and payments begin. A charity may wish to tell an annuitant how payments from a deferred gift annuity would be taxed under existing tables, but with the caveat that the taxation of payments will have to be recalculated if the tables change before payments begin and if the old return multiple tables are not grandfathered for existing deferred gift annuities.

Some gift planners believe that the return multiple tables in effect when the contribution for a deferred gift annuity was made should be used to calculate the exclusion ratio, even if those tables change before payments actually start. The authors of this manual disagree with their position for the following reasons: IRC Sec. 72(c)(4) says that for purposes of calculating the exclusion ratio, the annuity starting date is “the first day of the first period for which an amount is received as an annuity under the contract.” Thus, if the first payment were June 30, 2028, the annuity starting date (in the event payments are quarterly at the end of the period) would be April 1, 2028. Private Letter Ruling 7401290510A, a clarification of Private Letter Ruling 7309280510A, supports this analysis. It states, “The exclusion ratio for a donor who enters into a deferred payment gift annuity contract shall be computed at the time the payments start based on the life expectancy at the time payments are to commence.”

If new return multiple tables are issued and the old tables are not grandfathered for existing deferred gift annuities, the return of capital (whether on a tax-free basis or as capital gain) will be the amount originally calculated. It will simply be returned over a different period of time. For example, if the return multiple had been 15.0 and changed to 16.5, the return of capital would be reported ratably over 16.5 years.

In the case of a joint-and-survivor deferred gift annuity where the annuitants are husband and wife, who funded the annuity with jointly-owned or community property, the taxation of payments would definitely have to be recalculated in the event that (1) one of the spouses dies before the annuity starting date or (2) pursuant to a divorce decree, the annuity is divided into two one-life annuities or one spouse is awarded the entire annuity payment. The recalculation would be based on the return multiple for one life in effect on the annuity starting date (or on the one-life table in effect when the annuity was funded, in the event that the tables have changed in the meantime and the old tables were grandfathered for existing deferred gift annuities.)

Of course, if by the time a divorce occurs the deferral period has ended, the return of capital would be determined the same way as it would be if the couple were receiving payments from an immediate-payment gift annuity at the time of the divorce. For a detailed explanation of how the authors believe that would be determined, see Chapter 20.

If the sole annuitant of a one-life annuity or the survivor annuitant of a two-life annuity dies before the end of his/her life expectancy, he/she gets a posthumous income tax deduction for the amount of capital not returned (i.e., for the total unpaid tax-free amounts). See IRC Sec. 72(b)(3)(A). The annuitant is entitled to this deduction for use on the final income tax return regardless of whether the annuitant or another person funded the annuity. See IRC Sec. 72(b)(3)(B).

For the 2024 Form 1040, the deduction was reported on Line 16 of Schedule A. It may or may not be on the same line on the 2025 form. See Chapter 20 for a more detailed explanation.

Note: The immediately-preceding paragraphs apply to a gift annuity, the annuity starting date of which occurs after 1986 – even if the contribution was made in 1986 or earlier. If an annuitant began receiving payments before 1987, the tax-free portion of the annual payments will continue to be tax-free no matter how long the annuitant lives. However, if the annuitant dies before the end of life expectancy, no income tax deduction will be allowed on his or her final income tax return. This change was brought about by the Tax Reform Act of 1986. Nearly all annuities now in existence started making payments after 1986.

Contribution of Long-term Capital Gain Property

The contribution of any property for a charitable gift annuity is deemed to be a bargain sale of that property. See Reg. Secs. 1.170A-1(d)(3) and 1.1011-2(a)(4)(i). The donor is subject to tax on the gain attributable to the present value of the annuity. The taxable gain is determined by subtracting the basis allocated to the present value of the annuity from the present value.

If the following conditions are met, that gain need not be recognized in the year of the gift but can be reported ratably over the life expectancy(ies) of the annuitant(s). See Reg. Sec. 1.1011-2(a)(4)(ii).

1. The annuity is non-assignable except to the charity.
2. The donor is the sole annuitant or is the initial annuitant in a two-life annuity.

If the annuity payments are made to someone other than the donor initially, then the taxable gain (computed under the bargain sale rules) is all reportable in the year property is transferred for the annuity. To the extent the annuity was funded with property held one year or less, or with other ordinary income property, the gain reported in the year of transfer will be taxed as ordinary income. (See Chapter 5 for comments on how to report gain when the annuitant is someone other than the donor.)

If the annuity is funded with the donor's separate property, but is payable to the donor and then to another, the gain is reported over the donor's life expectancy only. However, any gain not reported by the time the donor dies must be reported by the surviving annuitant. The amount reported each year by the surviving annuitant will be the same as the donor was reporting, and it will continue to be reported for the duration of the donor's life expectancy, determined at the time payments began. Sometimes it will be impossible to report all of the gain over the donor's life expectancy. When that is the case, planned giving software programs show the remaining gain continuing to be reported ratably by the successor annuitant for however many years it takes to report it completely.

See Appendix 2 for an explanation of how capital gain is reported for different donor-annuitant combinations.

If the annuity is funded with jointly-owned or community property, and payments are payable to both owners and then to the survivor, the gain can be reported ratably over their joint life expectancy.

Any gain unreported at the death of the sole or surviving annuitant is not taxed because it is part of the residuum that belongs to the charity. See Figure 2.5.

When gain is reported ratably, annuity payments usually consist of three elements: ordinary income, capital gain, and tax-free return of capital. The amount of ordinary income will be the same as it would have been had an equivalent amount of cash been contributed. The tax-free portion of the payments will be reduced by the amount of gain reportable. When property with a very low basis is contributed, there may be no tax-free portion.

Finally, if a donor contributes long-term capital gain property but elects under IRC Sec. 170(b)(1)(c)(iii) to have the income tax charitable deduction be calculated with respect to the property's cost basis rather than with respect to its fair market value, the gain will still be reported as long-term capital gain.

The foregoing specifically applies to an immediate gift annuity, but the same method of reporting gain apparently also applies to deferred gift annuities. The capital gain would not be reported until the payments begin, and then it would be reported ratably over the donor's remaining life expectancy.

See Appendix 3 for additional examples showing how gift annuity payments would be taxed in different situations.

See Chapter 5 for a discussion of the different tax rates that apply to capital gain.

In the event the gift annuity is funded with stock acquired through the exercise of incentive stock options, the donor should consult his or her tax advisor regarding alternative minimum tax implications.

Choosing to Report Taxable Gain Immediately Rather than Ratably

There could be instances, such as one illustrated in Figure 17.2, where the donor would choose to report taxable gain in a lump-sum in the year of the gift rather than ratably over life expectancy. It may be possible to do this by notifying the charity of one's intention and then reporting all of the gain on IRS Form 8949 of the tax return for the year of the gift. Another way to cause all taxable gain to be reported up-front is to draft the gift annuity agreement so that one of the requirements of Reg. Sec. 1.1011-2(a)(4)(ii) is not met. A simple way to do this is to state that the annuity is assignable.

Text continues on page 11.

Figure 2.5

Contribution of Capital Gain Property

Instead of contributing $100,000 cash for the gift annuity, Jasmine S contributes stock with a fair market value of $100,000 and a cost basis of $40,000. Jasmine has held the stock for more than one year, so her capital gain in the stock is long term.

Present Value of Annuity = $58,229		Gift Value = $41,771 *	
$23,291 This is the cost basis of the present value of the annuity. It is the capital that is returned tax free.	**$34,937** This is the capital gain allocated to the present value of the annuity. Since Jasmine is the annuitant, it is reported ratably over her life expectancy.	**$17,709** This is the cost basis allocated to the charitable gift (the deductible portion of the contribution).	**$25,063** This is the capital gain allocated to the charitable gift, and it is not taxed.

* This is the amount by which the contribution ($100,000) exceeds the value of the annuity. This "excess" is the charitable deduction.

For the duration of her life expectancy, Jasmine's payments will be taxed as follows:

Tax-free return of capital	$23,291 ÷ 13.1**	=	$1,778
Capital gain	$34,937 ÷ 13.1**	=	$2,669
Ordinary income (the balance of the payment)			$2,353
			$6,800

The numbers generated by a computer program may vary from these numbers by a few cents because of rounding. The portion of the payments taxed as ordinary income is the same whether $100,000 of cash or $100,000 of long-term appreciated stock is contributed.

At the end of her life expectancy the entire capital will have been returned, and the entire taxable gain will have been reported. Thereafter, the annuity payments are fully taxable as ordinary income.

If Jasmine dies prior to the end of her actuarial life expectancy—i.e., before 13.1 years—the unreturned tax-free portion of the capital can be taken as an income tax deduction on her final income tax return. (Again, this applies to a gift annuity, the annuity starting date of which occurs after 1986 – even if the contribution was made in 1986 or earlier.) As indicated, any unreported capital gain will not be taxed.

Continued on next page...

Figure 2.5 Continued

Contribution of Capital Gain Property

If she were the donor and another person—her brother, for example—were the successor annuitant, the capital gain would be reported ratably over her life only. However, if she were to die before the end of her actuarial life expectancy, her brother would continue the ratable reporting of gain until it has all been reported.

If Jasmine were the donor and her twin sister, for example — were the only annuitant, Jasmine would be taxed on the $34,937 of gain in the year of the gift. Since that gain would have been taxed, a larger portion of her sister's payments would be tax-free.

** *As noted earlier, this is the expected return multiple (life expectancy) in effect now, and it should be used for an immediate gift annuity. However, in the case of a deferred gift annuity, both the tax-free portion of payments and the amount of payments taxable as capital gain will have to be recalculated if the return multiple tables change prior to the starting date of the annuity, and the old return multiple tables are not grandfathered for existing deferred gift annuities.*

Applicable Tax Rates

The ordinary income and capital gain portion of gift annuity payments will be taxed at rates applicable when the payments are received, not when the annuity was established. For example, if an annuitant is subject to the maximum standard capital gain rate of 20 percent in 2024, but was subject to the maximum standard capital gain rate of 15 percent in 2015 when the annuity was funded, the portion of capital gain reportable in 2024 will be taxed at the 20 percent rate. Of course, it works the same way with the sale of securities. The gain is taxed at the rate in effect when the securities are sold, not at the rate in effect when they were purchased.

Beginning in 2013, the Health Care and Education Reconciliation Act of 2010 imposed a 3.8 percent surtax on the net investment income of those whose adjusted gross income (AGI) exceeds certain thresholds ($250,000 for married individuals filing jointly, $200,000 for single taxpayers, and $125,000 for married individuals filing separately). The taxable gain incurred from a pre-2013 annuity and ratably reported in subsequent years will not be subject to the surtax. However, the surtax will apply to gain reported from annuities completed in 2013 or later.

Here are the capital gain tax rates that could apply to the reportable gain from a gift annuity in 2024:

Single Taxpayer

Taxable Income	Tax Rate on Long-Term Capital Gain
Not more than $47,025	0%
$47,025 - $518,899	15%
Over $518,900	20%

Married, Filing Jointly

Taxable Income	Tax Rate on Long-Term Capital Gain
Not more than $94,050	0%
$94,050 - $583,749	15%
Over $583,750	20%

Head of Household

Taxable Income	Tax Rate on Long-Term Capital Gain
Not more than $63,000	0%
$63,000 - $551,349	15%
Over $552,350	20%

* If the 3.8 percent Affordable Health Care surtax applies, the portion of the annuity payments that is long-term capital gain might be taxed at a federal tax as high as 18.8 percent or 23.8 percent if the annuity was funded with long-term appreciated securities or real estate, or even higher if depreciated real estate or collectibles was contributed for the gift annuity. In certain states, capital gain may also be taxed on the state return.

Contribution of Ordinary Income Property

Reg. Sec. 1.1011-2(a)(4)(ii) provides for ratable reporting of gain, and it makes no distinction between long-term capital gain and gain arising from the sale of ordinary income property. The example later cited in Reg. Sec.1.1011-2(c)(8) concerns a gift of long-term capital gain property, but it does not follow that ratable reporting is intended to be limited to long-term capital gain. This particular example may have been selected because long-term capital gain property is the most commonly contributed non-cash asset.

Thus, the authors of this manual conclude that ratable reporting of gain in ordinary income property, as well as in long-term capital gain property, is permissible.

Contribution of Mortgaged Property

If property subject to a mortgage is contributed, the amount of the mortgage will be treated as an amount realized for purposes of calculating the donor's capital gain. See Reg. Sec. 1.1011-2(a)(3). The gain attributable to the mortgage, unlike other gain in the property, cannot be reported ratably over the life expectancy of the donor. Rather, it must all be recognized in the year of the gift. See Figure 2.6.

See Chapter 16 for a more detailed analysis of all of the considerations for the donor and the charity when mortgaged property is contributed for a charitable gift annuity.

Contribution of Depreciated Property

Rather than contributing property that has decreased in value, a donor should sell the property and contribute the proceeds. Thereby, the loss can be claimed on the income tax return to offset capital gain. If depreciated property is donated, the charitable deduction will be based on market value, and no deduction will be allowed for the loss.

It should be noted that when appreciated property is given, the cost basis of the property transfers with the property. However, when depreciated property is given, the cost basis of the recipient will be the fair market value, not the donor's original cost basis. Thus, no loss can be claimed by a recipient who then sells the property for that fair market value.

A charity generally does not pay tax on capital gain because it is tax-exempt. However, as explained in the preceding pages, when a person transfers appreciated property for a gift annuity, the transaction is treated as a part sale and part gift, and the capital gain allocated to the sale amount (the value of the annuity) is taxed to the donor, either over life expectancy or up front, depending on who is named as the annuitant(s). The gain allocated to the gift amount (the deductible portion) is not taxed. If depreciated property is transferred, none of the loss is allocated to the donor. That is why it is better first to sell the property, claim the loss of the tax return, and give the proceeds.

Requirements to Qualify for Tax Exemption

According to IRC Sec. 501(m), a Sec. 501(c)(3) organization is exempt from taxation only if "no substantial part of its activities consists in providing commercial-type insurance." In general, the issuance of annuity contracts is treated as providing insurance. However, a charitable gift annuity will not be considered

Text continues on page 14.

Figure 2.6

Contribution of Mortgaged Property

Suppose, for example, that a donor contributes real property, which has a fair market value of $100,000, an adjusted cost basis of $40,000, and a mortgage of $30,000. Suppose, further, that the charitable gift value, based upon the age(s) of the annuitant(s) and CMFR, works out to 35% of the equity.

Capital gain recognized in the year of the gift

Amount of mortgage	$30,000
Cost basis allocated to mortgage	$12,000
$\frac{\$30,000}{\$100,000} \times \$40,000$	
Capital gain allocated to mortgage (recognized in the year of the gift)	$18,000

Capital gain reported ratably over donor's life expectancy

Equity in property ($100,000 - 30,000)	$70,000
Gift value (35% × $70,000)	$24,500
Present value of annuity ($70,000 - 24,500)	$45,500
Cost basis allocated to present value of annuity	$18,200
$\frac{\$45,500}{\$100,000} \times \$40,000$	
Gain allocated to present value ($45,500 - $18,200) This can be reported ratably over the donor's life expectancy.	$27,300

Note: The portion of the gain allocated to the charitable deduction is not taxed.

commercial insurance if a charitable deduction is allowable and if the annuity is described in Sec. 514(c)(5). See Sec. 501(m)(3)(E) and 501(m)(5)(A) and (B).

Sec. 514(c)(5) sets forth these conditions:

1. The obligation to pay the annuity is the sole consideration (disregarding mortgages) for the property transferred.
2. The present value of the annuity is less than 90 percent of the value of the property transferred.
3. The annuity is payable over the life of one individual, or the lives of two individuals, living when the annuity is issued.
4. The annuity contract does not guarantee a minimum amount of payments or specify a maximum amount of payments, and does not provide for any adjustment in the amount of payments based on income received from the property.

If a charity issues gift annuities that fail to meet these conditions, the obligation to make annuity payments will be treated as acquisition indebtedness and will give rise to debt financed income, which would be taxable to the charity.

A charity should not accept property in exchange for a lump sum payment plus an annuity. IRC Section 514(c)(5)(A) states that acquisition indebtedness does not include an obligation to pay an annuity which is the sole consideration (other than a mortgage to which paragraph 2(B) applies) in exchange for the annuity. For example, a charity should not accept real estate in exchange for a lump sum payment of $200,000 plus an annuity of $18,000 per year. Otherwise, the charity will have acquisition indebtedness and be subject to tax. Nevertheless, see Chapter 16 under the heading "Other Payments for Property" for discussion of another way to reach the desired result.

When a charity follows the rates recommended by the ACGA, the present value of the annuity will be less than 90 percent of the value of the property transferred (condition 2 above) unless the CMFR is below the CMFR assumed by the ACGA when determining its suggested rates (the ACGA assumed a CMFR of 3.2 percent for the rates effective 1/1/2024). Should the CMFR fall below that level, it may be necessary, at some ages, to offer a rate lower than the ACGA rate. If charities pay rates that result in the present value meeting the above requirement and if they pay annuities only over the lives of one or two individuals, and make no other payments to annuitants, they almost always meet all of the requirements of Sec. 514(c)(5) and, thus, need not be concerned about unrelated business taxable income.

Assignment of Annuity Interest

Gift annuity agreements typically include language such as the following: "This annuity is irrevocable and non-assignable, except that it may be assigned to the charity." The reason for including such language is so that capital gain (in the event appreciated property is contributed and the donor is an initial annuitant) can be reported ratably over the donor's life expectancy. See Reg. Sec. 1.1011-2(a)(4)(ii).

If the donor contributes cash, or contributes appreciated property and is willing to forego ratable reporting of gain, language permitting the assignment of the annuity to another individual should be permissible (assuming it is allowed under state law). IRC Sec. 514(c)(5)(B) requires that the annuity "is payable over the life of one individual in being at the time the annuity is issued, or over the lives of two individuals in being at such time." This language does not permit any change in the measuring life or lives, but it does not appear to preclude assigning the payments to someone else. For example, a donor might establish a gift annuity for A, reserving in the agreement the right to revoke A's payments and assign them to B. The payments would be made to B for the duration of A's life. If A died after two years, payments to B would cease. It is not possible to assign the payments to B and have them continue for the duration of B's life. The measuring life is stated in the agreement and cannot be changed. In the event that B predeceased A, the payments could revert to A if so stipulated in the assignment document.

Note: If A had a right to the annuity payments and the power to assign them, and then assigned them to B, A would probably be taxed on the payments made to B under the assignment of income doctrine.

Gift and Estate Tax Implications

A donor who funds a gift annuity and names an annuitant in addition to, or instead of, himself or herself makes two gifts: one to the charity and one to the annuitant. The gifts may or may not be reportable and taxable depending on the circumstances. Gift and estate tax implications for various situations are described below. An explanation of how revocation language in the gift annuity agreement may eliminate or postpone a taxable gift appears later in this chapter.

The following scenarios presuppose that the language in the gift annuity agreement empowers the donor to revoke an annuitant's payments either during life, or at death by will or trust instrument. However, some authorities recommend that the power of revocation not be exercisable during life. See below the section titled "[When the Power of Revocation Should Be Exercisable]" for a fuller discussion of this issue.

Single-life Annuity; Donor Is the Annuitant

The donor makes a present interest gift to the charity equal to the amount contributed less the present value of the annuity (gift value). Although this gift is fully deductible, it should be reported on Form 709 unless the gift value is equal to or less than the gift tax annual exclusion ($19,000 in 2025). See IRC Sec. 6019(3).

When the donor dies, nothing is included in his or her estate because the right to payments terminates at that time and nothing is transferred to any other party. See IRC Sec. 2039(a).

Single-life Annuity; Donor Is Not the Annuitant

The donor makes a present interest gift to the charity of the gift value and a present interest gift to the annuitant of the present value of the annuity. Each of these gifts should be reported on Form 709 if it exceeds the gift tax annual exclusion. The former is fully deductible, but the latter is a taxable gift to the extent it exceeds the annual exclusion.

The annuitant in this instance is assumed to be someone other than the donor's spouse. If the annuitant of an immediate gift annuity is the donor's spouse, the gift automatically qualifies for the gift tax marital deduction, so long as the spouse is a U.S. citizen.

In the case of a deferred gift annuity, the present value of the annuity is a taxable gift whatever its size because the gift tax annual exclusion is not allowed for a gift of a future interest.

In the case of either an immediate annuity or a deferred annuity, a taxable gift can be avoided at the time the gift annuity is established if the annuity agreement contains language empowering the donor during life, or at death, to revoke the annuitant's payments. See Reg. Sec. 25.2511-2(c).

If the donor does not retain the power to revoke the annuitant's payments and either predeceases or survives the annuitant, the taxable gift (if any) reported at the time the annuity was established, like all other taxable gifts, will be added to the donor's taxable estate.

If the donor retains, but does not exercise, the power to revoke the annuitant's payments and predeceases the annuitant, the present value of the annuitant's future payments, computed as of the date of the donor's death (or alternative valuation date), will be included in the donor's estate.

If the donor retains and does exercise the power to revoke the annuitant's payments, either during life or at death, and predeceases the annuitant, nothing will be included in the donor's estate, for the right to payments will have terminated at the donor's death or earlier. Nevertheless, for each year in which payments made to the annuitant exceed the gift tax annual exclusion, the donor will need to file Form 709.

If the donor retains the power to revoke the annuitant's payments, either does or does not exercise that power during life, and is predeceased by the annuitant, nothing is included in the annuitant's estate, because the annuitant was not a contributor. Similarly, nothing is included in the donor's estate because the right to payments terminates prior to the donor's death.

If a single-life annuity is funded by a husband and wife with jointly-owned or community property, and neither is the annuitant, each will be treated as contributing one-half of the value of the property.

Two-life Annuity; Donor Is the First Annuitant, Non-spouse Is the Successor Annuitant

The donor makes a present interest gift to the charity of the gift value, and a future interest gift to the successor annuitant of the present value of an annuity for their two lives less the present value of an annuity for the donor's life alone. The gift to the charity should be reported on Form 709, if it exceeds the gift tax annual exclusion, but it is fully deductible. The gift to the successor annuitant is a taxable gift because a gift of a future interest does not qualify for the gift tax annual exclusion. If the power to revoke is not retained, this gift must be reported on Form 709, whatever its size. If the donor retains the power to revoke the successor annuitant's payments, Form 709 need not be filed when the annuity is established unless the value of the charity's interest exceeds the gift tax annual exclusion.

If the donor does not retain the power to revoke the successor annuitant's payments, and either predeceases or survives that person, the taxable gift reported at the time the annuity was established, like all other taxable gifts, will be added to the donor's taxable estate.

If the donor retains the power to revoke the successor annuitant's payments, does not exercise the power, and predeceases the successor annuitant, the present value of the successor annuitant's payments, computed as of the date of the donor's death (or alternate valuation date) will be included in the donor's estate.

If the donor retains and does exercise the power to revoke the successor annuitant's payments, either during life or at death, and predeceases the successor annuitant, nothing will be included in the donor's estate, for the right to payments will have terminated at the donor's death or earlier.

If the donor retains the power to revoke the successor annuitant's payments, either does or does not exercise that power during life, and is predeceased by the successor annuitant, nothing is included in the successor annuitant's estate, or subsequently in the donor's estate, because the successor annuitant was not a contributor, and the right to payments terminates at the donor's death.

Two-life Annuity; Non-spouse Is the First Annuitant, Donor Is the Successor Annuitant

This arrangement is uncommon, but sometimes a donor may inquire about it. For that reason, the gift and estate tax implications are discussed here.

The donor makes a present interest gift to the charity of the gift value, and a present interest gift to the first annuitant, which is the present value of an annuity paying the stipulated amount and measured by the first annuitant's life. The gift to the charity should be reported on Form 709 if it exceeds the gift tax annual exclusion, but it is fully deductible. The gift to the first annuitant is taxable to the extent it, plus other gifts to that person, exceeds the annual exclusion. If it exceeds that amount, the gift must be reported on Form 709. If the donor retains the power to revoke the first annuitant's payments, no current taxable gift need be reported on Form 709, though the Form still must be filed if the gift value exceeds the annual exclusion.

If the donor does not retain the power to revoke the first annuitant's payments, and either predeceases or survives that person, the taxable gift reported at the time the annuity was established, like all other taxable gifts, will be added to the donor's taxable estate.

If the donor retains the power to revoke the first annuitant's payments, does not exercise that power, and predeceases the first annuitant, the present value of the first annuitant's payments, computed as of the date of the donor's death (or alternate valuation date) will be included in the donor's estate. Each year while both the first annuitant and the donor are living, the donor will make a gift to the first annuitant equal to the annuity payment, and if it exceeds the annual exclusion, the donor must report it on Form 709.

If the donor retains the power to revoke the first annuitant's payments, and exercises that power while living, nothing will be included in the first annuitant's estate at the time of revocation or in the donor's estate when the donor dies. In the case where the donor revokes the first annuitant's payments while the donor is living, no payments would be made to the donor until the death of the first annuitant unless the agreement provided otherwise. If the agreement did provide that payments would be made to the donor immediately upon revocation of the first annuitant's payments, then the taxable portion of all annuity payments from the outset may be taxable income to the donor, for the donor would be able to control the timing of income to himself or herself. (See the discussion under "When the Power of Revocation Should Be Exercisable" later in this chapter.)

If the donor retains the power to revoke the first annuitant's payments, and exercises that power at death, payments to the first annuitant will cease at that point, and nothing will be included in either the first annuitant's or the donor's estate.

Two-life Annuity; Donor Contributes His/Her Separate Property, Donor and Spouse Are Consecutive Annuitants

The donor makes a present interest gift to the charity of the gift value and a future interest gift to the spouse of the present value of an annuity for their two lives less the present value of an annuity for the donor's life alone. The gift to the charity should be reported on Form 709, if it exceeds the gift tax annual exclusion, but it is fully deductible. The gift to the spouse is not eligible for the gift tax annual exclusion because it is a future interest, and it does not qualify for the marital deduction because it is a terminable interest. See Reg. Sec. 25.2523(b)-1(c).

Therefore, to avoid making a taxable gift to the spouse, the donor-spouse should reserve the right, during life or at death, to revoke the spouse's annuity interest.

If the donor-spouse does not retain the power to revoke the other spouse's payments, and either predeceases or survives that spouse, the taxable gift reported at the time the annuity was established, like all other taxable gifts, will be added to the donor's taxable estate.

If the donor-spouse retains the power to revoke the other spouse's payments, does not exercise the power, and predeceases the other spouse, the present value of the other spouse's annuity, computed as of the date of the donor's death (or alternate valuation date) will be included in the donor's estate, but the value of the annuity will qualify for the estate tax marital deduction, so long as the surviving spouse is a U.S. citizen.

If the donor-spouse retains and does exercise, either during life or at death, the power to revoke the other spouse's payments, and predeceases the other spouse, nothing will be included in the donor's estate, for the right to payments will terminate at the donor's death or earlier.

If the donor-spouse retains the power to revoke the other spouse's payments, either does or does not exercise that power during life, and is predeceased by the other spouse, nothing is included in the other spouse's estate, or subsequently in the donor's estate, because the other spouse was not a contributor, and the right to payments terminates at the donor's death.

Joint and Survivor Annuity; Husband and Wife Contribute Jointly-owned or Community Property

Each spouse makes a present-interest gift to the charity of one-half of the gift value. Neither makes a taxable gift to the other (unless the annuity is deferred) because the present value of the annuity automatically qualifies for the QTIP gift tax marital deduction. See IRC Sec. 2523(f)(6). Each spouse's gift to the charity should be reported on Form 709, if it exceeds the gift tax annual exclusion, but it is fully deductible.

It is unnecessary to include revocation language to avoid making a taxable gift unless the annuity is deferred. The marital deduction is not allowed for a deferred gift annuity because a deferred annuity is a gift of a future interest.

When the first spouse dies, one-half of the present value of the other spouse's annuity, computed as of the date of the first spouse's death (or alternate valuation date) will be included in the first spouse's estate, but the value of the annuity will qualify for the estate tax marital deduction, so long as the surviving spouse is a U.S. citizen. When the second spouse dies, nothing will be included in his or her estate because the right to payments terminates at that time.

Husband and Wife Contribute Jointly-owned or Community Property, But Only One Spouse Is the Annuitant

The spouse who is not the annuitant makes a present-interest gift to the other spouse of one-half of the present value of the annuity. This gift is not taxable because it automatically qualifies for the QTIP gift tax marital deduction (IRC Sec. 2523(f)(6)). However, the gift tax marital deduction is limited if the annuitant-spouse is not a U.S. citizen.

It is unnecessary to include revocation language to avoid making a taxable gift unless the annuity is deferred. Again, the marital deduction is not allowed for a deferred annuity because it is a gift of a future interest.

Each spouse makes a present-interest gift to the charity of one-half of the gift value. Each spouse's gift should be reported on Form 709 if it exceeds the gift tax annual exclusion, but it is fully deductible.

Joint and Survivor Annuity; Non-spouse Annuitants Contribute Jointly-owned Property

Millions of unmarried couples are living together in the United States. In some cases these couples own property in joint tenancy. Whereas married couples are deemed to be equal owners of joint tenancy property acquired during the marriage, unmarried joint tenants are deemed owners of only that portion of the property acquired for "full and adequate consideration." See IRC Sec. 2040. For example, if tenant A paid 30 percent of the purchase price, he or she would be considered owner of a 30 percent interest in the property.

If the agreement is drafted such that each tenant receives the same percentage of the total annuity payment as his or her percentage of ownership, then from a tax standpoint it is as if each tenant contributed his or her proportionate share of the property for a two-life annuity, where that tenant is the first annuitant, and the other tenant is the successor annuitant. (See above the section with the heading "Two-life Annuity, Donor Is the First Annuitant, Non-spouse Is the Successor Annuitant.")

If the agreement were drafted such that each tenant receives one-half of the annuity payment, regardless of the percentage of the purchase price he or she paid, then the tax calculations are more complex because there are gifts of present interests as well as gifts of successor, or future, interests.

Example 1

A and B each contribute $50,000 for a joint-and-survivor annuity where each receives 50 percent of the payments, and the survivor receives all of the payments. A makes a future-interest gift to B equal to the difference between the present value of a joint annuity funded with the $50,000 he contributes and the present value of an annuity for A's life funded with his contribution of $50,000. B makes a future-interest gift to A equal to the difference between the present value of a joint annuity funded with the $50,000 he contributes and the present value of an annuity for B's life funded with his contribution of $50,000.

Example 2

A contributes $70,000 and B $30,000 for a joint-and-survivor annuity where each receives 50 percent of the payments, and the survivor receives all of the payments. A makes a present-interest gift to B equal to the present value of an annuity funded with $20,000 for B's life, and A also makes a future-interest gift to B equal to the difference between the present value of a joint annuity funded with $70,000 and the present value of an annuity for A's life funded with $70,000. B makes a gift to A equal to the difference between the present value of a joint annuity funded with the $30,000 he contributes and the present value of an annuity for B's life funded with his contribution of $30,000.

In both of these examples, A and/or B might have retained the right to revoke the payments to the other annuitant that derive from his contribution. The consequences would have been comparable to those described in the preceding scenarios.

Joint and Survivor Annuity; One Spouse Is the Donor

The donor-spouse makes a present-interest gift to the charity of the gift value and should report it on Form 709 if the gift value exceeds the gift tax annual exclusion. However, the gift to the charity is fully deductible. The donor-spouse does not make a taxable gift to the other spouse (unless the annuity is deferred) because the annuity automatically qualifies for the QTIP gift tax marital deduction. See IRC Sec. 2523(f)(6).

It is unnecessary to include revocation language to avoid making a taxable gift unless the annuity is deferred.

If the donor-spouse predeceases the other spouse, the present value of the surviving spouse's annuity, computed as of the date of the donor's death (or alternate valuation date) will be included in the donor's estate, but the value of the annuity will qualify for the estate tax marital deduction, so long as the surviving spouse is a U.S. citizen. When the other spouse dies, nothing will be included in his or her estate.

If the other spouse predeceases the donor spouse, nothing is included in his or her estate because he or she was not a contributor. When the donor subsequently dies, nothing is included in his or her estate because the right to payments terminates at that time.

Two-life Annuity with Successive Annuitants; Donor Is Not One of the Annuitants

The donor makes a present interest gift to the charity of the gift value and should report it on Form 709 if it exceeds the gift tax annual exclusion. However, the gift to the charity is fully deductible. The donor also makes a present interest gift to the first annuitant of the present value of the annuity based on that person's life expectancy. Finally, the donor makes a future interest gift to the successor annuitant of the present value of an annuity for both annuitants' lives less the present value of an annuity for the first annuitant's life alone.

There will be a taxable gift to the first annuitant if the present value of that person's life annuity exceeds the gift tax annual exclusion. There will be a taxable gift to the successor annuitant, whatever the size of the annuity, because a future interest does not qualify for the annual exclusion. The donor could avoid a taxable gift by retaining the power during life or at death to revoke payments to both annuitants. (Retaining the power to revoke the payments to either annuitant, or to just the first annuitant, creates complications. Suppose, for example, that the donor revokes the payments of the first annuitant but not the second? Do the second annuitant's payments begin immediately upon the revocation? Or do they not begin until the death of the first annuitant, in which case payments may start, then cease for many years, and then resume?)

If the donor does not retain the power to revoke either annuitant's payments, and either predeceases or survives one or both, the taxable gift (if any) to the first annuitant and the taxable gift to the second annuitant reported at the time the annuity was established, like all other taxable gifts, will be added to the donor's taxable estate.

If the donor retains the power to revoke the payments of both annuitants, does not exercise that power, and predeceases one or both, the present value of the future payments to the annuitant(s), computed as of the date of the donor's death (or alternate valuation date), will be included in the donor's estate.

If the donor retains and does exercise, either during life or at death, the power to revoke both annuitants' payments, and predeceases one or both annuitants, nothing will be included in the donor's estate, for the right to payments will have terminated at the donor's death or earlier. Nevertheless, for each year in which payments made to the annuitant exceed the gift tax annual exclusion, the donor will need to file Form 709.

If the donor retains the power to revoke the payments of both annuitants, and either does or does not exercise that power, and survives both of them, nothing will be included in the donor's estate because the right to payments will have terminated prior to the donor's death.

If the donor retains the right to revoke the payments of the successor annuitant only, exercises that power, and predeceases the first annuitant, the present value of the first annuitant's future life payments, computed as of the date of the donor's death (or alternate valuation date) will be included in the donor's estate.

If this annuity is funded by a husband and wife with jointly-owned or community property, each will be treated as contributing one-half of the value of the property.

When the Power of Revocation Should Be Exercisable

There are two possible advantages of retaining an *inter vivos* as well as a testamentary power to revoke an annuitant's payments:

- The donor would have the flexibility to accelerate a benefit to the charity at any time.
- A completed gift may not be avoided if the power is testamentary only, for the donor might be considered to have made a completed gift equal to the present value

of the annuity payments measured by his or her life expectancy. (This is not an issue if the donor is the first annuitant and reserves the power to revoke a successor annuitant's payments.)

However, some legal advisors are concerned that if an individual sets up an income stream payable to a third person and retains control over that stream (e.g., is able to terminate it), the income will be taxable to the person who created it. They note that although the applicable statute (IRC Sec. 674) pertains to trusts, the principle might be broad enough to apply to gift annuities as well. Other authorities take the position that there is no basis for concluding that a statute applicable to a trust should also apply to a gift annuity, which is not a trust. They note as well that the payments would not be taxable under the assignment of income doctrine because assignment of income arises only when the right to receive income has matured in the hands of the assignor, which is not the case here because the donor never had a right to the income.

Considering the uncertainty and difference of opinion on this matter, a charity and a donor, pursuant to a consultation with their own separate legal counsel, should decide whether to include both *inter vivos* and testamentary powers of revocation or a testamentary power only. Because there is no statutory authority for concluding that payments would be taxable to the donor if there is an *inter vivos* power, and because there are advantages to retaining an *inter vivos* power, the gift annuity agreements and draft language in this manual include both an *inter vivos* and a testamentary power.

Testamentary Gift Annuity

If an individual provides in a will or trust for the establishment of a gift annuity to make payments for one or two survivors, the entire amount allocated for the annuity is included in the gross estate. Nevertheless, an estate tax charitable deduction is allowed for the value of the charitable gift and, if a surviving spouse is the sole annuitant, the present value of the annuity will qualify for the estate tax marital deduction.

If, however, the personal representative is instructed in the will to acquire a charitable gift annuity with payments to the decedent's spouse for the duration of his or her life, a marital deduction will not be allowed for the present value of the annuity. See IRC Sec. 2056(b)-1(f) and Reg. Sec. 20.2056(b)-1(g)(Ex. 7). The reason is that the annuity for the surviving spouse is a non-deductible terminable interest.

Some commentators have observed that the Regulation sections cited immediately above appear inconsistent with the QTIP provisions in general, and specifically with the language in IRC Sec. 2056(b)(7) and Reg. Sec. 20.2056(b)-7(d), which imply that a donor would get a marital deduction for the present value of the annuity because that interest is a QTIP interest. Nevertheless, Reg. Sec. 20.2056(b)-1(f) and Example 7 of Reg. Sec. 20.2056(b)-1(g) are quite explicit about disallowing a marital deduction when an annuity is acquired for a surviving spouse, so it seems reasonable to conclude that this is the position the IRS would take.

To have qualified the present value of the payments for the marital deduction, the decedent spouse could have created the annuity while still alive. Then it would have qualified for the gift tax marital deduction. See IRC Sec. 2523(f)(6). Nevertheless, if the donor during life established the annuity for a spouse and another person – a child, for instance – there would be no marital deduction for the value of the annuity.The decedent spouse could also have made an outright gift to the surviving spouse, who then could have used the money to establish a gift annuity. But if the personal representative, by direction in the will, establishes an annuity for the surviving spouse, the only estate tax deduction will be for the value of the charitable gift – the same as with a testamentary annuity for any annuitant. See

Chapter 20 for sample will language applicable under various scenarios.

Note Regarding Alien Spouses

If a U.S. citizen establishes a gift annuity with payments to a spouse who is an alien, an unlimited marital deduction is not allowed. The gift tax annual exclusion allowed for gifts to an alien spouse in 2023 is $175,000. This number is indexed for inflation and can be expected to rise each year in the future. When establishing an immediate annuity with a present value in excess of $175,000, it may be advisable to include the power of revocation to avoid a current taxable gift.

However, if a U.S. citizen establishes a joint and survivor annuity for himself or herself and an alien spouse, a power of revocation would be unnecessary to avoid a taxable gift. The reason is that IRC Sec. 2523(i) indicates that the unlimited marital deduction does apply to joint and survivor annuities described in IRC Sec. 2523(f)(6).

If a deferred annuity is established for either a citizen or alien spouse, there will always be a taxable gift unless the power of revocation is retained.

Revocation Language in Gift Annuity Agreements

Certain gift annuity agreements in this manual contain language empowering the donor to revoke the payments of an annuitant other than the donor. The right of revocation is exercisable by the donor either during life or at death by will or trust instrument. See Reg. Sec. 25.2511-2(c).

Including revocation language serves two purposes. First, it may enable the donor to avoid making a taxable gift to the annuitant. Second, it preserves flexibility in the event of a change in circumstances, such as the dissolution of a marriage.

It is recommended that the prototype agreements submitted to state authorities provide for both the inclusion and deletion of the revocation language. (New York allows for revocation only by will, requiring modification of the language as noted in Chapter 12.) Then the charity will have the freedom to include or delete it depending on the circumstances. Below are some notes to assist in determining whether to include it in a given situation. See Appendix 4 for sample revocation language.

One Life; Donor Is Not the Annuitant, Immediate and Deferred

If the annuitant is a citizen spouse and payments are immediate, the gift annuity qualifies for the gift tax marital deduction, so there is no need to include the revocation language to avoid a taxable gift. If the annuitant is an alien spouse, the revocation language should be included if the present value of the annuity exceeds $185,000 in 2024. It should also be included if payments will be deferred, regardless of whether the annuitant is the donor’s spouse.

If the annuitant is not a spouse and the present value exceeds the annual exclusion, the revocation language will need to be included to avoid a taxable gift. Assuming it is included and the donor does not revoke payments, each year’s payments will be a gift by the donor to the annuitant, but they will qualify for the annual exclusion. If the donor predeceases the annuitant without having revoked payments, the present value of the annuitant’s payments, determined as of the date of the donor’s death, will be included in the donor’s estate.

In some instances, it may be preferable to omit revocation language and report the taxable gift when the gift annuity is established. This is more likely to be the case when the annuity is deferred. Suppose, for example, that on July 1, 2020 a father had contributed $100,000 for a deferred gift annuity that would make payments to his daughter when she was age 65. The daughter was age 45 at the time the gift was made, and the ACGA rate at the time and an elected CMFR of 0.8 percent applied. If the father had not retained the right to revoke payments, he would have made a taxable gift of $86,287 when the annuity was established. If he did retain the right to revoke payments, did not exercise that right, and died when his daughter was 63, the taxable gift included in his estate would have been $112,127 (assuming a constant CMFR of 0.8 percent and no change in the mortality tables used to calculate the value of the annuity payments). If it is likely that the CMFR will be higher in the future, it would probably be better to retain the right to revoke payments, for a higher CMFR will reduce the amount of the taxable gift.

Below is sample language for a situation in which it makes sense to include a right to revoke payments.

Revocation Language

> ***Power to Revoke Payments***
>
> The Donor hereby reserves the power to revoke the right of the Annuitant to receive payments from Charity pursuant to this agreement. This power is exercisable by the Donor either (1) during life by giving a written notice to Charity, or (2) at death, by a written notice to Charity, from the Donor's executor, trustee or personal representative, that the Donor, in *[his/her]* will or trust, has exercised this power to revoke. If the power is exercised, Charity's obligation to make annuity payments shall terminate with the payment preceding the exercise of this power.

Two Donor Annuitants; Joint and Survivor, Immediate and Deferred

When two non-spouses contribute joint tenancy property for a joint and survivor annuity, revocation language should be included because each makes to the other a gift of a future interest that does not qualify for the gift tax annual exclusion. Depending on how the agreement is drafted and the proportions of ownership, one of the tenants may also make a present interest gift, which, if more than the gift tax annual exclusion, could result in a taxable gift. That would be still another reason for including the revocation language.

Ordinarily, however, the two donors will be husband and wife, and the annuity will be funded with community or jointly-owned property. (The issues involving use of the revocation language are the same when only one spouse is the donor and is using his or her separate property to make the gift.)

If both spouses are citizens, there is no need to include the revocation language to avoid a taxable gift unless the annuity is deferred, for the present value of the annuity automatically qualifies for the QTIP gift tax marital deduction. If one of the spouses is an alien, and the annuity is large, then the revocation language is recommended, as an unlimited gift tax marital deduction is not available.

For most joint-and-survivor annuities, the charity may want to delete the revocation language, for it is unnecessary and adds complexity to the agreement. If revocation is appropriate, and jointly-owned or community property will be contributed, the charity should consider using the following:

Revocation Language

> ***Power to Revoke Payments***
>
> a. *[Name of first donor]* reserves the power to revoke the survivorship annuity payments for *[name of second donor]* attributable to *[his/her – corresponding to first donor]* one-half interest in the *[joint/community]* property transferred under this Agreement. This power is exercisable by *[name of first donor]* either (1) during life by giving a written notice to Charity, or (2) at death, by a written notice to Charity, from *[name of first donor]*'s executor, trustee or personal representative, that *[name of first donor]*, in *[his/her – first donor]*

will or trust, has exercised this power to revoke. If the power is exercised, Charity's obligation to make the annuity payments attributable to the one-half interest of *[name of first donor]* in the *[joint/community]* property shall terminate with the payment preceding *[his/her – first donor]* death and *[name of second donor]* shall receive an annual annuity of $*[one-half of the amount stated in paragraph 2]* in equal *[monthly, quarterly, semi-annual, annual]* installments.

b. *[Name of second donor]* reserves the power to revoke the survivorship annuity payments for *[name of first donor]* attributable to *[his/her – corresponding to second donor]* one-half interest in the *[joint/community]* property transferred under this Agreement. This power is exercisable by *[name of second donor]* either (1) during life by giving a written notice to Charity, or (2) at death, by a written notice to Charity, from *[name of second donor]*'s executor, trustee or personal representative, that *[name of second donor]*, in *[his/her – second donor]* will or trust, has exercised this power to revoke. If the power is exercised, Charity's obligation to make the annuity payments attributable to the one-half interest of *[name of second donor]* in the *[joint/community]* property shall terminate with the payment preceding *[his/her – second donor]* death and *[name of first donor]* shall receive an annual annuity of $*[one-half of the amount stated in Paragraph 2]* in equal *[monthly, quarterly, semi-annual, annual]* installments.

Two Successive Annuitants; Donor Is the First Annuitant, Immediate and Deferred

In virtually all of these cases the revocation language should be included, whatever the size of the annuity. That is because the payments to the successor annuitant are a future interest and do not qualify for the annual exclusion. Thus, there will be a taxable gift if the revocation language is not included. Even if the successor annuitant is a spouse, the revocation language should be included, as the gift to the spouse will be eligible neither for the gift tax annual exclusion because it is a future interest, nor for the gift tax marital deduction because it is a terminable interest.

Because revocation language is recommended for all two-life annuities where the donor is the first annuitant and another person the successor annuitant, the deletion option is not included in the prototype agreements.

Revocation Language

Power to Revoke Payments

The Donor hereby reserves the power to revoke the right of *[name of successor annuitant]* to receive payments from Charity pursuant to this Agreement. This power is exercisable by the Donor either (1) during life by giving a written notice to Charity, or (2) at death, by a written notice to Charity, from the Donor's executor, trustee or personal representative, that the Donor, in *[his/her]* will or trust, has exercised this power to revoke. If the power is exercised, Charity's obligation to make annuity payments shall terminate with the payment preceding the death of the Donor.

Two Successive Annuitants; Donor Is Not an Annuitant, Immediate and Deferred

There will be a taxable gift whatever the size of the annuity if revocation language is not included. That is because the donor makes a gift to the successor annuitant of a future interest that does not qualify for the annual exclusion.

There will be no taxable gift at the time the gift annuity is funded, provided the donor retains the power to revoke payments to both annuitants. Payments actually made each year will be taxable to the extent they exceed the gift tax annual exclusion. Also, if the donor dies without having revoked payments to the annuitants, and is survived by one or both of them, the present value of the payments to the annuitant(s) will be included in the donor's taxable estate.

Retaining the power to revoke only the successor annuitant's payments eliminates a current taxable gift to that person. However, the present value of payments to the first annuitant will be a taxable gift to the extent it exceeds the gift tax annual exclusion.

The language for revoking the interests of both annuitants, and for revoking the interest of the successor annuitant only, appears below. Language for revoking the interest of the first annuitant only is not included because this arrangement would create complications.

Revocation Language

> ***Power to Revoke Payments to Both Annuitants***
> The Donor hereby reserves the power to revoke the right of both annuitants to receive payments from Charity pursuant to this Agreement. This power is exercisable by the Donor either (1) during life by giving a written notice to Charity, or (2) at death, by a written notice to Charity, from the Donor's executor, trustee or personal representative, that the Donor, in [his/her] will or trust, has exercised this power to revoke. If the power is exercised, Charity's obligation to make annuity payments shall terminate with the payment preceding the exercise of this power.
>
> ***Power to Revoke Payments to Successor Annuitant***
> The Donor hereby reserves the power to revoke the right of *[name of successor annuitant]* to receive payments from Charity pursuant to this Agreement. This power is exercisable by the Donor either (1) during life by giving a written notice to Charity, or (2) at death, by a written notice to Charity, from the Donor's executor, trustee or personal representative, that the Donor, in *[his/her]* will or trust, has exercised this power to revoke. If the power is exercised, Charity's obligation to make annuity payments shall terminate with the payment preceding the death of *[name of first annuitant]*.

Two-life annuities where the donor is not an annuitant are not very common.

Income Tax Deduction When Power to Revoke Is Exercised

Earlier in this chapter, it was noted that a posthumous income tax deduction for unreturned capital is allowed when the sole annuitant of a one-life annuity, or the survivor annuitant of a two-life annuity, dies before the end of the applicable life expectancy. Is a deduction also allowed when an annuity is terminated by the exercise of a power of revocation before all of the capital has been returned? If so, who is entitled to the deduction – the donor or the annuitant whose right to receive payments was revoked?

Donor Is the First of Two Successive Annuitants
Consider first the situation where a donor, who is the first of two successive annuitants, dies and revokes by will the right of the successor annuitant to receive payments. The power of revocation is exercised before all of the capital has been returned. Clearly, the successor annuitant is not entitled to a deduction because he or she had only a contingent interest in the annuity, and the payments did not cease by virtue of his or her death as required in IRC Sec. 72(b)(3). However, the donor should be entitled to a deduction for use on the final income tax return because the right to payments did terminate by virture of his or her death.

Annuitant Is Not the Donor, and the Donor Retains But Does Not Exercise the Power of Revocation
Consider next the situation where a donor names someone else as the sole annuitant, reserves the right to revoke that person's payments, either by will or during life, and dies without having exercised that power. Assume further that the

annuitant dies later but before all of the capital has been returned. Once the donor dies the annuitant's interest ceases to be contingent. Moreover, it would seem that the annuitant meets the two requirements for a deduction under IRC Sec. 72(b)(3), namely being the annuitant and ceasing to receive payments under the contract by reason of his or her death. There is no authority that says the result changes because someone had the unexercised right to revoke.

Annuitant Is Not the Donor, and the Donor Retains and Does Exercise the Power of Revocation

Now, consider the situation where a donor names someone else as the sole annuitant, reserves the right to revoke that person's payments, either by will or during life, and does exercise the power during life. Is either the annuitant or the donor entitled to an income tax charitable deduction?

The annuitant would not qualify for a deduction because he or she had only a contingent annuity interest, and the transaction which resulted in a gift to the charity was not a voluntary act. It might seem that the donor is entitled to a deduction because there is a property right over which control can be exercised, and the donor exercises that right on behalf of the charity. However, the donor gives up nothing of material value to himself, so the transaction does not appear to meet the definition of a gift, which is "a voluntary transfer of money or property that is made with no expectations of procuring financial benefit

Text continues on page 28.

Figure 2.7

Quick Guide for Inclusion of Revocation Language

Many factors, personal as well as tax-related, enter into the decision whether to include revocation language in a gift annuity agreement. The following chart shows when the inclusion of revocation language might be useful to avoid a current, taxable gift. Most donors will not be affected by the federal gift and estate tax because their estates are below the federal gift and estate tax exemption. However, the chart provides guidelines for donors whose estates are above the exemption level.

Situation	Revocation Language
Single-life annuity, Donor is annuitant	Not applicable
Single-life immediate annuity, Donor's spouse is annuitant	Unnecessary
Single-life immediate annuity, Annuitant is someone other than donor or donor's spouse	Should be considered
Single-life deferred annuity, Donor's spouse is annuitant	Should be considered

Continued on next page...

Figure 2.7 Continued

Quick Guide for Inclusion of Revocation Language

Situation	Revocation Language
Single-life deferred annuity, Annuitant is someone other than donor or donor's spouse	Should be considered
Two-life annuity, immediate or deferred, Donor is first annuitant, Non-spouse is successor annuitant	Should be considered
Two-life annuity, immediate or deferred, Non-spouse is first annuitant, Donor is successor annuitant	Should be considered
Two-life annuity, immediate or deferred, Donor contributes his/her separate property, and donor and spouse are consecutive annuitants	Should be considered
Joint-and-survivor immediate annuity, Husband and wife contribute jointly-owned or community property	Unnecessary
Joint-and-survivor deferred annuity, Husband and wife contribute jointly-owned or community property	Should be considered
Joint-and-survivor annuity, immediate or deferred, Non-spouses contribute jointly-owned property	Should be considered
Joint-and-survivor immediate annuity, Both spouses are annuitants, Only one spouse is donor	Unnecessary
Joint-and-survivor deferred annuity, Both spouses are annuitants, Only one spouse is donor	Should be considered
Two-life annuity, immediate or deferred, Donor is not an annuitant	Should be considered

commensurate with the amount of the transfer" (Rev. Rul. 86-63). The latter argument seems more persuasive, which leads to the conclusion, not supported by any Regulation or ruling on point, that neither the annuitant or donor would be entitled to a deduction. Presumably, the same conclusion would be reached in the case of a two-life annuity with the donor as the initial annuitant if he or she during life exercises the power to revoke the second annuitant's payments.

Annuitant Is Not the Donor, the Donor Retains But Does Not Exercise the Power of Revocation, and the Annuitant Contributes the Annuity Interest

Suppose the donor has not revoked the annuitant's right to payments, and the annuitant decides to assign his or her annuity interest to the charity while the donor is still living. Assuming the donor had retained an *inter vivos* as well as a testamentary power of revocation, the annuitant's interest would have no value, for it could be terminated at any moment. Thus, the annuitant would not be entitled to an income tax charitable deduction. On the other hand, if the donor had retained only a testamentary power of revocation, arguably the annuitant would be able to claim a deduction equal to the lesser of the unreturned capital or the present value of the payments for the duration of the donor's life expectancy, for the annuitant has an absolute right to the payments so long as the donor is living. However, there are no Regulations or rulings specifically adressing this issue.

The donor would not be entitled to a deduction in any case. For one thing, the donor did not voluntarily transfer money or property, so the requirement of a charitable gift was not met. Also, the donor never had a right to the payments and thus would not be giving up anything of material value.

Two Successive Annuitants Neither of Which is the Donor, First Annuitant Dies and Then Surviving Annuitant Contributes the Annuity Interest

In this instance, the donor retained, but did not exercise, the right to revoke the payments of the annuitants. The first annuitant dies and the second annuitant starts receiving payments. Then, sometime after the death of the donor, the second annuitant contributes his/her annuity interest to the charity. The second annuitant should be entitled to an income tax charitable deduction equal to the lesser of the unreturned capital or the present value of the payments for the rest of his/her life expectancy. The annuitant has an absolute right to the payments being contributed.

General Rule When Donor Does Not Retain the Right of Revocation

In all the above cases, if the donor does not retain the right of revocation, and the successor annuitant (first instance) or sole annuitant (second instance) dies before all of the tax-free capital has been returned, that annuitant definitely will be entitled to a deduction for that unreturned capital for use on his or her final income tax return. See Chapter 20. Likewise, in the fourth case, the annuitant would receive an income tax charitable deduction, if the donor retained no power of revocation, and the amount of the deduction would be easily ascertainable.

Same-sex Married Couples

In June 2015, the United States Supreme Court found bans on same-sex marriage (as found in the Defense of Marriage Act of 1996, for example) to be unconstitutional and made it legal in all states and the District of Columbia.

Based on that ruling, same-sex couples are subject to the same rules regarding income, gift, and estate taxes as heterosexual couples. Everything in this chapter about the tax implications for married couples applies to them.

How the CMFR Affects the Charitable Deduction

APPENDIX 1

Amount of Deduction

$10,000 Contribution
ACGA Rates, Quarterly Payments

Age of Annuitant	2% CMFR	3% CMFR	4% CMFR	5% CMFR	6% CMFR	7% CMFR
65	1,259	2,091	2,801	3,409	3,936	4,393
70	1,921	2,581	3,155	3,658	4,101	4,492
75	2,751	3,246	3,686	4,078	4,430	4,746
80	3,502	3,862	4,189	4,485	4,756	5,003
85	4,606	4,842	5,059	5,260	5,447	5,619

The younger the annuitant, the greater the impact of the CMFR. That is because the charity is presumed to have earned that rate of return for a longer time. The CMFR does not have much effect on the deduction for a 90-year-old because the funds are presumed to be invested only over life expectancy, which is relatively short.

***Note:** If the CMFR is only 1%, and the annuitants are age 60 or 65, the gift annuity rate paid by the charity must be below the published ACGA rate in order for the deduction to be over 10% of the amount contributed, which is required.

Difference in Deduction

Between a 2% CMFR and a 7% CMFR
(Same assumptions as above)

Age	Difference in Deduction
65	3,134
70	2,571
75	1,995
80	1,501
85	1,013

Selecting the CMFR

A donor has the option of using the CMFR for the current month or either of the two preceding months. Should the donor always choose the CMFR that will produce the largest charitable deduction? Not necessarily.

APPENDIX 1

If the donor does not itemize deductions, or would be unable to use an additional deduction, the donor should definitely select the lowest CMFR because that will cause a larger portion of the payments to be a tax-free return of capital.

If the donor does itemize deductions, it will be advantageous to select the highest CMFR if the future value of larger up-front tax savings will exceed the future value of larger after-tax cash flow. This depends on the donor's current and future tax situation.

Again, a higher CMFR results in a larger charitable deduction but a smaller tax-free portion of payments, while a lower CMFR results in a smaller charitable deduction but a larger tax-free portion of payments.

It should also be noted that the choice of a CMFR will have a greater impact on the charitable deduction and taxation of payments when the possible CMFRs are lower. For example, if the CMFRs for the current and immediately-preceding two months are, respectively, 1.0 percent, 2.0 percent, and 3.6 percent, the choice will have greater consequences than if those rates were, respectively, 5.0 percent, 5.2 percent, and 5.4 percent.

If a donor contributes appreciated property, it is more likely to be advantageous to select the highest possible CMFR. A low CMFR, in addition to generating a smaller charitable deduction, results in more of the capital gain being taxed when appreciated property is contributed. The after-tax cash flow will still be higher when a low CMFR is selected, but the differential will be less than if cash were contributed. The tax savings from the larger deduction will be more likely to outweigh the slightly increased after-tax cash flow.

Suppose that a donor, age 73, contributes stock having a fair market value of $100,000 and a cost basis of $20,000, and receives quarterly payments based on the ACGA rate of 6.7 percent. Her tax rate is 24 percent and capital gain is taxed at a 15 percent rate.

CMFR	Deduction	Annual Payment	Total Gain Taxable	Portion of Annual Payment Taxable as Gain*	Portion of Annual Payment that is Ordinary Income*	Annual After-tax Cash Flow*
3.0%	$29,665	$6,700	$56,268	$4,079	$1,120	$5,819
5.0%	38,951	6,700	48,839	3,538	2,278	5,623
7.0%	46,297	6,700	42,962	3,114	2,807	5,559

Note: 5.0% is the average CMFR since 1989.

* During 13.8 years of life expectancy per IRS Tables

Taxation of Capital Gain Under Different Donor-Annuitant Combinations

A P P E N D I X 2

The gain attributable to the present value of the annuity (the sale element) is taxable, but when and to whom depends on circumstances. The gain attributable to the gift element (the excess of the value of the contributed asset over the present value of the annuity) is not taxed. The following refers to taxable gain.

Donor is the sole annuitant

Gain is reported ratably over the donor's life expectancy. See Reg. Sec. 1.1011-2(c)(Ex. 8). (Actually, only the gain attributable to the present value of annuity payments is reportable, and that is what is understood when the term *gain* is used in this Appendix.)

Donor is the first of two successive annuitants

Gain is reported ratably over the donor's life expectancy only. See Reg. Sec. 1.1011-2(a)(4)(ii). However, if the donor dies before all of the gain has been reported, the successor annuitant must continue the ratable reporting for the duration of the donor's life expectancy, determined at the time of the gift. See Reg. Sec. 1.1011-2(a)(4)(iii)(b). This is true whether the successor annuitant is a spouse or someone else.

Donor funds a gift annuity with his or her own property and names someone else as the annuitant

The gain is immediately recognized. It cannot be reported ratably. See Reg. Sec. 1.1011-2(a)(4)(ii).

When one spouse funds a gift annuity with payments to the other spouse, the donor-spouse will immediately recognize gain if the annuity is funded with appreciated property. To avoid this consequence, the donor-spouse should first transfer the property to the spouse who will be the annuitant. Then that spouse can be both donor and annuitant, and the applicable gain will be reported ratably over his or her life expectancy. Since an unlimited marital deduction is allowed for transfers from one spouse to another (provided the donee spouse is a U. S. citizen), property can be transferred to the annuitant spouse without gift tax consequences.

Husband and wife fund a gift annuity with jointly-owned or community property, and they are joint-and-survivor annuitants

The Regulations do not specifically address ratable reporting of gain from an annuity funded with jointly-owned or community property. However, an unpublished private letter ruling held that the gain could be reported ratably over their joint life expectancy. Most planned giving software programs calculate the taxation of annuity payments on the assumption that gain can be reported ratably over their joint life expectancy. Since this is the common practice of charities, and no rulings or court cases have called it into question, this manual follows the common practice in its calculations.

If ratable reporting over joint life expectancy is not allowed, it should be possible to report one-half of the gain over one spouse's life expectancy and one-half over the other spouse's life expectancy. This would somewhat accelerate the reporting of gain.

Husband and wife fund a gift annuity with jointly-owned or community property, and only one of them is named as annuitant

One-half of the gain can be reported ratably over the annuitant-spouse's life expectancy. However, the IRS may assert that the other one-half of the gain must be reported immediately by the spouse who is not the annuitant on the premise that the non-annuitant spouse is funding an annuity for another person with his or her one-half interest in the property, so ratable reporting is not permitted.

This situation is not specifically addressed in the Regulations. While the above description of how gain is reported is a plausible extension of what is stated in the Regulations, we cannot be certain that the IRS would reach this conclusion if it addressed the matter.

Immediate recognition of gain can definitely be prevented if the spouse not named as an annuitant transfers his or her one-half interest in the property to the other spouse, who then becomes both donor and annuitant. The gain would be reported ratably over the life expectancy of the donor/annuitant.

A spouse funds a joint-and-survivor annuity with his or her separate property

The donor-spouse would report in the year of the gift one-half of the taxable gain.

The remaining taxable gain would be ratably reported by the donor-spouse over his or her life expectancy. If he/she dies before that gain has been fully reported, the rest of the taxable gain would be reported by the non-donor spouse, if he/she survives the donor-spouse.

This situation is not specifically addressed in the Regulations. While the above description of how gain is reported is a plausible extension of what is stated in the Regulations, we cannot be certain that the IRS would reach this conclusion if it addressed the matter.

To avoid any up-front recognition of gain and to have a longer period for ratable reporting, the property should be re-titled in the spouses' joint names before the annuity is funded.

Husband and wife fund a gift annuity with jointly-owned or community property, and they are successive annuitants

The spouse who is the successor annuitant would report in the year of the gift one-half of the taxable gain. The other one-half of the taxable gain would be reported ratably over the life expectancy of the first annuitant. If any taxable gain remains unreported at the death of the first annuitant, it would be reported by the successor annuitant if he or she survives the first annuitant.

This situation is not specifically addressed in the Regulations. While the above description of how gain is reported is a plausible extension of what is stated in the Regulations, we cannot be certain that the IRS would reach this conclusion if it addressed the matter.

To avoid up-front taxation of gain, the donor who is the successor annuitant should transfer his or her one-half interest in the property to the other spouse, who will then be the donor. The gain would be reported ratably over the life expectancy of the donor spouse, and if that spouse dies before all of the taxable gain has been reported the balance would be reported by the non-donor spouse, if he/she survives the donor spouse. Better still is for the spouses to be joint and survivor beneficiaries, unless there is some compelling personal reason not to do so.

Husband and wife fund a joint-and-survivor deferred gift annuity, and one of them dies before payments start

The gain will be reported over the life expectancy of the surviving spouse, using the IRS Expected Return Multiple Tables in effect at the time payments begin unless the tables in effect when the annuity was established are grandfathered when new tables are issued. The gain would not be reported ratably over their joint life expectancy whatever the applicable IRS Expected Return Multiple Tables.

Note: Neither Reg. Sec. 1.1011-2(a)(4) nor any other authority explicitly says that unreported gain is to be reported using the life expectancy of the surviving annuitant. However, this conclusion seems logically to follow from the directive to use the life expectancy in effect at the time payments start for purposes of calculating the tax-free portion of each payment.

In all of the above cases, if the sole or surviving annuitant dies before the entire amount of gain has been reported, the remaining gain is not reportable by anyone. See Reg. Sec. 1.1011-2(a)(4)(iii).

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Examples Showing Taxation Of Gift Annuity Payments In Different Situations

APPENDIX 3

Situation One

John and Mary J, whose dates of birth are May 10, 1943 and June 12, 1943, contribute jointly-owned long-term appreciated stock to fund a joint-and-survivor gift annuity. The stock has a fair market value of $100,000 and a cost basis of $30,000. They will receive an annual annuity of $6,500 paid in quarterly installments of $1,625 at the end of each quarter. Assume that the contribution is made on July 1, 2023 and that the July 2023 CMFR of 4.6 percent is elected.

Taxation Of Annuity Payments

Year	Number of Payments	Total Annuity	Ordinary Income	Tax-Free Return of Cap.	Long-Term Cap. Gain
2023	2	$3,250.00	$ 942.50	$ 692.25	$1,615.25
2024–2035	4	6,500.00	1,885.00	1,384.50	3,230.50
2036	4	6,500.00	5,593.50	271.95	634.55
2037+	4	6,500.00	6,500.00	0.00	0.00

The capital gain attributed to the present value of the annuity (the taxable gain) presumably can be reported ratably over their joint life expectancy which, according to Table VI of Reg. Sec. 1.72-9 with the adjustment for payment frequency in Reg. Sec. 1.72-5(a)(2), is 12.7 years.

Their cost basis attributed to the present value of the annuity (their capital) is recovered ratably over the same period. This constitutes the tax-free portion of each payment.

For the first 12.7 years their payments will be partly ordinary income, partly capital gain, and partly a tax-free return of capital. The end of their life expectancy, per the tables referenced above, occurs during the year 2035. By then they will have reported all of the capital gain and recovered all of their capital. Thereafter, the payments will be entirely taxable as ordinary income.

APPENDIX 3

Situation Two

George W, a single man whose date of birth is April 30, 1953, contributes long-term appreciated stock to fund a gift annuity with payments to himself and then to his sister, if she survives him. His sister's date of birth is March 31, 1957. This stock has a fair market value of $100,000 and a cost basis of $40,000. The total annual annuity will be $5,000 paid in quarterly installments of $1,250 at the end of each quarter. Assume that the contribution is made on July 1, 2023 and that the July 2023 CMFR of 4.6 percent is elected.

Taxation Of Annuity Payments

Year	Number of Payments	Total Annuity	Ordinary Income	Tax-Free Return of Cap.	Long-Term Cap. Gain
2023	2	$2,500.00	$1,005.00	$ 231.30	$1,263.70
2024–2038	4	5,000.00	2,010.00	462.60	2,527.40
2039	4	5,000.00	2,010.00	1,982.70	1,007.30
2040–2044	4	5,000.00	2,010.00	2,990.00	0.00
2045	4	5,000.00	2,315.00	2,685.00	0.00
2046+	4	5,000.00	5,000.00	0.00	0.00

In this instance, the capital gain attributed to the present value of the annuity (the taxable gain) can be reported only over George's life expectancy, which is 15.9 years. The end of his life expectancy occurs in the year 2038, and by that time all of the taxable gain will have been reported.

However, the cost basis attributable to the present value of the annuity (the capital) is recovered ratably over George's and his sister's joint life expectancy, which is 22.4 years. Thus, a portion of each annuity payment will be tax-free for 22.4 years following the contribution date. Following that period, which ends during the year 2045, the payments will be entirely taxable as ordinary income.

In the case of George's annuity, once the capital gain has been reported the remaining capital can be ratably returned tax-free over the balance of George's and his sister's joint life expectancy.

Situation Three

Herbert S, a single man whose date of birth is May 23, 1938, contributes long-term appreciated stock to fund a gift annuity with payments to himself and then to his niece, if she survives him. His niece's date of birth is June 16, 1961. This stock has a fair market value of $100,000 and a cost basis of $20,000. The total annuity will be $4,900 paid in quarterly installments of $1,225 at the end of each quarter. Assume that the contribution is made on July 1, 2023 and that the July 2023 CMFR of 4.6 percent is elected.

Taxation Of Annuity Payments

Year	Number of Payments	Total Annuity	Ordinary Income	Tax-Free Return of Cap.	Long-Term Cap. Gain
2023	2	$2,450.00	$1,031.45	0.00	$ 1,418.55
2024-2040	4	4,900.00	2,062.90	0.00	2,837.10
2041	4	4,900.00	2,062.90	943.95	1,893.15
2042-2045	4	4,900.00	2,062.90	2,837.10	0.00
2046	4	4,900.00	4,306.75	593.25	0.00
2047+	4	4,900.00	4,900.00	0.00	0.00

In this instance, too, the capital gain attributed to the present value of the annuity (the taxable gain) can be reported ratably only over the donor's life expectancy. However, it is impossible to report all of the taxable gain during Herbert's 8.8 years of life expectancy. When that is the case, the gain will continue to be reported beyond his life expectancy by him, or if he is not living, by the successor annuitant until the entire gain is reported. It will take 18.2 years to report all of the gain. That period is longer than Herbert's life expectancy but not as long as his and his niece's joint life expectancy.

Unlike Situation One, involving a joint and survivor gift annuity funded with community property, where gain can be reported ratably over the spouses' joint life expectancy, the gain in Herbert's gift cannot be reported ratably over his and his niece's joint life expectancy. Nevertheless, any gain not reported by the end of Herbert's life expectancy must continue to be reported by him or his niece for however long it takes to report all of it.

Note that in this situation no portion of the annuity payments will be tax-free until after all of the gain has been reported. That is often the case when the contributed property has a low basis and/or the donor-annuitant has a relatively short life expectancy.

Once all of the gain has been reported, the annuitant starts the tax-free recovery of capital (i.e., the cost basis attributed to the present value of the gift annuity). This capital is recovered over the balance of the joint life expectancy of Herbert and his niece. By the year 2046, 23 years following the contribution date, it will be recovered. Thereafter, the annuity payments will be entirely ordinary income.

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Revocation of Right to Gift Annuity Payments

Version 1 – Revocation of Successor Annuitant's Right to Payments

[name of contact person at charity]
[name of charity]
[P.O. Box or Street Address]
[City/State/ ZIP Code]

Dear ____________________:

On (date), I established a gift annuity with (name of charity) according to which payments were to be made to me for the duration of my life and then to (name of successor annuitant) if he/she survives me. Per paragraph (number of paragraph) of the gift annuity agreement, I reserved the right to revoke the payments to (name of successor annuitant). This power is exercisable either during life by giving written notice to (name of charity), or at death by a written notice to (name of charity) from my executor, trustee, or personal representative.

By this letter I hereby revoke all rights of (name of successor annuitant) to gift annuity payments. In exercising this right, I understand that payments from the annuity shall be made only to me, as if I were the sole annuitant.

Sincerely,

______________________________ ____________________
Name of Donor Date

APPENDIX 4

APPENDIX 4

Revocation of Right to Gift Annuity Payments

Version 2 – Revocation of Current Annuitant's Right to Payments

[name of contact person at charity]
[name of charity]
[P.O. Box or Street Address]
[City/State/ ZIP Code]

Dear ____________________:

On (date), I established an annuity with (name of charity) according to which payments were to be made to (name of current annuitant) for the duration of his/her lifetime. Per paragraph (number of paragraph) of the gift annuity agreement, I reserved the right to revoke the payments to (name of current annuitant). This power is exercisable either during life by giving written notice to (name of charity), or at death by a written notice to (name of charity) from my executor, trustee, or personal representative.

By this letter I hereby revoke all rights of (name of current annuitant) to receive gift annuity payments effective as of (date). In exercising this right, I understand that no payments to (name of current annuitant) shall be made after the aforementioned date.

Sincerely,

______________________________ ____________________
Name of Donor Date

Chapter 3

GIFT ANNUITY RATES

The American Council on Gift Annuities (ACGA) publishes suggested rates, which most charities follow. Charities that adopt these rates do not have to hire an actuary and develop their own rate schedule, and they do not compete with other charities on rates. By offering uniform rates charities encourage individuals to base their decision on the charity they want to support, rather than on which charity offers the highest rates.

Suggested rates are reviewed continuously, and any changes approved by the ACGA Board at its spring meeting become effective on July 1. However, interim adjustments of rates are occasionally made by the ACGA, if warranted by the economic situation. The ACGA Board did, in fact, increase the rates, effective January 1, 2023, after having raised the rates, effective July 1, 2022.

The fact that rates are reviewed continuously does not necessarily mean they will change frequently. Regular review enables the ACGA to respond quickly to changing economic conditions and thus protect charities. If warranted, rates are approved by the ACGA board.

Assumptions Underlying ACGA Suggested Rates

The current ACGA rates became effective January 1, 2024, and are based on the following assumptions:

Residuum

The target residuum (amount remaining for the charity when the annuitant(s) has (have) died) is 50 percent of the original contribution. There is an added overlay requirement that the present value of the residuum be at least 20 percent of the original contribution for the annuity.

In the case of a younger annuitant, the projected residuum could exceed 50 percent, but the present value of that residuum might be less than 20 percent of the contribution. When this happens, the suggested gift annuity rate is reduced to the level where the 20 percent requirement is met. In calculating the present value, a discount rate equal to the assumed net return (currently 4.75 percent) is used. This additional 20-percent-minimum-present-value requirement has the effect of reducing rates for certain younger ages. The purpose of this additional 20 percent requirement is to help charities realize a minimum value from gift annuities whose residua may not be received for many years.

A central question is whether, on average, the target residuum of 50 percent is being met. The ACGA has conducted surveys of charities that maintained records of contributions and residua asking them to report on the average percentage of the contribution remaining for the charity.

Following are the percentages for the seven surveys:

1994 – 95%
1999 – 98%
2004 – 86%
2009 – 82%
2013 – 64%
2017 – 62%
2021 – 64%

These are averages of outcomes achieved by all charities. The percentages for some charities would be higher, and for some it would be lower. Also, for all charities the residua for a particular annuity could vary widely. In some cases, the residuum for a particular annuity could be over 100 percent, and in other cases it could be less than zero, meaning that the reserves for the annuity were exhausted prior to termination of the annuity obligation.

Recently established annuities are unlikely to have terminated, so the residuum percentage of those annuities cannot be known until later. The residua of these annuities could be larger than historical residua because of the relatively low gift annuity rates in effect when they were established and because of the generally good performance of the investment markets after they were established.

Historical Note: The assumed 50 percent residuum has been in effect since 1939. Prior to that date it was 70 percent.

Life Expectancies

In 2001-2002, the ACGA commissioned an actuarial firm to conduct a mortality study of annuitants of actual gift annuities. Based on the results of that study, life expectancies of annuitants were determined to be in accordance with the Annuity 2000 Tables with these adjustments:

- All annuitants were assumed to be female.
- They were assumed to be two years younger than their actual ages.
- Since the publication of the Annuity 2000 Tables, life expectancies were assumed to have increased per Projection Scale G.

In the fall of 2010, the ACGA commissioned an updated study based on the mortality experience of 47,075 gift annuity contracts of 28 charities during the five-year period 2005 through 2009. That study found that annuitant mortality exceeded what would have been predicted by the mortality assumptions underlying the previous rates suggested by the ACGA, which were based on the 2001-2002 mortality study. In other words, annuitants were not living as long as had previously been assumed.

Accordingly, the ACGA modified the adjustments to the Annuity 2000 Tables. It continued to assume all annuitants were female, but it set back their ages by one year rather than two years. Also, it started using Projection Scale AA rather than Scale G for the increases in life expectancy. Scale AA assumes a somewhat smaller annual increase in life expectancies than Scale G, and that smaller increase has been actuarially demonstrated.

The problem with the Annuity 2000 Table and other previous tables is that they become dated. The National Association of Insurance Commissioners wanted a table that would be more enduring, so it requested that the Society of Actuaries and the American Academy of Actuaries produce such a table. The result is the 2012 Individual Annuity Reserving Table (abbreviated as the 2012 IAR Table). This table is derived from more recent data and it incorporates projected year-by-year improvements in mortality. An "improvement in mortality" means that a smaller percentage of people of a given age die in successive years.

As years pass, the 2012 IAR Table will project longer life expectancies according to a projection scale called G2. This means that the table is dynamic. For example, according to the Table, a person who turns 70 in 2025 will have a longer life expectancy, determined at that time, than a person did upon turning 70 in 2020.

In 2021, the ACGA conducted a new mortality study based on data provided by 31 charitable organizations regarding annuities in force and annuities terminated by death during the experience period 2015-2019. Based on the result of this study, the conclusion was that the mortality assumptions underlying the ACGA rates should continue to be based on the 2012 IAR dynamic table, but with a blend of 45 percent male annuitants and 55 percent female annuitants. This blend is based on data showing that the percentage of female annuitants exceeds the percentage of male annuitants, and it is necessary because the life expectancy of females is somewhat longer than that of males.

The 2012 IAR Table affects gift annuities in two ways. First, with the assumed blend of female and male annuitants, the dynamic 2012 IAR Table is what the ACGA will use in determining suggested maximum gift annuity rates instead of the Annuity 2000 Table that was used previously.

The second way the 2012 IAR Table affects gift annuities is in the calculation of required reserves. Some states have already followed the suggestion of the National Association of Insurance Commissioners and mandated that required reserves for annuities created after 2014 be based on the 2012 IAR Table, and more states are expected to take this action. This means that over time required gift annuity reserves will be somewhat larger than they would have been without the introduction of the new table.

Other Actuarial Tables Affecting Gift Annuities

Besides the 2012 IAR table, which affects gift annuity rates and required reserves, there are two other mortality tables that have financial implications for donors. Effective June 2, 2023, the 2010CM Table, which is based on the mortality experience of the general population per 2010 U.S. census data, has replaced the 2000CM Table, which was based on 2000 U.S. census data, in calculating the charitable deduction allowed upon a contribution for a gift annuity. Because life expectancies per the 2010CM Table are longer than life expectancies per the 2000CM Table, the charitable deduction is somewhat smaller.

The Return Multiple Tables provided under IRC Sec, 72 are used to determine the taxation of annuity payments. These tables are derived from the 1983 Basic table, which is to say they have not been updated for a long time. There is no indication that updating the return multiple tables is currently under review.

The mortality assumptions used to determine the deduction for gift annuities and the taxation of gift annuity payments are less conservative than those found in the 2012 IAR Table, which uses current mortality data applicable to those who establish gift annuities. Board members, who may be concerned about the mortality assumptions underlying gift annuity rates, may be assured that they are current and realistic.

Expenses

Annual expenses for administering gift annuities are assumed to be one percent per year. These expenses include investment and custodial fees, the costs of making payments and filing federal tax forms, and the costs of submitting reports in regulated states. They do not include the costs of promoting and obtaining annuity contributions, which are presumed to be covered in a charity's general budget for the development office.

To assist in determining the expense assumption, the ACGA's Gift Annuity Rates Committee consulted major financial institutions that administer gift annuity programs. They unanimously agreed that one percent was an appropriate expense assumption for charities that outsource administration. Some charities that administer gift annuities in-house may spend less than one percent annually, and charities that outsource administration of new programs may incur higher costs, at least until they accumulate sufficient gift annuity reserves to achieve economies of scale.

Historical Note: Prior to 1997, a charity was presumed to set aside 5 percent of the contribution for expenses and invest the remaining 95 percent at the assumed rate of return. The 5 percent was effectively a front-end load. Beginning in 1997, expenses were assumed to be 75 basis points per year rather than 5 percent of the initial contribution, and beginning in 2002, as noted above, they were assumed to be 100 basis points.

Total Annual Returns

The total return on gift annuity reserves for immediate gift annuities is 5.75%, or 4.75% net of expenses.

The total return credited to deferred gift annuities during the entire deferral period is 4.75%.

See Appendix 2 for the procedure used in determining deferred gift annuity rates.

See Appendix 3 for a record of ACGA historical assumed total returns from 1927 to the present.

Returns on Gift Annuity Reserves

Reason for Assumed Return on the Investment of Gift Annuity Reserves

The 5.75% assumed return is based on a portfolio of:

- 40 percent equities,
- 55 percent 10-year Treasury bonds, and
- 5 percent cash or cash equivalents.

Such a portfolio is possible in all states, even in the ones that limit equity investments, because the equity limitation applies only to required reserves plus any required surplus reserves. Reserves in excess of state requirements can be invested entirely in equities if the charity so chooses.

The following benchmarks are used to determine the average annual total return for each component of the portfolio:

- For equities, the average total return per the Standard and Poor's 500 Index for the period 1926 – 2021, less 2 percent. Over this period the average return was about 10 percent. This number is then reduced by 2 percent, resulting in 8 percent as the assumed return on the equity portion of the portfolio. The historical yield was reduced by 2 percent to reflect more conservative assumptions for economic growth and equity returns. Also, the Gift Annuity Rates Committee considers it prudent to be conservative with respect to assumed returns on equities.
- For bonds, the average current yield (using a 13-week rolling average) on the 10-year U.S. Treasury bond.
- For cash, the average current yield (using a 13-week rolling average) on the 3-month U.S. Treasury bill.

The weighted average total return for a portfolio of 40% equities, 55% bonds (fixed income), and 5% cash is usually rounded down to the nearest 0.25%, but ACGA exercises judgment in rounding the expected return, considering current economic conditions, forward-looking projections, recent rate change history, and other practical issues.

Although the return on equities in the next 10 to 20 years (which is the duration of most gift annuities written today) could be higher or lower than the historical average, that average reduced by 2 percent seemed to the Gift Annuity Rates Committee, and to most of the investment experts the Committee consulted, to be the most prudent benchmark.

For bonds, the questions are whether to use historical average total returns or current yields and whether to assume an investment entirely in government bonds or a mixture of government and corporate bonds. Many charities invest a portion of their gift annuity reserves in corporate bonds. However, government bonds are an acceptable investment in all states and carry only market risk. Therefore, the Gift Annuity Rates Committee decided to assume that the bond component of the portfolio would remain entirely in 10-year Treasury bonds. The Committee also decided that current yield – the interest rate a charity could expect to earn on new money – would continue to be used. The average current yield on these bonds during the three months immediately preceding determination of the new rates is well below the average total returns on government bonds for the past 100 years (based on *Standard and Poor's* and *Ibbotson* data).

For cash, the assumed return, as noted, is the average current yield on the three-month Treasury bill during the three-month period preceding the review of the rates.

The gift annuity rates for certain younger and older annuitant ages are lower than would follow from the assumptions discussed above. The rates for younger annuitants may have been reduced for either or both of these reasons:

- To assure that the present value of the residuum is at least 20 percent of the amount contributed.
- To have rates that comply with the requirement of IRC Sec. 514(c)(5)(A) that the present value of the annuity payments will be less than 90 percent of the contribution. The suggested rates meet this requirement for immediate annuities unless the Charitable Midterm Federal Rate (known by the acronym CMFR and described in IRC Sec. 7520) is exceedingly low. If it were to become very low, a charity might have to offer a lower rate at certain ages to meet the maximum present value requirement.

The rates for older annuitants are lower than the rates that would follow from the above assumptions because rates have been capped, and it is necessary to have a gradation of rates leading to that cap. The ACGA's single-life rates that became effective January 1, 2024 are capped at 10.1%, and the two-life rates are capped at 9.9%.

Lower Cap on Gift Annuity Rates

Some charities cap gift annuity rates at a lower level than the maximum ACGA rates. Their cap might be 8 percent, or even as low as 7 percent. It is true that a lower cap reduces the risk in the event an elderly annuitant lives well beyond life expectancy. However, before reducing the maximum rate, a charity should take the following factors into consideration:

- The ACGA rates for the oldest ages are already below the rates that follow from the stated assumptions.
- The differential between commercial and ACGA rates is greater at the older ages than at the intermediate ages. This indicates that rates for the older ages are already quite conservative.

- A low cap on rates can be unfair to elderly annuitants. The total benefit – payments multiplied by life expectancy – will be much less than the total benefit of an annuity for younger annuitants.
- If rates are capped at a lower level than the ACGA rates, either the same rate will apply to a wide span of ages (for example, everyone over age 85 receives the same rate), or all of the rates leading up to the cap will have to be reduced so that there is a gradation of rates.

Good News from New York

In New York, there had been a problem with charities issuing gift annuities and following the ACGA's suggested rates. Maximum annuity rates allowed by the State of New York were lower than the maximum annuity rates suggested by the ACGA at certain ages. Also, New York rates, unlike those of the ACGA, were not unisex. The ACGA worked with New York legislators to resolve this problem, and it was pleased to announce that on June 8, 2023 the New York legislature passed bill A4599-A. The bill was signed into law later that year and became effective on January 23, 2024. It establishes that New York's maximum allowable payout rates will be unisex in nature. It also establishes a new methodology for determining maximum annuity rates in New York that should allow charities to issue immediate gift annuities and deferred gift annuities using the ACGA rates regardless of the ages and gender of the annuitants.

We are grateful to the ACGA for obtaining a resolution to this problem that had complicated issuing gift annuities in New York.

How Charities Actually Invest Gift Annuity Assets

In the recent ACGA surveys, respondents reported on the investment allocation of their gift annuity reserves. The chart above from data in the survey report shows how charities were investing six classes of assets in 2021.

Marketing Gift Annuities After Recent Rate Increases

The maximum gift annuity rates suggested by the ACGA during the period July 1, 2020 to June 30,

Asset Allocation

According to the 2021 ACGA's national survey, charities, on average, invested gift annuity reserves as follows:

Cash	6%
Stocks/mutual funds	57%
Government bonds	19%
Corporate bonds	12%
Real estate	3%
Other investments	3%

The 2017 ACGA survey found that 51% of charities invested more than half of their assets in stocks and mutual funds, but according to the 2021 survey that percentage had risen to 57%. This change probably resulted from increasing confidence in equity markets due to returns prior to the survey. It is possible that in 2022, following the most recent survey, as a result of a market downturn, the average asset allocation may have changed somewhat.

Given the low return on cash, most charities appear to keep just enough in cash to make payments and cover expenses for a year.

2022 were the lowest they had ever been since the ACGA and its predecessor organization, the Committee on Gift Annuities, started suggesting rates in 1927. Nevertheless, donors established gift annuities during this period. Aside from the desire to make a gift, they found the after-tax payments from gift annuities to compare favorably to the cash flow from taxable fixed-income investments, which were paying very low interest rates.

Recent increases in gift annuity rates makes them even more appealing to donors. At the sample ages shown in the chart below, the rate increase from July, 2022 to January, 2024 was about 1.5% as a percentage of the contribution but 20-36% as the percentage by which payments increased.

Age	Rate Prior to 7/1/22	Rate After 12/31/23	% Increase in Payments
65	4.2%	5.7%	36%
75	5.4%	7.0%	30%
85	7.6%	9.1%	20%

The payments from a deferred gift annuity will increase by a higher percentage than the payments from an immediate gift annuity. That is because of the increase in both immediate gift annuity rates and the 4.75% compound interest rate credited during the deferral period. Following are sample deferred gift annuity rates for one life, assuming contributions at different ages and that in all cases the annuitant is age 65 when payments begin:

Contribution Age/Payment Start Age	Rate Prior to 7/1/22	Rate After 12/31/23	% Increase
50/65	6.3%	10.9%	73%
55/65	5.5%	8.7%	58%
60/65	4.8%	6.9%	44%

As a result of these rate increases, charities may be somewhat more successful in marketing gift annuities in general, and especially in marketing deferred gift annuities to those wanting to augment retirement income.

Even with the ACGA rate increases, gift annuity rates remain relatively low compared to other investment options, which may discourage some potential donors. One way to make gift annuities more attractive is to compare the after-tax cash flow from a gift annuity with the after-tax cash flow from a fixed-income investment as is done in Figure 3.1. Pointing this out could be persuasive to a philanthropic individual who is looking at current gift annuity rates without taking into consideration the charitable deduction and the tax-free component of the payments.

When comparing cash flows, it is, of course, important to explain that with a gift annuity, unlike an investment, the contribution is irrevocably committed and the payments are partially a return of capital. However, for those interested in making a gift and who are able and willing to commit some of their assets, the gift annuity remains a way to increase spendable income they are currently receiving from fixed income investments and equities.

Comparison of Gift Annuity and Commercial Rates

Generally, gift annuity rates are lower than the rate that could be obtained from a commercial annuity. It was represented to Congress, when the Charitable Gift Annuity Antitrust Relief Act of 1995 and the Charitable Donation Antitrust Immunity Act of 1997 were being considered, that gift annuities do not compete with commercial annuities. In addition, if gift annuity rates approach commercial rates, the residuum for charity would be significantly diminished.

Although the ACGA uses its own methodology for determining rates, it does pay attention to the movement of commercial rates because insurance companies and charities invest in the same financial markets. If commercial rates move up

Figure 3.1

To illustrate the full advantage of the after-tax cash flow from a charitable gift annuity, consider three donors, each of whom contributes $10,000 in cash in exchange for a one life charitable gift annuity. Assume the donor's marginal Federal Income Tax rate is 32% and the applicable CMFR is 5.0%.

	ACGA suggested annuity rate	Annuitant Age 65 5.7%	Annuitant Age 75 7.0%	Annuitant Age 85 9.1%
(a)	Contribution	$10,000	$10,000	$10,000
(b)	Annual Annuity	$570	$700	$910
(c)	Charitable Deduction	$3,409	$4,078	$5,260
(d)	Income Tax Savings 32% x (c)	$1,091	$1,305	$1,683
(e)	Out-of-pocket Cost of Plan (a)-(d)	$8,909	$8,695	$8,317
(f)	Rate of Return (b)/(e)	6.4%	8.1%	10.9%

Equivalent Rate of Return

The Rate of Return illustrated on line (f) above tells only part of the story. A more complete illustration of the advantages of a gift annuity should take into account the additional value of the tax-free portion of each annuity payment, as follows:

		Annuitant Age 65	Annuitant Age 75	Annuitant Age 85
	Total Annuity	$570	$700	$910
(g)	Tax-free	$331	$477	$697
(h)	Taxable	$239	$223	$213
(i)	Equivalent Fully Taxable Return*	$726	$925	$1,238
(j)	Equivalent Rate of Return (j)/(c)	8.1%	10.6%	14.9%

* Adjusted upward because the tax-free portion on line (g) makes the after-tax value of the annuity equivalent to this amount of fully taxable income for an annuitant in the 32% Federal Income Tax bracket.

Figure 3.1 Continued

Summary

	Annuitant Age 65	Annuitant Annuitant Age 75	Annuitant Age 85
ACGA suggested annuity rate	5.7%	7.0%	9.1%
Rate of Return based on Out-of-Pocket Cost of Plan (e) and Annual Annuity (b)	6.4%	8.1%	10.9%
Equivalent Rate of Return based on Out-of-Pocket Cost of Plan (e) and Equivalent Return (i)	8.1%	10.6%	14.9%

Note: The after-tax cash flows are for the life expectancy of the annuitant. If an annuitant outlives life expectancy, the Equivalent Rate of Return will become equal to the Rate of Return from then on because annuity payments become fully taxable once an annuitant lives beyond the life expectancy determined using the required IRS table.

or down, that would be an indicator that perhaps gift annuity rates should move as well.

Gift Annuity Rates Are Gender Neutral

Unlike commercial annuity rates, gift annuity rates are gender neutral. Male and female annuitants of the same age receive the same payments for a contribution of equivalent amounts. However, commercial annuities pay higher rates to male annuitants. That is because males have a shorter life expectancy than females and, consequently, are projected to receive less in total payments than females if the rates paid to each were the same. Equivalency is achieved by paying higher rates to male annuitants. The same equivalency is achieved in the case of life insurance by charging lower premiums to females because, on average, payments of death proceeds will be delayed for a longer period.

Even though gender-based gift annuity rates would make actuarial sense, the ACGA chooses, as a matter of policy, to recommend unisex rates. Not only are such rates simpler to explain, but they also avoid any appearance of gender inequity.

Analysis of Risk if a Charity Follows the ACGA Rates

A charity must continue annuity payments if annuity reserves should be exhausted because annuity payments are a general obligation of the charity. However, charities following the ACGA rates are unlikely to deplete their gift annuity reserves.

As shown in the tables of Figures 3.2 and 3.3, there is little risk if the charity's constant net total return is 4 percent or higher. Even if the constant net total return is only 3 percent, the reserves are unlikely to be exhausted prior to the end of the annuitants' life expectancies though they could be when annuitants live well beyond life expectancy. In projecting a net total return, the organization should factor in all administrative expenses, including investing assets, processing payments, and filing federal forms and state reports.

Risk of Exceeding ACGA Rates

Most charities follow the ACGA rates, but a few charities exceed those rates in order to make annuities more appealing to donors and perhaps to gain a competitive advantage. Certainly they are free to do that, provided their rates do not run afoul of the maximum present-value-of-the-annuity limit in IRC Sec 514(c)(5) and are acceptable by the states where they issue gift annuities. However, before offering higher rates than the maximum rates suggested by the ACGA, a charity should consider the following:

- In a regulated state that requires a segregated reserve fund, higher rates will necessitate the charity's maintaining larger reserves.
- Higher rates increase the risk of losing money on an annuity. For example, if a charity follows the ACGA suggested rate of 6.3% for a 70-year-old donor and has a constant net total return of 4.75 percent, reserves would be exhausted in 32 years, well beyond the donor's 21.6-year life expectancy. However, if the charity pays an 8.3 percent rate rather than the 6.3 percent rate suggested by the ACGA, the reserves would exhaust in 20 years. (Exhaustion could occur sooner if the charity has low returns during the years immediately following the establishment of a gift annuity.)
- Even if higher rates do not result in losses on any annuities, the residuum will definitely be smaller.
- When charities compete with each other on rates, they could cause a gift annuity to be perceived as an investment instrument rather than as a means of making a gift, and that, in turn, could stimulate more regulation. When charities offer the ACGA suggested rates, individuals make a decision based on the charity they wish to support.

Effect of Timing of Returns on Projections

The projections in Figures 3.2 and 3.3, showing when reserves would be exhausted, are based on various average net total returns, assuming in each instance that the net total return is realized every year. However, actual returns fluctuate, and the projections depend not only on the average return but also on the timing of returns.

Figure 3.4 demonstrates how the residuum remaining for the charity after 10 years could vary significantly even when the average of the net returns for each of the 10 years is the same. The timing of returns for particular years makes the difference.

The risk to a charity is greater if it incurs investment losses during the first few years of a new program. The recovery from those losses will be even more difficult if the charity exceeds the ACGA rates.

Value of a Gift Annuity to the Charity

A charity's benefit from a gift annuity can be expressed as the future value (otherwise known as the "residuum"), which is available to the charity after satisfying the payment obligation. When calculating suggested rates, the ACGA begins with a target residuum and calculates the rates that would produce the residuum, taking into consideration assumptions about returns, expenses, and mortality.

The benefit of a gift annuity can also be expressed as the present value, which is what the gift is worth today, assuming a certain discount rate. Suppose that a donor contributes $30,000 for a gift annuity, and the present value of what the

Text continues on page 14.

Figure 3.2

Analysis of Risk (Gift Annuities)
Based on ACGA Rates Effective January 1, 2024

Ages(s) of Annuitants	ACGA Rate	Life Expectancy(1)	Year When Initial Gift is Exhausted(2): 3.0% return	4.0% return	4.75% return(3)	5.0% return	6.0% return	7.0% return
55	4.8%	35.9	35	47	100	∞	∞	∞
55 & 55	4.4%	41.5	40	63	∞	∞	∞	∞
60	5.2%	30.9	31	39	54	68	∞	∞
60 & 60	4.7%	36.3	36	50	∞	∞	∞	∞
65	5.7%	26.1	27	32	40	44	∞	∞
65 & 65	5.0%	31.2	36	43	66	∞	∞	∞
70	6.3%	21.6	23	27	32	34	54	∞
70 & 70	5.5%	26.3	28	35	44	51	∞	∞
75	7.0%	17.1	20	23	26	27	35	∞
75 & 75	6.2%	21.4	24	28	33	35	60	∞
80	8.1%	13.0	17	19	21	21	25	31
80 & 80	6.9%	16.8	21	24	27	28	36	∞
85	9.1%	9.4	15	16	17	18	20	23
85 & 85	8.1%	12.6	17	19	21	21	25	31
90	10.1%	6.7	13	14	15	16	17	19
90 & 90	9.8%	9.2	14	15	16	16	18	20

(1) Life expectancy as of 2024 according to the Individual Annuity Reserving Table (2012 IAR) for females.
(2) Investment returns are net of expenses.
(3) The net investment return assumed by the ACGA in determining suggested rates is 4.75%.

Observations

If the charity achieves a constant net total return equal to the ACGA assumed return of 4.75%, the reserves for a gift annuity would not be exhausted prior to the end of life expectancy.

In most instances, even if the charity earns a net return of only 3%, the initial gift would not be exhausted until past life expectancy. The younger the annuitants at the time of the gift, the greater the possibility they will live long enough to exhaust the initial gift.

This analysis assumes that the charity invests 100% of the contribution. If a charity initially spends a portion of the contribution and invests the balance, the risk of exhausting the funds will be greater.

Note that this illustration assumes a constant annual rate of return. Real-world investment returns, however, can be quite variable from year to year. The reserves for a gift annuity could be exhausted sooner than illustrated, especially if returns are low or negative in the years immediately following the establishment of the annuity. (See Figure 3.4 for an illustration of the effect of variable investment returns.)

Figure 3.3

Analysis of Risk (Deferred Gift Annuities)
Based on ACGA Rates Effective January 1, 2024

Ages(s) of Annuitants	ACGA Rate	Years Deferred	Life Expectancy[1]	Year When Initial Gift is Exhausted[2] 3.0% return	4.0% return	4.75% return[3]	5.0% return	6.0% return
45	13.8%	20	46.2	38	47	66	88	∞
45 & 45	12.1%	20	52.0	42	54	129	∞	∞
50	10.9%	15	41.0	35	44	61	79	∞
50 & 50	9.6%	15	46.7	39	52	122	∞	∞
55	8.7%	10	35.9	33	41	55	68	∞
55 & 55	7.6%	10	41.5	37	50	132	∞	∞
60	6.9%	5	30.9	30	38	50	60	∞
60 & 60	6.0%	5	36.3	36	49	145	∞	∞

(1) Life expectancy as of 2024 according to the Individual Annuity Reserving Table (2012 IAR) for females.
(2) Investment returns are net of expenses.
(3) The net investment return assumed by the ACGA in determining its current suggested rates (effective 1/1/2024) is 4.75%.

Observations

If the charity achieves a constant net total return equal to the ACGA assumed return of 4.75%, the reserves for a gift annuity would not be exhausted prior to the end of life expectancy.

Even if the charity earns a net return of only 4%, the reserve would not be exhausted until past life expectancy, though exhaustion is possible if annuitants who are 50 or younger at the time of the gift live only slightly beyond life expectancy.

This analysis assumes that the charity invests 100% of the contribution. If a charity initially spends a portion of the contribution and invests the balance, the risk of exhausting the funds will be greater.

Note that this illustration assumes a constant annual rate of return. Real-world investment returns, however, can be quite variable from year to year. The reserves for a gift annuity could be exhausted sooner than illustrated, especially if returns are low or negative in the years immediately following the establishment of the annuity. (See Figure 3.4 for an illustration of the effect of variable investment returns.)

Figure 3.4

Effect of Variable Investment Returns on Projections

To illustrate the effect of year-to-year variations in investment returns on projections, consider a donor who contributes $100,000 for a gift annuity, receives annual payments of $7,200, payable at the end of each year, and dies exactly 10 years after the contribution. Assume the portfolio earns an average net total investment return of 6.0% per year during the ten-year period.

This table illustrates the different results for three different portfolios. Each portfolio earns an average net total investment return of 6.0% per year, but: (A) sustains losses in the early years, (B) sustains the same losses but in later years, and (C) maintains a stable return of 6.0% each year.

	Portfolio A (losses early)		**Portfolio B** (losses later)		**Portfolio C** (stable return)	
Year	**Net Return**	**Ending Balance**	**Net Return**	**Ending Balance**	**Net Return**	**Ending Balance**
1	-12%	$80,800	+12%	$104,800	6%	$98,800
2	-2%	$71,984	+8%	$105,984	6%	$97,528
3	+3%	$66,944	+9%	$108,323	6%	$96,180
4	+5%	$63,091	+10%	$111,955	6%	$94,750
5	+12%	$63,462	+15%	$121,548	6%	$93,235
6	+15%	$65,781	+12%	$128,934	6%	$91,630
7	+10%	$65,159	+5%	$128,180	6%	$89,927
8	+9%	$63,823	+3%	$124,826	6%	$88,123
9	+8%	$61,719	-2%	$115,129	6%	$86,210
10	+12%	$61,937	-12%	$94,114	6%	$84,183

This illustration demonstrates that the amount remaining for the charity depends not only on the average yearly net returns but also on the timing of those returns. At the end of year ten, Portfolio B, which sustained losses late and otherwise had above average returns, has the largest balance. Portfolio C, which had the same 6% net return every year, has the next largest balance. Portfolio A, which sustained losses early and otherwise had above average returns, has the smallest balance by a wide margin. In short, investment performance in the first few years after a gift annuity is funded can have a profound impact on the amount remaining when the gift annuity terminates.

charity will realize after fulfilling its payment obligation is $10,000. The value of the gift annuity to the charity would be equivalent to a $10,000 outright gift.

Figure 3.5 shows the residuum a charity would realize from a contribution of $100,000, assuming the annuitants live to life expectancy projected by the 2012 IAR Table and assuming the charity earns a constant net return of 4.75 percent, which is the return assumption underlying the current ACGA rates. Figure 3.5 also shows the present value of what the charity would realize, based on a discount rate equal to the ACGA's assumed gross and net returns on reserves.

Figure 3.5

Hypothetical Projected Residua

To illustrate the projected residuum and present value of the residuum, consider a contribution of $100,000 in exchange for a gift annuity at the ACGA suggested rates. Assume annual payments at the end of each period and that the annuitant(s) live exactly to their life expectancy.

Annuitant Age(s)	ACGA Rate(1)	Life Expectancy(2)	Projected Residuum(3)	Present Value(4)	PV as a % of Residuum
65	5.7%	26.1	$56,191	$16,736	29.8%
65 & 65	5.0%	31.2	$84,086	$19,766	23.5%
70	6.3%	21.5	$50,081	$18,466	36.9%
70 & 70	5.5%	26.3	$65,414	$19,303	29.5%
75	7.0%	17.1	$47,839	$21,635	45.2%
75&75	6.2%	21.4	$53,302	$19,745	37.0%
80	8.1%	13.0	$47,443	$25,952	54.7%
80 & 80	6.9%	16.8	$54,470	$24,979	45.9%
85	9.1%	9.4	$58,831	$38,033	64.6%
85 & 85	8.1%	12.6	$53,024	$29,548	55.7%
90	10.1%	6.7	$70,585	$51,723	73.3%
90 & 90	9.8%	9.2	$52,206	$34,065	65.3%

(1) ACGA suggested rate as of January 1, 2024
(2) Life expectancy as of 2024 according to the Individual Annuity Reserving Table (2012 IAR) for females
(3) Constant net investment return of 4.75% per year
(4) Present value discounted at 4.75%

Note: The life expectancies projected by the 2012 IAR Table have a larger impact on the outcomes of annuities for younger annuitants than for older annuitants.

Life Expectancies Based on 2012 IAR Table as of 2024

One Life

Age	Male	Female	Age	Male	Female	Age	Male	Female
0	91.9	93.4	41	48.7	50.4	82	10.4	11.5
1	90.9	92.5	42	47.6	49.4	83	9.7	10.8
2	89.9	91.5	43	46.6	48.3	84	9.0	10.1
3	88.8	90.4	44	45.5	47.3	85	8.4	9.5
4	87.8	89.4	45	44.5	46.2	86	7.8	8.8
5	86.7	88.3	46	43.4	45.2	87	7.3	8.3
6	85.7	87.3	47	42.4	44.2	88	6.7	7.7
7	84.6	86.2	48	41.3	43.1	89	6.2	7.2
8	83.5	85.2	49	40.3	42.1	90	5.8	6.7
9	82.5	84.1	50	39.3	41.1	91	5.4	6.2
10	81.4	83.0	51	38.3	40.0	92	5.0	5.8
11	80.3	82.0	52	37.2	39.0	93	4.6	5.4
12	79.3	80.9	53	36.2	38.0	94	4.3	5.0
13	78.2	79.9	54	35.2	37.0	95	4.0	4.6
14	77.1	78.8	55	34.2	35.9	96	3.7	4.3
15	76.0	77.8	56	33.2	34.9	97	3.4	3.9
16	75.0	76.7	57	32.2	33.9	98	3.2	3.7
17	73.9	75.7	58	31.3	32.9	99	3.0	3.4
18	72.9	74.6	59	30.3	31.9	100	2.8	3.1
19	71.8	73.6	60	29.3	30.9	101	2.6	2.9
20	70.7	72.5	61	28.3	29.9	102	2.4	2.7
21	69.7	71.5	62	27.4	29.0	103	2.3	2.5
22	68.6	70.4	63	26.4	28.0	104	2.1	2.4
23	67.6	69.3	64	25.5	27.1	105	2.0	2.2
24	66.5	68.3	65	24.6	26.1	106	2.0	2.1
25	65.5	67.2	66	23.7	25.2	107	2.0	2.0
26	64.4	66.2	67	22.7	24.3	108	2.0	2.0
27	63.4	65.1	68	21.8	23.3	109	2.0	2.0
28	62.3	64.1	69	20.9	22.4	110	2.0	2.0
29	61.3	63.0	70	20.0	21.5	111	2.0	2.0
30	60.2	62.0	71	19.1	20.6	112	2.0	2.0
31	59.2	60.9	72	18.3	19.7	113	2.0	2.0
32	58.1	59.9	73	17.4	18.9	114	1.9	1.9
33	57.1	58.8	74	16.6	18.0	115	1.9	1.9
34	56.0	57.8	75	15.7	17.1	116	1.8	1.8
35	55.0	56.7	76	14.9	16.3	117	1.7	1.7
36	53.9	55.7	77	14.1	15.4	118	1.5	1.5
37	52.9	54.6	78	13.3	14.6	119	1.1	1.1
38	51.8	53.6	79	12.5	13.8	120	0.5	0.5
39	50.8	52.5	80	11.8	13.0			
40	49.7	51.5	81	11.1	12.3			

APPENDIX 1

Joint and Survivor—
One Male Annuitant and One Female Annuitant

Ages	M/F Joint Life Expectancy	Ages	M/F Joint Life Expectancy	Ages	M/F Joint Life Expectancy
5/5	93.3	34/34	62.8	63/63	32.5
6/6	92.2	35/35	61.8	64/64	31.5
7/7	91.2	36/36	60.7	65/65	30.5
8/8	90.1	37/37	59.7	66/66	29.5
9/9	89.1	38/38	58.6	67/67	28.5
10/10	88.0	39/39	57.6	68/68	27.5
11/11	87.0	40/40	56.5	69/69	26.5
12/12	85.9	41/41	55.5	70/70	25.5
13/13	84.9	42/42	54.4	71/71	24.6
14/14	83.8	43/43	53.4	72/72	23.6
15/15	82.8	44/44	52.3	73/73	22.6
16/16	81.7	45/45	51.3	74/74	21.7
17/17	80.7	46/46	50.2	75/75	20.7
18/18	79.6	47/47	49.2	76/76	19.8
19/19	78.6	48/48	48.1	77/77	18.8
20/20	77.5	49/49	47.1	78/78	17.9
21/21	76.5	50/50	46.0	79/79	17.0
22/22	75.5	51/51	45.0	80/80	16.1
23/23	74.4	52/52	43.9	81/81	15.3
24/24	73.4	53/53	42.9	82/82	14.4
25/25	72.3	54/54	41.8	83/83	13.6
26/26	71.3	55/55	40.8	84/84	12.8
27/27	70.2	56/56	39.7	85/85	12.0
28/28	69.2	57/57	38.7	86/86	11.3
29/29	68.1	58/58	37.7	87/87	10.6
30/30	67.1	59/59	36.6	88/88	9.9
31/31	66.0	60/60	35.6	89/89	9.3
32/32	65.0	61/61	34.6	90/90	8.7
33/33	63.9	62/62	33.6		

American Council on Gift Annuities ("ACGA") Suggested Gift Annuity Rates

APPENDIX 2

Maximum Gift Annuity Rates for a Single Life
Suggested by the ACGA
Rates effective January 1, 2024.

Age	Rate	Age	Rate	Age	Rate
5-	3.8	36	4.1	67	5.9
6	3.8	37	4.1	68	6.1
7	3.8	38	4.2	69	6.2
8	3.8	39	4.2	70	6.3
9	3.8	40	4.2	71	6.4
10	3.8	41	4.2	72	6.6
11	3.8	42	4.3	73	6.7
12	3.9	43	4.3	74	6.8
13	3.9	44	4.3	75	7.0
14	3.9	45	4.4	76	7.2
15	3.9	46	4.4	77	7.4
16	3.9	47	4.4	78	7.6
17	3.9	48	4.5	79	7.8
18	3.9	49	4.5	80	8.1
19	3.9	50	4.6	81	8.3
20	3.9	51	4.6	82	8.5
21	3.9	52	4.6	83	8.7
22	3.9	53	4.7	84	8.9
23	3.9	54	4.8	85	9.1
24	3.9	55	4.8	86	9.3
25	4.0	56	4.9	87	9.5
26	4.0	57	4.9	88	9.7
27	4.0	58	5.0	89	9.9
28	4.0	59	5.1	90	10.1
29	4.0	60	5.2	91	10.1
30	4.0	61	5.3	92	10.1
31	4.0	62	5.4	93	10.1
32	4.1	63	5.4	94	10.1
33	4.1	64	5.6	95+	10.1
34	4.1	65	5.7		
35	4.1	66	5.8		

Maximum Gift Annuity Rates for Two Lives – Joint and Survivor
Suggested by the ACGA

Rates effective January 1, 2024.

Younger Age	Older Age	Rate	Younger Age	Older Age	Rate	Younger Age	Older Age	Rate	Younger Age	Older Age	Rate
5-	5+	3.6	30	30+	3.8	51	51-54	4.3	60	60-62	4.7
6	6+	3.6	31	31+	3.8	51	55+	4.4	60	63-66	4.8
7	7+	3.6	32	32+	3.9	52	52-53	4.3	60	67-71	4.9
8	8+	3.6	33	33+	3.9	52	54+	4.4	60	72+	5.0
9	9+	3.6	34	34+	3.9	53	53-58	4.4	61	61	4.7
10	10+	3.6	35	35+	3.9	53	59+	4.5	61	62-64	4.8
11	11+	3.6	36	36+	3.9	54	54-56	4.4	61	65-68	4.9
12	12+	3.7	37	37+	3.9	54	57-63	4.5	61	69-73	5.0
13	13+	3.7	38	38+	4.0	54	64+	4.6	61	74+	5.1
14	14+	3.7	39	39+	4.0	55	55	4.4	62	62-63	4.8
15	15+	3.7	40	40+	4.0	55	56-60	4.5	62	64-66	4.9
16	16+	3.7	41	41+	4.0	55	61+	4.6	62	67-70	5.0
17	17+	3.7	42	42+	4.1	56	56-59	4.5	62	71-75	5.1
18	18+	3.7	43	43+	4.1	56	60-64	4.6	62	76+	5.2
19	19+	3.7	44	44+	4.1	56	65+	4.7	63	63-65	4.9
20	20+	3.7	45	45-46	4.1	57	57-58	4.5	63	66-68	5.0
21	21+	3.7	45	47+	4.2	57	59-62	4.6	63	69-72	5.1
22	22+	3.7	46	46+	4.2	57	63+	4.7	63	73+	5.2
23	23+	3.7	47	47+	4.2	58	58-61	4.6	64	64	4.9
24	24+	3.7	48	48-51	4.2	58	62-66	4.7	64	65-67	5.0
25	25+	3.8	48	52+	4.3	58	67+	4.8	64	68-70	5.1
26	26+	3.8	49	49-50	4.2	59	59	4.6	64	71-73	5.2
27	27+	3.8	49	51+	4.3	59	60-64	4.7	64	74-78	5.3
28	28+	3.8	50	50-56	4.3	59	65-68	4.8	64	79+	5.4
29	29+	3.8	50	57+	4.4	59	69+	4.9	65	65	5.0

Maximum Gift Annuity Rates for Two Lives – Joint and Survivor
Suggested by the ACGA
Rates effective January 1, 2024.

Younger Age	Older Age	Rate	Younger Age	Older Age	Rate	Younger Age	Older Age	Rate	Younger Age	Older Age	Rate
65	66-68	5.1	69	71-72	5.5	72	79-80	6.2	76	78-79	6.5
65	69-71	5.2	69	73-74	5.6	72	81-83	6.3	76	80-81	6.6
65	72-74	5.3	69	75-76	5.7	72	84+	6.4	76	82-83	6.7
65	75-78	5.4	69	77-79	5.8	73	73	5.9	76	84-85	6.8
65	79+	5.5	69	80-82	5.9	73	74-75	6.0	76	86-88	6.9
66	66-67	5.1	69	83+	6.0	73	76	6.1	76	89+	7.0
66	68-69	5.2	70	70	5.5	73	77-78	6.2	77	77-78	6.5
66	70-72	5.3	70	71-72	5.6	73	79-80	6.3	77	79	6.6
66	73-75	5.4	70	73-74	5.7	73	81-83	6.4	77	80-81	6.7
66	76-79	5.5	70	75-76	5.8	73	84+	6.5	77	82-83	6.8
66	80+	5.6	70	77-78	5.9	74	74	6.0	77	84-85	6.9
67	67-68	5.2	70	79-81	6.0	74	75	6.1	77	86-87	7.0
67	69-70	5.3	70	82+	6.1	74	76	6.2	77	88-90	7.1
67	71-73	5.4	71	71	5.6	74	77-78	6.3	77	91+	7.2
67	74-75	5.5	71	72-73	5.7	74	79-80	6.4	78	78	6.6
67	76-79	5.6	71	74	5.8	74	81-83	6.5	78	79	6.7
67	80+	5.7	71	75-76	5.9	74	84+	6.6	78	80-81	6.8
68	68-69	5.3	71	77-78	6.0	75	75	6.2	78	82	6.9
68	70-71	5.4	71	79-80	6.1	75	76-77	6.3	78	83-84	7.0
68	72-73	5.5	71	81+	6.2	75	78-79	6.4	78	85-86	7.1
68	74-76	5.6	72	72	5.7	75	80-81	6.5	78	87-88	7.2
68	77-79	5.7	72	73	5.8	75	82-83	6.6	78	89-91	7.3
68	80-82	5.8	72	74-75	5.9	75	84-86	6.7	78	92+	7.4
68	83+	5.9	72	76	6.0	75	87+	6.8	79	79	6.8
69	69-70	5.4	72	77-78	6.1	76	76-77	6.4	79	80-81	6.9

APPENDIX 2

Maximum Gift Annuity Rates for Two Lives – Joint and Survivor
Suggested by the ACGA
Rates effective January 1, 2024.

Younger Age	Older Age	Rate	Younger Age	Older Age	Rate	Younger Age	Older Age	Rate	Younger Age	Older Age	Rate
79	82	7.0	81	88	7.7	83	90-91	8.3	86	89	8.8
79	83-84	7.1	81	89-90	7.8	83	92	8.4	86	90	8.9
79	85	7.2	81	91	7.9	83	93+	8.5	86	91	9.0
79	86-87	7.3	81	92-94	8.0	84	84	7.8	86	92+	9.1
79	88-89	7.4	81	95+	8.1	84	85	7.9	87	87	8.7
79	90-92	7.5	82	82	7.3	84	86	8.0	87	88	8.8
79	93+	7.6	82	83	7.4	84	87	8.2	87	89	9.0
80	80	6.9	82	84	7.5	84	88	8.3	87	90	9.1
80	81	7.0	82	85	7.6	84	89	8.4	87	91+	9.3
80	82	7.1	82	86	7.7	84	90	8.5	88	88	9.0
80	83	7.2	82	87	7.8	84	91-92	8.6	88	89	9.2
80	84-85	7.3	82	88	7.9	84	93+	8.7	88	90	9.4
80	86	7.4	82	89-90	8.0	85	85	8.1	88	91+	9.5
80	87-88	7.5	82	91	8.1	85	86	8.2	89	89	9.4
80	89	7.6	82	92-93	8.2	85	87	8.3	89	90	9.6
80	90-92	7.7	82	94+	8.3	85	88	8.5	89	91+	9.7
80	93+	7.8	83	83	7.5	85	89	8.6	90	90	9.8
81	81	7.1	83	84	7.7	85	90	8.7	90	91+	9.9
81	82	7.2	83	85	7.8	85	91	8.8	91	91+	9.9
81	83	7.3	83	86	7.9	85	92+	8.9	92	92+	9.9
81	84	7.4	83	87	8.0	86	86	8.3	93	93+	9.9
81	85	7.5	83	88	8.1	86	87	8.5	94	94+	9.9
81	86-87	7.6	83	89	8.2	86	88	8.6	95+	95+	9.9

APPENDIX 2

ACGA Procedure for Calculating Suggested Maximum Deferred Gift Annuity Rates

1. Determine the annuity starting date, which is:
   one year before the first payment, if payments are made annually;
   six months before the first payment, if payments are made semi-annually;
   three months before the first payment, if payments are made quarterly; and
   one month before the first payment, if payments are made monthly.

2. Determine the number of whole and fractional years from the date of the contribution to the annuity starting date (the deferral period). Express the fractional year to four decimal places.

3. Use the following formula to determine the compound interest factor:
   $F = 1.0475^d$, where:
   F is the compound interest factor and
   ^{d} is the deferral period.

   Example: If the period between the contribution date and the annuity starting date is 10.5 years, the compound interest factor would be $1.0475^{10.5} = 1.627861$

4. Multiply the compound interest factor (F) by the immediate gift annuity rate for the nearest age or ages of a person or persons at the annuity starting date.

   Example: If the sole annuitant will be nearest age 65 on the annuity starting date and the compound interest factor is 1.627861, the deferred gift annuity rate would be 1.627861 x 5.7% = 9.3% (rounded to the nearest tenth of a percent).

Comments

The annuity starting date for purposes of calculating the deferred gift annuity rate will be the same as the annuity starting date for calculating the charitable deduction, if payments are at the end of the period (which is usually the case).

An annuitant is credited with compound interest for the entire period from the date of contribution to the annuity starting date.

Notes:

1. The gift annuity rates are for ages at the nearest birthday.

2. For deferred gift annuities with longer deferral periods, the suggested rates may not meet the 10% minimum charitable deduction test, especially if the CMFR is low. In those instances, it will be necessary to reduce the rate to have a qualified annuity.

APPENDIX 2

3. PG Calc's PGM Anywhere software will calculate the maximum rate that can be offered to meet the 10% deduction test.

Deferred Payment Gift Annuity Factors for New York and New Jersey

Occasionally, in the past, the ACGA's rates for deferred gift annuities exceeded the allowable deferred gift annuity rates in New York and New Jersey because of the maximum compound interest factors allowed in those states. When that happened, it was necessary to reduce the ACGA deferred gift annuity rate to comply with the requirements of those states. However, this has not been the case for many years.

At this time, the AGCA suggested maximum rates for deferred gift annuities satisfy New Jersey requirements for all deferral periods, whatever the sex on the annuitants. The same is true in New York since legislation went into effect on January 23, 2024 that revised how New York computes its maximum allowable rates for gift annuities and deferred gift annuities.

HISTORICAL ASSUMED TOTAL RETURNS—IMMEDIATE GIFT ANNUITIES

APPENDIX 3

List of total returns assumed by the American Council on Gift Annuities (ACGA) in years when it recommended a new schedule of rates:

1927	4.5%	
1934	4.0	
1939	3.0	
1955	3.5	
1971	4.0	
1974	4.5	
1977	5.0	
1980	5.5	
1983	6.5	
1994	5.5	
1997	7.0	(6.25% net of expenses)
1998	6.75	(6.00% net of expenses)
2001	6.50	(5.75% net of expenses)
2002	6.75	(5.75% net of expenses)
2003 (1/1)	6.25	(5.25% net of expenses)
2003 (7/1)	6.00	(5.00% net of expenses)
2006	6.25	(5.25% net of expenses)
2008	5.75	(4.75% net of expenses)
2009	5.25	(4.25% net of expenses)
2010	5.50	(4.50% net of expenses)
2011	5.00	(4.00% net of expenses)
2012 – 2017	4.25	(3.25% net of expenses)
2018	4.75	(3.75% net of expenses)
2020 – Jan	4.25	(3.25% net of expenses)
2020 – July	3.75	(2.75% net of expenses)
2022 – July	4.5	(3.5% net of expenses)
2023 – Jan	5.25	(4.25% net of expenses)
2024 – Jan	5.75	(4.75% net of expenses)

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Historical Gift Annuity Rates—Immediate Gift Annuities

APPENDIX 4

	65	70	75	80	85	90
1927	6.8%	7.6%	8.7%	9.0%	9.0%	9.0%
1931	6.2	6.7	7.3	8.0	8.0	8.0
1934	5.7	6.2	7.0	8.0	8.0	8.0
1939	5.1	5.5	6.2	7.0	7.0	7.0
1955	5.0	5.5	6.3	7.4	7.4	7.4
1965	5.2	5.7	6.5	7.6	8.0	8.0
1971	5.6	6.2	7.0	8.2	9.7	10.0
1974	6.0	6.6	7.4	8.5	10.0	10.0
1977	6.2	6.8	7.7	9.0	10.5	12.0
1980	6.6	7.1	7.9	9.2	11.2	14.0
1983	7.3	7.8	8.5	9.6	11.4	14.0
1986	7.3	7.8	8.5	9.6	11.4	14.0
1989	7.3	7.8	8.5	9.6	11.4	14.0
1992	7.3	7.8	8.5	9.6	10.9	12.0
1994	6.5	6.9	7.7	8.8	10.0	11.0
1997	7.2	7.7	8.4	9.4	10.5	12.0
1998	7.0	7.5	8.2	9.2	10.5	12.0
1999	7.0	7.5	8.2	9.2	10.5	12.0
2001	6.7	7.2	7.9	8.9	10.4	12.0
2002	6.7	7.2	7.9	8.9	10.4	12.0
2003 (1/1)	6.3	6.7	7.3	8.3	9.7	11.5
2003 (7/1)	6.0	6.5	7.1	8.0	9.5	11.3
2006 (7/1)	6.0	6.5	7.1	8.0	9.5	11.3
2008 (7/1)	5.7	6.1	6.7	7.6	8.9	10.5
2009 (2/1)	5.3	5.7	6.3	7.1	8.1	9.5
2010 (7/1)	5.5	5.8	6.4	7.2	8.1	9.5
2011 (7/1)	5.3	5.8	6.5	7.5	8.4	9.8
2012 (1/1)	4.7	5.1	5.8	6.8	7.8	9.0
2018 (7/1)	5.1	5.6	6.2	7.3	8.3	9.5
2020 (1/1)	4.7	5.1	5.8	6.9	8.0	9.0
2020 (7/1)	4.2	4.7	5.4	6.5	7.6	8.6
2022 (7/1)	4.8	5.3	6.0	7.0	8.1	9.1
2023 (1/1)	5.4	5.9	6.6	7.6	8.7	9.7
2024 (1/1)	5.7	6.3	7.0	8.1	9.1	10.1

Chapter 4

Deduction Calculation & Payment Taxation

Prior to the introduction of planned giving software programs, the amount of the charitable deduction and the taxation of annuity payments had to be calculated manually. Some of these calculations were simple; others were long and tedious. While software has relieved us of this onerous task and assures accuracy – if the information is entered correctly – a disadvantage is that there is less understanding of the methodology of the calculations and the interplay of the various factors involved.

There's little point to performing manual calculations day after day, but there is value in reviewing the methodology behind the calculations because understanding how deductions and taxation of payments are derived helps equip the practitioner to estimate expected results within a range, recognize a suspect value in the software output, and identify potential errors. In addition, a basic understanding is helpful when explaining the numbers to donors and their advisors.

It is impractical to cover all possible scenarios, but to explore the calculations involved we will review the basics of present value, the Charitable Midterm Federal Rate (the "IRS Discount Rate") used in the calculations, and the inputs required for gift annuity calculations before delving into an example of the detailed calculations for a gift annuity.

Present Value Versus Future Value

A dollar that a charitable organization can use today is worth more than a dollar that it will not receive until sometime in the future. To comprehend the discounted value of the charitable deduction, it is helpful to understand two important concepts, present value and future value, and how they relate to each other.

- Present value is the value in today's dollars of a certain amount of money that is not received until some future time
- Future value is the value that a certain amount of money held today will attain at some future time

Present value is often called the "discounted present value" because it is less than the amount that will be received in the future.

To calculate either the present value or the future value, an interest rate must be assumed. When calculating present value, the assumed rate is often called the "discount rate." Depending upon the purpose of the calculation, the assumed interest rate is usually tied to either historic or expected rates of interest or inflation. For gift annuity calculations, the interest rate is set by the IRS (see next section).

For example, assuming a 5% discount rate:

- $61,391 is the present value of $100,000 that will not be received until ten years from now. This means that, assuming a 5% interest rate, $100,000 is expected to purchase the same amount of goods and services ten years from now as $61,391 can purchase today.
- $162,889 is the future value of $100,000 held today that earns interest at the rate of 5% for ten years. This means that, assuming a 5% interest rate, $100,000 today can be expected to grow to $162,889 in ten years.

Finally, though it might seem a bit confusing, the same amounts expressed in a present value statement can also be expressed as a future value statement. In other words:

- $100,000 is the present value of $162,889 received ten years from now.
- $162,889 is the future value, ten years from now, of $100,000 received today.

Charitable Midterm Federal Rate — The "IRS Discount Rate"

One of the key variables in the calculations for a gift annuity is the interest rate used to estimate present value. The calculations must use the "Charitable Midterm Federal Rate" (or "CMFR"), which is defined as 120% of the "Applicable Federal Midterm Rate" (or "AFR"), rounded to the nearest 0.2%.

The CMFR is commonly referred to as the "IRS Discount Rate" but is also known by other names. It is mistakenly called the "AFR" (mistakenly because the CMFR is actually 120% of the AFR). Sometimes it is referred to as the "7520 Rate" (for the Internal Revenue Code Section from which it comes). For our purposes, we will use "IRS Discount Rate," but CMFR, 7520 Rate, and even AFR are sometimes used synonymously.

The IRS Discount Rate changes each month. The IRS announces the new rate for the next month on or about the 15th of each month. The IRS Discount Rate can have a significant impact on the amount of the charitable deduction. When computing the charitable deduction, the donor is allowed to choose the IRS Discount Rate for the month in which the gift is made *or the Rate for either of the two months prior to the date of the gift*, whichever produces the best result for the donor. In fact, with a little careful planning a donor can choose from among four rates by waiting until the next month's IRS Discount Rate is announced before deciding in which month to complete the gift.

Since the regulations allow any one of three different rates (the month of the gift or either of the previous two months) to be used, donors should be careful to select the rate that produces the most advantageous result for their circumstances. Usually, the donor will choose the IRS Discount Rate that yields the largest deduction. However, gift annuity donors should also consider the impact of the IRS Discount Rate on the tax-free portion of their annuity payment. The highest IRS Discount Rate produces the largest deduction for charitable gift annuities, but also the lowest tax-free portion of the annuity payment.

These general rules can help a donor select the best IRS Discount Rate:

- The highest IRS Discount Rate produces the largest deduction for charitable remainder trusts and charitable gift annuities (but also the lowest tax-free portion of the annuity payment)

- The lowest IRS Discount Rate produces the largest deduction for retained life estate agreements
- A change in the IRS Discount Rate has a much smaller impact on the deduction for a charitable remainder unitrust than on the deduction for a charitable gift annuity, charitable remainder annuity trust, or retained life estate.

Required Inputs

Calculating the charitable deduction requires several inputs:

- **Date of Gift** – This is the date the gift was completed for purposes of the income tax charitable deduction.
- **Amount of Gift** – This is the amount of money or the fair market value of the property contributed as of the Date of Gift. Note that a qualified appraisal may be required to establish fair market value.
- **Annuitant Birth Dates** – Although illustrations are commonly prepared using the age in years, the specific birthdates are required for the final calculations because the annuitant's "actuarial age" must be used for these calculations. An annuitant's actuarial age is their age in whole years as of their birthday nearest the date of gift.
- **Payout Rate or Amount** – This is the annuity rate set in the gift annuity agreement, usually the ACGA suggested rate for the annuitant age(s).
- **Payment Schedule** – The starting point for the calculations is annual payments, but adjustments are required to account for payment frequency and timing when payments are more frequent than annual.
- **Cost Basis and Holding Period** – For non-cash gifts, the adjusted cost basis in the property (generally, what the donor paid for it) and the holding period are required to determine whether capital gain is long-term and the amount of capital gain income involved in the contribution.

Summary of Benefits

It is important to bear in mind, a charitable gift annuity is an exchange of value: in return for a contribution now, the donor receives an item of value in the form of an annuity contract obligating the charity to pay a fixed amount of money to the annuitant each year. In this sense, the gift is a bargain sale contribution because the charity is "paying" the donor, in the form of an annuity, in order to "purchase" the contribution.

For the purposes of illustration, we will assume a contribution of $25,000, a single annuitant aged 72, and quarterly payments. We will also assume the donor is the annuitant (the one who will receive the annuity payments for life) and we will use a 5.0% IRS Discount Rate.

Figure 4.1 shows a typical summary of benefits presentation for both a gift of $25,000 in cash and a contribution of appreciated property now worth $25,000 that cost $5,000 some years ago. This initial presentation to a prospective donor is a straightforward illustration of the potential charitable deduction and the taxation of the annuity payments. Note that the $9,434.25 charitable deduction and the $575.85 ordinary income portion of the annuity payments are the same for both gifts.

If the donor funds her contribution with capital gain property, she will not owe capital gains tax on the entire $20,000 gain (today's value of $25,000 minus the $5,000 she paid for it) and will pay no capital gains tax immediately. However, she will use $12,452.60 out of her $20,000 total capital gain to pay for part of the annuity she receives in return for her contribution. So, although she will pay no capital gains tax at the time of her gift, she will owe tax on a portion of the gain, which she can pay in equal installments over her life expectancy. This is why, in the case of a gift of appreciated property, a portion of the

Figure 4.1

SUMMARY OF BENEFITS: *6.6% CHARITABLE GIFT ANNUITY*

	Cash	Appreciated Property
Charitable Deduction	**$9,434.25**	**$9,434.25**
Annuity	**$1,650.00**	**$1,650.00**
Tax-free Portion	$1,074.15	$214.82
Capital Gain Income	n/a	$859.33*
Ordinary Income	$575.85	$575.85
After 14.5 years, the entire annuity becomes ordinary income.		
* Total reportable capital gain of $12,452.60 must be reported over 14.5 years, the expected lifetime of a 72-year-old.		

annuity payment is capital gain income rather than tax-free. See Figure 4.1.

Charitable Gift Annuity Deduction Amount

Figure 4.2 shows the detailed calculations for a charitable gift annuity paying $1,650 per year for the lifetime of a 72-year-old in exchange for a contribution of $25,000 either in cash or appreciated property. Note that the donor's charitable contribution deduction (Line 10) is the same for either contribution. It is simply the "Principal Donated" (Line 2) minus the "Investment in Contract" (Line 9), which is the present value of the annuity the donor receives in exchange for the contribution.

The steps to calculate the charitable deduction (Line 10) are:

1) **Determine the Adjusted Value of the annuity (Line 8)** – The Adjusted Value of annuity is the discounted present value of an annual annuity of one dollar paid for the lifetime of the annuitant. In this case, the Adjusted Value of an annuity paying one dollar per year (Line 8c) is 9.4338, which means each dollar of an annual annuity payment in equal quarterly installments for the lifetime of a 72-year-old annuitant is worth about $9.43 in today's dollars.

2) **Calculate the "Investment in Contact" for the annuity (Line 9)** – The "Investment in Contract" is the discounted present value of the annual annuity that will be paid for the life of the annuitant. It is calculated by multiplying the annual annuity amount (Line 7) by the Adjusted Value of an annuity of one dollar (Line 8c). In this case, an annual annuity of $1,650 times the Adjusted Value of a one-dollar annuity is $15,565.75. This amount, the Investment in Contract, is the value of what the donor is retaining out of the $25,000 transferred to fund the gift annuity.

   Conceptually, the Investment in Contract is the amount a 72-year-old might expect to spend for a commercial annuity paying $1,650 per year for life. It must be noted, however, that the Investment in Contract value is not a market price comparison. Pricing in the commercial annuity marketplace is much more complicated.

3) **Calculate the Charitable Deduction (Line 10)** – The charitable deduction is

Text continues on page 6.

Figure 4.2

Calculations: *6.6% Charitable Gift Annuity*

			Contribution Funded With:	
			Cash	**Appreciated Property**
ASSUMPTIONS:				
[1]		Annuitant	72	72
[2]		Principal Donated	$25,000.00	$25,000.00
[3]		Cost Basis of Property	$25,000.00	$5,000.00
[4]		Annuity Rate	6.6%	6.6%
[5]		Payment Schedule	Quarterly at end	Quarterly at end
[6]		IRS Discount Rate (for the month of gift or either of the previous two months)	5.0%	5.0%
CALCULATIONS:				
[7]		Annuity ([2] x [4])	$1,650.00	$1,650.00
[8]	[a]	Value of $1 for age on [1], rate on [6] (Table S in IRS Publication 1457 (5-2009))	9.2615	9.2615
	[b]	Adjustment for schedule on [5], rate on [6] (Table K in IRS Publication 1457 (5-2009))	1.0186	1.0186
	[c]	Adj. Value of $1 ([8a] x [lb.])	9.4338	9.4338
[9]		Investment in Contract ([7] x [8c])	$15,565.75	$15,565.75
[10]		**CHARITABLE DEDUCTION ([2] - [9])**	**$9,434.25**	**$9,434.25**
[11]	[a]	Expected Return for age on [1] (Table V in Reg. 1.72-9)	14.6	14.6
	[b]	Adjustment for payment schedule on [5] (Reg. 1.72-5(a)(2)(i))	-0.1	-0.1
	[c]	Expected Return per $1 ([11a] + [11b])	14.5	14.5
[12]		Expected Return ([7] x [11c])	$23,925.00	$23,925.00
[13]		Exclusion Ratio ([9] / [12]) (Regs. 1.72-4, 1.1011-2(c) Example (8))	0.651	0.651
[14]		Bargain Sale Ratio ([9] / [2]) (Regs. 1.170A-1(d), 1.1011-2(b))	n/a	0.62263
[15]		Cost Basis Allocable to Sale Portion ([14 x [3])	n/a	$3,113.15
[16]		Total Reportable Capital Gain ([14] x ([2] – [3]))	n/a	$12,452.60
[17]		Years to Report Gain (life expectancy age 72) (Reg. 1.1011-2(a)(4)(ii))	n/a	14.5

simply the amount Principal Donated (Line 2) minus the Investment in Contract (Line 9) for the annuity issued in exchange for the contribution. In this case, the deduction will be $9,434.25 because, although the donor will contribute $25,000.00, in exchange for her contribution she will receive a lifetime annuity worth $15,565.75 in today's dollars ($25,000 - $15,565.75 = $9,434.25).

Taxation of Annuity Payments

The next step is to calculate the taxation of the annuity payments. Remember that, as a part of her contribution, our donor has purchased an annuity paying her a fixed amount for her lifetime. Therefore, a portion of each annuity payment she receives is a return of the amount she spent on her annuity contract. Determining the taxation of her annuity payments involves calculating the "Exclusion Ratio" (Line 13), which is the percentage of each annuity payment the IRS considers a return of what the donor paid for the annuity contract. The steps are:

1) **Determine the "Expected Return" for the annuity (Line 12)** – The "Expected Return" is the total amount the annuity will pay if the annuitant lives to her life expectancy. It is the annual annuity amount (Line 7) multiplied by the adjusted Expected Return (Line 11c). In this case, the adjusted life expectancy for a 72-year-old is 14.5 years, so an annual annuity of $1,650 per year would pay a lifetime Expected Return of $23,925 ($1,650 annual annuity times 14.5-year life expectancy equals $23,925). Of course, the calculation assumes she lives to her precise life expectancy.

2) **Calculate the "Exclusion Ratio" (Line 13)** – The Exclusion Ratio is the percentage of each annuity payment that is a return of the donor's Investment in Contract during the annuitant's life expectancy (14.5 years in this case). It is calculated by dividing the Investment in Contract (Line 9) by the Expected Return (Line 12). In this case the Exclusion Ratio is 0.651, which means that 65.1% of each annuity payment is a return of the donor's principal for the initial 14.5 years. After that time, the donor will have recovered all of her Investment in Contract (her cost basis) and all of the annuity payments will be ordinary income.

For a cash contribution, we can stop here. For a contribution of appreciated assets, there is an additional step.

Capital Gains Tax

Although there is no capital gains tax due immediately if a donor contributes long-term capital gain property (e.g., appreciated securities) instead of cash, the donor will owe capital gains tax on some of the appreciation because the contribution is a bargain sale (see page ##). In essence, the donor is paying for the purchase of her annuity with a portion of her capital gain in the property. However, instead of paying the capital gains right away, she can pay part of the capital gains tax each year as she receives her annuity payments.

Line 14 through 17 of Figure 4.2 show how the amount of taxable capital gain is calculated. The steps are:

1) **Determine Bargain Sale Ratio (Line 14)** – The Bargain Sale Ratio is the portion of the gift that is considered to be a sale of property to the charity. The Bargain Sale Ratio is the Investment in Contract (Line 9) – the discounted present value of the annuity – divided by the value of the Principal Donated (Line 2). In this case, the Bargain Sale Ratio is 0.62263. This means that almost 62.3% of the total capital gain in the property must be reported by the donor as taxable capital gain.

The remaining 37.7% of the capital gain is a charitable contribution and therefore not taxed.

2) **Determine Total Reportable Capital Gain (Line 16)** – Total Reportable Gain is determined by multiplying the total capital gain that would result if the property were sold on the date of the gift (Line 2, Principal Donated minus Line 3, Cost Basis of the contributed property) by the Bargain Sale Ratio (Line 14). In this case, the donor would be responsible for capital gains tax on Total Reportable Capital Gain of $12,452.60.

3) **Determine the number of years to report the capital gain (Line 17)** – This is the life expectancy of the donor according to tables provided by the IRS. In this case the life expectancy of a 72-year-old annuitant is 14.5 years. Because the capital gain amount is a return of the donor's principal, it reduces the tax-free portion of the annual annuity payment.

Finally, note that all these calculations are based upon the annuitant's life expectancy. Although her annuity payments will continue unchanged for as long as she lives, if the annuitant is fortunate enough to outlive her life expectancy, she will have recovered her entire Investment in Contract (her cost basis) and, therefore, as noted earlier, her remaining annuity payments will be taxable entirely as ordinary income.

Chapter 5

Establishment & Administration of Program

Establishment of a Gift Annuity Program

The total number of charities offering gift annuities is unknown, but it may well be as many as five thousand, or even more. Initially, it was primarily religious organizations offering gift annuities. Then they were joined by private colleges and universities. Today gift annuities are offered by all types of charities, with varied missions and supported by donors on a local, regional, or national scale.

Per a 2021 survey conducted by the American Council on Gift Annuities (ACGA), 8 percent of all organizations that responded indicated they had been offering gift annuities for less than 10 years, with just 3 percent starting their gift annuity programs within the past five years. While there continues to be an expansion of charities offering annuities, the numbers as reflected in recent ACGA surveys have been decreasing. In the 2013 survey 20 percent of respondents had been operating their program for less than 10 years, while in the 2017 survey it was 11 percent. This could be a reflection of general economic conditions, budgetary or staffing considerations, annuity rates having remained low during that time, or simply that fewer organizations with new programs responded to the more recent surveys.

Note: For several reasons, gift annuities are seldom issued by private foundations. First, the donors most interested in establishing a gift annuity would likely be those with the status of "disqualified persons" vis-à-vis the foundation. Issuing a gift annuity to any such person would be a prohibited act of self-dealing on the part of the foundation. Conversely, private foundations typically do not seek contributions from persons beyond a limited group of existing supporters, out of a concern that any sort of broad fundraising might transform them into public charities. In addition, it could be a challenge to meet the requirements of states that regulate gift annuities depending on the size of the foundation and how it was organized (corporation vs. trust). Finally, if a donor were to fund a gift annuity with a private foundation using any asset other than cash or long-term appreciated publicly-traded securities (such as real estate, for instance), his or her deduction would be a function of the lesser of the asset's fair market value or its cost basis.

Deciding Whether to Start a Gift Annuity Program

In order to start a gift annuity program, a charity should have sufficient financial strength, a significant number of prospective donors, and one or more staff persons whose time can be allocated to the program. If upon reflection a charity decides not to start a program, it may still be able to make gift annuities available to donors through partnership with a related organization or a community foundation which does issue gift annuities.

Financial Strength

Individuals who contribute for gift annuities may depend on the payments for personal and family security. Thus, only charities that are financially sound and expect to operate indefinitely in the future should accept contributions in exchange for promised payments. Most states that exempt gift annuities from regulation still require the charity to have been in existence three or more years and to have a minimum amount of available assets ranging from $100,000 to $2 million. Those states want to protect their citizens from newly-formed and struggling charities that might default on annuity obligations. Fortunately, instances of default are extremely rare, and that will remain the case so long as gift annuity programs are launched only by charities that have adequate financial resources and invest gift annuity reserves prudently. If a charity is struggling to stay afloat, clearly it should not be offering gift annuities.

Significant Donor Base

The most successful gift annuity programs have vibrant annual giving programs to which loyal donors have been continuously contributing. Donors with a history of giving and commitment to a charity are prime candidates for the charity's gift annuity program.

The primary market for gift annuities is individuals over age 65, and particularly those over age 70. The gift annuity appeals especially to individuals who have reached that stage of life where fixed payments are more important than potential asset growth, and who are charitably inclined.

A secondary market for gift annuities is mid-life individuals (ages 45-65) who are charitably inclined and would like to establish a supplemental retirement plan. They are prospects for a deferred gift annuity.

Although a charity can attract some gifts from this younger group, most contributions for gift annuities will come from older donors. If a charity has hundreds of existing donors in the 65-90 age range, it should be successful, provided it has dedicated staff and is diligent in its marketing. If a charity has a donor base of mostly younger donors, it should use other techniques and save gift annuities until later.

Staff Person(s) Assigned to Gift Annuity Program

Gift annuity programs that depend on volunteers or on development staff distracted by multitudinous duties are usually unsuccessful. Volunteers have limited time to make successive cultivation calls, but they can open doors and make referrals. Development officers responsible for the annual fund, special events, and proposal writing, as well as planned giving, wind up allocating to planned giving only leftover time, which is minimal. Successful gift annuity programs almost always have one or more dedicated staff persons who understand gift annuities technically and who have the time to market them and call on prospective donors.

In addition to time spent on donor cultivation, a charity must be able to undertake the ongoing administrative obligations that come with issuing gift annuities. Such tasks – generating gift calculations, preparing the annuity agreements, making timely annuity payments, and completing tax reporting – can be handled in-house or can be outsourced. Before deciding to start a gift annuity program, a charity should determine whether it has the staff and/or the budget resources to insure the timely and accurate handling of these responsibilities.

Actions by the Board of the Charity

Assuming the charity meets the above three conditions for a successful gift annuity program and a satisfactory business plan has been developed, the charity's governing board would adopt a resolution approving the issuance of gift annuities. See Appendix 1 for a sample resolution.

The resolution should:

1. Approve a schedule of gift annuity rates to be offered. It is recommended that the charity follow the rates suggested by the ACGA. They have credibility with state insurance regulators, and they are sufficiently conservative to minimize risk to the charity. A charity could further reduce its risk and enlarge the eventual residuum by offering still lower rates, but it could be at a disadvantage when working with potential donors who are also considering gift annuities with charities that follow the ACGA rates. Exceeding the ACGA rates can put the charity at risk and may necessitate hiring an actuary to develop a rate schedule. Some states require such actuarial support if a charity creates its own schedule of rates (the ACGA utilizes an actuary in setting its suggested rates); even if not required, any schedule of rates should be supported by underlying assumptions and analysis.
2. Direct the establishment of one or more reserve funds. If a charity intends to offer gift annuities in regulated states that require a segregated reserve fund, it may be necessary for the charity's governing board to adopt additional resolutions, in the form required by the respective states, establishing such a reserve fund. California requires a separate trust (i.e., reserve) fund that will hold reserves for California annuitants. Thus, if the charity intends to offer gift annuities in California, it will be necessary for the governing board to adopt a resolution specifically pertaining to the establishment of a California trust fund.

   A single reserve fund will suffice for all other states, although a charity may elect to establish state-specific funds for Arkansas, Florida, and Tennesee. Regardless of whether a charity establishes a single fund or multiple funds, more than one resolution may need to be adopted by the governing board, as certain states require very specific language in the resolution.

   Even if a charity does not issue gift annuities in a state that requires a reserve fund, it is still recommended that the charity establish one and retain in it sufficient assets to cover annuity obligations.
3. Grant authority to delegate responsibility for administration of gift annuities and investment of annuity funds. Even though all associated activities could be carried out by a single party, it is also possible for them to be carried out by a combination of parties. Examples include the charity's business office, a financial institution, or some other external entity. In addition, the finance committee of the board should provide investment guidelines and regularly monitor performance.
4. Delegate authority for drafting policies and procedures. This would include setting age minimums, contribution minimums (and, if applicable, maximums), and procedures for making payments. While the Board itself could draft policies, typically this will be done by designated staff, with the policies then being adopted by the Board or Board Committee. See Appendix 2 for a sample set of policies. See Chapter 22 for best practices.

Actions by the Development Office of the Charity

(or possibly by the Planned Giving Office within the Development Office)

1. Have a set of specimen gift annuity agreements, such as those provided in Chapter 6, approved by the charity's legal counsel. While these could be drafted by counsel, an easier approach would be to make use of the agreements contained in a gift calculation software, noted in action 2.
2. Determine how gift illustrations and final calculations will be generated, whether by purchase of applicable software (e.g., PG Calc's *PGM Anywhere*) or use of a consultant (e.g., PG Calc's gift calculation service).
3. Comply with state requirements, if applicable, for issuing gift annuities. It is necessary to meet the requirements not only of the state where the charity is domiciled but also of the states where the charity will market gift annuities. In some instances this entails applying to the state for certification, while in others it involves meeting the requirements for an exemption. See Chapter 11 for a state-by-state summary of regulations and Chapter 12 for the disclosure language required by some states in gift annuity agreements.

   Since state laws are complex and the information about them sometimes difficult to obtain, a charity may wish to retain a consultant who is knowledgeable about state regulations to assist in complying with the certification and exemption requirements.

   Because some regulated states take a long time to process applications, a charity might opt to roll out its program by issuing in states with minimal regulatory requirements, where it can quickly and easily become compliant, while awaiting certification in the others.
4. Purchase or produce marketing material to provide to prospective donors.
5. Create a comprehensive marketing plan for gift annuities and arrange for training for volunteers and staff who will be involved with marketing. See Chapter 15 for ideas on creating an effective marketing program, as well as for sample marketing materials.

   With respect to training, that should be done at differing levels depending on the extent to which an individual may be interacting with donors and prospects. You may want Board members to simply be able to recognize a potential opportunity when in conversation with a peer and make a referral to a staff member, but want major gift officers to have a deeper, more technical understanding of the gift. In 2019, the American Council on Gift Annuities (ACGA) and National Association of Charitable Gift Planners (CGP) conducted a joint survey on charitable gift annuity program best practices. While most respondents reported that less than half of their fundraisers felt comfortable talking about gift annuities, the related good news was that almost 60 percent of respondents indicated that those who do feel comfortable are not limited to just planned giving staff. Training offered to non-planned giving staff primarily consists of in-house training conducted by gift planners (41 percent), but close to a quarter of respondents noted the training was a blend of in-house, use of outside consultants, and webinars, seminars, and conferences.

The following section provides guidance regarding what a charity should do once it has begun to issue gift annuities. See also Chapter 22 for best practices both in issuing and in mitigating risk.

Administration of a Gift Annuity Program

The formal administration of each gift annuity begins with the execution of the agreement once the gift has been made and concludes after the death of the sole annuitant (for a one life annuity) or the surviving annuitant (if it is a two-life annuity). Between those points, and even a bit on either side, the process includes ongoing and recurring responsibilities that are the same for every annuity, as well as circumstances that arise in operating the program as a whole, even if not with each individual annuity.

Execution of Documents

Signature Options

Charity Only

The donor(s) sign(s) an application form containing all pertinent information about the annuitant(s) and the property that will be contributed for the annuity, and then transfer(s) the property. Based on this information, and having determined the transfer date and exact value of the contributed property, the charity prepares a gift annuity agreement (which is also called "the contract"). An officer of the charity signs the agreement, but it is not signed by the donor(s). The charity should attach the signed application to the gift annuity agreement.

See Appendix 3 for a sample gift annuity agreement that is signed only by an officer of the charity and Appendix 4 for a Gift Annuity Application Form.

Donor and Charity

The gift annuity agreement is signed both by an officer of the charity and by the donor(s). An application form might still be completed prior to the preparation of the gift annuity agreement in order to ascertain the information needed for the agreement. If such an application is completed, the charity should ask the donor(s) to sign the application to attest to the accuracy of the information contained in it, even though the donor will also sign the agreem.

See Appendix 5 for a sample gift annuity agreement that is signed by both an officer of the charity and the donor. See Chapter 7 for a detailed discussion of agreement signatures, including what to do should a donor die after the contribution has been made, but before signing the agreement, and the use of electronic signatures.

Recommendation

For national charities which complete gift annuities with minimal donor contact, it may be more practical to have the donor sign only an application form and then to mail out the completed agreement.

However, where possible it is recommended that the donor(s) as well as an officer of the charity sign the agreement. In fact, certain states – Alabama, California, and New York – expressly require the signature(s) of the donor(s). Thus, even if a charity generally does not have the donors sign agreements, it must obtain signatures on agreements in those states. Washington allows an agreement without the signature(s) of the donor(s), but the application must be attached to the agreement. In Maryland and Tennessee the donor(s) must either sign a statement acknowledging receipt of the required disclosure provision, or sign an annuity agreement that includes the disclosure language.

Preparatory to completing the agreement, if the donor isn't completing an application form, it is recommended that a similar type of form be completed by a representative of the charity who is interacting with the donor. This assures that all of the necessary information will, in fact, be collected. In the case of gifts of securities, the value may not be ascertainable until the day following their transfer to the charity.

The gift annuity agreements in Chapter 6 all presuppose that both the donor(s) and an officer of the charity will sign the agreement. If that is not the case, those agreements will need to be slightly modified.

Finally, regardless of whether a charity has donors sign gift annuity agreements, the charity itself can have either one or more persons sign agreements on its behalf. The gift annuity agreements in Chapter 6 assume that two persons will be signing on behalf of the charity, and they indicate that the second person is attesting to the first person's signature. Nevertheless, the second person could also be referred to as a witness or could be identified by his or her title as signing in that capacity – just as is done in the case of the first person. In any event, the charity should assure itself that whoever signs on its behalf has sufficient authority to do so.

Note: New York does not want an outside signatory on the agreement on the part of the charity, as might be the case if making use of an attestation line. If a charity has two representatives of the organization sign each agreement, an indication of the name and title of each signatory should be noted under the signature line, and the word "attest" should not be used.

Multiple Donors

Gift annuities are frequently established by married couples using jointly-owned or community property. Nevertheless, sometimes an asset that two spouses regard as being owned by both of them turns out to be owned by only one of them, meaning that he or she alone will be the donor (unless measures are taken to transform his or her separate property into property owned by both spouses). Likewise, one spouse may not be aware that an asset he or she thinks is separate property is really owned jointly with the other spouse (although, once again, the two spouses can change the ownership if they wish). All of this underscores the importance of a charity being clear as to both a donor's marital status and, in the case of a married person, how the asset to be contributed is owned.

Less common are situations in which co-owners of a particular asset – such as siblings or two people who live together but are not married – contribute the asset in question for a gift annuity. See Chapter 2 for a discussion of the transfer tax issues that can arise with such annuities.

Moreover, occasionally a group of people who do not own any assets in common wish to pool their individual contributions in order to establish a single gift annuity for someone who will not be among those making a contribution. Examples would be co-workers wanting to honor a colleague who is retiring or alumni wanting to provide for a favorite professor. Even though such donors would be precluded from banding together to establish a charitable remainder trust, technically what they propose to do should be possible with a gift annuity. That being said, practical considerations tend to make it inadvisable. Accordingly, it is the rare charity that would agree to such an arrangement, and the yet-more-rare one that would actually promote the arrangement. Still, for an organization willing to pursue the possibility, some options exist.

One approach would be for a specific member of the group to receive money from each other member. The recipient of these cash gifts would add to the amount received his or her own gift before contributing the total amount to the charity. From the charity's standpoint, it would simply be entering into the gift annuity with but one donor. From the point of view of the group, however, there would need to be a high level of trust in the donor to follow through with the plan. Furthermore, in fairness the donor should share with each member of the group a pro rata portion of the tax savings realized by the donor in claiming the income tax charitable deduction associated with the gift annuity. This assumes, however, that the amount of the tax savings could be determined reliably. Even when it can be, the donor may not actually receive from the IRS a sum of money that can be distributed to other members of the group. Thus, in the end, it would be simplest if no deduction is claimed.

An alternative, if the total number of donors is not large, would be for the members of the group to make their respective contributions simultaneously and then sign the same gift annuity agreement. That document would need to make clear who contributed how much, with the charity then confirming for each donor what his or her share of the overall income tax charitable deduction is.

A final alternative, albeit one far less attractive than either of the other two from the charity's standpoint, would be for each member of the group to establish his or her own annuity for the benefit of the non-donor annuitant. If perhaps the charity's normal minimum gift annuity contribution were, say, $10,000, but the charity would be willing to issue a series of gift annuities for the benefit of the same annuitant so long as 20 donors agreed to contribute at least $500, this might be acceptable. While a tremendous amount of paperwork would be entailed initially, on an ongoing basis the annuity could be administered in the same manner that a single annuity established with a gift of at least $10,000 would be administered.

Variance from Annuity Rate Schedule

In certain instances, donors are looking to enhance the ultimate benefit to the charity (and correspondingly their charitable deduction) from a gift annuity, and are willing to accept an annuity rate lower than the applicable rate based on the charity's published schedule (usually the ACGA suggested rates). It is advisable in such circumstances to document the fact that the donor was made aware of the standard rate, and voluntarily accepted a lower rate. In fact, California requires that an addendum to the agreement be signed by both the donor and a charity representative, indicating the donor's acceptance. See Appendix 6 for sample addendum language. While use of an addendum is not required in other states, it supports the annuity rate used should an issue regarding the payment amount arise in the future. Absent the addendum, notes concerning discussions with the donor regarding the rate, along with copies of financial illustrations or calculations reflecting the different rates, should be kept in the file.

The flip side to the above discussion, i.e., issuing a gift annuity using a higher rate than would follow from the charity's rate schedule, raises two primary concerns: risk to the charity and violation of state regulatory requirements. Issuing an annuity at a higher rate can be a main or contributing factor in the annuity underperforming, i.e., the reserves held for the annuity being exhausted before the payment obligation terminates. In setting its rate schedule, the ACGA uses certain underlying assumptions, including residuum, mortality, investment return, and expenses. See Chapter 3. Presumably a charity that has created its own rate schedule would similarly have specific assumptions that form the basis for the rates. A charity should understand the applicable assumptions, and assess the risk it is taking on, before deciding whether to offer a higher rate. See Chapter 22 for a discussion of best practices for mitigating risk, including the impact (as well as regulatory concerns) of exceeding ACGA rates.

Disclosure of Information to Donor

Before the Gift Is Completed

A charity should do the following:

1. Give the donor a financial illustration showing the size of the payments, taxation of the payments, and the amount of the charitable deduction based on the property expected to be contributed, and encourage them to show the illustration to their tax advisor and discuss the appropriateness of the gift for their situation. This assures that each donor, as required by the *Model Standards of Practice for the Charitable Gift Planner*, will have a full explanation and can make an informed decision.
2. Give the donor a disclosure statement regarding the investment of the charity's gift annuity reserves, as required by the

Philanthropy Protection Act of 1995. See Chapter 8 for an explanation of the requirements of the Act and for a specimen disclosure statement.

3. Note that some states require disclosure language in promotional material as well as in the gift annuity agreement. See Chapter 11 for the disclosure language required by various states.

After the Gift Is Completed

The charity should send the donor a letter with the following enclosures:

1. A copy of the fully-executed gift annuity agreement.
2. Information about the schedule of payments and tax reporting requirements.
3. A copy of a tax computation form (generated by a planned giving software program or manually produced) based on the actual gift date, as well as the fair market value of the property contributed and its cost basis. By contrast, the financial illustration given to help donors reach a decision is based on estimated values and a projected gift-completion date. The computation sent with the fully-executed agreement contains the final information required for claiming the charitable deduction and for determining how annuity payments will be taxed.
4. If the deduction was based on the Charitable Midterm Federal Rate (CMFR) for either of the two months preceding the month of the gift, an Applicable Federal Midterm Rate Election.

See Chapter 9, Appendix 2 and Appendix 3, for specimens of items 2 and 4 in the immediately preceding list of enclosures.

Information Provided to Administrator

The Gift Annuity Administrator (hereinafter "Administrator") could be the charity's business office or a financial institution or other outside entity retained by the charity. The charity should send to the Administrator the information necessary for making payments to annuitants and doing federal and state reporting. Copies of the gift annuity agreement, the completed application form, and the final tax computation form should be sufficient for this purpose. In addition to information about the annuitants, the value of contributed property, and the amount of the payments (all of which are contained in the gift annuity agreement), the Administrator will need to know the adjusted cost basis of the contributed property, the date the property was acquired by the donor(s), and how the annuity payments will be taxed (as shown on the tax computation form). Also, no later than the end of the calendar year in which the first payment is made, the Administrator will need the Social Security number(s) of the annuitant(s). In the event an annuitant requests or agrees to direct deposit of the payments, the name of the annuitant's bank and the account number should also be provided. A voided check contains the information needed for direct deposit; deposit slips should not be accepted for this purpose, as they may contain inaccurate or incomplete information.

Payments to Annuitants

When to Send

The Administrator is responsible for sending payments to the annuitants. Best practice is for payments to be mailed to arrive by the due date. If direct deposit has been elected, payment should be electronically transferred to the annuitant's account on the due date. In either case, if the due date is a holiday or a weekend day the effective payment date should be the first business day prior to the stated due date.

Joint-and-Survivor Annuities

In the case of a joint-and-survivor annuity for two spouses, the charity can generally choose whether to make out a single check for the full amount to both names (e.g., "John T. Doe and Jane L.

Doe") or make out a separate check to each name for one-half the full amount. Of course, if the agreement includes specific directions as to payments, the charity must adhere to those. When it is a matter of choice, the charity should take into account any preference stated by the annuitants.

Revocable Living Trust Issues

If an annuitant has a revocable living trust and if he or she wants the annuity payments to be made directly to the trust, this is a possibility. Making payments to the trust is simply a gesture of accommodation toward the annuitant, as the payment obligation will continue to be owed to the annuitant as an individual, and the IRS Form 1099-R will be in the name of the annuitant. Accordingly, before payments are made to the trust, the charity should obtain from the annuitant written verification that this is what he or she desires. See Appendix 7 for a sample of a letter an annuitant would furnish the charity to provide such verification. Moreover, the trust should not have anyone other than the annuitant as the beneficiary at the time any gift annuity payment is made to the trust. Of course, the gift annuity should not be established by the trust itself, although the donor – in his or her capacity as grantor of the trust – can likely direct the trustee to make the gift using assets held in the name of the trust. (If it is unclear from the language of the trust agreement whether the trustee has authority to make a direct distribution to a charity, it would be preferable for the trust to distribute to the donor and then for the donor to make the gift.) See Appendix 8 for a sample letter a donor would furnish the charity to confirm that he or she, rather than the trust itself, is indeed the party making the contribution.

Allowing the Charity to Keep the Payments

Likewise, on a temporary or indefinite basis, an annuitant may wish to forego receiving annuity payments and instead have the charity retain them. This is permissible and should produce an income tax charitable deduction for every payment the charity keeps, provided the charity furnishes the annuitant with a gift acknowledgement for each such payment. Nevertheless, the annuitant will continue to be taxed on all payments as though he or she had received them, meaning the charity will still need to send the annuitant an IRS Form 1099-R annually. See Appendix 9 for a sample letter formalizing such an arrangement. This is distinct from an annuitant permanently assigning his or her interest in the annuity to the charity. See Chapter 20.

Delaying First Payment Until New Calendar Year

The amount and schedule of payments is stated in the gift annuity agreement and listed on the computation form. If a gift annuity is established near the end of the year and if the initial prorated payment covering the period between the date of the gift and the end of the year will be added to the first full payment to be made in the new year, caution must be exercised.

Only if the agreement explicitly indicates that the prorated amount will be added to the first full payment will the annuitant(s) not be subject to tax in the year of the gift with respect to the prorated amount. Such a provision might read as follows: "The first installment shall be prorated on the basis of the number of days in the initial payment period and shall be payable on [insert date – in the following year], together with the installment payable for the payment period ending on [insert same date in the following year]." If the agreement then goes on to reference subsequent installments being made beginning on a particular date, the date to insert would be the date on which the next payment period ends. Thus, if payments are made quarterly at the end of the quarter and if March 31, 2024 is the date that is inserted twice in the sentence that references the first installment, June 30, 2024 would be the date to insert in the sentence that references the beginning of subsequent installments. Note: Making such a change in the agreement language is not a concern if the donor resides in a state where submitting agreement forms for approval is not required. However, if the annuity is issued in a state where the charity has filed its forms of agreement with the state, modifying an agreement by including language such as that suggested above could be regarded by the state as an impermissible departure from the pre-approved sample wording. See Chapter 6.

If merely for the sake of convenience a charity waits until some point in the new year to make a payment that the gift annuity agreement indicates was due during the prior year, the annuitant(s) will still be subject to taxation in the year of the gift with respect to the prorated amount. This will be the case even if the delayed payment is otherwise acceptable to the annuitant(s) and even if the delay is agreed to in some document other than the gift annuity agreement. For an example of such a document (which, as implied by the foregoing discussion, should be used only if the initial prorated payment is to be combined with the subsequent full payment to be made later in the same calendar year), see Appendix 10.

Note that the situation discussed above is distinct from an instance where the payment starting date is delayed into the next year but without proration of a first payment. For example, a donor might make the contribution in November of one year, but not wish to receive a first payment until September 30 of the next year. Since payments will be received sooner than one year after the contribution, it is not a deferred annuity. But, like a deferred annuity, the first payment is simply a full quarterly payment, without any proration for the period from the date of gift until the quarter of payment. In this instance, there is no concern about taxation to the donor in the year of the gift; the agreement indicates a first payment in the following year, with no prorated amount.

Prorating Final Payment

Ordinarily, gift annuity agreements provide that the payments to any annuitant shall terminate with the last regular payment immediately preceding the annuitant's death.If the agreement contains such a provision and there is a surviving annuitant, that annuitant will receive the next payment in full. (If the deceased annuitant dies on an actual payment date, that full payment would be made to the decedent's estate.) If the agreement contains no such provision and if the decedent was the only annuitant, the decedent's estate should receive a partial payment, prorated from the date of the payment immediately preceding death to the date of death. If the agreement contains no such provision and if there is a surviving annuitant, that person's first payment would be prorated from the deceased annuitant's date of death to the next payment date. In either case, any amount of payments due prior to the deceased annuitant's death and unpaid is payable to that person's estate. Finally, if a deceased annuitant has inadvertently been overpaid because a payment was sent before the charity learned of the annuitant's death, the charity is entitled to a return of the overpayment and should work with the personal representative of the annuitant's estate to ensure that the amount of the overpayment is in fact refunded. See Appendix 16 for a sample letter requesting return of a payment made after the annuitant's death.

Payment of Incorrect Amount

Some annuity agreements contain a payment correction provision, which indicates what to do should an annuitant's date of birth have been incorrectly stated. See Chapter 12. If such a provision is included and it is discovered later that the date of birth used in calculating the payment was incorrect, then it will be necessary not only to adjust future payments to the correct amount but to adjust for the past incorrect payment amount.

If under the correct date of birth the annual annuity would have been larger, the annuitant is entitled to a prompt additional payment that covers the total difference between what was paid and what should have been paid from when payments began. Depending on payment frequency, this additional payment might be added to the next regular payment, or it might be made as a separate payment. (For example, if payments are made on a semi-annual basis, and the error was discovered just after a payment had been made, it would be preferable to make a separate payment to the annuitant rather than wait six months to add it to the next payment.) If under the correct date of birth the annual annuity would have been smaller, the amount that has been overpaid (from when payments began until discovery of the error) will be taken from the next payment(s) to the annuitant.

When an underpayment or overpayment is corrected, the Form 1099-R produced for the annuitant that year will need to be modified to account for the additional payment or reduced payment made to the annuitant. There is no need to go back and correct the 1099-Rs prepared in prior years, as those reflected the amounts that were paid at the time. The same would be true for any state reporting that had been done in the past, as again the reports would have reflected what occurred at the time. The corrected payment, along with the adjusted future payments, should be taxed in accord with the calculation using the correct date of birth.

Recalculating with the correct date of birth will also affect the charitable deduction, increasing or decreasing it depending on the circumstances. It is probably most prudent on the part of a charity to provide the donor with the corrected calculation, and advise the donor to consult with his or her tax preparer about whether an amended return should (or can) be filed. It may turn out that the donor did not even claim the deduction. Even if he or she did, as a practical matter the difference in the amount may be so small that it would have only a negligible impact on the tax paid or amount refunded at the time of filing the original return in which the deduction was claimed.

Recommendation

Since the size of annuity payments, the amount of the charitable deduction, and the taxation of payments all depend on the ages of annuitants, a best practice is to require proof of each annuitant's date of birth. See Chapter 22.

Taxation of Payments

The computation form will show how annuity payments are taxed up to the end of the life expectancy of the annuitant(s), and beyond life expectancy.

Annuities with an Annuity Starting Date in 1987 or after (Even if the Contribution Was Made before 1987)

- Where cash or ordinary income property was contributed, a portion of each payment will be taxed as ordinary income and a portion will be a tax-free return of capital.
- Where long-term appreciated real estate or securities were contributed, a portion of each payment will be taxed as ordinary income, a portion taxed as capital gain (provided the donor is the sole annuitant or is the initial annuitant of a two-life annuity), and a portion may be a tax-free return of capital. It is important to obtain as accurate information as possible relating to the cost basis of the contributed asset. See Chapter 22.
- Following the end of life expectancy the entire payment will be taxed as ordinary income.
- If a charity produces 1099-Rs with the use of gift administration software, and has entered complete payment information, the change in taxation will likely be automatically reflected. (This is the case with PG Calc's *GiftWrap*.) If software is not being used, a tickler system should be created to alert the Administrator at the end of the annuitant's life expectancy (or, if there are two annuitants, at the end of their joint life expectancy). At the time the change occurs, a charity may also wish to be in touch with the annuitant(s) regarding the fact that payments will henceforth be taxed entirely as ordinary income. Appendix 11 is a sample letter a charity might send.

Annuities with an Annuity Starting Date before 1987

While very few of these gift annuities still exist, organizations that have any need to be aware that there are important differences between how the payments from these annuities are taxed and how the payments from gift annuities funded more recently are taxed.

- Where cash or ordinary income property was contributed, a portion of each payment is taxed as ordinary income, and a portion is tax-free return of capital. The taxable and tax-free portions remain the same for the duration of the annuitant's life.
- Where long-term appreciated real estate or securities were contributed, a portion of each payment is taxed as ordinary income, a portion taxed as capital gain (provided the donor is the sole annuitant or is the initial annuitant of a two-life annuity), and a portion may be a tax-free return of capital. The portion taxed as ordinary income remains the same for the duration of the annuitant's life. The balance of the annuity payment (the portion that is a return of the donor's investment in the contract) consists of capital gain and possibly a tax-free component until such time as all of the taxable capital gain has been reported. Thereafter, the portion representing the investment in the contract will be entirely tax-free no matter how long the annuitant lives.
- The tickler system should distinguish the pre-1987 gift annuities from those issued in 1987 or later to ensure accurate reporting on Forms 1099-R for all years each annuity is in force.

Deferred Gift Annuities

Gift information provided to the Administrator at the time a deferred gift annuity was funded probably showed how payments would be taxed if the expected return multiple (life expectancy) per Table V or VI of Reg. Sec. 1-72-9 did not change prior to the date payments begin. The Administrator should determine whether the IRS Expected Return Multiple Tables have changed in the meantime and, if so, recalculate the taxation of payments based on the new tables, although this will not be necessary if the prior tables have been grandfathered.

Reporting Capital Gain When the Annuitant Is Someone Other Than the Donor

Occasionally, a donor funds a gift annuity with long-term appreciated property and names someone else as the first or only annuitant. In that case, as noted in Chapter 2, the capital gain allocated to the present value of the annuity interest (i.e., to the present value of the right to receive payments for life) must be recognized by the donor in the year of the gift. The taxable gain cannot be ratably reported over the annuitant's life expectancy.

Inasmuch as a gift annuity is fundamentally a bargain sale where the present value of the annuity interest is the sale portion, it would seem that the donor should report the gain, like the gain resulting from other sales, on IRS Form 8949, which accompanies Schedule D of IRS Form 1040. The fair market value of the asset would be the present value of the annuity interest, and the cost basis would be the portion of the total cost basis attributable to that present value.

Example: Ms. Y contributes stock having a fair market value of \$100,000 and a cost basis of \$40,000 for a gift annuity and names her sister as the annuitant. The charitable deduction is determined to be \$34,000, and the present value of the annuity interest is \$66,000. The cost basis allocated to that present value is (\$66,000÷100,000) x \$40,000, which equals \$26,400. Thus, on Form 8949 the donor would show \$66,000 as the sales price of the asset creating the annuity interest and \$26,400 as its cost basis.

Although it probably has no legal obligation to do so, as a practice of good stewardship the charity could provide to the donor the information needed for Form 8949, namely the present value of the annuity interest and the allocated cost basis. (These figures can be found in the *PGM Anywhere* Actuarial Calculations presentation.) If the donor contributes more than one capital gain asset for a gift annuity that makes payments initially or solely to someone other than the donor, the sales price and cost basis of each such asset should be listed separately on Form 8949.

Withholding

While it is not the general practice of charities to withhold any portion of annuity payments for federal tax purposes, an annuitant may desire to have federal tax withheld, in which case the charity would have the annuitant complete IRS Form W-4P to confirm the amounts to be withheld. Moreover, as noted in Chapter 21, withholding of federal tax is required in the case of certain foreign annuitants. When there is withholding, the Administrator must make periodic deposits to the IRS based on payment frequency, as well as file an annual tax report.

For annuitants residing in states which have a state income tax, the Administrator should determine whether state tax is required to be withheld from annuity payments. Such a determination could conceivably entail consulting knowledgeable tax counsel for the relevant state(s). It should be noted that in 2017 Connecticut General Statutes Section 12-705 was amended to require payors of certain pensions and annuities to withhold state income taxes beginning in 2018. While unclear on its face as to its applicability to the taxable portion of gift annuity payments, in response to individual inquiries the Department of Revenue Services has indicated that gift annuities do not require withholding. Similarly, in early 2012, Michigan's statutory code temporarily contained a law that was deemed to apply to gift annuities, although such applicability was not readily apparent simply from reading the statute in question. Fortunately, the statute was subsequently amended to clarify that withholding is not required for payments from a gift annuity.

Divorcing Annuitants

When a charity learns that a husband and wife who are both annuitants under a gift annuity agreement have divorced, adjustments in its administration of the annuity will depend on the terms of the agreement itself unless perhaps the annuity has been specifically addressed in the divorce decree or addressed by any applicable state law. Usually spouses have established a joint-and-survivor annuity, with each party being entitled to one-half of the annuity payment. However, from an administrative perspective, typically with such annuities a single payment is made and also a single Form 1099-R is issued under one Social Security number.

Assuming no other arrangement has been specified in the divorce decree, the charity should begin sending a payment of one-half of the full amount to each of the annuitants, and there would be two Forms 1099-R, one to each of them reflecting their half. If the annuity had been set up with successive rather than joint payments, then the payments would continue in accordance with the agreement, unless otherwise indicated in the final property settlement. Regardless of whether the charity had heard from both parties with respect to the divorce or just one, it is advisable for the charity to communicate in writing with both individuals regarding its understanding of the situation and how payments are to be made going forward.

The way in which annuity payments will be taxed going forward depends partly on how such taxation was calculated originally (which, in turn, will essentially be a function of how the gift annuity was structured) and partly on how the payments are to be made once the divorce becomes final. See Chapter 20 for a discussion of various scenarios. See Chapter 2 for a discussion of recalculation if the annuity is still in deferral.

Missing Annuitants

More often than one might expect, charities find themselves unable to determine the whereabouts of certain annuitants. The problem typically comes to light either because a payment made by check has been returned with no forwarding address or because the account in which payments have heretofore been deposited has suddenly been closed. Either of these events may be indications that the annuitant has died, in which case the considerations covered later in this chapter would apply. In other cases, a bit of research reveals the annuitant to be alive and well, likely meaning that all the charity will need to do is revise its arrangements for making payments to the annuitant. Nevertheless, in certain instances no amount of investigation results in any light being shed on the situation.

How the charity should proceed will be a matter of applicable state law, although determining what is "applicable" can be something of a challenge. Consider this scenario. Charity is domiciled in State A. Donor, who is a lifelong resident of State B, many years ago established a gift annuity with Charity for the benefit of Annuitant, who lives in State C and who now appears to have achieved missing person status. Furthermore, Charity also holds certificates authorizing it to issue gift annuities in States D and E. Unfortunately, Charity may have to determine what the law of each of these states has to say on the matter. In addition, the inquiry will likely need to focus not only on what is required under statutes and regulations applicable to gift annuities, but also under those dealing with financial accounting and unclaimed property.

Fortunately, consensus may exist on certain issues, depending on the states involved. For example, inquiries made of a few state insurance departments indicated that at the least a charity would not be obligated to keep sending payments to an annuitant who, although not yet confirmed to have died, has ceased taking receipt of payments. Nevertheless, once the mystery surrounding the person's status is eventually solved, the regulators polled said the charity would be expected to make any back payments still owing, based on whether the annuitant remains alive or, if not, when he or she died.

On other matters, however, the states diverge. Thus, one of the states polled requires a charity to continue to include the annuity in its reserve report for a period of years, whereas another allows the charity to delete the annuity from its reserve report (subject to adding the annuity back at some later point if the annuitant is found to be alive).

Needless to say, the particulars of each situation will need to be analyzed, and in addition to bringing the situation to the attention of relevant state authorities, the charity may be well advised to involve its legal counsel. The safest approach is to regard the payment obligation as continuing to exist, even if payments have been halted for the time being, until all applicable legal authority confirms that the obligation can be regarded as terminated.

Finally, with respect to federal requirements, the IRS has indicated it expects a charity to file a Form 1099-R for all annuitants including those who are "missing." In other words, taxable income is reportable in the year it is payable, regardless of whether it is actually received by a taxpayer. If the charity subsequently locates a missing annuitant and a payment is made to cover all prior amounts that were not received by the annuitant, there will be no Form 1099-R filing requirement with regard to those amounts, as that requirement will already have been met. If, on the other hand, the charity subsequently learns that an annuitant deemed to be missing has died, the charity may need to amend Form 1099-R for one or more years, depending on when the annuitant died.

Tax Reporting Requirements

- The Administrator completes a Form 1099-R for each annuity and sends a copy to the annuitant(s) by January 31 of each year. If a person is receiving payments from more than one gift annuity, it is permissible to send a Form 1099-R for each annuity, but best practice is to combine the information for all annuities in a single form. The "PAYER" will always be the charity, even if actual annuity payments themselves are made by a financial institution acting on the charity's behalf.

- In the case of a joint and survivor annuity where a single check is made payable to both spouses, the name and Social Security number of only one of the spouses can be entered as recipient on the Form 1099-R.
- Separate Forms 1099-R, each showing one-half of the payments, can be sent to each spouse when they file separate income tax returns.
- Separate Forms 1099-R would also be sent in the case of a joint-and-survivor annuity where the annuitants are other than a married couple.
- The IRS imposes requirements and limitations on what information can be included in mailings with tax forms. Charities should be familiar with these requirements and exclude unrelated information or documents, particularly marketing materials, from the mailing of tax forms. If the charity so wishes, it may include a cover letter that calls attention to the form and its signficance. See Appendix 12 for a sample letter.
- By the end of February, if filing by paper, the Administrator sends to the Internal Revenue Service copies of all Forms 1099-R attached to a completed IRS Form 1096. See Appendix 13 for samples of completed Form 1099-R. One Form 1099-R illustrates reporting for an annuity funded with cash, the other an annuity funded with appreciated stock. See Appendix 14 for a sample Form 1096.
- The procedure in the immediately preceding bullet point is an option only if there are fewer than 10 Forms 1099-R. If there are 10 or more forms, then they must be filed with the IRS electronically, although this is an option even if there are fewer than 10 forms. The deadline for filing electronically is the end of March.
- If applicable, the Administrator completes any state required forms on withholding of state income tax from annuity payments. Withheld funds must be deposited with the applicable state agency and annual tax reporting must be filed.

Note: A charity will remain responsible for seeing that the requirements listed above are met even if the charity "reinsures" one or more gift annuities. (See Chapter 10.)

Reg. Sec. 1011-2(a)(4)(ii) states that capital gain can be reported ratably over the life expectancy of the annuitant provided that (1) the annuity is non-assignable except to the charity and (2) the donor is either the sole annuitant or the first of two successive annuitants. Most gift annuities funded with appreciated property meet these two conditions. Therefore, the Form 1099-R that the charity sends to the annuitant will show (in Box 3) the amount of capital gain to be reported that year.

The capital gain reported could be taxed at different rates, depending on the type of property and when the gift annuity payment was received. A gift annuity is treated like an installment bargain sale, which means that the applicable capital gain rate on gain that is being reported ratably is the rate in effect when each payment is received – not the rate in effect when the gift annuity was established.

Currently, the gain noted on Form 1099-R could be taxed at any of the following maximum rates:

- The gain reported ratably in payments not deriving from depreciation in real estate or from collectibles, would be taxed at a maximum rate of 20 percent.
- The gain reported ratably in payments resulting from depreciation in real estate would be taxed at a maximum rate of 25 percent.

- The gain reported ratably in payments resulting from collectibles would be taxed at a maximum rate of 28 percent.

Example: Donor contributes depreciated real estate that has an appraised fair market value of $800,000 and an adjusted cost basis of $200,000. To date, the total depreciation is $250,000. The present value of the annuity payments, which will be made to the donor for his life, is determined to be $580,000.

The total gain to be reported over the donor's life expectancy is

$$\frac{\$580{,}000}{\$800{,}000} \times \$600{,}000 = \$435{,}000$$

The reportable gain that is attributable to the depreciation is

$$\frac{\$250{,}000}{\$600{,}000} \times \$435{,}000 = \$181{,}250$$

Suppose the gain is to be reported ratably over 15 years (based on the return multiple tables). Each year the amount of gain reported on Form 1099-R would be:

Gain attributable to depreciation taxed at a maximum rate* of 25 percent is

$$\frac{\$181{,}250}{15} = \$12{,}083$$

Other gain taxed at a maximum rate* of 20 percent is

$$\frac{(\$435{,}000 - \$181{,}250)}{15} = \$16{,}917$$

*The actual rate will depend on the donor's tax situation. In addition, the 3.8 percent surtax on net investment income may apply. See Chapter 16 for a detailed discussion of gift annuities funded with real estate.

Even though the IRS has so far not modified Form 1099-R to provide additional spaces for listing different types of gain, it has indicated that it expects a charity to provide this information in a separate document.

Finally, the taxable gain associated with ordinary income property is indeed treated as ordinary income and is thus not listed separately as gain on Form 1099-R.

State Reporting Requirements

Of the 14 states that require some sort of annual filing related to a charity's registration to issue gift annuities, some (Arkansas, California, Maryland, New Jersey, New York, Tennessee, and Washington) require a report showing some or all of the following: (1) a list of annuities in force, (2) the actuarially-determined required reserves for annuities in force, (3) the asset values at the beginning and end of the year, (4) financial activity during the year, and, in many instances, (5) a list of investments. (California also requires that newly established California annuities be reported on a quarterly basis.) In most cases the state report must be accompanied by a reserve calculation prepared in accordance with a prescribed actuarial methodology. One state, Washington, requires the report to be signed by an actuary; an actuary's signature may be necessary in Arkansas and Tennessee in certain circumstances.

If the charity's business office acts as Administrator, it will ordinarily prepare the state reports, though it may delegate this responsibility. If a financial institution is selected as Administrator, the charity should determine from the outset whether that institution will also be responsible for the state reports. The financial institution may agree to do this, or it may provide the necessary financial information to the charity's business or development office, or to an outside preparer retained by the charity, which completes the report.

Fortunately, the number of states requiring a segregated gift annuity reserve fund and such annual reports is small. Only charities issuing annuities in those states will have to be concerned about detailed annual reports. Other states, however, do require certain less detailed annual filings.

When an actuary's signature is not required, a reserve calculation can be run in accordance with the applicable methodology from a gift administration software program (such as PG Calc's *GiftWrap*). Many charities and financial institutions use such programs in administering their gift annuities. Hiring an actuary to do an actuarial report can be expensive. Some consultants, financial institutions, and software firms have made arrangements with actuarial firms for these reports at a discounted price. A charity may wish to investigate these services before independently hiring an actuary.

See Chapter 11 for information on state regulation of gift annuities, and see Chapter 14 for information regarding the annual filing requirements of various states, including links for obtaining copies of state annual report forms.

Accounting Standards for Gift Annuities Recommended by the Financial Accounting Standards Board (FASB)

When a charity receives a contribution for a gift annuity, the fair value of the contributed assets is recorded on the charity's financial statement. The present value of the future annuity payments is recorded as a liability. The difference is the contribution revenue shown as either net assets with donor restrictions or net assets without donor restrictions. (In accordance with the Account Standards Update (ASU) issued August 18, 2016, these two classes replace what previously were three: unrestricted, temporarily restricted, or permanently restricted). The audited financials must also include, in the notes, information regarding assets set aside to satisfy reserve requirements imposed by states. If a state imposes limitations on the manner in which assets are to be invested, that also should be disclosed in the notes. If a charity's governing board decides to set aside additional reserves that are not required by a state, these would likewise be disclosed in the notes as board-designated reserves that are part of net assets without donor restrictions.

At the end of each fiscal year, the charity prepares a financial report in accordance with FASB generally accepted accounting principles (GAAP). This report will show the fair value of all gift annuity reserves and the present value of all gift annuity liabilities as of the last day of the fiscal year. The difference between the value of the assets held in reserve and the present value of the liabilities will change from year to year, and the fluctuations will be recognized as changes in the value of annuity agreements.

For an example of how this accounting is handled for a particular gift annuity, see Figure 5.1. Accounting practices can vary, however, and depending on the approach used, accounting entries can be made on an annuity-by-annuity basis or in an aggregate fashion. In either case, entries are made for new gifts, for payments, to adjust liabilities, and for terminations. Also in either case, a report that details the individual payments and individual liabilities needs to be provided to the charity's auditors or accountants.

FASB does not prescribe the methodology, mortality table, or discount rate to use in calculating the present value of annuity obligations. The American Institute of Certified Public Accountants (AICPA) has mentioned the IRS deduction methodology as a prevalent practice but notes that to be compliant with GAAP the charity would need to evaluate the assumptions used and compare them to assumptions that a market participant would use that are appropriate for fair value. Once that comparison is made, the charity can evaluate whether the differences are significant enough to require an adjustment to be in compliance with GAAP. The "IRS deduction methodology" would make use of the mortality table used in IRS deduction calculations at the time liabilities are computed, which since June 2, 2023 has been Table 2010CM. However, other mortality tables, as discussed further in this section, are used by some charities when calculating present value liability.

The discount rate can be either the CMFR used to calculate the present value of the annuity and the deduction at the time of the contribution or a fixed discount rate used for all annuities. If a charity follows the first procedure and the CMFR at the time of the contribution is 1.2 percent, it will base all future recalculations on a 1.2 percent CMFR even though the CMFR at the end of any given fiscal year could be more or less than 1.2 percent. If a charity follows the second procedure, it will select a rate based on the institution's average return on gift annuity reserves – 2.5 percent, for example – and use that rate in performing the initial and future calculations.

Generally, a charity should not use one discount rate for the initial booking and different discount rates for subsequent recalculations. For instance, a charity should not use the 1.2 percent CMFR on which the initial calculations were based and then the 3.0 percent CMFR in effect at the end of the fiscal year two years later to recalculate the liability. If this is done, the liability will fluctuate and may actually increase in some years. If the same discount rate is used every year to calculate the present value of the liability of a particular annuity, and there is no change in the mortality table used, the liability will decrease each year, for it is being amortized. (An exception to this general rule is that the liability associated with a deferred gift annuity will increase each year during the deferral period.) Of course, what remains of the assets originally contributed for that annuity will also decrease if the annuity rate exceeds total return net of annuity payments and expenses.

If an organization owns or has access to gift annuity administrative software such as PG Calc's *GiftWrap*, and if all data on outstanding annuities have been entered in the program, a FASB liability report can be easily generated. It will show the present value of the annuity obligation for each annuity and a total present value for all annuities. Depending on the option selected, the program will base the calculations on the initial CMFR used for each annuity or on a fixed discount rate for all annuities. The calculations can also be performed using a regular planned giving software program, but it will be a long and tedious process if the charity has a large volume of gift annuities. If calculations are performed annuity-by-annuity using regular planned giving software, the number on which to focus in each instance is the present value of the annuity obligation, not the charitable deduction.

All this being said, FASB ASC 958-30-35 gives a charity the option to use a "fair value" approach in valuing gift annuity liabilities. If that approach is elected, in all likelihood a different interest rate will be used each year.

The present value of the liabilities on the FASB report will not be the same as the required reserves reported to the various regulated states. The reason is that the mortality tables and discount rates used in calculating reserves required by the states are different from the mortality table and discount rate used by the IRS. The discrepancy between the state reserve calculations and the IRS calculations (used for FASB reports, if it has been determined that the IRS rates used initially were materially comparable to fair value on that date) should be explained to the charity's auditor. (Of course, if the charity operates in no regulated states requiring segregated reserve funds, there will be no discrepancy because only the IRS methodology will be used.) Nevertheless, even though using the IRS methodology is simpler, an auditor may determine that it is more appropriate – especially if the charity is subject to the gift annuity regulations of several states – to look

Text continues on page 20.

Figure 5.1

Sample Accounting Entries for a Particular Gift Annuity

Upon receipt of the gift, the charitable value is booked as a contribution, and the present value of the annuity obligation is booked as a liability. An offsetting entry for the entire gift amount is recorded to cash. Each time a payment is made, the liability is reduced by the payment amount and cash is credited.

Once per year, a new liability is computed and a change (either positive or negative) is made to the existing liability to bring it into line with the newly computed liability. When this adjustment is made, an offsetting entry is recorded as a change in split interest. Upon termination of the gift, the liability is debited so that it equals 0 and the change in split interest is credited with an offsetting amount.

Here is a step-by-step example of booking a charitable gift annuity on an individual basis:

Step 1) A $10,000 gift is received on 12/31/2022. $10,000 is debited as cash, the charitable deduction of $3,954 is credited as revenue, and the present value of the annuity obligation (the "investment in contract") of $6,046 is credited as a liability.

Step 2) A payment of $200 is made on 3/31/2023. The liability is debited by $200 and cash is credited by $200. The liability is now $5,846.

Step 3) A payment of $200 is made on 6/30/2023. The liability is debited by $200 and cash is credited by $200. The liability is now $5,646.

Step 4) The fiscal year ends on 6/30/2023, at which point a new liability of $6,051 is computed. The existing liability is credited with $405. This adjustment makes the liability accurate in light of the current actuarial age(s) of the annuitant(s). An offsetting debit of $405 is made to the change in split interest.

Steps 5,6,7, and 8) Payments are made on 9/30/2023, 12/31/2023, 3/31/2024, and 6/30/2024. Each time, the liability is debited by $200 and cash is credited by $200. The liability is now $5,251.

Step 9) The fiscal year ends on 6/30/2024, at which point a new liability of $5,835 is computed. The existing liability is credited with $584. This adjustment makes the liability accurate in light of the current actuarial age(s) of the annuitant(s). An offsetting debit of $584 is made to the change in split interest.

Step 10) The gift terminates on 9/1/2024. The current liability of $5,835 is debited by $5,835 to bring the liability to $0. The change in split interest is credited by $5,835.

Step 11) Depending on various factors including the terms of the gift annuity agreement, the sufficiency of assets in the reserve fund, and the balance of the annuity, a residuum amount may be made available to the charity in fulfillment of the ultimate charitable purpose of the annuity.

to state reserve requirements in calculating the present value of the annuity obligations for FASB purposes.

Regardless of the purpose for which the present value of the payments associated with a gift annuity is being calculated, it is helpful to understand the basic effect that various mortality tables and discount rates will have. The more conservative the mortality table (i.e., the longer in general that individuals of various ages are expected to live), the higher the present value of the annuity payments. Mortality tables created more recently have tended to be more conservative, though this pattern could change if U.S. life expectancies were to decrease rather than increase in the future. With some tables, such as the Annuity 2000 and 2012 Individual Annuity Reserving ("IAR") tables, their conservatism stems largely from their focus on a segment of the population (purchasers of commercial annuities) rather than on the entire U.S. population. The conservatism of the 2012 IAR table is furthered by its inclusion of a projection scale to accommodate improvements in mortality over time; this feature is intended to keep the table from quickly becoming out-of-date. With respect to discount rates, the lower the rate, the higher the present value of the annuity payments. Just as sometimes for financial accounting purposes a charity may use different discount rates depending on when different annuities were established, many of the states that require charities to calculate the present values of the annuities they have issued will specify both discount rates and mortality tables that will differ depending on when a particular annuity was established.

Finally, even if a charity has "reinsured" a particular gift annuity (whether entirely or only in part) by purchasing a commercial annuity, the present value of the gift annuity must still be shown as a liability on the charity's books. Nevertheless, the commercial annuity contract is deemed to be an asset with a value equal to the present value of the gift annuity payment obligation it was purchased to offset. As noted in Chapter 10, however, different states have different ways of regarding reinsurance for purposes of compliance with their own laws.

Investment of Gift Annuity Assets

Annuity payments constitute a general obligation of the charity. This obligation is secured by all of the assets of the charity. Certain states require the charity to maintain a segregated reserve fund containing sufficient assets to meet the annuity obligations. Even so, all of the charity's assets, and not just those assets in the segregated reserve fund, back the annuities.

An investment strategy for gift annuity reserves, in addition to taking applicable state regulations into consideration, may include the following risk-control techniques:

- **An asset allocation that strikes the proper balance between risk and potential return**
  Although charities will reach different conclusions about what constitutes an appropriate asset allocation at any given time, it is probably prudent to invest gift annuity reserves more conservatively than the charity's endowment. Gift annuity reserves invested heavily in equities are affected more severely than an endowment during a prolonged bear market because gift annuity payments remain at the same level, even when market values decline. Having a significant portion of reserves in fixed-income investments with laddered maturities may protect the charity during those periods.
- **Diversification within each asset class**
  This, of course, is sound advice for any fund.
- **Selection of investments based on expected cash flow needs**
  If a gift annuity reserve fund has insufficient liquidity, it may be necessary to sell securities at the most inopportune time in order to make the required annuity payments. To avoid having to do this, a charity can project future cash flow needs based on annuities in

force; then it can build a portfolio such that interest payments and maturities of various fixed-income instruments will generate enough income to meet those cash flow needs.

At various times over the years, and particularly since the great recession of 2008, comments have been made on how it may not be possible to obtain an investment return on gift annuity reserve funds that equals or exceeds the annuity rates being paid out. It is important to remember that the main assumption underlying the suggested gift annuity rates put forth by the American Council on Gift Annuities is that when an annuity terminates the charity will be left with 50 percent of the original contribution amount. See Chapter 3 for more detail on the ACGA rates and assumptions. See Chapter 22 for further discussion of mitigating risk.

State Requirements Regarding Investment of Reserves

As noted above, several states require charities to maintain a segregated gift annuity reserve fund, with some restricting the fund's investments to limited types of assets. The value of such a fund must equal or exceed the present value of all outstanding annuities plus – often – a stipulated percentage surplus. Charities issuing annuities in more than one of the states that require a reserve fund should bear in mind that different states have different methods for determining the present value of annuity obligations. Any such charity will need to assure the adequacy of its reserve fund with respect to each of the states in which it is issuing.

California requires a segregation of California reserves from the reserves for other states through a separate trust account. California is also one of two states that impose specific investment restrictions on the reserves, with Florida being the other. The charity and its money managers should be familiar with the states' requirements and attentive to them. At the charity's option, state specific funds may be established for Arkansas, Florida, and Tennessee, though the change to the prudent investor standard in Arkansas (though it is optional) removes the main purpose for creation of a separate fund.

The investment restrictions apply only to the required reserves (as calculated, plus any mandated surplus), and any excess above that amount may be invested as the charity or its money managers deem appropriate. This is true whether the excess remains in the segregated reserve account or is held in a separate account. The latter approach might be chosen as a way to more clearly delineate those assets subject to and those free from specific restrictions. While money must be placed into the California trust account for each issued annuity, a charity can withhold an amount up to the excess of the contributed amount over the initial reserve requirement. For example, if a donor contributes $10,000 for a gift annuity and if the initial required reserve is $6,500, the charity may withhold up to $3,500.

If an excess account is created, care should be taken to leave some of the excess amount in the required reserve fund as a cushion. This is to protect against the possibility of the value of the assets in that fund fluctuating enough that suddenly those assets are insufficient to meet actuarial requirements. For example, it might be wise to aim for having the assets in the reserve fund equal at least 125 percent of the actuarially required amount, or correspondingly more depending on what mandatory minimum surplus a charity may be required to maintain pursuant to the law of a given state.

The charity should consider any excess that is retained outside the reserve fund as continuing to be part of the overall assets the charity maintains for the specific purpose of backing its annuity obligations. This means that if for some reason the charity needed to transfer some of its own assets into the reserve fund, it would first use assets in the excess account. Similarly, upon the end of a given annuity obligation, the charity should be able to identify how much of the residuum of the original contribution should be removed from the reserve fund and how much should be removed from the excess account. Moreover, in investing those assets in the reserve account, the charity should keep in mind the need for cash to make the periodic annuity payments.

See Chapter 13 for specific information on investment restrictions of regulated states.

Death of Annuitant

Notification

Ideally, a charity will be proactive when it comes to staying in touch with annuitants, thereby increasing the likelihood it will learn of a death promptly. In addition to regular contact with the annuitants, a subscription to a death search service such as Lexis Nexis or PBI Research Services can provide information on deceased annuitants. Ordinarily, notification of an annuitant's death will come from the annuitant's personal representative, though it may also come from a surviving family member. Even if provided with notification, the charity should request a copy of the death certificate so that it has documentation that its payment obligation to the annuitant has ceased. The New York Department of Financial Services has regularly expressed concern about the failure to obtain a copy of a death certificate during its audits of New York charities holidng a permit to issue gift annuities in the state. However, it has indicated that a report from a search service such as Lexis/Nexis' social security death index would be acceptable in lieu of a death certificate. Following notification, the charity should take appropriate action as described under the next several headings.

Death of Sole Annuitant

The entire amount credited to the annuitant's interest, other than any amount due the estate of the annuitant, is transferred for the purpose stated in the annuity agreement.

Death of Annuitant Survived by a Successor Annuitant

Any amount due the estate of the deceased is paid, and thereafter payments continue to the surviving annuitant. As explained above, if the gift annuity agreement provides that the payments to any annuitant terminate with the regular payment preceding the annuitant's death, the successor annuitant will receive a full payment for the next period. Otherwise, the successor annuitant will receive a partial payment prorated from the deceased annuitant's date of death to the next payment date. **Note:** All of the model gift annuity agreements in this manual do provide that payments to any annuitant terminate with the last regular payment immediately preceding his/her death.

Death of the Final Annuitant

The entire amount credited to the interest of the initial and successor annuitants, other than any amount due the estate of the successor annuitant, is transferred for the purpose stated in the annuity agreement.

Return of One or More Payments

What if a charity inadvertently overpays a deceased annuitant because it does not realize he or she had died? The charity should take steps to recover from the estate the amount overpaid. Usually, this will entail little more than providing the annuitant's personal representative with an explanation of why a refund needs to be made. Conceivably, however, a charity might be required to file some more elaborate claim with the estate, depending on the provisions of applicable state law. Once the amount overpaid has been recovered, the charity may need to revise Form 1099-R.

Even though a charity might be tempted not to seek a refund, either out of a sense of goodwill toward the family of the deceased or simply out of a desire to avoid the hassle if the amount at stake is small, the overpayment arguably constitutes a benefit to a private individual, something 501(c)(3) organizations are prohibited from providing. Accordingly, to remain in the good graces of the IRS, the charity should make a reasonable effort (which may involve more than simply sending a letter) to collect the amount due. If the charity is unsuccessful in obtaining a refund, the payment made after death is included on the annuitant's final Form 1099-R.

Information Provided to the Donor's Personal Representative

The charity should furnish the personal representative with a copy of the gift annuity agreement, as the donor's records may no longer include documentation of the annuity arrangement. What else is conveyed to the personal representative will depend on the particular circumstances surrounding the gift annuity.

When the donor is survived by a successor annuitant (or by annuitants from one- or two-life annuities established by a donor who was not an annuitant) and the donor retained the power to revoke the interest(s) of the annuitant(s), the charity should determine whether the donor exercised the power. This could be accomplished by highlighting the revocation provision in the agreement, and requesting a copy of the will or trust provision revoking payments, if applicable, or written confirmation that no such provision was included. If the power was exercised, the charity must honor that exercise by halting or decreasing the payments, as applicable. If the power was not exercised, the present value of the future payments to the annuitant(s) will be included in the donor's taxable estate. The computation will be based on the age(s) of the annuitant(s) at the time of the donor's death, the CMFR for the month in which the donor died, and the amount and frequency of payments that will continue to the annuitant(s). The present value should be reported to the donor's personal representative.

The above applies to annuities involving spouses as well, although the value of the annuity will qualify for the estate tax marital deduction, so long as the surviving spouse is a U.S. citizen. See Chapter 2 for detail on estate tax implications in different donor/annuitant situations.

Death Prior to End of Life Expectancy

Annuities with an Annuity Starting Date in 1987 or after (Even if the Contribution Was Made before 1987)

If a sole annuitant dies prior to the end of his/her life expectancy, or if the surviving annuitant of a two-life annuity dies prior to the end of the joint life expectancy, the annuitant is entitled to a posthumous income tax deduction on his/her final income tax return for the amount of capital that has not been returned.

Determine the total tax-free return of capital that would have been paid to the end of life expectancy (the annuitant's life expectancy for a one-life annuity and the joint life expectancy for a two-life annuity) as calculated at the time the annuity was established. Then subtract the total tax-free return of capital paid to the date of death. The difference is the income tax charitable deduction. Convey this amount to the personal representative of the annuitant whose death ended the annuity payment obligation. This annuitant may not be the donor if there was a successor annuitant or if the annuity was set up solely for someone other than the donor.

Appendix 15 is a sample letter from a charity to a personal representative. See Chapter 20 for an explanation of how the deduction is to be reported on the annuitant's final income tax return.

If the donor was the annuitant, and the annuity was funded with long term capital gain property, any unreported gain is interred with the donor. It need not be computed. However, if the donor is survived by a successor annuitant, that annuitant will continue ratable reporting of gain until the entire gain has, in fact, been reported.

Annuities with an Annuity Starting Date before 1987

If annuitants of such annuities die before the end of life expectancy, the investment in their contract is not recovered, and there is no deduction on the final income tax return. Therefore, it is unnecessary for the Administrator to calculate the unreturned capital.

Revising and Maintaining Records

Finally, a charity will need to revise its records in light of each annuitant's death. Even if an annuitant who has died is succeeded by another annuitant, any database maintained for purposes of monitoring the actuarial value of gift annuity obligations (whether for state regulatory purposes or to comply with the requirements of FASB) will need to be updated to reflect the death. Similarly, in completing annual statements for those states that require them, a charity will need – in one way or another – to note annuity obligations that have terminated. The last step will be simply to keep the "file" for an annuity (which may include paper and electronic records) in a place where others can find it in the years to come. Such files should be retained for several years, if not indefinitely, especially if there is any likelihood a particular state will conduct a retroactive audit of the charity's annuity operations. New York and Washington conduct such audits on in-state charities on a 5-year recurring basis. That same time period appears in other states' statutes, even if they are not at present conducting audits. Given the lag time in audits getting underway, a 7-year retention period (often suggested for tax records) may be appropriate. It would be beneficial to develop a document retention policy in collaboration with the finance office and/or legal counsel.

Expenditure of Annuity Contributions

When an annuity terminates, the charity's liability for payments ceases, and funds being held that are attributable to that annuity can be withdrawn and utilized in accordance with the donor's wishes. The amount available to be withdrawn may be known with precision, if a charity is tracking individual values, or some other method might be used to determine the amount. See Chapter 22.

Withdrawals are typically done at the end of the calendar quarter in which the termination occurred, though sometimes it is done semiannually or annually. Particularly when a charity is required to do detailed reporting to a state department of insurance as part of its registration to issue gift annuities, it is preferable to make the distributions within the reporting period so that there is correspondence between terminated annuities and the distribution. This is particularly true in California, where withdrawals not directly associated with termination of specific annuities must be reported to the Department of Insurance as "other" withdrawals, with the charity providing a Board resolution and financial information as of the withdrawal date.

However, there may be times when a charity wishes to retain the value associated with terminations within the reserve fund – for example, when the reserve fund is at risk of dropping below the level required by one or more states in which the charity issues. This approach is acceptable with respect to unrestricted gift annuities, but not with respect to annuities for which the donor has designated a purpose. Retained distributions should be tracked so that they can be made at a later date when, hopefully, the reserve fund has rebounded in value.

A charity should avoid the practice of never taking distributions from the reserve fund. While doing so may provide the charity with a sense of security with respect to meeting its annuity obligations, it runs counter to the purpose for which the donor made the gift; even if there was no designated purpose, the donor certainly intended for the charity to make use of the gift in support of its mission. A charity that does not take distributions is leaving dollars on the table and is likely fueling an incorrect impression within the organization that its gift annuity program is not successful and not benefitting the organization, which could lead to a decision to terminate the program.

Making Payments When an Annuity Runs Dry

Even in a profitable, well-managed gift annuity program, occasionally a gift annuity will run dry, which means that the original contribution for that annuity will be exhausted. This typically results from a combination of bad timing - a contribution just before a market decline - and the annuitant living well beyond life expectancy.

If all or a substantial number of gift annuities are for unrestricted purposes, the exhaustion of a particular annuitant's reserves, while never a welcome outcome, poses no problem for the program. The payments can simply be made from the reserves of healthy, unrestricted annuities. If all the charity's annuities are unrestricted, the charity could deposit all contributions in a general reserve fund, make all payments and pay all expenses from that fund, and make distributions for discretionary charitable purposes. Such a distribution might be made at the death of an annuitant when the liability for the annuitant's annuity ceases or, periodically when the reserves exceed a certain level.

A problem arises when virtually all gift annuities are for restricted purposes, and one of them runs dry. Suppose, for example, that at a university the residua of all annuities are designated for certain academic departments. If an annuity for English runs dry, funds held in reserve for engineering cannot be used to make payments for an annuity established for English. Even if the gift annuity pool, as a whole, has a large surplus of reserves, none of those reserves can be used to make payments for a failed annuity unless permitted by any of the gift annuity agreements.

Possible solutions when a specific annuity runs dry

Charity pays from its general funds: A charity could transfer some of its general funds to continue payments. This will not be a popular solution when the administration has little discretionary money at its disposal.

Annuitant assigns annuity to charity: You might explain the situation to the annuity's donor and see if the donor is willing to assign his or her right to payments to the charity. Some annuitants don't really need the payments and might be willing to forego them. Of course, be careful not to exert any pressure and create resentment.

Inter-account loans: The charity could use some of the restricted gift annuity funds to continue payments, treating the disbursed restricted funds, for accounting purposes, as inter-account loans that must be repaid when the charity is able to do so. This solution depends on the availability of future unrestricted gift annuities whose funds can be used to pay off the loans.

Possible solutions to implement before any annuities run dry

Assess an administrative fee: To prevent such a situation from arising in the first place, a charity might assess an annual, internal administrative fee on all annuities. This would be in addition to whatever investment/administrative fee is currently charged the gift annuity reserve fund. The amount collected would build a fund from which payments could be made when any annuity runs dry. If that fee is 30 basis points, and the value of the reserve fund is currently $10 million, $30,000 will be added to the contingency fund this year. Over time the accumulations should cover payment obligations from problematic gift annuities. The fee will have no effect on the payments annuitants receive, but it will slightly reduce the eventual residuum.

Retain a percentage of each residuum: Instead of, or in addition to, assessing an annal internal administrative fee, the charity might retain a certain percentage of the residuum for this contingency fund. It will take longer to build the contingency fund in this manner than through an annual fee. The charity's practice regarding fees should be disclosed in a statement given to donors in advance of establishing a gift annuity.

See also Chapter 22 for best practices in mitigating risk.

Sample Resolution Establishing a Gift Annuity Program

APPENDIX 1

WHEREAS securing planned charitable gifts in general and charitable gift annuity contributions in particular is recognized to be of considerable importance to the future financial stability and overall operation of ABC Charity (hereinafter " the Charity"),

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Charity is authorized to establish a program for the issuance of immediate and deferred payment charitable gift annuities.

2. The Charity's gift annuity program shall be conducted in compliance with all applicable requirements of federal and state law including, if relevant, the laws of states in addition to *[the state in which the Charity is domiciled]*.

3. The annuity rates offered to donors by the Charity in connection with gift annuity contributions shall be those suggested from time to time by the American Council on Gift Annuities, although in any given instance a donor may agree to payment of a rate lower than the rate offered by the Charity.

4. The Charity shall establish and maintain a gift annuity reserve fund, or more than one reserve fund if such is required as a result of offering gift annuities in a state that requires a separate fund. The *[Finance Committee or other appropriate committee of the Charity's governing board]* shall oversee the management of the fund, including the investment of fund assets. The full amount of all gift annuity contributions shall be credited to the fund, along with all earnings on assets attributable to the fund. Disbursements from the fund may be made for the following purposes: to make annuity payments; to pay for the costs associated with investing and managing fund assets and administering the gift annuity program; and to make available to the Charity for its charitable purposes (as designated by the gift annuity donor, if applicable) the amount of fund assets attributable to a particular annuity obligation upon satisfaction of that obligation. Disbursements for any other purposes must be approved by the Charity's Board of *[Directors/ Trustees]*. (**Note:** *A charity that offers gift annuities in several different states may find that some of those states will require additional governing board resolutions containing gift annuity reserve fund provisions worded differently from the reserve fund provision in this sample resolution. Nevertheless, the charity can maintain a single gift annuity reserve fund and still meet the requirements of all states where it issues gift annuities (except California).*)

5. In managing its gift annuity program, the Charity may employ agents and advisors to assist with various aspects of operating the program. In particular, the Charity may delegate to other entities the administration of gift annuities and the investment of gift annuity reserve fund assets.

Prototype Materials: resolution to establish.docx

6. Further policies relating to operation of the program shall be drafted by *[specify individuals/titles or a committee]* and approved by the Finance Committee *[or other appropriate committee, or by the full Board]* . These policies shall include, but not be limited to setting minimums for ages and contribution amounts, the nature of assets that may be accepted, and acceptable payment frequency.

7. The terms of this Resolution may be amended by the Charity's Board of *[Directors/Trustees]*.

Adopted by the ABC Charity Board of *[Directors/Trustees]* on the _____ day of ________ 20___.

CHARITABLE GIFT ANNUITY POLICIES

In recognition of the importance of charitable gift annuities as part of the fund development program of ABC Charity (hereinafter "the Charity) and in an effort to ensure that gift annuities are beneficial both to donors and to the Charity, the following policies are adopted:

1. The Charity's gift annuity program shall be conducted in compliance with all applicable requirements of federal and state laws, including the laws of any states where the Charity may issue gift annuities to donors.

2. The Charity will issue both immediate and deferred gift annuities. The deferred annuities may have either a fixed or flexible payment-beginning date.

3. The annuity rates offered to donors by the Charity in connection with gift annuity contributions shall be those suggested from time to time by the American Council on Gift Annuities, although in any given instance a donor may agree to a rate lower than the rate then offered by the Charity. When a donor agrees to a lower-than-published rate, this fact should be documented either by an addendum to the gift annuity agreement (as required in California) or by a signed consent form or memorandum in the file.

4. The minimum contribution for a gift annuity shall be $10,000. *[**Note:** Many charities set a minimum that is greater than $10,000. A $25,000 minimum has become common. We strongly discourage setting a minimum below $10,000.]* The Gift Acceptance Committee may approve a smaller amount in some circumstances, such as when the donor is establishing a number of substantially similar gift annuities.

5. If the proposed contribution for an annuity will exceed $500,000, or if a proposed contribution plus contributions for previous annuities on the life (lives) of the same annuitant(s) will exceed $500,000, the Charity, upon recommendation of the Gift Acceptance Committee, may reinsure all or a portion of the payment obligation, consistent with the requirements of any applicable state laws. *[**Note:** A charity may want to set the threshold at a different level, or express the maximum as a percentage of the reserve pool.]*

6. Gift annuity payments may be made to one person for life or to two persons, either concurrently or successively, for life.

7. In the case of an immediate gift annuity, the minimum age of the annuitant of a one-life annuity, or the younger annuitant of a two-life annuity, shall be 65. Any exceptions must be approved by the Gift Acceptance Committee. *[**Note:** A charity could have a younger or older age minimum but caution should be excercised in adopting a lower age minimum in consideration of the time horizon before actually realizing the gift.]*

Prototype Materials: policies.docx

APPENDIX 2

8. In the case of a deferred gift annuity, whether the payment-beginning date is fixed or flexible, the minimum age of the annuitant of a one-life annuity, or the younger annuitant of a two-life annuity, at the time contribution is made shall be 55; the minimum age at the time payments begin shall be the same as for immediate annuities, 65. Any exceptions must be approved by the Gift Acceptance Committee. *[**Note:** Again, the minimum age could be younger or older, but a younger minimum age is not recommended. Nevertheless, one of the exceptions the Gift Acceptance Committee might make would be in connection with the issuance of a so-called "college annuity" on the life of a child.]*

9. Annuity payments shall ordinarily be made quarterly at the end of each calendar quarter, although at the request of the donor they may be made semi-annually or annually at the end of the period. Monthly payments require the prior approval of the Gift Acceptance Committee and the Chief Financial Officer.

10. Gifts of cash, including transfers from an IRA, and marketable securities that are in accordance with the above policies do not require approval of the Gift Acceptance Committee. A gift annuity funded with any other property must be approved by the Gift Acceptance Committee. Such approval should not be granted unless steps are taken to minimize the risk to the Charity.

11. The Finance Committee *[or other appropriate committee designated by the governing board]*, shall approve the asset allocation of the gift annuity reserve fund(s) with the objectives of (1) realizing a net total return on gift annuity reserves that equals or exceeds the net-return assumption on which the American Council on Gift Annuity suggested rates are currently based and (2) minimizing investment risk and volatility. It is expected that fixed income investments will constitute a higher percentage of gift annuity reserves than of the Charity's endowment.

12. In managing its gift annuity program, the Charity may employ agents and advisors to assist with various aspects of operating the program. In particular, the Charity may delegate to other entities the administration of gift annuities and the investment of assets held in the gift annuity reserve fund(s).

13. These policies shall be reviewed periodically, and may be amended at any time by *[Board/ Finance Committee]* of ABC Charity.

Adopted by the *[Board/Finance Committee]* of ABC Charity on the _____ day of _______ 20 __.

Agreement Signed by Charity Only

Serial Number ______________

ABC Charity

Gift Annuity Agreement
One Life – Donor is the Annuitant
Immediate Payments

1. Transfer of Property by Donor
ABC Charity (hereinafter "Charity") of 1234 Main Street, Seattle, Washington 98000 certifies that John Doe (hereinafter "the Donor") of 1000 Pleasant Boulevard, Seattle, Washington 98100, as an evidence of his desire to support the work of Charity and to make a charitable gift, on July 15, 2024 contributed to Charity the property described in Schedule A attached hereto, the fair market value of which is $20,000.00.

2. Payment of Annuity
In consideration of the property transferred by the Donor, Charity agrees to pay an annual annuity of $1,620.00 from the date of this Agreement and to pay such amount to the Donor so long as he is living.

3. Payment Dates; First Installment
The annuity shall be paid in quarterly installments of $405.00. The first installment shall be payable on September 30, 2024 in the amount of $343.37, prorated on the basis of the number of days in the initial payment period. Subsequent installments beginning on December 31, 2024 and continuing every quarter thereafter shall be in the full amount of $405.00.

4. Birth Date of Annuitant
The birth date of the Donor is August 15, 1944.

5. Payment Correction
If the stated birth date of the Donor should be found to be incorrect at any time, the amount payable or benefit accruing under this Agreement shall be such as would have been provided according to the correct birth date. If any underpayment or overpayment has been made on account of such misstatement, any such underpayment shall promptly be paid to the Donor, and any such overpayment shall be charged against the current and/or next succeeding payment(s) to the Donor.

6. Reasonable Value of Benefits
The reasonable commensurate value of the benefits hereby created as of the date of this instrument is $10,699.00.

ABC-1da-I-WA

APPENDIX 3

7. Irrevocability; Non-assignability; Termination
This annuity is irrevocable and non-assignable, except that it may be assigned to Charity. Charity's obligation under this Agreement shall terminate with the regular payment preceding the Donor's death.

8. Uses and Purposes of Gift
Upon Charity's satisfaction of its obligation under this Agreement, an amount equal to the residuum of the gift shall be used by Charity for its general purposes.

9. Entire Agreement; Governing Law
This Agreement, together with Schedule A attached hereto, constitutes the entire agreement of the parties. This Agreement shall be governed by the laws of the State of Washington.

This Agreement is effective as of July 15, 2024.

ABC CHARITY:

By:

____

[Name and title of officer]

ABC-1da-I-WA

Gift Annuity Agreement Between
John Doe and
ABC Charity

Schedule A

Description of Property

$20,000 cash (personal check)

ABC-1da-I-WA

APPENDIX 3

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ABC Charity
Office of Development
1234 Main Street, Seattle, Washington 98000
(206) 329-8144

GIFT ANNUITY APPLICATION FORM

I (we) hereby make application for a gift annuity subject to the following terms and conditions:

Donor(s) (Enter both names if property is jointly-owned or community property; otherwise enter one name)

Name ______________________ Name ______________________
SS#__________ Date of Birth________ SS# __________ Date of Birth ______
Address ______________________ Address ______________________
City__________ State___ Zip ________ City __________ State ___ Zip________
Daytime Phone (   ) ______________ Daytime Phone (   ) ______________

Annuitant(s) (Check one)

___ One annuitant
___ Two joint and survivor annuitants (payments to both jointly, continuing to the survivor)
___ Two successive annuitants (payments to one, then to the survivor)

If annuitant(s) is(are) other than the donor(s), complete the following

First Annuitant ______________________ Date of Birth ______________
Street Address ______________________________________
City ______________________ State ________ Zip ____________
SS#______________________ Relationship to Donor(s) __________
Second Annuitant______________________ Date of Birth ______________
Street Address ______________________________________
City ______________________ State ________ Zip ____________
SS# ______________________ Relationship to Donor(s) __________

***NOTE:** For each annuitant, provide a copy of a driver's license or other i.d. showing date of birth*

Contribution (Check all that apply)

____ Cash Anticipated Amount: $ ______________
____ Qualified charitable distribution will be coming from ______________
[Name of IRA plan administrator]
____ Securities: (include details if known; otherwise, estimate fair market value and indicate the cost basis)
Description ______________________________________
____

Prototype Materials: application form.docx

APPENDIX 4

Cost Basis ______________________________ Estimated Fair Market Value: $ ______________

Note: *Actual fair market value of securities for calculating the amount of the annuity and tax deduction will be determined when the securities are received by ABC Charity.*

Annuity Type

Will payment of the annuity be immediate or deferred? ____ Immediate ____ Deferred

If deferred, check and complete either (a) or (b) below:

(a) Payments are to begin on this specific date: ________________.

(b) Payments may begin on ______________ (indicate month/day) in any year during the period ______________ (1st possible year) and ____________ (last possible year).

Payment frequency. Check one:

___ Monthly ___ Quarterly ___ Semi-annually ___ Annually

Purpose

Indicate the purpose to which gift is to be directed. Undesignated contributions will be used for general purposes.

____

Emergency Contact:

Please provide the name, address, and phone number of someone with whom ABC Charity may communicate if we are unable to reach the annuitant(s):

____

I have received the disclosure statement from ABC Charity regarding its gift annuity reserves and investments, as required under the Philanthropy Protection Act of 1995. I understand that a charitable gift annuity is irrevocable and that, at the death of the last annuitant, the portion of my contribution remaining after satisfying the annuity payment obligation will be used by ABC Charity for the purpose stated above.

[**Note:** For Oklahoma donors, insert the disclosure language below, which is required to appear in any application form as well as the annuity agreement. Although not required in other states with disclosure language, charities that do not have the donor sign the agreement should consider including the applicable state disclosure language in the application form, which the donor will sign. Delete this explanatory text from the actual application.]

A charitable gift annuity is not regulated by the Oklahoma Insurance Department and is not protected by a guaranty association affiliated with the Oklahoma Insurance Department.

Signature of Donor(s): ________________________________ Date: ______________

________________________________ Date: ______________

Serial Number ____________

ABC Charity

Gift Annuity Agreement

One Life – Donor is the Annuitant
Immediate Payments

This Agreement is made between John Doe, of 1000 Pleasant Boulevard, Seattle, Washington 98100 (hereinafter "the Donor"), and ABC Charity, of 1234 Main Street, Seattle, Washington 98000 (hereinafter "Charity").

1. Transfer of Property by Donor
Charity certifies that the Donor, as an evidence of his desire to support the work of Charity and to make a charitable gift, on July 15, 2024 contributed to Charity the property described in Schedule A attached hereto, the fair market value of which is $20,000.00.

2. Payment of Annuity
In consideration of the property transferred by the Donor, Charity shall pay an annual annuity of $1,620.00 from the date of this Agreement and shall pay such amount to the Donor so long as he is living.

3. Payment Dates; First Installment
The annuity shall be paid in quarterly installments of $405.00. The first installment shall be payable on September 30, 2024 in the amount of $343.37, prorated on the basis of the number of days in the initial payment period. Subsequent installments beginning on December 31, 2024 and continuing every quarter thereafter shall be in the full amount of $405.00.

4. Birth Date of Annuitant
The birth date of the Donor is August 15, 1944.

5. Payment Correction
If the stated birth date of the Donor should be found to be incorrect at any time, the amount payable or benefit accruing under this Agreement shall be such as would have been provided according to the correct birth date. If any underpayment or overpayment has been made on account of such misstatement, any such underpayment shall promptly be paid to the Donor, and any such overpayment shall be charged against the current and/or next succeeding payment(s) to the Donor.

6. Reasonable Value of Benefits
The reasonable commensurate value of the benefits hereby created as of the date of this instrument is $10,699.00.

ABC-1da-I-WA

7. Irrevocability; Non-assignability; Termination
This annuity is irrevocable and non-assignable, except that it may be assigned to Charity. Charity's obligation under this Agreement shall terminate with the regular payment preceding the Donor's death.

8. Uses and Purposes of Gift
Upon Charity's satisfaction of its obligation under this Agreement, an amount equal to the residuum of the gift shall be used by Charity for its general purposes.

9. Entire Agreement; Governing Law
This Agreement, together with Schedule A attached hereto, constitutes the entire agreement of the parties. This Agreement shall be governed by the laws of the State of Washington.

This Agreement is effective as of July 15, 2024.

DONOR:

____

ABC CHARITY:

By:

____

[Name and title of officer]

ABC-1da-I-WA

Gift Annuity Agreement Between
John Doe and
ABC Charity

Schedule A

Description of Property

$20,000 cash (personal check)

ABC-1da-I-WA

APPENDIX 5

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Addendum to Annuity Agreement When Donor Accepts a Lower Rate

APPENDIX 6

Addendum to Annuity Agreement
[Include if CA annuity: ***as required by the California Department of Insurance*****]**

Executed on *[date of annuity agreement]*

[*Name of donor*] and the [*full name of charity*] entered into an annuity agreement dated [*date of agreement*]. On that date, based on [*name of annuitant*]'s date of birth, the annuity rate suggested by the American Council on Gift Annuities (ACGA) was [*ACGA rate*] percent. While [*full name of charity*] usually follows the ACGA rates, in this instance an annuity rate of [*actual rate used*] percent was used. The annuity payments shown in the gift annuity agreement, and the charitable deduction calculation, reflect the use of this lower rate.

Information concerning the suggested rate, and the difference in calculations resulting from the lower rate, have been disclosed to [*name of donor*]. By [*his/her*] signature below, [*name of donor*] indicates agreement with the use of an annuity rate lower than the ACGA suggested rate.

DONOR:

____
[*Type in donor's name*]

Date:

____

Agreed to by the [*full name of charity*]:

By:

____
[*Name and title of officer*]

Date:

____

Prototype Materials: lower rate addendum.docx

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Sample Letter Directing That Annuity Payments Be Made to a Revocable Living Trust

APPENDIX 7

[Name of donor]
[Address]
[City/state/ZIP code]

[Name and title of contact person at charity]
[Name of charity]
[Address]
[City/state/ZIP code]

Dear *[name of contact person at charity]*:

I am writing to direct *[name of charity]* to make all future payments pursuant to *[identify the gift annuity in question]* to the trustee of the *[name of living trust]* rather than to me as an individual. In executing this direction letter, it is my intention to confirm that all of my individual rights and interests in these payments are now held by the trust. I understand that Internal Revenue Service Form 1099-R will continue to be provided in my name as an individual.

In making these payments to the trust, please arrange for checks to be made out to *[specify how checks should read]*.

If you have any questions about this letter, please do not hesitate to contact me or my legal counsel, *[name of attorney]*. Thank you for your cooperation.

Sincerely,

____________________________ ________________
[name of donor] Date

Prototype Materials: payments to RLT.docx

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Sample Letter Regarding Funding a Gift Annuity with Assets in the Donor's Revocable Living Trust

APPENDIX 8

[Name of donor]
[Address]
[City/state/ZIP code]

[Name and title of contact person at charity]
[Name of charity]
[Address]
[City/state/ZIP code]

Dear *[name of contact person at charity]*:

I am writing to confirm for you that *[identify assets]* transferred to *[name of charity]* from my revocable living trust, the *[name of trust]*, should be regarded by your organization as a contribution made by me as an individual for a charitable gift annuity. This is because under the terms of the trust instrument governing the *[name of trust]* and as the sole settlor of the trust and its sole current beneficiary, I have the absolute right to direct that all of the assets of the trust be applied for purposes of my own choosing.

Thus, even though the *[identify assets]* could have been distributed from the trust to me and then contributed by me to *[name of charity]*, I have chosen for the sake of convenience to have the distribution be made directly to the organization itself. Thank you for your understanding regarding this matter.

Sincerely,

____________________________ __________________
[name of donor] Date

Prototype Materials: CGA funded via RLT.docx

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Sample Letter Instructing Charity to Retain Annuity Payments

APPENDIX 9

[*Name(s) of Annuitant(s)*]
[*Address*]
[*City/state/ZIP code*]

[*Name and title of contact person at charity*]
[*Name of charity*]
[*Address*]
[*City/state/ZIP code*]

Dear [*name of contact person at charity*]:

Until further notice, please pay to [*name of charity*] the annuity amount payable to [*me/us (or upon the death of one of us, to the survivor of us)*] under Gift Annuity Number ___, pursuant to the gift annuity agreement dated [*date*] between [*me/us*] and [*name of charity*].

[*I/We*] understand that [*I/we*] will continue to be taxed on the payments as though they were being made directly to [*me/us*]. Nevertheless, [*I/we*] also understand that [*name of charity*] will provide [*me/us*] with a contemporaneous written acknowledgment of every payment made to [*name of charity*], as each such payment will constitute a charitable contribution by [*me/us*] to [*name of charity*].

[*I/the two of us while both of us are living and the survivor of us once one of us has died*] hereby reserve the right to modify or cancel this instruction at any time by delivering to [*name of charity*] a revised instruction document signed by [*me/both of us, or if one of us is no longer living, by the survivor of us*].

Thank you very much for your cooperation in carrying out this instruction.

Sincerely,

______________________________ ______________________________
[*Name of first annuitant*] [*Name of second annuitant if applicable*]

____
Date

Prototype Materials: payments to charity.docx

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SAMPLE LETTER REGARDING FIRST PAYMENT DEFERRAL

APPENDIX 10

[Name of annuitant]
[Address]
[City/state/ZIP code]

[Name and title of contact person at charity]
[Name of charity]
[Address]
[City/state/ZIP code]

Dear *[name of contact person at charity]*:

In connection with the charitable gift annuity established with *[name of charity]* for my benefit on *[date]*, an initial prorated payment of $__________ will be due to be made to me on *[date]*. I hereby confirm for you that this amount should be added to the full $__________ *[monthly/quarterly/semiannual/annual]* installment amount due to be paid to me on *[date – should be in same calendar year as date of initial prorated payment]* in connection with that gift annuity.

Thank you for your attention to this aspect of the gift annuity arrangement.

Sincerely,

________________________ ____________________

[Name of annuitant] Date

Prototype Materials: first payment deferral.docx

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Sample Letter Alerting Annuitant(s) to Upcoming Change In Taxation of Annuity Payments

APPENDIX 11

[*Date*]

[*Name(s) of annuitant(s)*]
[*Address*]
[*City/state/ZIP code*]

Dear [*name(s) of annuitant(s) currently receiving payments*]:

As you have probably noticed, a portion of what has been paid to you each year by [*name of charity*] in connection with [*identify gift annuity, whether by serial number or by some brief phrase such as "the gift annuity you established with us in 2003"*] has been tax free thus far.

I am writing now to call to your attention the fact that beginning next year, the entire amount of each payment will be taxed as ordinary income. This is in accordance with the information regarding taxation of payments that we provided you at the time the annuity was established. [*If annuitant has multiple annuities and taxation of others will not change: "This change is specific to the annuity identified above. Payments from your other (annuity/annuities) will continue to be taxed as they have been."*]

If you or your tax advisor has any questions regarding this letter in particular or the gift annuity in general, I encourage you to contact me. Finally, thank you once again for the support you have provided to [*name of charity*] through your gift annuity contribution.

Sincerely,

[*Name and title of contact person at charity*]

Note: *The text of this letter will need to be modified if: (1) the recipient(s) (is/are) someone other than the donor(s); (2) the payments made in connection with more than one gift annuity will be taxed entirely as ordinary income starting the following year; (3) the gift annuity is a flexible deferred annuity and the taxation of the payments was originally communicated when the commencement date was elected, rather than when the annuity was established; or (4) as in Situation Three covered in* *Appendix 3 of Chapter 2**, there was an initial period of time when no part of any payment was tax free.*

Prototype Materials: annuity becoming taxable.docx

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Sample Letter Accompanying IRS Form 1099-R

Dear Annuitant,

Enclosed is Copy C of your [*year*] IRS Form 1099-R. If Federal Income Tax was withheld from your [*year*] annuity payments, we have enclosed Copy B. This form contains tax information regarding annuity payments you received from us during [*year*]. You should enter this information on your federal tax return as outlined below.

Note that to protect the security of your personal information, we have masked all but the last 4 digits of your Social Security number.

If there was no Federal Income Tax withheld from your annuity payments in [*year*], you are not required by the IRS to attach Copy C of the 1099-R form to your federal tax return. The enclosed 1099-R form Copy C is for your records only.

If Federal Income Tax was withheld from your [*year*] annuity payments, you are required to attach Copy B to your federal tax return that you file with the IRS.

Form 1099-R item	Box #	Definition	Form 1040 entry line
Gross distribution	1	Total annuity	Form 1040 line 5a
Taxable amount	2a	Ordinary income plus capital gain income	Subtract Form 1099-R box 3 from Form 1099-R box 2a. Enter result on Form 1040, line 5b.
Capital gain	3	Long-term capital gain income	Check box F at the top of Part II of Form 8949. Enter "Form 1099-R" in column (a) on line 1 of Form 8949 Part II. Enter box 3 amount from Form 1099-R in column (d) and column (h) on line 1 of Form 8949 Part II. These entries total to Form 1040 Schedule D Part II line 10.
Federal income tax	4	Tax withheld	Form 1040, line 25b
Employee contributions or insurance premiums	5	Non-taxable	Do not report on Form 1040.
Distribution code	7	F = Gift Annuity	Do not report on Form 1040.

Sincerely,

[*Name and title of contact person at charity*]

Enclosure

Prototype Materials: 1099-R letter.docx

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APPENDIX 13

Annuity Funded with Cash

☐ CORRECTED (if checked)

PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.

ABC Charity
1234 Main Street
Seattle, WA 98000

1 Gross distribution $ 3245.00

2a Taxable amount $ 1234.39

OMB No. 1545-0119 2025 Form 1099-R

Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

2b Taxable amount not determined ☐ Total distribution ☐

Copy B

Report this income on your federal tax return. If this form shows federal income tax withheld in box 4, attach this copy to your return.

This information is being furnished to the IRS.

PAYER'S TIN: 12-3456789

RECIPIENT'S TIN: 98-7654321

3 Capital gain (included in box 2a) $ 0.00

4 Federal income tax withheld $

RECIPIENT'S name: Jane Doe

5 Employee contributions/Designated Roth contributions or insurance premiums $ 2010.61

6 Net unrealized appreciation in employer's securities $

Street address (including apt. no.): 900 Cape Road

7 Distribution code(s) F IRA/SEP/SIMPLE ☐

8 Other $ %

City or town, state or province, country, and ZIP or foreign postal code: Seattle, WA 98100

9a Your percentage of total distribution %

9b Total employee contributions $

10 Amount allocable to IRR within 5 years $

11 1st year of desig. Roth contrib.

12 FATCA filing requirement ☐

14 State tax withheld $ $

15 State/Payer's state no.

16 State distribution $ $

Account number (see instructions)

13 Date of payment

17 Local tax withheld $ $

18 Name of locality

19 Local distribution $ $

Form 1099-R www.irs.gov/Form1099R Department of the Treasury - Internal Revenue Service

Annuity Funded with Appreciated Securities

☐ CORRECTED (if checked)

PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.

ABC Charity
1234 Main Street
Seattle, WA 98000

1 Gross distribution $ 903.90

2a Taxable amount $ 843.07

OMB No. 1545-0119 2025 Form 1099-R

Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

2b Taxable amount not determined ☐ Total distribution ☐

Copy B

Report this income on your federal tax return. If this form shows federal income tax withheld in box 4, attach this copy to your return.

This information is being furnished to the IRS.

PAYER'S TIN: 12-3456789

RECIPIENT'S TIN: 98-7654321

3 Capital gain (included in box 2a) $ 508.42

4 Federal income tax withheld $

RECIPIENT'S name: Jane Doe

5 Employee contributions/Designated Roth contributions or insurance premiums $ 60.83

6 Net unrealized appreciation in employer's securities $

Street address (including apt. no.): 900 Cape Road

7 Distribution code(s) F IRA/SEP/SIMPLE ☐

8 Other $ %

City or town, state or province, country, and ZIP or foreign postal code: Seattle, WA 98100

9a Your percentage of total distribution %

9b Total employee contributions $

10 Amount allocable to IRR within 5 years $

11 1st year of desig. Roth contrib.

12 FATCA filing requirement ☐

14 State tax withheld $ $

15 State/Payer's state no.

16 State distribution $ $

Account number (see instructions)

13 Date of payment

17 Local tax withheld $ $

18 Name of locality

19 Local distribution $ $

Form 1099-R www.irs.gov/Form1099R Department of the Treasury - Internal Revenue Service

Instructions for Recipient

Generally, distributions from retirement plans (IRAs, qualified plans, section 403(b) plans, and governmental section 457(b) plans), insurance contracts, etc., are reported to recipients on Form 1099-R.

Qualified plans and section 403(b) plans. If your annuity starting date is after 1997, you must use the simplified method to figure your taxable amount if your payer didn't show the taxable amount in box 2a. See the instructions for your tax return.

Traditional IRAs or traditional SIMPLE IRAs. For distributions from a traditional individual retirement arrangement (IRA) or a traditional SIMPLE IRA, generally the payer isn't required to compute the taxable amount. See the instructions for your tax return to determine the taxable amount. If you're at least age 73, you must take minimum distributions from your IRA (other than a Roth IRA or Roth SIMPLE IRA). If you don't, you're subject to an excise tax on the amount that should've been distributed. See Pub. 590-A and Pub. 590-B for more information on IRAs.

Roth IRAs or Roth SIMPLE IRAs. For distributions from a Roth IRA or Roth SIMPLE IRA, generally the payer isn't required to compute the taxable amount. You must compute any taxable amount on Form 8606. An amount shown in box 2a may be taxable earnings on an excess contribution.

Loans treated as distributions. If you borrow money from a qualified plan, section 403(b) plan, or governmental section 457(b) plan, you may have to treat the loan as a distribution and include all or part of the amount borrowed in your income. There are exceptions to this rule. If your loan is taxable, code L will be shown in box 7. See Pub. 575.

Recipient's taxpayer identification number (TIN). For your protection, this form may show only the last four digits of your TIN (SSN, ITIN, ATIN, or EIN). However, the payer has reported your complete TIN to the IRS.

Account number. May show an account, policy, or other unique number the payer assigned to distinguish your account.

Box 1. Shows the total amount distributed this year. The amount may have been a direct rollover, a transfer or conversion to a Roth IRA or Roth SIMPLE IRA, a recharacterized IRA contribution; or you may have received it as periodic payments, nonperiodic payments, or a total distribution. Report the amount on Form 1040, 1040-SR, or 1040-NR on the line for "IRA distributions" or "Pensions and annuities" (or the line for "Taxable amount") and on Form 8606, as applicable. However, if this is a lump-sum distribution, see Form 4972. If you haven't reached minimum retirement age, report your disability payments on the line for "Wages, salaries, tips, etc." on your tax return. Also report on that line permissible withdrawals from eligible automatic contribution arrangements and corrective distributions of excess deferrals, excess contributions, or excess aggregate contributions except if the distribution is of designated Roth contributions or your after-tax contributions or if you're self-employed.

If a life insurance, annuity, qualified long-term care, or endowment contract was transferred tax free to another trustee or contract issuer, an amount will be shown in this box and code 6 will be shown in box 7. If a charge or payment was made against the cash value of an annuity contract or the cash surrender value of a life insurance contract for the purchase of qualified long-term care insurance, an amount will be shown in this box and code W will be shown in box 7. You need not report these amounts on your tax return. If code C is shown in box 7, the amount shown in box 1 is a receipt of reportable death benefits that is taxable in part.

Box 2a. This part of the distribution is generally taxable. If there is no entry in this box, the payer may not have all the facts needed to figure the taxable amount. In that case, the first box in box 2b should be checked. You may want to get one of the free publications from the IRS to help you figure the taxable amount. See *Additional information* on the back of Copy 2. For an IRA distribution, see *Traditional IRAs or Traditional SIMPLE IRAs* and *Roth IRAs or Roth SIMPLE IRAs*, earlier. For a direct rollover, other than from a qualified plan, section 403(b) plan, or governmental section 457(b) plan to a designated Roth account in the same plan or to a Roth IRA, zero should be shown and you must enter zero (-0-) on the "Taxable amount" line of your tax return. If you roll over a distribution (other than a distribution from a designated Roth account) from a qualified plan, section 403(b) plan, or governmental section 457(b) plan to a designated Roth account in the same plan or to a Roth IRA, you must include on the "Taxable amount" line of your tax return the amount shown in this box plus the amount in box 6, if any.

(Continued on the back of Copy C)

Instructions for Recipient *(continued)*

If this is a total distribution from a qualified plan and you were born before January 2, 1936 (or you're the beneficiary of someone born before January 2, 1936), you may be eligible for the 10-year tax option. See the Form 4972 instructions for more information.

If you're an eligible retired public safety officer who elected to exclude from income distributions from your eligible plan used to pay certain insurance premiums, the amount shown in box 2a hasn't been reduced by the exclusion amount. See the instructions for your tax return for more information.

Box 2b. If the first box is checked, the payer was unable to determine the taxable amount and box 2a should be blank, except for a traditional IRA or traditional SIMPLE IRA. It's your responsibility to determine the taxable amount. If the second box is checked, the distribution was a total distribution that closed out your account.

Box 3. If you received a lump-sum distribution from a qualified plan and were born before January 2, 1936 (or you're the beneficiary of someone born before January 2, 1936), you may be able to elect to treat this amount as a capital gain on Form 4972 (not on Schedule D (Form 1040)). See the Form 4972 instructions. For a charitable gift annuity, report as a long-term capital gain as explained in the Instructions for Form 8949.

Box 4. Shows federal income tax withheld. Include this amount on your income tax return as tax withheld. Generally, if you receive payments that aren't eligible rollover distributions, you can change your withholding or elect not to have income tax withheld by giving the payer Form W-4P or Form W-4R, as applicable.

Box 5. Generally, this shows the employee's investment in the contract (after-tax contributions), if any, recovered tax free this year; the portion that's your basis in a designated Roth account; the part of premiums paid on commercial annuities or insurance contracts recovered tax free; the nontaxable part of a charitable gift annuity; or the investment in a life insurance contract reportable under section 6050Y. This box doesn't show any IRA contributions. If the amount shown is your basis in a designated Roth account, the year you first made contributions to that account may be entered in box 11.

Box 6. If you received a lump-sum distribution from a qualified plan that includes securities of the employer's company, the net unrealized appreciation (NUA) (any increase in value of such securities while in the trust) is taxed only when you sell the securities unless you choose to include it in your gross income this year. See Pub. 575 and Form 4972. If you roll over the distribution to a designated Roth account in the same plan or to a Roth IRA or Roth SIMPLE IRA, see the instructions for box 2a. For a direct rollover to a designated Roth account in the same plan or to a Roth IRA or Roth SIMPLE IRA, the NUA is included in box 2a. If you didn't receive a lump-sum distribution, the amount shown is the NUA attributable to employee contributions, which isn't taxed until you sell the securities.

Box 7. The following codes identify the distribution you received. For more information on these distributions, see the instructions for your tax return. Also, certain distributions may be subject to an additional 10% tax. See the Instructions for Form 5329.

1—Early distribution, no known exception (in most cases, under age 59½).
2—Early distribution, exception applies (under age 59½).
3—Disability.
4—Death.
5—Prohibited transaction.
6—Section 1035 exchange (a tax-free exchange of life insurance, annuity, qualified long-term care insurance, or endowment contracts).
7—Normal distribution.
8—Excess contributions plus earnings/excess deferrals (and/or earnings) taxable in 2025.
9—Cost of current life insurance protection.
A—May be eligible for 10-year tax option (see Form 4972).
B—Designated Roth account distribution.

Note: If code B is in box 7 and an amount is reported in box 10, see the Instructions for Form 5329.

C—Reportable death benefits under section 6050Y.
D—Annuity payments from nonqualified annuities that may be subject to tax under section 1411.

(Continued on the back of Copy 2)

APPENDIX 13

Instructions for Recipient *(continued)*

E—Distributions under Employee Plans Compliance Resolution System (EPCRS).

F—Charitable gift annuity.

G—Direct rollover of a distribution to a qualified plan, a section 403(b) plan, a governmental section 457(b) plan, or an IRA.

H—Direct rollover of a designated Roth account distribution to a Roth IRA or Roth SIMPLE IRA.

J—Early distribution from a Roth IRA or Roth SIMPLE IRA, no known exception (in most cases, under age 59½).

K—Distribution of traditional IRA assets not having a readily available FMV.

L—Loans treated as distributions.

M—Qualified plan loan offset.

N—Recharacterized IRA contribution made for 2025 and recharacterized in 2025.

P—Excess contributions plus earnings/excess deferrals (and/or earnings) taxable in 2024 or a previous year.

Q—Qualified distribution from a Roth IRA or Roth SIMPLE IRA.

R—Recharacterized IRA contribution made for 2024 or a previous year and recharacterized in 2025.

S—Early distribution from a SIMPLE IRA in first 2 years, no known exception (under age 59½).

T—Roth IRA or Roth SIMPLE IRA distribution, exception applies.

U—Dividend distribution from ESOP under section 404(k).

Note: This distribution isn't eligible for rollover.

W—Charges or payments for purchasing qualified long-term care insurance contracts under combined arrangements.

Y—Qualified charitable distribution (QCD) claimed by taxpayer under section 408(d)(8).

If the IRA/SEP/SIMPLE box is checked, you've received a traditional IRA, SEP, or SIMPLE distribution.

Box 8. If you received an annuity contract as part of a distribution, the value of the contract is shown. It isn't taxable when you receive it and shouldn't be included in boxes 1 and 2a. When you receive periodic payments from the annuity contract, they're taxable at that time. If the distribution is made to more than one person, the percentage of the annuity contract distributed to you is also shown. You'll need this information if you use the 10-year tax option (Form 4972). If you previously received an annuity contract as part of a distribution (or the contract was purchased through a direct rollover from a plan account) and periodic payments from that annuity contract are included in box 1, the value of the contract as of the end of the year is shown. This information may be provided to your plan administrator to determine any required distribution from that plan. If charges were made for qualified long-term care insurance contracts under combined arrangements, the amount of the reduction in the investment (but not below zero) in the annuity or life insurance contract is reported here.

Box 9a. If a total distribution was made to more than one person, the percentage you received is shown.

Box 9b. For a life annuity from a qualified plan or from a section 403(b) plan (with after-tax contributions), an amount may be shown for the employee's total investment in the contract. It is used to compute the taxable part of the distribution. See Pub. 575.

Box 10. If an amount is reported in this box, see the Instructions for Form 5329 and Pub. 575.

Box 11. The first year you made a contribution to the designated Roth account reported on this form is shown in this box.

Box 12. If checked, the payer is reporting on this Form 1099 to satisfy its Internal Revenue Code chapter 4 account reporting requirement under FATCA. You may also have a filing requirement. See the Instructions for Form 8938.

Box 13. Shows the date of payment for reportable death benefits under section 6050Y.

Boxes 14–19. If state or local income tax was withheld from the distribution, boxes 16 and 19 may show the part of the distribution subject to state and/or local tax.

Additional information. You may want to see: Form W-4P, Form 4972, Form 5329, Form 8606, Pub. 525, Pub. 560, Pub. 571, Pub. 575, Pub. 590-A, Pub. 590-B, Pub. 721, Pub. 939, and Pub. 969.

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Form **1096**

Department of the Treasury
Internal Revenue Service

Annual Summary and Transmittal of U.S. Information Returns

OMB No. 1545-0108

2025

FILER'S name

Street address (including room or suite number)

City or town, state or province, country, and ZIP or foreign postal code

For Official Use Only

Name of person to contact	Telephone number
Email address	Fax number

1 Employer identification number	2 Social security number	3 Total number of forms	4 Federal income tax withheld	5 Total amount reported with this Form 1096
			$	$

6 Enter an "X" in only one box below to indicate the type of form being filed.

W-2G 32	1097-BTC 50	1098 81	1098-C 78	1098-E 84	1098-F 03	1098-Q 74	1098-T 83	1099-A 80	1099-B 79	1099-C 85	1099-CAP 73	1099-DA 7A	1099-DIV 91	1099-G 86	1099-INT 92	1099-K 10
☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
1099-LS 16	1099-LTC 93	1099-MISC 95	1099-NEC 71	1099-OID 96	1099-PATR 97	1099-Q 31	1099-QA 1A	1099-R 98	1099-S 75	1099-SA 94	1099-SB 43	3921 25	3922 26	5498 28	5498-ESA 72	5498-QA 2A
☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
5498-SA 27																
☐																

Return this entire page to the Internal Revenue Service. Photocopies are not acceptable.
Send this form, with the copies of the form checked in box 6, to the IRS in a flat mailer (not folded).

Under penalties of perjury, I declare that I have examined this return and accompanying documents and, to the best of my knowledge and belief, they are true, correct, and complete.

Signature **Title** **Date**

Instructions

Future developments. For the latest information about developments related to Form 1096, such as legislation enacted after it was published, go to *www.irs.gov/Form1096*.

Caution: You may be required to electronically file (e-file) information returns as the e-file threshold is 10 (calculated by aggregating all information returns), effective for information returns required to be filed on or after January 1, 2024. Go to *www.irs.gov/InfoReturn* for e-file options. Also, see part F in the current General Instructions for Certain Information Returns.

Purpose of form. Use this form to transmit paper Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G to the IRS.

Who must file. Any person or entity who files any form checked in box 6 above must file Form 1096 to transmit those forms to the IRS.

Caution: Your name and taxpayer identification number (TIN) (employer identification number (EIN) or social security number (SSN)) must match the name and TIN used on your 94X series tax return(s) or you may be subject to information return penalties. Do not use the name and/or TIN of your paying agent or service bureau.

Enter the filer's name, address (including room, suite, or other unit number), and TIN in the spaces provided on the form. The name, address, and TIN of the filer on this form must be the same as those you enter in the upper left area of Form 1097, 1098, 1099, 3921, 3922, 5498, or W-2G.

When to file. If any date shown falls on a Saturday, Sunday, or legal holiday in the District of Columbia or where the return is to be filed, the due date is the next business day. File Form 1096 in the calendar year following the year for which the information is being reported, as follows.

- With Forms 1097, 1098, 1099, 3921, 3922, or W-2G, file by February 28.*
- With Forms 1099-NEC, file by January 31.
- With Forms 5498, file by May 31.

* Leap years do not impact the due date. See Announcement 91-179, 1991-49 I.R.B. 78, for more information.

Where To File

Send all information returns filed on paper with Form 1096 to the following.

If your principal business, office or agency, or legal residence in the case of an individual, is located in:	Use the following address:
Alabama, Arizona, Arkansas, Delaware, Florida, Georgia, Kentucky, Maine, Massachusetts, Mississippi, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Texas, Vermont, Virginia	Internal Revenue Service P.O. Box 149213 Austin, TX 78714-9213
Alaska, Colorado, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Utah, Washington, Wisconsin, Wyoming	Internal Revenue Service Center P.O. Box 219256 Kansas City, MO 64121-9256

For more information and the Privacy Act and Paperwork Reduction Act Notice, see the current General Instructions for Certain Information Returns. Cat. No. 14400O Form **1096** (2025) Created 3/20/25

APPENDIX 14

California, Connecticut, District of Columbia, Louisiana, Maryland, Pennsylvania, Rhode Island, West Virginia	Internal Revenue Service Center 1973 North Rulon White Blvd. Ogden, UT 84201

If your legal residence or principal place of business is outside the United States, file with the Internal Revenue Service, P.O. Box 149213, Austin, TX 78714-9213.

Transmitting to the IRS. Group the forms by form number and transmit each group with a separate Form 1096. For example, if you must file both Forms 1098 and 1099-A, complete one Form 1096 to transmit your Forms 1098 and another Form 1096 to transmit your Forms 1099-A. Do not send a form (1099, 5498, etc.) containing summary (subtotal) information with Form 1096. Summary information for the group of forms being sent is entered only in boxes 3, 4, and 5 of Form 1096.

Corrected returns. Originals and corrections of the same type of return can be submitted using one Form 1096. For information about filing corrections, see the current General Instructions for Certain Information Returns.

Box 1 or 2. Enter your TIN in either box 1 or 2, not both. Sole proprietors and all others must enter their EIN in box 1. Individuals not in a trade or business must enter their SSN in box 2. However, sole proprietors who do not have an EIN must enter their SSN in box 2. Use the same EIN or SSN on Form 1096 that you use on Form 1097, 1098, 1099, 3921, 3922, 5498, or W-2G.

Box 3. Enter the number of forms you are transmitting with this Form 1096. Do not include blank or voided forms or the Form 1096 in your total. Enter the number of correctly completed forms, not the number of pages, being transmitted. For example, if you send one page of three-to-a-page Forms 1098-E with a Form 1096 and you have correctly completed two Forms 1098-E on that page, enter "2" in box 3 of Form 1096.

Box 4. Enter the total federal income tax withheld shown on the forms being transmitted with this Form 1096.

Box 5. No entry is required if you are filing Form 1098-T, 1099-A, or 1099-G. For all other forms in the listing that follows, enter the total of the amounts from the specific boxes identified for each form.

Form W-2G	Box 1
Form 1097-BTC	Box 1
Form 1098	Boxes 1 and 6
Form 1098-C	Box 4c
Form 1098-E	Box 1
Form 1098-F	Box 1
Form 1098-Q	Box 4
Form 1099-B	Boxes 1d and 13
Form 1099-C	Box 2
Form 1099-CAP	Box 2
Form 1099-DA	Box 1f
Form 1099-DIV	Boxes 1a, 2a, 3, 9, 10, and 12
Form 1099-INT	Boxes 1, 3, 8, 10, 11, and 13
Form 1099-K	Box 1a
Form 1099-LS	Box 1
Form 1099-LTC	Boxes 1 and 2
Form 1099-MISC	Boxes 1, 2, 3, 5, 6, 8, 9, 10, and 11
Form 1099-NEC	Boxes 1 and 3
Form 1099-OID	Boxes 1, 2, 5, 6, and 8
Form 1099-PATR	Boxes 1, 2, 3, and 5
Form 1099-Q	Box 1
Form 1099-QA	Box 1
Form 1099-R	Box 1
Form 1099-S	Box 2
Form 1099-SA	Box 1
Form 1099-SB	Boxes 1 and 2
Form 3921	Boxes 3 and 4
Form 3922	Boxes 3, 4, and 5
Form 5498	Boxes 1, 2, 3, 4, 5, 8, 9, 10, 12b, 13a, and 14a
Form 5498-ESA	Boxes 1 and 2
Form 5498-QA	Boxes 1 and 2
Form 5498-SA	Box 1

Online fillable forms. Forms 1097-BTC, 1098-C, 1098-MA, 1098-Q, 1099-CAP, 1099-LTC, 1099-Q, 1099-QA, 1099-SA, 3922, 5498-ESA, 5498-QA, and 5498-SA have been converted to online fillable PDFs. For more information, see *Online fillable forms* in the current General Instructions for Certain Information Returns.

APPENDIX 15

Sample Letter to Personal Representative Regarding Additional Deduction for Unrecovered Investment in Contract

[Date]

[Name of personal representative]
[Address]
[City/state/ZIP code]

Re: Estate of *[annuitant's legal name],* Deceased

Dear *[name of personal representative]*:

I am writing you because I understand you are involved in administering the estate referenced above. As you may be aware, on *[date]* a charitable gift annuity was established with *[name of charity]*. Under the terms of the gift annuity agreement, a copy of which is enclosed with this letter, annuity payments were being made to *[annuitant]* for life.

A portion of each payment was treated as a tax-free return of principal. This tax-free portion would have ended during *[year in which tax-free portion would end]*. Because *[annuitant]* died prior to receiving all tax-free amounts for which *[he/she]* was eligible, a tax deduction is allowed on *[his/her]* final income tax return. This deduction equals the total of the tax-free amounts *[annuitant]* was eligible for, but did not live to receive: [$______].

The above deduction amount can be claimed on Line 16 ("Other Itemized Deductions") of Schedule A (Form 1040) in connection with *[annuitant's]* final income tax return. If you or others involved in the administration of *[his/her]* estate have any questions or need more information regarding this matter, please contact me.

Sincerely,

[Name and title of contact person at charity]

Enclosure

Prototype Materials: unrecovered inv in contract letter.docx

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Sample Letter for Requesting Return of a Payment Issued After Annuitant's Death

APPENDIX 16

[Date]

[Name and address of estate representative]

Dear *[Salutation]*:

[Opening paragraph expressing condolences, etc as appropriate]

As you may know, *[Annuitant name]* was receiving payments from a charitable gift annuity issued by *[Charity name]* in *[Year]*. The annuity agreement provides that the last annuity payment is to be the last payment preceding the death of the annuitant. See paragraph *[Number]* of the attached annuity agreement.

[Adapt the paragraph below, as needed, to identify all payments issued after death. If payments were issued but not deposited, request their return rather than a refund.]
Unfortunately, due to a delay in receiving notification of the death of *[Annuitant name]*, *[Charity name]* erroneously issued an annuity payment of $*[Amount]* on *[Date]* which was received and deposited by the estate. We must ask that the estate promptly refund $*[Amount]*.

[Closing paragraph expressing gratitude, memories, mission, etc.]

Sincerely,

[Name, title, and contact information of charity representative]

Prototype Materials: return post-death payment.docx

Chapter 6

ANNUITY AGREEMENTS

A complete set of agreements and instructions for finding a specific agreement can be found among the prototype materials accompanying this manual (agreements-base.docx and agreements directory.docx, respectively). There is also a directory of all the prototype agreements at the beginning of this manual. For your reference, the prototype agreement for a one-life annuity where the donor is the annuitant appears at the end of this chapter.

The base set of agreements contained in agreements-base.docx may be used without modification when issuing annuities to donors in Arkansas, Delaware, the District of Columbia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Nebraska, Ohio, Rhode Island, South Carolina, Utah, and Wyoming.

Agreements for other states may require additional provisions, particular phrasing, or disclosure language. Chapter 12 details the changes which must be made to the base agreements for annuities issued to donors in Alabama, Alaska, Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Iowa, Maryland, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, and Wisconsin.

The agreements provide for signature by both the donor(s) and the charity. Three states, Alabama, California, and New York, specifically require that the signature(s) of the donor(s) appear on the agreement. Washington allows for an agreement without the signature(s) of the donor(s), as long as an application form containing the signature(s) is attached to the agreement. With respect to Maryland and Tennessee, the donor(s) must either sign an acknowledgment verifying receipt of the required disclosure provision, or sign an annuity agreement which includes the disclosure language. Charities adopting a general practice of not having donors sign agreements are strongly encouraged to use formal applications with donor signatures. A sample application form is included in Chapter 5, Appendix 4.

If the charity elects not to have the donor(s) sign, the agreement should be modified by removing the preamble ("This Agreement is made between . . .") and substituting the following paragraph 1:

1. Transfer of Property by Donor

ABC Charity (hereinafter "Charity") of 1234 Main Street, Seattle, Washington 98000 certifies that *[Name of Donor]* (hereinafter "the Donor") of *[street address]*, *[city]*, *[state]*, *[zip code]* as an evidence of *[his/her]* desire to support the work of Charity and to make a charitable gift, on *[contribution date – month, day, year]* contributed to Charity the property described in Schedule A attached hereto, the fair market value of which is $*[amount]*.

Use of the revocation language, included in the agreements in an optional format, is discussed in Chapter 12. With respect to the applicable state law which will govern the agreement, seven states (Arkansas, California, Maryland, New Jersey, New York, Tennessee, and Washington) require that their law be named as governing in agreements entered into with state residents. While naming the law of the donor's state of residence in all circumstances provides consistency, some charities prefer to name the law of their home state unless required to do otherwise.

The governing law issue is distinct from the matter of the applicable regulatory law regarding such things as needing to register, including disclosure language, and maintaining a segregated reserve fund. The regulatory law is always based on the donor's state.

Note: Certain states require a charity, as part of the registration to issue annuities, to put on file the forms of agreement the charity proposes to use. Those states are: Alabama, Arkansas, California, Maryland, New Jersey, New York, North Dakota, Tennessee, and Washington. A charity that wishes to use the forms provided in the prototype materials must submit them as part of its application or, if a charity is already registered, it must submit them as revised forms for review and approval in the applicable state(s) prior to use of the forms. A charity accepting qualified charitable distributions from an IRA to fund a gift annuity, or issuing flexible deferred and/or commuted annuities, would need to submit those forms of agreement to the applicable states as well. See Chapters 16, 18 and 19, respectively.

The forms submitted to a particular state must contain all required provisions, as noted in Chapter 12. This may be done by modifying, as necessary, the set of agreements contained among the prototype materials accompanying this manual. (For charities using PG Calc's *PGM Anywhere* , it is possible to generate state prototype agreements from the software.) Because New York has modified the manner for presenting text options within the agreement, sample sets of New York base agreements and New York qualified charitable distribution (QCD) agreements are also contained among the prototype materials (NY agreements.docx and NY QCD agreements.docx, respectively).

Once forms of agreement have been filed and approved, if a charity wishes to make changes it must submit new forms for approval prior to beginning to use them. See Chapter 12. In addition to substantive changes, a change in the charity's name or address also necessitates submitting new forms to the applicable states.

Serial Number

ABC Charity

Gift Annuity Agreement
One Life – Donor is Annuitant
Immediate Payments

This Agreement is made between *[name of donor]*, of *[street address]*, *[city]*, *[state] [zip]* (hereinafter "the Donor"), and ABC Charity, of 1234 Main Street, Seattle, Washington 98000 (hereinafter "Charity").

1. Transfer of Property by Donor
Charity certifies that the Donor, as an evidence of *[his/her]* desire to support the work of Charity and to make a charitable gift, on *[contribution date – month, day, year]* contributed to Charity the property described in Schedule A attached hereto, the fair market value of which is $*[amount]*.

2. Payment of Annuity
In consideration of the property transferred by the Donor, Charity shall pay an annual annuity of $*[amount]* from the date of this Agreement and shall pay such amount to the Donor so long as *[he/she]* is living.

3. Payment Dates; First Installment
The annuity shall be paid in *[monthly, quarterly, semi-annual, annual]* installments of $*[amount]*. The first installment shall be payable on *[month, day, year]*, and shall be prorated on the basis of the number of days in the initial payment period. Subsequent installments beginning on *[month, day, year]* and continuing every *[month, quarter, half-year, year]* thereafter shall be in the full amount of $*[amount]*. *[If the contribution is received on the first day of the period or if the first payment will be for the full amount in any case, delete the reference to proration and subsequent installments.]*

4. Birth Date of Annuitant
The birth date of the Donor is *[month, day, year]*.

5. Irrevocability; Non-assignability; Termination
This annuity is irrevocable and non-assignable, except that it may be assigned to Charity. Charity's obligation under this Agreement shall terminate with the regular payment preceding the Donor's death.

6. Uses and Purposes of Gift
Upon Charity's satisfaction of its obligation under this Agreement, an amount equal to the residuum of the gift shall be used by Charity for [*"its general purposes" if unrestricted; if restricted, state purpose*].

7. Entire Agreement; Governing Law
This Agreement, together with Schedule A attached hereto, constitutes the entire agreement of the parties. This Agreement shall be governed by the laws of the State of *[state]*.

Form: ABC-1da-I-XX (10/17) Prototype Materials: agreements-base.docx

This Agreement is effective as of *[contribution date – month, day, year]*.

DONOR:	ABC CHARITY:
	By:
______________________________	______________________________ *[Name and title of officer]*
	ATTEST
	By:
	______________________________

Gift Annuity Agreement Between
***[Name of Donor]* and**
ABC Charity
Schedule A

[Description of Property]

Chapter 7

TRANSFERRING ASSETS & EXECUTING AGREEMENTS

Although most gift annuities are funded with cash or publicly-traded securities, it is possible to fund them with other assets, including closely held stock, real estate, tangible personal property, commercial annuities, savings bonds, retirement funds, and life insurance policies. The procedures for transfer depend, of course, on the type of asset transferred, as well as on who owns the asset. For example, a life insurance policy that would be regarded as a spouse's separate property in one state might be regarded as the community property of both spouses in another state. Likewise, the rules for determining the date and value of the gift depend on the type of asset and on the particular method by which it is transferred.

The first part of this chapter discusses how transfers are effectuated, when transfers are deemed to be complete, and how an asset's value is determined. The second part deals with the execution of agreements.

Transferring Assets

Cash

Procedure for Transfer

Actual transfers of currency and coinage are rare. In almost all instances, a "cash" gift will be a gift made by check. Typically, it will be drawn upon the donor's personal checking account, although sometimes it will be a cashier's check or one which has been issued to the charity by a financial institution acting as custodian for property owned by the donor.

Occasionally, a cash gift may be made by wire transfer or even by credit card. If the wire transfer method is used, a service fee may be deducted by the sender of the wire, in which case the amount of the gift will be reduced slightly (although it is also possible for the donor to pay this fee directly, thereby avoiding any reduction in the amount transferred). If the contribution is charged to a credit card, the financial institution serving as the intermediary will assess a service fee directly to the charity. The amount of the fee is not deducted from the amount charged, as the fee is a cost born by the charity in arranging to accept contributions by credit card.

Special Note Regarding Certificates of Deposit: A certificate of deposit may be the source of the cash a donor wishes to contribute. Usually, the certificate will have matured and the principal and interest will have been deposited in the donor's checking account, so the gift will take the form of a personal check.

Nevertheless, from time to time a donor may inquire about the possibility of transferring a certificate directly to the charity. In such a case, the donor should be encouraged to allow the certificate to mature and then to contribute cash, unless other considerations make it advisable for the gift to be made sooner. Even if a direct transfer would be appropriate, however, the bank that has issued the certificate may not agree to a transfer. Assuming it does agree, it would specify the steps in the transfer process. The gift would be made once the process has been completed.

The amount of the gift would be the face value of the certificate, plus any accrued interest which the donor may be required to recognize as income but which will be received by the charity when the next periodic interest payment is made. The charity, of course, would be free either to hold the certificate until maturity (and to receive any interest payments due) or to cash it in prior to maturity (and to pay any penalty associated with early withdrawal of the principal amount).

Date and Value of Gift

Cash contributions for gift annuities are sometimes made in person, in which case the date of the gift is the date the donor hands the check to a representative of the charity. Frequently, however, the donor (or an agent of the donor, such as a financial institution) will mail the check to the charity. Assuming the charity actually receives the check, the date of the gift is technically the date on which the envelope containing the check was deposited in the mail, although for practical purposes it is the date the envelope was postmarked. Only if the donor can prove that the postmark date is incorrect would an earlier date apply.

This *mailbox rule* can be quite significant for gifts made toward the end of a calendar month, especially the month of December, or in proximity to an annuitant becoming a year older for actuarial purposes. For example, if the donor deposits the check in the mail on Saturday July 30 but the envelope is not postmarked until Monday August 1st, unless the donor can prove to the satisfaction of the charity (and ultimately the Internal Revenue Service and any relevant state regulatory bodies) that the check was in fact mailed on July 30, the date of the gift will be August 1. This two-day delay may or may not affect the tax aspects of the gift annuity arrangement, depending on whether during that period there was a change in the available Charitable Midterm Federal Rate (CMFR) or an annuitant's nearest age increased. A similar delay occurring at the end of the year would also affect the year in which the donor could use the income tax charitable deduction associated with the annuity.

Interestingly, the date on the check itself has no bearing on the timing of the gift unless the check has been postdated for some day after the gift would otherwise be considered to have been completed. For example, if on May 3 the donor hands a representative of the charity a check dated May 4, the date of the gift will be May 4. If the date of the check is May 2, the date of the gift will be May 3.

If a donor elects neither to give a check to a representative of the charity nor to mail it to the charity but instead to use a private delivery service such as DHL, Federal Express, or United Parcel Service, an argument can be made that the date of the gift will be the date recorded or marked on the cover of the parcel containing the gift. In other words, the date on a private delivery parcel would be treated the same as the postmark when the parcel is sent by U.S. mail. However, the private delivery service would presumably need to be one designated by the IRS to meet the "timely mailing" requirement, pursuant to IRC Sec. 7502. It should be noted that the IRS does not designate delivery service companies broadly, but specific types of services offered by those companies - for example, Fed Ex Standard Overnight, or UPS Next Day Air. These designations can change; one year the IRS removed all DHL services from the list, only to put many of them back on the list the following year.

While Sec. 7502 applies specifically to any document required to be filed, or any payment required to be made to the IRS, it is believed, as well, to apply to the delivery of a charitable gift. See also Reg. Sec. 1.170A-1(b), which uses the words *mailing* and *mails* in a way that leaves open the possibility that DHL, Federal Express, or United Parcel Service would be regarded as a private mail service.

Some commentators contend, however, that precisely because the statute mentions only documents required to be filed with the IRS, it is not applicable to the transmittal of charitable gifts. They also point out that any private delivery service is ultimately acting as an agent of the donor, meaning that the donor can – in theory – intervene to halt the process at any point prior to actual delivery to the charity. If this is so, then the date of the gift is the date of delivery.

Nevertheless, if the private delivery service is acting as the charity's agent, then the date of the gift will be the date the parcel is received by the delivery service. This can be accomplished by the charity providing to the donor in advance a prepaid envelope (or other parcel container) and accompanying shipping paperwork, along with instructions that the donor use the envelope when sending the contribution.

To the extent a check is involved in any of the foregoing instances, the date of the gift is further contingent on the check clearing the donor's bank "in due course." As noted above, two alternatives to a check (or currency/coinage) are possible. In the case of a wire transfer, the date of the gift will be the date the amount contributed is credited to the account of the charity. In the case of a contribution charged to the donor's credit card, the gift will be complete on the date the charge is posted to the donor's account.

Here, too, there can be some disagreement, with arguments made in favor of the gift date being the date the donor provides the credit card information to the charity or the date the charity runs it through, rather than the posting date. The IRS has not been consistent in the language it uses, referring to deductibility of the gift in the year the "charge is made" (Rev. Rul 78-38) but in news releases indicating that to support such a gift a donor should have an account statement showing the "transaction posting date" (IR 2006-192, IR 2014-110). From a charity's perspective the key is to be consistent in the approach taken to determine the gift date and, particularly with respect to calendar year-end, to encourage donors not to wait until the last minute to make such gifts.

Regardless of how a contribution of cash is made, the value of the gift is certain and does not fluctuate over time. This is in contrast to contributions of other types of assets.

Publicly-traded Securities

Procedure for Transfer

This category of assets includes stocks, bonds (both corporate and government obligations, such as Treasury Notes and Bonds, plus government-backed mortgage securities), mutual fund or exchange traded fund shares, and occasionally warrants and options. Annuities established with the first three types of securities, and stocks in particular, are quite common and can enhance the tax benefits associated with the gift.

Nevertheless, the donor and especially the charity will need to be alert to certain complexities inherent in gifts of publicly-traded securities, as well as to ways to avoid or at least minimize potential complications. In general, the charity should be proactive, obtaining as much information as possible about the securities to be transferred and remaining ready to work with the donor on an alternative gift plan if establishing the annuity as originally envisioned no longer seems wise. The donor may be unable to provide all of the relevant information, in which case the charity should either contact the donor's broker, accountant, or other financial advisor, or else have the donor do so.

Special Note Regarding Tax-Free Municipal Bonds: This is one type of publicly-traded security that generally should not be used to fund a gift annuity. All the income a donor receives from a municipal bond will be tax-free, but only a portion of what he or she would receive from a gift annuity would be tax-free. Still, using a bond to fund a gift annuity might make sense if (1) the donor has considerable charitable intent; (2) the bond is due to mature relatively soon; (3) the donor is motivated primarily by the income tax deduction or fixed-payments-for-life features of an annuity; or (4) the overall after-tax cash flow resulting from the establishment of the annuity, taking into consideration the tax on the taxable income, would be greater than what the donor would receive in continuing to hold the bond. Of course, unless a particular bond has increased in value substantially, a donor would likely do better first to sell or surrender the bond and then contribute cash. Moreover, the suitability of using other assets the donor may own to fund the annuity should be considered, as well.

Transferring Stocks and Bonds

In most cases, stocks and bonds will be held in street name by the donor's broker and transferred electronically to an account for the charity. Stock in a dividend reinvestment program (DRIP) account maintained by the issuing company can also be transferred electronically.

For stocks or bonds held in certificate form, the most direct method of transfer will be for the donor to deliver the securities – unendorsed and with no other blanks filled in by the donor – to the charity in person, along with a properly executed stock or bond power document for each security. If this is not convenient, an unendorsed and otherwise blank stock certificate or bond (other than a bearer bond) can be mailed to the charity, in which case the donor will also need to execute a stock or bond power document and mail it to the charity in a separate envelope. The donor's signature on the stock or bond power document will need to be "guaranteed," a process distinct from mere notarization and one which can normally be handled only by an appropriate person at a financial institution where the donor does business.

Alternatively, the donor could forward a stock certificate and stock power to the transfer agent and have the shares reregistered in the name of the charity. Because this process can often take several weeks, it is not recommended.

If the donor holds stock in certificate form but wants to contribute for a gift annuity fewer shares than the number represented by the certificate, then the donor should provide the charity with the certificate and a completed stock power document, along with a simple letter. The letter would specify the number of shares being contributed for the gift annuity and indicate that a new certificate should be issued to the donor for the shares not being contributed. The charity (or its bank or brokerage firm) would then work with the transfer agent to have a new certificate issued to the donor for the number of shares remaining after deducting the contributed shares. This aspect of the process can take quite a while to complete (even though the gift aspect of the process is considered to be complete as soon as the original certificate and stock power document are given to the charity). It is also possible for the donor to send the certificate to the transfer agent with instructions to issue two new certificates (one to the charity and the other to the donor), but this delays the making of the gift until the charity's certificate is issued.

Transferring Mutual Fund Shares

The donor's shares will usually be held in an account maintained by the mutual fund company itself. Unless the charity already has an account with the company, a new account in the name of the charity will need to be opened. Many mutual fund companies have detailed requirements to which the donor and the charity must adhere before a donor's shares can be transferred. Examples include having the donor sign a specific form or having the charity supply a board resolution authorizing the charity to open an account with the mutual fund company.

Occasionally, mutual fund shares will be held in the donor's brokerage account. This allows for the possibility of an electronic transfer to a brokerage account for the charity, provided the charity's broker is authorized to hold shares of the particular fund in question.

The transfer process may take up to several weeks, and during this period the value of the shares will fluctuate. Accordingly, it is advisable at the outset for the charity to ask those who will have a role in the process how long they think it will take. The charity should then share what it learns with the donor and explore ways to ensure the transfer will take place as smoothly and as close to the desired date as possible. In addition, the charity will need to be sure the donor understands when the gift will be complete and how its value will be determined. In all probability, the donor will not be aware of the rules summarized below unless so informed by the charity.

Transferring Exchange Traded Fund (ETF) Shares

Although there are similarities between an exchange traded fund (ETF) and a mutual fund, there are also differences. As with mutual funds, an ETF is a pooled investment vehicle, with each share representing proportional ownership of the pool. However, unlike mutual funds (and akin to stock) ETFs are listed on a stock exchange and traded through a brokerage account. Thus, shares can be transferred electronically to a brokerage account held by the charity. For a discussion and example of a gift annuity funded with ETF shares in the context of tangible personal property, see Chapter 16 and Figure 16.5.

Date and Value of Gift

When stock, mutual fund, or ETF shares are transferred electronically, the gift is complete on the date they are received in an account authorized by the charity. Even though the donor's broker may maintain an omnibus "charitable gift account" to receive transfers of securities for the ultimate benefit of many different charities, a particular gift to a particular charity is not deemed to be completed until the charity has confirmed that the account may be used for this purpose. If, for example, a transfer takes place on a Tuesday but the charity does not even learn of the existence of the account until receiving a call from the donor's broker on the following day, then that Wednesday is the earliest the gift can be deemed to be completed, assuming the charity ratifies use of the account for this purpose. Prior to such ratification, the broker has simply acted as the donor's agent in attempting to complete the gift.

A transfer of securities made in person is complete when a representative of the charity is handed the bond or stock certificate and bond or stock power document. When the securities are mailed or sent via a designated private delivery service, the date of the gift is the same as in the case of a contribution of cash (assuming, as discussed in *Executing Agreements* later in this chapter, that all terms of the annuity arrangement are acceptable to both parties). For example, if the two separate envelopes for the security and the relevant "power" document are mailed but are postmarked on different days, the later postmark controls.

When a transfer of stock takes place by means of reregistering ownership of the shares, the date of the gift is the date of the new stock certificate.

Once the gift completion date is known, the value of the gift needs to be calculated. For publicly-traded stocks and bonds, and for ETF shares, the key figure is the average of the high and low prices for the date in question. Slightly different rules apply for bonds if high and low prices are not available but closing prices are. See Reg. Sec. 25.2512-2(b)(2). For mutual fund shares, the relevant measure is the net asset value on the date of the gift.

In the case of thinly-traded stocks, for which no quotations are available on the date of the gift, first determine the mean trading price on the closest prior date for which quotations are available and the mean trading price on the closest subsequent date for which quotations are available. Then use the weighted average of these two mean prices as the value of the stock on the actual date of the gift. For example, if the closest prior trading date was two days before the gift was made and the mean price on that date was $15 per share, and if the closest subsequent trading date was three days after the gift was made and the mean price on that date was $10 per share, then the value on the date of the gift would be $13 per share. The same approach should also be used even for heavily-traded stock if a gift made in person or by mail is completed on a weekend or a holiday when the relevant stock exchange is not open. Slightly different rules apply to gifts of bonds. See Reg. Sec. 25-2512-2(b).

In view of the foregoing, it may be impossible to know the precise value of the assets contributed for the annuity on the date of the gift. Furthermore, with electronic transfers of stock or mutual fund or ETF shares, confirmation of a transfer may not be available until the day after it was completed.

Fortunately, so long as the gift annuity agreement is dated as of the date the gift is completed, actual execution of the agreement can take place later, as noted in *Executing Agreements* later in this chapter. The charity may even sell the donated securities before the agreement is executed without fear of the donor being taxed on all of the capital gain, so long as he or she has instructed the charity that the transfer was intended for a gift annuity and so long as all terms of the annuity arrangement are acceptable to both parties. Note: With some mutual funds, the shares may not be "in proper order to sell," and thus may not be eligible for the charity to sell until one or more days after the date of the gift.

All of this means that in its initial conversations with the donor, the charity will need to address the possibility that the value of the securities in question might change quite a bit by the time the gift is complete. If the donor has in mind receiving annuity payments of a precise amount, the charity should explore options such as supplementing a shortfall with a contribution of cash or accepting a lower annuity rate if the annuity is overfunded.

Transfers of long-term or short-term loss securities should be avoided. The donor would be better off selling such securities and donating the cash proceeds, thereby realizing a loss which can be used to offset certain other income received by the donor.

Generally, transfers of appreciated securities which have been held one year or less should also be avoided. This is because the deduction will be based on the cost basis of the securities rather than on their fair market value, and because the short-term gain that is reported will be taxed less favorably than would a similar amount of long-term gain. (Nevertheless, as is the case with long-term gain, only a portion of the short-term gain will be subject to tax, and it should be eligible for ratable reporting to the same extent as long-term gain. See the discussion of ordinary income property in Chapter 2.)

Notwithstanding the difficulty of predicting when securities will be transferred or what their value will be, the charity and the donor should try to assess whether there is a reasonable likelihood the transfer will include short-term securities or those which will be valued at less than what the donor paid for them. Due to the potential for difficulty in obtaining cost basis information, close attention will need to be paid to transfers of mutual fund shares if the donor opted to have dividends, interest, or capital gains distributions be used to purchase new shares (the same applies to shares of stock held in DRIP accounts) and to situations in which a donor wishing to simplify his or her financial affairs proposes to transfer most or all of an entire investment portfolio.

Note: If a donor contributes for a gift annuity something less than all of his or her shares of stock in a particular corporation and if the shares were purchased at different times, cost basis will be determined based on the FIFO (first in, first out) method, although the donor may also elect to identify specific shares as the ones being transferred, so long as certain requirements are met. What the donor is prohibited from doing is averaging the cost bases of all shares prior to contributing only a portion of the shares. By contrast, a donor who contributes mutual fund or ETF shares for a gift annuity may select from among not only the two methods allowed for shares of stock but also two additional methods, each of which involves some form of averaging.

A final factor that may affect the value of a contribution of publicly-traded securities is the possibility that the transfer of a particular asset may include related interest or dividends. In fact, this is very likely to occur when a bond is given. The accrued interest is included in the gift amount because the charity will receive it when the next periodic interest payment is made or – if the charity does not retain the bond – when the bond is sold. Of course, the accrued interest will likely be taxed to the donor.

If shares of stock or shares in a mutual fund are transferred on or after an ex-dividend date but before the dividend is paid, the value of the shares will reflect this fact. The donor, as the owner of the shares on the ex-dividend date, will receive the dividend and be taxed on it. The value of the dividend is not included in the gift annuity contribution. If, on the other hand, a gift of stock is made after a stock split has occurred but before the new additional shares are received by the donor, then the shares the donor receives belong to the charity. Such a situation is more likely to occur if the donor owned the shares in certificate form than if they were held in street name.

In the event that a donor transfers stock subject to a tender offer, the donor will be taxed on the capital gain if the merger or acquisition has been formally approved. (See Ferguson v. Commissioner, 108TC 14 [4/28/97].) Donors owning stock subject to such a tender offer should be informed of the consequences and advised to consider funding the annuity with other property. However, if it is too late and the donor will be subject to taxation on all of the gain, then there will be no capital gain to report ratably and more of each payment will be tax-free.

Restricted Securities

Occasionally, a donor may want to transfer restricted securities in exchange for a gift annuity. These are securities which are acquired in a transaction not involving a public offering and which are subject to certain Securities and Exchange Commission (SEC) rules regarding their sale. A charity that receives such securities may have to hold them for a minimum of one year, and there may be a volume limitation on how much can be sold within any three-month period. These restrictions are described more particularly in SEC Rule 144.

Procedure for Transfer

Once a charity has complied with the applicable restrictions, these securities will eventually become eligible to be traded publicly. Accordingly, they can be transferred to the charity by any means used for securities that are already publicly traded.

Date and Value of Gift

Likewise, the date of the gift will be the same as with a transfer of publicly-traded securities. Since securities subject to SEC Rule 144 are not securities for which market quotations are readily available, it will be necessary for the donor to obtain a qualified appraisal if their value exceeds $5,000, and to see that Section B of Form 8283 is completed and filed with the tax return on which the charitable deduction is claimed. The amount of the annuity, the charitable deduction, and the taxation of payments should all be based on the appraised value of the securities, rather than on market quotations on the day of the gift. (See Private Letter Ruling 9247018.)

The criteria for a qualified appraisal are spelled out in Reg. Sec. 1.170A-13(c)(3). The appraisal may be completed either before or after the gift is made. If completed beforehand, it must be dated no earlier than 60 days prior to the date of the gift. If completed afterward, the appraisal must value the stock as of the date of the gift, and it may be dated no later than the due date (including extensions) for the tax return on which the donor will be claiming a charitable deduction. Many donors will not be aware of this and other requirements associated with the necessity of obtaining and paying for a qualified appraisal, so those requirements should be brought to the attention of a donor before a gift is made.

The charity should also be mindful of the added risk in accepting restricted securities for a gift annuity, due to the fact that the stock could drop significantly in value before the charity is able to sell it. The appraiser will take the volatility of the securities into consideration when appraising them, and will undoubtedly discount them due to this factor and their lack of immediate marketability. While this discount mitigates the risk to the charity, the charity could further lessen its risk by offering a lower-than-normal gift annuity rate.

Closely Held Stock

Procedure for Transfer

Although electronic transfer is not an option for closely held stock, a transfer can still be accomplished by the other methods applicable to publicly-traded securities, so long as those methods are acceptable to the corporation which has issued the stock. Therefore, prior to making the transfer, the donor should check with the corporation and then advise the charity about the process that will be used.

The most common method of transferring closely held stock is for the corporation, or the corporation's transfer agent, to reregister the donated shares in the charity's name. Normally, this can be done very quickly, particularly if the donor is a principal of the company.

Date and Value of Gift

In view of the fact that there is no trading activity to which one may look in order to ascertain the value of closely held stock, the contributed shares must be valued by other means, usually a qualified appraisal. Indeed, whenever the deduction exceeds $10,000, such an appraisal will be required in order to substantiate the income tax deduction to which the donor is entitled in establishing the gift annuity.

The requirements for a qualified appraisal will need to be met even when the price per share is established by the corporation. In such an instance, of course, the key element of the appraisal – which, under the circumstances, need not be lengthy – would be a reference to the corporate action which resulted in the setting of the price. In other cases, however, the appraisal might involve a detailed examination of the corporation and thus might be quite lengthy.

Real Estate

Procedure for Transfer

Transfer of real estate is accomplished by means of a deed. The nature of the deed and the formalities for completing it will vary depending on the law of the state in which the property is situated. For this reason, the deed should be drafted by legal counsel for the donor and reviewed by counsel for the charity or vice-versa.

Date and Value of Gift

Regardless of the date on the deed, the transfer is complete only once the donor furnishes the deed to the charity. This can be done either by handing it to a representative of the charity or by mailing or otherwise sending it to the charity. If the deed is delivered in person to the charity (whether by the donor or by an agent for the donor), the date of the gift is usually the date of delivery. If it is mailed or sent by a designated private delivery service, then the rule discussed above with respect to cash contributions applies.

Even though the gift will usually be completed as outlined in the immediately preceding paragraph, the charity will still need to record the deed in the county where the real estate is located. In some states, however, recording is necessary in order for the gift to be completed making that the gift date. The recording process can take anywhere from a few hours to several weeks.

To substantiate the income tax charitable deduction associated with a contribution of real estate where the deduction is more than $5,000, the donor will need to obtain and pay for a qualified appraisal, as described above with respect to contributions of restricted securities. If the appraisal is not made available to the charity for its review prior to completion of the gift, then the charity will need to postpone the gift until it can obtain its own appraisal in order to insure that the gift annuity arrangement will be financially sound from the charity's point of view.

Although not part of the transfer process itself, a title search and, in certain instances, a Phase I or more detailed environmental review should be conducted by the charity prior to completion of the gift so that any potential problems associated with the property can be brought to light. In addition, even though a charity would rarely accept encumbered real estate for a gift annuity due to the risks entailed, if the property being donated is indeed subject to a mortgage, this fact will need to be taken into account at one or more stages of the transfer process, such as the review of the property's title status and the drafting and recording of the deed. Furthermore, the gift should not be made until the mortgage holder has been informed of the contemplated gift annuity arrangement and has given written consent. For more information on funding a gift annuity with real estate in general and mortgaged real estate in particular, see Chapters 2 and 16.

Therefore, in light of all of the foregoing considerations, the time required by various steps which may be involved in transferring ownership of any given piece of real estate will need to be built into the overall schedule for completing the gift.

Tangible Personal Property

Procedure For Transfer

Given the wide variety of items which might potentially be contributed, it is conceivable that the donor could mail or otherwise send the property to the charity. More likely, however, the donor will give the property to the charity in person or have the charity pick it up. Regardless of how delivery is made, the donor should provide some sort of transfer documentation, such as a deed of gift or bill of sale, at the same time that the physical transfer of the item takes place.

Date and Value of Gift

In most instances, a gift of tangible personal property will be completed on the date the charity takes possession of the item or items in question. However, if the property is mailed or otherwise sent to the charity, the date of the gift would be determined by using the same analysis as for the mailing of cash gifts.

Finally, when the deduction for a contributed item (or of all similar contributed items as a group) exceeds $5,000, the donor will need to obtain and pay for a qualified appraisal in order to substantiate his or her income tax charitable deduction.

Note: For a discussion of the extent to which gold and silver are considered to be tangible personal property, see Chapter 16.

Commercial Annuities

Procedure for Transfer

From the standpoint of the charity, it is simplest for the donor to surrender the annuity to the issuing company first and then contribute the resulting cash, either directly or by means of a check sent to the charity by the issuing company. If the donor instead prefers to transfer ownership of the annuity to the charity, he or she will need to complete a form supplied by the issuing company and then submit the form to the company.

From a tax standpoint, it generally makes no difference whether the commercial annuity is surrendered and the proceeds contributed, or ownership of the commercial annuity is transferred to the charity. See Chapter 16 for an explanation. However, if the annuity was purchased within the past few years and an early surrender penalty would apply, it would be better for the donor to transfer ownership to the charity, and for the charity to hold the annuity until the end of the penalty period. This may not be practical if the proceeds are needed to make the annuity payments.

Date and Value of Gift

When the donor elects to surrender the annuity, the date of the subsequent cash gift will be the same as for any other gift of cash. When the ownership transfer approach is chosen, the date of the gift will be the date the issuing company completes its processing of the transfer. Accordingly, the value of the contribution will be the value on that date, rather than on the later date when the charity actually liquidates the annuity. Moreover, if the income tax charitable deduction associated with the donor's transfer of the commercial annuity is more than $5,000, the deduction will need to be substantiated by a qualified appraisal of the commercial annuity. Fortunately, an appraisal can generally be performed simply and inexpensively in such instances.

Savings Bonds

With limitations relating to lifetime transfers, a donor interested in contributing savings bonds should instead redeem the bonds and then give the cash proceeds; the rules pertaining to cash contributions would apply. The accrued interest will be taxed to the donor, but that would be true even if transferred directly to the charity. Inquiries around use of savings bonds as the funding asset are often prompted by a desire to avoid taxes. Once the tax implications are learned, donors often shift the discussion to other funding assets. See Chapter 16 for an example of a gift annuity funded with savings bonds.

Retirement Funds

Previously, the only way a donor could fund a gift annuity with retirement plan assets during their lifetime was to receive a cash distribution from their plan and then send a check to the charity. This remains an option, with the donor declaring the distribution as income on their tax return and, if they itemize their deductions, taking a charitable deduction to offset some of that taxable income. From the charity's viewpoint, the gift is the same as a gift of cash.

However, with passage of the Consolidated Appropriations Act of 2023, it is also possible to fund a gift annuity with a qualified charitable distribution (QCD) from an IRA, which avoids taxation on the transferred funds in the year of distribution. However, specific requirements must be met for the transfer to be considered a QCD. See Chapter 16.

Procedure for Transfer

Most commonly, the QCD will be issued directly from the IRA plan administrator to the charity, either electronically or by check. The administrator is likely to have a specific process for the IRA owner to request such a distribution, often involving a particular form. A charity should advise the donor to contact the administrator with any questions, and not become involved in giving instructions or guidance on how to affect such a transfer. In the case of a check, as long as the check is made payable to the charity the check may be sent to the IRA owner for conveyance to the charity, rather than directly to the charity. If the IRA owner has check writing privileges on the account, such a check payable to the charity can qualify as a QCD.

Date and Value of Gift

When the QCD comes directly from the plan administrator the date of gift will be the date the funds are distributed from the account – reflected either by the date on the check or of the electronic transfer. If the donor has written a check on their IRA account, the date of gift will similarly be the date the funds are distributed, but in this instance that will not occur until the charity has deposited the check. The time lag from the donor writing the check to it being received and processed by the charity should be taken into account as it could have significant tax consequences for the donor, particularly if the donor writes the check in December but it is not received or cashed until January.

As with a gift of cash, the value of the gift is certain and does not fluctuate over time. It will be the amount on the check or of the electronic transfer.

Life Insurance

Procedure for Transfer

As in the case of a contribution of a commercial annuity, a donor may contribute a life insurance policy either by surrendering the policy and transferring cash to the charity or by transferring the policy itself to the charity, using forms supplied by the insurance company. If the policy is surrendered and the cash proceeds contributed, the donor will be taxed in the year of the gift on any excess of the surrender value over the cost basis of the policy, and the charitable deduction will be based on the amount of cash contributed. If the policy is transferred, the donor will not be taxed in the year of the gift on the gain in the policy, but the deduction may be reduced, and the gain in the policy will be ratably reported over the life expectancy of the annuitant, assuming the donor is the primary annuitant. For more information about the tax aspects of funding a gift annuity with a life insurance policy, see Chapter 16.

Date and Value of Gift

If the policy is surrendered and the resulting cash is used to fund the gift annuity, the rules pertaining to cash contributions apply. If ownership of the policy is instead transferred to the charity, the date of the gift will be the date the transfer is completed in accordance with the insurance company's procedures.

In the event the donor elects to transfer ownership of the policy to the charity, the amount of the gift will be the cash surrender value. If the income tax charitable deduction associated with transferring the policy is more than $5,000, the deduction will need to be substantiated by a qualified appraisal of the policy. As with an appraisal of a commercial annuity, an appraisal of an insurance policy can generally be performed simply and inexpensively.

Cryptocurrency

While more charities are accepting outright gifts of cryptocurrency, it is less common as an asset for a gift annuity contribution. Currently, the majority of owners of cryptocurrency are far younger than what would be considered the primary age for gift annuity donors (mid-70s and up) and also younger than the most common age minimums set by most charities (60-65 for immediate annuities, 50-55 for deferred annuities). However, though smaller in numbers, older purchasers of cryptocurrency tend to buy more, likely the result of having more disposable income or assets. And the number of prospective gift annuity donors owning cryptocurrency seems likely to increase over time, both as a result of aging and of increasing familiarity or comfort with the asset.

Procedure for Transfer

Given the generally young age of cryptocurrency owners, a charity may first confront the questions of whether and how to accept cryptocurrency with respect to outright and annual gifts, well before it ventures into that area with gift annuities. The most common way for a charity to receive a gift of cryptocurrency is by having an account with a company that will process the transaction (conceptually similar to a credit card payment service). There are numerous providers in this area, with a growing number willing to work with charities, among them Bitpay, Engiven, and The Giving Block. The main appeal of using a third party to facilitate these gifts is the ease and quickness of converting the donation into US dollars, minimizing the risk associated with holding the cryptocurrency given its potential volatility. Alternatively, a charity can establish its own digital "wallet," an app that holds the cryptocurrency. In this scenario, a charity would need to sell the cryptocurrency on an exchange in order to convert to dollars. The lack of internal knowledge and experience in handling such transactions, and the resultant increased risk, is typically what's behind a charity's reluctance to accept such gifts.

Date and Value of Gift

The gift date is established when the cryptocurrency arrives in the charity's account, whether that be with the service processor or its own "wallet."

The IRS considers cryptocurrency to be property and not currency. (See https://www.irs.gov/filing/digital-assets) Given that most charities have a minimum contribution for gift annuities above $5,000, it will be necessary to establish the value of cryptocurrency by securing a qualified appraisal. Given the volatility of cryptocurrencies, it is probably advisable for the appraisal to be completed following the gift, determining the value as of the gift date. If the appraisal were done within the allowable 60-day period prior to the gift, there could be a significant variation between the values on the appraisal date and on the gift date.

In addition, if the deduction claimed will be over $5,000, Part B of Form 8283 must be completed, signed by the charity, and submitted with the Form 1040 on which the deduction is claimed. If the charity then disposes of the asset within three years, it must report the selling price on Form 8282.

Note: Legislation has been introduced several times (within the proposed Lummis-Gillibrand Responsible Financial Innovation Act) that would eliminate the need for a qualified appraisal to establish the value of a gift of cryptocurrency. Though not previously reaching a vote, it appears such legislation could be re-introduced in 2025 or 2026.

See Chapter 16 for other considerations relating to a gift of cryptocurrency.

Executing Agreements

Who Signs What When

As discussed in Chapter 5, a charity may take one of two basic approaches with regard to how its gift annuity agreements are to be executed: it can be the only party to sign the agreement (assuming the donor has signed an application containing all pertinent information about the gift arrangement), or it can design the agreement to be signed not only by it but also by the donor. In either case, no one should sign the agreement until the actual contribution of assets has been made. This is necessary not only so that the date of the gift, the amount of the contribution, and the annuity amount can be set forth correctly, but also so that if for some reason the transfer of assets does not take place as planned, there will be no ambiguity about whether a gift has in fact been made.

Regardless of which option a charity chooses, the gift annuity agreement does not need to be signed on the precise date of the gift. Indeed, this would be impossible in many situations, including such common ones as those involving transfers of cash or publicly-traded stock made by mail. For this reason, the agreement should recite that it is being executed "as of" the date the transfer was completed, thereby allowing for the possibility that the actual signature or signatures will be placed on the document in the days or even weeks following completion of the gift.

Moreover, so long as the charity and the donor have a mutually enforceable understanding pursuant to state law regarding the annuity arrangement, complete execution of the agreement can even take place after the first annuity payment has been made, although this should happen only when circumstances require it. For example, if a donor makes a gift annuity contribution on Monday December 23 but the agreement is not executed by the charity until Friday January 3 (when the person with the authority to sign returns from vacation), the charity will nonetheless be obligated to make a timely gift annuity payment on December 31, assuming the charity and the donor have arranged for payments to be made at the end of a calendar period.

However, often when the contribution is made close to the end of the initial payment period the parties will agree to add the first prorated payment to the full payment at the end of the next payment period. This is easier from an administrative perspective, as payments are typically processed well before the payment due date so that they are received (and not just sent) by the applicable date.

Once again, the intent of the parties is key. If the agreement is to be signed after a transfer of assets is made, the parties must concur on the terms of the gift arrangement. This is especially important when the asset transferred is long-term appreciated securities: if the charity sells the securities without first confirming with the donor the annuity amount and other particulars of the annuity arrangement, there is a risk that the donor will have to recognize all of the capital gain. The annuity terms the donor had in mind when he or she initiated the transfer of securities must be acceptable to the charity. If the charity does not find those terms acceptable, then the transfer falls short of being a completed gift. If subsequent discussion fails to result in terms acceptable to both parties, then the charity will need to return the securities to the donor.

Finally, if both the charity and the donor sign the agreement, it makes no difference who signs first. Furthermore, if there are two donors they need not sign at the same time. It is even permissible for the agreement to be signed in duplicate so that each party will have an original, although if the parties elect to proceed in this fashion the agreement should recite this fact.

Electronic signatures

The prevalence of electronic signatures was growing even before the Coronavirus, but the extent of people working from home during the pandemic added to the appeal and functionality of their use. Should they be used for signing gift annuity agreements? Obtaining the answer may be a 2-part process: are e-signatures valid and, if so, are there any specific conditions or criteria that must be met. There are both Federal (Electronic Signatures in Global and National Commerce Act of 2000) and state laws (Uniform Electronic Transactions Act), or other state-specific statutes that potentially govern this issue. (It is a contract law matter, not governed by state gift annuity regulatory law.) There are also a variety of e-signature software options, not all of which may meet specific requirements in your state. Most of the companies producing such software have content on their websites regarding the legality of e-signatures. Before switching to the use of e-signatures on annuity agreements, a charity should first consult with and get the go-ahead from its legal counsel.

Donor Dies Before Agreement is Signed

Though a rare occurrence, the question can arise about what to do if the donor dies after the contribution has been made but prior to signing the gift annuity agreement. Is there a binding contract? Has any gift been made? There are both legal and practical considerations in this situation. On the legal side, this is primarily a matter of state law. If a binding agreement can be created without a written document, it becomes a matter of determining from the facts whether that occurred and, if so, what are the terms. Facts that might inform a determination that a binding contracts exists include: signed application form, sending of a draft agreement to the donor prior to the contribution being made, sending of a final agreement (for signature) after the contribution was made, communications (preferably in writing) between the parties.

Beyond a determination that a binding agreement exists, there are practical matters to consider. If a gift annuity exists, and depending on the timing of the death and agreed-upon terms, it is possible a payment might be owed to the estate. There would be a charitable deduction based on the standard calculation, and then a posthumous deduction for the unreturned investment in contract (the tax-free portion of the payment). (Note that neither deduction would be available if the gift annuity were funded by a qualified charitable distribution from an IRA.) If the deceased's family does not contest that a gift was made, there might be a request from them to instead consider the contribution as an outright gift, which would result in a larger deduction reportable on the donor's final tax return. This might be agreeable to the charity, since it has the same funds available to it in either scenario. But what if the deceased's family contests that any gift was made? To what extent should a charity pursue the matter legally? This might depend on the amount of the contribution (as contrasted with anticipated legal fees, but also with choosing to give to individuals money intended for its charitable purpose) and the extent of the relationship with the deceased, his/her family, and other gifts that may have been made (or are coming from the estate). The charity should involve its legal counsel (or if necessary, retain outside counsel) to help it navigate these issues.

In moving forward with a gift annuity, if the donor was to be one of two annuitants it remains a two-life annuity using the applicable two-life annuity rate. The terms of the annuity should not be renegotiated, as doing so would argue against there having previously been a binding agreement. The annuity agreement should be signed by the executor or personal representative of the estate if: 1) the charity's standard practice is to have the donor sign the agreement, 2) the donor resided in a state requiring donor signature, or 3) the donor resided in a state that required the charity to put forms of agreement on file and such forms provided for a donor signature. See Chapter 12 for state requirements relating to agreements.

When to Prepare the Agreement

As a practical matter, if the charity elects to use agreements which do not need to be signed by the donor, then it can always wait until all aspects of the asset transfer are completed before the agreement is prepared. Likewise, even if the charity's agreements call for the donor's signature, the charity should normally wait until an asset transfer is complete before preparing the agreement. Nevertheless, if the donor will be contributing assets in person (e.g., handing a representative of the charity a check or the certificate and other documentation associated with a gift of stock) and the value of those assets is known, the agreement can be prepared ahead of time for signature by the donor (and the charity, if feasible) at the time the contribution is made.

As mentioned above, however, often the date and/or amount of a gift annuity contribution will not be known until a day or more after the gift is deemed to have been made. In such an instance, whether the donor's signature is required or not, nothing definitive can be prepared until after the gift is completed.

What to Do If Assets Are Transferred on Two or More Different Days

The preferred approach is to have a separate gift annuity agreement for each day a contribution takes place. This will always be acceptable from a legal standpoint. As an alternative, depending on the nature of the understanding reached between the donor and the charity, a single gift annuity agreement could be executed.

If securities are involved and if the charity wishes to sell each security as soon as it is received, then for purposes of calculating the amount of the total contribution, each of the assets transferred is valued as of the date of its contribution. However, if the charity and the donor concur, the obligation to pay the annuity can commence on the date of the last transfer. In that case, the annuity agreement would be made effective on the date of the last transfer, and the first payment would be prorated from that date to the end of the period. The agreement should also recite that the fair market value of each asset contributed for the gift annuity is determined as of the date it was contributed. For example:

> Charity certifies that the Donor, as evidence of *[his/her]* desire to support the work of Charity and to make a charitable gift, on *[Date 1]*, *[Date 2]*, and *[Date 3]* contributed to Charity the property described in Schedule A attached hereto, the combined fair market value of which is $ ______________, taking into account the fair market value of each contribution on the day it was made.

If securities are involved but the charity and the donor decide that the charity will hold the securities as the donor's agent until all of them have been transferred, the securities would be valued as of the date of the last transfer. (Once all the securities have been received, the agency arrangement would cease and the charity would be free to sell the securities in its own right.) The obligation to pay the annuity would commence on the date of the last transfer, with the first payment prorated accordingly.

This approach will result in a single gift annuity agreement, dated as of the date of the last transfer. The charitable deduction will be calculated using the date of the last transfer as the gift date and the amount of the total contribution (valued as described in the preceding paragraph) as the gift amount.

Before settling on the single-agreement approach, however, the charity should consult its legal counsel. Even if that person sees the approach as basically viable under applicable state law, the longer the span of time involved the more that viability may be compromised. Moreover, the multiple-agreement approach should always be used if between the date of the first transfer of assets and the date of the last transfer there is a change in (1) the calendar year, (2) the nearest age of an annuitant, or (3) the CMFR.

Whichever method the charity settles upon in handling transfers that occur on different days, it should alert the donor early on to the issues involved. If a donor does not understand why two or more agreements would need to be signed for what he or she thinks of as a single gift, it may help to assure the donor that the periodic payments made pursuant to each agreement can be combined in a single check or direct deposit.

Chapter 8

DISCLOSURE REQUIREMENTS

State-imposed Requirements

Numerous states mandate that a charity's gift annuity agreements include specific language advising donors regarding the extent, if any, to which gift annuities are regulated under state law. See Chapters 11 and 12. The states of California, Oklahoma, and South Dakota also require that certain disclosures be made in materials that promote gift annuities. In addition, a charity offering gift annuities to Oklahoma donors must include a particular disclosure statement in the gift annuity application, if the charity makes use of an application. See Chapter 5, Appendix 4 and Chapter 12.

Alabama and Arizona are the two states that have specific requirements relating to a disclosure statement and its content. See Chapter 11. Such requirements can be integrated with the disclosure statement required under the Philanthropy Protection Act of 1995 (discussed further in this chapter) to avoid having to provide donors in these states with two separate disclosure statements. See Chapter 11, Appendix 3 and Chapter 11, Appendix 4, for examples, respectively, of Alabama and Arizona disclosure statements.

The Philanthropy Protection Act of 1995

Many charities that act as trustee of charitable remainder trusts and charitable lead trusts, have established a pooled income fund, or offer gift annuities, invest the assets in internal common funds. Even if they invest trust funds separately, they are likely to commingle pooled income fund contributions together and gift annuity contributions together. The Philanthropy Protection Act of 1995 exempts these common funds from federal securities registration laws. The Act also exempts fundraising representatives of such charities from classification as broker dealers. However, these exemptions will not be available if anyone who solicits gifts on behalf of the charity receives a commission based on the value of the donations received.

Furthermore, the Philanthropy Protection Act of 1995 imposes on charities that invest trust, pooled income fund, and gift annuity assets in common funds the obligation to disclose certain information to donors. Terry Simmons of the Thompson and Knight law firm in Dallas, who was the driving force in persuading Congress to enact the Philanthropy Protection Act of 1995, as well as the other two laws exempting gift annuities from antitrust legislation, made this comment about the scope of the disclosure requirement:

The disclosure requirement is based on the appropriate assumption that a donor whose gift is commingled in a collective fund has a right to know what will be done with his or her gift. However, since (as recognized in the legislative history of H.R. 2519) the primary motivation of a charitable giver is to benefit the charity, and not to receive the maximum return on the donation, it is not necessary to provide the detailed information that might be needed to fully evaluate the earnings that are likely to result from investment of the funds.

Where a charity is named as trustee of charitable remainder trusts and then appoints an agent to invest the assets of those trusts, and the assets of each trust are invested separately, the Act does not apply, and, therefore, no disclosure is necessary. However, if the charity appoints an agent to invest gift annuity assets, and those assets are commingled in one or more reserve funds, then disclosure is necessary.

The sample disclosure statement in Appendix 1 pertains only to gift annuities. If a charity also commingles for investment purposes trust or pooled income assets it would need a different disclosure statement for those donors. Any disclosure statement should be given to donors prior to their signing documents and transferring funds. Some charities have donors sign an acknowledgment (perhaps as part of the application) that they have received the disclosure statement.

Possible Additional Disclosure Requirements Attributable to the Gramm-Leach-Bliley Act

In November 1999, the Gramm-Leach-Bliley Act was signed into law. The basic purpose of this legislation was to modernize numerous aspects of the U.S. financial services industry. Accordingly, a portion of the Act was devoted to safeguarding the privacy of those who do business with a "financial institution," as that term is defined in the Act. Even though the Act does not state that a charitable organization which issues gift annuities is a financial institution, under certain circumstances such an organization could be deemed to be a financial institution. The determination of whether the Act is applicable should be made by an organization's legal counsel. If such a determination is made, disclosures may be required that are distinct from those under the Philanthropy Protection Act of 1995.

Privacy Laws

Given the frequency of data breaches that expose the personal information of individuals, state legislatures are increasingly looking at measures to try and protect their citizens. The rules put in place by the European Union in May 2018 (General Data Protection Regulation or "GDPR") has become a starting point for these legislative efforts. The types of data that fall under the auspices of GDPR include both what one would expect – such as personal identifiers (think social security number in the U.S.), bank account and credit card numbers, health information, and dates of birth. GDPR also covers some unexpected information, such as addresses and phone numbers, as well as a persons' likeness, email address, racial origin, social media profile IDs, and handwriting, among other data.

State laws that have been introduced or adopted have varied both from GDPR and each other, but the personal information they cover certainly includes at least some types of information obtained by charities issuing gift annuities. Such laws typically provide certain rights to consumers and establish requirements for entities collecting the information, including the need to provide certain disclosures. As states adopt privacy laws or future amendments are made to existing laws, charities would be well-advised to have their legal counsel keep an eye on whether these laws become applicable to them.

Sample Gift Annuity Disclosure Statement

APPENDIX 1

A statement similar to the one below should be given to the donor prior to the gift being made, and might be included with a financial illustration or proposal letter.

Description of a Gift Annuity
A gift annuity is a simple contract between the donor(s) and the ABC Charity. In exchange for the donor's(s') contribution, the ABC Charity promises to make fixed payments for life to one or two annuitants (usually, but not necessarily, the donor(s)). The amount paid is based on the age(s) of the annuitant(s), in accordance with the ABC Charity's rate schedule.

Not a Commercial Investment
The act of establishing a gift annuity with the ABC Charity is not, and should not be viewed as, an investment. Rather, it is a way to arrange for annuity payments while making a charitable donation. In this respect, a gift annuity issued by the ABC Charity is different from a commercial annuity. While both types of annuities make payments that are usually partially tax-free, the charitable donation aspect of establishing a gift annuity may result in additional tax benefits that are not available when purchasing a commercial annuity. These tax benefits include a current federal income tax charitable deduction (if you itemize your deductions) and possible future estate tax savings. Note that there is no income tax deduction if the annuity is funded by a qualified charitable distribution (QCD) from an IRA.

Gift Annuity Rates
Generally, the gift annuity rates paid by the ABC Charity are those suggested by the American Council on Gift Annuities, which is a national organization of charities that has been in existence since 1927. These rates have been calculated so as to provide attractive payments to the donor and/or other annuitant(s) and also to result in a significant portion of the contribution remaining for the charity. Because a charitable gift is involved, the rates are lower than those available through commercial annuities offered by insurance companies and other financial institutions.

Assets Backing Annuity
The annuity payments are a general obligation of the ABC Charity, and they are backed by all of our assets (subject to security interests). As of *[indicate date]* the market value of our total invested funds exceeded $*[amount]*, and they are invested in *[describe the general types of investments held by the organization such as stocks, bonds, money market funds, and federal obligations, but do not list assets by name]*. *(If applicable, include the following sentence about maintaining a reserve fund. Otherwise, delete it.)* We also maintain *[a gift annuity reserve fund or gift annuity reserve funds]* valued at more than $*[amount]* in accordance with the laws of the states in which we offer gift annuities. Assets received by the ABC Charity for gift annuities are managed *[either say "internally" or say "by" and then name the financial institution]*, in a conservative and disciplined manner. *[If a charity will always reinsure, delete the prior sentence and instead substitute:* The ABC Charity reinsures its gift annuities by using a portion of the assets contributed to purchase a commercial annuity.*] [If a charity sometimes reinsures, retain the "Assets received by" sentence, and add:* In certain instances, the ABC Charity may make the decision to reinsure all or a portion of a gift annuity by using a portion of the assets contributed to purchase a commercial annuity.*]* If the ABC Charity should

Prototype Materials: disclosure statement.docx ever fail financially, individuals entitled to receive annuities will qualify as general creditors of the ABC Charity.

Governance

Responsibility for governing the ABC Charity, which was established in [*state where established*] in *[indicate year]*, is vested in a Board of *[Directors/Trustees]* composed of *[number]* persons, who are *[describe manner of selection]*. Common investment funds managed by our organization are exempt from registration requirements of the federal securities laws, pursuant to the exemption for collective investment funds and similar funds maintained by charitable organizations under the Philanthropy Protection Act of 1995 (P.L. 104-62). Information in this statement is provided to you in accordance with the requirements of that Act.

Points to Remember

- A contribution for a gift annuity is irrevocable.
- The right to annuity payments may not be assigned to any person or organization, other than the ABC Charity. The annuity must be non-assignable when funded by a QCD from an IRA.
- The gift date is the date when you actually transfer assets. In the case of cash, it is the date you mail or deliver a check. In the case of an electronic transfer of securities, it is the date they are received into the account of the ABC Charity. If you have certificates, it is the date they are properly endorsed and mailed or delivered. With a QCD from an IRA, it is the date the IRA administrator withdraws the funds from your IRA account.
- The gift annuity is governed by the laws of the state in which you reside at the time the gift annuity agreement is signed. *[Alternate phrasing, for a charity that names the law of its state of domicile as governing except in states that require otherwise:* The gift annuity is governed by applicable state laws.*]*

For More Information

This disclosure statement is intended to provide basic information regarding the gift annuities issued by the ABC Charity, and is not intended to serve as legal advice. We encourage you to consult your own legal and/or financial advisor about the applicability of such a gift in your own situation. If you have additional questions concerning the ABC Charity's gift annuity program, please call or write *[person and/or address]*.

Chapter 9

TAX INFORMATION FOR DONORS

Once a gift annuity has been established, in addition to acknowledging the gift as required by IRS regulations, the charity should consider providing the donor with documentation regarding the accounting and tax aspects of the gift. Accordingly, the items in this chapter contain not only the elements of a gift acknowledgment but also various pieces of information the donor (and the donor's tax preparer) will find useful in filing the relevant tax returns.

Substantiation requirements for supporting a claimed charitable deduction are set forth in Reg. Sec. 1.170A-13. This Section addresses items ranging from the contemporaneous nature of the written acknowledgment to what constitutes a qualified appraisal, but also includes a section specific to gift annuities. If an individual is claiming a deduction of $250 or more with respect to a gift annuity contribution, the written acknowledgment "must state whether any goods or services in addition to the annuity were provided to the taxpayer." See Reg. Sec. 1.170A-13(f)(16). Simply stating "no goods or services", without also specifically referencing the annuity, has led to the IRS disallowing the deduction as a result of an invalid acknowledgment.

The Summary of Accounting and Tax Information contained in this Chapter uses the following phrasing: "Apart from the annuity described above, the present value of which is $[amount], you have received no goods or services in return for this gift." Users of PG Calc's *PGM Anywhere* or *Planned Giving Manager* will see that the acknowledgement letter within the software includes, at the end of a paragraph describing the deduction and noting it as the difference between the contribution and annuity, the following: "No other goods or services were provided in exchange for this contribution." While the value of the annuity is not specifically required to be contained in the acknowledgment, the charity should be sure to at least reference the donor receiving an annuity, coupled with an indication that no other goods or services were provided. Even when a gift annuity is funded with a qualified charitable distribution (QCD) from an IRA, for which there is no charitable deduction, it is still advisable to include the "no goods or services" language in the acknowledgment. (See Chapter 16 for more information on the QCD gift annuity.)

In providing gift information, the charity should never assume the role properly played by the donor's own independent legal and financial advisors. This is particularly true when it comes to tax forms, such as Form 8283 that is required for reporting noncash gifts. The form and its instructions more clearly anticipate outright gifts, with the result that donors often have questions on how to complete it in the context of a contribution for a charitable gift annuity. Avoid the temptation to help your donors complete the form; you do not want to be in a position where your guidance – whether correctly or incorrectly followed – results in questions from the IRS. However, you could highlight that the instructions for the form anticipate situations where attachment of an explanation may be needed. This may be the appropriate approach in the context of a gift annuity in order to explain that the deduction being taken is less than the amount of the asset being contributed.

While steering clear of specific advice, it is appropriate for the charity to provide the donor information that supports the gift and that may be needed for tax purposes. Included as the first three appendices to this chapter and among the prototype materials which accompany this manual are the following:

- Cover letter to donor after completion of the gift annuity (*tax-cover letter.docx*).
- Summary of Accounting and Tax Information (*tax-info summary.docx*).
- Applicable Federal Midterm Rate Election (*tax-CMFR election.docx*).

The prototype summary is designed to cover the various types of contributions which might be made for a gift annuity, and it allows for sections to be included or deleted as appropriate for a particular gift. Appendices 4 and 5 are examples of a completed summary and applicable rate election, reflecting a cash contribution of $20,000. See also Appendix 2 of Chapter 16, Appendix 4 of Chapter 18 and Appendix 3 of Chapter 19 for examples of completed summaries for use with, respectively, a gift annuity funded with a QCD, flexible deferred annuities, and commuted annuities.

Cover Letter to Donor after Completion of Gift Annuity

APPENDIX 1

[*Date*]

[*Name(s) of donor(s)*]
[*Address*]
[*City/state/Zip code*]

Dear [*Name(s)*]:

Enclosed you will find the following documents relating to your new gift annuity with the [*name of charity*]:

1. Your [*duplicate original or photocopy*] of the Gift Annuity Agreement.

2. A Summary of Accounting and Tax Information to be used in the preparation of your income [*and gift*] tax return[*s*].

3. [*If applicable: An Applicable CMFR Election to be filed with your income tax return.*]

4. [*One charitable deduction calculation sheet/Two different but related charitable deduction calculation sheets*] showing the amount of your income tax deduction, for you to file with your tax return.

If you have questions about any of this information, please contact [*person*] at the [*name of charity*], [*phone number*]. We appreciate the commitment you have made and will do our best to assure that all of your expectations are met.

Sincerely,

[*name and title of contact person at charity*]

Enclosures

Prototype Materials: tax-cover letter.docx

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Summary of Accounting and Tax Information

Gift Annuity

Name of donor(s): ______________________
Gift completion date: ______________________
Value of property contributed: ______________________

Annuity Payments

The wording below may need to be modified for certain situations, such as those involving deferred annuity payments or annuities established for someone other than, or in addition to, the donor.

Your first payment, prorated from the date of your gift to the end of the first payment period, will be for $[*amount*], and will be made on [*date*]. Thereafter, you will receive [*monthly/ quarterly/semi-annual/annual*] payments of $[*amount*] at the end of each payment period.

Income Tax Charitable Deduction

Your contribution creates an income tax charitable deduction of $[amount] that you may be able to use in full or in part depending on your situation and applicable tax rules. Consult your own tax advisor on how these rules may affect the tax benefits of your gift.

Substantiating Your Deduction (Form 1040)

If gift was either cash/ordinary income property or long-term capital gain property:

To substantiate your income tax charitable deduction, we recommend that you file one copy of [*the/each of the*] enclosed charitable deduction calculation [*sheet* or *sheets*] and one copy of the gift annuity agreement with your [*gift year*] federal income tax return (IRS Form 1040).

If gift included both cash/ordinary income property and long-term capital gain property:

To substantiate your income tax charitable deduction, we recommend that you file copies of the enclosed charitable deduction calculation sheets for both the cash and [*securities/real estate/other*] contributions, and one copy of the gift annuity agreement with your [*gift year*] federal income tax return (IRS Form 1040).

Include next paragraph for all annuity gifts:

Prototype Materials: tax-info summary.docx

APPENDIX 2

Apart from the annuity described above, the present value of which is $[*amount*], you have received no goods or services in return for this gift. Keep your original annuity agreement and this Summary of Accounting and Tax Information in your files as your acknowledgement for this gift.

Include the next section only if a previous month's discount rate was used in calculating the charitable deduction.

Applicable Federal Midterm Rate Election

In valuing your gift, we were able to apply the [*month, year*] discount rate, resulting in a larger [*income tax charitable deduction for you/tax-free portion of the annuity for you*]. In order to substantiate this higher [*deduction/tax-free portion of the annuity*], you must also sign and attach to your tax return the enclosed Applicable Federal Midterm Rate Election.

Include the next section if applicable:

Reporting Noncash Gifts (Form 8283)

Because you have transferred non-cash assets, you may need to complete Form 8283 (Noncash Charitable Contributions) to be filed with your [gift year] income tax return. You should seek your tax advisor's assistance in completing this form.

Include the next section if donor's(s') gift(s) to the charity during the year totaled more than (gift tax annual exclusion amount) and/or if the donor(s) has/have made a taxable gift to an annuitant. When joint/community property is contributed, each spouse will have to file a gift tax return depending on the size and nature of his or her one-half of the gift.

Federal Gift Tax Return (Form 709)

If you are required to complete IRS Form 709 (Federal Gift Tax Return), you should report a charitable gift in the amount of $[*amount*] to [*Charity*].

Include the applicable variation of the next section when (1) one or two person(s) other than the donor and spouse has (have) been named as initial annuitant(s) of an immediate annuity and the present value of annuity payments to any such person exceeds [gift tax annual exclusion amount in year of gift], (2) a person other than the donor has been named as successor annuitant, or (3) the annuity is deferred, and a person other than the donor will be an initial annuitant. However, if the donor has retained the right, exercisable during the donor's life or *by testamentary instrument, to revoke the annuitant's(s') payments, do not include the next section unless the annual annuity payment exceeds the annual exclusion amount; in that case, include the last provision.*

To be used when one person, who is not a donor, has been named as annuitant: You should [*also*] report a gift in the amount of $[*amount*] to [*name of annuitant*]. Since this is a present-interest gift it qualifies for the $[*amount*] gift tax annual exclusion. You may or may not owe a gift tax, depending on the size of the gift and whether you have previously used your lifetime unified gift and estate tax exemption. (**Note:** Delete second sentence of this paragraph, referring to gift tax annual exclusion, in the case of a deferred annuity.)

To be used when a donor is the first annuitant and a non-donor is the successor annuitant: You should [*also*] report a gift in the amount of $[*amount*] to [*name of annuitant*]. You may or may not owe a gift tax, depending on the size of the gift and whether you have previously used your lifetime unified gift and estate tax exemption.

To be used when two persons, neither of whom is a donor, have been named as annuitants: You should [*also*] report a gift in the amount of $[*amount*] to [*name of annuitant*] and a gift in the amount of $[*amount*] to [*name of annuitant*]. The gift to the first of two successive annuitants [*in the case of a joint-and-survivor annuity, indicate "each of the annuitants"*] qualifies for the $[*amount*] gift tax annual exclusion. You may or may not owe a gift tax, depending on the size of the gift and whether you have previously used your lifetime unified gift and estate tax exemption. [***Note:*** *Delete second sentence of this paragraph, referring to gift tax annual exclusion, in the case of a deferred annuity.*]

To be used when the power to revoke has been retained, but the amount of the annuity payment each year exceeds the annual exclusion amount: Since you have retained the right to revoke the annuity payments for the annuitant(s), the full present value of the lifetime annuity stream is not considered a taxable gift this year. However, in any year in which the amount of the annuity payments to the annuitant(s) exceeds the gift tax annual exclusion amount (currently $[*amount*], though it may increase in future years), you may need to file a Form 709 and report a taxable gift. You may or may not owe a gift tax, depending on the size of the gift and whether you have previously used your lifetime unified gift and estate tax exemption.

Note: The gift tax annual exclusion is indexed for inflation and increases by $1,000 increments. For example, it increased from $18,000 in 2024 to $19,000 in 2025.

Tax Reports

Use this wording if (1) the donor is the sole annuitant, (2) the donor is the first of two successive annuitants, or (3) the annuity is joint and survivor funded with a husband's and wife's jointly-owned or community property (or with one spouse's separate property, although

APPENDIX 2

- if long-term capital gain assets are used to fund the annuity - this is not advisable and will make it necessary as well to identify the portion of capital gain that must be reported in the year of the gift, as noted later in this document):

The ABC Charity will prepare an IRS Form 1099-R showing the amount of taxable income you received during the year and send it to you by January 31 of the following year. For your information, the portions of payments received each year that are taxable as ordinary income, taxable as capital gain, and tax-free are shown in the table below. The same numbers will appear on Form 1099-R.

Substitute the following language if annuity payments are deferred:

When your annuity payments begin, the ABC Charity will prepare an IRS Form 1099-R showing the amount of taxable income you received during the year and send it to you by January 31 of the following year. Based on current IRS Expected Return Multiple Tables, the portions of payments received each year that are taxable as ordinary income, taxable as capital gain, and tax-free are shown in the table below.

If the IRS Expected Return Multiple Tables should change before your payments begin, it may be necessary to recalculate how your payments are taxed. [If there are two annuitants, add as well: "Also if one of you should die before the payments begin, it will definitely be necessary to recalculate how the payments will be taxed."] In any event, however, the total amount paid would be unaffected.

Substitute the following language if the annuitant(s) is (are) a person(s) other than the donor:

The ABC Charity will prepare an IRS Form 1099-R showing the amount of taxable income [*name(s) of annuitant(s)*] received during the year and send it to [*him/her/them*] by January 31 of the following year. For your information, the portions of payments received each year that are taxable as ordinary income and tax-free are shown in the table below. The same numbers will appear on Form 1099-R.

Use this wording if annuity payments are deferred and the annuitant(s) is (are) a person(s) other than the donor:

When annuity payments to [*name(s) of annuitant(s)*] begin, the ABC Charity will prepare an IRS Form 1099-R showing the amount of taxable income [*he/she/they*] received during the year and send it to [*him/her/them*] by January 31 of the following year. Based on current IRS Expected Return Multiple Tables, the portions of payments received each year that are taxable as ordinary income and tax-free are shown in the table below. If the IRS Expected Return Multiple Tables should change before payments begin, it may be necessary to recalculate how payments are taxed. [If there are two annuitants, add as well: "Also, if one of the annuitants should die before the payments begin, it will definitely be necessary to recalculate how the payments will be taxed."] In any event, however, the total amount paid would be unaffected.

Note: Whether payments are immediate or deferred, if the gift consisted of cash or ordinary income property, the reference to capital gain should be eliminated.

Insert proper numbers. For example...

Year	Number of Payments	Total Annuity	Ordinary Income	Tax-free Return of Cap.	Long-term Cap.Gain
2024	1 part, 1 full	$1,550.27	$ 325.56	$ 489.88	$ 734.83
2025–2032	4	3,500.00	735.00	1,106.00	1,659.00
2033	4	3,500.00	2,527.21	389.12	583.67
2034+	4	3,500.00	3,500.00	0.00	0.00

Include this section only if the annuity was funded with long-term capital gain property and the annuitant(s) is (are) a person(s) other than the donor:

Since you funded the gift annuity with capital gain property and named as [*annuitant(s) (a) person(s)*] other than yourself, you must recognize in the year of the gift capital gain in the amount of $[*amount*]. This is the gain allocated to the present value of the annuity payments, and it cannot be prorated over life expectancy as it could have been had you [*or you and your spouse*] been the annuitant(s).

Note: This situation arises rarely, and the donor should have been advised of the capital gains implications before completing the gift. See Chapter 5 for a discussion of reporting capital gain when the annuitant is someone other than the donor. If, because someone else is named as annuitant, the gain must be recognized in the year of the gift, then the annuity payments will be partially taxable as ordinary income and partially tax-free. Typically, no part of the payments will consist of capital gain since the gain will already have been recognized. An exception to this general rule occurs, however, if a joint and survivor annuity is funded with property owned by only one of the annuitants. In this case some taxable capital gain must be recognized in the year of the gift, with the rest of the taxable capital gain being spread over the donor-annuitant's life expectancy.

Notice Concerning Tax and Accounting Information

THIS TAX INFORMATION IS PROVIDED TO YOU AS A SERVICE OF THE ABC CHARITY. HOWEVER, WE ARE NOT PROVIDING LEGAL OR TAX ADVICE TO YOU. YOU SHOULD GIVE THIS INFORMATION TO YOUR ACCOUNTANT OR TAX ADVISOR AND HAVE THAT PERSON CONFIRM THE ACCURACY OF OUR COMPUTATIONS AND DETERMINE THE SCOPE OF THESE AND OTHER REPORTING REQUIREMENTS THAT MAY APPLY.

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APPENDIX 3

Applicable Federal Midterm Rate Election

Donor Name:
Taxpayer ID:

[Donor Name:]
[Taxpayer ID:]

According to Reg. Sec. 301.9100-8(a)(1), I [*we*], [*Name(s)* of *donor(s)*], am [*are*] making an election as provided under Section 7520(a) of the Internal Revenue Code.

The interest being valued is a charitable gift annuity agreement with ABC Charity made on [*date of gift*]. The payout rate of the gift is [gift annuity rate]%, payable for the lifetime benefit of an individual [*individuals*], age [*age(s) of annuitant(s)*].

To value the transferred interest, I [*we*] elect to use the [*percentage for the month used – may be either of the two months preceding the gift month*]% rate under Section 7520 for [*month, year used*] (120% of the Applicable Mid-Term Federal Interest Rate compounded annually and rounded to the nearest two-tenths of one percent).

Instructions to Donor

You are receiving the above election statement because the IRS discount rate used to compute the value of your charitable contribution was based on a rate for one of the two months prior to the month of your gift.

The IRS requires a planned gift donor to make an explicit election in the event that the value of the donor's charitable contribution was computed using the IRS discount rate for either of the two months prior to the month of gift. The month of your gift is [*month, year of gift*] and the IRS discount rate used to compute the value of your charitable contribution is for [*month, year of rate used*].

You must attach the election statement to your federal income tax return for the tax year in which you claim your income tax charitable deduction for this gift. You should provide your tax preparer with a copy of this election statement.

If you are filing your federal income tax return electronically and are also filing a Form 8283, Noncash Charitable Contributions, you can submit this election statement separately on paper as an attachment to the Form 8283 by using a Form 8453, U.S. Individual Income Tax Transmittal for an IRS *e-file* Return. Otherwise, you will have to file your entire tax return on paper in order to attach this election statement. Please consult your tax preparer for guidance.

Prototype Materials: tax-CMFR election.docx

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Completed Summary of Accounting and Tax Information

Summary of Accounting and Tax Information

Gift Annuity

Name of donor: Janice L
Gift completion date: July 6, 2024
Value of property contributed: $20,000

Annuity Payments

Your first payment, prorated from the date of your gift to the end of the first payment period, will be for $330.98, and will be made on September 30, 2024. Thereafter, you will receive quarterly payments of $350.00 at the end of each payment period.

Income Tax Charitable Deduction

Your contribution creates an income tax charitable deduction of $8,587.00 that you may be able to use in full or in part depending on your situation and applicable tax rules. Consult your own tax advisor on how these rules may affect the tax benefits of your gift.

Substantiating Your Deduction (Form 1040)

To substantiate your income tax charitable deduction, we recommend that you file one copy of the enclosed charitable deduction calculation sheet and one copy of the gift annuity agreement with your 2024 federal income tax return (IRS Form 1040).

Apart from the annuity described above, the present value of which is $11,413.00, you have received no goods or services in return for this gift. Keep your original annuity agreement and this Summary of Accounting and Tax Information in your files as your acknowledgement for this gift.

Applicable Federal Midterm Rate Election

In valuing your gift, we were able to apply the June 2024 discount rate, resulting in a larger income tax charitable deduction for you. In order to substantiate this higher deduction, you must also sign and attach to your tax return the enclosed Applicable Mid-Term Rate Election.

Tax Reports

The ABC Charity will prepare an IRS Form 1099-R showing the amount of taxable income you received during the year and send it to you by January 31 of the following year. For your information, the portions of payments received each year that are taxable as ordinary income and tax-free are shown on the table below. The same numbers will appear on Form 1099-R.

Year	Number of Payments	Total Annuity	Ordinary Income	Tax-free Return of Cap.
2024	1 part, 1 full	$ 680.98	$ 233.58	$ 447.40
2025–2035	4	1,400.00	480.20	919.80
2036	4	1,400.00	552.20	847.80
2037+	4	1,400.00	1,400.00	0.00

Notice Concerning Tax and Accounting Information

This tax information is provided to you as a service of the ABC Charity. However, we are not providing legal or tax advice to you. You should give this information to your accountant or tax advisor and have that person confirm the accuracy of our computations and determine the scope of these and other reporting requirements that may apply.

ABC Charity

Prepared for:
Janice L.
July 6, 2024

Actuarial Calculations

7% Charitable Gift Annuity

ASSUMPTIONS:

[1]	Annuitant Date of Gift		[4/1/1949] 75 7/6/2024
[2]	Cash Donated		$20,000.00
[3]	Payout Rate from ACGA2024 Table		7%
[4]	Payment Schedule		quarterly at end
[5]	Discount Rate under IRC Section 7520(a) for 6/2024		5.6%

CALCULATIONS:

[6]	Annuity ([2] x [3])		$1,400.00
[7]	[a]	Value of $1 for age on [1], rate on [5] (Table S - IRS Publication 1457 (2010CM))	7.9860
	[b]	Adjustment for schedule on [4], rate on [5] (Table K - IRS Publication 1457 (2010CM))	1.0208
	[c]	Adj. Value of $1 ([7a] x [7b])	8.1521
[8]	Investment in Contract ([6] x [7c])		$11,413.00
[9]	**CHARITABLE DEDUCTION** ([2] - [8])		**$8,587.00**
[10]	[a]	Expected Return for age on [1] (Table V in Reg. 1.72-9)	12.5
	[b]	Adjustment for payment schedule on [4] (Reg. 1.72-5(a)(2)(i))	-0.1
	[c]	Expected Return per $1 ([10a] + [10b])	12.4
[11]	Expected Return ([6] x ([10c])		$17,360.00
[12]	Exclusion Ratio ([8] / [11]) (Regs. 1.72-4, 1.1011-2(c) Example (8))		0.657

The charitable deduction displayed above is based on an IRS discount rate for a month prior to the month of gift. To take your deduction based on this rate, you must specify it in an election statement that you file with your tax return.

Prepared by: Edie Matulka

These calculations are for illustration purposes only and should not be considered legal, accounting, or other professional advice. Your actual benefits may vary depending on several factors, including the timing of your gift.

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Completed Applicable Federal Midterm Rate Election

Applicable Mid-term Rate Election
Charitable Gift Annuity

Donor Name: Janice L
Taxpayer ID: xxx-xx-xxxx

According to Reg. Sec. 301.9100-8(a)(1), I, Janice L, am making an election as provided under Section 7520(a) of the Internal Revenue Code.

The interest being valued is a charitable gift annuity agreement with ABC Charity made on July 6, 2024. The payout rate of the gift is 7%, payable for the lifetime benefit of an individual, age 75.

To value the transferred interest, I elect to use the 5.6% rate under Section 7520 for June, 2024 (120% of the Applicable Mid-Term Federal Interest Rate compounded annually and rounded to the nearest two-tenths of one percent).

Instructions to Donor

You are receiving the above election statement because the IRS discount rate used to compute the value of your charitable contribution was based on a rate for one of the two months prior to the month of your gift.

The IRS requires a planned gift donor to make an explicit election in the event that the value of the donor's charitable contribution was computed using the IRS discount rate for either of the two months prior to the month of gift. The month of your gift is July, 2024 and the IRS discount rate used to compute the value of your charitable contribution is for June, 2024.

You must attach the election statement to your federal income tax return for the tax year in which you claim your income tax charitable deduction for this gift. You should provide your tax preparer with a copy of this election statement.

If you are filing your federal income tax return electronically and are also filing a Form 8283, Noncash Charitable Contributions, you can submit this election statement separately on paper as an attachment to the Form 8283 by using a Form 8453, U.S. Individual Income Tax Transmittal for an IRS e-file Return. Otherwise, you will have to file your entire tax return on paper in order to attach this election statement. Please consult your tax preparer for guidance.

Chapter 10

REINSURANCE

When a charity invests assets contributed for a gift annuity and makes annuity payments from those invested assets, the annuity is said to be *self-insured*.

As commonly understood by charities, *reinsurance* of a gift annuity refers to purchase of an annuity contract from a life insurance company, which would make payments equal to the amount stipulated in the gift annuity agreement. For example, if a charity received a contribution of $100,000 and promised to pay $7,000 per year, it would purchase a single-premium annuity from an insurance company that would pay $7,000 per year. Suppose the premium cost was $72,000. The charity would retain $28,000, which it might spend immediately for charitable purposes or invest for the duration of the life of the annuitant.

The insurance company would be obligated to make the payments under the annuity contract, but it would assume none of the risks the charity incurred under the gift annuity agreement. Purchase of an annuity from an insurance company to cover the payments promised in the gift annuity agreement does not release the charity from ultimate liability. In the event that the insurance company goes bankrupt and defaults on the payments, the charity has a contractual obligation to continue them. (For this reason, as noted in Chapter 5, the charity must continue to show the present value of the gift annuity payments as a liability on its financial statement, although the value of the commercial annuity contract can be shown as an offsetting asset.) If the charity purchases annuities only from highly-rated insurance companies, the risk of this happening is minimal. Even if the company does default, the state guaranty association would provide to the annuity owner protection up to a certain limit. Thus, although a charity remains ultimately liable for annuity payments when it reinsures a gift annuity, the chances of its having to dip into its general funds are extremely remote if it deals only with highly-rated companies and issues annuities within the levels protected by state guaranty associations. That is why governing boards of charities consider that they have effectively, if not totally, shifted the risk when they reinsure gift annuities.

The term *reinsurance* in the insurance industry refers to one company ceding risk to another company through a treaty agreement. In the case of reinsured gift annuities, the insurance company would assume the risk by assuring that payments on the annuities would be made. New York follows this definition for reinsurance of gift annuities, and it requires a charity to execute a reinsurance treaty in order to be relieved of the reserve requirement for the reinsured gift annuities. If a charity wishes to reinsure New York gift annuities, it must confirm that the insurer has met New York qualifications and has developed an acceptable treaty arrangement. Also, in California, reinsurance is more complicated than simply purchasing an individual annuity from an insurance company.

Although *reinsurance* has a more technical meaning in the industry, in this chapter it has the commonly-understood meaning, namely purchasing an annuity from an insurance company to cover the payment obligation. The comparisons of self insurance and reinsurance are based on such a definition. However, in the discussion of the effect of reinsurance on state reserve requirements, where it is necessary to distinguish between the common understanding and the technical industry definition, *commercially insured* will refer to the former and *insuring the risk* to the latter.

Comparison of Benefits of Self-insuring and Reinsuring

According to the 2021 American Council on Gift Annuities (ACGA) survey, only 7.0 percent of charities reinsure some or all of their gift annuities. This number has remained fairly consistent notwithstanding the increased concern about controlling risk. Apparently, most charities conclude that they realize more economic benefit from self-insured gift annuities than from reinsured ones. Whether this is true depends on a number of factors:

- the cost of reinsuring at a particular time,
- how long the annuitant(s) live(s),
- total return on gift annuity reserves, if the charity self-insures,
- total return on the portion of the contribution retained by the charity, if the charity reinsures, and
- administrative costs for self-insured and reinsured gift annuities.

Premium costs for annuities paying the stated amounts vary by insurance company and fluctuate daily. Also, the premium costs for annuities of different sizes are not necessarily proportionate. Following are points of comparison between self-insured and reinsured gift annuities.

Reinsurance Costs

As noted above, the premium costs for annuities from insurance companies fluctuate daily. Generally, as interest rates rise, the charity will spend less on the premium and will, consequently, have more remaining to invest. To reinsure a gift annuity, a charity typically purchases a fixed, single-premium, immediate, pure-life annuity. With this form of insurance, the insurance company guarantees fixed payments to the annuitant(s) for life in exchange for a single, lump sum premium. Payments cease at the death of the sole or surviving annuitant, just as they do with a gift annuity. In the event of premature death, there is no continuation of payments for the balance of a specified number of years and no cash refund. The charity could purchase an annuity with these features so that it would receive some further benefit in the event of the early death of the annuitant(s), but the premium cost would be higher, leaving less for reinvestment. It is assumed that the charity will spend the minimum required to cover its obligation for the life (lives) of the annuitant(s).

Total Returns

Charities that self-insure may invest annuity reserves more conservatively than they do their endowments. Indeed, if they are registered in one of the states that restrict allowable investments for gift annuity reserves, the amount they can invest in equities could be limited. Investment returns were not very good during the first decade of this century, but afterwards the stock market generally performed quite well until 2020 when Covid-19 caused a temporary decline in stock values and plummeting interest rates. It then revived, but fell sharply in 2022. According to the 2021 ACGA national survey, which is the most recent survey the organization has conducted, the range of investment returns on gift annuity reserves were as follows:

Figure 10.1

Investment Performance Over the Past Four Years

Returns	% of Responding Charities That Had These Returns
<0%	11%
0 – 4%	23%
4 – 5%	4%
5 – 10%	26%
10 – 20%	26%
20%+	10%

Figure 10.2

Investment Performance Over the Past Ten Years

Returns	% of Responding Charities That Had These Returns
0%	0%
0 – 4%	4%
4 – 5%	2%
5 – 10%	92%
10 – 20%	3%
20%+	0%

Note that nearly two-thirds of charities had total returns of 5 percent or more over the four-year period preceding the survey, and that 95 percent of charities had returns of 5 percent or more over the 10 years preceding the survey.

As noted in chapter 3, the average residuum from terminated gift annuities increased between the 2017 and 2021 national surveys. This resulted from the fact that the actual return on gift annuity reserves has, in most years, exceeded the assumed return underlying the ACGA rates in effect when the terminated gift annuities were established.

Very few gift annuities established during the past few years have terminated. The residua realized when they eventually terminate will, of course, be affected by future returns and the timing of those returns. The residuum will be most negatively affected if a new contribution is received, and shortly thereafter significant investment losses are incurred.

Charities considering whether to self-insure or reinsure gift annuities should keep in mind how each would be affected by changes in gift annuity rates and the movement of interest rates. When the ACGA reduced gift annuity rates in 2020 to historically-low levels, the risk for charities that self-insure was reduced, and the residua they would realize was increased. The downside, of course, was that they might attract fewer gift annuities. If they reinsured, less money would be required for the premium because payments were lower, and, consequently, the charity would have more currently available for its exempt purpose. When interest rates are extremely low, such as they were in 2020, and the charity reinsures, the premium will be higher, leaving less of the contribution for its exempt purposes. If it self-insures, there will be the challenge of balancing fixed income investments paying low interest and equities that offer the potential for higher returns but also higher risk.

Investment or use of Assets Remaining after Reinsuring

A charity that reinsures can spend whatever portion of the contribution that remains after purchasing a commercial annuity. Indeed, one of the appeals of reinsuring is that the charity has money to spend immediately, rather than having to wait until the annuity obligation terminates. However, when weighing whether to reinsure or self-insure, a more direct comparison of future benefits to the charity would analyze the amount accumulated by investing the assets remaining after reinsurance for the life of the annuity.

If a charity can earn a higher net return on the balance remaining after reinsuring than it can on gift annuity reserves, then reinsurance may produce better results in more instances. This disparity of net returns can result when a charity invests a higher percentage of gift annuity reserves in bonds and cash because of state regulations and prudence, while it invests a higher percentage of the balance, after reinsuring, in equities.

Advantages and Disadvantages of Reinsurance

Advantages

- A portion of the gift is available for immediate use by the charity. This is also true of self-insured gift annuities, but charities that self-insure are more likely to keep the entire contribution in reserve until the termination of the annuity.
- The charity's risk is minimized.
- Some states do not require a reserve for reinsured annuities. (How reinsurance affects reserve requirements is discussed below.)
- Donors may feel more secure if the charity is young or financially weak.

Disadvantages

- The charity will realize less money when annuitants die early and, if it can earn an attractive return on gift annuity reserves, may realize less from the entire gift annuity program.
- Donors may be disappointed and confused when they learn that the charity retains only a fraction of the contribution. Suppose a donor gives $100,000 for a gift annuity, and the charity advises her that it is using $73,000 to reinsure the obligation and that $27,000 will be used for the designated purpose. Even if the present value of the residuum the charity would have realized with a self-insured gift annuity were no greater than $27,000, the donor perceives herself as giving $100,000, a substantial portion of which will eventually be available for charitable purposes.
- Reinsurance introduces more complexity because two contracts are required, and another entity, the insurance company, is involved. As gift annuities lose the appeal of simplicity, marketing them becomes more difficult.
- Once an annuity is divided into its component parts, a donor may wonder why making a gift requires purchase of an annuity or vice versa.

Advantages and Disadvantages of Self-insurance

Advantages

- Self-insured gift annuities are easier for donors to understand, and they are more psychologically appealing.
- Most charities believe that they can invest gift annuity reserves in such a manner that they will realize more money by self-insuring than by reinsuring.

Disadvantages

- The charity is at greater risk.
- If the charity operates in regulated states, it will have to maintain a segregated reserve fund, which may be subject to investment restrictions.

Selective Reinsurance

A charity may choose to reinsure some but not all of its gift annuities. For example, to limit the amount of risk to which it is exposed, it might reinsure the portion of an annuity that exceeds a certain size.

Suppose the charity has determined that the maximum contribution it will accept for a self-insured gift annuity is $300,000, and then a donor offers a gift of $1 million for an annuity. The charity could self-insure 30 percent and reinsure 70 percent. Using an estimated cost of reinsurance, an analysis would look like this:

Contribution	$1,000,000
Total annuity payment	66,000
70% of annuity payment	46,200

Cost of purchasing a commercial pure-life annuity paying $46,200 per year	492,149
Amount retained by the charity	507,851
Amount invested in the gift annuity reserve fund to cover the self-insured portion of the annuity	300,000
Amount that could be invested in the endowment or expended per an agreement with the donor ($700,000 – 492,149)	207,851

A charity might also choose to reinsure gift annuities when the annuitants are under, or above, a certain age. Sometimes, though, it is difficult to find an insurer willing to insure a pure-life annuity for a quite elderly annuitant.

Still other reasons for considering reinsurance:

- The charity is likely to continue to have a relatively small number of gift annuities, too small for the actual mortality to approach the average, and too small for a diversified investment pool.
- The charity is not financially strong. If a weak organization defaulted, not only would its annuitants be harmed, but it would also bring discredit to the industry.
- The charity's board is quite risk-averse and perhaps would be unwilling to offer gift annuities unless risk can be eliminated.

Annuities that have been in existence for a number of years, and which the charity has been administering as self-insured annuities, could subsequently be reinsured. This could be a prudent course, and possibly afford some protection to annuitants, if the charity's financial future should become problematic.

However, there may be instances when the reserves allocated to a particular annuity are almost equal to or even less than the single-payment insurance premium currently needed to cover the obligation. If reinsuring in such a case, the charity would be left with practically no residuum from the original gift, or would need to use some of its own assets to help cover the premium.

Even so, it might decide to proceed with reinsurance because it is at risk of losing a substantial sum on the annuity, particularly if the annuity is large and if the annuitant lives well beyond life expectancy. On the other hand, it might accept the risk because of the probability that self-insurance will result in a larger benefit to the charity.

Tax Implications of Reinsurance

Usually, a charity that reinsures a gift annuity accepts the contribution, executes a gift annuity agreement, and then voluntarily decides after receiving the gift to cover the obligation by purchasing an annuity from an insurance company. The annuity agreement makes no reference to reinsurance. Under this scenario, the deduction and taxation of payments will be unaffected. Even if the donor and annuitant are aware that the charity will purchase an annuity from an insurer to match its payment obligation, the deduction and taxation of payments will be calculated in the normal way. See Private Letter Ruling 200852037.

Suppose, however, that the charity reinsures pursuant to a gift annuity agreement that requires reinsurance and specifically names the reinsurer. Effectively, the donor has simultaneously made an outright gift and purchased a commercial annuity, and the charity has acted as his/her agent in procuring the annuity. (The result would be the same if the charity has an agreement with an insurance company obligating it to reinsure all of its annuities with that company.) Then the charitable deduction would be for the amount retained by the charity, and the payments would be taxed according to the rules governing commercial annuities. For a history of the IRS view of gift annuities in relationship to commercial annuities, see Rev. Ruls. 62-137 and 62-216, the latter of which was amplified by Rev. Rul. 72-438, then updated by Rev. Rul. 84-162. See also Private Letter Ruling 8322068 for a situation in which the charity was obligated to reinsure.

Reinsurance Contract with a Term-certain Option

Sometimes a charity that reinsures a gift annuity will choose to pay a higher premium for an annuity contract that provides payments for the longer of the lifetime of the annuitant or a term of years – for example, 10 years. Then, if the annuitant dies early, the charity will be entitled to the payments for the balance of the guaranteed period (or the commuted value of them) and thus will recover some of the premium.

There is a question whether this is allowable under IRC Sec. 170(f)(10)(D)(iii), which requires that the timing and amount of payments under a reinsurance contract be "substantially the same as the timing and amount of payments to each such person under such obligation (as such obligation is in effect at the time of such transfer.)" Since a gift annuity must make payments for the lifetime of the annuitant, would a reinsurance contract that makes payments for the longer of the lifetime of the annuitant or a period of years flunk the "substantially the same" test?

When legislation was passed shutting down charitable split-dollar life insurance, IRC Sec. 170(f)(10)(D) was included to provide a safe harbor for the reinsurance of gift annuities. To qualify for the safe harbor, the reinsurance contract has to be substantially the same as the gift annuity agreement. A reinsurance contract that contains a term-certain provision, though not the same as the gift annuity agreement, does not benefit the annuitant and is clearly not abusive. Nevertheless, it must be acknowledged that a degree of uncertainty remains. PLR 200852037 dealt with a situation in which the charity would pay a slightly higher premium in exchange for a commitment by the insurance company to pay in a lump sum to the charity, at the death of the annuitant, the difference between the premium and total payments received by the annuitant prior to death. This is different from a gift annuity, which contains no refund option, and it is conceptually similar to a term certain provision. Thus, having a term-certain option with remaining payments to the charity may be acceptable.

Both PLRs 200847014 and 200852037 declare that reinsured gift annuities will not constitute provision of commercial-type insurance under IRC Sec. 501(m), provided the annuity meets the requirements of IRC Sec. 514(c)(5).

Effect of Reinsurance on Disclosure Requirements

If a charity's policy is to reinsure all its gift annuities, then this fact should be disclosed to the donor before an annuity is established. The sample disclosure agreement in Appendix 1 of Chapter 8 includes suggested language addressing this situation, as well as somewhat different language a charity might use if its practice is to reinsure some, but not all, of its annuities.

Effect of Reinsurance on Reserve Requirements

In some states that require a charity to maintain a segregated reserve fund, reinsurance will reduce the amount that needs to be kept in that fund. However, with reference to its effect on required gift annuity reserves, reinsurance has different meanings in different states. The term can mean purchasing an annuity from a commercial insurance company to cover the payment obligation, or it can mean insuring the risk assumed by the charity as explained at the beginning of this chapter. In the following summary of how reinsurance affects reserve requirements in various states, the applicable meaning will be noted. Where reinsurance has the first meaning, the term *commercially insured* will be used. Where it has the second meaning, the term *insuring the risk* will be used. In addition, states differ not only with respect to the meaning of the term but also with respect to the requirements that must be met before an annuity can be considered appropriately reinsured. In other words, a particular gift annuity may be reinsured according to the laws of one state but not according to those of another state. A charity is thus well advised to review the statutory requirements for each state in which it seeks to reduce its reserve liability through use of reinsurance.

Arkansas

A deduction in required reserves may be made for any portion of the annuity risk which is reinsured by an authorized life insurance company. Arkansas Code 23-63-201(d)(6). (Reinsurance means commercially insured.)

California

If the liability under an annuity agreement is reinsured, the charity may reduce required reserves by the amount that would have been required for that annuity. California Insurance Code Section 11523.5. The reinsurance contract must be filed with the Department of Insurance, and it must specify which annuity agreement is reinsured.

As a practical matter, due to restrictions contained in the California Insurance Code concerning the payment of commissions for reinsurance and the requirement that the reinsurer remain liable for annuity payments to the annuitant if the charity is unable to make the required payments, reinsurance for charitable gift annuity contracts may not be as readily available in California as in some other states. (Reinsurance means insuring the risk.)

Florida

A deduction in required reserves may be made for any portion of the annuity risk which is reinsured by an authorized life insurance company. Florida Statutes Section 627.481(2)(b). (Reinsurance means commercially insured.)

Hawaii

A deduction in required reserves is to be made for all or any portion of an annuity risk which is reinsured by an authorized insurer. (Reinsurance means commercially insured.) Section 431:1-204(c)(2), Hawaii Revised Statutes makes clear that the 10 percent surplus required on calculated reserves is not required on any portion that is reinsured.

Maryland

A deduction in required reserves may be made for any portion of the annuity risk which is reinsured by an authorized insurer or accepted reinsurer. Insurance Article, Section 16-114(d)(2) Annotated Code of Maryland, and COMAR 31.09.07.03C. (Reinsurance means commercially insured.)

New Hampshire

The state statute requires charities to retain in reserve 100 percent of contributions received for gift annuities, increased by earnings and decreased by annuity payments and allocated expenses. The statute makes no reference to reinsurance of gift annuities. Legislation introduced in 2021 (NH HB 527) would have allowed for reinsurance as a way for charities not meeting the minimum assets requirement to be able to issue gift annuities. The legislation was killed in commmittee.

New Jersey

A deduction in required reserves may be made for any portion of the annuity risk which is lawfully reinsured by an insurer that is licensed in New Jersey. New Jersey Statutes Annotated 17B:17-13.1b and New Jersey Administrative Code 11:4-8.6(b). Technically, reinsurance means reinsuring the risk. However, the insurance department allows a deduction in required reserves for any gift annuity where the charity purchases from an authorized insurer an annuity that will pay the amount stipulated in the gift annuity agreement. Reinsurance does not relieve the permit holder from the requirement that surplus reserves be at least $100,000.

New York

A deduction in required reserves may be made for any portion of the annuity risk which is reinsured. New York Insurance Law, Section 1110(b). (Reinsurance means insuring the risk.) Reinsurance involves a treaty agreement with an authorized life insurance company. If the reinsurance is not done with a company authorized to transact business in New York, then it must be secured by a letter of credit or trust agreement. The contract for reinsurance must be submitted to and approved by the Insurance Department in advance of reinsuring particular annuities. Proper reinsurance reduces the amount of reserves on which the surplus requirement is calculated. However, reinsurance does not relieve the permit holder from the requirement to have a minimum balance of $100,000 in the segregated reserve fund. As with California, the restrictions on reinsurance imposed by New York have reduced its availability and use from a practical perspective.

If a charity has a New York permit to issue gift annuities, it must execute such a treaty agreement even if the donor resides in another state, if it wants to be exempted from the reserve requirement for that annuity. A charity may purchase a commercial annuity to cover its obligation, but that commercial annuity will be disregarded when the required and actual reserves are reported.

North Dakota

The state statute makes no reference to the effect of reinsurance on reserve requirements.

Oklahoma

The State statute says that a qualified charitable organization may use a portion of the money or property received in exchange for a qualified charitable gift annuity to purchase an annuity from an insurance company qualified to transact a business of insurance in this state. See Oklahoma Statutes Sec. 36-4079. Reinsured gift annuities could be noted on the audited financial statement filed with the Insurance Commissioner.

Oregon

The state statute allows the gift annuity reserve fund to hold "one or more single premium annuities that pay the entire amount of one or more charitable gift annuities issued by the charitable organization." Oregon Revised Statutes 731.038(2)(c). Any such single premium annuity must be issued by an authorized insurer that is also authorized to transact insurance in the charity's state of domicile and in the state in which the single premium annuity is issued.

Pennsylvania

Under Pennsylvania Statutes, Title 10, sections 361-364, in order for the gift annuities issued by a charity to be exempt from the insurance code a charity had to have unrestricted and unencumbered assets (in the form of cash, cash equivalents, or publicly-traded securities) of at least $100,000 plus one-half of the principal value of then outstanding annuities. Effective January 1, 2023, "de-risking annuity contracts" also count towards the asset requirement. A "de-risking" contract is defined as a commercial annuity, purchased from an authorized insurance company, that matches future payments arising from a charitable gift annuity.

Tennessee

A deduction in required reserves may be made for any portion of the annuity risk which is reinsured by an authorized insurer. Tennessee Code Annotated, Section 56-52-104(b)(2). (Reinsurance means commercially insured.)

Washington

A charity does not have to maintain the required reserve amount for any annuity which is reinsured by an authorized life insurance company. Revised Code of Washington 48.38.020(6). The reinsurance contract must be filed with the Office of the Insurance Commissioner, and it must specify which annuity agreement is reinsured. (Reinsurance means commercially insured.) The statute specifically provides for reinsuring a gift annuity in its entirety, and not just a portion of it. Thus, if a charity purchases from an insurance company a single premium life annuity covering one-half of a gift annuity, it cannot claim a reduction in the amount required to be held in its gift annuity reserve fund. However, the purchased commercial annuity can be included as an asset in the reserve fund, provided that the value of the annuity is determinable and that it is appropriately transferred to and maintained within the reserve fund.

Administration of Reinsured Gift Annuities

Reinsurance of gift annuities relieves a charity of ongoing investment responsibilities. However, the charity is still responsible for completing IRS Forms 1099-R and 1096 and for filing state reports where applicable. Performance of these duties will entail some expense.

Payments can be sent directly to the annuitant(s) by the insurance company, or the payments can be made to the charity, which deposits them in its account and then sends checks drawn on that account to the annuitant(s). The former entails less work for the charity and may get checks into the hands of the annuitant(s) more quickly, but the latter reinforces the relationship between the charity and those annuitants who are also donors. If checks are mailed or funds are electronically transferred by the insurance company, they should clearly be identified as payments from a gift annuity with the charity. When purchasing the commercial annuity, the charity will be applicant and owner. In the event the charity purchases an annuity that guarantees payments for a minimum number of years, or has a refund option, any payments following the death of the annuitant go to the charity, not to the annuitant's estate.

Gift Annuity Agreement for Reinsured Gift Annuity

A charity can cover its payment obligation by purchasing a commercial annuity whether or not the gift annuity agreement specifically authorizes such a purchase. However, in some cases when the charity intends to purchase a commercial annuity, it may be advisable to include an authorization paragraph. For example, a charity issuing gift annuities in Illinois should include an authorization paragraph if it has not been in active operation for 20 years and does not have an unrestricted fund balance of at least $2 million. That is because Illinois requires reinsurance when a charity fails to meet both of these requirements, and a reinsurance authorization paragraph attests that the charity intends to comply with Illinois law. A similar approach is taken by Montana. See Chapter 11 for further information on state requirements.

See the Appendix for a sample gift annuity agreement including a reinsurance authorization paragraph.

Marketing Reinsured Gift Annuities

Some insurance companies, realizing the potential for annuity sales, ask charities to enter into an agreement to reinsure all gift annuities through the company and promise, in return, discounted premiums. Before agreeing to reinsure all annuities with a particular company, the charity should ascertain that the company is highly-rated and does indeed have competitive rates. The annuity business is volatile, and the companies that have the lowest premiums now may not have them a few months later. If the charity wants to be able to reinsure gift annuities selectively, or perhaps to reinsure only part of the risk of a large gift annuity, it should ascertain that this will be permitted before entering into a reinsurance agreement with a particular company.

Sometimes insurance agents and brokers market gift annuities with the understanding that the gift annuities they initiate will be reinsured through them. A commission paid on a reinsured gift annuity does not violate the *Model Standards of Practice for the Gift Planner* because the commission is not a percentage of the gift, nor is it paid for delivery of the gift. Rather, it is analogous to broker's commissions paid when the charity purchases stocks and bonds with contributed assets. However, when agents and brokers market gift annuities, there is a risk of selling "investments" rather than encouraging "gifts." Also, the spirit, if not the letter, of the *Model Standards* may be violated.

Unbundling Gift Annuities

At times, some financial services professionals have promoted a plan whereby an individual purchases a private annuity from an insurance company and makes an outright gift to charity. This transaction "unbundles" or breaks a gift annuity into its component parts and removes the charity from the annuity-payment part of the transaction, other than possibly having brought the client to the table. Because the charity is not a party to the annuity contract, the client can purchase any annuity product offered by the insurance company, variable as well as fixed.

The transaction is generally structured to mimic a gift annuity in that annuity payments from the insurance company are the same amount as the payments the annuitant would have received from a self-insured gift annuity funded with the premium cost plus the outright gift. However, it is important to note that the transaction is neither a self-insured nor a reinsured gift annuity. The only charitable component is an outright gift made by an individual who, in the same time frame, purchases a commercial annuity through an agent of an insurance company. The charitable deduction is the same as for any outright gift of an equivalent amount.

As the promoters of the plan assert, the charity assumes no financial risk, for it is doing nothing more than accepting an outright contribution. Also, the promoters are correct in asserting that the charity would not have to register to issue gift annuities in the state where the donor resides because the charity would not, in fact, be issuing a gift annuity. The charity would need only to comply with the general charitable solicitation laws of the states where it fundraises.

However, despite these advantages, there are several reasons why a charity might not want to collaborate in promoting the unbundled approach.

- The charity's net benefit may be less than if the individual simply transferred the entire asset for a self-insured gift annuity.
- If the individual wants to acquire an annuity with appreciated property, part of the gain would be immediately taxable. The individual would be selling enough of the property to generate the cash required for the premium.
- The charitable deduction would not be the same as it would be if the donor contributed all of the property to the charity, and the charity, in its discretion, either self-insured or reinsured the obligation.
- An individual might decide to reduce, or even eliminate, the gift portion of the unbundled plan in order to increase the size of payments.
- If the charity participates in marketing the unbundled approach, it might be viewed as inappropriately participating in the promotion and sale of a commercial product, and there could be regulatory implications. This would not be an issue if an insurance agent contacts a charity about a client who wishes to make a charitable gift in connection with purchasing a commercial annuity.

- The genius of a gift annuity is the bundling of a charitable gift and life payments. Unbundling the transaction could ultimately undermine it.

Reinsured Gift Annuity Combined with Life Insurance

Another strategy sometimes proposed by financial services professionals is to reinsure a gift annuity and use the amount remaining, after paying the reinsurance premium, to purchase a single-premium life insurance policy on the life of the annuitant. Suppose that $100,000 is contributed and the cost of reinsurance is $70,000. With the $30,000 remaining the charity purchases a life insurance policy that will pay $60,000 upon the annuitant's death. Thereby, the charity essentially eliminates risk and locks in a residuum equal to 60 percent of the contribution. The amount of insurance that can be purchased depends on the age and state of health of the annuitant.

Does the charity fare better with this strategy than it would by (1) simply self-insuring the gift annuity or (2) reinsuring the payment obligation with a portion of the contribution and investing the remainder? That depends on returns that would be realized and the longevity of the annuitant. A primary disadvantage of the strategy is that it greatly complicates the process, requiring three documents – a gift annuity agreement, an application for purchasing the commercial annuity, and an application for purchasing the life insurance – and possibly requiring medical underwriting. All of this could confuse and alienate the donor.

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Gift Annuity Agreement with Reinsurance Paragraph

Serial Number_____________

ABC Charity
Gift Annuity Agreement
One Life – Donor is the Annuitant

This Agreement is made between *[name of Donor]*, of *[street address]*, *[city]*, *[state] [zip]* (hereinafter "the Donor"), and ABC Charity, of 1234 Main Street, Seattle, Washington 98000 (hereinafter "Charity").

1. Transfer of Property by Donor
Charity certifies that the Donor, as an evidence of *[his/her]* desire to support the work of Charity and to make a charitable gift, on *[contribution date – month, day, year]* contributed to Charity the property described in Schedule A attached hereto, the fair market value of which is$*[amount]*.

2. Payment of Annuity
In consideration of the property transferred by the Donor, Charity shall pay an annual annuity of $*[Amount]* from the date of this Agreement and shall pay such amount to the Donor so long as *[he/she]* is living.

3. Authorization of Charity to Purchase an Annuity
The Donor understands that Charity may satisfy its payment obligation under this agreement by purchasing from a licensed life insurance company in good standing an annuity on the life of the Donor that will pay an annual annuity of $*[Amount]*, and the Donor authorizes but does not require Charity to make such a purchase.

4. Payment Dates; First Installment
The annuity shall be paid in *[monthly, quarterly, semi-annual, annual]* installments of $*[Amount]*. The first installment shall be payable on *[month, day, year]*, and shall be prorated on the basis of the number of days in the initial payment period. Subsequent installments beginning on *[month, day, year]* and continuing every *[month, quarter, half-year, year]* thereafter shall be in the full amount of $*[Amount]*. *[If the contribution is received on the first day of the period or if the first payment will be for the full amount in any case, delete the reference to proration and subsequent installments.*]

5. Birth Date of Annuitant
The birth date of the Donor is *[month, day, year]*.

6. Irrevocability; Non-assignability; Termination
This annuity is irrevocable and non-assignable, except that it may be assigned to Charity. Charity's obligation under this Agreement shall terminate with the regular payment preceding the Donor's death.

Form: ABC-1da-I-IL 9/17 Prototype Materials: agreement-reinsurance.docx

APPENDIX

7. Uses and Purposes of Gift

Any amount remaining after Charity's satisfaction of its obligation under this Agreement (including the amount remaining after purchase of an annuity per Paragraph 3 above) shall be used by Charity for *["its general purposes" if unrestricted; if restricted, state purpose]*.

8. Entire Agreement; Governing Law

This Agreement, together with Schedule A attached hereto, constitutes the entire agreement of the parties. This Agreement shall be governed by the laws of the State of Illinois.

This Agreement is effective as of *[contribution date – month, day, year]*.

DONOR:

____

ABC CHARITY:

By:

____

[Name and title of officer]

ATTEST

By:

____

Form: ABC-1da-I-IL 9/17

APPENDIX

Gift Annuity Agreement Between
***[Name of Donor]* and**
ABC Charity

Schedule A

Description of Property

Form: ABC-1da-I-IL 9/17

Chapter 11

Regulations Regarding Issuance of Gift Annuities

In regulating the issuance of charitable gift annuities, states are almost equally divided in number between those that require filing and those that do not.

Filing Required

- Eleven states (Alabama, Arkansas, California, Florida, Hawaii, Maryland, New Jersey, New York, North Dakota, Tennessee, and Washington) require charities to maintain segregated reserves, submit annual reports, and/or file a detailed application in order to issue gift annuities to residents of that state. The application typically involves organizational and financial information about the charity, as well as the submission of prototype annuity agreements and a proposed rate schedule.
- Fourteen states provide for an exemption from insurance regulation for the issuance of gift annuities but require notification to the state insurance department or securities commission of the charity's intent to issue annuities. To qualify for the exemption, the charity must meet the applicable statutory criteria, including years-in-operation and minimum asset requirements. All of these states require inclusion of disclosure language in annuity agreements.

Filing Not Required

- Twenty-two states provide for an exemption from insurance regulation for the issuance of gift annuities but do not have a notification requirement. However, a charity may still need to meet the same type of statutory criteria mentioned above in order to qualify for the exemption.
- Three states and the District of Columbia are currently silent regarding gift annuities.

A description of the statutory or regulatory provisions for each state with an overview of all state requirements, as well as a map reflecting the four regulatory categories, are provided in Appendices 1 and 2, respectively.

Where applicable, the state summaries provide required disclosure language for inclusion in annuity agreements and indicate whether investment restrictions are imposed on the reserve fund or an annual reporting is required. More detailed information on these subjects may be found in Chapters 12, 13, and 14.

Language used to describe certain requirements is intended to reflect distinctions between seemingly similar provisions. For example, some state statutes require a charity to have been in existence for a certain period of time, while others require active operation for the requisite period. For most organizations existence and operation are the same. However, for organizations that were in existence for a period of time (having incorporated) before becoming operational, attention should be given to the specific requirement of a particular state and to when the organization did become operational. With respect to minimum asset requirements, most states with such a requirement specify an amount that is to be above the assets funding the annuity agreements. However, even in those states where the assets contributed for a gift annuity could count towards the minimum, a charity would be well advised not to issue unless it had sufficient assets independent of the annuity contributions, to insure that the charity is able to fulfill its obligations to the annuitants.

The lack of a particular provision, which other states may have, is not indicated. From a practical standpoint, however, lack of a specific provision (e.g., imposition of fines for failure to comply) may not preclude a state from taking certain action. In addition, while there is a reference to filing requirements contained within states' gift annuity statutes, there may be general state solicitation or registration laws which are applicable to charities. Such laws are not covered herein.

The states referred to as *silent* have no specific statutory provisions governing charitable gift annuities, either through formal regulation or by providing for an exemption. Issuance of annuities in these states, therefore, may be covered by either insurance or securities laws, requiring charities to comply with the same registration and reporting requirements as any issuer of insurance or securities. Charities find such requirements to be prohibitive, and many make the decision to issue gift annuities in these states without such registration. While silent states do not appear to be actively enforcing insurance or securities laws against charities, it is unclear whether this is because they do not have the resources to do so, or because they view the laws as not applicable to charities. Note, however, that in a 2002 opinion the Ohio Court of Appeals held that gift annuities were not subject to insurance regulation, even in the absence of a specific statutory provision governing their issuance.

When a Charity Must Comply with the Regulations of a Particular State

A charity doing business in a state should comply with the registration or filing requirements of that state. "Doing business" includes sending marketing material into the state, visiting with prospective donors in the state, or any kind of communication with prospective donors within that state regarding a contribution for a gift annuity.

It may be possible to execute a gift annuity agreement with a resident of a particular state without doing business in that state. Consider this example: A college domiciled in Indiana, an exempt state, never sends gift annuity marketing material into California (a regulated state) and does not visit, telephone, or otherwise communicate with California residents about contributing for a gift annuity. However, on alumni day, an alumnus from California comes to campus, walks into the development office and completes a gift annuity agreement. That probably would not constitute doing business in California, and would not cause the charity to have to register in California. The reason is that all parts of the transaction occurred in Indiana.

A charity does not have to comply with the regulations of a state merely because a donor moves to that state. Suppose, for example, that an Indiana donor, three years after signing a gift annuity agreement in Indiana, moves to California. That annuity continues to be governed by the state where it was executed, and the charity is not required to register in California.

While most frequently the donor(s) is/are also the annuitant(s), there are instances where they are different, and in such a situation the donor and annuitant may also live in different states. Generally speaking, the applicable regulatory law is that of the state where the donor resides. California's law does make specific reference to the required reserve fund being established for "annuitants." This could result in an annuity potentially being subject to reserve requirements in two states; for example if the donor resides in Washington while the annuitant resides in California, the reserve for a single annuity could be required to be held in two separate reserve accounts. In discussion, no state has indicated a desire to have a charity "double reserve" for the same annuity. Thus, in practice it has been acceptable even in California when a charity follows the standard practice of meeting the reserve requirements of the donor's state.

This chapter provides state-by-state information about requirements pertaining to the issuance of gift annuities; charities should consult their own counsel regarding the applicability of such laws to their circumstances.

Potential Regulation of Gift Annuities Under Securities Law

The Philanthropy Protection Act of 1995 exempted from federal securities laws common funds maintained by charitable organizations, provided they included only certain assets such as those of general endowments, gift annuities, and charitable remainder trusts. The exemption under the Philanthropy Protection Act preempted state law requirements for securities regulation and reporting, but states could opt out of the preemption provisions within three years of the adoption of the Act. Nine states – Arkansas, Connecticut, Florida, Maryland, Mississippi, Nebraska, Tennessee, Vermont, and Virginia – did opt out. Terry Simmons, an attorney with Thompson and Knight in Dallas who was chiefly responsible for securing the exemptions in the Philanthropy Protection Act, indicated at the time that Florida was the one state whose laws could result in costly compliance requirements for charities issuing gift annuities.

In opting out of the Philanthropy Protection Act, Florida did preserve the exemption for gift annuities and the other types of charitable funds listed in the Act. However, the disclosure requirements – including an offering circular – to qualify for the exemption could be quite extensive, and possible penalties for non-compliance could be severe.

The other states likewise provide for an exemption from securities registration for securities issued by charitable non-profit organizations, but by virtue of the opt-out retain the ability to regulate such issuance. Charities are cautioned to watch for gift annuity regulation developments in these states and to consult their legal counsel about potential implications under securities laws of offering gift annuities.

Alabama

Gift annuities in Alabama are regulated by the Securities Commission, governed by Alabama Code Section 8-6-10 and Chapter 830-X-6-.10 of the administrative code. As part of a charity's application for an exemption from registration, certain individuals within the organization (those who will promote gift annuities and those who will sign annuity agreements) must complete a Uniform Application for Securities Industry Registration of Transfer (Form U-4). There is a $70 fee for each Form U-4 submitted.

The application must include information on the organizational structure and financial status of the charity, as well as how and to whom annuities are marketed. At one point, the Securities Commission expressed concern over the use of donor testimonials and generic examples and rejected their use in marketing materials sent to Alabama donors. Recently, however, the Commission has modified its comments to emphasize that information in marketing materials simply cannot be misleading, and materials with testimonials have been approved.

Donors must be given a detailed disclosure statement including relevant risks, tax consequences, and financial information of the organization pertaining to assets backing the annuity payments, including whether there are present, pending, or threatened material legal proceedings. The disclosure must also note that annuities are nonassignable and that they are backed solely by the charity and not by the state. Both donors and a representative of the charity are to sign the disclosure statement. See [Appendix 3](), which is a modification of the general disclosure statement found in [Chapter 8]().

To keep its Alabama exemption in force, a charity must do two things annually:

1. By December 31 of each year, renew the registration of each "registered agent" (the persons who filed Form U4) and pay the one-year fee of $70 for each. Any new agent (e.g., a replacement) must file Form U-4 and pay $70.
2. Within 60 days after the end of its fiscal year, file an audited financial statement of the organization for the year just ended.

A segregated annuity reserve fund must be maintained, but there are no statutory investment restrictions imposed on the fund.

Contact Information

Bene' Kyles
Securities Analyst Supervisor
Alabama Securities Commission
445 Dexter Avenue, Suite 12000
Montgomery AL 36104
or
PO Box 304700
Montgomery, AL 36130-4700
(334) 353-7143
bene.kyles@asc.alabama.gov

http://www.asc.alabama.gov
For registration information, click on Filing Requirements, Charitable Gift Annuity (under Exemptions)

Disclosure Language

In Alabama there are two disclosure requirements: the disclosure statement noted previously, and the disclosure to be included in the annuity agreement. In addition to the elements noted above, the following language should be included as part of the disclosure statement:

> *The payments made under the charitable gift annuity are backed by the full faith and credit of the organization and are not issued or guaranteed by an insurance company or backed in any way by the State of Alabama.*

The annuity agreements should contain the following:

> *This charitable gift annuity is offered pursuant to a claim of exemption from registration under Section 37(h) [Section 8-6-10, Code of Alabama, 1975] of the Alabama Securities Act and Section 3(a)(4) of the Securities Act of 1933. A registration statement relating to this annuity has not been filed with the Alabama Securities Commission or with the United*

States Securities and Exchange Commission. Neither the Alabama Securities Commission nor the United States Securities and Exchange Commission has passed upon the value of this charitable gift annuity or approved or disapproved of its offering, or passed upon the adequacy or accuracy of this agreement. Any representation to the contrary is unlawful.

While a charity might choose to include both disclosures in the disclosure statement and the annuity agreements, inclusion of both in only one place would not satisfy the requirement.

Alaska

Under Alaska Statutes Section 21.03.070, the issuance of qualified charitable gift annuities is exempt from insurance regulation. To qualify for the exemption a charity must provide notification to the Division of Insurance within 90 days of the issuance of its first annuity.

A charity must also have a minimum of $300,000 in unrestricted cash, cash equivalents, or publicly-traded securities, exclusive of the assets funding the annuity agreements, and have been in continuous operation for at least three years or be a successor or affiliate of an organization in operation for at least that time. Specific disclosure language is required in the annuity agreements.

Failure to comply with the notice requirements does not disqualify an otherwise qualified gift annuity. However, the Division may demand compliance, through certified mail, and impose a fine of up to $1,000 for each annuity issued during the time the organization is not in compliance.

Contact Information

Sonnet Reddoor
Insurance Licensing Examiner 2
Division of Insurance
Department of Commerce,
Community & Economic Development
550 West 7th Avenue, #1560
Anchorage, AK 99501-3567
(907) 269-7537
sonnet.reddoor@alaska.gov

Note: Filing may be submitted via email

Disclosure Language

Must be in bold type and in a font larger than that generally used in the agreement.

A qualified charitable gift annuity is not an insurance policy in the State of Alaska, is not subject to regulation by the division, and is not protected by the Alaska Life and Health Insurance Guaranty Association established under AS 21.79.040 or any other association that guarantees payment under a policy of insurance, and the state does not in any way approve or endorse the annuity.

Arizona

Sections 20-103 and 20-119, Arizona Revised Statutes, provide a general exemption from insurance regulation for gift annuities issued by organizations described in IRC Sec. 501(c)(3) or 170(c). A charity must have $300,000 in unrestricted cash, cash equivalents, or publicly traded securities, exclusive of the assets funding the annuity agreements, have audited financial statements for the two years prior to entering into a gift annuity agreement, and have been in continuous operation for at least three years or be a successor or affiliate of an organization in operation for at least that time. No notification to the Department of Insurance is required.

Instead of simply including specific disclosure language in the annuity agreement, a detailed disclosure statement must be given to a donor *before* the contribution for a gift annuity is made. That statement must include: (1) the name and address of the charity; (2) a description of the charity, including its state of organization, its date of organization and its current operations; (3) a statement that the charity will make additional financial information, including its most current audited and interim financial statements, available to the donor on request (this statement is to be conspicuous and printed in at least 10-point bold-faced type); (4) a disclosure that the state and the Department of Insurance have not approved or disapproved of the charitable gift annuity being offered and have not determined whether any of the information provided to the donor is truthful or complete; and (5) the disclosure noted below. Though not specifically required, including the last disclosure element in the agreement is advisable. See Appendix 4 for a suggested disclosure statement which is a modification of The Philanthropy Protection Act of 1995 disclosure found in Chapter 8.

Payment by charities of commissions, fees, or other forms of compensation that are contingent on a contribution being made, or on the amount of the contribution, is prohibited. State law also creates a specific cause of action for the donor of any gift annuity issued by a charity that is not in compliance with the law, allowing recovery of the contribution amount, plus costs and fees, but less payments received. Such action must be brought within two years of discovery of the noncompliance.

Disclosure Language

> *This charitable gift annuity is not insurance under the laws of this state, is not subject to regulation by the director and is not protected by any state guaranty fund.*

Arkansas

Issuance of charitable gift annuities is governed by Arkansas Code 23-63-201(d). Application for a permit to issue charitable gift annuities is directed to the Arkansas Insurance Department. Charities must have been in active operation for at least five years. Charities that do not meet the years-in-operation requirement, but are affiliated with an organization that does, may qualify for a permit if the Commissioner of Insurance determines there is sufficient management expertise readily available.

Arkansas requires that charities maintain segregated assets equal to the greater of $50,000 or an amount equal to the calculated reserves on all outstanding gift annuity agreements plus a 10 percent surplus. A board resolution regarding creation of the segregated reserve fund must be submitted with the application. A deduction in reserves may be made for any portion of the annuity risk that is reinsured by an authorized life insurance company.

State law allows investment of the reserve fund in accordance with the State's prudent investor standard, or a charity may follow specific investment restrictions set forth in the statute. See Chapter 13. If a charity elects the prudent investor standard, it must submit additional documentation on an annual basis. It should be noted that a charity domiciled in a state that regulates investment of gift annuity reserves, including a state that uses a prudent investor standard, may invest in accordance with the laws of its state of domicile, without the need to file additional documentation.

An annual report must be filed within 180 days after the end of a charity's fiscal year. See Chapter 14. A charity investing per the prudent investor standard must include with the annual report a description of its investment philosophy, information about members of its investment committee, and a certification that its investments conform to its philosophy and to the prudent investor rule.

A charity may receive a "cease and desist" letter, or have its permit suspended or revoked, for noncompliance with any provision of the Code governing charitable gift annuities. In addition, the insurance commissioner has authority to impose a fine of up to $10,000.

Arkansas is one of the states that opted out of the federal preemption on state securities regulation provided by the Philanthropy Protection Act; see discussion earlier in this chapter.

Contact Information

Angela Davis
Administrative Assistant
Finance Division
Arkansas Insurance Department
1 Commerce Way, Suite 505
Little Rock, AR 72202-2087
(501) 683-0231
angela.davis@arkansas.gov

https://insurance.arkansas.gov/pages/industry-regulation/compliance/charitable-gift-annuities/

Note: The application may be submitted via email: insurance.finance@arkansas.gov

California

The issuance of charitable gift annuities is governed by California Insurance Code Sections 11520-11524. California's application process includes a significant number of forms, and much of the required information pertains to investments, reserves, and the individuals actively involved in their management. California requires most charities to have been in active operation for at least 10 years. There is an application filing fee of $4,656 for charities incorporated in California and $4,735 for those incorporated outside of California, with the higher fee being a result of the need to appoint an in-state agent for service of process.

A segregated reserve fund solely for annuities issued to California residents must be maintained, calculated in accordance with prescribed mortality tables and rates of interest. The fund must be held in trust, although it does not need to be maintained in California. While annuities may be reinsured, with a corresponding reduction in reserves, reinsurance means insuring the risk, not the purchase of a commercial annuity. A copy of each reinsurance contract must be filed with the Department of Insurance and an agreement among the charity, the annuitant(s), and the reinsurer must provide for payments directly from the reinsurer if the charity is unable to make payments. Charities are subject to investment restrictions on their reserve funds. See Chapter 13. No value is allowed for investments which violate the investment restrictions. Failure to create and maintain the reserve fund may result in the revocation of the permit. A board resolution authorizing creation of a segregated reserve fund, which will be maintained and invested in compliance with California's requirements, must be included with the application.

Disclosure language must be included in the annuity agreements. (Certification that the agreement forms conform to California's requirements is required on an annual basis.) Promotional materials must include the same disclosure, along with a disclaimer advising donors to seek the advice of competent counsel.

An annual statement of the reserve fund is due 120 days after the end of the charity's fiscal year (unless calendar year reporting is approved by the Department of Insurance), utilizing a specified form. See Chapter 14. An annual renewal fee of $150 is due on March 1. On a quarterly basis, information regarding new annuities must be submitted, along with a basic fee of $60 per agreement for up to 10 per quarter.

Although charities are exempt from most of the California Insurance Code, they are subject to Sections 730-736, which govern audits. The commissioner has discretionary authority to conduct an audit at any time, but must at a minimum conduct one every five years. However, in lieu of a formal audit, the

Department of Insurance appears instead to be conducting thorough reviews of the required annual statements. Just as charities would bear the cost of being audited, they are billed for time spent on review and analysis of the annual filing.

Contact Information

Corporate Affairs Bureau
Department of Insurance
1901 Harrison Street, 6th Floor
Oakland, CA 94612
Gayle Freidson: (415) 538-4418,
gayle.freidson@insurance.ca.gov

Leslie Alexander: (415) 538-4358
leslie.alexander@insurance.ca.gov

Kevin Pennington: (415) 538-4184
kevin.pennington@insurance.ca.gov

http://www.insurance.ca.gov/0250-insurers/0300-insurers/0100-applications/corp-apps-and-info/
For application information (click on "Grants and Annuities Society")

http://www.insurance.ca.gov/0250-insurers/0300-insurers/0100-applications/financial-filing-notices-forms/GrantsAnnuities/
For annual report forms.

Disclosure Language

The language must be in at least 12-point boldface type, and on the same page as, and in proximity to, the donor's signature.

> *Annuities are subject to regulation by the State of California. Payments under this agreement, however, are not protected or otherwise guaranteed by any government agency or the California Life and Health Insurance Guarantee Association.*

Colorado

Colorado Revised Statutes 10-1-102(4) and 10-3-903(2)(i) provide a general exemption from insurance regulation for any organization which, for at least three years, has been eligible to receive tax deductible contributions under IRC 170(c). No notification to the Insurance Department is required. Annuity agreements must include specified disclosure language.

Disclosure Language

> *This annuity is not issued by an insurance company nor regulated by the Colorado Division of Insurance and is not protected by any state guaranty fund or protective association.*

Connecticut

Under Connecticut General Statutes Sections 38a-1030 to 38a-1034, charitable gift annuities are exempt from insurance regulation. However, charities are required to provide notification to the Insurance Commissioner by the date they issue their first annuity. Charities must also have a minimum of $300,000 in unrestricted cash, cash equivalents, or publicly traded securities exclusive of the assets funding the annuity agreements, have been in continuous operation for at least three years or be a successor or affiliate of an organization in operation for at least that time, and include specific disclosure language in the annuity agreements.

Failure to comply with the notice requirements does not disqualify an otherwise qualified gift annuity. However, the commissioner may impose a fine of up to $1,000 for each annuity issued while the organization is not in compliance.

Connecticut is one of the states that opted out of the federal preemption on state securities regulation provided by the Philanthropy Protection Act; see discussion earlier in this chapter.

Contact Information

State of Connecticut Insurance Department
P.O. Box 816
Hartford, CT 06142-0816
https://portal.ct.gov/cid/searchable-archive/legal-division/charitable-gift-annuities?language=en_US

Note: The application may be submitted via email: cid.charitablegift@ct.gov

Disclosure Language

Must be in a separate paragraph, in print no smaller than used generally in the agreement.

> *A charitable gift annuity is not insurance under the laws of Connecticut and is not subject to regulation by the Insurance Commissioner or protected by an insurance guaranty association.*

Delaware

Section 2902 of Delaware's Insurance Code (Delaware Code Annotated, Title 18), defines an annuity as a contract "issued by a person which is not classified by the Internal Revenue Service as exempt from taxation under § 501(c)(3)." Though the law itself does not use the term "gift annuity," the Bill (1983 Chapter 155, HB 270) that amended Section 2902 to add the quoted language stated in its descriptive title that it was an Act to exempt charitable gift annuities from Delaware's insurance laws. In addition, the list contained in Section 4405 of what is not a member insurer includes "an organization which has a certificate or license limited to the issuance of charitable gift annuities." Both exclusionary provisions could be construed as providing an exemption from insurance regulation for charitable gift annuities. The Code makes no provision for obtaining a certificate or license.

District of Columbia

There is no general exemption from the Insurance Code for issuance of charitable gift annuities. However, an organization with a "certificate or license limited to the issuance of charitable gift annuities" is excluded from the definition of "member insurer" with respect to the Insurance Guaranty Association. (DC Code 31-5401) The Code makes no provision for obtaining a certificate or license.

Florida

Issuance of gift annuities is governed by Section 627.481, Florida Statutes. Charities, which must have been in active operation for at least five years, file an initial notification with the Florida Office of Insurance Regulation, advising that they are entering into annuity agreements and certifying compliance with Florida's reserve requirements.

Florida requires disclosure language in its agreements. Annuity benefits must be calculated to return one-half of the original contribution to the charity at the termination of the annuity, a requirement already met by charities following the American Council on Gift Annuities (ACGA) annuity rates. Charities must also maintain segregated assets to cover their annuity obligations, computed in accordance with prescribed mortality tables and interest rates. In addition, the fund must include a surplus equal to 10 percent of the reserves. A deduction may be made in the reserves for any portion of the charity's annuity risk that is reinsured with an authorized life insurance company. Florida charities and, to one extent or another, charities domiciled outside of Florida, are subject to investment restrictions on their reserve funds. See Chapter 13. The restrictions apply just to reserves for Florida annuities. A charity may hold the Florida reserves in a segregated fund with reserves for annuities issued in other states, or it may elect to establish a state-specific fund in which just the reserves for Florida annuities would be held.

Florida does not require an annual report on annuity reserves. Instead, a sworn statement in lieu of the report must be filed annually within 60 days of the close of a charity's fiscal year, certifying continuing compliance with Florida's requirements. See Chapter 14. If the charity fails to file the sworn statement, Florida may require it to submit an annual report, including audited financial statements and other information Florida deems necessary to determine compliance.

Noncompliance with any section of the statute governing charitable gift annuities may subject a charity to a "cease and desist" order.

Florida is one of the states that opted out of the federal preemption on state securities regulation provided by the Philanthropy Protection Act; see discussion earlier in this chapter.

Contact Information

Melinda Cupp
Administrative Assistant III-SES
Life and Health Financial Oversight
Office of Insurance Regulation
200 East Gaines Street
Tallahassee, FL 32399-0327
melinda.cupp@floir.com
http://www.floir.com

To obtain notification form:
https://www.floir.com/docs-sf/default-source/floir-documents/OIR-C1-1208.pdf

To obtain annual sworn statement:
https://www.floir.com/docs-sf/default-source/floir-documents/oir-a3-1209.pdf

Note: Initial filings may be submitted via email. Electronic filing of the sworn statement must be done online at https://irfs.fldfs.com/

Disclosure Language

> *This annuity is not issued by an insurance company, is subject only to limited regulation by the State of Florida and is not protected or otherwise guaranteed by any government agency.*

Florida state institutions of higher learning should include this additional disclosure:

> *This agreement is the entire contract between the parties, with rights and responsibilities of each party to the other as set forth herein. The donor or annuitant shall not have recourse against any assets of the state other than any funds or assets donated by, or funds derived from any assets donated by, the donor as set forth herein.*

Georgia

Charitable gift annuities are exempt from insurance regulation under Official Code of Georgia Annotated Sections 33-58-1 to 33-58-6. To qualify for the exemption a charity must have a minimum of $300,000 in unrestricted cash, cash equivalents, or publicly-traded securities, exclusive of the assets funding the annuity agreements, and must have been in continuous operation for at least three years or be the successor or affiliate of an organization in operation for at least that time. Charities are also required to provide notification to the Office of the Insurance and Safety Fire Commissioner by the date on which they enter into their first annuity, and must include specific disclosure language in the annuity agreements. A copy of the charity's audited financial statement must be filed annually once it becomes available. A Citizenship Affidavit is also part of the annual filing. See Chapter 14.

Failure to comply with the notice requirements does not disqualify an otherwise qualified gift annuity. However, the Commissioner may demand compliance, through certified mail, and impose a fine of up to $1,000 for each annuity issued during the time the organization is not in compliance.

Contact Information

Division of Insurance and
Financial Oversight
Office of Insurance and
Safety Fire Commissioner
Two Martin Luther King, Jr. Drive SE
West Tower, Suite 916
Atlanta, GA 30334
https://oci.georgia.gov/regulatory-filings/limited-risk-entities/charitable-gift-annuity-organizations

Beatrice Muganwa
Compliance Business Analyst
404-463-0331
bmuganwa@oci.ga.gov
entitylicensing@oci.ga.gov

Note: Filing must be submitted online:
Sircon.com/Georgia

Disclosure Language

Must be in a separate paragraph, in print no smaller than used generally in the agreement.

> *A charitable gift annuity is not insurance under the laws of Georgia and is not subject to regulation by the Insurance Commissioner or protected by any insurance guaranty association.*

Hawaii

Under Section 431:1-204(c), Hawaii Revised Statutes, charitable gift annuities are not included within the definition of life insurance. In order to issue gift annuities, a charity must have conducted business continuously in the state for at least 10 years. Such business may be "in the form of program services or fundraising activities." A charity must also have a net worth in the state of $200,000 in cash, cash equivalents, or publicly traded securities, exclusive of the assets funding the annuity agreements. Specific disclosure language must be prominently included on the first page of the annuity agreement.

A charity must maintain a segregated annuity reserve fund, calculated in accordance with an actuarial methodology and with an added surplus that is the greater of $100,000 or 10 percent of the calculated reserve. (Reserve assets cannot be used to meet the net worth requirement noted above.) A deduction in the reserves may be made for any portion of the annuity risk that is reinsured with an authorized reinsurer. Investment of the reserve fund is to be in accordance with a prudent investor standard. See Chapter 13. The initial registration consists of submitting to the Attorney General proof of compliance with the above-noted activity, net worth, disclosure, and reserve requirements. Thereafter, an annual statement of compliance is to be filed by March 15. See Chapter 14.

The statute specifically provides that a gift annuity issued by a non-compliant organization will be considered to be life insurance and as such will be subject to the provisions of the Hawaii insurance code.

Contact Information

Tax & Charities Division
Department of the Attorney General
425 Queen Street
Honolulu, HI 96813
(808) 586-1480
ATG.Charities@Hawaii.gov

Disclosure Language

Must be prominently stated on the first page of the agreement.

A charitable gift annuity is not insurance under the laws of the State of Hawaii, is not subject to regulation by the State's insurance division, and is not protected by any State guaranty fund.

Idaho

Under Sections 41-114 and 41-120, Idaho Code, issuers of qualified charitable gift annuities are not engaging in the business of insurance, and are exempt from complying with the Idaho Insurance Code. A charity must provide notice to the Department of Insurance, certifying that it is a charitable organization and that the annuities to be offered are charitable gift annuities within the meaning of IRC Secs. 501(m)(5) and 514(c)(5). In addition, the charity must have a minimum of $100,000 in unrestricted cash, cash equivalents, or publicly-traded securities, exclusive of the assets funding the annuity agreements, and have been in continuous operation for at least three years or be a successor or affiliate of an organization in operation for at least that time.

Failure to comply with the notice requirements does not disqualify an otherwise qualified gift annuity. However, the director may demand compliance, by certified letter, and impose a fine of up to $1,000 each for annuities issued during the time the organization is not in compliance.

Contact Information

Michele Muñoz
Technical Records Specialist III
Company Activities - Analysis and
Company Licensing
Idaho Department of Insurance
700 West State Street, 3rd Floor
Boise, ID 83720-0043
(208) 334-4309
doi.companyactivities@doi.idaho.gov

http://www.doi.idaho.gov
Click on Industry, License Types, TPA PBM & other entities, Charitable Gift Annuities (under "Other Regulated Entities")

Note: Filing may be submitted via email.

Disclosure Language

Must be in a separate paragraph, in print no smaller than used generally in the agreement.

This charitable gift annuity is not insurance under Idaho law and is not subject to regulation by the Department of Insurance or protected by a guaranty association affiliated with the Department.

Illinois

Illinois Insurance Code Section 121-2.10 (215 ILCS 5/121-2.10) provides an exemption from insurance laws for gift annuities issued by IRC Sec. 170(c) organizations. A charity must have been in active operation for 20 years and have an unrestricted fund balance of at least $2 million at the time an annuity is issued. Assets restricted to uses inconsistent with the payment of annuity obligations cannot be counted toward meeting the fund balance requirement. A charity that does not meet both of the aforementioned criteria may still qualify under the exemption if it has its annuities reinsured by an authorized insurer that is directly obligated to the annuitants. In either case, no notice to the Division of Insurance is required. The need to reinsure if the years of operation and fund balance requirements are not met applies just to annuities issued in Illinois, not those issued in other states, even if the issuing charity is domiciled in Illinois.

Indiana

Section 27-1-12.4-2 of the Indiana Code exempts charitable gift annuities from regulation by the Department of Insurance. Any annuity which, for federal income tax purposes, is in part a charitable contribution (IRC Sec. 170) and in part an investment in an annuity contract (Sec. 72), and which is excluded from the definition of acquisition indebtedness under Sec. 514(c)(5), qualifies for this exemption. No notification to the state is required.

Iowa

Iowa Code Sections 508F.1 - 508F.8 provide an exemption from insurance regulation for charitable gift annuities. Notification must be given to the Commissioner of Insurance by the date on which the charity enters into its first annuity agreement.

A charity must have in unrestricted cash, cash equivalents, or publicly-traded securities a minimum value which is the lesser of $300,000 or five times the face amount of outstanding annuities exclusive of the assets funding the annuity agreements. In addition, it must have been in continuous operation for at least three years, or be a successor or affiliate of an organization in operation for at least that time. Specific disclosure language is required in the annuity agreements.

The Commissioner may enforce the disclosure and notice provisions by demand letter and impose fines of up to $1,000 per annuity agreement until an organization complies. Further penalties, including fines up to $50,000, may be imposed if the Commissioner determines after a hearing that issuance of an annuity is not in compliance with the statute.

Contact Information

Attn: Wayne Lacher
Compliance Officer II
Iowa Insurance Division
1963 Bell Avenue
Des Moines, IA 50315
(515) 654-6571
wayne.lacher@iowa.gov

Note: Filing must be submitted online: https://ia.accessgov.com/iid/Forms/Page/iid/iid-charitable/1

Disclosure Language

Must be in a separate paragraph, in print no smaller than used generally in the agreement.

> *A qualified charitable gift annuity is not insurance under the laws of Iowa and is not subject to regulation by the commissioner or protected by an insurance guaranty fund or an insurance guaranty association.*

Kansas

Issuance of charitable gift annuities is governed by Kansas securities law. Section 17-12a201(7) of the Kansas Uniform Securities Act provides a self-executing (no filing required) exemption for any "security" issued by a not-for-profit organization operated exclusively for religious, educational, benevolent, fraternal, or charitable purpose, or issued by a company excluded from the definition of an investment company under the Investment Company Act of 1940. The latter exclusion originates from the Philanthropy Protection Act of 1995. See Chapter 8.

Kentucky

Under Section 304.1-120 of the Kentucky Revised Statutes, issuance of charitable gift annuities by a qualified organization is exempt from regulation under the insurance code. As defined in the statute, a qualified organization must either be exempt from taxation under IRC Sec. 501(c)(3) or as a public or private, nonprofit educational institution. For Sec. 501(c)(3) organizations, other than religious institutions, a copy of Form 990 must be filed annually with the Office of Consumer Protection in the Attorney General's office. This filing is part of the general registration requirements for charities soliciting in the state, and has no accompanying fee. No notification to the Department of Insurance is required.

Louisiana

Charitable gift annuities issued by an organization which is tax exempt under IRC Sec. 501(c)(3) are exempt from Insurance Code regulation of annuities, under Sections 22:951(D) and 952(A) of the Louisiana Revised Statutes. No notification to the Department of Insurance is required.

Maine

Under Title 24-A, Chapter 9 of the Maine Revised Statutes, charitable gift annuities issued by qualified organizations are not considered insurance. As defined in Section 703-A, an organization must be tax exempt under IRC Sec. 501(c)(3) and have been in continuous operation for at least five years, be a successor organization where the combined years of operation equals or exceeds five years, or be a parent or subsidiary of a qualified organization. No notification to the Bureau of Insurance is required. However, the organization must either have been incorporated in Maine, or be qualified as a foreign corporation pursuant to Title 13-B, chapter 12, which entails a filing with the Secretary of State.

Maryland

Governed by Insurance Article, Section 16-114, Annotated Code of Maryland and accompanying regulations, COMAR 31.09.07.01 through .07, special permits to issue charitable gift annuities may be issued only to educational or religious organizations, Maryland hospitals, or community foundations. Besides educational institutions, organizations whose mission includes educating the public regarding their specific interest area have received certification. In support of its application, a charity must provide documents evidencing activity in Maryland over the past 10 years. Such activity must be mission related and relevant to one of the aforementioned categories, rather than pertaining to fundraising. A charity need not, however, have an ongoing physical presence (e.g., an office) in the state.

A charity must disclose to donors that annuities are backed solely by the charity and not by the state. Donors must either sign an acknowledgment that they have received the disclosure or sign an annuity agreement which includes the disclosure language.

Segregated assets must be maintained in an amount equal to at least the sum of the charity's required reserves on outstanding annuities. Those reserves are calculated in a manner consistent with the assumptions underlying the ACGA rates in effect at the time of issuance. A deduction in the reserves may be made for any portion of annuity risk which is reinsured by an authorized insurer or accepted reinsurer. Investment of the reserve fund is to be in accordance with the standards applicable to endowment funds under the Estates and Trusts Article, Section 15-402, Annotated Code of Maryland. See Chapter 13.

A charity must file a copy of its audited financial statements each year within 180 days of its fiscal year end. See Chapter 14. If the audited financials do not include a statement attesting to the adequacy of gift annuity reserves and that such reserves are held in a segregated account, a separate statement to that effect is needed.

Failure to comply with any statutory requirements may result in the suspension or revocation of the permit, preceded by a "cease and desist" order and an opportunity to conform. The Insurance Administration has been imposing fines on charities that have issued annuities to Maryland residents without having first obtained a permit. Fines have ranged from the low hundreds to around two thousand dollars.

Contact Information

For initial registration, contact:
Director, Life, Annuity and Credit Reviews
Maryland Insurance Administration
200 St. Paul Place, Suite 2700
Baltimore, MD 21202-2272
(410) 468-2170

https://insurance.maryland.gov
For registration information, look under Licensing, Insurers and Other Regulated Entities

For annual filing, contact:
Company Licensing Unit
(410) 468-2104

Disclosure Language

Payments made under charitable gift annuities are backed solely by the full faith and credit of the issuing organization and are not insured or otherwise guaranteed by any government agency.

Massachusetts

Under Massachusetts General Law Chapter 175, Section 118, organizations incorporated for any educational, charitable, benevolent, or religious purpose are excluded from the definition of *life companies* and are not subject to insurance regulation. No notification to the Division of Insurance is required.

Michigan

In a 1988 opinion (No. 6538) the Michigan Attorney General stated that a gift annuity program proposed by the Michigan State University Foundation was not subject to regulation under the Insurance Code, nor would it be unless issuance of annuities became the Foundation's principal purpose. The office of the Commissioner of Insurance has advised that it views the opinion as applying to any "legitimate charity." While there is no general exemption from the Insurance Code for issuance of charitable gift annuities, an organization with a "certificate or license limited to the issuance of charitable gift annuities" is excluded from the definition of "member insurer" with respect to the state guaranty association. (Section 500.7705) The Code makes no provision for obtaining a certificate or license.

Minnesota

Issuance of charitable gift annuities is governed by Minnesota securities law. Under Chapter 80A.45, Section 201(7) provides a self-executing (no filing required) exemption for any "security" issued by a not-for-profit organization operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purpose, or issued by a company excluded from the definition of an investment company under the Investment Company Act of 1940. The latter exclusion originates from the Philanthropy Protection Act of 1995. See Chapter 8.

Mississippi

Under Mississippi Code Sections 79-11-651 through 79-11-661, the issuance of qualified charitable gift annuities is exempt from insurance regulation. A charity must have a minimum of $300,000 in unrestricted cash, cash equivalents, or publicly-traded securities, exclusive of the assets funding the annuity agreements, and have been in continuous operation for at least three years or be a successor or affiliate of an organization in operation for at least that amount of time. Notification to the Secretary of State must be made when a charity enters into its first annuity agreement. Specific disclosure language is required in the annuity agreements.

Failure to comply with the notice and disclosure requirements does not disqualify an otherwise qualified gift annuity. However, the Secretary of State may demand compliance, through certified mail, and impose a fine of up to $1,000 for each annuity issued during the time the organization is not in compliance.

Mississippi is one of the states that opted out of the federal preemption on state securities regulation provided by the Philanthropy Protection Act; see discussion earlier in this chapter.

Contact Information

Tanya Webber
Assistant Secretary of State for Charities
Charities Division
Mississippi Secretary of State
P.O. Box 136
Jackson, MS 39205-0136
(601) 359-1599
tanya.webber@sos.ms.gov

Note: Filing may be submitted via email.

Disclosure Language

Must be in a separate paragraph, in print no smaller than used generally in the agreement.

> *A qualified charitable gift annuity is not insurance under the laws of Mississippi and is not subject to regulation by the insurance commissioner or protected by an insurance guaranty association.*

Missouri

Under Revised Statutes of Missouri Sections 352.500 - 352.520, issuance of qualified charitable gift annuities is exempt from insurance regulation. Notification to the Department of Insurance is required at least by the date on which a charity enters into its first annuity in the state.

A charity must have a minimum of $100,000 in unrestricted cash, cash equivalents, or publicly-traded securities, exclusive of the assets funding annuity agreements, and have been in continuous operation for at least three years or be a successor or affiliate of an organization in operation for at least that amount of time. Specific disclosure language is required in the annuity agreements.

Failure to comply with the notice requirements does not disqualify an otherwise qualified gift annuity. However, the Department of Insurance may demand compliance, by certified letter, and impose a fine of up to $1,000 for each annuity issued during the time the organization is not in compliance.

Contact Information

Melissa Bailey
Regulatory Auditor
Company Regulation Division
Missouri Department of Insurance
P.O. Box 690
Jefferson City, MO 65102
(573) 751-0794
melissa.bailey@insurance.mo.gov

Note: Filing may be submitted via email.

Disclosure Language

Must be in a separate paragraph, in print no smaller than used generally in the agreement.

> *This is a charitable gift annuity. A charitable gift annuity is not insurance under the laws of Missouri and is not subject to regulation by the Missouri Department of Insurance, Financial Institutions and Professional Registration or protected by a guaranty association.*

Montana

Under Montana Code Annotated, Sections 33-20-701 and 702, issuance of a qualified charitable gift annuity is not considered engaging in the business of insurance. For it to be a qualified gift annuity, the issuing charity must have a net worth of $300,000 or a minimum of $100,000 in unrestricted cash, cash equivalents, or publicly-traded securities, exclusive of the assets funding the annuity agreements. The charity must also have been in continuous operation for at least 3 years, or be a successor or affiliate of an organization in operation for at least that time, and maintain a separate annuity fund with at least one-half of the gift annuity contribution. A charity unable to meet all three requirements may still issue gift annuities in the state if it reinsures.

A statutory change in 2019 eliminated both the need to file notice with the Department of Insurance (initially or on an annual basis) and the need to include specific disclosure language in the annuity agreement.

Nebraska

Under Nebraska's Charitable Gift Annuity Act (Revised Statutes of Nebraska, Sections 59-1801 to 59-1803), issuance of a charitable gift annuity is exempt from both insurance and trust company regulation, and is neither an unlawful restraint of trade nor a violation of the Uniform Deceptive Trade Practices Act or the Viatical Settlements Act. For purposes of the Act, the issuing organization must fall within the description of either IRC Sec. 170(c) or Sec. 501(c)(3) and have been in continuous operation for at least three years, or be a successor or affiliate of an organization in operation for at least that time. No notification to the state is required.

Nebraska is one of the states that opted out of the federal preemption on state securities regulation provided by the Philanthropy Protection Act; see discussion earlier in this chapter.

Nevada

Under Nevada Revised Statutes, Sections 688A.281 to 688A.285, issuers of qualified charitable gift annuities are exempt from insurance regulation. Specifically excluded from the definition of a *qualified* annuity are those for which an individual is paid compensation contingent upon issuance of the annuity or based on the value of the annuity, other than payment for reinsurance.

A charity must provide notice to the commissioner, certifying that it is a charitable organization and that the annuities to be offered are charitable gift annuities within the meaning of IRC Secs. 501(m)(5) and 514(c)(5). The notification must be made within 90 days after issuance of the first annuity. The charity must also have a minimum of $300,000 in money, cash eqivalents, or publicly-traded securities exclusive of the assets funding the annuity agreements, have been in continuous operation for at least three years or be a successor or affiliate of an organization in operation for at least that time, and include specific disclosure language in the annuity agreements.

Failure to comply with the notice requirements does not disqualify an otherwise qualified gift annuity. However, the commissioner may demand compliance, through certified mail, and impose a fine of up to $1,000 for each annuity issued before compliance is complete.

Contact Information

Jack Childress
Insurance Actuarial Analyst III
L&H Section
Nevada Division of Insurance
(775) 687-0731

The required notification must
be submitted via email to
productcompliance@doi.nv.gov
Mailed applications are no longer accepted.

Disclosure Language

Must be in a separate paragraph, in print no smaller than used generally in the agreement.

> *A charitable gift annuity is not insurance under the laws of Nevada and is not subject to regulation by the insurance commissioner or protected by an insurance guaranty association.*

New Hampshire

Under Chapter 403-E of New Hampshire Revised Statutes Annotated, issuers of qualified charitable gift annuities are exempt from insurance regulation.

A charity is required to provide notification to the director of charitable trusts certifying that it is a charitable organization issuing gift annuities as described by IRC Secs. 501(m)(5) and 514(c)(5). (This is in addition to general registration with the Department of Justice.) Charities must have a minimum of $300,000 in unrestricted assets exclusive of the assets funding the annuity agreements, have been in continuous operation for at least three years or be a successor or affiliate of an organization in operation for at least that time, and have included specific disclosure language in the annuity agreements. (Legislation introduced in 2021, which would have allowed for reinsurance as a way for charities not meeting the unrestricted asset requirement to be able to issue gift annuities, did not pass.) Each year the charity is to recertify that it is issuing only qualified charitable gift annuities.

New Hampshire requires a charity to retain 100 percent of the contributions received for gift annuities, increased by earnings and decreased by annuity payments and properly allocated expenses, with such contributions to be invested in accordance with the general standards of prudent investment (RSA 564-B, Article 9). In addition, a charity is not to offer annuity rates higher than those suggested by the ACGA at the time the annuity is issued. The requirements noted in this paragraph apply specifically to annuities issued to New Hampshire residents, not to all annuities issued by the charity.

Failure to comply with the notice requirements does not disqualify an otherwise qualified gift annuity. However, the director may demand compliance, through certified mail, and impose a fine of up to $1,000 for each annuity issued during the time the organization is not in compliance.

Contact Information

Charitable Trusts Unit
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301

(603) 271-3591

charitabletrustsunit@doj.nh.gov

https://www.doj.nh.gov/charitable-trusts/%20forms.htm
Form NHCT-15 is for the gift annuity notification

Disclosure Language

Must be on the first page, in print no smaller than used generally in the agreement.

> *A charitable gift annuity is not insurance under the laws of New Hampshire and is not subject to regulation by the insurance department or protected by an insurance guaranty association.*

New Jersey

Charitable gift annuities are governed by New Jersey Statutes Annotated 17B:17-13.1 and New Jersey Administrative Code 11:4-8. A charity must make application for a permit to issue annuities to New Jersey residents, and must show active operation for at least 10 years. Charities that do not meet the years in operation requirement may still be able to qualify for a permit if they are connected to an organization that has existed for the requisite time (e.g., a foundation specifically created to handle fundraising activity can rely on the years of existence of the underlying charitable organization).

In addition to documentation concerning the nonprofit and charitable status of the organization, New Jersey requires specific information concerning annuity rates and the reserve fund. A board resolution regarding the creation of a segregated reserve fund must be submitted with the application. There is a $100 filing fee. The charity must also provide proof of registration with the New Jersey Division of Revenue and the New Jersey Department of Law and Public Safety/Division of Consumer Affairs, or proof of exemption from such registrations.

New Jersey requires that a charity maintain segregated assets at least equal to the sum of the reserves on its outstanding agreements, and a surplus equal to the greater of 10 percent of the reserves or the amount of $100,000. A deduction in reserves is allowed for any portion of annuity risk which is lawfully reinsured by an authorized insurer. However, reinsurance does not relieve a charity from the $100,000 minimum surplus requirement.

Investment of the annuity reserves is pursuant to New Jersey's Prudent Investor Act. See Chapter 13. A charity must submit to the Department of Banking and Insurance an operations plan for the segregated reserve fund. Among the items to be addressed in the plan are asset allocation and standards for investment quality, oversight, and responsibility, as well as standards for monitoring the adequacy of the reserve fund's value.

An annual statement of the segregated fund must be filed within 120 days of the end of the calendar year, unless a charity has elected to file such report based on its fiscal year. See Chapter 14. The commissioner retains the right to request additional reports to ensure compliance with the statutory requirements, or to conduct an audit when deemed necessary. A charity is responsible for the reasonable expenses of the audit, which are payable upon receipt of a detailed accounting.

Failure to comply with any of the statutory requirements may result in the suspension or revocation of the permit, or other action the commissioner may deem necessary to restrain or enjoin further activity in the state.

Contact Information

Nakia Reid
Manager - Admissions
Office of Solvency Regulation
Department of Banking and Insurance
P.O. Box 325
Trenton, NJ 08625-0325
(609) 940-7613
nj_cgafilings@dobi.nj.gov

www.state.nj.us/dobi/division_insurance/charitableann.htm
Registration information and annual statement.

New Mexico

New Mexico Statutes Annotated, Section 59A-1-16.1, exempts charitable gift annuities from insurance regulation. However, charities must provide notice to the insurance department certifying that both the organization and the gift annuities are *qualified* as defined under the Act. The annuity agreements must include specific disclosure language.

An issuing organization must be tax exempt and have been in continuous operation for at least three years or be a successor or affiliate of an organization in operation for at least that time. In addition, it must have either an unrestricted fund balance (assets in excess of liabilities) or unencumbered assets in a gift annuity fund of at least $300,000. The offered gift annuities must fall within the meaning of IRC Secs. 501(m)(5) and 514(c)(5).

Failure to comply with the notice requirements does not disqualify an otherwise qualified gift annuity. However, enforcement may be made by demand letter sent via certified mail.

Contact Information

Brittany Odell
Compliance Officer Supervisor
Life and Health Rate & Form Filing Bureau
Office of Superintendent of Insurance
P.O. Box 1689
Santa Fe, NM 87504-1689
(505) 508-9073
brittany.odell@osi.nm.gov

Note: Filing may be submitted via email.

Disclosure Language

Must be in a separate paragraph, in print no smaller than used generally in the agreement.

> *A qualified charitable gift annuity is not insurance under the laws of New Mexico and is not subject to regulation by the New Mexico Insurance Division or protected by a guaranty association affiliated with the division.*

New York

Issuance of gift annuities in New York is governed by New York Insurance Law, Section 1110. In applying for a permit to issue annuities to New York residents, a charity must provide a board resolution regarding the creation of a segregated reserve fund. The charity must have been in active operation for at least 10 years. While New York's statute no longer specifically restricts the types of assets that can be contributed for a gift annuity, there are concerns with a contribution of a remainder interest in a personal residence or farm. See Chapter 17. Also, as discussed in Chapter 19, New York prohibits the issuance of commuted (college) annuities.

Section 1110(d) provides for an exemption from a permit if a charity's required reserves in the multi-state reserve account reported on to New York are less than $1 million, although a charity can elect to bypass the exemption and immediately obtain the permit. A charity claiming such exemption must still apply to the state, but at the end of the review process the charity would receive confirmation of the exemption rather than a permit. (After crossing the $1 million threshold, the charity would submit certain specified documents regarding the reserve fund to the Department of Financial Services, and the permit would issue.)

The advantage of the exemption is that during that period of time a charity does not need to file an annual report on the segregated fund and statement of reserves, otherwise due by March 1 each year. See Chapter 14. The Department also does not conduct audits (discussed later in this section) on charity's with an exemption. However, during the exempt period a charity is required to hold a larger surplus in its reserve fund than a charity holding a permit. In both the permit and exempt phases, a charity is subject to an initial level of surplus of 15 percent. (A charity has the option to avoid this level of surplus by obtaining an Actuarial Opinion and Memorandum, though this could be a costly alternative.) In addition to this initial surplus, a charity with a permit must hold an additional 10 percent surplus, while a charity with an exemption must hold an additional 25 percent surplus. Since the two surpluses are layered, the total resulting surplus for a charity with a permit is 26.5 percent, while for a charity with an exemption it is 43.75 percent. It should be noted that in either case the reserve fund must at a minimum hold $100,000.

The custodian of the reserve fund must be a bank or trust company, or a member of the Securities Investment Protection Corporation (SIPC). A deduction may be taken for any portion of annuity risk which is reinsured by an authorized life insurance company. (The surpluses discussed in the preceding paragraph are applied to the net reserve, after any deduction for reinsurance has been made.) Reinsurance means insuring the risk, not the purchase of a commercial annuity. A contract (treaty agreement) for reinsurance with an authorized company must be submitted to and approved by the Department in advance. (If the reinsurance is not done with a company authorized to transact business in New York, then it must be secured by a letter of credit or trust agreement.) Investment of the reserve assets is pursuant to the prudent investor standard. See Chapter 13.

Although charities are exempt from much of the New York Insurance Code, they are subject to Sections 309 and 310, which govern audits. The Commissioner has authority to conduct an audit as often as is deemed necessary to protect the public interest, but is directed to conduct an audit of in-state insurers every five years. The charity is billed for expenses associated with the audit.

NOTE: The issues addressed within these audits have tended to change and/or expand over the years, and offer a sense of the Department's particular focus. For a few years, diversification of investments was a primary issue, though the Department has since indicated it will no longer offer guidance in this area. However, focus does remain on a charity having, and annually reviewing, a written investment policy statement pertaining to its gift annuity reserve account. Attention has also been paid to annuity rates and their compliance with New York's maximum standards since 2020, when a change in New York's methodology resulted in maximum rates lower than the American Council on Gift Annuity's (ACGA's) rates at certain ages. Fortunately, legislation (S02683, Chapter 584) passed in 2023 and effective January 23, 2024, modified New York's methodology. The expectation is that New York's maximum rates will now be higher than the ACGA's suggested rates in all cases, allowing charities to offer ACGA rates to all New York donors. That has been the case, so far. However, it is advisable to confirm this remains the case when New York releases its maximum rate schedules each January (applicable to gift annuities issued 1/1 - 6/30) and July (applicable to gift annuities issued 7/1 - 12/31).

New York publishes its maximum annuity rates for single-life immediate annuities only. To review these rates, go to https://www.dfs.ny.gov/apps_and_licensing/life_insurers/Charitable-Reserves and click the "Present Value of Immediate Annuities and Maximum Incomes per $1000 Gift Allowed by Section 1110 for Issues of 1/23/24+ (Gift 3)" link. Divide the value in the Maximum Income column by ten to determine New York's maximum annuity rate for the corresponding male or female age.

Failure to comply with any statutory requirements may result in the suspension or revocation of the permit.

Contact Information

Robert DiLorenzo
Assistant Deputy SuperintendentLife Bureau
Department of Financial Services
One State Street, 11th Floor
New York, NY 10004-1511
robert.dilorenzo@dfs.ny.gov

https://www.dfs.ny.gov/apps_and_licensing/life_insurers/licensing_application

Note: Application is to be filed via email, sent to both:

robert.dilorenzo@dfs.ny.gov
and
bradley.rice@dfs.ny.gov

North Carolina

Under General Statutes of North Carolina Section 58-3-6, charitable gift annuities are exempt from insurance regulation. However, charities are required to provide notification to the Department of Insurance within 90 days of issuance of the first gift annuity. A charity must also have a minimum of $100,000 in unrestricted assets exclusive of the assets funding the annuity agreements, have been in continuous operation for at least three years or be a successor or affiliate of an organization in operation for at least that time, and include specific disclosure language in the annuity agreements.

Charities must make a copy of their most recent Form 990, or similar information, available to a prospective donor at the time of the initial solicitation, with updated information made available at the time of the gift. Although not required to file a copy of Form 990 annually with the Insurance Commissioner, charities must provide it if requested to do so.

The department may enforce compliance with the requirements by sending a notice and demand letter to the charity; for failure to comply after such notice, the department may impose a fine of up to $1,000 per annuity agreement.

Contact Information

Rebecca C. Hill
Regulatory Insurance Analyst Manager
Product Regulation Group/L&H Division
North Carolina Department of Insurance
1201 Mail Services Center
Raleigh, NC 27699-1201
(919) 807-6060
rebecca.hill@ncdoi.gov

https://www.ncdoi.gov/insurance-industry/form-and-rate-filings/life-and-health/annuities-industry#charitable-gift-annuities

Note: The Life and Health Division is focused on eliminating paper filings. In addition to its online filing system (SERFF), for which there is a fee, submission may be made by converting any document to a PDF and emailing it to LHinbox@ncdoi.gov

Disclosure Language

This annuity is not issued by an insurance company, is not subject to regulation by the State of North Carolina, and is not protected or otherwise guaranteed by any government agency or insurance guaranty fund.

North Dakota

North Dakota Century Code Chapter 26.1-34.1 governs charitable gift annuities and provides for a certificate of exemption for their issuance. The application form includes designation of the Commissioner of Insurance as a charity's agent for receipt of process and certification of compliance with the segregated account requirements. There is also a $100 filing fee.

Reserves must be adequate to meet future payments under all outstanding annuity agreements and must be maintained in a segregated account. There are no statutory restrictions on investment of the reserves.

A charity must file a copy of its audited financial statement annually, within 15 days of its completion. Filing is to be done via email, by attaching an electronic version of the financial statement. In addition, written notification of any corporate change (e.g., name change, merger) is to be provided to the Department in a timely manner, along with any applicable documents that reflect the change.

The Commissioner has the authority to conduct an audit of an organization's annuity activity. The cost of such an audit is payable by the organization, upon receipt of a detailed accounting of charges after the auditor's statement has been filed and approved by the Commissioner.

Failure to comply with any statutory requirements may result in the suspension or revocation of the exemption certificate.

Contact Information

Nichole Feldman
Administrative Assistant 1
North Dakota Insurance Department
600 East Boulevard
Bismarck, ND 58505
http://www.nd.gov/ndins/Companies/companylicensing/giftannuities/

Note: Application should be filed via email, to: colicexam@nd.gov, cc: nfeldman@nd.gov

Ohio

An administrative exemption from securities regulation for the issuance of charitable gift annuities previously provided under Rule 1301:6-3-03 was rescinded, prompted by the Philanthropy Protection Act of 1995. This rescission eliminated the requirement that the donor sign the annuity agreement.

Ohio law does not now specifically address gift annuities. In *Trangenstein v. Wheaton College Board of Trustees*,148 Ohio App.3d 382, 2002-Ohio-2937, the Court of Appeals held that gift annuities were not subject to insurance regulation, even in the absence of a specific statutory provision governing issuance of gift annuities. On appeal, the Ohio Supreme Court declined to accept jurisdiction.

Oklahoma

The Oklahoma Charitable Gift Annuity Act (Oklahoma Statutes, Title 36, Sections 4071-4082) exempts gift annuities from insurance regulation. However, a charity must provide notice to the Insurance Department certifying that both the organization and the gift annuities are *qualified* as defined under the Act. The notice is to be filed after issuance of the first annuity.

Disclosure language must be included in the annuity agreements, as well as in any promotional materials or application forms. Copies of relevant documents, containing the disclosure, must be included with the notification; when documents are amended, they must be submitted with the annual filing noted below.

The offered gift annuities must fall within the meaning of IRC Secs. 501(m)(5) and 514(c)(5), with payments calculated using rates which will *reasonably assure* those payments to the annuitant. Issuing organizations must be tax exempt, qualified to do business in the state, have a minimum of $100,000 in unrestricted assets (exclusive of assets funding the annuity agreements), and have been in continuous operation for at least three years or be a successor or affiliate of an organization in operation for at least that time.

A copy of the audited financial statement must be filed annually, within 90 days of its receipt by the charity. Updated demographic information and any amended documents required to include disclosure language must accompany the filing. See Chapter 14.

The Insurance Commissioner may demand compliance with the Act through a certified letter. If a charity fails to respond, the Commissioner may censure the charity or impose a fine of not less than $1,000, but not more than $10,000, until the charity complies. The Commissioner may also commence action in district court to enjoin violations if the violations are determined to be willful or harmful to the public.

Contact Information

Regulated Industry Services
Oklahoma Insurance Department
(405)522-6635
ris@oid.ok.gov

https://www.oid.ok.gov/regulated-entities/regulated-industry-services/charitable-gift-annuities/

Note: The required notification must be submitted via email. Mailed applications are no longer accepted.

Disclosure Language

Must be in a separate paragraph, in print no smaller than used generally in the agreement.

> *A charitable gift annuity is not regulated by the Oklahoma Insurance Department and is not protected by a guaranty association affiliated with the Oklahoma Insurance Department.*

Oregon

Under Oregon Revised Statutes 731.038, issuance of charitable gift annuities is exempt from insurance regulation. To qualify under the exemption, a charity must have been in continuous operation for five years (or be the successor or affiliate of such an organization) and have a minimum of $300,000 in net assets, as shown by an annual audited financial statement. A charity that as of December 31, 2005 held a certificate of authority issued by the Oregon Insurance Division (under ORS 731.704, which was repealed at the end of 2005) may continue to issue gift annuities even if it does not meet the minimum asset requirements. Such a charity must, however, still have an audited financial statement prepared annually by an independent CPA.

Under the exemption a charity must also maintain a segregated reserve fund, holding in reserve an amount calculated using mortality tables and interest rates recommended by a "national organization organized for the purpose of providing educational and other services to American charities regarding gift annuities and other forms of planned gifts." Specific disclosure is required to be given to the donor in writing; while the statute does not mandate including it in the agreement, doing so would be consistent with the requirements of other states. No notification to the state is required.

Disclosure Language

> *This charitable gift annuity is not issued by an insurance company, is not subject to regulation by the State of Oregon and is not protected by an insurance guaranty association.*

Pennsylvania

Issuance of gift annuities in Pennsylvania is exempted from regulation under insurance laws by the Charitable Gift Annuity Exemption Act (Pennsylvania Statutes, Title 10, Sections 361-364). No notification to the Pennsylvania Insurance Department is required, but a charity must have been in continuous existence for at least three years or be a successor or affiliate of an organization in operation for at least that time. Annuity agreements must contain very detailed disclosure language.

A charity must also have unrestricted and unencumbered assets (in the form of cash, cash equivalents, de-risking annuity contracts, or publicly-traded securities) of at least $100,000, plus one-half of the principal value of then outstanding annuities. A de-risking contract is defined as a commercial annuity, purchased from an authorized insurance company, that matches future payments arising from a charitable gift annuity.

An organization must also be a *qualified charity*, falling within one of many specified categories. Those applicable to organizations outside of Pennsylvania include educational or religious institutions, and *charitable organizations* which are required to register under the Solicitation of Funds for Charitable Purposes Act. There are other qualifying categories available only for Pennsylvania organizations.

No filing fee or annual reporting statements are required under the gift annuity exemption. However, for a charity qualifying as a *charitable organization*, there are initial and annual registration statements and fees required under the Solicitation of Funds Act. The fee varies depending on the total contributions received in a year, but does not exceed $250.

Disclosure Language

The following statement corresponds to the provisions required under the statute.

Notice to Pennsylvania Donors

> *The parties to this Agreement understand and acknowledge that:*
> *1) As of the date of this Agreement, the fair market value of the property transferred to ABC Charity is substantially in excess of the fair market value of the annuity, and the difference between those values constitutes a gift by the Donor(s) to ABC Charity for its charitable purposes.*

2) ABC Charity has advised the Donor(s) that a charitable gift annuity is not designed primarily as an investment but rather as a charitable gift.

3) ABC Charity's promise to pay the annuity described in this Agreement is not insurance under the laws of Pennsylvania, is not subject to regulation by the Pennsylvania Insurance Department and is not protected by the Pennsylvania Life and Health Insurance Guaranty Association under Article XVII of the Act of May 17, 1921 (P.L. 682, No. 284), known as the Insurance Company Law of 1921, or other protective device.

4) To obtain confirmation that ABC Charity, as a Pennsylvania qualified charity, is an organization described in section 170(c) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. section 170(c)) or any successor provision; or to obtain audited financial statements showing that ABC Charity, as a Pennsylvania qualified charity, has unrestricted and unencumbered assets in the form of cash, cash equivalents or publicly-traded securities of at least $100,000 plus one-half of the principal value of any annuities issued by ABC Charity and in effect at the time such statements are requested, the Donor(s) may contact [insert name, address and phone number of appropriate person or office].

5) As a Pennsylvania qualified charity which must have been in existence for at least three years, ABC Charity in fact came into existence [insert date of incorporation].

6) In addition to meeting the Pennsylvania qualified charity criteria described in items 4) and 5), ABC Charity is a Pennsylvania qualified charity because it is also

Choose one from the following, delete the others...

1-A an educational institution, the curriculum of which in whole or in part is registered with or approved by the Pennsylvania Department of Education, either directly or by accreditation by an accrediting body recognized by the Pennsylvania Department of Education. [OR]

1-B an auxiliary association[or]a foundation[or] a support group which is directly responsible to an educational institution.

2-A a hospital which is subject to regulation by the Pennsylvania Department of Health or the Pennsylvania Department of Public Welfare. [OR]

2-B a hospital foundation which is an integral part of a hospital subject to regulation by the Pennsylvania Department of Health or the Pennsylvania Department of Public Welfare.

3 a charitable organization which is required to file or does file a registration statement with the Pennsylvania Department of State under the provisions of the Act of December 19, 1990 (P.L. 1200, No. 202), known as the Solicitation of Funds for Charitable Purposes Act.

4 a senior citizen center[or]a nursing home which is nonprofit and charitable and which voluntarily files a registration statement with the Pennsylvania Department of State under the provisions of the Act of December 19, 1990 (P.L. 1200, No. 202), known as the Solicitation of Funds for Charitable Purposes Act.

5 a bona fide duly constituted religious institution [or] a separate group [or] corporation which forms an integral part of a bona fide duly constituted religious institution which is tax exempt pursuant to the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. section 1 et seq.); and no part of the income of which inures to the direct benefit of any individual; and the conduct of which is primarily supported by government grants or contracts, by funds solicited from its own membership, congregations or previous donors and by fees charged for services rendered.

6 a corporation established by an act of Congress that is required by federal law to submit annual reports of its activities to Congress containing itemized accounts of all receipts and expenditures after being fully audited by the United States Department of Defense.

Rhode Island

State law does not specifically address gift annuities. However, within the Rhode Island Life and Health Insurance Guaranty Association Act, Section 27-34.3-5 excludes from the definition of member insurers "an organization that has a certificate or license limited to the issuance of charitable gift annuities." No further provision is found within the insurance code for obtaining such a certificate or license. Charitable gift annuities are exempted under 230-RICR-20-25-6, but that regulation applies specifically to the Unfair Competition and Practices section of the Insurance Code (27-29-1, et seq), rather than to the insurance code broadly.

South Carolina

Charitable, religious, benevolent, or educational nonprofit corporations which have been in active operation for at least five years may issue charitable gift annuities without being subject to insurance regulation, under Section 38-5-20 of the Code of Laws of South Carolina. No notification to the state is required.

South Dakota

An exemption from insurance regulation for issuance of gift annuities is provided under South Dakota Codified Laws Section 58-1-16. A charity must either be domiciled and have its principal place of business in South Dakota or be qualified in the state as a foreign corporation, requiring registration with the South Dakota Secretary of State. A qualified organization under the exemption is further defined as an IRC Sec. 501(c)(3) organization that regularly files Form 990 in the Office of the Attorney General, or is a religious organization or educational institution.

A charity must have been in operation for 10 years and have a minimum of $500,000 in unrestricted cash, cash equivalents, or publicly-traded securities, exclusive of the assets funding annuity agreements. These provisions do not apply to charities that met previous statutory requirements (domiciled in South Dakota, five years of operation, and no minimum asset requirement) and issued a gift annuity prior to July 1, 2001.

No notification to the state insurance department is required. Section 58-1-17 requires disclosure language in both annuity agreements and any marketing materials.

Disclosure Language

Must be in 10-point bold type or larger:

> *Charitable gift annuities are not regulated by and are not under the jurisdiction of the South Dakota Division of Insurance.*

Tennessee

Issuance of charitable gift annuities in Tennessee is governed by Tennessee Code Annotated, Sections 56-52-101 through 56-52-111, and by Chapter 0780-01-70 of the Rules and Regulations of the Department of Commerce and Insurance. A charity must apply for a certificate of authority to issue gift annuities in the state. There is a $675 application fee.

The law requires that certain information be disclosed to donors, with the donors either signing an acknowledgment of receipt or signing an annuity agreement that includes the following information: value of property transferred, amount of annuity to be paid, intervals in which payments are to be made, age(s) of annuitant(s), reasonable value of payments as of the gift date, and date payments are to begin, as well as a specific disclosure that gift annuities are backed solely by the charity and not by the state.

A charity must hold its reserves in a separate charitable gift annuity account, which may be either a "multi-state" or Tennessee-specific account. The fund in which the Tennessee reserves are held, whether state-specific or multi-state, must comply with one of Tennessee's reserve methodologies. A charity may elect to hold 100 percent of the annuity contribution in reserve, hold a reserve liability calculated in accordance with its state of domicile's standard valuation law (plus a surplus of 10 percent), or hold a reserve liability calculated using a stated Tennessee methodology (plus a surplus of 10 percent).

An annual renewal fee of $100 is due by March 1, along with an annual report form and financial statement of the organization. See Chapter 14. The financial statement must either be audited or be verified by two officers. If at the time of initial application the charity's audited financials are older than 150 days, a verified statement as of a more recent date will be needed.

If a charity maintains reserves in accordance with either of the two calculation methodologies, an actuarial opinion regarding the reserves, prepared by a qualified actuary, must be submitted with the annual report. The insurance commissioner retains the right to request additional information or to conduct an audit when deemed necessary, with the expenses of such audit being borne by the charity.

Annuities for which a commission is paid to any person as a result of the transfer are specifically excluded from the definition of a charitable gift annuity. Any annuity issued by a charitable organization that does not meet all requirements of the law will be subject to the Tennessee Insurance Code.

Tennessee is one of the states that opted out of the federal preemption on state securities regulation provided by the Philanthropy Protection Act; see discussion earlier in this chapter.

Contact Information

Mike Landers
Company Licensing Analyst
Financial Affairs Section
Department of Commerce and Insurance
500 James Robertson Parkway
Nashville, TN 37243-1135
(615) 741-7346
(615) 741-1670
Michael.Landers@tn.gov

https://www.tn.gov/commerce/insurance/company-resources/company-licensing-forms-applications.html
This links to the online filing system and the annual report form.

Disclosure Language

Payments made under a charitable gift annuity are backed solely by the full faith and credit of the organization, are not insured or guaranteed by an insurance company, are not protected by any insurance guaranty association, and are not backed in any way by the State of Tennessee.

Texas

Chapter 102, Texas Insurance Code, exempts gift annuities from insurance regulation. However, a charity must provide notice to the Department of Insurance certifying its nonprofit and tax exempt status, that the annuities to be offered are charitable gift annuities within the meaning of IRC Secs. 501(m)(5) and 514(c)(5), and that the annuity agreements will include the required disclosure language. In addition, the charity must have a minimum of $100,000 in unrestricted cash, cash equivalents, or publicly-traded securities, exclusive of the assets funding the annuity agreements, and have been in continuous operation for at least three years, or be a successor or affiliate of an organization in operation for at least that time.

Failure to comply with the notice requirements does not disqualify an otherwise qualified gift annuity. However, the Commissioner of Insurance may demand compliance, by certified letter, and impose a fine of up to $1,000 for each annuity issued during the time the organization is not in compliance. State law also provides to issuers of gift annuities immunity from legal claims brought by donors or donors' heirs that allege that issuance of gift annuities constitutes engaging in the insurance business.

Contact Information

Life and Health Lines Office
Texas Department of Insurance
MC 106-1A
P.O. Box 149104
Austin, TX 78714-9104
(512) 676-6628
lifehealth@tdi.texas.gov

Courier Delivery:
333 Guadalupe
MC 106-1A
Austin, TX 78714

Note: Filing may be submitted via email.

Disclosure Language

Must be in a separate paragraph, in print no smaller than used generally in the agreement.

> *This charitable gift annuity is not insurance under the laws of the state of Texas and is not subject to regulation by the Texas Department of Insurance or protected by a guaranty association affiliated with the Department.*

Utah

Issuance of charitable gift annuities by not-for-profit corporations (engaged in charitable, religious, missionary, educational, medical or philanthropic activities) is not insurance business and not subject to insurance regulation. Utah Code Annotated Section 31A-22-1305. No notification to the Department of Insurance is required.

Vermont

Under Vermont Statutes Title 8, Chapter 103, Section 3718a, charitable gift annuities are not considered insurance nor does issuance of a gift annuity by a qualified charitable organization constitute the business of insurance. To fall under this exemption, charities must comply with the requirements set forth in Title 9, Chapter 68, Section 2517. A charity must have $300,000 in unrestricted cash, cash equivalents, or publicly-traded securities, exclusive of the assets funding the gift annuity agreements, and have been in continuous operation for at least three years, or be a successor or affiliate of an organization in operation for at least that time. Information must be provided to the donor as to the amount of the annuity payment, when payments are to begin, and the intervals at which payments will be made, along with inclusion of specific disclosure language. No notification to the state is required.

The Attorney General may enforce the disclosure provisions by demand letter and impose fines of up to $1,000 per annuity agreement until an organization complies. An extensive enforcement section (Section 2518) further authorizes the Attorney General to bring actions for noncompliance, in which injunctive relief, the dissolution of an in-state charity or the revocation of status as a qualified foreign corporation, or fines of up to $10,000 per violation can be sought.

Vermont is one of the states that opted out of the federal preemption on state securities regulation provided by the Philanthropy Protection Act; see discussion earlier in this chapter.

Disclosure Language

Must be in print no smaller than used generally in the agreement.

> *A qualified gift annuity is not insurance under the laws of the State of Vermont, and is not subject to regulation by the Department of Financial Regulation or protected by an insurance guaranty association.*

Virginia

Sections 38.2-106.1 and 38.2-3113.2 of the Code of Virginia provide a general exemption from insurance regulation for any charitable organization which has a minimum of $100,000 in unrestricted cash, cash equivalents or publicly-traded securities, exclusive of the assets funding the gift annuity agreements, and which has been in continuous operation for at least three years. No notification to the State Corporation Commission Bureau of Insurance is required. Annuity agreements must contain specified disclosure language.

Virginia is one of the states that opted out of the federal preemption on state securities regulation provided by the Philanthropy Protection Act; see discussion earlier in this chapter.

Disclosure Language

Must be in a separate paragraph, in print no smaller than used generally in the agreement.

> *A qualified gift annuity is not insurance under the laws of the Commonwealth of Virginia and is neither subject to regulation by the Insurance Commission nor protected by the Virginia Life, Accident and Sickness Insurance Guaranty Association.*

Washington

A charity may apply for a certificate of exemption to issue charitable gift annuities, under Revised Code of Washington Chapter 48.38. The organization must have been actively doing business under the laws of its state of domicile for at least three years; it must also be registered as a foreign corporation and a charitable organization with the Washington Secretary of State. The charity issuing the gift annuities must have unrestricted net assets of $500,000, and the Office of Insurance Commissioner looks to the corresponding line in the audited financial statements for proof of meeting this requirement. An organization that has consolidated financial statements will need to include in them a supplemental schedule that provides a breakout showing the financial position of just the entity issuing gift annuities. This is required both with the initial application and as part of the annual filing.

The charity must maintain a segregated reserve fund, adequate to meet future payments of its annuities, computed in accordance with prescribed mortality tables and rates of interest. In addition, the fund must include a surplus equal to 10 percent of the reserves. Washington requires the fund to be invested in accordance with the standard of care used by a person of "reasonable prudence, discretion, and intelligence." See Chapter 13. A deduction may be made in the reserves for any gift annuity that is reinsured through the purchase of a commercial annuity from an authorized life insurance company licensed in both the charity's state of domicile and the state of issuance. A copy of the reinsurance contract must be filed with the Office of the Insurance Commissioner, and it must specify which annuity agreement is reinsured.

An annual report is due 60 days after the charity's fiscal year ends, via an online system.

See Chapter 14. A certified statement by a qualified actuary regarding the reserves must accompany the report, covering the fiscal year end. There is a $25 annual fee, plus $5 for each annuity agreement written for a Washington resident that year; fees are due by March 1 each year, regardless of a charity's fiscal year end. The charity must also provide a copy of its Form 990 within 15 days of filing it with the IRS, and a copy of its audited financial statements within nine months of its fiscal year end. The Insurance Commissioner retains the right to request additional financial material and has the authority to conduct periodic examinations in accordance with the statutory provisions for insurers.

In addition to revocation of the certificate of exemption, failure to comply with the statutory requirements may result in a fine of up to $10,000. The unauthorized operation of an insurance business (which includes issuance of gift annuities without a permit) is a class B felony and carries fines of up to $25,000 per violation. The Office of the Insurance Commissioner does impose fines on charities that have issued without a permit. In late 2023 the dollar amount of fines increased significantly, from the low hundreds or thousands to tens of thousands. A charity seeking a permit after having already issued in the state will need to address the non-compliant issuance as part of its application and should anticipate having to sign a Consent Order and pay a signficant fine.

Separate authorization for issuance of gift annuities by the boards of state and regional universities located within Washington is found at RCW 28B.10.485 and 28B.10.487. While no filing with the Insurance Commissioner is required, 100 percent of the gift annuity assets must be held in reserve for the lifetime(s) of the annuitant(s). Washington universities which issue annuities through a separate foundation, however, must apply for a certificate and comply with the regulations set out above.

Contact Information

Company Supervision Division
Company Licensing & Compliance Unit
Office of the Insurance Commissioner
P.O. Box 40255
Olympia, WA 98504-0255
(360) 725-7200
clc@oic.wa.gov

http://www.insurance.wa.gov
Click on Insurers & Regulated Entities, Company registration and renewal, Company registration and renewal for charitable gift annuities.

Courier Delivery:
5000 Capitol Boulevard SE
Tumwater, WA 98501

Note: The application is to be submitted via email, with an attachment of a single PDF file containing all documents, addressed to: CSF@oic.wa.gov, with a subject line of "CGA Application of <charity's full legal name>." Once the application has been approved, information will be provided for submitting prototype annuity agreement forms for review and approval via an online filing system.

West Virginia

Under Chapter 33, Article 13B of the West Virginia Code, issuance of qualified charitable gift annuities is exempt from insurance regulation. Under the exemption, a charity must provide notification to the Insurance Commissioner by the date on which it enters into its first annuity in the state.

A charity must also have a minimum of $300,000 in unrestricted cash, cash equivalents, or publicly traded securities, exclusive of the assets funding the annuity agreements, and have been in continuous operation for at least three years or be a successor or affiliate of an organization in operation for at least that time. Specific disclosure language is required in the annuity agreements.

Failure to comply with the notice requirements does not disqualify an otherwise qualified gift annuity. However, after notice and a hearing the Commissioner may impose a fine of up to $1,000 for each annuity issued during the time the organization is not in compliance.

Contact Information

Financial Conditions Division
Office of the Insurance Commissioner
PO Box 50540
Charleston, WV 25305-0540
(304) 558-2100
OICFinancialConditions@wv.gov

Note: Filing may be submitted via email.

Disclosure Language

Must be in a separate paragraph, in print no smaller than used generally in the agreement.

> *A qualified charitable gift annuity is not insurance under the laws of West Virginia, is not subject to regulation by the West Virginia Insurance Commissioner, and is not protected by the West Virginia life and health insurance guaranty association established in article 26A, chapter 33 of the West Virginia Code or by any other guaranty association established by the West Virginia Code.*

Wisconsin

Wisconsin Statutes Section 600.03(27) specifically excludes from the definition of "insurer" an entity issuing a qualified charitable gift annuity pursuant to Section 632.65, and such annuities are not subject to the insurance code. No filing with the state is required.

However, a charity must comply with certain requirements. In order to issue gift annuities in the state a charity needs to have been in existence for at least three years, or be a successor or affiliate of an organization in operation for at least that time. Annuity agreements must include specified disclosure language.

Disclosure Language

> *A qualified charitable gift annuity is not insurance under the laws of Wisconsin and is not subject to regulation by the commissioner of insurance of Wisconsin or protected by an insurance guaranty fund or an insurance guaranty association.*

Wyoming

State law does not specifically address gift annuities.

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State Regulatory Categories

APPENDIX 1

1. State law requires segregated reserve, annual reporting, and/or detailed application (11):

State	Years in operation	Board resolution	Disclosure in agreement	Reserve required	Investment limitations	Other registrations
AL[1]	—	—	yes	yes	—	—
AR	5	yes	—	yes[2]	yes[3]	—
CA	10	yes	yes	yes[4]	yes[4]	—
FL	5	—	yes	yes[5]	yes	—
HI[6]	10 in HI	—	yes	yes	—[7]	—
MD	10 in MD	—	yes[8]	yes	—[7]	—
NJ	10	yes	—	yes	—[7]	yes[9]
NY	10	yes	—	yes	—[7]	—
ND	—	—	—	yes	—	—
TN	—	—	yes[8]	yes[10]	—[7]	—
WA[11]	3	—	—	yes	—[7]	yes[12]

NOTES:

[1] Regulated by Securities Dept. rather than Insurance
[2] May elect to segregate AR annuitants
[3] Prudent investor standard allowed
[4] CA annuitants only
[5] May elect to segregate FL annuitants
[6] Law requires $200,000 of assets in Hawaii
[7] Prudent investor standard
[8] If signed, or in separate signed document
[9] Registration with NJ Div. of Revenue and NJ Dept. of Law and Public Safety
[10] TN-only fund allowed but no longer mandated
[11] Organization must have $500,000 in unrestricted net assets
[12] Registration with WA Secretary of State

2. State law provides for exemption - Notification required (14):

State	Years in operation	Board resolution	Disclosure in agreement	Reserve required	Available assets	Other registrations
AK	3	—	yes	—	$300k	—
CT	3	—	yes	—	$300k	—
GA[13]	3	—	yes	—	$300k	—
ID	3	—	yes	—	$100k	—
IA	3	—	yes	—	$300k	—
MS	3	—	yes	—	$300k	yes[14]
MO	3	—	yes	—	$100k	—
NV	3	—	yes	—	$300k	—
NH[15, 16]	3	—	yes	yes	$300k	yes[17]
NM	3	—	yes	—	$300k[18]	—
NC	3	—	yes	—	$100k	—
OK[13]	3	—	yes	—	$100k	—
TX	3	—	yes	—	$100k	—
WV	3	—	yes	—	$300k	—

NOTES:

[13] Annual reporting: submission of audited financial statement
[14] Registration with MS Secretary of State (as charitable organization)
[15] Annual reporting: re-notification
[16] Annuity rates must not exceed ACGA suggested rates
[17] General registration with NH Dept. of Justice in some instances
[18] Either in unrestricted assets or reserve fund

APPENDIX 1

3. State law provides for exemption - No notification required (22):

State	Years in operation	Board resolution	Disclosure in agreement	Reserve required	Available assets	Other registrations
AZ	3	—	—[19]	—	$300k	—
CO	3	—	yes	—	—	—
DE	—	—	—	—	—	—
IL	20[20]	—	—	—	$2 mil.[20]	—
IN	—	—	—	—	—	—
KS	—	—	—	—	—	—
KY	—	—	—	—	—	yes[21]
LA	—	—	—	—	—	—
ME	5	—	—	—	—	yes[22]
MA	—	—	—	—	—	—
MI	—	—	—	—	—	—
MN	—	—	—	—	—	—
MT	3[20]	—	—	yes[20]	$100K[20,23]	—
NE	3	—	—	—	—	—
OR	5	—	—[24]	yes	$300k	—
PA	3	—	yes	—	$100k[25]	yes[26]
SC	5	—	—	—	—	—
SD	10	—	yes	—	$500k	yes[27]
UT	—	—	—	—	—	—
VA	3	—	yes	—	$100k	—
VT	3	—	yes	—	$300k	—
WI	3	—	yes[28]	—	—	—

NOTES:

[19] Detailed disclosure statement to donor prior to gift

[20] Waived if annuities reinsured

[21] Certain charities must file copy of Form 990 with KY Attorney General

[22] Registration with ME Secretary of State (qualified as foreign corporation)

[23] $100k in unrestricted assets or $300k net worth

[24] Content-specific written disclosure, in agreement or other document

[25] Plus one-half principal value of then outstanding annuities

[26] Certain charities must register with PA Dept. of State (general solicitation law)

[27] Registration with SD Secretary of State (qualified as foreign corporation)

[28] Language modified when law changed 4/18/14

4. State law does not specifically address gift annuities (4):

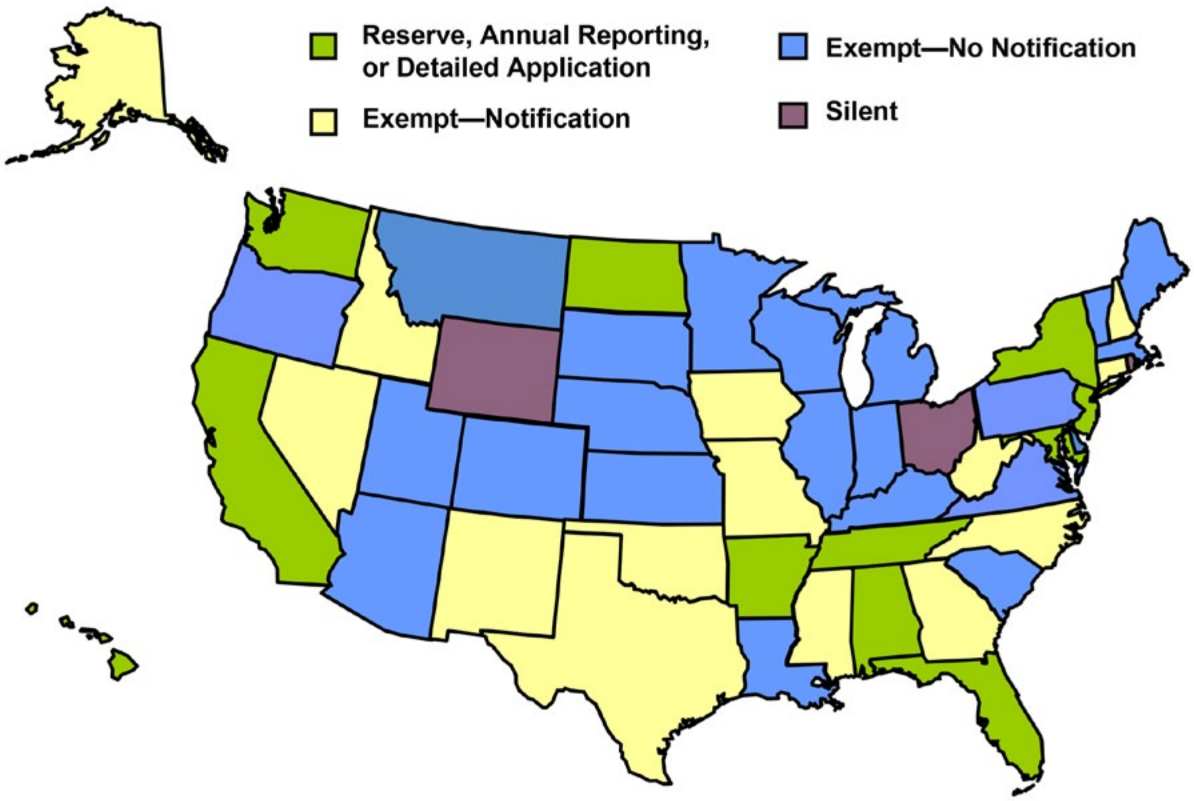
DC, OH [29], RI, WY

NOTES:

[29] OH previously provided for an exemption from securities law under now rescinded administrative rule. OH Court of Appeals case decided in 2002 held gift annuities not subject to insurance regulation (OH Supreme Court declined to hear appeal).

States by Regulatory Categories

APPENDIX 2



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Alabama Gift Annuity Disclosure Statement

APPENDIX 3

Description of a Gift Annuity
A gift annuity is a simple contract between the donor(s) and *[name of charity]*. In exchange for the donor's(s') contribution, *[name of charity]* promises to make fixed payments for life to one or two annuitants (usually, but not necessarily, the donor(s)). The amount paid is based on the age(s) of the annuitant(s), in accordance with *[name of charity]*'s rate schedule.

Not a Commercial Investment
The act of establishing a gift annuity with *[name of charity]* is not, and should not be viewed as, an investment. Rather, it is a way to arrange for annuity payments while making a charitable donation. In this respect, a gift annuity issued by *[name of charity]* is different from a commercial annuity. While both types of annuities make payments that are usually partially tax-free, the charitable donation aspect of establishing a gift annuity may result in additional tax benefits that are not available when purchasing a commercial annuity. These tax benefits include a current federal income tax charitable deduction (if you itemize your deductions) and possible future estate tax savings. Note that there is no income tax deduction if the annuity is funded by a qualified charitable distribution (QCD) from an IRA.

Gift Annuity Rates
Generally, the gift annuity rates paid by *[name of charity]* are those suggested by the American Council on Gift Annuities, which is a national organization of charities that has been in existence since 1927. These rates have been calculated so as to provide attractive payments to the donor and/or other annuitant(s) and also to result in a significant portion of the contribution remaining for the charity. Because a charitable gift is involved, the rates are lower than those available through commercial annuities offered by insurance companies and other financial institutions.

Assets Backing Annuity
The annuity payments are a general obligation of *[name of charity]*, and they are backed by all of our assets (subject to security interests). As of *[indicate date]* the market value of our total invested funds exceeded $*[amount]*, and they are invested in *[describe the general types of investments held by the organization such as stocks, bonds, money market funds, and federal obligations, but do not list assets by name]. (If applicable, include the following sentence about maintaining a reserve fund. Otherwise, delete it.)* We also maintain *[a gift annuity reserve fund or gift annuity reserve funds]* valued at more than $*[amount]* in accordance with the laws of the states in which we offer gift annuities. Assets received by *[name of charity]* for gift annuities are managed *[either "internally" or say "by" and then name the financial institution]*, in a conservative and disciplined manner. *[If a charity will always reinsure, delete the prior sentence and instead substitute: [name of charity]* reinsures its gift annuities by using a portion of the assets contributed to purchase a commercial annuity.*] [If a charity sometimes reinsures, retain the "Assets received by" sentence, and add:* In certain instances, *[name of charity]* may make the decision to reinsure all or a portion of a gift annuity by using a portion of the assets contributed to purchase a commercial annuity.*]* If *[name of charity]* should ever fail financially, individuals entitled to receive annuities will qualify as general creditors of *[name of charity]*.

Governance
Responsibility for governing *[name of charity]*, which was established in *[indicate year]*, is vested in a Board of *[Directors/Trustees]* composed of *[number]* persons, who are *[describe manner of selection]*. Common investment funds managed by our organization are exempt from registration requirements of the federal securities laws, pursuant to the exemption for collective investment funds and similar funds maintained by charitable organizations under the Philanthropy Protection

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APPENDIX 3

Act of 1995 (P.L. 104-62). Information in this statement is provided to you in accordance with the requirements of that Act.

Points to Remember

- A contribution for a gift annuity is irrevocable.
- The right to annuity payments may not be assigned to any person or organization, other than *[name of charity]*. The annuity must be non-assignable when funded by a QCD from an IRA.
- The gift date is the date when you actually transfer assets. In the case of cash, it is the date you mail or deliver a check. In the case of an electronic transfer of securities, it is the date they are received into the account of *[name of charity]*. If you have certificates, it is the date they are properly endorsed and mailed or delivered. With a QCD from an IRA, it is the date the IRA administrator withdraws the funds from your IRA account.
- The payments made under a charitable gift annuity are backed by the full faith and credit of the organization and are not issued or guaranteed by an insurance company or backed in any way by the State of Alabama.
- *[Provide information on present, pending, or threatened legal proceedings, if any known at time disclosure is given. If none, include the following statement: There are no present, pending or threatened legal proceedings.]*

For More Information

This disclosure statement is intended to provide basic information regarding the gift annuities issued by *[name of charity]*, and is not intended to serve as legal advice. We encourage you to consult with your own legal and/or financial advisor about the applicability of such a gift in your own situation.

Additional financial information about *[name of charity]*, including its most current audited financial statement and interim financial statement, is available on request. Any questions concerning *[name of charity]*'s gift annuity program, or requests for information, should be directed to: *[name/address/phone number/e-mail address]*

Donor Acknowledgment

I/We hereby acknowledge receipt of the above disclosure from *[name of charity]* regarding charitable gift annuities, as required under the Philanthropy Protection Act and by the State of Alabama.

SIGNATURE OF DONOR(S):

____ DATE: ____________________

____ DATE: ____________________

SIGNATURE OF ABC CHARITY:

____ DATE: ____________________

[name/title of signatory]

ARIZONA GIFT ANNUITY DISCLOSURE STATEMENT

This disclosure statement is provided by *[name of charity] [if desired, add a "hereinafter" reference to a shorter name to be used throughout document]* pursuant to Section 20-119.B of the Arizona Revised Statutes, and in accordance with the requirements of the Philanthropy Protection Act of 1995 (P.L. 104-62).

Description of a Gift Annuity
A gift annuity is a simple contract between the donor(s) and *[name of charity]*. In exchange for the donor's(s') contribution, *[name of charity]* promises to make fixed payments for life to one or two annuitants (usually, but not necessarily, the donor(s)). The amount paid is based on the age(s) of the annuitant(s), in accordance with *[name of charity]*'s rate schedule.

Not a Commercial Investment
The act of establishing a gift annuity with *[name of charity]* is not, and should not be viewed as, an investment. Rather, it is a way to arrange for annuity payments while making a charitable donation. In this respect, a gift annuity issued by *[name of charity]* is different from a commercial annuity. While both types of annuities make payments that are usually partially tax-free, the charitable donation aspect of establishing a gift annuity may result in additional tax benefits that are not available when purchasing a commercial annuity. These tax benefits include a current federal income tax charitable deduction (if you itemize your deductions) and possible future estate tax savings. Note that there is no income tax deduction if the annuity is funded by a qualified charitable distribution (QCD) from an IRA.

Gift Annuity Rates
Generally, the gift annuity rates paid by *[name of charity]* are those suggested by the American Council on Gift Annuities, which is a national organization of charities that has been in existence since 1927. These rates have been calculated so as to provide attractive payments to the donor and/or other annuitant(s) and also to result in a significant portion of the contribution remaining for the charity. Because a charitable gift is involved, the rates are lower than those available through commercial annuities offered by insurance companies and other financial institutions.

Assets Backing Annuity
The annuity payments are a general obligation of *[name of charity]*, and they are backed by all of our assets (subject to security interests). As of *[indicate date]* the market value of our total invested funds exceeded $ *[amount]*, and they are invested in *[describe the general types of investments held by the organization such as stocks, bonds, money market funds, and federal obligations, but do not list assets by name]. [If applicable, include the following sentence about maintaining a reserve fund. Otherwise, delete it.]* We also maintain *[a gift annuity reserve fund or gift annuity reserve funds]* valued at more than $*[amount]* in accordance with the laws of the states in which we offer gift annuities. Assets received by *[name of charity]* for gift annuities are managed *[either say "internally" or say "by" and then name the financial institution]*, in a conservative and disciplined manner. *[If a charity will always reinsure, delete the prior sentence and instead substitute: [name of charity]* reinsures its gift annuities by using a portion of the assets contributed to purchase a commercial annuity.*] [If a charity sometimes reinsures, retain the "Assets received by" sentence, and add:* In certain instances, *[name of charity]* may make the decision to reinsure all or a portion of a gift annuity by using a portion of the assets contributed to purchase a commercial annuity.*]* If *[name of charity]* should ever fail financially, individuals entitled to receive annuities will qualify as general creditors of *[name of charity]*.

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APPENDIX 4

APPENDIX 4

Governance

Responsibility for governing *[name of charity]*, which was established in *[indicate state]* in *[indicate year]*, is vested in a Board of *[Directors/Trustees]* composed of *[number]*______ persons, who are *[describe manner of selection]*. Common investment funds managed by our organization are exempt from registration requirements of the federal securities laws, pursuant to the exemption for collective investment funds and similar funds maintained by charitable organizations under the Philanthropy Protection Act of 1995.

[The Arizona law requires a description of the charity's "current operations." Consult with legal counsel as to whether additional information beyond that already included in this section should be inserted.]

Points to Remember

- A contribution for a gift annuity is irrevocable.
- The right to annuity payments may not be assigned to any person or organization, other than *[name of charity]*. The annuity must be non-assignable when funded by a QCD from an IRA.
- The gift date is the date when you actually transfer assets. In the case of cash, it is the date you mail or deliver a check. In the case of an electronic transfer of securities, it is the date they are received into the account of *[name of charity]*. If you have certificates, it is the date they are properly endorsed and mailed or delivered. With a QCD from an IRA, it is the date the IRA administrator withdraws the funds from your IRA account.
- A charitable gift annuity is not insurance under the laws of Arizona, is not subject to regulation by the Director of Insurance, and is not protected by any state guaranty fund.
- The State of Arizona and the Department of Insurance have neither approved nor disapproved of the gift annuity being offered, nor have they reviewed the information provided to determine its accuracy or completeness.

For More Information

This disclosure statement is intended to provide basic information regarding the gift annuities issued by *[name of charity]*, and is not intended to serve as legal advice. We encourage you to consult with your own legal and/or financial advisor about the applicability of such a gift in your own situation.

Additional financial information about *[name of charity]*, including its most current audited financial statement and interim financial statement, is available on request.

Any questions concerning *[name of charity]*'s gift annuity program, or requests for information, should be directed to: *[name/address/phone number/e-mail address]*

Chapter 12

AGREEMENT REQUIREMENTS

Many of the particular state requirements are included in the base agreements discussed in Chapter 6 and contained in agreements-base.docx of the prototype materials that accompany this manual. There are, however, requirements for certain states which are not generally applicable. For these states, which include California, New Jersey, New York, North Dakota, Tennessee, and Washington, the agreements must be modified by including appropriate provisions. In addition, many states require inclusion of specific disclosure language. See Chapter 11. Set out below are the requirements incorporated in the base agreements and those to be included only for specific states. A list of all states and the corresponding agreements and modifications to be used is set out in Appendix 1.

Note: Because of certain state-specific formatting requirements, sets of NY agreements are included among the prototype materials, along with the base agreements. (NY-agreements.docx and NY QCD agreements.docx.) NY-specific content requirements noted within this chapter are incorporated in those NY agreements.

Filing Agreements with the States

Full sets of annuity agreement forms must be submitted for review and approval in nine states: Alabama, Arkansas, California, Maryland, North Dakota, New Jersey, New York, Tennessee, and Washington. The forms are submitted in prototype fashion, with variable text such as names and dates denoted as such, rather than in "Jane Doe" fashion. A charity may only issue annuities that are covered by the forms submitted. If, for example, a charity only submitted forms of agreement for immediate annuities, it would not be able to issue deferred annuities; or if it submitted only one-life agreements it would not be able to issue any annuities with two annuitants. Once the set of agreement forms have been submitted and approved, if a charity wishes to make any changes – whether in the content of its own form of agreements, or by switching to agreements contained in its gift calculation software – it must submit revised forms for review and approval prior to beginning to use them. Two states have fees associated with these filings: California charges $60 per agreement and Washington charges a transaction fee ($19.57 in 2025) each time one uses the required SERFF filing system.

Sometimes a state will initiate a change in its agreement content requirements. This may or may not necessitate revision and resubmission of agreements by charities that have already received approval on agreement forms previously submitted. Ideally the state will communicate to all registered charities if resubmission is needed, though this does not always happen. As state required changes are made to the agreements within *PGM Anywhere* and *PGM desktop*, PG Calc will indicate in its communications to clients whether resubmission has been directed.

In contrast to filing full sets, Oklahoma and West Virginia require only a sample agreement to be submitted with the required notification, to confirm the charity's understanding of the disclosure language that must be included in the agreement. A future change in the form of agreement would not necessitate filing a new sample with West Virginia, but would require such filing as part of the annual renewal with Oklahoma.

Requirements Incorporated in Base Agreements

Property Transferred—Payment Interval

California, New Hampshire, North Dakota, Tennessee, and Washington require that the agreement reflect the value of the property transferred, the amount of the annuity, and the manner and interval in which the annuity will be paid. Vermont requires the amount of each payment and the frequency with which payments will be made. In addition, New Hampshire, Tennessee, and Vermont require inclusion of the date payments are to begin.

At times some states have interpreted "manner" to mean the actual method of payment, i.e. whether by check or direct deposit. However, no state has required that this type of detail be included in the annuity agreement itself. The charity may, though, as part of the review of its application to issue in the state, be asked to document its procedure for obtaining information from the annuitant relevant to the method of payment.

Payment of Annuity

When there is a non-donor annuitant, Alabama requires that the annuitant's address, as well as the donor's, be included in the agreement.

For deferred annuities, the *Payment of Annuity* paragraph contains a statement that the charity is released from all payment obligations if the annuitant dies prior to the stated date of first payment. Such language is required by New Jersey.

Age(s) and Sex of Annuitant(s)

California, New Jersey, New York, North Dakota, Tennessee, and Washington require that the agreement include the age(s) of the annuitant(s) (nearest age at the time of the contract). While inclusion of the date(s) of birth of the annuitant(s) is generally acceptable for the age requirement (and may avoid inadvertent insertion of the annuitant's current rather than nearest age), California specifically requires that the agreement state the nearest age. This can be accomplished by adding to the agreement, in the paragraph in which the annuitant's date of birth is noted, the language shown in bold in this example for a single donor who is also the sole annuitant:

> The birth date of the Donor is [month, day, year] **and [his/her] nearest age as of the date of this instrument is [age].**

Some states require the agreement to indicate the sex of each annuitant. This can be accomplished through the use of relevant pronouns, with one exception – Alabama requires that the gender be specifically stated. This can be most easily added to the agreement in the date of birth paragraph shown above (which also appears to be Alabama's preferred location), as indicated in this example:

> The birth date of the Donor, a [male/female], is [month,day,year].

Termination

New Jersey requires a statement that payments will terminate upon the death of the annuitant (for a one-life annuity), or the death of the surviving annuitant (for a two-life annuity).

Governing Law

Seven states (Arkansas, California, Maryland, New Jersey, New York, Tennessee, and Washington) require that their law be named as governing in agreements entered into with state residents. (Wisconsin's gift annuity law has significantly changed, no longer requiring any filing with the state, including no need to file prototype agreement forms. However, it should be noted that the Office of the Commissioner of Insurance's previous requirement that Wisconsin law govern the agreement was not specifically found in the gift annuity statute.)While naming the state of residence of the donor(s) in all circumstances provides consistency, some charities prefer to name the law of their home state unless required to do otherwise.

The governing law issue is distinct from the matter of the applicable regulatory law regarding such things as needing to register, including disclosure language, and maintaining a segregated reserve fund. The regulatory law is always based on the donor's state.

Donor Signature

Alabama, California, and New York specifically require that the signature(s) of the donor(s) appear on the agreement. Washington allows an agreement without the signature(s) of the donor(s), so long as the charity obtains the signature(s) on an application form. The application form should be attached to the agreement. In Maryland and Tennessee the donor(s) must either sign a statement acknowledging receipt of the required disclosure provision, or sign an annuity agreement which includes the disclosure language.

While only the above noted states address the donor signature issue, it is advisable always to obtain the signature(s) of the donor(s). Further discussion regarding signature(s) on the agreement (including New York's requirements if a charity has two signatories to the document), or use of an application form can be found in Chapter 5, including a sample form in Appendix 4 of that chapter.

Signature Date Line

The base agreements discussed in Chapter 6 contain a statement regarding the effective date of the agreement (the date of contribution), but do not contain date lines for individual signatures of the donor(s) and charity. As noted in Chapter 7, the agreement is most typically not signed on the date of gift, and the date(s) of signature are immaterial to the terms of the agreement. Beginning in 2022, the California Department of Insurance has indicated a strong preference that a date be indicated for each signature, and is requiring charities newly applying for a permit to issue in the state to include date lines in the agreement unless a charity can persuade them why one should not be included. Agreements that were previously approved by the Department without a date line are not required to add one, but may do so (without need to resubmit agreement forms).

Form and Serial Numbers

Arkansas, New Jersey, New York, and Washington all require an identifying form number on each agreement a charity proposes to use. The form numbers used in the base agreements discussed in Chapter 6 encode the annuity types as shown in Appendix 2.

New York and Washington request placement of the form number in the bottom left corner of the agreement, while Washington and New Jersey both require a publication date (i.e., mm/yy) be included. This is the date the agreement forms are submitted by the charity to the state to obtain approval for their use.

In addition to the form number, Washington requires a serial number, to be used by charities for the internal control and auditing of agreements. Unlike the form number, which remains constant for each agreement of the same donor/annuitant variation, the serial number is unique to an agreement completed for a specific gift. While New York does not require serial numbers, if a charity optionally decides to use them the prototype agreements filed with the state must include a blank line after the words "Serial Number" (as shown in the base agreements in Chapter 6). Finally, New Jersey requires page numbers for multiple-page agreements.

Requirements Included Only in Specific State Agreements

Property Transferred

New York requires an indication of the nature of the property transferred in the main text of the agreement, besides a reference to an attached Schedule. This requirement can be met by modifying the *Transfer of Property by Donor* paragraph as follows:

> ABC Charity certifies that the Donor, as an evidence of [*his/her*] desire to support the work of ABC Charity and to make a charitable gift, on [*contribution date, month, day, year*] contributed to ABC Charity [*cash in the amount of $*[*amount*]] or [[*briefly describe property, e.g., negotiable securities, real property] described in Schedule A, attached hereto, the fair market value of which is $*[*amount*]].

As shown in the preceding example paragraph, there would be no Schedule A attached with a contribution of cash. To allow for this, the Entire Agreement; Governing Law paragraph would include a bracketed reference to Schedule A in prototype form:

> This Agreement [, together with Schedule A attached hereto,] constitutes the entire agreement of the parties. This Agreement shall be governed by the laws of the State of New York.

In completing an actual agreement for a contribution of cash, the reference to Schedule A would then be removed.

For an annuity funded with a qualified charitable distribution from an IRA, the *Transfer of Property by Donor* paragraph would be modified as follows:

> ABC Charity certifies that the Donor, as an evidence of *[his/her]* desire to support the work of ABC Charity and to make a charitable gift, on *[contribution date -- month,day,year]* contributed to ABC Charity a qualified charitable distribution from an IRA, described in Schedule A, attached hereto, the fair market value of which is *$[amount].*

Payment Correction

New Jersey, New York, and Washington specifically require that the agreement provide for payment correction based on misstatement of the age(s) of the annuitant(s). This can be addressed in a separate paragraph, illustrated below for inclusion in a one-life annuity where the donor is the annuitant, captioned *Payment Correction*, and inserted after the *Birth Date of Annuitant* paragraph:

> If the stated birth date of the Donor should be found to be incorrect at any time, the amount payable or benefit accruing under this Agreement shall be such as would have been provided according to the correct birth date. If any underpayment or overpayment has been made on account of such misstatement, any such underpayment shall promptly be paid to the Donor, and any such overpayment shall be charged against the current and/or next succeeding payment(s) to the Donor.

Inclusion of the payment correction provision is also allowable, though not required, in other states.

Because at one point California objected to the provision, the base annuity agreements discussed in Chapter 6 do not include a payment correction provision. However, since it is no longer prohibited in any state, a charity may wish to include the provision in all agreements, rather than just in agreements for those states that specifically require it, both to allow for adjustment of the payment should it be necessary and for consistency in the charity's agreement forms. A charity should be aware that this may necessitate submitting revised agreements for approval if it is registered in a state that requires filing of prototype agreements and the previously submitted agreements did not include such provision. See Chapter 5 for a discussion of the details to be addressed if a payment correction provision actually needs to be implemented.

Reasonable Value of Benefits

Three states, North Dakota, Tennessee, and Washington, require that the agreement reflect the reasonable value of the benefits created under the contract. Calculating the reasonable value of benefits may be done using the IRS methodology, in which case charities may utilize the present value of the annuity figure generated by their gift planning software. In fact, use of the IRS methodology is specifically required by Tennessee, and the gift annuity agreement must contain a statement affirming that the reasonable value was calculated in accordance with such methodology.

To address the reasonable value requirement, insert a separate paragraph, captioned *Reasonable Value of Benefits* following the *Birth Date of Annuitant* or *Payment Correction* (where applicable).

For immediate annuities, include the following language:

> The reasonable commensurate value of the benefits hereby created as of the date of this instrument is $[*amount*].

For deferred annuities, the language is changed slightly, to reflect that the value is based on the selected commencement date:

> The reasonable commensurate value of the benefits, based on the selected commencement date, is $[*amount*].

For flexible deferred annuities, the language is further modified:

> The reasonable commensurate value of the benefits, based on the earliest possible commencement date, is $[*amount*].

For Tennessee agreements, include in any reasonable value paragraph the following second sentence:

> This figure has been calculated using a methodology approved by the Internal Revenue Service.

Revocation Language

As addressed in Chapter 2, revocation language may be included in the agreements to avoid potential gift tax liability when an annuitant is other than the donor, or to preserve flexibility in the event of a change in circumstances. The base agreements discussed in Chapter 6 include it in an optional format, where the language can be deleted if desired.

While the revocation language in the base agreements provides for revocation either during life or at death by will or trust instrument, New York allows for revocation only by will. Therefore, the language should be modified for use in New York agreements, as illustrated below for a one-life annuity where the donor is not the annuitant:

> The Donor hereby reserves the power to revoke the right of the Annuitant to receive

> payments from Charity pursuant to this agreement. This power is exercisable by the Donor at death in [*his/her*] will. If the power is exercised, Charity's obligation to make annuity payments shall terminate with the payment preceding the death of the Donor.

New York also requires that the option to include or exclude the revocation language, as written, be given to every donor regardless of gift tax status.

In certain successive annuitant agreements there is an option to retain the right to revoke over just the second annuitant or over both annuitants. New York has requested phrasing that allows for the possibility of revoking the initial annuitant's interest without revoking the interest of the successive annuitant. This raises concerns, not currently addressed in the agreement, about what to do with the annuity payment – immediately begin sending it to the successor or stop payments until the initial annuitant dies and then resume making payments, this time to the successor (if he or she is still living). Because the donor/annuitant situations covered by these agreements come up rarely, it may be unnecessary to file and use these forms in New York.

Uses and Purposes of Gifts

Some charities allow the donor to direct the residuum of the gift to benefit a particular aspect of the organization. If this is to be done with a New York donor, the agreement should include language directing that any amount not designated for a particular purpose will be used for the general purposes of the organization. Suggested phrasing is noted in bold below, within the language that would appear in the prototype version of the agreement.

> Upon Charity's satisfaction of its obligation under this Agreement, an amount equal to the residuum of the gift shall be used by Charity for [*its general purposes*] [*or*] [*(describe restricted purpose)*. ***If any amount is undesignated, or if the designated purpose no longer exists, it shall be used by Charity for its general purposes.***]

State Specific Disclosure Language

Twenty-four states currently require a disclosure statement in the agreement, with many directing that it should be a separate paragraph in type no smaller than the general text of the agreement. One manner for setting it off is to caption it *Notice to Donor* and insert it below the heading of the agreement, and before the main text. California, however, requires the disclosure statement to be on the same page as, and in proximity to, the donor's signature.

The applicable disclosure language to include would be that of the state in which the donor resides. While similar in content, the wording is specific to each state, and is included in the state pages of Chapter 11 for Alabama, Alaska, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Iowa, Mississippi, Missouri, Nevada, New Hampshire, New Mexico, North Carolina, Oklahoma, Pennsylvania, South Dakota, Texas, Vermont, Virginia, West Virginia, and Wisconsin. A listing of all the state-specific disclosures can also be found in the prototype materials (disclosure-states.docx)

In addition, there are several states in which a charity might include disclosure language in the annuity agreement. In Oregon, a charity must provide a content-specific written disclosure to each donor, though the statute does not state it must be contained within the agreement. However, it may be easier to remember to include the language in the agreement, as opposed to inserting it in some other document or correspondence. Arizona previously required a specific disclosure in the agreement, but that language is now part of the disclosure statement that must be provided to donors prior to a contribution being made. A cautious approach, however, would be to continue as well to include the disclosure in the agreement. Maryland and Tennessee require that the donor be given a specific disclosure, receipt of which must be acknowledged by the donor's signature. This can be done by inclusion of the language in the annuity agreement as long as the donor signs the agreement.

Pennsylvania's requirements are more detailed than those of other states and necessitate a separate page attached to the agreement, which should be referenced in the body of the agreement by modifying the Entire Agreement; Governing Law paragraph:

> This Agreement, together with Schedule A and the Notice to Pennsylvania Donors attached hereto, constitute the entire agreement of the parties. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

In addition to the agreements, California, Oklahoma, and South Dakota require the disclosure language to be included in any promotional materials, and Oklahoma also requires it in any application forms used with Oklahoma residents. Many charities have the donor sign an application form in lieu of signing the annuity agreement, where state law does not require otherwise. Although Oklahoma is the only state to require inclusion of the disclosure language in an application, consideration should be given to following this practice in other disclosure states, particularly when the donor does not sign the agreement. This provides a document with both the disclosure and the donor's signature, and insures that the donor has seen the disclosure language prior to the annuity being finalized.

See Chapter 5, Appendix 4 for a sample application form.

Addendum—Variance from Annuity Rate Schedule

California requires an addendum to the agreement if a charity issues an annuity with a rate lower than the applicable rate on the schedule submitted to the Insurance Department. The addendum must be signed by both the donor and the charity. It must also indicate that the charity disclosed to the donor that a higher rate was available and that the donor accepted the lower rate. See Chapter 5, Appendix 6 for sample addendum language.

Note: The California Department of Insurance takes the position that issuing an annuity with a higher rate than the applicable rate on the submitted schedule is prohibited, as it is likely a discriminatory rating practice.

Jointly-owned or Community Property

Both in the heading and in variable text within the power to revoke paragraph, reference is made in applicable agreements to "jointly-owned or community property." Because it is not a community property state, New York objects to inclusion of that term even in an alternative phrasing. Therefore, any reference to community property should be removed. In addition, any reference to each donor's interest in the jointly-held property should use the term "proportional," rather than assuming an equal one-half share.

Tax Credit—Montana and North Dakota

Montana makes a tax credit available to state residents making a qualified planned gift to a permanent endowment fund held by a charitable organization domiciled in the state (Montana Code Annotated, Section 15-30-2327). There is likewise a tax credit available to North Dakota residents primarily for making a planned gift to a qualified North Dakota charity (North Dakota Century Code Section 57-38-01.21). The statute also makes the credit available for gifts to certain charitable organizations in states bordering North Dakota, specifically foundations supporting hospitals, nursing homes or medical centers located within five miles of a North Dakota city of 5,000 or more that has no such facility.

Under both Montana's and North Dakota's laws, a deferred annuity is only a planned gift if payments are required to start within the life expectancy(ies) of the annuitant(s), as determined at the time the gift is made. Montana's law also requires that the annuity rate for a deferred annuity be no lower than 5 percent in order for the annuity to be a qualified planned gift for purposes of the credit.

In both states, in order for a gift annuity to be a "planned gift" for purposes of taking the credit, the gift annuity agreement must provide that the annuitant's interest in the annuity cannot be assigned to the charity sooner than five years after the contribution has been made (except upon the death of the annuitant). This requirement can be met by adding to the *Irrevocability; Non-assignability; Termination* paragraph the language noted in bold, as reflected in a one-life agreement where the donor is the annuitant, and a two-life, successive interests agreement in which the right to revoke is retained:

One-life example:

This annuity is irrevocable and non-assignable, except that it may be assigned to Charity. **Such assignment to Charity may not be made sooner than 5 years after the date of contribution, unless the annuity is terminated by the death of the annuitant.** Charity's obligation under this Agreement shall terminate with the regular payment preceding the Donor's death.

Two-life example:

Except as provided in Paragraph 6, this annuity is irrevocable. This annuity is also non-assignable, except that it may be assigned to Charity. **Such assignment to Charity may not be made sooner than 5 years after the date of contribution, unless the annuity is terminated by the deaths of both annuitants.** Charity's obligation under this Agreement shall terminate with the regular payment preceding the death of the survivor of the Donor and Second Annuitant, unless the Donor has exercised the right to revoke survivorship payments to Second Annuitant per Paragraph 6 below. The obligation to pay the Donor any share of the annuity shall terminate with the regular payment preceding his death. If Second Annuitant survives the Donor, and the Donor has not revoked his survivorship payments, all following payments shall be payable to Second Annuitant.

While no specific language is required in the agreement regarding the ultimate use of the gift, it should be noted in some way that it will go in to an endowment fund. The Uses and Purposes paragraph is designed to allow for an indication of the purpose for a restricted gift, such as "shall be used by Charity to establish the John and Jane Doe Endowment." In addition to specifying the endowment, the agreement might also indicate it will be held by the charity in a "permanent, irrevocable fund," a phrase used in the Montana statute, and/or include a reference to the applicable statute that allows for the tax credit for such gifts.

The Montana law had been set to sunset at the end of 2025. However, that termination date has been repealed.

Note: On June 13, 2019, the IRS issued final regulations relating to the federal tax deductibility of charitable gifts for which a taxpayer received a state tax credit. The regulations expand the existing quid pro quo rules for charitable gifts into the area of state tax credits and deductions for charitable gifts.

The final regulations provide that "the amount of the taxpayer's charitable contribution deduction … is reduced by the amount of any state or local tax credit that the taxpayer receives or expects to receive in consideration for the taxpayer's payment or transfer." There are two exceptions: (a) a state or local income tax deduction that does not exceed 100 percent of the fair market value of the property transferred and (b) a state or local tax credit that does not exceed 15 percent of the fair market value of the property transferred. If the state or local tax benefit is over the threshold, the whole amount is considered a quid pro quo, not just the excess.

The tax credits provided for in the Montana and North Dakota laws are well above the exception amount; both provide for a 40 percent tax credit for certain types of planned gifts. So, a donor who takes the 40 percent tax credit in either of these states will have to reduce the charitable deduction for the gift on the donor's federal tax return by the amount of the credit taken.

There is a little bit of good news. The amount of the charitable deduction that is lost from the new quid pro quo rule can be treated as a state and local tax payment on the donor's federal income tax return. That will be helpful to taxpayers who are under the state and local tax deduction limit. However, transfers of property are explicitly outside the safe harbor, so donors can't make a gift of appreciated property in lieu of state or local taxes and get a state and local tax deduction on their federal income tax return.

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STATE AGREEMENT REQUIREMENTS

Note: All additions and modifications indicated in this listing relate to content provisions discussed in the text of this Chapter.

Alabama	Add Disclosure language Include gender reference in date of birth paragraph Donor signature required
Alaska	Base set of agreements plus Disclosure language
Arizona	Base set of agreements (optional inclusion of Disclosure language)
Arkansas	Arkansas law required as governing law
California	Add Disclosure language Add nearest age of annuitant(s) California law required as governing law Donor signature required Include date line for signatures Addendum, if variance from annuity rate schedule
Colorado	Base set of agreements plus Disclosure language
Connecticut	Base set of agreements plus Disclosure language
Delaware	Base set of agreements
District of Columbia	Base set of agreements
Florida	Base set of agreements plus Disclosure language
Georgia	Base set of agreements plus Disclosure language
Hawaii	Base set of agreements plus Disclosure language
Idaho	Base set of agreements plus Disclosure language
Illinois	Base set of agreements
Indiana	Base set of agreements
Iowa	Base set of agreements plus Disclosure language
Kansas	Base set of agreements
Kentucky	Base set of agreements
Louisiana	Base set of agreements
Maine	Base set of agreements

APPENDIX 1

APPENDIX 1

Maryland	Add Disclosure language (if donor does not sign agreement, then disclosure must be provided in separate document signed by donor) Maryland law required as governing law
Massachusetts	Base set of agreements
Michigan	Base set of agreements
Minnesota	Base set of agreements
Mississippi	Base set of agreements plus Disclosure language
Missouri	Base set of agreements plus Disclosure language
Montana	Base set of agreements Montana charities should modify assignability provision to comply with tax credit requirements
Nebraska	Base set of agreements
Nevada	Base set of agreements plus Disclosure language
New Hampshire	Base set of agreements plus Disclosure language
New Jersey	Add Payment Correction paragraph New Jersey law required as governing law
New Mexico	Base set of agreements plus Disclosure language
New York	Add Payment Correction paragraph Modify Transfer of Property paragraph Modify Revocation Language (only allowed in will) Modify Entire Agreement/Governing Law paragraph Remove references to community property New York law required as governing law Donor must sign agreement Include/exclude Schedule A depending on nature of contributed asset. (see NY agreements.docx and NY QCD agreements.docx in the prototype materials, which incorporates all NY requirements)
North Carolina	Base set of agreements plus Disclosure language
North Dakota	Add Reasonable Value of Benefits paragraph
Ohio	Base set of agreements
Oklahoma	Base set of agreements plus Disclosure language
Oregon	Base set of agreements plus Disclosure language (unless disclosure included in another document)

Pennsylvania	Add Disclosure language as separate page Modify Entire Agreement/Governing Law paragraph to reference disclosure notice
Rhode Island	Base set of agreements
South Carolina	Base set of agreements
South Dakota	Base set of agreements plus Disclosure language
Tennessee	Add Disclosure language (if donor does not sign agreement, then disclosure must be provided in separate document signed by donor) Add Reasonable Value of Benefits paragraph (include statement regarding use of IRS methodology) Tennessee law required as governing law
Texas	Base set of agreements plus Disclosure language
Utah	Base set of agreements
Vermont	Base set of agreements plus Disclosure language
Virginia	Base set of agreements plus Disclosure language
Washington	Add Payment Correction paragraph Add Reasonable Value of Benefits paragraph Washington law required as governing law Donor must sign agreement or application form
West Virginia	Base set of agreements plus Disclosure language
Wisconsin	Base set of agreements plus Disclosure language
Wyoming	Base set of agreements

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FORM NUMBERS

APPENDIX 2

Sample form number	ABC-1da-I-XX
ABC	Initials of the Charity
XX	Initials of state for which forms are prepared
1da-I	One life, donor is the annuitant, Immediate payments
1da-D	One life, donor is the annuitant, Payments are deferred
1L2D-da-I	One life, one of the donors is an annuitant, funded with jointly-owned or community property, Immediate payments
1L2D-da-D	One life, one of the donors is an annuitant, funded with jointly-owned or community property, Payments are deferred
1dna-I	One life, donor is not the annuitant, Immediate payments
1dna-D	One life, donor is not the annuitant, Payments are deferred
1L2D-dna-I	One life, neither donor is an annuitant, funded with jointly-owned or community property, Immediate payments
1L2D-dna-D	One life, neither donor is an annuitant, funded with jointly-owned or community property, Payments are deferred
2J-I	Two lives, joint and survivor, funded with jointly-owned or community property, Immediate payments
2J-D	Two lives, joint and survivor, funded with jointly-owned or community property, Payments are deferred
2J-SP-I	Two lives, joint and survivor, funded with donor's separate property, Immediate payments
2J-SP-D	Two lives, joint and survivor, funded with donor's separate property, Payments are deferred
2J-dna-I	Two lives, joint and survivor, donor is not an annuitant, Immediate payments
2J-dna-D	Two lives, joint and survivor, donor is not an annuitant, Payments are deferred

APPENDIX 2

2J2D-dna-I	Two lives, joint and survivor, funded with jointly-owned or community property, donors are not the annuitants, Immediate payments
2J2D-dna-D	Two lives, joint and survivor, funded with jointly-owned or community property, donors are not the annuitants, Payments are deferred
2Sda-I	Two lives, successive interests, donor is an annuitant, Immediate payments
2Sda-D	Two lives, successive interests, donor is an annuitant, Payments are deferred
2Sdna-I	Two lives, successive interests, donor is not an annuitant, Immediate payments
2Sdna-D	Two lives, successive interests, donor is not an annuitant, Payments are deferred
2L2D-2da-I	Two lives, successive interests, funded with jointly-owned or community property, both donors are annuitants, Immediate payments
2L2D-2da-D	Two lives, successive interests, funded with jointly-owned or community property, both donors are annuitants, Payments are deferred
2L2D-1da-I	Two lives, successive interests, funded with jointly-owned or community property, one of the donors is the first annuitant, Immediate payments
2L2D-1da-D	Two lives, successive interests, funded with jointly-owned or community property, one of the donors is the first annuitant, Payments are deferred
2L2D-dna-I	Two lives, successive interests, funded with jointly-owned or community property, neither donor is an annuitant, Immediate payments
2L2D-dna-D	Two lives, successive interests, funded with jointly-owned or community property, neither donor is an annuitant, Payments are deferred

For the two variations on a deferred annuity - involving a flexible payment start date or commutation provision - the above form numbers should be modified by replacing the D with DFlex or DCommuted, such as ABC-2L2D-dna-DFlex-XX.

The form numbers on agreements for an annuity funded with a qualified charitable distribution (QCD) would be modified by adding "QCD-" before the segment that identifies the type of annuity (for example, ABC-1da-QCD-I-XX). Most of the above listed forms are not available with a QCD due to restrictions on who can be the donor and annuitant and their being limited to immediate annuities only. See [Chapter 16, Appendix 1] for sample QCD agreements.

Chapter 13

Reserve Investment Regulations

The Philanthropy Protection Act of 1995 requires that charities disclose to donors information regarding the investment of their annuity reserves. This notification should be made prior to, or at the time of, the completion of the gift, and must be done regardless of whether a separate reserve fund is required by the state in which the donor resides. See Chapter 8 for more details concerning required disclosures.

Reserve funds are required by 14 states: Alabama, Arkansas, California, Florida, Hawaii, Maryland, Montana, New Hampshire, New Jersey, New York, North Dakota, Oregon, Tennessee, and Washington. Ten states have statutes or regulations which specifically mention the investment of reserve fund assets. Seven of these states – Hawaii, Maryland, New Hampshire, New Jersey, New York, Tennessee, and Washington – require investment in accordance with a "prudent investor" standard. Arkansas provides charities the option to invest reserves in accordance with the prudent investor standard, or to continue to adhere to specific investment restrictions.

The remaining two (California and Florida) have detailed requirements regarding the types of investments permitted. These investment limitations apply only to reserves held for annuities issued in California and Florida. California requires a charity to maintain a state-specific reserve fund, with such fund holding reserves for just its California annuities. At the charity's option a state-specific fund may be established for Florida reserves, which in some instances may make it easier to ensure the Florida reserves are invested in accordance with the state's investment restrictions. A state-specific fund is also allowable (though not required) for Arkansas and Tennessee.

The states that specifically restrict the investment of charitable gift annuity reserves to a large extent require that charities adhere to essentially the same requirements as those to which commercial insurance companies must adhere in investing their policy reserves, but with allowance for a certain percentage invested in stocks. Covered here are those types of permissible investments most likely to be of interest to a charity; other, less common types of investments may be permissible.

Figure 13.1 summarizes in very general terms the main requirements of Arkansas, California, and Florida as to types of investments; additional requirements pertain to quality and other attributes associated with different types of investments. Somewhat more detailed information about

Figure 13.1

Overview of Gift Annuity Reserve Fund Investment Criteria

	Arkansas*	California	Florida
U.S./State Bonds	Unlimited	Unlimited	Unlimited
Corporate Bonds	Unlimited overall, but limits as to bonds of any one company, plus quality limits	Permitted as part of limit for publicly-traded securities (or subject to written consent)	Unlimited overall, but bonds of medium to lower quality limited to 13%
Common Stock	10% limit	50% limit	Combination of common & preferred stock—and stock mutual funds—limited to 50%, plus no more than 10% in stock of any one company or fund
Preferred Stock	20% limit overall, but limits as to stock of any one company, plus quality limits	Permitted only as part of limit for publicly-traded securities	
Mutual Funds (Including - presumably - common trust funds)	10% limit	Permitted as part of limit for publicly-traded securities (prior consent no longer required)	See above plus no limit for bond funds, aside from no more than 10% in any one fund
Real Estate	20% limit overall, plus limits as to particular investments	Not permitted	5% limit with no more than 1% in any one property
Foreign Investments (Some exceptions made for Canada and Puerto Rico)	5% limit overall, plus limits as to particular investments	Not permitted	5% in general, plus additional amounts in stock under certain circumstances
Leeway Provision	10% limit, with some further restrictions	Effectively, 5% of admitted assets	Lesser of 5% or 25% of surplus

* As an alternative, a charity may adhere to statutorily-defined prudent investor standard.

the standards of these three states, plus those of Hawaii, Maryland, New Hampshire, New Jersey, New York, Tennessee, and Washington, is included in the state-by-state summaries on these pages following the chart. Nevertheless, in making any determination about how a charity's gift annuity reserve fund assets should be invested, the charity's legal and investment advisors will need to review carefully all applicable statutes. Also, a charity's reserve fund assets must be not only properly invested, but also adequate in amount given the reserve funding requirements of the state(s) in which the charity issues gift annuities.

Arkansas

Arkansas Code Section 23-63-201(d)(8) states that "no [out-of-state charity] shall be permitted to make annuity agreements in this state unless it complies with all requirements of this subsection imposed upon domestic corporations or associations, except that [it] may invest its reserves and surplus funds in securities permitted by the laws of its state of domicile." However, the Arkansas Insurance Department has advised that if an out-of-state charity's state of domicile is silent on the permissibility of a given investment, then the charity will be treated as though it were an Arkansas charity.

Arkansas Code Section 23-63-201(d)(7)(B) allows charities to invest gift annuity reserves in accordance with the prudent investor standard as set forth in Arkansas Code Sections 24-2-610 - 24-2-619. Investment in this manner is an option, not mandated, and a charity may choose instead to invest pursuant to specific restrictions set out in the statute. An organization that elects to follow the prudent investor standard, whether a domestic charity or an out-of-state charity domiciled in a state that does not regulate investment of gift annuity reserves, must submit additional information regarding its investments as part of the annual report. See Chapter 14. A charity domiciled in a state that regulates investment of gift annuity reserves, including a state that uses a prudent investor standard, may invest in accordance with the laws of its state of domicile, without the need to provide additional investment information with the annual report.

As noted, investment per the prudent investor standard is one option; Section 23-63-201(d)(7)(A) still allows for investment of reserves in accordance with specific guidelines, as set forth in Sections 23-63-801 - 23-63-833, 23-63-835, 23-63-836, 23-63-839, and 23-63-840. Highlights of the statutory restrictions:

- U.S. government bonds are permitted without limitation, although various limitations do apply to certain government-backed securities.
- U.S. and Canadian corporate bonds are also not subject to limitation, aside from a requirement that no more than five percent of *admitted assets* (in simplest terms, this essentially means assets that count toward the reserve requirement) be in the bonds (or other investments) of any one issuer.
- Common stock in U.S. and Canadian corporations is limited to 10 percent of admitted assets and preferred stock in the same types of corporations is limited to 20 percent, with both types of stock further limited by the five-percent limitation on the investments of any one issuer.
- Real estate is subject to a 20-percent-of-admitted-assets limitation, and mortgages on U.S. real estate are unlimited, although the no-more-than-five-percent-in-the investments-of-any-one-issuer limitation applies to both types of investments.
- Foreign (which, in some instances, includes Canadian) investments are limited to 20 percent of admitted assets, subject to additional limitations in any one investment.
- The leeway provision carries a basic 10-percent-of-admitted-assets limitation, although certain types of investments are not eligible for the benefits of the provision. It appears to enable a charity to increase certain already-permitted investments by

an additional 10 percent of admitted assets, if the increase would otherwise have been prohibited due to the other percentage limitations.

- Mutual fund shares are limited to 10 percent of admitted assets, regardless of the types of assets held by a fund, although no more than five percent may be in the shares of one "person or issuer."

California

California's investment requirements pertain only to the required reserves held for California annuities within the separate California trust account. This is true for charities domiciled in California as well as those domiciled outside the state. Funds held in that account that are in excess of required reserves can be invested any way the charity wishes. Suppose, for example, that the actuarially-determined, required reserves are $1,500,000, but the trust account holds assets valued at $2,000,000. The required reserves ($1,500,000) must be invested per the rules described immediately below, but the $500,000 of surplus reserve funds could be invested entirely in equities if the charity so chooses. It is not necessary for the charity to maintain a separate account for surplus funds in order to invest them freely.

Investment Rules for Required Reserves

Insurance Code Section 11521.2 requires that a reserve amount calculated pursuant to Section 11521 be invested in investments specified in Sections 1170 through 1182, except that a certificate holder may invest in "investment companies registered under the federal Investment Company Act of 1940, and in securities, including interests in those investment companies, listed and traded on the New York Stock Exchange, the American Stock Exchange or regional stock exchanges . . . to the extent of the lesser of net worth (assets over liabilities and reserves) of the certificate holder or 50 percent" of the reserve investments.

Within the 50-percent limitation would fall equity investments and corporate bonds, although additional corporate bonds may be held if written consent to do so is obtained from the Department of Insurance. Investments in mutual funds (including money market funds) likewise fall within this limitation. Because of how Section 11521.2 defines the exceptions to Sections 1170 – 1182, any type of mutual fund, regardless of the underlying assets held in the fund, falls within the 50-percent limitation. In essence, this means that a charity may invest up to 50 percent of its reserves in equities, corporate bonds, and/or mutual funds, with the remainder invested in accordance with Sections 1170-1182. One additional note with respect to mutual funds: although Section 11521.2 specifically prohibits investments in options or commodity exchanges, a domestic mutual fund that invests in commodities is permitted, as long as the mutual fund otherwise falls within the defined exception. This is true with respect to mutual funds investing in international assets or in real estate, which as noted below are otherwise prohibited.

Sections 1170-1182 pertain mostly to various types of government bonds, plus other government-backed or insured investments. A final type of approved investment is a bank account (including a certificate of deposit). No diversification or minimum/maximum percentage is required with respect to these permitted investments.

Except as noted above with respect to mutual funds, investments in real estate are prohibited, as are foreign investments (aside from certain Canadian and Puerto Rican bonds). Even though the investments mentioned in the immediately preceding sentence are not specifically addressed in Sections 1170-1182, they are expressly permitted by Sections 1190-1202 and 1210, which concern "excess funds investments." Sections 1190-1202 and 1210 apply to commercial insurance companies (as do Sections 1170-1182, as well), yet no mention is made in Section 11521.2 of the applicability of Sections 1190-1202 and 1210 to issuers of charitable gift annuities.

As noted above, so long as a charity's gift annuity reserves are invested according to Sections 11521.2 and 1170-1182, the charity may invest its surplus funds in any manner it chooses. Actually, this is the general rule with respect to all states that regulate the investment of reserve fund assets, but it is of particular significance in California due to the investment limitations imposed on the required gift annuity reserves.

Possible Exemption from Investment Restrictions

A charity may be able to obtain an exemption from the restrictions on the investment of required reserves if (a) it has a credit rating of A or better and (b) its endowment is at least 10 times the amount of its required gift annuity reserves. The charity should write to the Insurance Examiner requesting an exemption, providing documentation about its credit rating and the ratio of endowment to required reserves, and proposing how it would like to invest the reserves.

Exemption requests are not automatically granted; each is reviewed and either approved or not approved on a case-by-case basis. Receipt of an exemption also does not necessarily mean that the charity can invest reserves any way it wishes, although an exemption can provide more latitude.

Withdrawal of Money from the California Gift Annuity Trust Account

A charity can withdraw money from the trust account to make gift annuity payments, and it can also remove the residuum associated with an obligation that has terminated, so long as the amount that remains in the account is sufficient to meet the reserve requirements of obligations that have not terminated. However, for a withdrawal of money for any other purpose, including a delayed withdrawal for annuities terminated in prior years, the charity must include with its annual reporting a Board resolution authorizing the withdrawal. The resolution should reference the current value of the reserve fund and the amount required to be held, so as to show that the withdrawal is being made from excess reserves. If a charity anticipates spending some portion of a gift annuity contribution prior to the termination of the gift annuity, it should retain that portion at the time the contribution is received and put the balance in the trust account. This approach will avoid the need for later Board authorization. At the time the annuity is established, it must put at least the required reserve amount for that annuity in the trust account.

Automatic withdrawal from the trust account for investment and administrative fees is not allowed. This prohibition relates to the potential for creating a lien on the fund, which would run counter to the segregated nature of the pool that is designed to protect the reserves solely for the annuitants. Withdrawals for fees and expenses have been allowed if an invoice is first issued, with the charity then authorizing a specific withdrawal; however, such steps would need to be taken for each payment. In addition, in this situation a charity typically must also provide information reflecting that the fees are being taken out of excess reserves, i.e., that the reserve fund is holding more than is required, or may need a Board resolution as noted above. Because of these numerous steps, a charity may prefer to pay directly any fees relating to the California reserve, or to have such fees withdrawn from its multi-state reserve account.

Florida

Florida Statutes Section 627.481(3) states that "no [out-of-state charity] shall make these annuity agreements in this state unless it complies with all requirements of this section imposed upon like domestic corporations, except that the [charity] may invest its reserve and surplus funds in the kind of securities permitted by the laws of the state in which it was incorporated or organized."

Given that the state in which a charity is incorporated or organized will in most instances be the state in which it is domiciled, this provision is essentially the same as the one discussed above for Arkansas. And, similarly, the Florida Office of Insurance Regulation has indicated that if the law of another state in which a particular charity is domiciled is silent as to the permissibility of a certain "kind" of security, then Florida law will apply. Moreover, if investment in that type of security is permitted by the law of that other state but if no limit is specified with respect to the level of investment allowable, then Florida's limit will apply. The practical effect of this interpretation is that all charities issuing gift annuities in Florida must adhere to its investment criteria, though such restrictions apply just to reserves held for Florida annuities.

In general, investments are to be made in accordance with part II of Chapter 625 of the Florida Insurance Code. However, Fla. St. 627.481(2)(c)2, sets forth some exceptions, and allows up to 50 percent of a charity's required reserves and surplus to be invested in a combination of common stock, preferred stock, and stock mutual funds, with no more than 10 percent of the reserve invested in the stock of any one company or in any one stock mutual fund. While the statute itself says nothing about combining stock mutual funds with common and preferred stock, the Office of Insurance Regulation has indicated that this is its interpretation. Investment may be in any U.S. or Canadian stock, or that of any foreign corporation if its stock is listed and traded on a national securities exchange in the United States, or if first approved by the department. Fla.St. 625.324. Interestingly, the Office of Insurance Regulation indicates that up to 100 percent of required reserves plus surplus can be in bond mutual funds although, once again, no more than 10 percent can be in any one bond mutual fund.

Bonds classified as medium to lower quality are limited to 13 percent of admitted assets, with no more than five percent total in those rated four, five, or six by the Securities Valuation Office of the National Association of Insurance Commissioners. (Those rated six are limited to .5 percent, and the combination of five or six is limited to 1.5 percent.) Investments in issuers from any one industry are limited to 10 percent of admitted assets, with no more than two percent from any one issuer. Fla.St. 625.305(4)

Other highlights, as reflected in Fla. St. 625.301-625.333, 625.338, and 625.340:

- Various U.S. and Canadian government bonds, including certain securities backed by the U.S. government, are permitted without limitation.
- U.S. and Canadian corporate bonds are permitted without limitation.
- Real estate acquired for investment is limited to five percent of admitted assets, with no more than one percent in any one property, and no more than one-half of one percent in unimproved land.
- Real estate mortgages are limited to the lesser of five percent of admitted assets, or 10 percent of total capital and surplus, subject to restrictions on the types of mortgages as set out in section 625.327.
- The leeway provision is five percent of admitted assets, or 25 percent of the amount by which surplus exceeds the required reserve amount, whichever is less. Department approval may be sought to exceed these limitations although, effectively, they apply only to investment of surplus assets, per Fla. St. 625.331(1).

Hawaii

Section 431:1-204(c)(3), Hawaii Revised Statutes indicates that a charity must "[i]nvest and manage assets as would a prudent investor, taking into account the purposes, terms, and distribution requirements expressed in its governing instrument. To satisfy this standard, the fiduciary shall exercise reasonable care, skill, and caution."

Maryland

Insurance Article, Section 16-114, Annotated Code of Maryland makes no mention of investment limitations. However, the related regulations, COMAR 31.09.07.04, reads as follows:
"A. The reserve assets shall be segregated. B. The segregated reserve assets shall be invested in the same manner and subject to the same standards as are applicable to endowment funds under the Estates and Trusts Article, Section 15-402, Annotated Code of Maryland."

Section 15-402 is part of the Maryland Uniform Prudent Management of Institutional Funds Act (UPMIFA). It directs investing to be done in consideration of "the charitable purposes of the institution and the purposes of the institutional fund," and exercising "ordinary business care and prudence under the facts and circumstances" at the time decisions are made. Factors to be considered in making investment decisions are set forth in Section 15-402(e)(2).

New Hampshire

Chapter 403-E, New Hampshire Revised Statutes Annotated, requires investment of the annuity reserves in accordance with the general standards of prudent investment set out under Article 9 of the Uniform Trust Code as adopted by New Hampshire and codified in RSA 564-B:9, and especially as set forth in detail in RSA 564-B:9-902 and 903.

New Jersey

While New Jersey Statutes Annotated 17B:17-13.1 allows for investment in accordance with a prudent investor standard (NJSA 3B:20-11.1, et seq.), the Commissioner of the Department of Banking and Insurance has issued Order A04-107, which requires a charity to submit a plan of operation regarding the segregated reserve fund. Such a plan must include the following:

1. an indication of the portion of the gift that will be placed in the reserve fund (i.e., the entire gift amount or some lesser amount and, if the latter, how that amount is determined);
2. standards for monitoring the adequacy of the reserve fund as asset values fluctuate (so that the minimum required value is maintained at all times);
3. a contingency plan for additional sources of funding if the reserve fund falls below the required minimum amount; and
4. an investment plan for the reserve fund, that indicates:

   a) responsibility for oversight of the investments, and whether it is delegated to an investment committee or a third party;

   b) intended allocation of assets by categories of investments (e.g., stocks, bonds, real estate, mortgages, cash);

   c) standards for investment quality; and

   d) duration and liquidity of assets.

New York

New York Insurance Law Section 1110(b) states that gift annuity reserves shall be "invested in accordance with the prudent investor standard as defined in section 11-2.3 of the estates, powers and trusts law" and are not subject to requirements for commercial insurers. Subsection (b) of the aforementioned section 11-2.3 spells out the elements of the prudent investor standard in considerable detail.

In 2017, the New York Department of Financial Services posted on its website further guidance relating to reserve investments, specifically addressing portfolio diversification and adoption of an investment strategy statement. That posting was removed sometime in late 2021 or early 2022, and the Department has commented subsequently that it no longer provides guidance on diversification. One point from the guidance that does remain, however, is the Department's view that every charity should adopt an Investment Strategy Statement relating to its gift annuity reserves. The existence of such a statement is asked about on the interrogatories page of New York's Annual Statement form.

Tennessee

Tennessee Code Annotated Section 56-52-105 requires the segregated reserve fund to be invested in accordance with the Tennessee Uniform Prudent Investor Act of 2002 (Tennessee Code Annotated, Title 35, Chapter 14). The cited law sets out the details of the prudent investor standard, but included among them are that assets are to be invested "by considering the purposes, terms, distribution requirements, and other circumstances" and by exercising "reasonable care, skill and caution."

Washington

RCW 48.38.020 (2)(b) provides that the reserve fund "shall be invested in the same manner that persons of reasonable prudence, discretion, and intelligence exercise in the management of a like enterprise." To ensure the reserve fund is adequate to meet future payments of annuities, investments "shall be of sufficient value, liquidity, and diversity."

Chapter 14

Annual Filings

General Overview of State Requirements

Of the states that require some sort of registration specific to the issuance of gift annuities, only 14 require an annual filing related to that registration. These filings can range from a simple renotification (repeating the notice required initially), to submission of a copy of the charity's audited financial statement, to signing an attestation of compliance, to a detailed annual reporting requirement. The latter involves providing information on the activity in the segregated reserve fund relating to money moving into and out of the fund, the purchase and sale of assets, and gains and losses on the investments.

Some states have specific forms that must be completed as part of the filing. Because these forms are readily available online, they are not reproduced in the pages of the manual itself. Nevertheless, the web address for each form (current as of the date of publication of this manual) may be found in the entry for the applicable state that appears in the "State-by-State Requirements" portion of this chapter. In addition, copies of all forms (and, in some cases, instructions) are included among the prototype materials.

In comparing the report forms, it is evident that they differ with regard to the particular information required. For example, in completing the form for California, a charity should include only information pertaining to its California annuities. By contrast, the reports for other states should include information pertaining to the charity's entire gift annuity program, sometimes including its California annuities and/or the annuities held in other state-specific reserve accounts. Because Florida allows a charity to create a "Florida only" reserve account, it is also possible for the annually required *sworn statement* to pertain only to Florida annuities.

Regardless of whether a state mandates that a charity use a particular report *form*, once a charity becomes certified to issue gift annuities in that state it must comply each year with the state's reporting *requirements* or risk facing sanctions. This will be the case even if the charity has no outstanding annuities in that state. The annual filing, in whatever form, is what maintains the charity's registration in the state and the ability to issue gift annuities to its residents. Failure to file can result in the registration lapsing, with some states acting quite quickly after a missed deadline. A charity that has allowed its registration to lapse would need to complete a new application or notification to be able to issue gift annuities in the state.

Figure 14.1

Summary of State Gift Annuity Annual Filing Requirements

State	Submit Report?	Use Specific Form?	Deadline for Form	Submit Financial Statement?	Deadline for Financial Statement	Other Submission?
AL	No	N/A	N/A	Yes	FY + 60 days	Renew "restricted agent" registrations
AR	Yes	Yes (as a guide)	FY + 180 days	Yes	FY + 180 days	No
CA	Yes	Yes	CY or FY + 120 days	No	N/A	No
FL	Yes	Yes	FY + 60 days	No	N/A	No
GA	No	N/A	N/A	Yes	December 31	Yes
HI	Yes	Yes	March 15	No	N/A	No
MD	No	No	N/A	Yes (Specialized)	FY + 180 days	No
NH	Yes	Yes	CY or FY + 4 months, 15 days	No	N/A	Report on general activities
NJ	Yes	Yes	CY or FY + 120 days	Yes	CY or FY + 120 days	No
NY	Yes	Yes	March 1	No	N/A	No
ND	No	N/A	N/A	Yes	When available + 15 days	No
OK	No	N/A	N/A	Yes	When available + 90 days	Yes
TN	Yes	Yes	March 1	Yes	March 1	No
WA	Yes	Yes	FY + 60 days	Yes (Specialized)	FY + 9 months	IRS Form 990

Note: In submitting a report, a charity will frequently need to include separate documentation, such as a statement of required reserves.

Non-gift annuity registrations: Annual filings that may be required as a part of registrations to do business or to solicit charitable contributions in a state are not included on this chart.

Non-gift annuity registrations

As noted in the state-specific entries in Chapter 11, Mississippi, New Hampshire, New Jersey, and Washington require registration with other state agencies as part of the gift annuity registration. In addition, even though Kentucky, Maine, Pennsylvania, and South Dakota do not require a gift annuity-specific registration, a charity may need to be registered to do business or for charitable solicitation in order to meet qualifying criteria under the gift annuity statute. Finally, a charity may, because of its fundraising activity in general, be registered with state agencies for purposes not related specifically to the issuance of gift annuities. All of these other registrations may have their own annual filing requirements, which are not addressed in this chapter.

Audits

Several states, in addition to requiring some sort of annual filing, also reserve the right to audit a charity's gift annuity program periodically and to assess the cost of such audit to the charity. Not all states take advantage of this right, at least on a systematic basis. California tends to conduct its "audits" as part of the review of the annual reporting, and does invoice the charity for the cost, usually on a yearly basis. New York and Washington typically audit a charity every five years, with particular emphasis on in-state charities. (New York does invoice the charity for the audit cost, while Washington does not.) Even though the criteria used by auditors have been known to change from time to time, the mere possibility that a charity will need not only to send information to one or more states annually, but also to subject its files to occasional direct review by state regulators, should provide the charity with incentive to operate its program appropriately in all respects and to maintain sound records.

State-by-State Requirements

Alabama

Statutes Related to the Filing Requirement
See **Note** below.

Due Date for the Filing
60 days after the end of the charity's fiscal year.

Requirement That Charity Use Specific Form
No.

Note: The requirement that a charity file its audited financial statement is not mentioned in any statute or regulation. Rather, it has been established by administrative action. Another component of the annual filing is the need to renew, by December 31 of each year, the registration of each "restricted agent" (the persons who filed Form U-4) and pay the one-year fee of $70 for each. The Form U-4 need not be completed as part of the renewal unless there has been a change of information for the applicable agent. However, any new agent (e.g., a new staff member who replaces someone previously registered) must complete and submit Form U-4 along with the $70 fee.

Arkansas

Statutes Related to the Filing Requirement
Arkansas Revised Statutes 23-63-201(d)(9)(C), read in conjunction with Arkansas Rule 90 adopted by the Insurance Commissioner.

Due Date for the Filing
180 days after the end of the charity's fiscal year. An extension can be requested if the charity's audited financial statement, which must be submitted with the filing, will not be available by the due date.

Requirement That Charity Use Specific Form
See **Note** below. Instructions and an Annual Statement form are available at https://insurance.arkansas.gov/industry-regulation/compliance/charitable-gift-annuities/

Note: The Annual Statement form has some blanks for the charity to fill in, but many of its items simply identify the information the state expects the charity to provide as supporting documents. A charity must submit a copy of its organization-wide annual financial statement (prepared by a certified public accountant), along with the schedule of annuities and reserves described in the statute. With respect to determining the required reserves, a charity may choose from three options: holding 100 percent of the contribution (with the amount not reduced by payments) for the life of the annuity, calculating the reserves using an "IRS methodology" (using the mortality tables and federal discount rate in effect as of the charity's fiscal year end), or calculating the reserves in accordance with Arkansas' standard valuation law. The last option requires verification by an actuary.

Charities registered to issue gift annuities in Arkansas have the option to invest the reserves pursuant to specific guidelines or in accordance with the prudent investor standard. A charity that elects to follow the prudent investor standard must also file with the annual report the following information:

> a description of its investment philosophy and an indication of how the investments "are designed to meet future charitable gift annuity obligations,"
>
> information about members of its investment committee, including a description of each committee member's investment experience, and
>
> a certification from its Board attesting that the investments conform to the organization's investment philosophy and to the prudent investor rule.

See the Appendix to this chapter for a sample Board certification that has been reviewed and favorably commented on by the Department of Insurance. It is interesting to note that a charity domiciled in a state that regulates investment of gift annuity reserves, including a state that uses a prudent investor standard, may invest in accordance with the laws of its state of domicile without the need to provide additional investment information with the annual report.

California

Statutes Related to the Filing Requirement

California Insurance Code Section 11521.3(c).

Due Date for the Filing

120 days after the end of the charity's fiscal year, although a charity may request approval for the report to cover the calendar year.

Requirement That Charity Use Specific Form

Yes. The blank form and instructions are available at http://www.insurance.ca.gov/0250-insurers/0300-insurers/0100-applications/financial-filing-notices-forms/GrantsAnnuities/. The completed form must be filed electronically in PDF and MS-Excel formats using the Department of Insurance's "OASIS (Online Assistance System for Insurance Submittals)." Submisison of the hard copy original signature pages is not required, with the exception of quarterly filings as noted below.

Note: The reporting pertains only to California annuitants. A calculation of required reserves should accompany the annual report form, although it does not need to be verified by an actuary. This calculation will cover all the charity's California annuitants as of the end of the reporting period. The charity will also need to note on the annual report form the initial required reserve for each new annuity issued during the period. It appears acceptable to use the figure for the applicable annuity/ies from the end-of-period calculation. Alternatively, a calculation can be done for each new annuity as of the gift date. These individual calculations do not need to accompany the report. An account statement for the California reserve account and proof of payment of the applicable quarterly fees (see below) also accompany the annual report.

On a quarterly basis, information regarding new annuities must be submitted, along with a fee of $60 per agreement for up to ten agreements per calendar quarter. (A hard copy of the signed transmittal form must accompany payment.) The fee is reduced as the number of agreements per quarter increases. In the fourth quarter, if a charity has issued any California annuities that year (even if not in that quarter), a charity must submit a certification attesting that the agreement forms used for annuities issued during the year conformed to California's requirements.

An annual renewal fee is due March 1, regardless of the date on which the charity files its annual report form. In addition, a charity should also expect an invoice for the cost associated with examination of the annual report. See "Audits" earlier in this chapter.

Apart from the quarterly and annual filings related specifically to issuance of gift annuities and holding of a reserve account, the Fraud Division of the Department of Insurance has a Special Investigative Unit (SIU) Annual Report. Issuers of gift annuities are exempt from the Report and no filing is required to claim that exemption.

Florida

Statutes Related to the Filing Requirement

Florida Statutes Section 627.481(6); Florida Rules Sections 69O-202.012 and 69O-202.015.

Due Date for the Filing

There is no report, as such, simply a sworn statement made by two officers of the charity. The statement is due 60 days after the end of the charity's fiscal year.

Requirement That Charity Use Specific Form

Yes, although it is technically just a statement form, rather than a report form. The form may be viewed at https://www.floir.com/docs-sf/default-source/floir-documents/oir-a3-1209.pdf

Submission of the form must be done through the Office of Insurance Regulation's Insurance Regulation Filing System, which can be found at https://irfs.fldfs.com/. The required sworn statement can be downloaded from within the program. The form must be signed by two officers and notarized, and a scanned copy is then uploaded via the online system.

Note: The statement applies to a charity's entire gift annuity program, not just its Florida annuities, unless the charity has opted for a state-specific reserve fund for Florida. However, even though the adequacy of reserves relates to the full program when a charity has its Florida reserves in a multi-state account, the investment restrictions apply just to the Florida portion. See Chapter 13.

Georgia

Statutes Related to the Filing Requirement

See **Note** below.

Due Date for the Filing

December 31. There is a built-in 15 day grace period, but if no filing is submitted the registration will lapse.

Requirement That Charity Use Specific Form

No.

Note: The requirement is not mentioned in any statute or regulation. Rather, it has been established by administrative action. The submission must be made using a filing portal: Sircon.com/Georgia. A Citizenship Affidavit is also needed, which can be found at https://ociapp.oci.ga.gov/Resources/Forms/AllForms/GID-276-EN.pdf.

If an Affidavit was submitted previously and the person who signed the form is still with the organization, then a copy of the prior Affidavit can be submitted; this will continue to be the case for as long as that person remains. However, once they leave the organization, a new Affidavit will need to be submitted by someone else at the charity.

Hawaii

Statutes Related to the Filing Requirement
Section 431:1-204(c)(1)(C).

Due Date for the Filing
March 15. Filed with the Department of the Attorney General.

Requirement That Charity Use Specific Form
Yes, although it is technically more an attestation than a report form. It is available at https://ag.hawaii.gov/tax/files/2019/03/Submit-Charitable-Gift-Annuities-Annual-Statement-2.pdf. While the Department has created an online system for other charity related filings, it is not currently using that system for the gift annuity reporting. Submission is made via email, ATG.Charities@hawaii.gov with the signed form and all supporting documents contained in a single PDF file.

Note: Along with filing the completed form, a charity must submit documents that substantiate compliance with the net worth and segregated reserve fund requirements.

Maryland

Statutes Related to the Filing Requirement
Annotated Code of Maryland, Insurance Article, Section 16-114. Additional guidance is provided by administrative regulations identified by the Maryland Insurance Administration as COMAR 31.09.07.01 through .07.

Due Date for the Filing
180 days after the end of the charity's fiscal year. Extension requests are no longer accepted, but if the filing will be late, notice of that fact should be given to the Insurance Administration in advance of the due date. The Insurance Administration will begin a process for suspending/revoking the permit if the filing deadline is not met.

Requirement That Charity Use Specific Form
No.

A charity is to file annually a copy of its audited financial statements, "presented in conformity with generally accepted accounting principles and audited by a certified public accountant." It is necessary for there to be a statement regarding adequacy of reserves. If the audited financials address gift annuity reserves specifically (as opposed to a combined reference to split-interest gifts including trusts or pooled income funds), that would be sufficient. Otherwise, a statement from a CPA or qualified actuary will be needed. The statement must attest to the adequacy of reserves and the existence of a segregated gift annuity reserve account. If a charity has on staff someone with CPA credentials, that individual may sign the statement. Though an actuary may sign, it should be noted that this attestation is different from the actuarial verification of a reserve calculation that a charity might be obtaining for filing in another state (such as Washington). See Bulletin 22-16, issued by the Maryland Insurance Administration, for further information on the requirements and sample language for the attestation.

Beginning with filings due in the fourth quarter of 2025, submission is made via an online portal: https://marylandinsurance.my.site.com/portal/s/login/. The Insurance Administration is notifying charities of this change and providing a registration link as part of the reminder emails it sends out a few months in advance of a charity's filing due date.

New Hampshire

Statutes Related to the Filing Requirement
Revised Statutes Annotated Section 403-E:3 II (b).

Due Date for the Filing
Four months and 15 days after the end of each calendar or fiscal year.

Requirement That Charity Use Specific Form

Yes, although it is now done via an on-line filing system: https://onlineforms.nh.gov/ To complete the filing, under "Find/Organizations" choose "Charitable Trusts". From the list of forms select Form NHCT15, Charitable Gift Annuity Certification. You then log in to complete the form/submission (first time users will need to register in the system).

Note: The filing can be made as part of a charity's annual report to the Department of Justice's director of charitable trusts concerning the general activities of the charity. This is done within the same on-line system, using Form NHCT12; answering "yes" to the question about issuing gift annuities in the state pulls Form NHCT 15 into the general filing.

New Jersey

Statutes Related to the Filing Requirement

The requirement is set forth by regulation, rather than by statute. See New Jersey Administrative Code Section 11:4-8.8.

Due Date for the Filing

120 days after the end of the calendar year, although a charity may request the permission of the Department of Banking and Insurance to file on a fiscal year basis.

Requirement That Charity Use Specific Form

Yes. The form and detailed instructions can be found at http://www.state.nj.us/dobi/division_insurance/charitableann.htm.A charity is generally to report on reserves being held for all annuities it has issued, not just on its New Jersey annuities. However, a question on the New Jersey form asks if a charity is authorized to issue gift annuities in California and, if so, allows for exclusion of detailed information on reserves held in the required California-only reserve fund. A separate form for the charity's actuary to sign is available from the state, and if the form is used, the actuary's signature must be notarized. In addition, the "work papers used by the actuary to calculate the required reserves" must be submitted. They must be "in such a form and of such detail that calculation of the present value of annuities can be verified." As an alternative to having an actuary verify the calculation of the required reserve, a charity may submit a reserve calculation from a software program (such as PG Calc's *GiftWrap*) along with a statement noting the person or firm providing the report and a description of that individual or firm's experience in running such calculations. This software "waiver" of the actuary requirement may not be available if a charity issues flexible deferred annuities. Finally, the charity will also need to include a copy of its most recent independent audited financial statement. While the report form must be filed by the due date, if the audited financial statement is not available by that time it may be filed later once it is available.

Note: New Jersey will accept a copy of a charity's completed New York form, in lieu of the state's own form. If this approach is taken, the due date must be 120 days after the end of the calendar year, as New York requires completion of its form based on the calendar year. Filing on a fiscal year basis is not an option in this case.

New York

Statutes Related to the Filing Requirement

Even though the basic gift annuity statute, Section 1110 of the New York Insurance Law, refers to the requirement of filing an annual report, it does not set forth the actual requirement. See instead Section 307(a) of the Insurance Law.

Due Date for the Filing

March 1 of the year after the calendar year in question.

Requirement That Charity Use Specific Form

Yes. The form and detailed instructions are available shortly after the end of the calendar year in question, and can be found at https://www.dfs.ny.gov/apps_and_licensing/insurance_companies/as_char

A charity is generally to report on reserves being held for all annuities it has issued, not just on its New York annuities. However, if a charity holds any state-specific reserve funds it is to exclude those reserves from the report. This is true whether the state-specific reserve fund is required (as is the case with California) or whether the charity is holding such a fund at its option (as, for example, might be the case with Florida).

Note: The filing is to be submitted via email to cannuity@dfs.ny.gov. The charity's name should be referenced in the subject line of the email. The submission should include:

- the Annual Statement, both in Excel format and in a PDF incorporating scans of the signed pages, and
- a statement of the reserves required for all outstanding annuities (referred to by New York as "reserve listing"). All organizations must submit this document in PDF format; NY-based charities must also submit it in Excel format. A reserve calculation from PG Calc's *GiftWrap* meets this requirement.

A hard copy original of the signed form is no longer required to be submitted.

North Dakota

Statutes Related to the Filing Requirement
North Dakota Century Code
Section 26.1-34.1-05.

Due Date for the Filing
No due date is set in the statute, which authorizes the Insurance Commissioner to require any report deemed necessary. By administrative action, a charity must submit its audited financial statement to the Insurance Commissioner within 15 days of its completion. Filing is to be done via e-mail to colicexam@nd.gov, attaching a PDF version of the financial statement. The subject line of the email should state "Gift Annuity Financial Statement."

Requirement That Charity Use Specific Form
No.

Oklahoma

Statutes Related to the Filing Requirement
Oklahoma Statutes, Title 36, Section 4076.

Due Date for the Filing
90 days after the audited financial statement becomes available to the charity.

Requirement That Charity Use Specific Form
No.

Note: The filing is submitted via email: ris@oid.ok.gov. It should include a copy of the charity's audited financial statement, along with copies of any amended marketing materials, application form, or annuity agreement, all of which must include the required disclosure language. See Chapter 11. Updated demographic information for the charity is also to be provided, using the same notification form submitted with the initial filing.

Tennessee

Statutes Related to the Filing Requirement
Tennessee Code Annotated 56-52-106, and Rule 0780-01-70-.06 of the The Rules and Regulations of the Department of Commerce and Insurance.

Due Date for the Filing
March 1

Requirement That Charity Use Specific Form
Yes. The form and instructions are available at https://www.tn.gov/content/dam/tn/commerce/documents/insurance/forms/CGAannualreportingform.pdf.

Note: The annual report form and the renewal letter and fee, which at one time were due at different times, are now submitted as a single filing due March 1. However, information on the annual report form continues to be as of a charity's fiscal year.

The filing is to be done via an online filing system: https://access.cloud.commerce.tn.gov/portal/public. New users will need certain information from the Department of Commerce and Insurance in order to create their on-line account; newly registering charities should receive the information at the conclusion of that process. The system may be accessed throughout the year for making name and address changes or to file updated forms of agreement. Fields for the reporting process will be opened up in advance of the filing deadline each year.

If a charity is holding its Tennessee reserves in a multi-state segregated reserve account, the reporting is on all annuities held in that account; if a charity maintains a Tennessee-specific reserve account (which is allowed but not required), the reporting is on just Tennessee annuities. Once a charity has advised the state how it is holding the reserves, it must continue to do so in that manner until obtaining permission from the Department to change.

If a charity has chosen to calculate its reserves (whether in a Tennessee-only or multi-state account) in accordance with either the specified Tennessee methodology or the methodology set forth in the standard valuation law of the charity's state of domicile, then it must also submit with the form an actuarial opinion prepared by a qualified actuary and an account statement for the reserve account. If the charity has instead opted to place in reserve (whether in a Tennessee-only or multi-state account) the total amount of the contribution for each applicable gift annuity, then it does not need to submit the actuarial opinion or account statement.

In addition to the form, a charity must file a financial statement. The statement must either be audited (in which case a copy may be submitted) or verified by two officers of the charity (in which case original notarized signatures of the two officers must be submitted). With the due date now set at March 1, the charity is to file the most current financials that are available at that time; a charity with a December 31 fiscal year end is not expected to have audited financials available for the just-completed year. For example, for the filing due March 1, 2026, a charity with a December 31 fiscal year end would file audited financials and an annual report for the year ending December 31, 2024.

Accompanying the annual report form and audited financials should be a letter of intent to renew containing information regarding a contact person for the charity. The required annual renewal fee of $100 can be paid via the online system, by credit card or e-check.

Washington

Statutes Related to the Filing Requirement
Revised Code of Washington 48.38.010(10).

Due Date for the Filing
Sixty days after the end of the charity's fiscal year. If the sixtieth day falls on a weekend or a holiday, the due date is the first business day thereafter. Submission is through an online system. A filing that is late, or one that is still missing any required item by the due date, will result in a fine, with the amount increasing the later the submission. See **Note** below regarding the due dates for submission of the most recent independently audited financial statement and IRS Form 990.

Requirement That Charity Use Specific Form
Yes. Instructions for both the filing system and the contents of the submission can be found at https://www.insurance.wa.gov/insurers-regulated-entities/financial-information-filing/financial-filing-requirements-charitable-gift-annuities. Note that while most of the filing relates specifically to the gift annuity reserve fund, certain financial information (summary of

net assets and statement of income and expenses) is requested of the charity as a whole. Such information does not have to have been audited.

A charity is generally to report on reserves being held for all annuities it has issued, not just on its Washington annuities. However, a charity may hold state-specific reserve funds, such as is required by California and allowed by Arkansas, Florida, and Tennessee. If that is the case, then the charity may elect either to include or exclude the reserves held for specific states in the main report to Washington. If such funds are excluded from the main report, basic information regarding each such fund is to be provided in an explanation as part of responding to the applicable question.

When the report is filed, it must be accompanied by a copy of a bank or brokerage statement indicating assets held in the reserve account as of the end of the charity's fiscal year, by a formal actuarial certification, and by a list of Washington annuities as of the fiscal year end. (These documents are uploaded as part of the online submission.) If a charity has never issued gift annuities in any state, it may request an exemption from filing the actuarial certification. The request must be made in writing and granted by the Insurance Commissioner prior to the due date for the report.

An exemption granted for a particular year does not automatically carry over to the following year. This means the charity must reapply in writing for any requested exception to the filing requirements each year and have such an exception granted in writing prior to the applicable deadline, even if the surrounding circumstances remain the same.

Note: In addition to filing a completed report form and other documents, the charity must pay a $25 filing fee, plus a fee of $5 for each annuity established by a Washington donor during the course of its fiscal year. The fee is actually paid on a calendar year basis, specifically by March 1 of the calendar year after the one in which occurred the end of the fiscal year to which the fee pertains.

Unless a charity is permanently exempt from having to file Form 990 with the IRS, it must submit a copy of the form to the Insurance Commissioner within 15 days of filing with the IRS. A default due date of 5 months after fiscal year end will be set within the online filing system; if a charity obtains an extension for filing the 990 with the IRS, it should upload a copy of the extension request or approval via the online system. A charity must also submit a copy of its audited financial statement within nine months of the end of its fiscal year. The audited statement must show, either on a separate line or in an explanation within the Statement Notes, the liability for annuity contracts. This liability (which is a matter of Generally Accepted Accounting Principles) is distinct from the separate reserve fund requirement (which is governed by RCW 48.38.020(3)). A charity that has consolidated financial statements will need to include within it a supplemental schedule that provides a breakout showing the financial position of the entity that is registered to issue gift annuities; this relates to the need to provide proof that the registered entity has the requisite unrestricted net assets of $500,000.

Arkansas Certification Form

Certification Relating to Investment of Segregated Annuity Reserve Fund

-- State of Arkansas --

ABC Charity maintains a separate and distinct gift annuity reserve fund as required by Arkansas Code §§23-63-201(d)(2)–23-63-201(d)(4), and invests the fund as permitted by §23-63-201(d)(7)(A)(ii).

As required by §23-63-201(d)(9)(C)(iii)(c), the Board of Directors of ABC Charity certifies that the investments and investment transactions of the gift annuity reserve fund match the investment philosophy of ABC Charity and meet the standards of the prudent investor rule as stated in Arkansas Code §24-2-610–24-2-619.

Attested to this _________ day of ___________, 20___ by the Board of Directors of ABC Charity.

WITNESS my hand and seal this _________ day of __________, 20___.

____
Secretary

Prototype Materials: AR-certification.docx

Chapter 15

MARKETING GIFT ANNUITIES

Introduction

This chapter discusses how to make a planned giving marketing program effective, the audience for each type of gift annuity, techniques for reaching each of these audiences, and offers examples of marketing materials and financial illustrations for different gift annuity donor situations. It will cover marketing concepts that are fundamental in the for-profit world and how they translate to charities. This chapter will also include remarks on setting realistic expectations for your planned giving marketing and how these expectations can influence your overall program. First, a few overall comments:

Marketing efforts do not always bring in leads immediately. First they raise awareness, which is just as important. By building awareness of planned giving, prospects will see an organization's program as a credible and viable option. They will come to understand who you are, what you can offer, and know exactly where to find you.

Marketing must be consistent. A mailing twice a year is not a plan. An organizations' best donors typically will need to receive a direct mail piece several times before reaching out. Many donors will save a planned gift mailing that interests them and discuss it later with a spouse or advisor. When the time is right for them to proceed, they will call.

In the for-profit world, potential customers are much more likely to become buyers when they know a business exists. The same is true for planned giving. When donors are engaged with an organization and aware of planned gift opportunities and their benefits, they are more likely to make a planned gift in addition to their other giving.

Although the philanthropic motivation of donors is not discussed in much detail here, it is pre-supposed. A gift annuity is a means of making a gift. Donors who enter into a gift annuity arrangement usually do so because they are committed to the charity and its mission. Thus, a charity should in all of its marketing materials combine a discussion of a gift's financial benefits for the donor with a compelling case for supporting the institution.

NOTE: In 2019 the American Council on Gift Annuities (ACGA) and the National Association of Charitable Gift Planners (CGP) conducted a survey of best practices for gift annuity programs. (This is distinct from the recurring survey on gift annuities conducted by the ACGA since 1994, and most recently in 2021.) With respect to marketing, the best practices survey report reflects no significant changes from what is included in this chapter. However, it does include narrative comments from the respondents that could be of interest to readers. The report was provided to ACGA and CGP members in Spring 2020, and can be ordered via the ACGA's website acga-web.org.

Value Proposition

What are you marketing? Your brand. Companies compete for sales, shelf space, and share of the customer's mind against other companies that offer similar products or services. In the kinds of competitive environments in which they find themselves, marketers understand that their success in the marketplace is intimately and inextricably tied to the strength of their brand. Consequently, they go to great lengths to build, promote, and enhance it.

Fundamentally, the purpose of asking "What are you marketing?" is to prompt the marketing team to explain in clear, relevant, and compelling ways what sets their organization apart from its competitors – in other words, its point of differentiation. Marketers call this the value proposition.

The underlying elements of a successful marketing campaign include a thorough understanding of organizational culture and values, and it is here that the value proposition lives. There are a number of strategies organizations employ to enhance their understanding of their organizational culture and position in the marketplace. A tool widely-used by marketing experts is the "SWOT" analysis. In such an exercise, key individuals in the organization conduct an honest workshop in which they discuss the organization's *Strengths (Internal)*, *Weaknesses (Internal)*, *Opportunities (External)*, and *Threats (External)*. The SWOT analysis serves as a mechanism that enables marketing to define its organization's unique value proposition.

A SWOT analysis is a worthwhile investment of effort for charities. Generally speaking, it's the responsibility of senior management within the organization to conduct a SWOT analysis of its mission. However, if a SWOT analysis document doesn't exist for your organization, which is quite possible, then the development staff should consider performing the analysis and sharing the results. Conducting this exercise will help your organization assemble critical data about its value proposition and its general status among the many other options donors have for committing their charitable dollars.

Be aware that the way consumers manage their purchase decisions – conducting research by visiting websites, asking their friends and colleagues for recommendations, and accessing consumers' reviews – is not unlike the process they go through when making decisions about how to invest their charitable dollars. This is reflected in the increasing popularity of charity evaluators such as Charity Navigator. As a non-profit, your value proposition is worth determining. It should be meaningful to your various constituencies and expressed throughout your marketing materials and communications.

You must determine the characteristics you want associated with your organization. This brand-building exercise is not unique to the for-profit world. Like those of for-profits, your brand will occupy the hearts and minds of the communities you wish to impact when you produce consistent communications over the long term that reinforce your desired positioning. Unlike most for-profits, however, every member of your organization is a "brand manager." In other words, everyone associated with your organization, regardless of their function, is likely connected to and living your brand. Use this to your advantage by implementing internal educational opportunities in which you share your value proposition and positioning with your organization's staff.

Support for the Program

Organizational support, both external and internal, is one of the most important contributors to a planned giving program's success. A charities' board and senior management team make important decisions about the funding of the program and should be among your most visible supporters. Additionally, volunteers can have great influence over a program's ultimate success. The importance of gaining support from within the organization cannot be overemphasized. Establishing enthusiasm for an organization's planned giving objectives will ensure continued support to see the program through to its projected outcomes. Internal supporters should understand and agree upon the specific goals of the planned giving program. The program should be actively measured and progress regularly reported on to all stakeholders.

How to Create an Effective Marketing Program

It is hard to overstate the importance of developing a strategic marketing plan for your planned giving program. From the most established programs to those just launching, every planned giving program can benefit from the credibility a well-conceived marketing plan creates, the awareness it builds, and the increase in gifts that it brings. Effective marketing will help your prospect group to grow year after year.

Marketing means different things to different people. For planned giving, marketing relates to a charity's website, direct mail, email, social media, and all the touches an organization has with its prospects throughout the year. To put it in for-profit terms, marketing is a planned giving program's branding and public relations.

There are four areas that are critical to the success and effectiveness of any marketing effort.

1. Establish the Objectives
2. Define the Strategy
3. Execute the Tactics
4. Measure, Report, Refine

These four areas are sequential and must be addressed in the order listed. A strategy cannot be formulated before objectives are established, tactics can only be determined once a strategy is in place, and measuring can only take place once the program has been executed. The rest of this chapter will outline the details of these four areas.

Establish the Objectives

Objectives are the goals you set for your program. They identify what you want to accomplish. Without them it's like sailing without a compass. You won't know if you are on course or if you need to change your direction in order to reach your "destination."

Establishing and publicizing your marketing objectives is important to your success for several reasons. It will confirm your understanding of the organization's priorities so that you can proceed with the confidence that your efforts are aligned with the organization's strategic plans. It also allows you to create champions for the program among senior management. Doing so will help ensure your planned giving marketing program is allocated the resources needed to get the job done. Lastly, establishing and publicizing your marketing objectives reinforces your ability to say "yes" to efforts that promote the true priorities and "no" to efforts that would promote lower priorities – something that can be difficult to do without transparency and support.

Here are some important considerations when creating objectives:

- When an organization declares its marketing objectives it is setting itself up for success.
- When choosing objectives, select goals that can be realistically achieved.
- Set tangible, measurable goals that complement other less quantifiable, but no less important, goals.
- Well-defined objectives allow marketers to articulate clearly and succinctly what the marketing program seeks to achieve.
- When objectives are measurable, an organization can demonstrate success when it happens. Similarly, an organization can

learn valuable lessons when results are less positive than projected.

- Formalizing realistic and measurable objectives help set appropriate expectations for leadership.
- Regardless of the size of your budget, keep in mind that every dollar spent is the organization's money – and should support the organization's priorities.

Example Objectives:

- Attract X number of new prospects.
- Attain life-income revenue of $X.
- Gain leadership commitment to start a legacy challenge.
- Include a public planned giving component in the capital campaign.
- Increase the planned giving prospect pipeline X percent in Y years.
- Formalize the stewardship program, thereby creating a culture that will support the initiation of a new legacy society.
- Increase collaboration with development staff to maximize the number of internal planned giving referrals.
- Include planned giving performance metrics for all gifts officers.
- Integrate planned giving messaging within development communications.
- Provide training for development staff, leadership, and other key influencers.
- Leverage the influence of highly-regarded board members by having them arrange their own planned gifts that will benefit the organization.

Ideally, an organization's marketing plan is based on three to five planned giving objectives to be executed over several years. These objectives depend upon numerous factors, which include (but are not limited to):

- the existence and strength of the organization's legacy society,
- the maturity of the organization's existing planned giving program,
- the availability of demographic data on the organization's planned gift prospects and existing donors,
- and awareness of the planned giving program among key constituents.

In addition, an organization's planned giving objectives will be influenced by what is known about its:

- marketing efforts conducted to date and the level of success,
- level of preparedness to implement marketing tactics,
- existing development marketing efforts that can be leveraged,
- and the readiness of its database to support the proposed marketing efforts.

Tips for Developing Objectives

- Marketing objectives should first and foremost support overall program objectives.
- Encourage buy-in, adoption, and enthusiasm for the objectives.
- Make priorities and goals transparent to the organization's leadership and to colleagues.
- Get commitment for the appropriate human, technical, and other budgetary resources.

Considerations

There are several elements that will affect the performance of a charity's overall marketing program. They should be taken into account when a charity is developing or reviewing the marketing objectives for its planned giving program, specifically.

Economy

The general health of the economy certainly has an impact on giving, but its effects are not consistent charity to charity. When the economy is struggling, for example, this can be exactly the right time to promote gift annuities more rather than less. At a minimum, charities should maintain their marketing activities or even consider increasing marketing of annuities with messages like, "An annuity is a source of stability in uncertain times."

Not promoting gift annuities when investment returns are down poses several issues, but the biggest is that a decline in new gift annuities will become a self-fulling prophecy. The challenge is to make sure leadership and finance understands why continuing to promote the gift annuity program is a sound strategy. If a charity has existing gift annuities, pulling back on promoting them or not issuing new annuities locks in losses and increases risk to its existing portfolio of annuities. Issuing gift annuities during all economic times, up and down, helps diversify an organization's annuity pool. Overall, gift annuities are most likely to be profitable for charities that actively promote their annuity programs consistently, in good economic times and bad.

Staffing

While gift planners always take budget into consideration when planning a marketing program, they don't always give sufficient consideration to the staffing and internal resources they will need to execute the marketing program successfully. Maybe there has been a reorganization, a change in responsibilities, a reduction in staffing, or a change in organizational direction. These circumstances need to be taken into account. For some institutions, limited availability of staff resources to conduct marketing activities for planned gifts may require a reduction in the types of marketing activities so that the ones that are continued can be accomplished well. For others, limited staff time may cause them to focus purely on prospecting via data mining, thereby minimizing their marketing efforts entirely. Knowing how much money, but more importantly, how much time can be dedicated to marketing is critical to the success of the program.

Campaign Status

The trend these days is for organizations to include planned giving in their capital campaign goals, but what that looks like can vary significantly from one organization to the next.

If an organization includes planned giving in its campaign goals, this will only enhance the success of its planned giving program. For example, some organizations count irrevocable bequests and life income gifts at face value for donors/beneficiaries who are over a certain age, such as 75 or 80, and at a discounted value for younger donors/beneficiaries (using an agreed upon methodology that is shared with the public).

When planned giving is not included in an organization's campaign, the focus on planned gifts during the course of the campaign generally decreases. If an organization chooses not to include planned gifts in its campaign goals, then the organization should set appropriately lower goals for its planned giving program.

Organizational Leadership

Active philanthropic leadership can strongly effect the marketing of gift annuities. Leaders who truly embrace planned giving and the power of communication will support promotion of gift annuities being woven into the fabric of their organization's everyday development activities. Contrarily, those leaders only interested in outright gifts will inhibit the growth of the planned giving program. In this case, the strategy for marketing gift annuities may need to be adjusted to minimize the impact of unsupportive leaders on the program.

One way to do this is to hire an outside consultant to advocate for your program with your organization's board and other leadership and to provide expertise. Another possibility is to identify a leader within the organization who will not only act as an internal advocate and ambassador to get others to think about this kind of giving, but may also play a role of co-chair of the legacy society.

Define the Strategy

The strategy discussed in this section refers to identifying the audience, crafting the message, and addressing additional ways to generate leads, not just to marketing. Defining the strategy is the part of the planned giving marketing process that tends to be overlooked or at best is defined during the execution phase. The consequence of putting too little effort into defining a strategy is a less efficient and effective marketing outcome.

The Gift Annuity Audience

Figure 15.1 below lists selected characteristics of gift annuities per the 2017 and 2021 Surveys of Charitable Gift Annuities conducted by the American Council on Gift Annuities (ACGA).

Typical Charitable Gift Annuity Profile

- Donors aged 65 to 90
- Donors concerned about outliving their resources
- Donors wanting security of fixed payments
- Donors wanting to provide life payments to one or two people
- Donors with investments yielding low returns
- Donors in higher tax brackets wanting partially tax-free payments
- Mid-life donors seeking a supplemental retirement plan

Figure 15.1

Gift Annuity Profile

		2017 Survey	2021 Survey
Mean age of annuitants at the time immediate gift annuities are funded		79	79
Sex of annuitants	Male	46%	48%
	Female	54%	52%
One-life annuities: mean percentage		70%	70%
Two-life annuities: mean percentage		30%	30%
Percentage of gift annuities that are immediate		87%	80%
Percentage of gift annuities that are deferred		13%	20%

Per Figure 15.1, the average age for annuitants of immediate gift annuities is 79. This means that many such annuitants are above age 79, and in most cases they are donors who have established annuities for their own benefit. Many are in their 80s, or even in their 90s. Clearly, the primary audience for immediate gift annuities is the charity's oldest prospect and donor groups. The very best prospects are those older individuals who have already completed a gift annuity.

According to the 2021 ACGA survey, only 20 percent of all gift annuities are deferred. While still a small percentage, the percentage of gift annuities that are deferred has grown steadily in each ACGA survey since 1994, when the percentage was just 5.8 percent. The increasing trend could be attributed to (1) relatively low contribution limits on qualified retirement plans, creating greater interest in supplemental plans, (2) relatively attractive interest credited during the deferral period, and possibly (3) the growing use of the flexible deferred gift annuity.

The flexible deferred gift annuity allows an annuitant to decide later when to start payments, rather than requiring the donor to select a payment starting date at the time of the contribution. In the 2021 ACGA survey, 56 percent of charities reported having completed a flexible deferred gift annuity. This is a substantial increase from the 32 percent reported in the 2017 ACGA survey and 31 percent reported in the 2013 ACGA survey. Chapter 18 is devoted primarily to this increasingly popular type of deferred annuity, and includes a discussion of the private letter ruling (PLR 9743054), specimen agreements, and related sample documents.

Immediate Gift Annuity Audience

Here are the typical categories of donor to which immediate payment gift annuities are promoted and for whom their benefits resonate. A pooled income fund gift may have some appeal in some of the same situations, but longstanding very low interest rates have made this type of gift unpopular for many years. See Appendix 3 for a comparison of gift annuities and pooled income funds.

Older Individuals Who Want the Security of Predictable Payments

Many older individuals have primarily fixed income investments and cash equivalents, and perhaps their interest income has been modest. Persons holding such investments are attracted to partially tax-free payments that are often significantly larger than the fully-taxable interest they have been receiving. Those who have stock or mutual fund shares may welcome the opportunity to eliminate risk and receive payments that are larger than their current dividends while avoiding immediate taxation of the capital gain.

Individuals of Any Age Who Want to Provide for Someone Else Who is Older

Some adults are providing supplemental financial support for aged parents who have limited income. Others regularly subsidize siblings who are struggling financially. Still others would like to provide for a friend.

Often people who subsidize a parent, sibling, or friend do so with after-tax dollars. For example, a person who is subject to a 32 percent income tax rate and who is sending an aged parent $500 per month, must earn $735 in order to provide that $500 monthly check. In those instances, it could be advantageous to transfer some capital to a charity for a gift annuity and name the parent, sibling, or friend as the annuitant. With this arrangement the donor not only retains the future income that would otherwise have been used to make future cash gifts to the other person, but also receives an income tax charitable deduction that may reduce current taxes. The tax paid by the recipient will likely be minimal because a portion of the payments will be tax-free, and the taxable portion of the payments will be taxed at a low rate.

It should be noted that the donor makes a taxable gift to the annuitant of the present value of the annuity. Since this is a present interest gift, it qualifies for the gift tax annual exclusion. Thus, the taxable gift can be reduced by $19,000 in 2025 ($38,000 in 2025 in the case of gift splitting by married donors). The donor may avoid making any taxable gift by retaining in the gift annuity agreement the right, exercisable during the donor's life or at the donor's death by will or other testamentary instrument, to revoke the annuitant's right to payments. See Reg. Sec. 25.2511-2(c). Then the donor will have made no completed gift until the annuitant actually receives the annuity payments, and if those payments are $19,000 or less in 2025 ($38,000 or less when two spouses are donors), they will be covered by the gift tax annual exclusion. However, if the donor predeceases the annuitant, the present value of the annuitant's future payments will be included in the donor's estate.

A donor who funds such an annuity with appreciated securities will recognize the capital gain allocated to the value of the annuity. This gain cannot be reported over the life expectancy when the donor is not the annuitant.

By marketing gift annuities to individuals who are providing financial support to a parent or other elderly family member, you will greatly increase the number of prospects. There are approximately 28 million U.S. individuals over the age of 70, and they are the ones most likely to establish a gift annuity naming themselves as annuitants. Suppose that you also market immediate gift annuities to donors age 50-70. They are the Baby Boomers, and there are two and a half times as many of them as there are people over 70. Think of how much larger your prospect pool if you marketed gift annuities to this cohort.

Does marketing immediate gift annuities to younger individuals mean lowering the charity's minimum age for annuitants? No, that would not be a good idea. Rather, the recommended strategy is to market gift annuities not only to older individuals who want payments for themselves but also to donors who would consider establishing a gift annuity for someone else. In many cases the annuitant will be a parent who needs supplemental financial support for retirement living. With the aging of the population, there are ever more persons with dwindling savings, and establishing a gift annuity for them could be an attractive alternative to a monthly subsidy.

Individuals Who Want to Live in Their Home and Receive Life Payments

The two largest assets most people own are their retirement funds and their home. Many would like to continue living in their home, yet convert some of the equity to life payments. This can be accomplished with a reverse mortgage offered by some financial institutions. It is also possible through a transaction in which a donor retains a life interest in a personal residence and gives the remainder interest in the residence in exchange for a gift annuity. (See Chapter 17 for examples that consider such a transaction from both the donor's standpoint and the charity's.)

Charities with sufficient financial resources and risk tolerance may find a large number of older homeowners, especially those without children, who are willing to commit their home to charity, provided they derive some present financial benefit. A gift annuity is really the only appropriate life-income charitable arrangement when the donor does not want to vacate the home.

A charitable remainder trust is not possible in these circumstances because living in the home rent free constitutes prohibited payments to the donor, and paying rent – even market rent – would be a prohibited act of self-dealing (see Appendix 2 for a comparison of the markets gift annuities and charitable remainder trusts).

Donors Interested in Establishing a "Virtual Endowment" During Their Lifetimes

Some donors would like to establish an endowed fund now and have the satisfaction of seeing the results. However, they hesitate because they might need the income from all of their investments should their circumstances change. One possibility is for them to establish the endowment at the end of their lives funded with a bequest or other revocable deferred gift.

Another is to create a "virtual" endowment now. The endowment would be a gift annuity, the payments from which would approximate the distributions from an endowment established now. The donor would authorize the charity until notified otherwise, to withhold the annuity payments and use them for a designated purpose – scholarships, for example. See [Appendix 9 of Chapter 5] for a sample of a letter by which such an arrangement could be made. From a tax standpoint, it is as if the donor actually received the payments and then made outright contributions. Thus, the donor would receive the normal Form 1099-R each year showing the taxable portion of the payments, and also a gift acknowledgement for the payments.

Since the deduction would equal or exceed the portion of payments taxable as ordinary income, the donor could have some net tax savings each year.

Should the donor need the payments any time in the future, she would simply advise the charity to start sending them to her. This would interrupt the distributions for the scholarship or other purpose. However, at the end of her life, the residuum of the gift annuity would constitute the principal of the endowment, and the distributions would resume.

The arrangement functions like a fully-funded endowment. The difference is that the donor, rather than the charity, retains the right to receive payments for personal use. The virtual endowment could bear the donor's name or other name she chooses, and she can specify the purpose, consistent with institutional policy.

Deferred Gift Annuity Audience

Here are the typical categories of donor to which deferred gift annuities are promoted and for whom their benefits resonate.

Individuals Who Want to Establish a Supplemental Retirement Plan

The primary audience for deferred gift annuities is mid-life individuals who would like to provide additional cash flow during retirement. Many are already contributing the maximum allowable to their 401(k), 403(b), Keogh, IRA or other plan, and they would like to accumulate still more on a tax-favored basis.

Although contributions for a deferred gift annuity are not fully deductible as they would be if made to an IRA or a qualified retirement plan, deferred gift annuities offer these advantages:

- The donor is not subject to contribution limits. Any amount in any year can be contributed.
- Whereas only cash can be contributed to a qualified retirement plan, appreciated property can be contributed for a deferred gift annuity. Some of the gain (the portion allocated to the gift value) will not be taxed at all, and recognition of the rest of the gain can be deferred and reported ratably over the donor's life expectancy, if the donor is an initial annuitant.
- There is no required beginning date for payments. They can start as early or as late as the donor wishes.

Retired Individuals Who Want a Deduction Now But Do Not Need Payments until Later

A number of persons who have already reached retirement age choose to defer payments for a few years. Possibly, they will be receiving substantial sums in deferred compensation for the first two or three years after retiring. Maybe they are scheduled to receive a balloon payment from an installment note, or they plan to sell some appreciated property. For whatever reason, their income will be extraordinarily high for a temporary period, and then it will drop.

At that point additional cash would be welcome, but what is needed now is a deduction to reduce taxes on a temporary bulge of income. A deferred gift annuity with payments starting in four or five years fits their situation.

Flexible Gift Annuity Audience

Here is the typical category of donor to which flexible gift annuities are promoted and for whom their benefits resonate.

Individuals Who Want to Establish a Supplemental Retirement Plan But Are Unsure When They Will Retire

As with the standard deferred gift annuity, the primary audience for flexible gift annuities is individuals who would like arrange for additional cash flow during retirement on a tax-favored basis. As implied by its name, the flexible gift annuity offers the donor the flexibility to make the gift and benefit from an income tax charitable deduction now, but choose when payments will start later (assuming the donor is also the annuitant). The longer the donor chooses to delay the start of payments, the greater the annuity amount will be.

For donors who are unsure of when they will retire and therefore when they will want to start receiving supplemental income from their gift annuity, the flexible gift annuity is preferable to a deferred gift annuity. Instead of being locked into a specific payment start date and amount, as would be the case with a deferred gift annuity, the donor can choose to start receiving payments once she knows her retirement date. By doing so, she will start receiving payments when she wants them and the annuity amount will be greater than if she had created a deferred gift annuity with a payment start date earlier than the one she ends up electing.

Note that the age of retirement varies widely, so the flexible gift annuity could appeal to individuals ranging in age from roughly 50 to 80 years old.

See Chapter 18 for a detailed analysis of the Flexible Gift Annuity, including of the Private Letter Ruling that brought it into being, sample illustrations, and related sample documents.

Commuted Gift Annuity Audience

Here are the typical categories of donor to which commuted gift annuities are promoted and for whom their benefits resonate. The audience for commuted gift annuities is smaller than the audience for deferred or flexible annuities. See Chapter 19 for a detailed analysis of the Commuted Annuity, along with related sample documents.

Individuals Near or at Retirement Who Want to Fill a Gap in Income

Many donors plan to retire before they have reached 72 years old, the age at which most qualified retirement plans require minimum distributions to start. Some of these donors may wish to maximize the tax-free build-up of principal within their qualified plan by delaying taking distributions as long as possible. In the meantime, they would like a source of tax-favored cash flow to bridge the gap between retirement and commencing withdrawals from their qualified retirement plan. For such a donor who also wishes to make a charitable gift to your organization, a commuted gift annuity can be an excellent solution.

The donor creates a deferred gift annuity with payments to start when they retire (or if she has already retired, to start one year or more from the date of gift) and includes the right to commute the lifetime annuity to a specific number of years of payments of equivalent present value. The donor specifies a number of years that corresponds to the gap between retirement and commencing withdrawals from her qualified retirement plan at 72. Shortly after creating the deferred gift annuity, the donor (who is presumably also the annuitant) commutes the payments.

The donor enjoys several benefits from the arrangement. She gets an income tax charitable deduction in the year of her gift. She receives relatively large payments during the years the commuted payments are made, a portion of which are tax-free. If the annuity is funded with long-term appreciated property, the capital gain attributable to the gift portion of the arrangement is not taxed and the rest of the capital gain can be reported ratably over the years the commuted payments are made.

Individuals Who Would Like to Assist a Family Member with College Expenses

The donor funds a deferred gift annuity and names a child, grandchild, niece, or nephew as annuitant with the life payments to begin at age 18, or whatever age the child is expected to enter college. Prior to the annuity starting date, the annuity is commuted to four (or more) annual installments. Thus, instead of receiving very modest payments for life beginning at age 18, the student receives large installments during the college years. In order to minimize the risk to the charity of issuing a commuted annuity, it is important for the annuitant to commute payments within a short time after the gift is made.

The most likely audience for such annuities is grandparents, who have the desire and wherewithal to assist grandchildren with their education, but would like to provide the assistance in a tax-efficient manner. The grandparent receives an initial deduction, the contribution compounds on a tax-free basis, and the student, though taxed on a substantial portion of the installments and subject to an early-withdrawal tax penalty, likely does not pay a lot of tax because of being in a low tax bracket (although the so-called "kiddie tax" may be a factor). In evaluating the plan, the grandparent must take into consideration the fact that a taxable gift is made to the grandchild and that the grandparent will immediately recognize capital gain if the annuity is funded with appreciated property.

Messaging

Many planned giving professionals have backgrounds in law, accounting, or finance due to the technical and sometimes complex nature of planned gifts. As a result, the tendency is to talk about the various vehicles in a way that is as accurate as possible, which unfortunately makes its way into marketing communications. Not surprisingly, research suggests softer, less formal language can engage the donor more effectively. *("Words that Work," Russell James 2014)*

This research shows that using laymen's language for technically accurate terms can increase interest in making a gift. For example, describing a gift annuity as "Make a gift and receive payments for life" is much more positively received than "Enter into a contract, transfer property to the charity, and receive a guaranteed lifetime income." The benefits of establishing any planned gift should be described in the less formal language.

Studies have shown, and we have found from our own experience, that CGAs are more "transactional" gifts than bequests. For most organizations, the percentage overlap between donors who have made a bequest and donors who have funded a gift annuity is in the single digits. Our testing has found that marketing the financial benefits as the primary message is more effective than mission in generating leads. For this reason, a gift annuity message should lead with the financial benefits to the donor*. The case for support should be secondary.

When communicating with donors, segment the audience by age so that the message is as relevant as possible given where they are in their own life-cycle. For example, you might use a message about supplemental retirement income with prospects approaching or in their retirement years (deferred gift annuity), a message about supporting elderly relatives with parents who might want to provide financial support for their own parents (immediate payment gift annuity), and a message about financing a younger person's college education with grandparents who might like to help their grandchildren (commuted gift annuity – see Chapter 19).

*** Note:** *If a charity indicates that a gift annuity contribution can result in increased cash flow, it must be careful not to be misleading. It is inaccurate to compare the income from a gift annuity with the income from a*

CD or similar investment, and the annuity rate should never be referred to as the interest rate. The beneficiary (annuitant) receives neither income nor interest but payments, which are a combination of tax-free return of capital and ordinary income when cash is contributed, and a combination of ordinary income, capital gain, and possibly some tax-free return of capital, as well, when long-term appreciated property is contributed.

Messaging Themes

Reduce Taxes

- Income tax charitable deduction reduces donor's income tax
- Avoid capital gains tax

Ensure Security and Provide for Family

- Provide for spouse's care and support
- Provide for children or other heirs
- Handle special needs such as an infirm parent or disabled child
- Guaranteed lifetime payments for the donor or others

Create a Legacy

- Allow a donor to make a gift as part of an existing campaign that not only helps the organization reach its goals, but also provides donor recognition
- A gift annuity can carry on a donor's passion and legacy through the charities' work long after they're gone
- Donors can have an impact they never imagined was possible on an organization that they care so much about

When marketing gift annuities, keep it simple. While there are many types of gift annuities that can work for a donor – immediate, deferred, flexible, commuted, or step – the focus of the messaging should be on the donor's benefits. Leave the type of annuity out of the picture.

Testimonials

Nothing attracts a reader's attention as much as a story about a real person, especially if that person is known to the reader. The reader can make an emotional connection with the story and imagine making a similar gift. That is why a testimonial article about a gift annuity donor is far more effective than an article that describes gift annuities.

Another form of testimonial is a letter from a person who has completed a gift annuity to a target audience that has a demographic profile similar to the sender's. The person describes the annuity he or she has completed and commends it to the recipients for consideration. Some gift annuity donors are willing to write such a letter, or at least to suggest the gift annuity concept in conversation with friends.

Testimonials are probably the most powerful way to convey the gift annuity message. Having a donor explain why he or she gave to the charity in this form encourages readers to put themselves in the donor's shoes and make a similar gift. As a result of the strong response testimonials inspire, many charities include testimonials in large mailings and make acquiring testimonials from new gift annuity donors a part of their marketing strategy.

Note: *Alabama no longer specifically prohibits use of testimonials.* See Chapter 11

Lead Generation

The purpose of having a marketing strategy is to make sure the charity is executing its marketing efforts as effectively and efficiently as possible, given budget and time constraints. Initially, the purpose of marketing communications is to build awareness of an organization's planned giving program. Eventually, however, the goal needs to evolve toward generating qualified leads for gift officers.

While not generally part of a marketing strategy, it's important to recognize three commonly used lead generation methods that are most effective when used together.

1. Traditional marketing tactics
2. Prospecting via data mining
3. Referrals from others

Most organizations focus on traditional marketing tactics, such as mailings to donors over a certain age or ads in the organization's magazine, and don't give enough credence to the other two practices. When we look at the most successful planned giving marketing programs, however, internal referrals and data mining are where the majority of their quality leads actually come from.

For charities with limited staff time dedicated to planned giving, devoting some of that time to the above efforts is more effective than spending that same time on traditional marketing tactics. Regardless of program size, an organization can greatly expand the reach of its planned giving program by making referrals and prospecting via data mining priorities in its overall lead generation efforts.

Prospecting via data mining

Identify the top planned giving prospects who have a propensity and capacity to make a planned gift. This can be done in conjunction with a planned giving rating score supplied by an internal data analytics team or by a firm that specializes in data analytics. (In our experience, using common industry criteria – FLAG (frequency of giving, longevity of giving, age, gender – is more appropriate for identifying bequest prospects than gift annuity prospects.) Once the top planned giving prospects in your database have been identified, create a one-to-one cultivation strategy for each one using internal resources to gather as much information as possible about the prospect. The goal is to continuously work this "list," removing the prospects that show no short term potential and regularly replenishing the list with new prospects based on repeated data mining and profiling.

Referrals

Identify the key influencers and internal stakeholders at your organization who can encourage others to make a planned gift, such as:

- Major and annual fund development staff
- Senior leadership
- Board members, trustees
- Employees
- Volunteers
- Guild/auxiliary members
- Legacy society members
- Professional advisors

Execute the Tactics

Once you have established and articulated the objectives and defined the strategy for your gift annuity marketing program, it is time to execute the tactics that put your marketing plan into action.

The Four Ps of Marketing

The process of executing a marketing plan should be informed by what marketers call the "Four P's" of Marketing. It defines marketing options in terms of product, price, promotion, and place so that an offering meets a specific customer need or demand. The Four Ps are about putting the right product, in the right place, at the right price, at the right time. And that's just what organizations need to do with their planned giving marketing.

Think of the four areas to marketing success, discussed earlier in the chapter, as the pillars of a building. They create the structure that holds the plan together. The four P's of marketing are the foundation on which these pillars rest. Taken together, they will allow you to build a successful marketing program.

The *product* is a planned gift that will positively affect the future of an organization while providing tax benefits and, in most cases, income to the donor. The *price* is the value and type of asset used to fund the gift – stock, real estate, cash, etc. The *promotion* is the specific efforts made to communicate about planned gifts (email messages, letters, estate planning seminars, etc.). The *place* can be your website, a donors' home (direct mail, email, or a personal visit), or an event at your institution.

The Four Ps of marketing are basic in concept, but executing them well is not easy. To create the right marketing plan, every charity and non-profit should ask itself the questions below to create the proper "marketing mix" for promoting planned gifts to their constituents. The suggested possible answers are just examples. Other answers may be appropriate for your organization.

1. What do our donors want when giving to our institution? **(Product)**
   - Immediate payment gift annuity?
   - Deferred gift annuity?
   - Bequest in the will?
   - Beneficiary designation?

2. Where do our donors look for information when giving to our institution? **(Place)**
   - Website?
   - Radio advertising?
   - Email?
   - Newsletters?
   - Onsite event?

3. What are the benefits donors receive when giving different types of assets? **(Price)**
   - Appreciated stock?
   - Retirement assets?
   - Cash?
   - Real estate?

4. What are the best messages to communicate to our donors about giving to our institution? **(Promotion)**
   - The impact your gift will have?
   - The legacy you will be remembered by?
   - The financial and tax benefits you will receive?
   - The other dedicated people you'll join when you support us?

The purpose of these tactics is to get individuals to raise their hands, to identify themselves as interested in learning more about gift annuities. These are the people to set appointments with and visit in person. If discussions go well, you can assist your prospect with completing a detailed annuity inquiry form (see Appendix 1) and then provide her with a financial illustration. PG Calc's software, *PGM Anywhere*, can create this type of illustration. These steps, of course, are essential for closing any type of planned gift. Likewise, some techniques for identifying individual gift annuity prospects apply equally well to other kinds of planned gifts.

Marketing Techniques

The list of techniques, known as the marketing mix, is broad. Determining which techniques will work best for a specific organization will depend on its program size, budget, and the human resources available. Most organizations use a combination of print and digital media to communicate with their prospects. Other tactics, such as advertising, calling programs, and seminars, can be effective, but involve a significant financial and human investment. In the pages that follow, each of the marketing tactics listed below is discussed.

Print	Letters, self-mailers, newsletters, inserts, reply envelopes, advertising
Digital	Websites, email, social media
Advertising	Web, radio, television
Calling Programs	Telephone
Seminars	Estate planning workshops

Print

Traditional print marketing has been around since the creation of paper and while the advent of the internet and digital marketing has changed the way we market, print still plays a critical role in planned giving marketing and will continue to for quite some time. This is partly due to the average age of a gift annuity donor, which is 79. The use of print will change as the next several generations move into that age bracket, but for now print is still the primary medium used to market gift annuities.

Note: *The gift annuity regulations in some states can affect the content of marketing materials. California requires that all promotional materials advise donors to seek the advice of competent counsel and that the state guaranty association does not guarantee or insure gift annuities. Oklahoma and South Dakota require that the disclosure language they require in annuity agreements must also appear in any promotional materials. Alabama once prohibited the use of "testimonials" - both donor quotes and generic fact patterns used for illustration - but that is no longer the case.. See Chapter 11.*

Targeted Mailings

A targeted mailing is different from the traditional "mass" mailing. A targeted mailing carries a specific message to a specific audience. In the case of gift annuities, the message is likely influenced by the recipient's age. A targeted mailing is all about personalization. The more personalized one can be when talking to the intended audience the better the results. One example is sending a mailing that includes financial benefits, the payment amount and deduction for a gift annuity, that are tailored to each recipient based on his or her age and an assumed gift amount. (PG Calc's *BatchCalcs Service* can help you create such a mailing.)

The group that is selected for a mailing should depend on the objective of the mailing. If the objective is to identify prospects for immediate gift annuities, the mailing could be sent to a group of individuals age 68 and older. On the other hand, if the objective is to identify prospects who may be interested in a supplemental retirement plan, the mailing should be to a younger cohort in the 50-to-65 age range. To the extent the information is available, the group could be narrowed to professional and business persons who are regular contributors and who have a certain wealth rating. If the objective is to encourage gifts of a personal residence where the owner receives fixed payments and continues to live in the residence, the mailing could be to retired homeowners whose homes are assessed above a certain threshold or located in specific zip codes.

Charities other than colleges and universities may not know the ages of their constituents, so they should segment their mailing list based on characteristics that are indicative of age. A symphony or ballet, for instance, might send the gift annuity mailing to season ticket holders for the matinee performances, who tend to be older. Depending upon the size of its prospect base, a charity may also want to consider consistency of giving, for instance including only donors who have made three or more gifts to the organization during the previous five years.

Because age is a critical factor in marketing gift annuities, organizations that don't already track this information should invest in an age-append service to have the constituents' ages added to their database. While these services are not 100 percent accurate, they provide enough accuracy to make the investment of time and money worthwhile. A charity may also acquire demographic information about persons whose names are on a mailing list.

A targeted mailing can be done in a variety of ways. See examples of each format starting on page 28 of this chapter.

Letter Package

A gift annuity letter mailing that usually elicits a good response consists of four pieces:

- A personal letter addressing the recipient's possible situation and highlighting the benefits of a gift annuity.
- A one-page graphic describing a gift annuity.
- A reply card to be completed and returned if the recipient would like more information.
- A pre-addressed, postage-paid return envelope.

Postcards

A way to reach a target audience that is less costly than a letter package mailing is with a postcard mailing. A postcard format addresses concerns that a donor may not take the time to open a gift annuity letter and read it through. And because a postcard mailing is simpler and less expensive to produce, it may help a charity to get its message out more frequently.

The trade-off is that a postcard conveys less information to the prospect and is necessarily less personal than a letter mailing. Whether it makes sense to use a postcard rather than a letter mailing depends upon the maturity of a charity's gift annuity program, the frequency and format of the mailings with which the charity communicates, the availability to its prospects of more detailed gift annuity information through other marketing channels, and the charity's marketing budget. Many charities do both types of mailings and test the response rates in each case to see what works best for them. PG Calc generally recommends sending a variety of mailing packages.

Self-mailers

This format can vary in size from an extended postcard that includes a tear-off reply card that can be closed by a self-adhesive clear tab, to a large sheet folded into thirds the size of a business envelope that also has a tear off or standalone reply card and a postage paid return envelope. Organizations are trying many different formats in order to test and increase their response rate.

Prospects who respond to a letter, postcard, or mailer, should receive a phone call, personalized illustration, or gift annuity brochure. Ideally, prospects are telephoned. The caller's objective is to qualify the donor and, if genuine interest in possibly funding a gift annuity is confirmed, secure an appointment.

While it can be time-consuming to perform, one-by-one, the calculations needed for any substantial number of personalized illustrations, there are companies, including PG Calc, that offer this service at a reasonable cost. And as part of the plan, the donor should receive a follow-up phone call a couple weeks after an illustration is mailed.

Regardless of the format of a targeted mailing, its message should include the webpage address (also known as the URL) where the prospect can learn more and be directed to the next action the organization would like them to take. All too often, organizations send print mailing recipients to their planned giving home page, leaving it to the prospects to determine their next step. This is poor marketing practice. It is much more effective to create a web page that is designed specifically for responders to the mailing, often called the "landing page." An additional benefit is that tracking web statistics for a mailing-specific landing page will give the charity valuable insight into the effectiveness of its mailing.

Print Advertisements

The most common vehicle for print advertisements is an organization's own publication(s). These advertisements, which often are more like advertorials that feature donor testimonials, are included in all forms of internal publications, from development news, to membership newsletters, to organization magazines. This approach allows an organization to reach a pool of potential donors who already have a connection to the organization.

For charities that have few older donors, or depend on the general public for donations, advertisements in publications external to the organization may be a good source of prospects. Selection of the appropriate message, the right periodical, proper placement of the advertisement within it, and running the advertisement at the right time are all critical to the ad's success. The right place and time could be the financial section of the local Sunday newspaper. The right periodical could be a national magazine for seniors, such as Modern Maturity, or one of the many local newspapers that are targeted to senior citizens.

Charities that market through the public media will inevitably receive responses from people who have little charitable motivation and who are exploring investment alternatives. The quality of leads will be better if the advertisement mentions the mission of the charity as well as the financial benefits to the donor.

Newsletters

For some charities, the planned giving newsletter continues to be, year after year, one of the most important sources of planned giving prospects. It is a wonderful way to give visibility to the charity's work and how the planned giving program has helped to make that work possible. It can also educate readers on gift possibilities, and prompt them to identify themselves as prospects by returning a response card. Each issue of the newsletter can focus on a specific form of gift annuity or gift asset used to fund it. Each issue should include a compelling profile of a gift annuity donor that describes who they are, their gift and what it has meant to them, and why they gave it.

Mailer Inserts

Inserts that "piggyback" on a non-planned gift mailing, such as an annual fund solicitation, an acknowledgement receipt, or a 50th year reunion reminder, can be an effective way to spread awareness of gift annuities. The purpose of the insert is to pique interest and prompt a request for more information. It could simply pose a question such as, "Did you know you can make a gift and receive fixed payments for life?" and then say how to learn more. As with any marketing mailing, it is best to segment the audience. If demographic information is available, include the inserts only with gift receipts to people over a certain age or with a certain number of years of giving.

Check-off Boxes

To help prospects self-identify, a check-off box can be added to annual giving response cards. This effort can generate leads at essentially no cost. The line can be very specific – "I would like more information on a charitable gift annuity" – if donors and prospects are seeing the charity's gift annuity message in other venues and are familiar with the concept. Otherwise, a more general line – "I would like more information on gifts that make payments to me for life" – will work better.

Digital Media

Every year, more gift planning prospects are comfortable on the Web, using it as a research tool, a source of information, and an interactive playground where they make connections with brands, organizations, and former acquaintances. Gift planners who think a lot about the behaviors of their existing donors and prospects have been recognizing over the last 15 years or more that there is a shift happening. Advances in technology are changing the way all of us gather and share information. As a result, the demographics, interests, and behaviors of their target audience is also changing.

This change is visible every day. A mature alumna now goes to a university's website for information about her reunion instead of calling the Alumni Office. A couple that likes to garden complements their gardening magazine subscriptions by following blogs of the local botanical gardens and preservation organization that explore their specific interests. The Internet is the reason marketing today is very different from marketing 25 years ago. The Internet has redefined how organizations can interact with their constituencies. Taking advantage of the opportunities that the Internet provides for marketing gift annuities and other planned gifts is critical to reaching future prospects.

Benefits of Digital Media

The return on investment (ROI) of digital media is a key reason businesses are attracted to this medium. Executed correctly, the ROI of digital media can far exceed that of traditional marketing strategies.

Good marketing always has been about building a relationship with the customer. In many ways, digital media offers the opportunity that marketers have dreamed of for decades: a chance to build relationships with a ready-made community of people who are open about who they are and what they like.

The main benefits of digital media over traditional print marketing are its reach, immediacy, trackable results, and interactivity. Digital media opens up new possibilities for small organizations on limited budgets to reach more potential donors. Yet just as important, the Internet has transformed how people organize themselves, and this has allowed organizations to reach niche markets in ways that were not available in the past. Moreover, since marketing messages are most effective when delivered to the audience most likely to be interested in them, the ability to reach niche markets has become an important building block of any successful marketing program.

While print marketing is largely about mass communication and brand awareness, digital marketing facilitates conversations between an organization and its donors and prospects. Digital marketing is a two-way channel, making it a powerful tool for fostering connections between an organization and its constituents.

Digital media covers a broad range of marketing techniques. This section identifies the most appropriate ones for planned giving:

1. Websites
2. Email
3. Social media
4. Search engine marketing and optimization

Websites

Websites have various purposes, and those purposes are unique to each organization. It is important for an organization to keep its site current from a design and copy perspective. Relevant, timely, and topical content is essential.

An organization's website should be a source of information and include the most compelling stories to promote its mission. In the case of gift annuities, the site could include a diagram that explains how a gift annuity works, a table of rates at representative ages for 1-person and 2-person annuities, and several donor scenarios where establishing a gift annuity with the organization met the donor's financial and philanthropic goals. The site may also include a calculator to enable the visitor to determine on her own the gift amount, annuity rate, and charitable deduction for a gift she is considering. Lastly, the site could include a testimonial from a gift annuity donor that illustrates why one donor gave and how his or her gift is having an impact on the charity.

Email

Email is a powerful tool for disseminating information to any size group. Its appeal to marketers stems from its budget-friendliness, its simple-yet-effective technology, its interactivity, and the ease of sending it to multiple recipients. Yet, as with any targeted mailing, the right message, the right audience, and good email addresses are essential to an effective email campaign. Most, if not all, recipients are overloaded with email, so it is critical that a message about gift annuities be sent to a group that is likely to find this information relevant to them. Otherwise, many recipients may ask to unsubscribe, which will make it more difficult for the charity to reach out to these prospects over the long term.

Social Media

Social media – including Facebook, Twitter, YouTube, Flickr, LinkedIn, Instagram, and blogging (to name a few) – are increasingly of interest to marketers because of the enormous capacity they have to build communities and foster stronger one-to-one relationships.

Social media are transformational because they take advantage of our natural interest in what other people are doing and what they think about products, services, and features. Word-of-mouth marketing is the essential appeal of social media, and word-of-mouth marketing is about placing trust in an objective source – getting the real story on a service or activity from someone who is not a paid marketer or representative of the organization, such as from an independent, objective web posting.

Many organizations are participating in one or more social networks, such as Facebook, Twitter, and Instagram, where they can engage with their constituents. The great majority of them use these networks for planned giving stewardship and cultivation, rather than solicitation. Social media is about promoting community, not asking for a gift. Engagement in social media is a broad endeavor that goes well beyond simply building a page on a social site. It's creating and maintaining that constant engagement. It's monitoring, responding, and staying current on all of the social networks where your donors will find you.

Before you dive into social media as part of your gift annuity marketing plan, be sure you have the necessary staff resources allocated to maintain the constant engagement they require.

Search Engine Marketing (SEM)

SEM is divided into two categories, paid search and organic search. Paid search, known as pay-per-click (PPC), and organic search, known as search engine optimization (SEO), together define SEM. While paid search may be something to consider, and some charities use this technology, organic search is generally more relevant to most organizations.

SEO is about optimizing a website to achieve high rankings on search engines for certain key phrases and/or keywords. SEO involves making changes to the HTML code, content, and structure behind a website to make it more accessible for search engines. For example, a person who types the keyword "annuity" might be referred to the pertinent section of a charity's site. SEO is a continuous process, both to maintain rankings and improve them for keywords that may bring relevant traffic to an organization's website.

Advertising – Radio and Television

While not likely to be a staple in the marketing plans of most organizations, radio and television spots may be a perfect fit for some. As with external print media, a key consideration is whether such an ad will reach a high concentration of individuals likely to be interested in the organization. Though cost is obviously another factor in selecting marketing efforts, radio spots can be comparable in price to placing print ads in outside publications. If leads generated by current marketing efforts are dwindling, one option is to consider broadcast media for a year or two.

The cost for television spots may be more prohibitive, but some public television stations have had success in airing planned giving spots in addition to conducting on-air pledge drives. Again, the right placement is essential, with spots being shown during programs such as *Nightly Business Report* that are known to attract a large audience of seniors.

A note of caution with respect to advertising on radio or television – care should be taken to promote the mission of the organization: focus on how the charity's work can be supported through a gift annuity, as opposed to describing the gift annuity as an investment vehicle or comparing its annuity rate to rates of return from common investment vehicles, such as CDs. To do otherwise may not just appear unseemly, but could trigger regulatory action.

Calling Programs

The goal of a gift annuity calling program is to identify and qualify prospects. Just as telephone solicitors call prospects and ask for an outright gift, they can call selected individuals regarding a charitable gift annuity. However, unlike calling for an outright donation, the objective of the call is not to solicit a gift or to secure a commitment. Its purpose is to interest the prospect in receiving information about a gift annuity and how it would work in the donor's specific circumstances. This can take the form of a follow-up call or sending a gift annuity brochure. The strategy is to ask open-ended questions to prompt a conversation. To be successful, the organization should do the following:

- Determine the level of phone sensitivity the organizations' donors have already. If telethons are part of the organization's culture, be wary of donor fatigue.

- Select the appropriate list – for example, donors who are age 65-75 and who have given for a certain period of time, maybe five years (not necessarily every year) might be a good list with which to start.

In our experience, gift annuity donors, while almost always connected to the organization in some way – a former patient, an alumnus, etc. – may not have given to the organization before. When selecting a list of gift annuity prospects to mail to, consider including prospects who have not made past gifts to the organization but have an identifiable affinity with the organization, and otherwise meet all selection criteria.

Also, look at annual giving patterns - experience shows a potential correlation between donors whose giving is based on receiving premiums and donors who have a high gift annuity qualification rating. (Steenhuysen Associates, 2016)

- Equip the callers with a script. The first 30-60 seconds of the script should focus on keeping the donor on the phone. It should not have the caller ask for "personal information," such as birth dates, at any point during the call.

- Use only very well-trained callers who are able to answer basic questions about gift annuities. They should describe the benefits to the donor first and how that gift will help further the organization's mission second.

- If the prospect is interested, then the gift officer should follow up directly.

Calling programs can be done internally, but are usually outsourced to an experienced calling vendor. The use of a vendor provides a high level of efficiency, allowing the gift officer time to focus on following up with the best prospects identified by the calling program. Overall, calling programs are more effective for organizations that have a large pool of gift annuity prospects.

Seminars

A seminar on gift annuities ordinarily would not be much of a draw. However, the gift annuity could be one component of a financial or estate planning seminar. A hospital foundation, for instance, might offer a seminar on *Planning for Retirement* during which the flexible deferred gift annuity could be presented as a way to supplement the qualified plan to which a physician is contributing the maximum allowable. Likewise, an estate planning seminar for seniors could feature the gift annuity as one way to increase cash flow during retirement years.

Presentations at Retirement Centers

Retirement centers regularly invite outside speakers for their resident programs, but they understandably insist that any financial or estate planning material be generic. A speaker can describe gift annuities, but generally not as an advocate for a particular charity. However, a resident who is affiliated with a particular charity can invite a few friends within the retirement home to join him or her and a representative of the charity for a discussion of gift annuities over lunch. If a donor is really sold on gift annuities it might stimulate fellow residents to complete gift annuities by scheduling such meetings.

There is a growing trend among religious, health care, and social service organizations that provide services to retirement center residents to visit these centers not only to promote gift annuities in general, but also to advocate for themselves. If a charity plans to offer a program at a retirement center in order to promote gift annuity donations to benefit themselves, it should have prior permission from the retirement center.

The gift planner must be extraordinarily cautious when working in this environment. The population is elderly (many are in their 80s and 90s) and could be too easily influenced by a friend whom they trust. Residents should be encouraged to discuss the gift annuity with their families as well as with their legal and tax advisors.

Execution Recommendations

Plan Ahead

- As part of an overall planned giving marketing plan, you must determine what materials will address charitable gift annuities, and in what form. First and foremost, keep in mind how planned giving messages can be "piggybacked" through existing communication channels. Integrate the planned giving message into other development efforts, such as the annual giving campaign or the organization's newsletter.
- How frequently will target mailers be sent? Will they be in addition to, or in lieu of, other materials on gift annuities (newsletter articles, ads)?
- If the charity has an internal publication, will it run an ad focused on gift annuities in each issue (or in each issue in which space is allotted), or will ads on gift annuities be alternated with ads regarding other methods of giving?
- How often will receipt stuffers be used? How frequently will the content of the stuffer be changed?

List, Offer, Creative

There is an adage in direct mail marketing that says success is based on three factors - (1) List, (2) Offer, and (3) Creative. In today's world, the terminology has changed but the core message is the same. The three factors are:

1. Data
2. Content
3. Creative

What exactly do those three factors mean?

1. Data (List)

   Focus on gathering and maintaining data that will enable you to create better lists of prospects to contact. The more targeted a direct mail campaign, the greater will be the response associated with it. Why? Because donors respond more favorably to messages that are relevant to them. Donors will respond to marketing that is specific enough to apply to their individual interests. If the content of the mailing, while persuasive, is irrelevant to the donor, it lessens the chance of the mailing's success. The more receptive donors in a mailing list are to gift annuities, the more likely they will respond to a mailing about them.

2. Content (Offer | Call-to-Action)

    Your offer can be just as important as your list when determining your direct-mail marketing success. Even a targeted audience is not likely to respond unless you entice them with a great benefit, be it a sales price for a for-profit product or a tax benefit for a charitable gift. When planning your message, try to approach your offer from your donors' perspective. Is the content designed to create a response? Does it describe an opportunity that would prompt you to take action, or that you might want more information on? Your offer should be a call to action that motivates the donor. It must be perceived as valuable, tangible, unique, and clearly related to your prospect's interests. It should also be straightforward and easy to understand.

3. Creative (Copy | Imagery)

    The creative aspect of a marketing piece is the design, layout, and imagery. There is no one approach that works for every charity or campaign. The two most common formats are letters and extended postcards. While there are endless design options to choose from, sometimes the simplest approach works best. Continually test what design, layout, and imagery work best with your donors and revise them accordingly.

Timing, Frequency and Consistency

Marketing studies have shown that people generally need to hear a message seven to nine times before it has an impact. The more frequently and consistently a charity can get its message out regarding gift annuities, the more likely it is to be successful in increasing its number of leads.

Because a gift annuity generally represents a substantial increase in a donor's giving level, often a donor will consider such a decision over several months or more. Sending the donor multiple messages during this period that encourage gift annuities can reinforce the donor's initial inclination. In addition, gift annuity decisions, more than annual gift decisions, are driven by changed circumstances in a donor's life, such as retirement, revising an estate plan, and investment maturation. Sending gift annuity messages regularly increases the likelihood that a donor will receive a gift annuity mailing at what is just the right moment *for them*.

The time of year for sending a mailing is not as critical as one might think. One rule of thumb is to mail when the organizations' other fundraising communications are at a low point in order to minimize overlap. Traditional planned giving mailing times are spring and fall, which is when annual giving mailing programs tend to be most active. Working around that, our clients have found more success mailing in February, March, July, and August, when other development mailings are fewer. Nevertheless, there is no magic time to mail, so it's best to be consistent. The more often a charity's gift annuity message is put forward, the more likely it is to arrive at the right moment in a donor's life for such a gift.

Stagger Mailings

If an organization has a large pool of prospects, it might want to consider sending materials in batches every week or two over a period of time, rather than sending a large mailing in one "drop." Staggering the mailing in this way should stagger responses as well, and help ensure that the organization's gift planner(s) can respond in a timely fashion to each prospect who expresses interest. An additional benefit is the chance to make follow-up calls to non-responders and to perhaps fine-tune later mailings if the initial response is poor.

Topical Content

When communicating, refer to other publications that have addressed gift annuities or deferred giving options, or consider including a reprint of an article as part of a target mailer. Other issues you might address include CD renewals (but see Appendix 4 about placing emphasis on the gift), overall financial conditions, changes in the ACGA rates, and tax law changes. If your organization will be adopting new annuity rates, most likely because the American Council on Gift Annuities has announced that it will be changing its suggested maximum rates as of a specified date, this is another opportunity to send topical (and timely) information to gift annuity prospects.

Data Analytics

In 2015, PG Calc conducted a gift annuity marketing survey. The results of the survey uncovered a growing trend among charities of all sizes: large to small, national to local, charities are using data analytics to better define who their good planned gift prospects are. They are then using this information to refine the list of supporters they communicate with about gift annuities, as well as about other giving opportunities.

Data analytics is a suite of statistical tools and techniques that identify patterns in the characteristics of a charities' donors and uses those patterns to identify who is most likely to make similar gifts in the future. Data analytics considers whatever data is available in the organization's database, and possibly outside data sources, as well, to draw its conclusions.

Many prospect researchers are learning data analytics techniques. Large nonprofits with a sophisticated fundraising operation are likely to have prospect researchers on staff who can create models and perform data analysis to help identify the organization's best gift annuity prospects. There are also many vendors who offer data analytics services.

Marketing Strategies for an ACGA Rate Change

The ACGA reviews its suggested maximum annuity rates regularly. It typically gives charities about two months' notice prior to the effective date of new rates. Noting a change in the rates, either up or down, presents a communication opportunity before the rates become effective.

Strategies for Communicating the Rate Changes

Here are some strategies to use prior to the adoption of new rates:

- Start by repurposing existing CGA marketing mailings. There is no need to recreate the wheel. Time is of the essence. It's important to promote a sense of urgency because charities need to build up demand. A simple reprint of an existing postcard with new headline copy and an updated rate table showing the before and after rates might be all that's needed. See an example on the next page.

- If the new rates are higher than the old ones, use a one-two punch; tell your prospects before the change goes into effect so they can start planning, and then again after the new rates are in effect.

- Use social media. Update your website, and Facebook and Twitter accounts, to announce the impending rate change.

Here are some quick ways to communicate the news once the rates have become effective. Which one(s) you use will be a question of your existing marketing plan and your time.

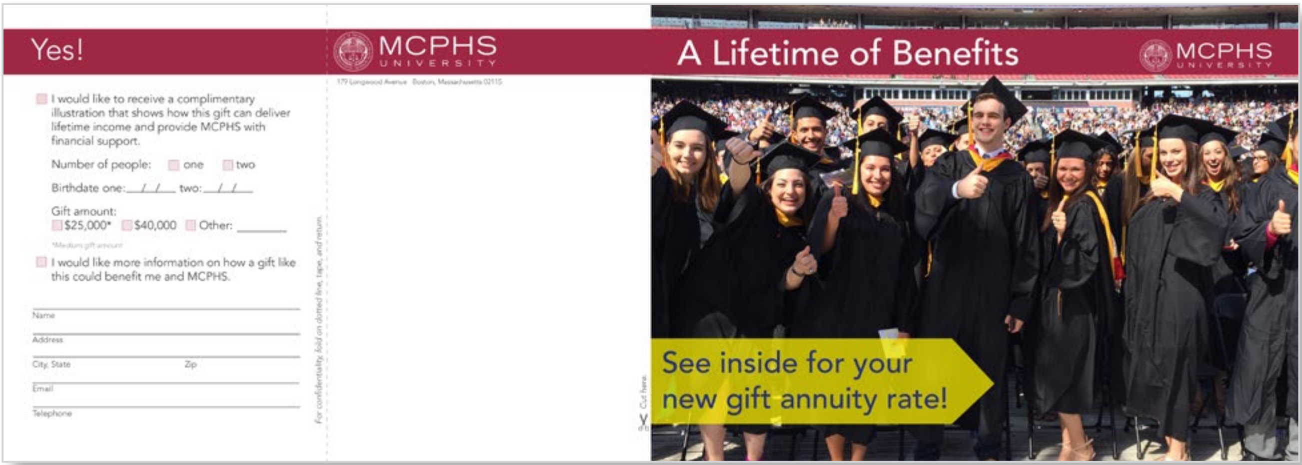
- Mail a short letter to your prospects with the new increased rates, and a reply card requesting a personalized illustration. If the rates will be decreasing, then mail the letters as soon as news of the announcement happens. There will be a short window for your donors to make a gift before the rates go down.

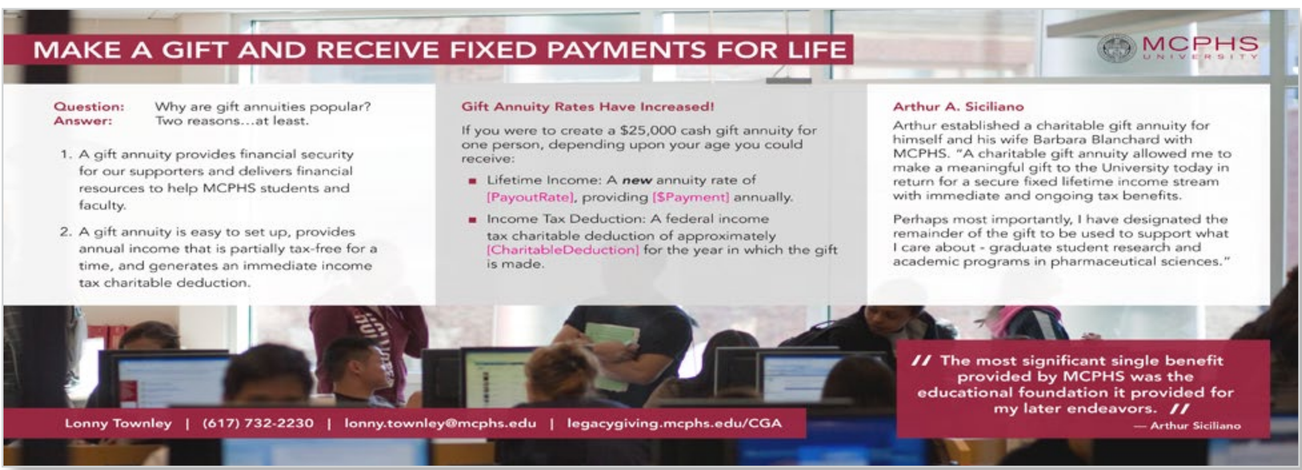
- Email your prospects with a rate table and a link to your gift calculator, so they can run their own personalized illustration.

- Advertise in your charity's publications (print or digital). Even if your publications don't normally mention philanthropy, a rate change justifies making an exception.

ACGA Rate Increase Self-Mailer Announcement

Here is an example, of an organization reusing a postcard it had sent earlier in the year to promote gift annuities after the ACGA announced an increase in its suggested maximum rates. The organization updated the front with a splash headline to draw attention to the new rates. Inside, it updated the rate, charitable deduction, and payments that the prospective donor would receive.





2018, Courtesy of MCPHS University

Communicating with Existing CGA Donors

It comes as no surprise that the best prospects for new annuities are those with existing annuities. Stewardship at this time is important. Send your annuitants a personalized letter showing them their current annuity rate and the annuity rate and payments to which they will be entitled under the new recommendations. If you have a large annuity program, PG Calc can help produce customized letters with new and old rates.

If rates are increasing, your marketing campaign should continue past the effective date of the new rates touting the message, "Important Update: Gift Annuity Rates Have Increased." The increase will be newsworthy for the rest of the calendar year. Mid-August through October is a good time to market to gift annuity prospects in order to close gifts before year-end.

Prospecting for Gift Annuitants

While marketing is important, don't forget to review your own portfolio of assigned prospects and consider their age, relationship to your charity, and giving capacity. Prospects expressing concerns over market volatility, outliving their resources, or increasing spendable income are likely to consider an annuity, especially when the new rates are more attractive. Donors who have said, "I wish I could do more" are good gift annuity prospects. While gift annuities should never be marketed as financial instruments, higher rates will be more attractive to prospects.

The Bigger Impact of a Rate Change

Every charity offering gift annuities should plan a communication and marketing campaign to target likely gift annuity donors. Place as many impressions of this message in front of your prospects as you can in the year of the change. By next year, the rate increase will be old news.

It is important to consider how an increase in rates may influence the investment allocation of gift annuity reserves. Before the rates become effective, consider the risk profile, investment style, and actual mortality of your charity's gift annuity reserve fund.

Lastly, states that regulate gift annuities most heavily require charities either to follow the ACGA rates or have other approved rates on file with the state. Ensure that if your charity will be adopting the new ACGA rates that it will remain in compliance with the requirements in these states. If your charity follows the ACGA rates and plans to adopt the new rates as of their effective date, then it should be in compliance. However, adopting the new rates as of any other date would require approval from these states.

Marketing Gift Annuities After Recent Rate Increases

See discussion in chapter 3.

Marketing Reinsured Gift Annuities

See discussion in chapter 10.

Using Gift Annuities in Blended Gifts

An organization may have more success marketing gift annuities if it shows how to blend them with other gifts. Throughout this manual, there are several examples of how a gift annuity might be combined with other gift types to produce a plan that meets more of a donor's objectives. They are:

- Blend of an immediate gift annuity and outright gifts over time – two variations – chapter 20
- Blend of an immediate gift annuity and a charitable remainder unitrust – chapter 20
- Blend of an immediate gift annuity and deferred gift annuities (Step annuity) – chapter 18

- Blend of an immediate gift annuity and flexible deferred gift annuities – chapter 18
- Blend of a retained life estate gift and a gift annuity – chapter 17
- Blend of the income interest in a charitable remainder trust and a gift annuity – chapter 20
- Blend of a beneficiary designation in an IRA and a testamentary gift annuity – chapter 16

In addition to the examples above, common blended gifts that enable a donor to provide a charity with either immediate support or additional future support while assuring a lifetime of fixed payments for one or two annuitants include:

- Blend of an immediate, deferred, or flexible gift annuity and an immediate outright gift
- Blend of an immediate, deferred, or flexible gift annuity and a bequest in a will or living trust
- Blend of an immediate, deferred, or flexible gift annuity and a beneficiary designation in a retirement plan, life insurance policy, bank account, or brokerage account

The following examples do not use the latest ACGA rates, which became effective January 1, 2024.

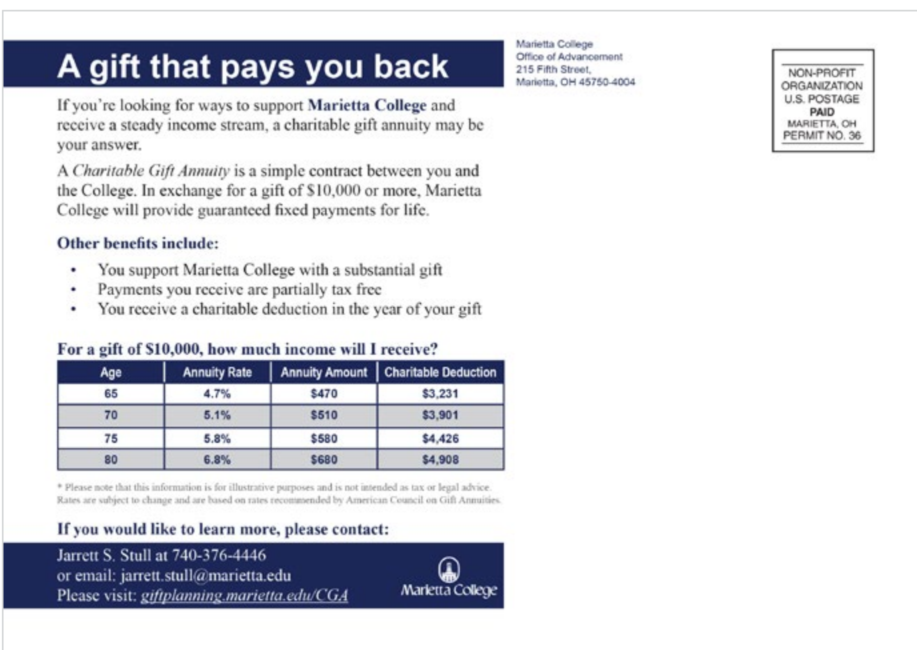
The examples are for illustration purposes only.

Gift Annuity Marketing Examples

We have collected the examples below to illustrate good marketing practices. While a number of these examples are from years past, they are still relevant in terms of marketing gift annuities.

Postcards

The two postcards below convey mission through an image that includes the college's mascot. Their message focuses on the gift's financial benefits to the donor. Note the call to action, *giftplanning.marietta.edu/CGA*, which directs recipients to the college's gift annuity web page where they can learn more about gift annuities and create a personalized illustration with a gift calculator.



A gift that pays you back

Marietta College
Office of Advancement
215 Fifth Street,
Marietta, OH 45750-4004

NON-PROFIT ORGANIZATION
U.S. POSTAGE
PAID
MARIETTA, OH
PERMIT NO. 36

If you're looking for ways to support **Marietta College** and receive a steady income stream, a charitable gift annuity may be your answer.

A *Charitable Gift Annuity* is a simple contract between you and the College. In exchange for a gift of $10,000 or more, Marietta College will provide guaranteed fixed payments for life.

Other benefits include:

- You support Marietta College with a substantial gift
- Payments you receive are partially tax free
- You receive a charitable deduction in the year of your gift

For a gift of $10,000, how much income will I receive?

Age	Annuity Rate	Annuity Amount	Charitable Deduction
65	4.7%	$470	$3,231
70	5.1%	$510	$3,901
75	5.8%	$580	$4,426
80	6.8%	$680	$4,908

* Please note that this information is for illustrative purposes and is not intended as tax or legal advice. Rates are subject to change and are based on rates recommended by American Council on Gift Annuities.

If you would like to learn more, please contact:

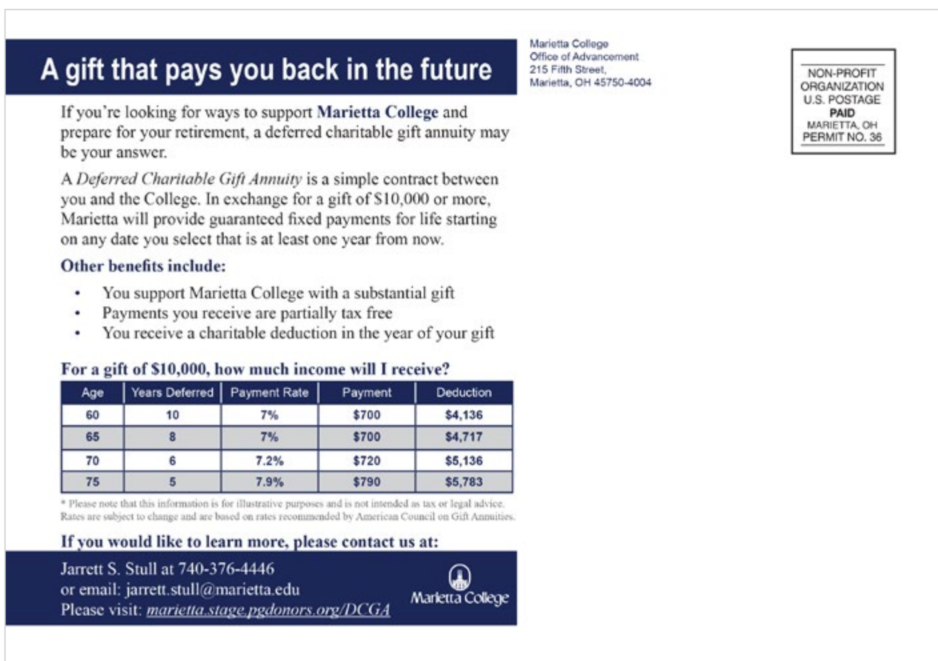
Jarrett S. Stull at 740-376-4446
or email: jarrett.stull@marietta.edu
Please visit: *giftplanning.marietta.edu/CGA*

Marietta College

2015, Courtesy of Marietta College

Postcards (continued)

A postcard mailing for deferred annuities can be accomplished similarly to immediate annuities, with minor changes to the list, headline copy, and chart. Although deferred annuities are less common than immediate payment annuities, they do allow the institution to reach prospects in a wider age range.



A gift that pays you back in the future

If you're looking for ways to support **Marietta College** and prepare for your retirement, a deferred charitable gift annuity may be your answer.

A *Deferred Charitable Gift Annuity* is a simple contract between you and the College. In exchange for a gift of $10,000 or more, Marietta will provide guaranteed fixed payments for life starting on any date you select that is at least one year from now.

Other benefits include:

- You support Marietta College with a substantial gift
- Payments you receive are partially tax free
- You receive a charitable deduction in the year of your gift

For a gift of $10,000, how much income will I receive?

Age	Years Deferred	Payment Rate	Payment	Deduction
60	10	7%	$700	$4,136
65	8	7%	$700	$4,717
70	6	7.2%	$720	$5,136
75	5	7.9%	$790	$5,783

* Please note that this information is for illustrative purposes and is not intended as tax or legal advice. Rates are subject to change and are based on rates recommended by American Council on Gift Annuities.

If you would like to learn more, please contact us at:

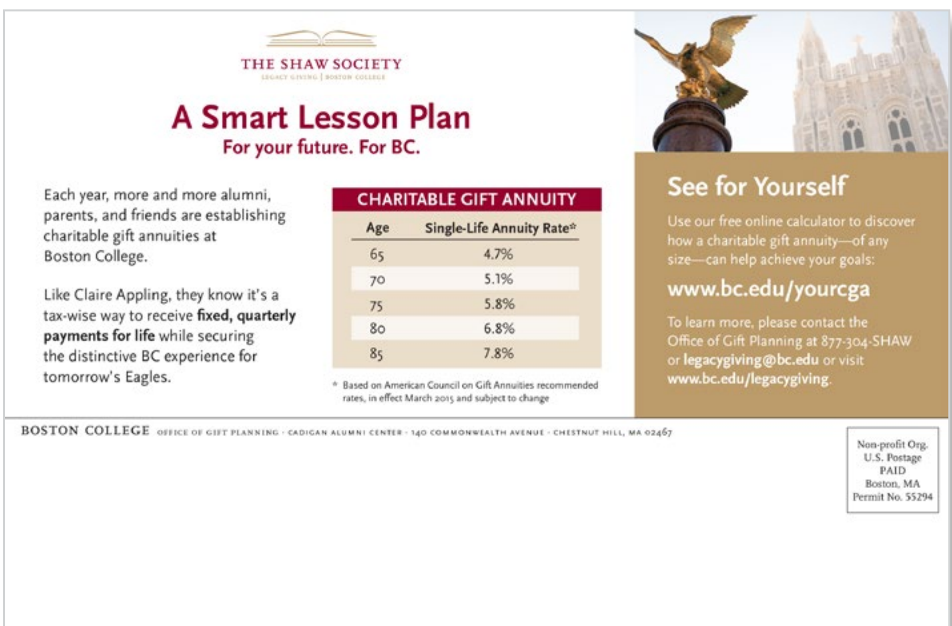
Jarrett S. Stull at 740-376-4446
or email: jarrett.stull@marietta.edu
Please visit: *marietta.stage.pgdonors.org/DCGA*

Marietta College

2015, Courtesy of Marietta College

Postcards (continued)

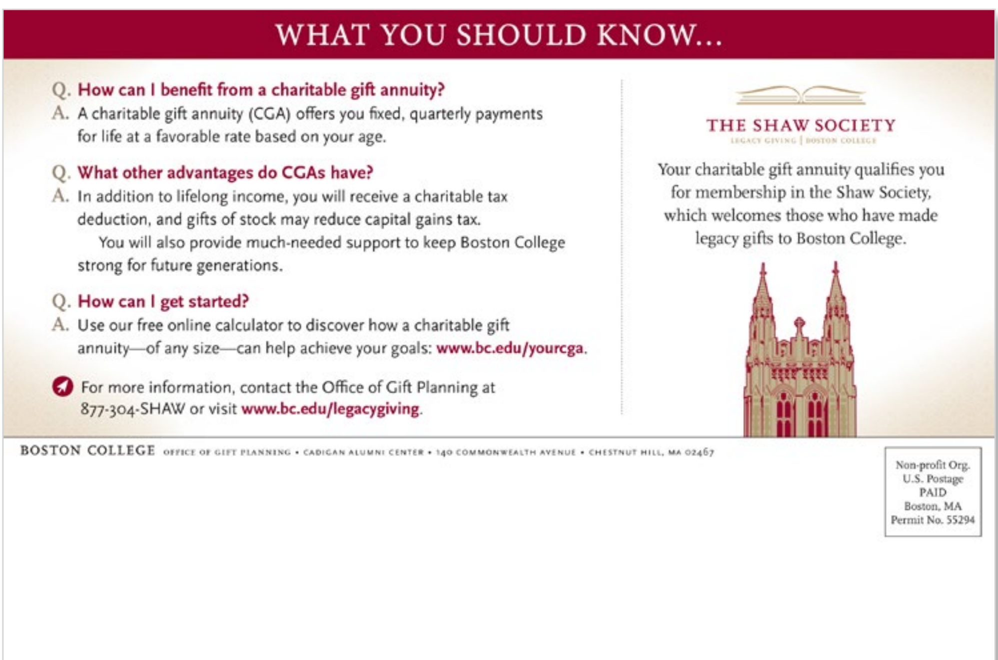
In the postcard below, a strong donor testimonial and appealing photo of the donor is combined with information on a gift annuity's financial benefits. The call to action is to the organization's website to use the gift calculator. The planned giving web address is included and legacy society branding ("The Shaw Society" logo) is appropriately visible. Notice the language used to encourage the recipient to give: "Each year, more and more alumni, parents, and friends are establishing charitable gift annuities at Boston College." Professor Russell James has found in his research that this appeal to "social norms" is among the most effective ways to spark interest in planned gifts.



2015, Courtesy of Boston College

Postcards (continued)

The postcard below focuses on the mechanics on how a gift annuity works and follows with a brief FAQ. The postcard is personalized to show what the donor's annual payments and deduction would be based on his or her age. Notice that the flow diagram illustrates priorities at Boston College that a gift annuity can support. Organizations should promote how a gift will make a difference.



2015, Courtesy of Boston College

Postcards (continued)

The postcard below follows another piece of advice from Russell James based on his research: the postcard doesn't even mention the term "gift annuity." It describes a "gift that pays you back" and focuses on the donor's financial benefits and how a gift will help the university's students and faculty. The call to action is to a webpage dedicated to gift annuities.

A Gift That Pays You Back

University of Nebraska Foundation
1010 Lincoln Mall, Suite 300
Lincoln, NE 68508

Thank you for your loyal contributions through the years. Your support has a profound impact on the lives of our students and faculty. Did you know you can extend your support with a gift that will provide you with lifetime payments in return?

In exchange for your gift of $10,000 or more, you can make a positive impact at the **University of Nebraska** and receive personal financial benefits, including:

- Secure fixed payments to you for life
- A charitable deduction in the year of the gift
- Tax free treatment of a portion of each payment to you
- Reduced capital gains taxes for gifts funded with appreciated assets

To learn more, please visit nufoundation.org/CGA or contact:

Megahn Schafer Assistant Vice President Gift Planning	800-432-3216 (main) 402-458-1158 (direct) megahn.schafer@nufoundation.org

This material is not offered as legal or tax advice. Individuals should seek the advice of their own legal counsel.

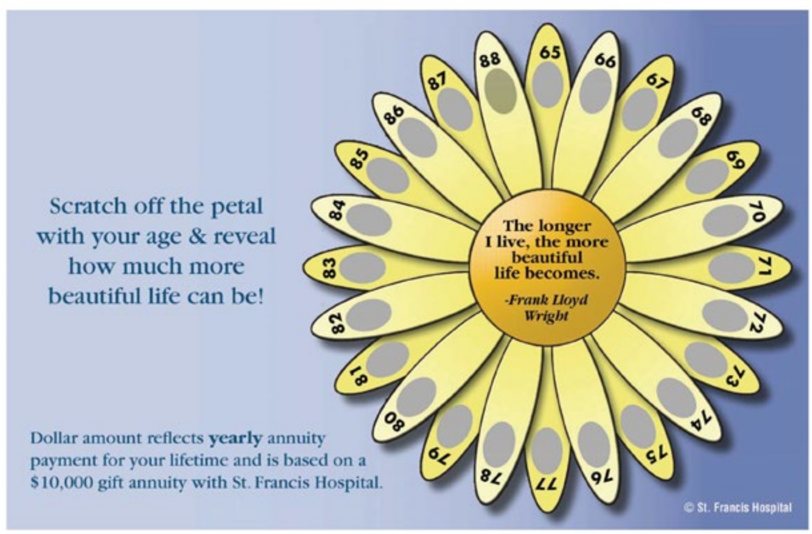
2015, Courtesy of University of Nebraska

Postcards (continued)

The mailing below uses what is known as the "scratch and sniff" technique, with mixed success. In the case of St. Francis Hospital in NY, they were looking for a different approach. Having no idea if a scratch appeal would work or was "too far out there," they decided to try it. They tested the postcard at a spring luncheon, where it received lots of buzz: some attendees asked for extras to take to gatherings of friends. Encouraged, they then used the postcard in a mailing and followed-up with those who responded. One benefit of the interactive postcard was that none of the respondents forgot that they had replied.

Tip: *when sending something to a prospect based on a mailed response, copy the response received and include it with your follow-up information.*

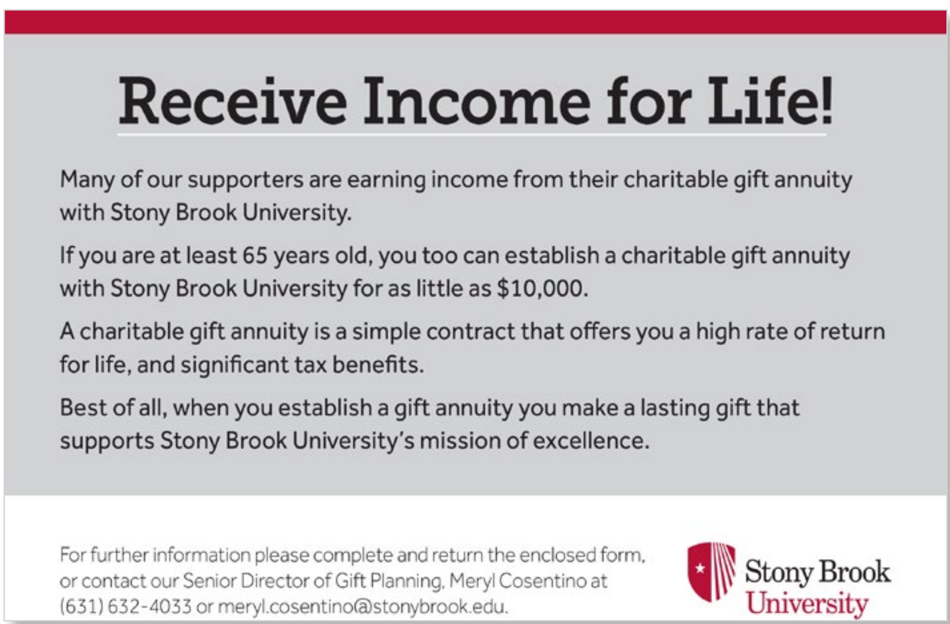
St. Francis found their mailing to be a successful and worthwhile endeavor that prompted a greater-than-average number of responses. However, two other healthcare organizations have tried something similar only to find they had a lower response rate than their standard mailings. This difference in results between charities illustrates the importance of testing.



From NCPP Presentation by Meryl Cosentino and Mary Lou Murphy, St. Francis Hospital, Roslyn, NY. Used w/ permission.

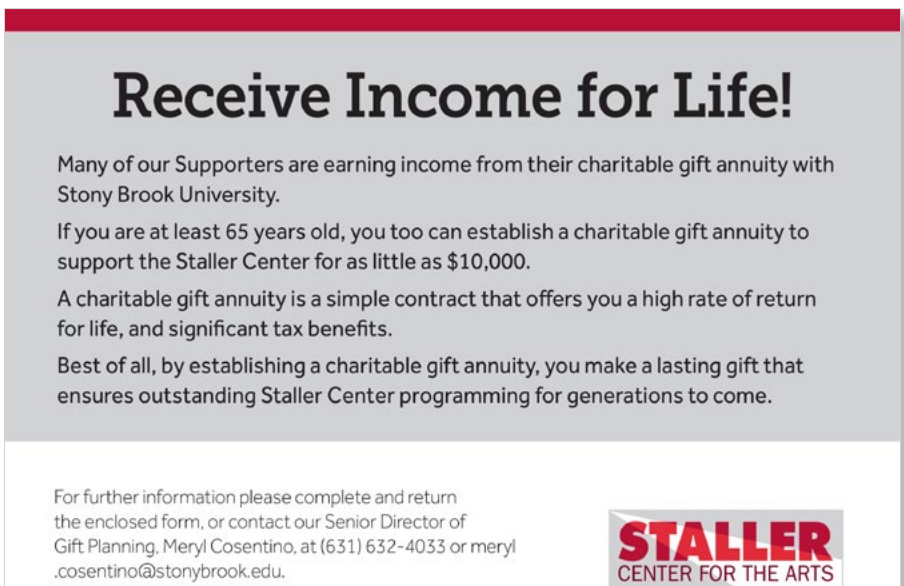
Postcards (continued)

Here are two more examples that the same gift planner, Meryl Cosentino, used when she moved from St. Francis Hospital to Stony Brook University. They were so successful that she has made this type of mailer part of her annual marketing program.



2016, Courtesy of Stony Brook University

Postcards (continued)



2016, Courtesy of Stony Brook University

Print Newsletter

Here is a newsletter that focuses on gifts by beneficiary designation and gift annuities. Notice how the headline of the CGA article, "Income for You, Support for Edmundite Missions," puts the financial benefits for the donor first. The article has a combination of three elements – how the gift works, a chart of the financial benefits the reader might receive, and a brief explanation in the narrative – that work together to create a highly readable and persuasive message. The call to action is to contact Steven Hubbard, the Director of Planned Giving, directly via phone or email. It is much better to provide a specific contact name rather than a generic name, such as "Office of Gift Planning."

EDMUNDITE Missions
OFFICE OF Planned Giving
1428 Broad Street
Selma, Alabama 36701
Phone: (334) 407-1625
steveh@edmunditemissions.org

PAID

BUSINESS REPLY MAIL

"A planned gift makes it possible for you, your loved ones, and Edmundite Missions to all benefit"

EDMUNDITE Missions

Contact us at (334) 407-1625 to get started.
plannedgiving.edmunditemissions.org

LIVING LEGACY

PLANNED GIVING NEWSLETTER

Making Plans for a Better Future

If you live near water, or perhaps you have made that family trip to the beach, what is the fascination of standing on the shoreline and looking out as far as we can? Why are we are sometimes "mesmerized" by what we see or in some cases what we dream?

In my family we take a vacation to the beach once a year. I don't get in the water, but I take the opportunity to walk, think, and plan. By the time I'm rested, and it's time to return home, I'm energized and ready to make plans for a better future.

At the Edmundite Missions, we serve all of God's children that suffer in the depths of poverty. For all of those that support us in this ministry, we are so thankful for this special partnership.

The question that is often asked is what we are doing to help support the Missions future. Planned Giving helps us to realize that future. It involves making a gift now so that the Missions can better plan for that need down the road.

Placing the Edmundite Missions in your Estate Plan will give you the satisfaction of knowing that you are leaving a lasting legacy. You could consider a gift of a Charitable Gift Annuity, where you make a gift now, receive a generous tax deduction now, and receive an annual distribution for life.

As you consider a Planned Gift, we are always available to address any questions that you might have. We will be glad to work closely with your financial advisor/attorney in planning for this type of gift.

As we look over the water and make plans for our future, think about the possibilities. How can we be a beacon of hope for those that still suffer? What can we do to serve God's children in the future?

Your ongoing support is greatly appreciated.

In partnership,

Steve Hubbard,
Director of Planned Giving

"Edmundite Missions is a Catholic organization rooted in the Gospel of Jesus Christ. Providing food, clothing and shelter to poor and marginalized children and families, young adults and seniors of all faith traditions to meet their immediate needs and help them address the long term issues of systemic poverty in the Deep South."

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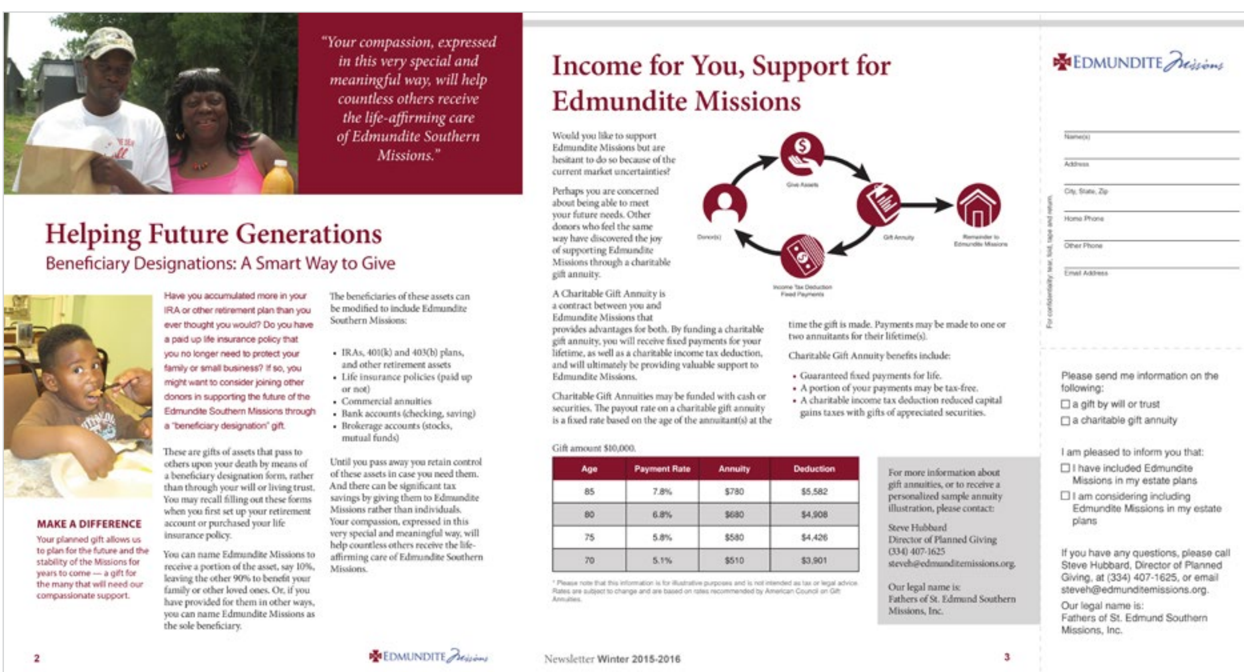

"Your compassion, expressed in this very special and meaningful way, will help countless others receive the life-affirming care of Edmundite Southern Missions."

Helping Future Generations

Beneficiary Designations: A Smart Way to Give

Have you accumulated more in your IRA or other retirement plan than you ever thought you would? Do you have a paid up life insurance policy that you no longer need to protect your family or small business? If so, you might want to consider joining other donors in supporting the future of the Edmundite Southern Missions through a "beneficiary designation" gift.

These are gifts of assets that pass to others upon your death by means of a beneficiary designation form, rather than through your will or living trust. You may recall filling out these forms when you first set up your retirement account or purchased your life insurance policy.

You can name Edmundite Missions to receive a portion of the asset, say 10%, leaving the other 90% to benefit your family or other loved ones. Or, if you have provided for them in other ways, you can name Edmundite Missions as the sole beneficiary.

The beneficiaries of these assets can be modified to include Edmundite Southern Missions:

- IRAs, 401(k) and 403(b) plans, and other retirement assets
- Life insurance policies (paid up or not)
- Commercial annuities
- Bank accounts (checking, saving)
- Brokerage accounts (stocks, mutual funds)

Until you pass away you retain control of these assets in case you need them. And there can be significant tax savings by giving them to Edmundite Missions rather than individuals. Your compassion, expressed in this very special and meaningful way, will help countless others receive the life-affirming care of Edmundite Southern Missions.

MAKE A DIFFERENCE

Your planned gift allows us to plan for the future and the stability of the Missions for years to come — a gift for the many that will need our compassionate support.

2 EDMUNDITE Missions

Income for You, Support for Edmundite Missions

Would you like to support Edmundite Missions but are hesitant to do so because of the current market uncertainties?

Perhaps you are concerned about being able to meet your future needs. Other donors who feel the same way have discovered the joy of supporting Edmundite Missions through a charitable gift annuity.

A Charitable Gift Annuity is a contract between you and Edmundite Missions that provides advantages for both. By funding a charitable gift annuity, you will receive fixed payments for your lifetime, as well as a charitable income tax deduction, and will ultimately be providing valuable support to Edmundite Missions.

Charitable Gift Annuities may be funded with cash or securities. The payout rate on a charitable gift annuity is a fixed rate based on the age of the annuitant(s) at the time the gift is made. Payments may be made to one or two annuitants for their lifetime(s).

Charitable Gift Annuity benefits include:

- Guaranteed fixed payments for life.
- A portion of your payments may be tax-free.
- A charitable income tax deduction reduced capital gains taxes with gifts of appreciated securities.

Gift amount $10,000.

Age	Payment Rate	Annuity	Deduction
85	7.8%	$780	$5,582
80	6.8%	$680	$4,908
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For more information about gift annuities, or to receive a personalized sample annuity illustration, please contact:

Steve Hubbard
Director of Planned Giving
(334) 407-1625
steveh@edmunditemissions.org.

Our legal name is:
Fathers of St. Edmund Southern Missions, Inc.

Newsletter Winter 2015-2016 3

EDMUNDITE Missions

Name(s)

Address

City, State, Zip

Home Phone

Other Phone

Email Address

For confidentiality: tear, fold, tape and return.

Please send me information on the following:

☐ a gift by will or trust
☐ a charitable gift annuity

I am pleased to inform you that:

☐ I have included Edmundite Missions in my estate plans
☐ I am considering including Edmundite Missions in my estate plans

If you have any questions, please call Steve Hubbard, Director of Planned Giving, at (334) 407-1625, or email steveh@edmunditemissions.org.

Our legal name is:
Fathers of St. Edmund Southern Missions, Inc.

2015, Courtesy of Edmundite Missions

Revised October 2025

Print Newsletter (continued)

Front

LIVING LEGACY

PLANNED GIVING NEWSLETTER

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2015, Courtesy of Edmundite Missions

Inside

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2015, Courtesy of Edmundite Missions

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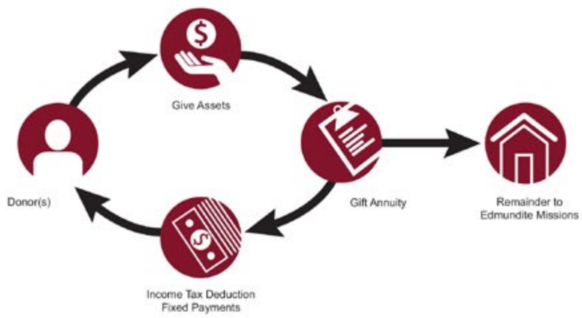

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- A charitable income tax deduction reduced capital gains taxes with gifts of appreciated securities.

Gift amount $10,000.

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Director of Planned Giving
(334) 407-1625
steveh@edmunditemissions.org.

Our legal name is:
Fathers of St. Edmund Southern Missions, Inc.

Newsletter **Winter 2015-2016** 3

EDMUNDITE Missions

Name(s) ______

Address ______

City, State, Zip ______

Home Phone ______

Other Phone ______

Email Address ______

For confidentiality: tear, fold, tape and return.

Please send me information on the following:

☐ a gift by will or trust

☐ a charitable gift annuity

I am pleased to inform you that:

☐ I have included Edmundite Missions in my estate plans

☐ I am considering including Edmundite Missions in my estate plans

If you have any questions, please call Steve Hubbard, Director of Planned Giving, at (334) 407-1625, or email steveh@edmunditemissions.org.

Our legal name is:
Fathers of St. Edmund Southern Missions, Inc.

2015, Courtesy of Edmundite Missions

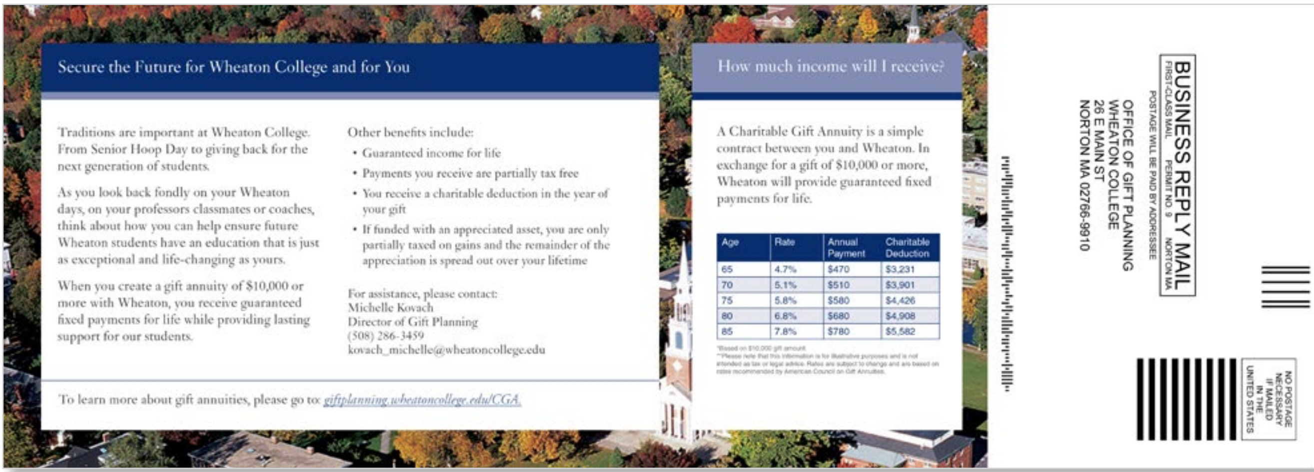
Print Newsletter (continued)

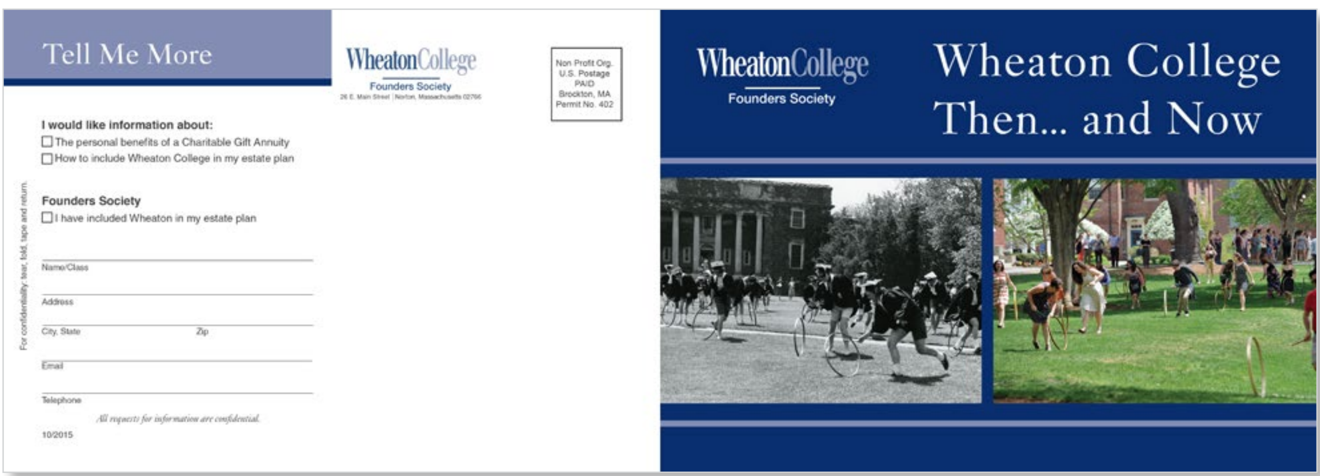
Back

2015, Courtesy of Edmundite Missions

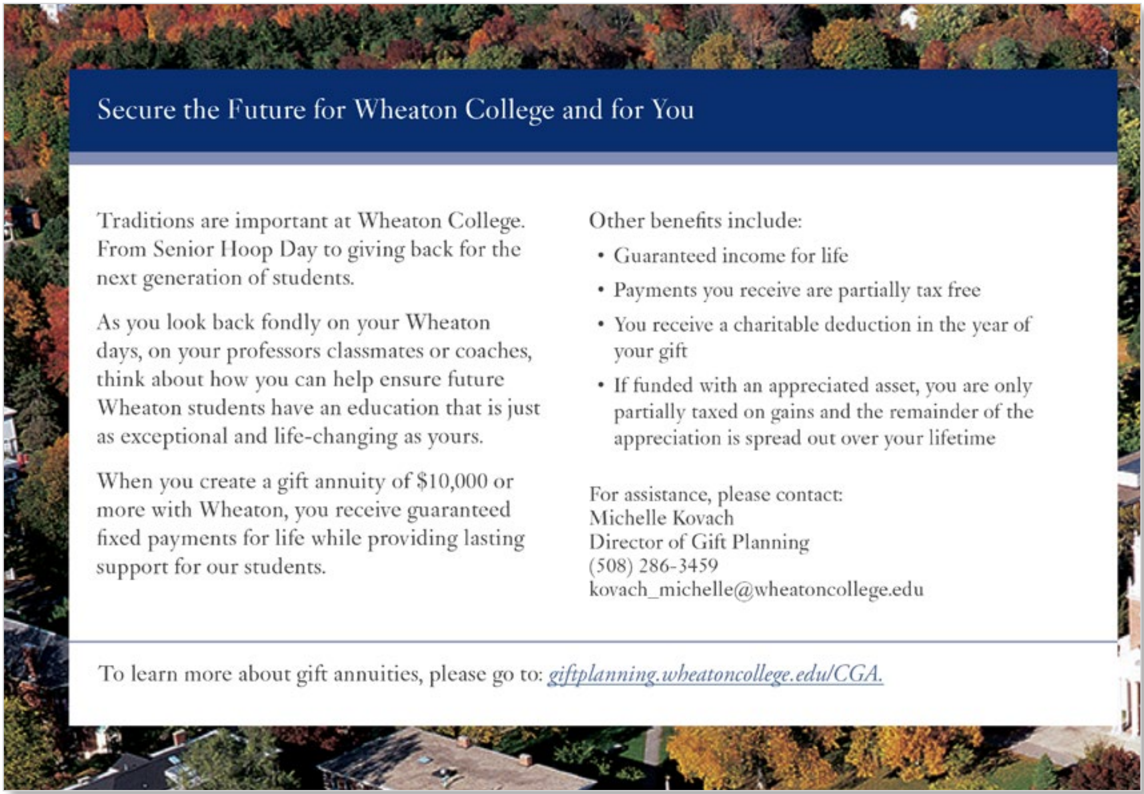
Self-Mailers

The examples below are single pieces (extended postcards with a reply device) that can be folded and mailed. They all include compelling imagery, clear information on gift annuity benefits, contact information, a call to action, and a tear-away response device.





2015, Courtesy of Wheaton College



Secure the Future for Wheaton College and for You

Traditions are important at Wheaton College. From Senior Hoop Day to giving back for the next generation of students.

As you look back fondly on your Wheaton days, on your professors classmates or coaches, think about how you can help ensure future Wheaton students have an education that is just as exceptional and life-changing as yours.

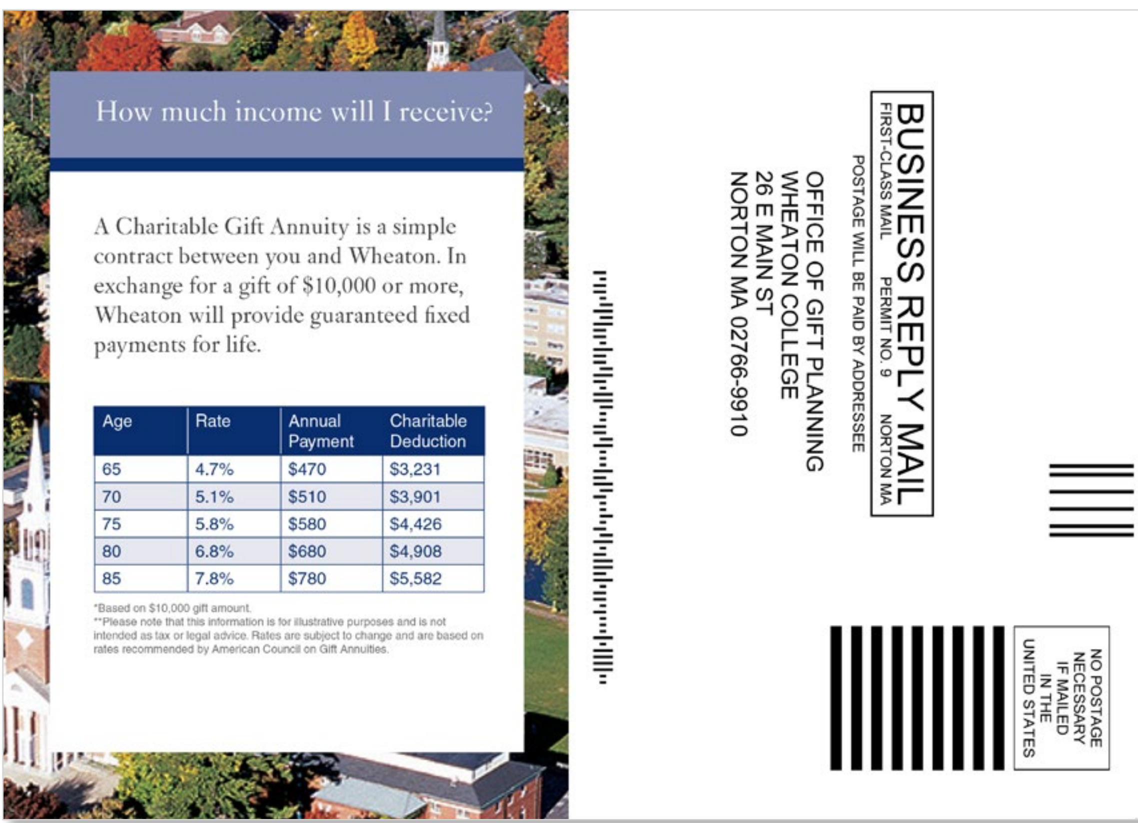
When you create a gift annuity of $10,000 or more with Wheaton, you receive guaranteed fixed payments for life while providing lasting support for our students.

Other benefits include:

- Guaranteed income for life
- Payments you receive are partially tax free
- You receive a charitable deduction in the year of your gift
- If funded with an appreciated asset, you are only partially taxed on gains and the remainder of the appreciation is spread out over your lifetime

For assistance, please contact:
Michelle Kovach
Director of Gift Planning
(508) 286-3459
kovach_michelle@wheatoncollege.edu

To learn more about gift annuities, please go to: *giftplanning.wheatoncollege.edu/CGA.*



How much income will I receive?

A Charitable Gift Annuity is a simple contract between you and Wheaton. In exchange for a gift of $10,000 or more, Wheaton will provide guaranteed fixed payments for life.

Age	Rate	Annual Payment	Charitable Deduction
65	4.7%	$470	$3,231
70	5.1%	$510	$3,901
75	5.8%	$580	$4,426
80	6.8%	$680	$4,908
85	7.8%	$780	$5,582

*Based on $10,000 gift amount.
**Please note that this information is for illustrative purposes and is not intended as tax or legal advice. Rates are subject to change and are based on rates recommended by American Council on Gift Annuities.

BUSINESS REPLY MAIL
FIRST-CLASS MAIL PERMIT NO. 9 NORTON MA
POSTAGE WILL BE PAID BY ADDRESSEE

OFFICE OF GIFT PLANNING
WHEATON COLLEGE
26 E MAIN ST
NORTON MA 02766-9910

NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES

2015, Courtesy of Wheaton College

Self-Mailers (continued)

Tell Me More

WheatonCollege
Founders Society
26 E. Main Street | Norton, Massachusetts 02766

Non Profit Org.
U.S. Postage
PAID
Brockton, MA
Permit No. 402

I would like information about:

☐ The personal benefits of a Charitable Gift Annuity
☐ How to include Wheaton College in my estate plan

Founders Society

☐ I have included Wheaton in my estate plan

For confidentiality: tear, fold, tape and return.

Name/Class

Address

City, State Zip

Email

Telephone

All requests for information are confidential.

10/2015

2015, Courtesy of Wheaton College

Self-Mailers (continued)

Outside

One Minute Survey

Please complete and return today!

- I am interested in making a gift and receiving payments for life. ☐
- I would like to learn about making a gift through my estate in honor or memory of someone special. ☐
- I would consider remembering Hospice Hawaii in my long-term plans. ☐
- Hospice Hawaii is already in my estate plan. ☐

NAME (PLEASE PRINT)

DATE(S) OF BIRTH

TELEPHONE

EMAIL

We respect your privacy! Please see reverse side for mailing instructions.

HOSPICE HAWAII
860 Iwilei Road
Honolulu, HI 96817

Nonprofit
Organization
U.S. Postage Paid
Honolulu, Hawaii
Permit No. 495

Our Legacy
Compassionate care
for over 35 years

HOSPICE HAWAI'I

Support to thousands of patients and their families

Caring for all ages, newborn to elderly

Serving our community with aloha

Your Legacy
Compassion, comfort, and care for the next generation

2015, Courtesy of Hospice Hawaii

Self-Mailers (continued)

Inside

Hospice Hawaii has provided hope and solace to families in times of need for over 35 years. You can ensure compassionate care continues for people in our community at the most difficult times of their lives.

Consider a gift through your will, **retirement plan, insurance policy, or commercial annuity**. Such a gift is:

- easy to arrange
- made only when you no longer need the asset(s)
- flexible for your family should your financial circumstances change

Make Hospice Hawaii a part of your legacy and help support those who have reached their journey's end.

To learn more or request a customized illustration without obligation, return the attached card or contact me.

Blayne Higa, Philanthropy Manager,
at (808) 791-8067
or bhiga@hospicehawaii.org

Tear here.

A Caregiver Gives Back

Dorothy Tamura was a caregiver for her late mother, Sueme Itoh. In 2008, Mrs. Itoh began receiving services from Hospice Hawaii. She passed away a year later at the age of 100. "The care my mother received from Hospice Hawaii was truly amazing," says Dorothy.

Dorothy has been a loyal supporter ever since. In addition to her annual gifts, in 2014 she decided to give Hospice Hawaii a generous gift, and in return, she is now receiving annuity payments for life.

"Our family couldn't have wished for better support during that difficult time."

"It's a wonderful feeling to help ensure families like mine can benefit from hospice services in the future," says Dorothy. "I was able to reduce my taxes, and the secure payments for life are a wonderful added benefit."

This information does not constitute legal, financial, tax or estate planning advice and should not be relied upon as a substitute for consulting your own professional advisors.

Fold in half & tape shut

DEVELOPMENT OFFICE
HOSPICE HAWAII
860 Iwilei Road
Honolulu, HI 96817-5018

Place stamp here

2015, Courtesy of Hospice Hawaii

Self-Mailers (continued)

Outside

2015, Courtesy of Massachusetts General Hospital

Self-Mailers (continued)

Inside

... at Massachusetts General Hospital

BECOME A LEGEND AT MASS GENERAL WITH A GIFT THAT PAYS YOU FOR LIFE

Lock in a stream of income and designate future support of the hospital in three simple steps.

With a Charitable Gift Annuity (CGA):

1. You contribute cash or stock to Mass General today.
2. You and/or another person you name receive a fixed income for life. Your annuity rate is based on beneficiary age(s).
3. At the passing of the last named beneficiary, the remaining balance comes to Mass General to advance medicine.

FIND YOUR RATE

ONE PERSON		TWO PEOPLE	
AGE	RATE	AGES	RATE
90+	9.0%	90/95+	8.8%
85	7.8%	85/90	7.3%
80	6.8%	80/85	6.1%
75	5.8%	75/80	5.3%
70	5.1%	75/75	5.0%

*Based on rates recommended by the American Council on Gift Annuities (subject to change)

BENEFITS INCLUDE:

- Secure, fixed payments for life
- Immediate charitable tax deduction
- Favorable capital gains tax treatment if you fund the annuity with long-term appreciated securities
- Your legacy at Mass General

MGH 1811 MASSACHUSETTS GENERAL HOSPITAL

Along with premier patient care and top-notch training of future doctors, the nation's largest research program is right here at Mass General. Medical breakthroughs in the lab become the highest quality patient care we deliver each day for you and your family.

Please send me:

❍ A personalized illustration of how a gift annuity could benefit me.

Include specific information based on the birth date(s) of

___/___/___ (and ___/___/___/

❍ Information on gifts that provide me payments for life.

❍ Information on making a gift to the MGH Fund today.

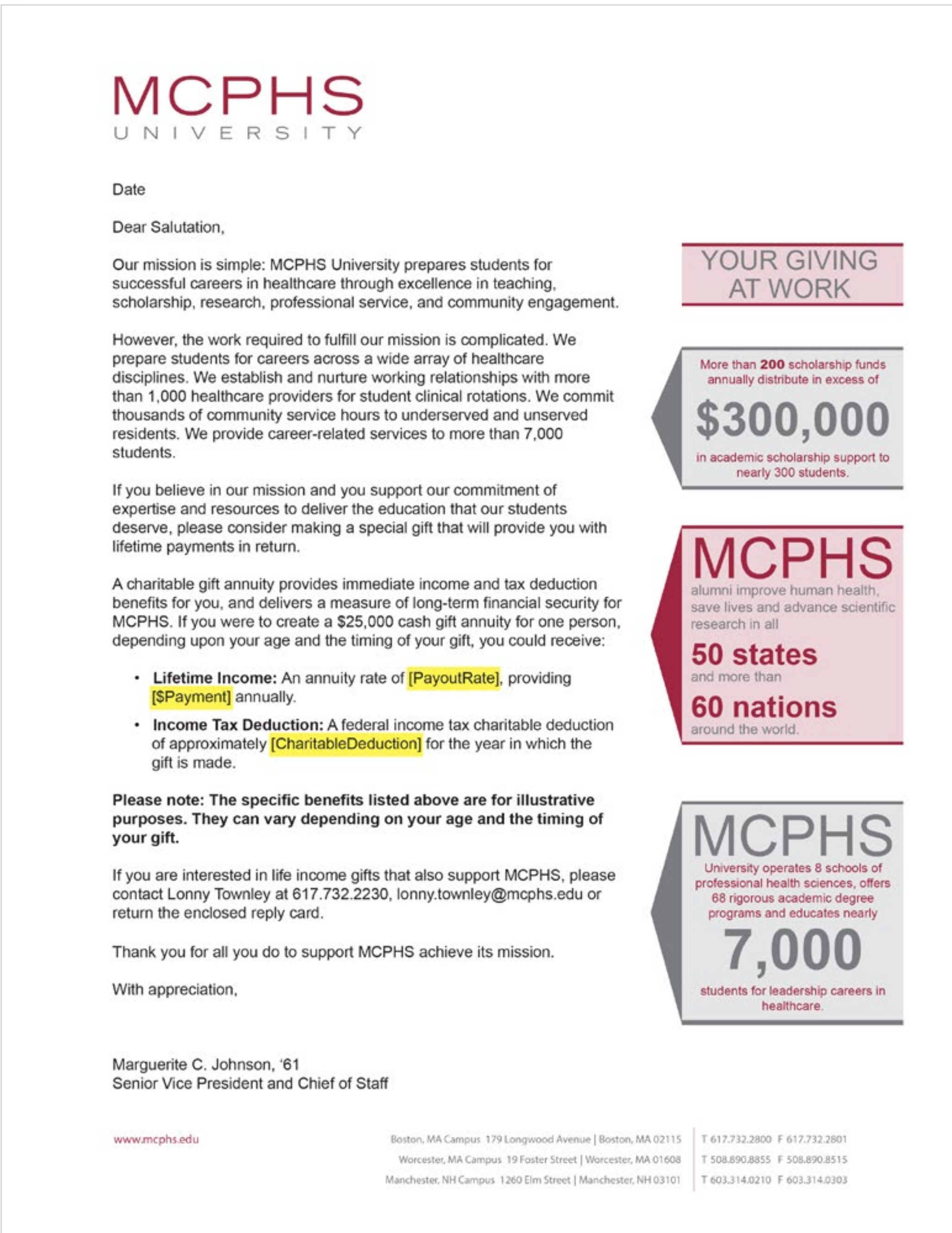
Please provide your contact information on the reverse side.

2015, Courtesy of Massachusetts General Hospital

Letter Package – Personalized Illustration

The letter below is from a gift annuity mailing that included the letter, a reply card, and a postage paid envelope. The letter was personalized with the annuity rate, annuity amount, and charitable deduction the recipient could expect (placement of these values is highlighted in yellow), given the prospect's age and a $25,000 gift amount. Copy about the impact on the charity was used as a design element in the right-hand column to add power and visual interest to the message.

Using this type of personalization improves response rates. It is especially effective in mailings to existing gift annuity donors.



MCPHS UNIVERSITY

Date

Dear Salutation,

Our mission is simple: MCPHS University prepares students for successful careers in healthcare through excellence in teaching, scholarship, research, professional service, and community engagement.

However, the work required to fulfill our mission is complicated. We prepare students for careers across a wide array of healthcare disciplines. We establish and nurture working relationships with more than 1,000 healthcare providers for student clinical rotations. We commit thousands of community service hours to underserved and unserved residents. We provide career-related services to more than 7,000 students.

If you believe in our mission and you support our commitment of expertise and resources to deliver the education that our students deserve, please consider making a special gift that will provide you with lifetime payments in return.

A charitable gift annuity provides immediate income and tax deduction benefits for you, and delivers a measure of long-term financial security for MCPHS. If you were to create a $25,000 cash gift annuity for one person, depending upon your age and the timing of your gift, you could receive:

- **Lifetime Income:** An annuity rate of [PayoutRate], providing [$Payment] annually.
- **Income Tax Deduction:** A federal income tax charitable deduction of approximately [CharitableDeduction] for the year in which the gift is made.

Please note: The specific benefits listed above are for illustrative purposes. They can vary depending on your age and the timing of your gift.

If you are interested in life income gifts that also support MCPHS, please contact Lonny Townley at 617.732.2230, lonny.townley@mcphs.edu or return the enclosed reply card.

Thank you for all you do to support MCPHS achieve its mission.

With appreciation,

Marguerite C. Johnson, '61
Senior Vice President and Chief of Staff

YOUR GIVING AT WORK

More than **200** scholarship funds annually distribute in excess of **$300,000** in academic scholarship support to nearly 300 students.

MCPHS alumni improve human health, save lives and advance scientific research in all **50 states** and more than **60 nations** around the world.

MCPHS University operates 8 schools of professional health sciences, offers 68 rigorous academic degree programs and educates nearly **7,000** students for leadership careers in healthcare.

www.mcphs.edu

Boston, MA Campus 179 Longwood Avenue | Boston, MA 02115 | T 617.732.2800 F 617.732.2801
Worcester, MA Campus 19 Foster Street | Worcester, MA 01608 | T 508.890.8855 F 508.890.8515
Manchester, NH Campus 1260 Elm Street | Manchester, NH 03101 | T 603.314.0210 F 603.314.0303

2015, Courtesy of MCPHS University

Advertisements in an Organization's own Publications

The example below is an advertisement in the college's alumnae magazine. Not all organizations have the opportunity to run a full page ad, but if so take note. The use of a prominent photo is eye-catching. We now know from Russell James' research on "Words that Work," which was not available at the time this ad ran, that the ad's subheading, "Philanthropy in Harmony with Your Needs," might have made a better heading, with "A Gift That Pays You Income" as the subheading. This change would have avoided such prominent use of a technical term like "Charitable Gift Annuity."

2014, Courtesy of Scripps College

Advertisements (continued)

THE UNIVERSITY OF NEW HAMPSHIRE HELPED YOU GET YOUR START.
LET IT PLAY A ROLE IN SECURING YOUR FUTURE.

"An investment in knowledge pays the best interest."
—Ben Franklin

Sample Charitable Gift Annuity
$25,000 CONTRIBUTION

Age	Annuity Rate	Annual Income
65	4.7%	$1,175
70	5.1%	$1,275
75	5.8%	$1,450
80	6.8%	$1,700

University of New Hampshire

www.unhlegacy.org

MAKE AN ANNUITY GIFT WITH UNH TODAY,

and you'll not only provide for UNH students tomorrow, but you'll guarantee yourself income for life. Charitable gift annuities are planned gifts of cash or securities that pay you and/or your spouse a fixed annual return for life.

WITH A MINIMUM GIFT OF $10,000, YOU WILL:

- Receive annual payments for life at a fixed rate of return higher than that of most bonds or CDs
- Benefit from an immediate charitable deduction for a portion of your gift
- Reduce your capital gains tax on a gift of appreciated securities
- Have the satisfaction of making a significant gift that benefits you now and UNH in the future

If you would like to calculate how a gift annuity would work for you, go to www.unh.legacy.org and our online calculator will allow you to do this anonymously. Please contact Theresa M. Curry, JD, Sr. Director of Gift Planning, at (603) 862-4895 or Theresa.curry@unh.edu with any questions.

2016, Courtesy of University of New Hampshire

Advertisements (continued)

Here's how a quarter page advertisement might look in a specialized publication. The entire page, which is dedicated to giving stories, appeared in Massachusetts General Hospital's cancer center magazine. The magazine's audience is a prime target for planned giving. Given the magazine's large circulation, the ad reached a wider audience than would be reachable through targeted mailings.

Planned Gift Donors Improve Proton Therapy, Cancer Care

From technology to educational programs and music therapy, Drs. Herman and Joan Suit's numerous planned gifts to Massachusetts General Hospital will improve the experience of cancer patients for years to come. "The great thing about a planned gift is that it provides a bit of comfort as to what's going to happen with your estate," says Herman. "And you can specify a special program that you wish to support," Joan adds.

The Suits have strong ties with Mass General. Herman served as the hospital's first chief of Radiation Oncology, while Joan, formerly a microbial geneticist at MIT, was an enthusiastic volunteer and secretary for The Friends of the Mass General Cancer Center for 25 years. The couple are long-time supporters of the Friends, a group of dedicated volunteers that raise money for supportive care services for cancer patients and their families. Their planned gift was the first such gift to the group.

The Suits also contributed to the establishment of the Herman and Joan Suit Professorship in Radiation Oncology. Most recently, they contributed to the development of a Professorship of Medical Physics in Radiation Oncology at the Mass General Cancer Center. These gifts pay tribute to Herman's distinguished career at the hospital, where he pioneered the use of proton therapy for cancer patients.

Drs. Herman and Joan Suit's planned gifts to Mass General Hospital will improve the experience of cancer patients for years to come.

To learn more about the Suits, visit *giving.massgeneral.org/suit*. To learn more about planned giving, please contact Mark Dantos, Director of Development: (617) 643-0465.

Like Drs. Herman and Joan Suit, You Can Become A Legend of Mass General With A Gift That Pays You For Life

A Charitable Gift Annuity (CGA) is a great way to lock in a stream of income and designate future support for the hospital.

With a CGA, you contribute cash or stock to Mass General. In return you, and/or another beneficiary you name, receive a fixed income for life. Your annuity rate is based on beneficiary ages (see chart). At the passing of the last named beneficiary, the remaining balance comes to Mass General to advance an area of the hospital that you choose.

Benefits include:

- Secure, fixed payments for life
- Immediate charitable tax deduction
- Favorable capital gains tax treatment if long-term appreciated securities fund the annuity
- Your legacy at Mass General

FIND YOUR RATE

ONE PERSON		TWO PEOPLE	
AGE	RATE	AGES	RATE
90+	9.0%	90/95+	8.8%
85	7.8%	85/90	7.3%
80	6.8%	80/85	6.1%
75	5.8%	75/80	5.3%
70	5.1%	75/75	5.0%

**Based on rates recommended by the American Council on Gift Annuities (subject to change)*

Double Your Impact!

Make a gift before **December 31** to support one of the following challenge grants, and your donation will be matched dollar for dollar. Twice the gift means twice the impact!

Liposarcoma Genome Project
Help researchers in the Center for Sarcoma shed light on new treatments for liposarcoma and a host of more common cancers—the cancers likely to affect all of us. Learn more at: *giving.massgeneral.org/liposarcoma*

Be a Piece of the Solution
Support vital targeted lung cancer therapy research at the Center for Thoracic Cancers and help provide hope to hundreds of thousands of families everywhere. Learn more at *giving.massgeneral.org/cancer/support-piece-solution*

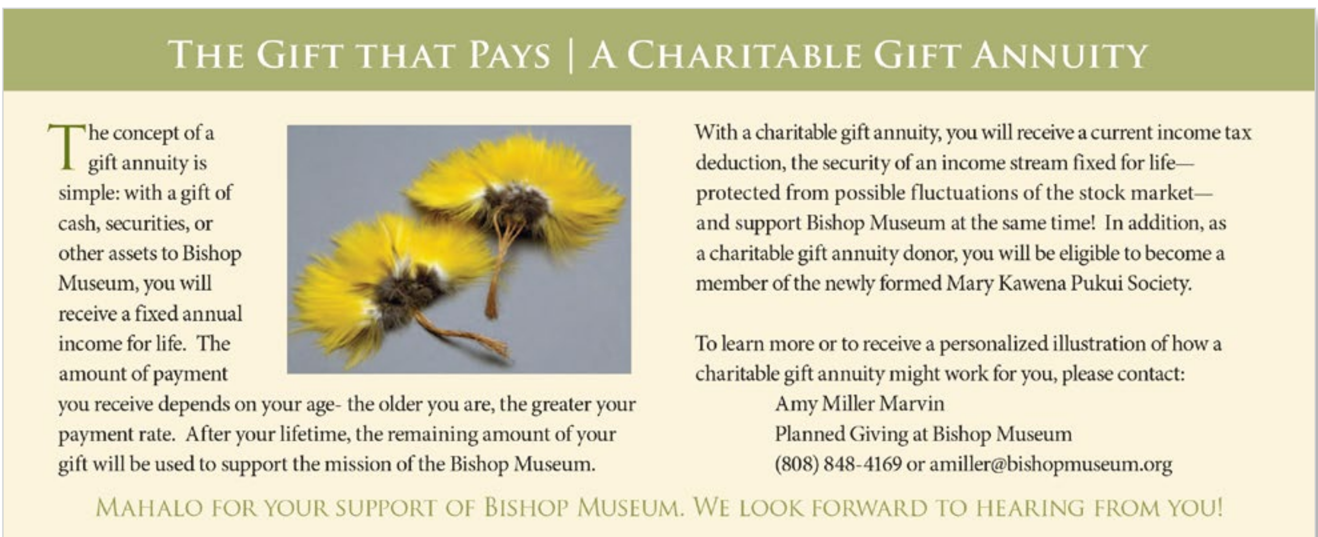
Pappas Family Pediatric Oncology Challenge
Donate today to support our youngest cancer patients as they undergo treatment—your gift will help establish a permanent child life specialist position at the MassGeneral Hospital *for* Children Cancer Center. To learn more, please contact Meagan Coons at (617) 643-9677.

6 MASSACHUSETTS GENERAL HOSPITAL CANCER CENTER

2015, Courtesy of Massachusetts General Hospital

Mailer Inserts

Inserts like the examples below are traditionally used in acknowledgement letters or gift receipts, as well as in annul fund solicitation mailings. They are an economical way to promote planned gifts to an audience that otherwise might get little exposure to this information. Ordinarily, this sort of insert would not go to everyone receiving the letter/receipt, but rather only to donors who are at least a certain age, such as 65 years old or older.



2008, Courtesy of Bishop Museum

Mailer Inserts (continued)

PAYMENTS FOR LIFE FROM HOSPICE HAWAII

With a charitable gift annuity you can make a gift to Hospice Hawaii and in exchange benefit your loved ones for life. It's simple - in exchange for a gift of $5,000 or more, Hospice Hawaii will agree to pay you and/or a loved one (both at least 60 years of age) payments for life.

EXPLORE THE ADVANTAGES OF A GIFT ANNUITY:

- Fixed annual lifetime payments.
- An immediate charitable income tax deduction.
- Provide hope, care and comfort to those approaching their journey's end.

For more information or a confidential illustration contact Janice Nillias Knapp, CFRE (808) 791-8046 or development@hospicehawaii.org

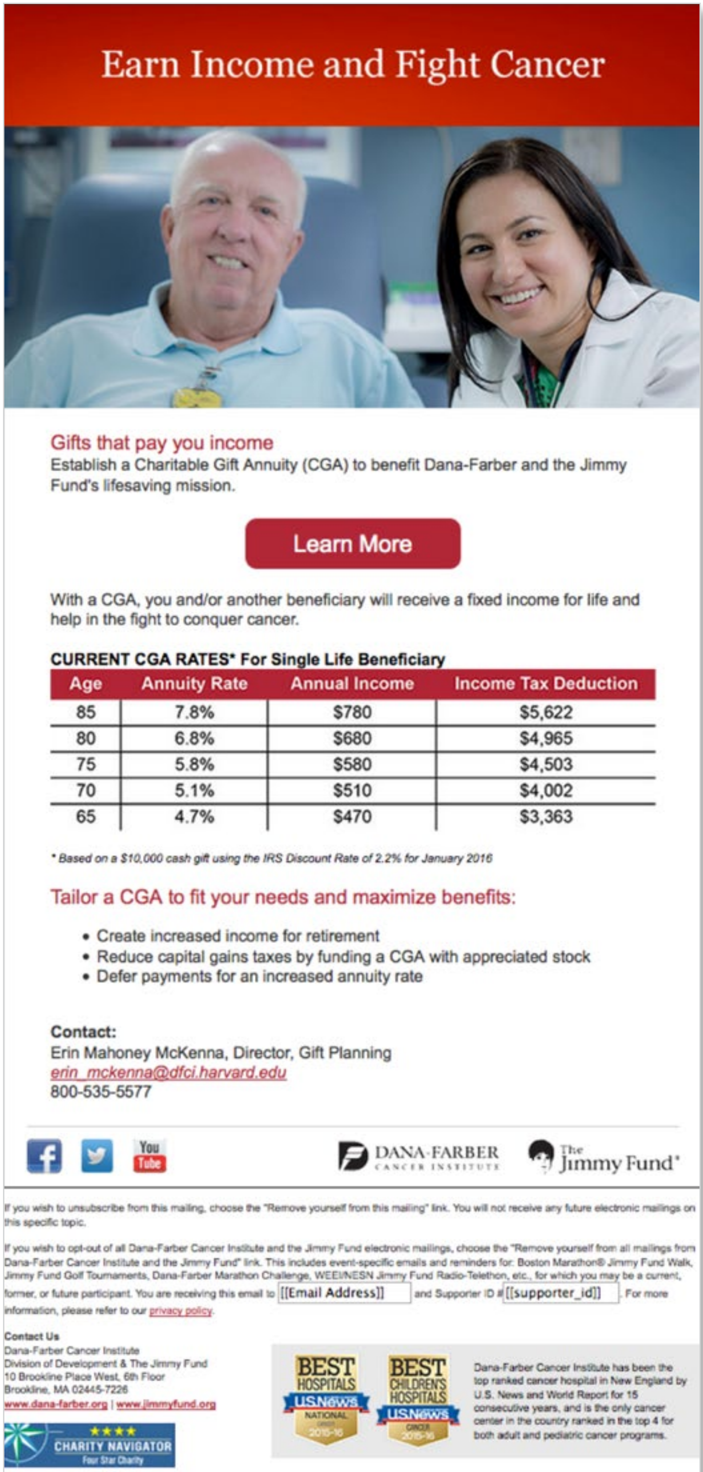
ONE LIFE		TWO LIVES	
Age	Rate	Ages	Rate
90+	9.0%	90/95+	8.8%
85	7.8%	85/90	7.3%
80	6.8%	80/85	6.1%
75	5.8%	75/80	5.3%
70	5.1%		

Rates recommended by the American Council on Gift Annuities, as of April 2012 (subject to change)

2012, Courtesy of Hospice Hawaii

Email

Email mailings are part of Dana-Farber Cancer Institute's standard marketing mix and have generated high quality leads for follow-up. In addition to gift annuity emails like the one shown below, Dana-Farber also sends a personalized gift annuity mailing similar to the MCPHS University mailing described earlier in this appendix, and uses banner ads on Facebook where they can narrowly target their audience.



Earn Income and Fight Cancer

Gifts that pay you income

Establish a Charitable Gift Annuity (CGA) to benefit Dana-Farber and the Jimmy Fund's lifesaving mission.

Learn More

With a CGA, you and/or another beneficiary will receive a fixed income for life and help in the fight to conquer cancer.

CURRENT CGA RATES* For Single Life Beneficiary

Age	Annuity Rate	Annual Income	Income Tax Deduction
85	7.8%	$780	$5,622
80	6.8%	$680	$4,965
75	5.8%	$580	$4,503
70	5.1%	$510	$4,002
65	4.7%	$470	$3,363

** Based on a $10,000 cash gift using the IRS Discount Rate of 2.2% for January 2016*

Tailor a CGA to fit your needs and maximize benefits:

- Create increased income for retirement
- Reduce capital gains taxes by funding a CGA with appreciated stock
- Defer payments for an increased annuity rate

Contact:
Erin Mahoney McKenna, Director, Gift Planning
erin_mckenna@dfci.harvard.edu
800-535-5577

DANA-FARBER CANCER INSTITUTE
The Jimmy Fund

If you wish to unsubscribe from this mailing, choose the "Remove yourself from this mailing" link. You will not receive any future electronic mailings on this specific topic.

If you wish to opt-out of all Dana-Farber Cancer Institute and the Jimmy Fund electronic mailings, choose the "Remove yourself from all mailings from Dana-Farber Cancer Institute and the Jimmy Fund" link. This includes event-specific emails and reminders for: Boston Marathon® Jimmy Fund Walk, Jimmy Fund Golf Tournaments, Dana-Farber Marathon Challenge, WEEI/NESN Jimmy Fund Radio-Telethon, etc., for which you may be a current, former, or future participant. You are receiving this email to [[Email Address]] and Supporter ID # [[supporter_id]]. For more information, please refer to our privacy policy.

Contact Us
Dana-Farber Cancer Institute
Division of Development & The Jimmy Fund
10 Brookline Place West, 6th Floor
Brookline, MA 02445-7226
www.dana-farber.org | www.jimmyfund.org

CHARITY NAVIGATOR
Four Star Charity

BEST HOSPITALS US News NATIONAL 2015-16
BEST CHILDREN'S HOSPITALS US News CANCER 2015-16

Dana-Farber Cancer Institute has been the top ranked cancer hospital in New England by U.S. News and World Report for 15 consecutive years, and is the only cancer center in the country ranked in the top 4 for both adult and pediatric cancer programs.

2016, Courtesy of Dana-Farber Cancer Institute

Email (continued)

Here are examples of emails from two additional institutions.

seattleopera.org | Support Us | Planned Giving

SEATTLE OPERA
SPEIGHT JENKINS GENERAL DIRECTOR

Dear [Name]

As a subscriber to Seattle Opera for 39 years, you have truly been part of Seattle Opera's history. Your consistent support has helped us become one of the most highly regarded opera companies in the U.S.

In this uncertain economy, you may have concerns about your financial future while wanting to continue support of Seattle Opera and other organizations you love.

I am writing to let you know about a way you can sustain - possibly even increase - your cash flow and make a special gift to Seattle Opera.

With a **Charitable Gift Annuity**, you make a gift to Seattle Opera, and in return, receive annual, fixed payments for your lifetime. These payments are received partly tax-free and won't fluctuate with the market, and you receive an immediate charitable deduction to save on your taxes. To learn more, please click on these links to read this easy to understand description and diagram.

For a personalized gift proposal (no obligation), please contact me today at 206.676.5534 or at paula.rimmer@seattleopera.org or return the attached inquiry form.

Thank you for your consideration of this gift opportunity - I look forward to discussing the many benefits of a **gift annuity** with you.

Best regards,

Paula A. Rimmer
Associate Director--Planned/Major Gifts

Photos: Rozarii Lynch

Seattle Opera, P.O Box 9248, Seattle WA, 98109

Unsubscribe

2014, Courtesy of Seattle Opera

Email (continued)

This message is being sent to you because of your affiliation with Tufts University at URL http://www.tuftsal

Dear

Despite reports about the economy improving, continuing economic uncertainties may influence your year-end philanthropic decisions. Establishing a charitable gift annuity at Tufts University allows you to make a lasting contribution while also taking steps to secure your future.

Benefits of charitable gift annuities, which can be funded with $10,000 or more in cash or appreciated securities, include:

- Fixed payments for life to you and/or a loved one
- Partially tax-free income
- An immediate charitable deduction

If you'd like to discuss funding a charitable gift annuity before year's end, please call or email the Gift Planning Office at 888-748-8387 or giftplanning@tufts.edu. You can also find more information on our website.

Sincerely,

Rebecca Scott
Director of Gift Planning
Tufts University

P.S. Check out our online gift calculator to calculate the income and tax benefits you may receive from establishing a charitable gift annuity to benefit Tufts.

Find us on Facebook

Charitable Gift Annuity Rates*

Age	Rate
60	5.2%
65	5.5%
70	5.8%
75	6.4%
80	7.2%
85	8.1%

*Rates are based on one income recipient. Contact the Gift Planning Office for gifts that benefit two recipients. Rates effective as of July 1, 2010, and are subject to change.

The CHARLES TUFTS Society

Key Links
Register for the Tufts Online Community
Update your contact information
Look up friends
Share your news in classnotes
Visit the career center
Retrieve your username & password
Update your email subscription preferences

You can reach us via mail at Tufts Online Community, 80 George St., Medford, MA 02155.

2014, Courtesy of Tufts University

Measure, Report, Refine

One of the most challenging tasks for marketing professionals is how to measure their success so that they can invest more in efficient marketing practices and invest less in – or abandon altogether – less efficient tactics. Quite often they measure the success of each marketing activity by its return on investment, by the cost of the campaign in relation to the number of leads it generates. This is not, however, the best way to measure the success of the activities in a planned giving marketing program.

Measure

Results are easier to measure for some tactics than others. With digital media, analytic tools make measuring web activity easy. While email programs deliver results such as open rates or click-through rates, the data provided in these instances are not useful without the proper analysis. For instance, an organization may launch a blog and be satisfied with how many people sign up to receive notifications, or it may find that its quarterly newsletters have a higher-than-average open rate. However, these two data points don't necessarily add up to engagement or generate leads.

How, then, can a marketer determine which tactics are generating good results? The most important part of this question is determining the appropriate definition of the term "results." The return on investment might be an important number, but it is not necessarily the best measure of a planned giving program's success.

Since web pages can be monitored most easily of all marketing tactics, it makes sense whenever possible to use traditional tactics, such as print and advertising, to drive traffic to the organization's website. Regardless of the number of visitors to a website, however, there simply is no tool that can read or track the experience users have when they arrive at a landing page. The metrics in this context rarely tell the whole story. Yes, an organization can get data on how many people went to a landing page and then moved on, but the data won't tell why they moved on. Maybe a visitor decided the idea was something they'd consider when they reviewed their charitable options at some later time, or wrote "Call Joe to talk about gift annuity" on a piece of scrap paper that they won't find again for a month, or maybe the visitor wasn't interested at all.

A campaign might be considered successful if, for example, 20 percent of the recipients of an email opened it and 15 percent of those who opened it went to the organization's website for more information. The success should be based on the charity's own benchmarks. Yet, that is only part of the picture; the other piece is measuring the number of "conversions." How many of those who went to the website actually did something, such as download a brochure or run a calculation?

For the print world, most organizations track response using source codes associated with the specific activity. Even with the use of source codes, tying gift results to a particular campaign is typically very difficult due to the lengthy cultivation period for most planned gifts. Assigning dollars raised or gifts closed to any particular campaign or mailing is likely to be misleading. Earlier marketing efforts may have raised a donor's awareness of gift annuities and made her receptive to the concept, while the latest campaign just happened to remind her of them at just the right time for her to take action and make the gift.

The solution? Look at aggregate gifts generated by all marketing activities over time (up to five years to see a trend). This approach will provide a truer picture of how the marketing program is performing.

Report

When evaluating specific results, it's important to have a system – a donor database or customer relationship management (CRM) – that captures the data that is essential for measuring the success of the marketing program. Especially with the ability to reach so many people through digital media and to monitor and measure results in real-time, feeding this information, such as a request for more information on gift annuities or for an illustration, back into a CRM is crucial. Without a process for doing this that is followed consistently, the ability to measure the marketing program's effectiveness will be limited because this information will not be recorded in a CRM, where it can be used for reporting and for selecting future lists of gift annuity prospects.

Metrics reporting is especially important to planned giving programs because deferred gifts have a "lag time." Senior leaders may hesitate to allocate resources to their organization's planned giving program because they do not fully appreciate that it can take many months or years of cultivation before a donor makes a planned gift and it may be years between receipt of the gift commitment and when the funds will become available to the charity.

Although metrics are valuable, it's important to remember that they also have shortcomings. Typically, marketers measure when the effort has concluded, but this is just one data point. Metrics are more revealing when they measure trends over an extended period of time, a couple of years or more.

It typically takes about five years for an organization to realize the full marketing potential of its planned giving program. Hence, the metrics used to evaluate a program's success should aim to capture the progress and activity of the program. The metrics for assessing program efforts and success should focus on three critical areas:

1. discovery of new planned gift prospects,
2. cultivation of existing planned gift prospects, and
3. stewardship of existing planned gift donors.

Here are the most common ways to measure the program's success:

Marketing Activity	Fundraising Activity	Stewardship Activity
• Number of targeted direct mailings • Number leads or activity from website • Number of referrals from professional advisors • Number of new prospects • Number of proposals sent • Number of known bequest intentions • Number of communications and/or events that feature planned giving information	• Number of planned giving visits by development officers • Number of unique planned giving visits by development officers • Number of blended gifts (outright and deferred combination) • Number of development communications that feature a planned giving message • Number of referrals from board members	• Number of annual visits, phone calls, letters and birthday cards to donors • Number of stewardship (non-solicitation) communications • Number of events held • Number of realized bequests processed

In addition, be sure to capture and report on activities and statistics that are relevant to quantifying the positive impact of the organization's legacy society:

- Number of new members each year. Do not report simply the change in gross number of members from year to year, as some members will pass away during the year, leading to underreporting of new gift intentions.
- Average size of annual-type gifts from donors before and after they joined the legacy society.
- Current gifts that result from the society's stewardship efforts.
- Repeat planned gifts from society members.

- Increases in size of planned gifts by members.
- Average dollar value of bequests received from legacy society members versus those received from other bequest donors.

Refine

Before a charity can achieve its marketing goals, it needs to know where it has been, and where it is now. Reviewing this information will help the charity set realistic expectations for its planned giving program. This is done by analyzing the metrics the organization has chosen to track, testing the effectiveness of individual marketing tactics, and revising these tactics based on the variations that generate the best response (see below). An organization's successes and failures can often be found in the marketing numbers. It's important to keep track of all efforts and to do a post-mortem on every mailing and campaign.

Just a small change to the look of the envelope or subject line of an email or headline of a landing page can make a big difference in its effectiveness. The easiest way to test the effect of a change of this sort is to create two versions of the envelope, email headline, or landing page (an A|B, or "split" test) that are identical except for one element. Experiment with the calls-to-action, for example, or the size of a "Contact Me" button and measure the results.

Typically, organizations test campaigns and website pages that have the most traffic and are most important to the conversion rate. In addition to testing the "list," here are some common elements to test:

- Headlines – have a strong, compelling headline that encourages the reader to read more.
- Calls to action – the size of your buttons and the text on the button should be tested regularly.
- Layout – test removing all distractions from your call-to-action to encourage response.
- Copywriting – mission copy, gift type descriptions, etc.
- Forms – their length, field types, text on the forms.
- Images – their placement, content, and size.

Continuous cultivation is a key to planned giving marketing, but doing the same ineffective communications year after year is not smart. Successful marketers need to learn as much from their failures as they discover from their successes. Use what works, and change what doesn't. Testing, reviewing, measuring, and refining helps advance new marketing ideas and will lead to greater success.

When assessing a program, it's important to look at its performance over the last several years. Looking at the program's performance year-over-year can be misleading because planned giving is cyclical in nature. There can be wide fluctuations from year-to-year for reasons beyond the charity's control, such as the donor of a large gift annuity happens to make the gift one year and not another, or the donor of a particularly large bequest happens to die one year. Identify if the long term trend is heading in a positive direction. That will be the strongest indicator that the marketing of the planned giving program is working.

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ABC CHARITY

Annuity Inquiry Form

Please fill out this form and mail it in the postage-paid envelope. The information you provide does not obligate you in any way to contribute for a gift annuity. It will simply allow the ABC Charity to prepare an annuity illustration for you. The illustration will show the amount of annuity payments you would receive and the tax benefits available to you.

1. I am interested in an illustration for:
   _____ One life   _____ Two lives (payments made to you and another person for the duration of your lives OR to two other persons for the duration of their lives)

2. The illustration should be in the amount of:
   ______ $10,000   ______ $25,000   ______ $50,000 $ _________ Other
   (The minimum contribution for an ABC Charity gift annuity is $ _______________ .)

3. The property contributed for the annuity would be:
   _____ Cash   _____ Bonds   _____ Stocks   _____ Mutual Fund Shares

   Please indicate approximate cost basis if property other than cash is to be contributed.
   Cost basis $ __________

4. Names and dates of birth of annuitants (those who will receive annuity payments):

First annuitant:	Second annuitant:
Name ______________________________	Name ______________________________
Address ______________________________	Address ______________________________
City, State, ZIP ______________________________	City, State, ZIP ______________________________
Date of birth __________ Telephone __________________	Date of birth __________ Telephone __________________

Prototype Materials: inquiry form - cga.docx

INQUIRY FORM

ABC CHARITY

Deferred Annuity Inquiry Form

Please fill out this form and mail it in the postage-paid envelope. The information you provide does not obligate you in any way to contribute for a gift annuity. It will simply allow the ABC Charity to prepare an annuity illustration for you. The illustration will show the amount of annuity payments you would receive and the tax benefits available to you.

1. I am interested in an illustration for:
   _____ One life _____ Two lives (payments made to you and another person for the duration of your lives OR to two other persons for the duration of their lives)

2. The illustration should be in the amount of:
   _______ $10,000 _______ $25,000 _______ $50,000 $ _________ Other
   (The minimum contribution for an ABC Charity gift annuity is $ ________________ .)

3. The property contributed for the annuity would be:
   _____ Cash _____ Bonds _____ Stocks _____ Mutual Fund Shares

   Please indicate approximate cost basis if property other than cash is to be contributed.
   Cost basis $ ___________

4. Payments are to begin on this date: ___________
   mm/dd/yy

   Names and dates of birth of annuitants (those who will receive annuity payments):

First annuitant:	Second annuitant:
Name ______________________	Name ______________________
Address ______________________	Address ______________________
City, State, ZIP ______________________	City, State, ZIP ______________________
Date of birth ________ Telephone ____________	Date of birth ________ Telephone ____________

Prototype Materials: inquiry form - dga.docx

Comparison of the Markets for Gift Annuities and Charitable Remainder Annuity Trusts

APPENDIX 2

Gift annuities are sometimes confused with charitable remainder annuity trusts because in both cases the beneficiaries receive a fixed sum. However, they differ from one another in a number of respects.

A gift annuity is an unsecured liability of the charity backed by all of the charity's assets, whereas payments from a charitable remainder annuity trust are secured only by the trust assets. The gift annuity agreement is a contract stating the obligation of the charity to make payments to one or two annuitants in exchange for the contribution of certain property.

A charitable remainder annuity trust comes into being through the execution of a trust agreement between the donor(s) and a trustee and the funding of the trust. The payments from a charitable remainder annuity trust are taxed under the four-tier system, while the gift annuity payments are taxed under the ratable reporting of tax-free return of principal and capital gain as described in Chapter 2.

There are also differences with respect to the number of permissible beneficiaries and the period over which payments can be made. Nevertheless, the income tax charitable deduction from a contribution to a charitable remainder annuity trust and for a gift annuity will be nearly identical, provided that the gift annuity rate and trust payout rate are the same and that both will make payments with the same frequency for the life of the beneficiary(ies).

Gift annuities appear to be far more common than charitable remainder annuity trusts. When there are one or two beneficiaries who want income for life, a gift annuity is usually preferred because higher payments may be available, payments may be taxed more favorably, and the gift annuity can be established quickly and inexpensively.

Advantages of a Gift Annuity

- Smaller contributions are acceptable.
- Payments may be deferred, thereby increasing both the eventual payment rate and the charitable deduction.
- A gift annuity is simpler to establish and administer.
- Administration will probably be less expensive.
- A gift annuity is easily understood by donors.
- In many instances payments will be taxed more favorably.
- Certain transactions, which would not be possible with an annuity trust because of the self-dealing rules applicable to those trusts, are possible with a gift annuity.
- Assuming the charity is financially sound, the payments to annuitants will be more secure.

Advantages of a Charitable Remainder Annuity Trust

- The donor can choose the person or institution that will manage the assets.
- The donor can contribute appreciated property, name another person as income beneficiary, and not be taxed on any of the gain when the trust is funded.
- The annuity trust can make payments for a term of years as well as for the life of the beneficiary(ies).
- There can be more than two income beneficiaries and multiple charitable

APPENDIX 2

remainder beneficiaries, and the donor can retain the right to change charitable beneficiaries.

- Donors may specify payments at rates as high as the law permits, but gift annuity donors can select rates no higher than those adopted by the charity.
- With an annuity trust, a charity can avoid the sometimes complicated gift annuity certification process.

Comparison of the Markets for Gift Annuities and Pooled Income Funds

APPENDIX 3

Advantages of a Gift Annuity

- Fixed payments to beneficiaries.
- For older beneficiaries, larger payments than they would likely receive from a pooled income fund.
- Portion of payments tax-free and/or taxed favorably as long-term gain.
- Ability to defer payments until retirement age (deferred gift annuity).
- Immediate deduction allowed if contribution consists of tangible personal property.
- Generally a larger charitable deduction than from a contribution of an equivalent amount to a pooled income fund. Nevertheless, in the current low interest rate environment this will more likely be the case with a seasoned pooled income fund than with a new one.
- Gift annuities are simple to administer.

Advantages of a Pooled Income Fund

- Charity's assets are not at risk.
- Possible to have more than two beneficiaries.
- Income to beneficiaries may increase. (More likely to be true of growth and balanced funds.)
- No registration requirements wherever donors live. (Gift annuities may require state certification.)
- For younger beneficiaries, income from pooled income fund may be larger than payments from a gift annuity because the amount of income does not depend on the age of the beneficiary.
- When a donor names another person as income beneficiary, none of the capital gain in the contributed asset will be taxed to the donor.
- Small additional contributions can be accepted with minimal paperwork.

APPENDIX 3

Primary Market for Gift Annuities* and Pooled Income Funds

Pooled Income Fund

Donors ages 50-65.

Donors wanting possible income growth (balanced or growth fund).

Donors naming more than two beneficiaries.

Donors in states where charity is not authorized to issue gift annuities.

Select donors seeking a tax-favored way to finance a capital project of charity.

Donors with appreciated property wanting to benefit persons other than themselves.

Donors ages 65-75.

Donors of modest sized gifts.

Donors contributing cash or securities (other than tax-exempts).

Gift Annuity

Donors ages 75-95.

Donors wanting security of fixed payments.

Donors naming one or two beneficiaries.

Donors with investments yielding low returns.

Donors in higher tax brackets wanting partially tax-free payments.

* This diagram applies to immediate payment gift annuities. Deferred gift annuities typically appeal to donors ages 50-65, such as mid-life donors who are seeking a supplemental retirement plan.

Emphasis on the Gift

APPENDIX 4

The Philanthropy Protection Act of 1995 create new parameters for charities to stay within when marketing gift annuities. The basic premise is that charities must make clear to prospects that a gift annuity is a charitable gift and not an investment. A 2009 court case, Warfield v. Alaniz, et. al, reinforced that charities should take these parameters seriously.

In 2009, the Ninth Circuit Court of Appeals ruled against the defendants in the Warfield v. Alaniz, et. al case. This case concerned the Mid-America Foundation, which recruited financial planners and insurance agents to sell gift annuities on a commission basis. Robert Dillie, the head of this Foundation, operated a Ponzi scheme whereby he did not invest contributions in a reserve fund but, rather, spent part of them personally and then used new contributions to make payments on earlier annuities. Eventually, the scheme collapsed, leaving annuitants without their payments. Dillie was convicted, and, per the ruling of the court, the sales people were required to return their commissions.

The Philanthropy Protection Act of 1995 exempts gift annuities from regulation as securities but makes this exemption contingent on no commissions being paid. Not only did the sales people receive commissions, but they also marketed gift annuities as investments, speaking of "returns" and "yields" and giving scant attention to the philanthropic component. This caused the Ninth Circuit Count of Appeals to uphold the District Court's finding that the gift annuities marketed by the defendants were investment contracts, subject to securities rules, which they had violated.

While the decision of the court should not discourage charities from continuing to offer gift annuities, it should stimulate a review of marketing materials. The American Council on Gift Annuities has provided the following guidance:

"Two important points may be derived by charities and gift planners from this case. First, in case there was still any doubt in anyone's mind, charities should not offer to pay commissions to anyone (employees or independent third parties like financial planners) for solicitation of gift annuities. Second, CGA marketing materials should emphasize the philanthropic, rather than the investment, objectives of this gift vehicle. Of course, it's OK to talk about payments to the annuitant and to express those payments as a percentage of the amount transferred to the charity. But we should avoid referring to those percentages as "yields" or "returns", or comparing CGAs to investments like stocks, bonds, and certificates of deposit."

We would add that if any reference is made to an instrument such as a CD, it should be made absolutely clear that the income from that instrument is not to be equated with the payments from a gift annuity because the annuity payments, unlike interest and dividends, consist partly of a return of one's capital.

Some national foundations have recruited financial services professionals to "sell" gift annuities on commission. It would be unfortunate if that practice became widespread, for a charity paying such commissions would not qualify for the securities exemption afforded by the

Philanthropy Protection Act of 1995, and the practice could invite state regulatory activity that might subject gift annuities to the same rules as commercial annuities. Moreover, such commissions are a clear violation of the *Model Standards of Practice for the Charitable Gift Planner*.

Chapter 16

POSSIBLE FUNDING ASSETS

Most gift annuities are funded with either cash or marketable securities. Certainly, a charity is less at risk when it accepts only these types of assets for a gift annuity. On the other hand, a charity may foreclose opportunities for some significant gifts when it refuses to consider different assets. This chapter considers various assets, other than cash and marketable securities, that could be contributed for a gift annuity.

Before contributing these assets, the donor needs to be fully informed about the tax consequences. Sometimes the deduction may be less than expected, and in some cases the donor may even incur a net cost because the tax on the recognized gain exceeds the tax savings from the deduction. Apart from the immediate tax consequences, the gift could still be advantageous considering the future stream of payments.

Likewise, the charity must evaluate each of these gifts on a case-by-case basis to make sure they are in its best interest. The charity might ask itself three questions in particular:

1. Does state law prohibit acceptance of the asset for a gift annuity?

   New York had been the one state with such a prohibition, and did not allow acceptance of real estate or, in fact, any asset other than cash or marketable securities for a gift annuity. That changed, however, with the enactment of legislation that allows for contribution of "cash and other property."
2. If the asset is accepted, will the charity be able to meet the reserve requirements of various regulated states where it is registered?

   Certain states limit the type of investments in the required segregated reserve fund. Real estate, closely held stock, and tangible personal property are not on the approved list in some of those states. It does not follow that a gift annuity cannot be funded with these assets. Rather, it simply means that they cannot be included in the investments of the required reserve fund. So long as the charity maintains in the reserve fund sufficient qualifying assets to back outstanding annuities, it can accept any kind of asset it wishes. However, if it accepts an asset such as real estate, and the property is not readily sold, the charity might have to move some if its general assets into the reserve fund to maintain it at the required level. This will be unnecessary in most states if the reserve fund has a healthy surplus. However, California requires that the portion of each contribution representing the required reserve for that annuity be added to the reserve fund even if that fund contains surplus reserves. Once the real estate sells, a portion of the proceeds can be transferred to the charity's general fund to replace the amount advanced from that fund to meet reserve requirements, and the balance of the proceeds would constitute surplus reserve funds to be invested or expended in accordance with the charity's policies. The prudent course is to invest them either in the required reserve account or in a separate surplus reserve account.

3. Does acceptance of the asset make good business sense?

   Some of the assets discussed in this chapter – cash value life insurance, commercial annuities, and retirement funds – are equivalent to gifts of cash, so no risk is involved. However, gifts of real estate, tangible personal property, cryptocurrency, commodities, and closely held stock do entail risk. Consequently, the charity should evaluate them very carefully, looking at marketability, the price range at which they may sell, holding costs, and selling costs. In many instances it may take certain steps to reduce risk, such as offering a lower annuity rate than it would for an annuity funded with cash or marketable securities.

Each of the possible funding assets discussed below is considered with reference to both the donor and the charity.

Gift Annuity Funded with Real Estate

The preferred instrument, when a donor wants to contribute real estate and receive life payments, is a net-income charitable remainder unitrust, probably containing a "flip" provision allowing it to convert to a standard charitable remainder unitrust upon sale of the property. However, some donors may prefer a gift annuity because the amount of the payments is predetermined and because those payments constitute a general obligation of the charity. Also, the gift annuity may be the only practical life income alternative if the value of the property is too low to justify establishing a trust, or if the property is subject to a mortgage for which the donor is personally liable.

In accepting real estate for a gift annuity, the charity assumes considerable risk. It commits itself to fixed payments without knowing when the property will sell or for how much. Prior to the sale, it must advance its own funds to make the annuity payments, service any debt, and cover various expenses unless income from the property is sufficient to cover these items. The net amount remaining for investment after absorbing these expenses and paying selling costs may be insufficient to sustain the payments for the life of the annuitant, in which case the charity will lose money.

An alternative to a gift annuity funded with real estate is an installment bargain sale of real estate. It could be considered if the donor resides in a state where the charity is not authorized to issue gift annuities. Another advantage of the installment bargain sale is that the right to payments could be given to heirs in the event the donor dies before the end of the amortization period. A major disadvantage is the fact that an installment bargain sale would generate unrelated business taxable income for the charity unless the charity uses the real estate in fulfillment of its charitable mission.

Strategies to Minimize Risk

1. Adjust the gift annuity rate to take into consideration the fact that net proceeds might be less than the appraised value.

The gift annuity payment can be any amount mutually agreed by the donor and the charity subject to two conditions: (1) The payment must result in the present value of the annuity being less than 90 percent of the value of the property transferred; otherwise the gift annuity may result in unrelated business taxable income. (See IRC

Secs. 501(m) and 514(c)(5)). (2) If the annuity is issued in a regulated state to which the charity has submitted a schedule of rates, it cannot vary from those rates, except to offer a lower rate pursuant to the donor's knowledge and consent.

The California Department of Insurance addresses this issue with the following statement: "If the amount of annuity to be paid is less than the amount calculated based on the current adopted annuity rate table as filed with this Department, such an agreement must have a rider or waiver statement indicating that the donor has been informed of the higher available rate, but accepted the lower rate of periodic annuity payments. In such cases *(the charity)* must submit a copy of the signed agreement and waiver along with other items required to be filed. **Annuity amounts paid cannot exceed the amount calculated based on the currently-adopted annuity rate table as filed with this Department."**

Fearing that the net sales proceeds may be substantially less than the appraised value, some charities offer to pay an annuity equal to the published rate for a person of the annuitant's age multiplied by the estimated sales proceeds. The discounted rate would be determined by this formula:

$$\frac{\text{estimated net proceeds}}{\text{appraised value}} \quad \text{x} \quad \text{normal gift annuity rate}$$

The problem, of course, is that the actual proceeds could be higher or lower than the estimate. If the former is true, the annuitant's payments are suppressed beyond what would have been necessary. If the latter is true, the charity is exposed to greater risk.

If it is likely that the property can be sold quickly, either before the end of the calendar year in which the gift is made or at least prior to the due date of the donor's income tax return for that year, the charity and donor might enter into an agreement that specifies the annuity payment shall be the net sales proceeds multiplied by the published gift annuity rate. In the event that the property has not sold by a specified date, the agreement would stipulate that the annuity payment shall be the discounted amount to which the charity and the donor have agreed.

The agreement regarding the rate can be a separate letter of understanding (with a gift annuity agreement being prepared later), or it can be within the annuity agreement itself. The latter option, however, may be problematic in states in which the charity has previously submitted forms of agreement for approval. Since the charity is not free to modify the text of such forms; it would have to submit new agreement variations for approval prior to use.

While determination of the annuity amount would await the sale of the property, the date of the gift would be the date on which title to the property was transferred to the charity; the first payment date could be the end of the payment period next following the sales date, or a specified date (April 1, for example) if the property has not sold by then. Since the payment amount would be known prior to the due date of the tax return, the deduction amount could be computed and reported by the donor on that return.

When calculating the deduction and the taxation of payments, discount the gift annuity rate, not the value of the property. Suppose, for example, that the appraised value of the property is $500,000 and the normal gift annuity rate for a person the donor's age is 6.4 percent. The property is contributed on July 15, 2023 and is sold December 28, 2023, and the net sales proceeds are $427,801. The gift annuity payment would be $27,379, which is 6.4 percent of the net proceeds. When calculating the deduction and taxation of payments using a planned giving software program, enter as the amount of the gift $500,000, the date of the gift as July 15, 2023, the adjusted cost basis whatever it was at the time of the gift, and the annuity rate as 5.4759 percent ($27,379 divided by $500,000), and the applicable CMFR for July 2023 or for either of the two preceding months.

What if you entered $427,801 as the amount of the gift and 6.4 percent as the annuity rate? That gift value will be inconsistent with the appraised value, which will have been entered on Form 8283 submitted with the tax return. An examiner might conclude that the donor sold the property, realized net proceeds of this amount and then contributed those proceeds for the gift annuity, in which case the donor would be judged liable for all of the tax on the capital gain. It is also possible that an examiner would draw the same conclusion from the arrangement where determination of the annuity amount is delayed until after the property is sold. The authors of this manual are not aware of any specific rulings on this point, but are aware that some organizations are choosing to set the annuity rate based on net sales proceeds subject to consultation with legal counsel.

In most cases, the gift annuity agreement will not contain a provision linking the annuity payment to the net sales proceeds. The charity will have made an estimate of net sales proceeds, and the gift annuity agreement will simply provide for a specified payment, which is lower than the customary gift annuity rate multiplied by the appraised value. Again, when doing the calculations of the deduction and taxation of payments, discount the rate but not the appraised value.

2. Do advance marketing and possibly identify a buyer prior to the date the property is transferred.

According to Rev. Rul. 78-197, a sale will not be considered prearranged, and the donor will not be taxed on the capital gain, if the charity is under no binding obligation to sell. If the charity, in anticipation of a gift of real estate, talks to prospective buyers, determines that one or more of them is seriously interested, receives the property, and soon thereafter enters into a purchase and sale agreement with one of these buyers, the donor should not be exposed to taxation on the gain because the charity was under no binding obligation to sell at the time of the gift.

Wanting more assurance, the charity might go a step further and enter into an oral agreement to sell for a certain price, contingent upon its receiving the property for a gift annuity. Some would say the charity has not gone too far because it has stopped short of a legally enforceable sales agreement (assuming state law does not treat an oral commitment as binding).

Suppose the charity goes still further and actually enters into a written contingent sales agreement with a prospective buyer and possibly opens an escrow account. It could be argued that the donor has not subjected the charity to an obligation to sell, but that the charity, being under no compulsion to do so, has simply made arrangements to sell in the event it receives certain property by gift. This argument might prevail, but certainly the risk level has increased.

Some charities, having entered into a contingent sales agreement, arrange for a simultaneous closing. On the same day, title is transferred to the charity and then to the prospective buyer. To avoid excise tax on both transactions, a charity might have title transferred directly from the donor to the buyer, in which case the charity does not appear on the chain of title. The question is whether a transfer of title directly from the donor to the buyer, if done at the direction of the charity, would be treated as a gift of the property to the charity. In the case of Guest v. Commissioner 77TC9 (1981), Temple Emanuel of Yonkers, New York, agreed to accept certain properties from Winston and Lucy Guest, and the Temple instructed them to retain the properties as nominee on its behalf and to have their attorney prepare deeds conveying the property to the purchaser whom it would later identify. As to whether Mr. and Mrs. Guest made a completed gift of the proceeds from the sale of the properties, the Court said, "We see no difference between the situation where a donee sells a gift prior to actual receipt of it, and, instead of accepting delivery himself, the donee directs that delivery be made to the purchaser."

While agreeing that the direct deeding did not affect the issue of whether a gift of property was made, the Court found that it did affect the timing of the gift. According to the Court, the gift occurred not in year one when Mr. and Mrs. Guest informed the Temple of their intent to make the gift, but rather in year two when delivery was completed. This means that by the time the gift occurred (delivery of deed to the purchaser) the charity was under a binding obligation. Of course, it had – acting in its own volition – bound itself. Would this cause a donor to be construed as having sold the property, using the charity as agent, and contributing the net cash proceeds? If the charity does not appear on the chain of title, this is a possible conclusion.

3. Secure a pledge from the donor and then seek a purchaser.

Before doing advance marketing, the charity may want assurance that the donor is serious about contributing the property, and a prospective buyer would want to know that the charity would be in a position to sell the property. To provide such assurance, the charity could have the donor sign a pledge agreement committing to donate the property in exchange for a gift annuity if and when requested to do so by the charity, provided the request is made within a specified and renewable period.

Having secured the pledge, the charity would seek a purchaser, probably with the assistance of a real estate agent, and then enter into a purchase and sale agreement contingent on receiving the property as a gift. The charity would then ask the donor to fulfill the pledge by transferring title to the property. The size of the annuity payments would be based on the net proceeds expected to be realized from the sale, which would be quite precise since the purchase price is known.

Below is some language that might be included in the Pledge Agreement.

> "This Pledge Agreement is effective as of the date that it has been signed by the Donor and ABC Charity, and shall remain in effect for six (6) months thereafter (the "Term"). The Term may be extended by mutual agreement of the donor and ABC Charity in writing.
>
> "Upon execution of this Pledge Agreement as described in the immediatly-preceding paragraph, ABC Charity plans to begin the process of seeking a buyer for the Property. ABC Charity shall have sole discretion and control related to arranging a sale of the Property, contingent upon ABC Charity's acceptance of the Donor's gift of the Property. ABC Charity is not legally bound, nor can it be compelled by the Donor, to sell the Property.
>
> "Upon ABC Charity's request made to the Donor in writing before the expiration of the Term, the Donor shall transfer title and ownership of the property to ABC Charity within thirty (30) days of the Donor's receipt of such request or within some other period agreed upon by ABC Charity and the Donor in writing. If the donor tenders the Property to ABC Charity other than pursuant to the process described in the immediately-preceeding sentence, ABC Charity shall not be required to accept the Property.
>
> "The Donor's transfer of the Property to ABC Charity shall be in exchange for a charitable gift annuity that will provide for payments made by ABC Charity to the Donor for the duration of his life, with the amount of the payments and their timing agreed to by ABC Charity and the Donor prior to such transfer."

Again, since the charity is subject to no binding purchase and sale agreement entered into, or even consented to, by the donor, arguably this would not be a prearranged sale, per Rev.

Rul. 78-197, and so the donor would not be taxed on the gain as if he sold the property.

4. Exercise a "put" agreement with a prospective buyer in advance of the transfer of the property.

Rather than signing a contingent purchase-and-sale agreement, the charity, having secured some assurance of the donor's intent to make the gift, could enter into a "put" agreement with the interested buyer. It would state that if the charity receives a gift of x property, it has a period of y days to require the buyer to purchase the property, based on certain terms and conditions that would be set forth.

This plan, which is conceptionally similar to option 3 above, also appears to satisfy the conditions of Rev. Rul. 78-197, which states that the gain will not be taxed to the donor, provided the donee is under no legal obligation to sell the property. In this instance the "put" gives the charity the right to compel a purchase, but it is itself under no obligation to exercise the "put." The charity would be subject to little financial risk, for it would not accept real estate for a gift annuity until the "put" is in place and it knows that it can sell the property for a specified price.

Following is possible language for such a "put" agreement:

> "The Seller shall have the right to require the Buyer to purchase the property ("Acquired Asset") as described herein. At such time as the seller acquires marketable title to the Acquired Asset, the Seller may notify the Buyer in writing of such acquisition. If the Seller does, in fact, notify the Buyer in writing of its desire to require the Buyer to purchase the Acquired Asset, then the Buyer shall on or before *[number of days]* business days after receipt of such notice, execute a Contract of Sale, in a form substantially similar to the copy which is attached hereto as Exhibit A ("Contract of Sale"). In addition, the Buyer shall, on or before *[number of days]* business days after the date of receipt of such notice, purchase the Acquired Asset as further described herein and in the Contract of Sale ("closing"). Upon payment in full at the closing as described herein and in the Contract of Sale, possession of the Acquired Asset shall be delivered to the Buyer."

A contract of sale would be attached to this "put" agreement and the agreement would be signed by the Seller (the charity to which the property will be donated) and the Buyer (the person interested in purchasing from the Charity the property that is expected to be donated).

This "put" agreement was drafted by Emil Kallina of Kallina and Associates, LLC in Baltimore, and it is reproduced with his permission. He was also the one who first proposed to the authors of this manual the idea of using a "put" option when a charity wants assurance about the terms of a future sale before accepting a gift of real estate.

Although this strategy, like option 3, is not without risk, it might present a lower risk than if the charity had a pre-existing or oral agreement that required it to sell the property subject to certain terms.

5. Ask the donor to defer gift annuity payments for a period of time.

When a charity accepts an illiquid asset, such as real estate, for a gift annuity it is concerned not only with the net proceeds it may realize but also with the beginning date of the payments. Particularly if the property is non-income or low-income producing, the charity would prefer not to make payments until the property is sold. Otherwise, it must advance general assets to make the payments.

One possibility is to ask the donor to establish a deferred gift annuity with payments starting two, three, or four years after the gift. This allows the charity time to find a buyer willing to pay full value. The problem from the donor's standpoint is that payments are delayed until the start-date even if the property sells sooner. The problem from the charity's standpoint is that there is no assurance the property will have sold by the payment-beginning date.

Another possibility is to ask the donor to execute a flexible deferred gift annuity agreement with the option to elect payments beginning at the end of a calendar period after one year and ending at some specified future date. There would be an understanding that the donor would not elect payments until the property has sold, and the charity would have to trust the donor to act accordingly. The risk is that the donor, needing money, might elect payments prior to the sale.

A third possibility is what might be called a *"flip" flexible deferred gift annuity*. Like any flexible deferred gift annuity agreement it would contain a schedule of payments depending on the election date within a range of years, but it would state that the annuitant could start payments on the later of the end of the next calendar period following the sale of the donated real estate or on a specified date.

Suppose the gift was made on July 1, 2023 and the agreement said that the donor could elect payments beginning at the later of the end of any full quarter following the sale of the property or September 30, 2024. If the property sold June 25 of 2024, the first payment would be September 30, 2024. If the property sold March 18, 2025, the first payment would be June 30, 2025. The charitable deduction claimed would be the lowest deduction that could result from any possible payment-start date, which normally would be the earliest possible date - September 30, 2024 in this case. This was what was proposed and accepted in the initial PLR (1997) where the IRS approved the flexible deferred gift annuity. Although this variation is not supported by a letter ruling, it is conceptually similar to what was approved.

While this arrangement eliminates having to make payments prior to the sale of an illiquid asset, it does not remove the risk of the uncertainty of the net sales proceeds. The charity could mitigate that risk by offering a gift annuity rate somewhat lower than it would pay in the case of contributions of cash or publicly-traded securities.

Summary of Options

The above strategies are all designed to minimize the charity's financial risk. Some of them, such as offering a lower-than-normal gift annuity rate and asking the donor to defer payments for a period of time should not expose the donor to any tax risk. Others, such as the charity's doing advance marketing and entering a contingent purchase-and-sale agreement, conceivably could expose the donor to taxation of capital gain, though it would appear that a strong case could be made that the donor has not subjected the charity to a binding sale agreement as described in Rev. Rul. 78-197. The greatest risk would be the donor's transferring the property directly to an external buyer at the direction of the charity without the charity's ever being on the chain of title. Before using any of these strategies the donor and charity should consult with their respective tax counsels.

Other Risk Considerations

Besides the risk of being unable to sell the donated real estate, or of realizing less than anticipated, there are the risks associated with any type of real estate gift. To minimize these, the charity should perform due diligence regarding matters such as the title and possible liability for cleanup of environmental pollution.

See Figure 16.1 for an example of a gift annuity funded with real estate.

Excise Tax

Many states assess an excise tax on real estate sales. This could be one percent or more of sales proceeds. If the state regards the present value of annuity payments as an amount received, that value could be subject to the excise tax. This would ordinarily be the responsibility of the seller

Text continues on page 10

Figure 16.1

Gift Annuity Funded with Real Estate

Mildred B, whose date of birth is September 2, 1947, offers to contribute rental property for a charitable gift annuity. The property, which is unencumbered, has been appraised for $300,000, and her adjusted cost basis is $100,000. Upon doing a market analysis, the charity concludes that the property can likely be sold within one year for not less than $280,000. If Mildred were funding the annuity with cash or marketable securities, the charity would pay the American Council on Gift Annuities (ACGA) suggested rate, which at her age is 6.8%. However, in this instance the charity offers her a lower rate determined as follows:

Appraised Value of Property	$300,000
Expected Selling Price	280,000
Selling Costs (9%)	- 25,200
Annuity Payments Prior to Sale	- 16,200[1]
Amount available for investment in gift annuity reserve fund after deducting from net sales proceeds the first year's annuity payments advanced by the charity	$238,600

[1] This number is $300,000 multiplied by the rate to be offered. That rate can be determined by the following formula:

$$R_1 = \frac{R_2 (S - C)}{A (1 + R_2 N)}$$

R_1 = the annuity rate to be offered
R_2 = the ACGA rate normally offered
S = selling price
C = selling costs
A = appraised value of the property
N = number of years prior to sale

$$R_1 = \frac{.068\ (\$280{,}000 - 25{,}200)}{\$300{,}000\ (1 + .068 \times 1)}$$

R_1 (rounded to nearest .1%) = 5.4%

Note that $238,600 multiplied by the normal gift annuity rate is approximately the same as $300,000 multiplied by the actual rate offered. They would be exactly the same except for the rounding of the offered rate to the nearest 0.1%.

Assuming the charity will, in fact, have $238,600 cash to invest in the reserve fund one year after the gift, it is no more at risk paying a rate of 5.4% of the appraised value of the real estate than it would be paying the normal rate of 6.8% on a cash gift of $238,600.

Continued on next page...

Figure 16.1 Continued

Gift Annuity Funded with Real Estate

If, however, the charity paid 6.8% of $300,000, it would effectively be paying an annuity rate of 8.7% [$20,400÷ (280,000 - 25,200 - 20,400) = 8.7%]. That would, indeed, put it at risk.

To determine the donor's charitable deduction and the taxation of payments, the following should be entered in the software program:

$300,000 as the fair market value of the property,
$100,000 as the adjusted cost basis, and
5.4% as the annuity rate.

Based on these numbers and assuming a gift date of July 1, 2023 and the July CMFR of 4.6%, Mildred's deduction will be $165,039, and her annuity payments will be taxed as follows:

Year	Total Annuity	Ordinary Income	Tax-free Return of Cap.	Long-term Cap. Gain
2023	$ 8,100.00	$ 2,381.40	$ 1,906.20	$3,812.40
2024	16,200.00	4,762.80	3,812.40	7,624.80
2035	16,200.00	12,766.80	1,144.40	2,288.80
2036+	16,200.00	16,200.00	0.00	0.00

Suppose that Mildred had agreed to defer payments one year. In that case, the charity could have offered a somewhat higher rate than 5.4% because it would not have to recover the $16,200 advanced for gift annuity payments prior to the sale. The formula for determining the rate then would have been:

$$R_1 = \frac{R_2(S - C)}{A}, \quad \text{and}$$

Where R_1 = the rate to be offered,
R_2 = the ACGA rate normally offered,
S = selling price,
C = selling costs,
A = appraised value of the property,

and the offered rate would have been 5.8% (rounded to the nearest .1%).

Finally, if Mildred had contributed her principal residence, rather than a piece of rental property, she would have been able to exclude from taxation up to $250,000 of gain at the time the gift annuity was established. (The excludable amount would be $500,000 if Mildred were married and she and her husband filed a joint tax return.) Moreover, the exclusion would not need to be applied to all of the gain in the value of the residence but only to the gain deemed to be taxable as a result of establishing the gift annuity. (See Chapter 17 for a detailed discussion of the exclusion of gain in a principal residence as it relates to a gift annuity.) She could also have simply sold the principal residence and contributed some or all of the cash proceeds, so long as she would - as in the case of $300,000 property with a $100,000 cost basis - have recognized capital gain of $250,000 or less.

The above calculations are based on the July 2023 CMFR of 4.6%.

(donor in the case of a gift annuity). Charities should determine the applicability of the excise tax when real property is contributed for a gift annuity and make the donor aware of any tax that will be owing.

Gift Annuity Funded with Mortgaged Real Estate

It is possible (though usually not desirable from the charity's standpoint) to transfer mortgaged property for a charitable gift annuity. Since a gift annuity entails a transfer of property directly to the charity, the private foundation rules applicable to charitable remainder trusts do not apply. Nor is Private Letter Ruling 9015049 a problem, for it specifically deals with mortgaged property transferred to a charitable remainder trust. (This letter ruling dealt with a situation where a charitable remainder unitrust was funded with income-producing, mortgaged real estate. The property was given subject to the mortgage, and the trustee would make regularly scheduled payments. The IRS ruled that the trust would not qualify for the income, gift, and estate tax deductions. Since the payments would be a discharge of an obligation of the grantor, the trust would be treated as a grantor trust and thus would not be a qualified charitable remainder trust.) The Ruling does not apply to gift annuities.

However, the bargain sale rules under Reg. Sec. 1.1011-2(a)(3) do apply, so the donor will have to recognize the capital gain allocated to the mortgage. In some instances the donor may incur a net cost in the year of the gift because the gain recognized exceeds the usable charitable deduction.

The charity should be mindful of the fact that it will have acquisition indebtedness, possibly resulting in taxable income, unless the mortgage was placed on the property more than five years before the gift and was held by the donor for more than five years before the gift. See IRC Sec. 514(c)(2)(B). Still, the transaction may be attractive to the donor, who is relieved of mortgage payments and can count on fixed payments. The charity not only has to make those payments but also has to service the mortgage, so it must carefully weigh the costs against the eventual benefits.

See Figure 16.2 for an example of a gift annuity funded with mortgaged real estate.

Gift Annuity Funded with Depreciated Real Estate

Commercial real estate, including rental houses, contributed for a gift annuity usually will have been depreciated. In many instances there will be gain due to an increase in the value of the land and gain due to the depreciation of the buildings.

Suppose, for example, that George purchased rental property ten years ago for $200,000, and the property is now valued at $500,000. During the time he has owned the property the straight-line depreciation on his tax returns total $60,000, reducing his tax basis to $140,000. If he were to sell the property, he would realize $60,000 of what is known as IRC Sec. 1250 gain and $300,000 of other gain. The other gain is taxed at capital gain rates, the highest of which is 20 percent. The Sec. 1250 gain is taxed at ordinary income rates, with the maximum rate being 25 percent.

If, instead of selling the property, George contributes it for a gift annuity with himself as the annuitant, the portion of annuity payments that consist of capital gain will be noted on IRS Form 1099-R, and the annuitant will be advised as to how much of this amount is Sec. 1250 gain subject to a maximum rate of 25 percent and how much is regular capital gain subject to a maximum rate of 20 percent. The applicable rate in each case depends on his total tax situation.

See Figure 16.3 for an example of a gift annuity funded with depreciated real estate.

Text continues on page 14.

Figure 16.2

A Gift Annuity Funded with Mortgaged Real Estate

On July 1, 2023 Fernando S, whose date of birth is August 25, 1949, contributed for a gift annuity an apartment building which had an appraised fair market value of $1,200,000 and an adjusted cost basis of $500,000, and which was subject to a $300,000 mortgage. The mortgage was placed on the property 15 years ago when he purchased it. According to the financial statement provided by Fernando, annual gross rents the previous year were $93,000, and expenses for taxes, utilities, and maintenance were $40,000. His annual mortgage payments were $39,000. His adjusted gross income, excluding net income from the apartment building, was $150,000.

Although the ACGA suggested rate for an annuitant nearest age 74 is 6.4%, the charity agreed, in this instance, to pay a rate of 5.4%. The property was sold one year later, and net proceeds, after selling costs, were $1,000,000.

Analysis of the Gift from the Donor's Standpoint

Cash Flow

Prior to the Gift:	
Gross rents	$93,000
Expenses	- 40,000
Mortgage payments	- 39,000
Net annual cash flow	$14,000

Fernando would have realized some tax savings as a result of depreciating the property. Net income from the property was taxed as ordinary income.

After the gift:	
5.4% × $900,000 (equity in property)	$48,600

Taxed as follows (for each full year until the end of life expectancy):	
Ordinary income	$15,114.60
Long term capital gain	19,533.15
Tax-free return of capital	13,952.28
	$48,600.00

Assumes the 4.6% CMFR for July 2023 is used.

Tax Implications

Amount of mortgage	$300,000
Adjusted cost basis allocated to mortgage $\frac{\$300{,}000}{1{,}200{,}000} \times 500{,}000$	125,000
Capital gain recognized in year of gift	175,000
Charitable deduction	461,610

Continued on next page...

Figure 16.2 Continued

A Gift Annuity Funded with Mortgaged Real Estate

Tax Implications Continued...

Deduction usable in the year of the gift 30% ($180,000* + 175,000) * (Assuming 2023 income increased to $180,000)	106,500
Amount of capital gain recognized in excess of usable deduction—year of gift ($175,000 - 106,500)	68,500
Tax cost—year of gift (32.0% × $68,500) (Assuming a 32% tax rate and surtaxes)	21,920
Deduction carried forward	355,110
Deduction usable over subsequent 5-year period (Assuming annual income remains $180,000)	270,000
Tax savings from deduction carried over (32% × $270,000) (Assuming average rate of 32% over five years)	86,400
Net tax savings ($86,400 - 21,920)	$64,480

Mortgage $300,000		Equity in Property $900,000			
		Value of Annuity $438,390		Gift Value $461,610	
A	**B**	**C**	**D**	**E**	**F**
125,000	175,000	182,662	255,728	192,338	269,272

A	is the cost basis allocated to the mortgage.
B	is the capital gain allocated to the mortgage. It is recognized in the year of the gift.
C	is the cost basis of the present value of the annuity. This is the capital that is returned tax-free over the donor's life expectancy.
D	is the capital gain allocated to the present value of the annuity. It is reported ratably over the donor's life expectancy.
E + F	is the amount by which the contribution ($900,000) exceeds the value of the annuity.
E	is the cost basis allocated to the charitable gift (the deductable portion of the contribution).
F	is the capital gain allocated to the charitable gift, and it is not taxed.

Continued on next page...

Figure 16.2 Continued

A Gift Annuity Funded with Mortgaged Real Estate

Note that C and E combined equal $375,000, which is the portion of the overall $500,000 cost basis not attributable to the mortgage. Thus, in using planned giving software, $375,000 was entered as the cost basis associated with the $900,000 equity in the property.

Analysis of the Gift from the Charity's Standpoint

Cash outlay prior to the sale of property:

Annuity payments (12 months)	- $48,600
Net cash flow after expenses and mortgage payments	+ 14,000
Net cash outlay	- $34,600

Amount available for gift annuity reserve fund:

Net proceeds from sale	$1,000,000
Mortgage balance	- 300,000
Net outlay (12 months)	- 34,600
	$665,400

Amount remaining for charity at end of Fernando's life, assuming:

Charity's constant net total
return on gift annuity reserves is 4.25%,
which is the assumed net return underlying
the ACGA rates that became effective 1/1/2023.

Fernando lives	Remaining for charity
10 years	413,825
15 years	242,067
20 years	29,880

The charity probably should have offered an annuity rate lower than 5.4% to reduce its risk and increase the probability of a significant residuum. Of course, the results will be considerably better for the charity if the net sales proceeds had exceeded $1,000,000 and/or the net return on gift annuity reserves exceeded 4.25%.

Note: The actual numbers — selling price, expenses, depreciation, income tax rates, etc. — might be different. This example is to demonstrate how a gift of mortgaged real estate might be analyzed from the standpoint of the donor and the charity.

If the donor is the sole annuitant, or the first of two successive annuitants, these categories of gain would be ratably reported over his or her life expectancy. If two donors contributed jointly-owned property for a joint-and-survivor annuity, the categories of gain would be reported over their joint life expectancy. However, if someone else is the annuitant, all three categories of taxable gain would have to be reported by the donor(s) in the year of the gift.

See Figure 16.3 for an example of a gift annuity funded with commercial property subject to both straight-line and accelerated depreciation.

Other Payments for Property

Sometimes a donor would like to contribute real estate and receive both a lump sum payment and annuity payments. For example, a donor offers to contribute real property appraised at $600,000 in exchange for $200,000 plus life payments based on the applicable gift annuity rate. As noted in Chapter 2 under the heading "Requirements to Qualify for Tax Exemption," this is prohibited by IRC Sec. 514(c)(5)(A), which states that the obligation to pay the annuity must be the sole consideration.

The desired result could be achieved by selling the charity an undivided fractional interest in the property and giving the remaining fractional interest for a gift annuity. The fractional interest contributed for the gift annuity would have to be appraised. Ordinarily, a fractional interest would be discounted by the appraiser, but it might not be in this instance inasmuch as the charity would already own the other fractional interest.

Gift Annuity Funded with Tangible Personal Property

Many individuals with stamp and coin collections, works of art and other items of tangible personal property would be willing to contribute them in exchange for life payments and an income tax charitable deduction.

One possibility is to transfer them to a charitable remainder trust, assuming the articles have sufficient value for a trust to be practical. However, no income tax charitable deduction is allowed until the articles are sold by the trust. See IRC Sec. 170(a)(3) and Private Letter Ruling 9452026. Income from the trust will also be deferred until the sale, assuming a net-income unitrust or a unitrust with a flip provision is selected.

Only with a gift annuity can the donor be assured of both immediate payments and an income tax deduction in the year of the gift. The amount of the deduction depends, in part, on whether the donated items are retained by the charity and used for its exempt purposes (related use) or sold and the proceeds invested to cover the annuity obligation (unrelated use). See IRC Sec. 170(e)(1)(B)(i). If the charity retains the objects, it will, of course, have to advance some of its own funds to cover the annuity obligation. Some organizations, such as an art gallery desirous of obtaining a particular artwork, might be willing to do that. In most cases, however, the charity will sell the donated object as quickly as possible and, consequently, the income tax deduction will be reduced by the capital gain allocated to the gift value. (If the object had been contributed to a charitable remainder unitrust, the use likewise would have been unrelated, and the deduction would have been reduced.)

See Figure 16.4 for an example of a gift annuity funded with tangible personal property.

Note: In the case of (1) appreciated tangible personal property contributed for an unrelated use, (2) ordinary income property other than short-term appreciated publicly-traded securities, or (3) any other appreciated asset with respect to which the deduction is a function of the donor's cost basis rather than the asset's fair market value,

Text continues on page 17.

Figure 16.3

A Gift Annuity Funded with Depreciated Real Estate

On July 1, 2023 Dorothy G, age 73, contributed for a gift annuity an apartment building, which she purchased a number of years ago for $600,000. Dorothy had depreciated the building by $240,000. Consequently, her adjusted cost basis was $360,000 at the time of the contribution. The property was not subject to a mortgage. An appraisal secured shortly before the gift found the fair market value to be $1,000,000. The charity agreed to pay her a rate 5.3%, which was lower than the ACGA rate of 6.3%. The charitable deduction was based on the July 2023 CMFR of 4.6%.

Annual payment	$53,000
Charitable Deduction	$503,780
Taxation of Payments (see below)	
Fair market value of the property	$1,000,000
Adjusted cost basis	360,000
Total gain in the property	640,000
Present value of the annuity (investment in the contract)	496,220
Portion of total gain not taxed $\frac{503{,}780 \times \$640{,}000}{1{,}000{,}000}$	322,419
Taxable gain $\frac{496{,}220 \times \$640{,}000}{1{,}000{,}000}$	317,581
Taxable gain attributable to depreciation (IRC Sec. 1250 gain) $\frac{\$240{,}000 \times 317{,}581}{640{,}000}$	119,093
Other taxable gain $\frac{\$400{,}000 \times 317{,}581}{640{,}000}$	198,488
During each full year of life expectancy, annuity payments taxed as follows:	
Ordinary income	$17,066
Tax-free	12,936
IRC Sec. 1250 gain (maximum tax rate of 25%)	8,630
Other gain (maximum rate of 20%)	14,383

Figure 16.4

A Gift Annuity Funded with Tangible Personal Property

Isaac and Ruth M, whose respective dates of birth are February 11, 1948 and July 20, 1949, had a stamp collection which was appraised for $160,000. They kept meticulous records and had a recorded cost basis of $20,000. They lost interest in further collecting and wanted to convert this idle asset to a stream of payments, so on July 1, 2023, they contributed it for a gift annuity. The ACGA rate based on their ages was 5.8%. However, to compensate for selling commissions, the charity offered a rate of 5.0%, which was accepted by Isaac and Ruth. Thus, they received a fixed annual annuity of $8,000.

Their deduction was a mere $8,896.

Present Value of Annuity — $88,830		Gift Value — $71,170	
A	**B**	**C**	**D**
11,103	77,727	8,896	62,274

A is the cost basis of the present value of the annuity. This is the capital that is returned tax-free over the donors' life expectancy.

B is the long-term capital gain allocated to the present value of the annuity. The gain is reported ratably by the donors over their joint life expectancy, which is 16.8 years. The amount of gain taxed each full year of life expectancy is $77,727 divided by 16.8. Because stamps are "collectibles," the gain will be taxed at the rate applicable to collectibles with the maximum federal rate being 28%. If the net-investment income surtax applies, 3.8% would be added to the applicable rate, in which case the maximum federal rate would be 31.8%.

C is the cost basis allocated to the gift value. It is the income tax charitable deduction.

D is the long-term capital gain allocated to the gift value. Because the gift is for an unrelated use, the gift value must be reduced by this amount in order to arrive at the deduction.

The calculations are based on the 4.6% CMFR for July 2023.

If they had contributed the stamp collection to a historical museum, which kept it in the philatelic display, their deduction would have been $71,170.

Even though their deduction is small, and their annuity payments are smaller than they would have received from a contribution of cash or marketable securities, they have been able to convert an idle asset to a stream of payments and pay no tax on the gain at the time of the gift.

Note 1: In this and following examples where unrelated-use tangible personal property is contributed, the deduction is based on cost rather than fair market value, and the deduction ceiling is 50% of adjusted gross income.

Note 2: In this case, it might have been better to elect the lower May 2023 CMFR because the deduction is minimal and somewhat more of the payments would be tax free.

if the deduction is more than $5,000 ($10,000 with regard to closely-held securities), then the donor will need to substantiate the deduction with a qualified appraisal of the asset's fair market value. This is indeed so despite the fact that – as just noted – the deduction is a function of cost basis, not fair market value. Even when the deduction is less than $5,000, it is advisable for the donor to have either a qualified appraisal or some other type of documentation to support the fact that the asset's cost basis is indeed less than its fair market value, as the deduction will ultimately be a function of the lesser of cost basis or fair market value. Likewise, the donor will need to be able to document his or her cost basis.

Gift Annuity Funded with Gold and Silver

The prices of gold and silver, which are highly volatile, have risen significantly since 1999. They reached a high point in 2011, declined somewhat in the ensuing years, but have recently risen above 2011 levels.

Tax Implications of Contributing Gold and Silver Investments

People invest in gold and silver by purchasing any of the following: gold coins such as Krugerrands and American Eagles; bullion; shares in an exchange traded fund (ETF), or shares in mining companies.

Contributions of gold and silver mining stock are treated the same as contributions of any other stock.

The central question is whether coins, bullion, and ETFs are considered to be tangible personal property. Tangible personal property refers to an object that can be physically held, can be moved, and has intrinsic value, unlike stocks and bonds that have representative value. Gold and silver coins and bullion meet these characteristics. Most people who invest in gold and silver purchase Exchange Traded Funds (ETFs) and do not have physical possession of the metal. This raises the question whether they too are regarded as tangible personal property and taxed accordingly. Since a gold or silver ETF is a trust that invests directly in the metal, the owner of ETF shares has a beneficial interest in the trust, and the share price corresponds to the day-to-day price movement of bullion, the ETS investor is considered by the IRS to own tangible personal property.

It would follow that if gold and silver coins, bullion, or EFTs are contributed outright, the income consequences would be the same as for contributing other types of tangible personal property. In the event that the gift is for a related use – for example, old coins with numismatic value owned more than one year and contributed to a museum that holds them as part of its collection – the deduction would be based on appraised fair market value. If given outright for an unrelated use, which would always be the case if the charity would sell the coins, the deduction would be for the lesser of fair market value and cost.

However, in Private Letter Ruling 9225036, dealing with a proposed gift if Krugerrands to a charitable remainder unitrust, the IRS took a different position. Here is the pertinent paragraph:

> *South African Krugerrand coins are more akin to money than to coins that have value as collection items. South African Krugerrand gold coins are one of the best known types of gold bullion coins; they have no numismatic value. Moreover, in the case at hand, the trustee is authorized to dispose of the coins. Therefore, pursuant to the rationale of Rev. Rul. 6963, we conclude that South African gold coins are not tangible personal property within the meaning of section 170(a)(3) of the Code."*

The IRS was reportedly reconsidering this position in a later private letter ruling that was withdrawn when the applicant died before issuance.

Thus, there is some uncertainty as to whether gold and silver coins without numismatic value, bullion, and ETFs would be treated as tangible personal property when contributed. In support of this position that they would not be tangible personal property, there are Rev. Rul. 69-63 and PLR 9225036.

However, this conclusion is inconsistent with the fact that, for tax purposes, not only collectibles but also gold and silver coins and bullion are treated as tangible personal property. In fact, IRC Sec. 1(h)(5)(A) explicitly denies an exception for gold and silver coins. Thus, both ETFs (for the reasons stated above) and gold and silver coins are taxed like collectibles. Since that is the case, it is reasonable to conclude that gifts of them would be subject to the rules applying to tangible personal property such as collectibles, in which case the charitable deduction for gifts of such items would be the lesser of their fair market value and their cost basis. Donors should, of course, consult their own legal advisors about the tax implications of such gifts.

As demonstrated in Figure 16.5, a gift of coins, bullion, or ETF shares could be quite attractive to donors whether or not these assets are treated as tangible personal property. Of course, the tax benefits are greater if they are not regarded as tangible personal property, but in either case the gift annuity can be a good way to convert a volatile asset to a stream of payments with no upfront taxation of gain.

Gift Annuity Funded with a Life Insurance Policy

Some individuals have life insurance policies that are either paid up or, at least, have been owned long enough to have accumulated considerable cash value. In some cases, the policy is no longer needed for family protection or liquidity to cover estate expenses, and it is just sitting in a safe deposit box. To derive some current benefit from the policy, the owner might be willing to transfer ownership to a charity for a gift annuity.

Non-charitable Dispositions

To understand the tax implications of such a gift, consider first non-charitable dispositions of the policy. A policy owner who surrenders a policy to the insurance company for cash will be taxed on the gain, which is the excess of the cash surrender value over the cost basis. The cost basis refers to net premiums paid. The gain, known as the inside build-up will be taxed as ordinary income at ordinary income tax rates.

Suppose, for example, that a number of years ago Mary purchased a life insurance policy, and the net premiums she has paid to date total $30,000. The cash surrender value is now $34,000. If she surrenders the policy to the insurance company and receives $34,000 in cash, she will be taxed on the $4,000 gain at the applicable ordinary income tax rate.

Assume that Mary is approached by a company that specializes in the purchase of existing life insurance policies and, based on Mary's current state of health and other factors, that company is willing to pay Mary $37,000 for her policy, so she sells it. The total gain she realizes is $7,000 ($37,000 - $30,000). Of this total gain, $4,000 (the inside build-up) will be taxed as ordinary income, but $3,000 (the excess of the purchase price over the cash surrender value) will be taxed as long-term capital gain taxed at the applicable long-term capital gain rate.

Charitable Gift

Instead of either cash surrendering the policy or selling it to the external company, Mary decides to contribute the policy outright to a charity. If the value of the policy is determined to be the same as the cash surrender value, her deduction will be $30,000. That is because the deduction for an ordinary income asset is the lesser of the value and the cost basis. If an appraisal finds that the current value of the policy to be $37,000, her deduction will be $33,000 (the cost basis of the

Text continues on page 20

Figure 16.5

A Gift Annuity Funded with ETF Shares

Nancy, age 73, purchased gold ETFs a few years ago for $150,000, and they were valued at $400,000 when she contributed them for a gift annuity on July 1, 2023. She elected the July CMFR of 4.6%.

ETF shares not regarded as tangible personal property

Fair market value	$400,000.00
Charitable deduction	164,060.00
Annual annuity	25,200.00
Taxed as follows during each full year of life expectancy	
Ordinary income	$8,114.40
Capital gain*	10,678.50
Tax-free return of capital	6,407.10
	25,200.00

ETF shares regarded as tangible personal property

Fair market value	$400,000.00
Charitable deduction	61,522.50
Annual annuity	25,200.00
Taxed as follows during each full year of life expectancy	
Ordinary income (taxed as ordinary income with a maximum tax rate of 28%)*	$8,114.40
Capital gain*	10,678.50
Tax-free return of capital	6,407.10
	25,200.00

* Even if, for purposes of determining the charitable deduction, the EFT shares are not regarded as unrelated-use tangible personal property, the gain attributable to the present value of the payments may still be taxed at the rate applicable to tangible personal property because a gift annuity is treated as a bargain sale where the present value of the annuity is the sales price. As noted above, the gain in ETF shares is taxed at the same rate as ordinary income property, but the maximum rate is 28% (not counting the 3.8% investment surtax). Thus, any gain in excess of the amount subject to the 24% tax bracket would be taxed at a maximum rate of 28%.

inside build-up plus the growth in value over the cash surrender value). From a tax standpoint, it is as if she made two gifts: a gift of an ordinary income asset with a value of $34,000 and a cost basis of $30,000 plus a gift of a long-term capital gain asset with a value of $3,000 and a zero cost basis. See [Figure 16.6] for a further explanation.

Rev. Rul. 2020-5

In the past, the IRS took the position that, in the case of a sale of a life insurance policy, the cost basis of the policy had to be reduced by the cost of insurance (the cumulative cost of insuring each year what the company has at risk). This resulted in a larger amount of gain by the policyholder, and it was also difficult to obtain information as to what the cumulative cost of insurance actually was.

Rev. Rul. 2020-5 reviews pertinent Code sections and concludes that no adjustment should be made for mortality or other charges incurred under a life insurance contract. In previous updates of this gift annuity manual, the example of a gift annuity funded with a life insurance policy was based on the mortality charge reducing the cost basis, which had been the case. Rev. Rul. 2020-5 makes clear that such an adjustment is no longer required. This makes a gift annuity funded with a life insurance policy more appealing and the calculations simpler.

Alternative to Giving Policy

Instead of transferring ownership of the life insurance policy to the charity in exchange for a gift annuity, the owner might cash surrender the policy and then contribute the cash for a gift annuity. In the year of the gift, the owner would have to pay tax, at ordinary income rates, on all of the gain (cash surrender value minus net premiums paid). However, more of the annuity payments would be tax-free because the donor would simply be contributing cash. In some cases, this may be preferable to transferring ownership of the policy itself.

Gift Annuity Funded with a Commercial Annuity

Many people have purchased from insurance companies either fixed or variable deferred annuities, and in the years since purchase considerable gain has accrued. That gain will be taxed as ordinary income over time if the owner elects to receive life payments, or all at once if the contract is surrendered. If the contract is given to beneficiaries (other than charities) when the donor dies, the gain will be taxed as ordinary income to them. An owner of one of these contracts can use it to establish a gift annuity and thereby reduce the tax on the gain, receive life payments, and have the satisfaction of making a charitable gift.

IRC Sec. 1035 permits a tax-free exchange of one annuity contract for another. It is unclear, however, whether IRC Sec. 1035 applies only to annuities issued by insurance companies, or whether it also includes an exchange of a commercial annuity for a gift annuity. Assuming an exchange of a commercial annuity for a gift annuity is *not* permitted, the tax savings would result not from avoidance of tax on the gain but from an income tax charitable deduction that totally or partially offsets the taxable gain. The gain in the contract will be taxed, and the only question is when. For annuities acquired on or before April 22, 1987, the donor is taxed on the gain when the donee surrenders the contract. For annuities acquired after April 22, 1987, the donor is taxed on the gain when the contract is transferred, no matter when the donee surrenders it. In all probability the charity will surrender the contract for cash as soon as possible and invest the proceeds in the gift annuity reserve fund. While gain in other ordinary income property can be reported ratably over the donor's life expectancy, the authors of this manual do not believe ratable reporting is possible when commercial annuities are transferred to a charity for a gift annuity. That is because special rules in IRC Sec. 72 apply to annuities, and these would have precedence over Reg. Sec. 1.1011-2.

Figure 16.6

A Gift Annuity Funded with a Life Insurance Policy

Scenario 1 – Value of policy is same as its cash surrender value

Mary owns a life insurance policy that she would like to contribute for a gift annuity. The face value is $100,000, the cash surrender value is $34,000, and the investment in the contract (net premiums paid) is $30,000. Mary's date of birth is August 12, 1948, and she transfers ownership of the policy on July 1, 2023, Calculations are based on the July 2023 CMFR of 4.6%. The value of the policy is found to be the same as the cash surrender value.

Value of Policy (same as cash surrender value)	$34,000.00
Investment in the contract	30,000.00
Income tax charitable deduction	12,820.20
Annual annuity	2,244.00

Taxed as follows

Ordinary income	
Ordinary gain of $2,290.64 reported over 12.4 years	$184.80
Interest (taxed as ordinary income)	673.20
Tax-free	1,386.00
	$2,244.00

Since the gain from the inside buildup is taxed as ordinary income, total ordinary income during each full year of life expectancy is $858.00 ($184.80 + $673.20)

If ordinary income property, such as appreciated securities owned a year or less, were contributed for a gift annuity, the deduction would be limited to the portion of the cost basis allocated to the gift value, and the gain would be ratably reported but taxed as ordinary income. Based on the rules applicable to annuities, a contribution of a commercial annuity would be treated, from a tax standpoint, as if the donor sold the annuity and gave the cash proceeds. Thus, the gain would be taxed as ordinary income, and the deduction would be based on the cash value of the commercial annuity.

Since the gain will be taxed and no part of it can be reported ratably over life expectancy, it makes no difference, from a tax standpoint, whether the donor transfers the contract to the charity or surrenders it and gives the proceeds to the charity. Of course, it would make a difference if ratable reporting of gain were possible. Even if, as we believe, the gain has to be recognized up front, the transaction can still be attractive because the charitable deduction may enable the donor to make the transfer with little or no actual tax cost. Because the deduction limit for gifts of cash has been increased to 60 percent of adjusted

Figure 16.6 Continued

A Gift Annuity Funded with a Life Insurance Policy

Scenario 2 - Value of policy is greater than its cash surrender value
The appraiser that Mary retains determines that the current value of the policy is $37,000, which is $3,000 more than the cash surrender value. This excess over the cash surrender value is treated as a long-term capital asset, with a zero cost basis, and it results in a larger payment and larger deduction.

Value of Policy	$37,000.00
Investment in the contract	30,000.00
Income tax charitable deduction	14,102.22
Annual annuity	2,442.00
Taxed as follows	
Ordinary income	
Ordinary gain of $2,072.88 reported over 2.4 years	184.80
Interest taxed as ordinary income	732.60
Long-term capital gain	138.60
Tax-free	1,386.00
	$2,442.00

gross income, it is more likely that enough deductions can be used to offset the taxable income. If there would be a tax cost, and the donor has surrendered the annuity contract, the donor could withhold enough proceeds to cover the tax, taking into consideration the income tax charitable deduction.

See Figure 16.8 for an example of a gift annuity funded with a commercial annuity.

Gift Annuity Funded with Savings Bonds

Millions of older persons hold savings bonds. In years past, some converted their EE Bonds (formerly E Bonds) to HH Bonds (formerly H Bonds) and are now receiving interest payments. Such conversions are no longer possible, however, meaning that the interest continues to accrue – unless the bonds have been held so long they no longer pay interest. Also, since 1998 the Treasury Department has been issuing I Bonds. As with E and EE Bonds, interest accrues until maturity, although the rate of interest fluctuates over the years in order to keep up with inflation.

For some retired individuals, their savings bonds are an idle, almost forgotten, asset. A number of these savings bonds are no longer paying interest, and many of the owners are probably unaware of this fact. The prospect of converting these bonds to lifetime payments could be very appealing.

Although savings bonds can be transferred to a charity, the process for doing so is complicated, and the accrued interest will be taxed to the owner just the same as if the bonds were

Figure 16.7

A Gift Annuity Funded with a Life Insurance Policy with a Loan Outstanding

Jeremy R owns a life insurance policy which he would like to contribute for a gift annuity. The face value of the policy is $250,000, the appraised value of the policy, which is also the cash surrender value, is $100,000, the adjusted cost basis is $40,000, and there is a $30,000 loan outstanding.

When a policy subject to a loan is contributed, the gain allocated to the loan must be recognized in the year of the gift. The remainder of the taxable gain can be ratably reported over the donor's life expectancy, assuming the donor is the annuitant.

To determine the portion of the gain taxable in the year of the gift, follow this procedure:

Adjusted cost basis allocated to loan ($30,000 ÷ $100,000) x $40,000	$12,000
Gain Allocated to loan taxed in the year of the gift $30,000 – 12,000	$18,000

The remainder of the taxable gain can be ratably reported over Jeremy's life expectancy.

All of the gain will be taxed as ordinary income.

redeemed for cash. Therefore, it is preferable for a donor to redeem the bonds and then to give the charity the cash proceeds. The donor will pay no tax if the charitable deduction is sufficient to offset the tax on the accrued interest. Even a less-than-complete offset, such as occurs when the proceeds are contributed for a gift annuity, may make the transaction appealing to donors, for by making the gift they eliminate a potential IRD asset from their estate and receive current payments, a portion of which will be tax-free. In order to avoid an out out-of-pocket expense, the donor could withhold enough proceeds to pay the net tax, taking into consideration the charitable deduction.

See Figure 16.9 for an example of a gift annuity funded with savings bonds.

Gift Annuity Funded with Retirement Plan Assets

Lifetime Gift Annuity Funded with IRA Assets

The Pension Protection Act, signed into law in 2006, permitted up to $100,000 per year to be distributed tax-free from an IRA to a charity, excluding private foundations and supporting organizations, and also excluding gifts to a charity for a donor advised fund (the $100,000 limit is now adjusted for inflation and is $108,000 in 2025). The transfer had to be for an outright gift, and the donor had to be 70½ or older. If those conditions were met, the transfer of IRA funds to a charity was known as a Qualified Charitable Distribution (QCD) and it counted towards the IRA owner's required minimum distribution for the year and was not included in his or her taxable income.

Figure 16.8

A Gift Annuity Funded with a Commercial Annuity

Louise T, whose date of birth is July 12, 1942, transferred a commercial annuity for which she paid $25,000 and which had a current cash value of $45,000. The transfer was made on July 1, 2023, and she receives quarterly payments from the gift annuity funded with the transfer.

Income tax charitable deduction	$21,796.20
Taxable gain	20,000.00
Excess deduction after offsetting gain	1,796.20
Tax savings (24% tax rate)	431.08
Total annual payments ($877.50 per quarter)	3,510.00
Taxation of payments during each full year of life expectancy:	
Ordinary income	873.99
Tax-free return of capital	2,636.01
	$3,510.00

Calculations were based on the 4.6% CMFR for July 2023.

Louise was able to convert her commercial annuity to a stream of payments, a substantial portion of which are tax-free. Had she elected to receive life payments from the commercial annuity, a higher percentage of the payments would have been taxable because of the accrued gain. Also, she saved a modest amount of income tax in the year of the transaction.

Note 1: The insurance company that issued the annuity would ordinarily withhold some of the proceeds for income tax. However, Louise may have been able to qualify for an exemption from the withholding requirement.

Note 2: If a commercial annuity is surrendered within a certain period (generally six to eight years, depending on the contract), surrender charges may apply. The charity will incur these if ownership of the annuity is transferred to it, and it then surrenders the annuity in order to reinvest the proceeds. The donor will incur the charges if he/she surrenders the annuity and then contributes the proceeds. Either way, possible surrender charges should be factored into financial projections.

The law, which had been annually renewed by legislative action, was made permanent by the Protecting Americans for Tax Hikes (PATH) Act of 2015. This action was welcomed by charities because their donors could now plan for a transfer well in advance of the end of the year. Previously, the extension often was not approved until December by which time most people over 70½ had already taken the mandatory distribution from their IRAs. The age for beginning mandatory distributions, which had been 70½ is now 73 for those who become 72 between January 1, 2023 and December 31, 2032.

Outright gifts of IRA funds have been ideal for individuals who will not need all the assets in their IRA for living expenses, and who want to support a charity's mission currently. However, many individuals who would like to make a gift from their IRA have hesitated to do so because it

Figure 16.9

A Gift Annuity Funded with Savings Bonds

Rachel C, whose date of birth is May 10, 1944, had Series EE Bonds which had a current value of $60,000. She purchased the bonds some years ago for $28,000. On July 1, 2022 she redeemed the bonds for cash and immediately contributed the proceeds for a charitable gift annuity, which paid her $3,720 per year based on the ACGA annuity rate of 6.2%.

Taxable gain	$32,000.00
Income tax charitable deduction	27,616.80
Gain not offset by deduction	4,383.20
Tax on gain not offset (24% tax rate)	1,051.97
Total annual payments ($1,110 per quarter)	4,440.00
Taxation of payments during each full year of life expectancy:	
Ordinary income	1,167.72
Tax-free return of capital	3,272.28
	$4,440.00

Calculations were based on the 4.6% CMFR for July 2023.

By incurring a net tax of only $1,051.97, she was able to convert an idle asset to a stream of payments, a substantial portion of which are tax-free. If she wanted to avoid paying any tax, she could have withheld whatever amount would have been necessary to cover the tax liability (taking into consideration the income tax charitable deduction) and contributed the balance. This example assumes that Rachel itemizes her deductions.

An alternative would have been to redeem the bonds and invest the after-tax proceeds through her broker. The tax on the gain would have been $7,680 (24% × $32,000), so the amount available for reinvestment would have been only $52,320.

would reduce their future income. They might be willing to give some of their IRA funds if they would still receive income from them.

Fortunately, **IRA transfers for life income gifts are now possible**. Subject to certain limitations they, like outright transfers, will be QCDs. The Consolidated Appropriations Act of 2023, also known as the Omnibus bill, which was passed by Congress and signed by the President in late December of 2022, contains such a provision. This came about because legislation known as the SECURE Act, which contains numerous provisions related to retirement plans, was included in the Omnibus bill.

Following is a summary of the portions of the legislation that pertain to transfers of IRA funds for life income plans. For a transfer to qualify as a QCD:

- The IRA owner must have attained age 70½, the same as for an outright gift of IRA funds. (Note that the minimum age for such a transfer is younger than the mandatory age for beginning IRA withdrawals.)
- A transfer of IRA funds for a life income plan can only be done in one tax year. Nothing further can be transferred for a life income plan in any subsequent year. However, an IRA owner who has reached the required age can

continue to make outright IRA gifts via QCD.

- The maximum amount that can be transferred for a life income plan in 2025 is $54,000, and total QCDs (outright gift plus gifts for life income plans) cannot exceed $108,000 in any given year. Thus, if a donor transferred $40,000 for a life income plan in 2025, the maximum outright QCD would be $68,000. Both the $108,000 and $54,000 maximums are adjusted for inflation annually.
- Although the life income plan could be either a charitable remainder trust or a gift annuity, in most cases it is expected to be for a gift annuity because the $54,000 maximum gift size is usually below the minimum required by trustees for the management of a charitable remainder trust. Most charities have a lower minimum for a gift annuity.
- The income beneficiaries are limited to the IRA owner, the IRA owner's spouse, or the two jointly. An IRA owner could transfer up to $54,000 for a gift annuity where the owner and the owner's spouse are joint and survivor beneficiaries, but the IRA owner and a sibling could not be beneficiaries.
- In the case of a gift annuity, payments must start no more than one year after the date of gift. In other words, the QCD can fund an immediate payment gift annuity, but not a deferred gift annuity.
- The payout rate of the life income plan must be at least 5.0 percent. This can be an issue for gift annuities with relatively young annuitants. The ACGA rate is less than 5.0 percent for single-life annuities where the annuitant is age 58 or younger and can be less than 5.0 percent for two-life annuities where the younger annuitant is age 64 or younger. A donor in this situation who wants to fund a gift annuity with IRA assets could wait until the annuitants are old enough for the ACGA rate to be 5.0 percent or greater. We do not recommend offering an annuity rate greater than the ACGA's suggested maximum rate as a solution (see Chapter 3 for a discussion of the risks of exceeding the ACGA rate). A younger donor, who wants to establish a gift annuity now, could fund the annuity with other assets, such as cash or appreciated stock.

  The 5.0 percent minimum payout rate is not an issue for charitable remainder trusts since they are required to have a payout rate of a last 5.0 percent (see Treas. Reg. Sec. 1.664-3(2)).
- An IRA owner could establish a life income plan with more than one charity in a given year. For instance, the IRA owner during that year could transfer $25,000 to each of two charities for gift annuities.
- The life income plan cannot be funded partly with transfers from an IRA and partly with other assets, such as stocks from a brokerage account.
- An income tax deduction is not allowed for a gift of IRA funds that qualifies as a QCD.
- The payments from a gift annuity funded with IRA assets that have never been taxed, and consequently have a zero basis, are fully table. Do not treat such gifts like regular gifts of cash and report a tax-free component on a Form 1099-R. If the annuity is funded with a withdrawal from a ROTH IRA, the donor may, of course, take a tax-free distribution and then make a cash gift.
- QCD transfers, whether for an outright or a life income gift can only be made from an IRA, not from another retirement plan, such as a 401(k). However, it may be possible to roll another retirement plan into an IRA and then make the gift.
- Follow a similar procedure as you do with a QCD from an IRA for an outright gift. Have the IRA administrator make a direct transfer from the IRA account to the charity, or the trustee of a charitable remainder trust, and generate a gift annuity or trust agreement for the donor to execute.

See Appendix 1 for sample agreements for a gift annuity funded with a QCD. See Appendix 2 for a gift summary that might be provided to a donor after completion of such a gift.

Other Ways to Make Lifetime Gifts Using Retirement Plan Assets

Another option, if a donor's retirement funds are in a plan other than an IRA, is to withdraw money from the retirement plan, withhold enough to pay tax on the withdrawal, after taking into consideration the charitable deduction, and then contribute the balance for a gift annuity. Such a withdrawal should not be made prior to attaining age 59½, else the penalty tax for early withdrawals would apply. A substantial portion of the payments will be tax-free because the distribution will have been taxed, and the donor will be making a cash contribution.

If the donor has an IRA, would like to receive distributions from the entire account, and wants to make a charitable gift larger than the $50,000 lifetime limit (plus adjustments for inflation) prescribed in the Secure Act of 2021, a possible strategy is to divide the IRA, creating a separate IRA with some of the funds - $100,000, for example – and naming the charity as beneficiary of this IRA. The donor can make regular withdrawals from it equal to what the amount transferred to the separate IRA, multiplied by the applicable gift annuity rate, would have been. The total required distribution from all IRAs combined can be apportioned among the various IRAs as the account owner chooses.

If the donor has a Roth IRA, and it has been in existence for the period necessary for the distributions to be tax-free, any amount can be withdrawn from the Roth IRA and contributed for a gift annuity since no tax will be owed on the withdrawal.

Testamentary Gift Annuity Funded with Remaining IRA Assets

There are rulings and lots of literature dealing with a charitable remainder trust named as beneficiary of IRA assets remaining at the death of the donor. However, until 2002 there had been no comparable rulings and virtually no literature concerning funding a testamentary gift annuity with IRA assets. That changed with the release of Private Letter Ruling 200230018. See Appendix 3 for the complete text of the ruling. For information on testamentary gift annuities in general, see Chapter 20.

The letter ruling was initiated by Planned Giving Services (which was subsequently purchased by PG Calc) and involved one of its clients. The request was prepared by David Wheeler Newman and his associates, Jeff Davine and Jason Farber, of the Los Angeles firm of Mitchell Silberberg & Knupp. The ruling responded to the following facts: the taxpayer will complete a beneficiary designation form for the IRA to provide that, if the annuitant (the taxpayer's sister) survives the taxpayer, then upon the taxpayer's death, the entire proceeds for the IRA will be transferred to the charity in exchange for the charity's promise to pay the annuitant an annuity for the remainder of her life. The annuity that will be paid by the charity to the annuitant will be a function of the amount contained in the IRA which is transferred to the charity at the time of the taxpayer's death, the annuitant's nearest age at that time, and the gift annuity rates in effect as recommended by the ACGA at the time of the taxpayer's death.

The IRS ruled that:

1. The charity's exempt status under IRC Sec. 501(c)(3) will not be adversely affected by receipt of the IRA proceeds, and the charity will not recognize unrelated business taxable income;

Figure 16.10

Lifetime Gift Annuity Funded with IRA Assets

Martin H., whose date of birth is Septemberl 20, 1949, would like to make a $50,000 charitable gift using some of his IRA funds. However, he hesitates to give $50,000 outright from his IRA because that would diminish the future amount that would be available for his retirement. Upon learning that it is now possible to transfer up to $50,000 from his IRA for a gift annuity with himself as annuitant, he makes an election to do so. The required distribution from his IRA in the year he makes the gift is $60,000.

Amount transferred from his IRA to the charity for a gift annuity	$50,000
Portion of transfer added to taxable income	0
Charitable deduction	0
Taxable distribution to Martin to satisfy his $60,000 distribution requirement	10,000
Annual gift annuity payments (assuming Martin is age 74 when the gift is made, and the gift annuity rate 6.4%)	3,200
Portion of payment that is taxable	3,200

Martin locks in $3,200 of annual payments, which replace all or a substantial portion of the income that might have been earned by the $50,000 transferred to the charity if it had remained in the IRA. Moreover, he satisfies his philanthropic objective.

2. The value of the IRA at the death of the taxpayer will be included in the taxpayer's estate;
3. An estate tax deduction will be allowed for the value of the IRA assets less the present value of the annuity payable to the sister;
4. If the charity is named as the designated beneficiary of the IRA, then the proceeds will be income in respect of a decedent to the charity under IRC Sec. 691(a)(1)(B) and will not be income in respect of a decedent to the taxpayer's estate.

The critical point of this ruling is that the donor's estate will not have to pay income tax on any part of the IRA at the time the gift annuity is funded. Prior to the ruling, it was considered possible that the present value of the annuity payments would be immediately taxable to the taxpayer's estate as income in respect of a decedent.

The IRS did not rule on the "investment in the contract," so it is probably advisable to take a conservative position and presume that the investment in the contract is zero, unless the IRA was partially funded with after-tax dollars. This means that the annuity payments will be entirely taxable as ordinary income when received, but distributions from the IRA would likewise have been fully taxable as ordinary income.

The IRS was not asked to rule on whether the recipient of the annuity payments would be entitled to claim an income tax deduction for any federal estate tax attributable to the present value

Figure 16.11

Testamentary Gift Annuity Funded with IRA Assets

John P. dies in 2023 at age 82 and is survived by his wife, Mary age 81.

Option 1
She is beneficiary of the IRA and must withdraw at least the following minimum percentages of the account value:

Age	Percentage	Age	Percentage
81	5.15%	91	8.70%
82	5.41	92	9.26
83	5.65	93	9.90
84	5.95	94	10.53
85	6.25	95	11.24
86	6.59	96	12.35
87	6.94	97	13.16
88	7.30	98	14.08
89	7.75	99	14.92
90	8.20		

Option 2
John makes a charity the beneficiary stipulating that it pay an annuity for life to Mary, the payments from which are based on her age at the time of John's death.

- She receives life payments based on the ACGA rate of 7.8% effective for a person age 81 at the time of John's death.
- These payments are fixed and are a general obligation of the charity.
- She is relieved of the market risk to which she would have been exposed with an IRA invested in securities.
- A charitable gift is assured.

of the annuity (IRC Sec. 691(c)). Such a deduction would be a nice extra benefit, but it did not seem critical as to whether to fund a testamentary gift annuity with an IRA.

A private letter ruling applies only to the applicant's situation and cannot be relied upon by others as binding legal precedent. Nevertheless, it does reveal the thinking of the IRS, and, presumably, if the facts in another situation are similar, the IRS would rule the same way. Based on this ruling, a donor could use all or a portion of remaining IRA assets to provide for an heir and assure a charitable gift. The amount of payments would remain constant, and those payments would be a general obligation of the charity. If the heir received distributions from the IRA over his or her remaining life expectancy, those distributions would have to increase steadily per the IRS tables, the IRA would be exposed to market risk, and the IRA would eventually diminish and could potentially be exhausted.

See Figure 16.11 for a description of the advantages of a testamentary gift annuity funded with IRA assets.

See Chapter 2 for a discussion of not only the estate tax charitable deduction but also, when applicable, the estate tax marital deduction.

Procedure

First, the donor completes a beneficiary designation form for the IRA such as the following:

> "The undersigned, being the owner of Individual Retirement Account No. *[number]* hereby designates that, upon my death, the assets (or *[percentage]* percent of the assets) (or $*[amount]* of the assets) remaining within the IRA shall be transferred to *[charity]*."

The donor should consult the IRA administrator regarding the specific beneficiary form that may be required.

Second, the donor and the charity execute a gift annuity agreement according to which the charity agrees to pay a life annuity to a named annuitant, which shall be equal to the value of the IRA assets transferred to the charity multiplied by the charitable gift annuity rate then published by the ACGA for a person of the annuitant's nearest age at the time of the donor's death. Alternatively, the agreement could reference the rate then offered by the charity for a person of the annuitant's nearest age at the time of the donor's death.

The agreement should also state the purpose for which the IRA assets are to be used by the charity in the event the named annuitant predeceases the donor.

See Appendix 4 for a sample agreement to be executed by the donor and the charity.

Testamentary Gift Annuity Funded with Other Retirement Assets

Although Private Letter Ruling 2002230018 concerned a gift annuity funded with remaining assets in an IRA, it should also be possible to fund the annuity with remaining assets in a 401(k) plan, a 403(b) plan, or with any retirement plan where assets can be passed by beneficiary designation. The arrangement is conceptually similar to the IRA gift, and the procedure would be the same – donor names a charity as beneficiary of all or a fraction of the remaining retirement plan assets and, while living, executes a gift annuity agreement according to which the retirement funds transferred to the charity are used to provide an annuity for a survivor.

It should also be possible to fund the annuity with the cash value of a commercial deferred variable annuity that has not been annuitized. A charity, as well as an individual, could be named as beneficiary of such a contract. Since the distributions from the commercial annuity will consist of the amount originally invested plus the gain on the investment, they will be partly tax-free and partly taxable. This means that the annuity payments will be partially tax-free as a return of capital, and partly taxed as ordinary income. In the case of a gift annuity funded with assets remaining in a regular IRA, where the owner did not make any after-tax contributions, all annuity payments would be taxed entirely as ordinary income.

Gift Annuity as the Equivalent of a Stretch IRA

The SECURE Act, signed into law in late 2019, with certain exceptions, requires that retirement funds given to non-spousal beneficiaries be fully distributed within 10 years. Excepted from the requirement would be a beneficiary who is disabled, chronically ill, a minor child, or someone who is 10 years or less younger than the account owner. Prior to the SECURE Act, the payments to any non-spousal beneficiary could be made over that beneficiary's lifetime. When the retirement plan was an IRA and payments were made for life, it was known as a "stretch IRA."

The stretch IRA offered several benefits:

- There would be valuable tax deferral and tax-free growth inside the plan for a long time.
- Distributions from the IRA would likely be taxed at a lower rate because they would be smaller and thus would not significantly increase the recipient's tax rate, which would likely be the case if the IRA were distributed in a lump sum or over a short period of time.
- A stretch IRA would prevent imprudent beneficiaries from quickly burning through an inheritance

Philanthropic individuals who would like some equivalent of the stretch IRA could create a testamentary gift annuity for surviving children or other non-spousal heirs. The procedure would be as discussed above, and, as noted, it should be possible to fund the gift annuity with any IRD assets, such as funds in a 401(k) or 403(b), as well as IRA assets.

The annuity would assure payments for life. The distribution period would not be limited to 10 years as it is now for most non-spousal beneficiaries. In addition to providing life payments to an heir, the residuum of the annuity can fund a legacy gift.

Example: Philip had been planning on a stretch IRA for his son, Chris, but the SECURE Act prevented this arrangement. In lieu of it, he decided to arrange a testamentary gift annuity funded with remaining funds in his IRA. To effect this, he followed the procedure described above: named the charity as beneficiary of the IRA and executed a gift annuity agreement, with the charity providing for life payments to Chris equal to the amount distributed to the charity from the IRA multiplied by the recommended ACGA gift annuity rate for a person Chris's age at the time of Philip's death.

Assume that Philip dies at age 85 when Chris is age 60, and that the IRA balance at the time is $1,000,000. Chis will be paid $49,000 per year for life. If he had simply named Chris as the individual beneficiary, Chris would have been required to empty the IRA within 10 years, and the larger payments would likely have pushed him into a higher tax backet.

It should be possible to fund the gift annuity with any IRD assets, such as funds in a 401(k) or 403(b).

Gift Annuity in Connection with a Roth IRA Conversion

Beginning in January 2010, the income ceiling for converting a traditional IRA to a Roth IRA was lifted. In the past, persons whose income exceeded $100,000 were precluded from a conversion.

The advantages of a Roth IRA are that distributions to the owner and to heirs are not taxed (subject to certain requirements), and there are no minimum distributions. The disadvantage of the conversion is that the money transferred from the traditional IRA to the Roth IRA will be fully taxable.

A good strategy would be to generate a charitable deduction that could offset all, or a substantial portion, of the additional taxable income resulting from the conversion. For example, a person might convert $100,000 from a regular IRA and contribute a separate sum of $100,000 to charity. Assuming the deduction is all usable, it would offset the tax on the conversion. The deduction from a $100,000 contribution for a gift annuity, however, would be only a fraction of the contribution. Nevertheless, it would mitigate, if not eliminate, the tax. A person who wants to offset more of the tax could contribute a larger amount for the gift annuity. Thus, a person contemplating both a Roth conversion and a gift annuity might consider doing them in tandem.

Gift Annuity Funded with Closely-held Stock

It is possible to contribute stock in either a C or S corporation for a gift annuity, whereas only C corporation stock can be contributed to a charitable remainder trust. The 1996 tax legislation added charities to the list of eligible shareholders of S stock but did not add charitable remainder trusts. In the case of gift annuities, the stock is given directly to the IRC Sec. 501(c)(3) charity, which is now an eligible shareholder.

If a charity receives S corporation stock for a gift annuity and then continues to hold the stock and to receive its share of income earned by the corporation, the charity will be taxed on that income at normal corporate tax rates if it is a corporation, or at trust tax rates if it is a trust. This is because the distribution will be treated as unrelated business taxable income.

A charity may be willing to accept S stock for a gift annuity if it is reasonably certain that (1) it can sell the stock to other shareholders in the near term or (2) the corporation will make regular distributions of income.

If the charity retains the stock, any income earned by the corporation will be taxed as unrelated business taxable income. Even income deriving from interest, dividends, and rents – the type of passive income normally not taxable to a charity – will be taxed. If the charity sells the stock it will be taxed on the gain, but the amount of gain will be reduced because the charity's cost basis will be the present value of the annuity, which is its acquisition cost. Thus, when a charity receives and sells S stock, it will pay less tax if the stock is contributed for a gift annuity than if it is contributed outright. Consequently, funding a gift annuity with S stock can be a good technique. See Figure 16.12 for an example.

Regardless of whether the charity will sell or retain the S stock, if it is contributed for a gift annuity, the charity would be well advised to offer a lower-than-normal gift annuity rate, for there will be some attrition of sales proceeds or annual income because of the tax. (Over the years, legislation has been introduced that would exempt a charity from taxation on income received from an S corporation, as well as from capital gains realized on the sale of S stock, but no such legislation has yet been enacted.)

Sometimes, the potential purchasers of closely-held stock are members of the donor's immediate family. If C stock were transferred to a charitable remainder trust, the donor's children would be disqualified persons. For them to purchase the stock would be a prohibited act of self-dealing under IRC Sec. 4941. However, if C stock or S stock were transferred directly to the charity in exchange for a gift annuity, the children would be able to purchase it. Nevertheless, the charity can be under no obligation to sell the stock to the children, or to anyone else. It would be imprudent to accept such an asset for a gift annuity unless there is a ready and willing buyer, or there is assurance of regular distributions from the corporation. Otherwise, the charity would have to advance its own funds until a buyer can be found or the corporation starts distributing income.

Gift Annuity Funded with a Partnership or LLC Interest

It is possible to fund a gift annuity with a partnership or LLC interest, provided the interest is transferrable. The operating agreement will indicate whether transfers to a nonprofit institution are allowable and whether members must approve the transfer.

As with closely-held stock, the charity should have reasonable assurance it can liquidate the interest in the near term. Otherwise, it may have to make annuity payments with general institutional assets for an indefinite period. Unless an immediate liquidation is extremely likely, it would also be prudent to reduce the customary gift annuity rates.

Figure 16.12

Gift Annuity Funded with S Corporation Stock

On July 1, 2023, Cecil, whose date of birth is February 23, 1956, contributed S stock to a charity in exchange for a gift annuity. The stock was appraised at $400,000 and Cecil's adjusted cost basis was only $10,000. Shortly after the contribution, the charity sold the stock to another shareholder for $400,000. While the charity would ordinarily pay the 5.6% ACGA rate, it reduced the rate to 5.0% in this instance to compensate partially for the tax it will pay. Calculations are based on the 4.6% CMFR for July 2023. This increases the charity's basis and thus decreases the gain on which it is taxed.

Value of S Stock	$400,000.00
Adjusted cost basis	10,000.00
Present value of annuity	226,900.00
Charitable deduction	173,100.00
Annual payment ($5,000 per quarter)	20,000.00
Taxed as follows during each full year of life expectancy:	
Ordinary income	$7,600.00
Capital gain	12,090.00
Tax-free return of capital	310.00
	$20,000.00
Capital gain taxed to charity ($400,000 - 226,900 - 4,327*)	$168,773.00
Tax on gain (assuming the charity is a corporation subject to a 21% rate)	35,442.33
After-tax proceeds	$364,557.67
Annual annuity as a percentage of after-tax proceeds	5.49%**

* The basis allocated to the gift portion is $4,327.

** This is below the ACGA rate of 5.6%, so the rate offered by the charity compensates for the tax it will incur.

If Cecil had given the stock outright, the charity would have had $390,000 of taxable gain when it sold the stock, and if the 21% rate still applied, the tax would have been $81,900. Thus, the charity pays $46,458 less tax with the annuity than with an outright gift. If an outright gift were intended, tax might have been reduced by creating a supporting organization in trust form and having the stock contributed to it. The supporting organization could then have made grants to or on behalf of the supported charity.

The distributions from the partnership or LLC may or may not be taxable to the charity. If they consist of passive income such as rents, they would not be taxable. However, they may be taxable if the partnership or LLC operates a business or has debt-financed income. The gain on the sale of the interest would not be taxable to the charity, so in this respect such assets may be better for funding a gift annuity. A donor who transfers an interest in a partnership or LLC with underlying indebtedness may recognize gain. In view of all of these potential consequences, it is essential for the charity and the donor to consult tax counsel to determine the advisability of proceeding with the gift annuity.

On occasion, the partners of a partnership, members of an LLC, or shareholders of an S corporation may be interested in using assets of the business to fund a gift annuity for just one of the partners, members, or shareholders. While this is possible, it may not be advisable given the taxable gifts and recognition of gain that may result.

Gift Annuity Funded with Assets Needed by the Charity

Sometimes a charity wants to retain the property it receives for a gift annuity. For example, it needs real estate for expansion, or a painting for its collection, and the donor is willing to donate the property in exchange for annuity payments. In these instances, the charity has to cover the annuity with its general funds. For example, Linda K, age 84, lives in a home on the perimeter of a college campus. The college already owns the lot next to her house and would like to acquire her property as well so that it would have adequate space for a new dormitory. Being ready to move into a retirement home and having affection for the college, she agrees to transfer the property in exchange for lifetime annuity payments. Since the present value of those payments is well below the appraised value, the college is acquiring the property at a bargain price. Consequently, Linda receives a substantial income tax deduction.

Gift Annuity Funded with a Conservation Easement

An environmental organization may want a particular piece of property to be permanently protected from development. The owner would like this as well, but she feels that she should be compensated for the diminishment in her property's value as a result of the easement. One possibility, which would reduce the charity's cost, is to suggest that the owner contribute the easement in exchange for a gift annuity. Of course, the charity would have to use its general funds to make payments and satisfy any state reserve requirements.

The gift is commonly a perpetual conservation restriction granted to a qualified organization for a conservation purpose, which could be public recreation or education, protection of environmental systems, and preservation of open space. See Reg. Sec. 1.170A-14(d)(2),(3), and (4).

If the easement were contributed outright, the donor would be allowed a deduction for the difference between the values of the property before and after the easement is granted. As with other real estate gifts, a qualified appraisal is required to substantiate a deduction in excess of $5,000. An outright gift of a conservation easement will not cause a donor to recognize capital gain. However, if the donor subsequently sells the property, it will be necessary to allocate his or her original basis between the easement and the property. See Figure 16.13 for an example of a gift annuity funded with a conservation easement, one that results in the recognition of some gain.

Gift Annuity Funded with Cryptocurrency

As cryptocurrencies have become more popular as a medium of exchange, it is not surprising that they are now being offered to charities as gifts. Some charities have modified their gift acceptance policies to govern acceptance of Bitcoin, the most popular cryptocurrency, and other forms of these virtual currencies. So far, most such gifts have been outright, but they might also be offered for charitable remainder trusts and gift annuities. Would they be appropriate for gift annuities and under what conditions? To answer that question, it is necessary to consider both the tax aspects of gifts of cryptocurrencies and the risks to the charity.

Taxation of gifts of Cryptocurrencies

The IRS rules regarding charitable donations of purchased cryptocurrencies are similar to the rules regarding gifts of securities, except for substantiation of the gift. Whereas market

Figure 16.13

Gift Annuity Funded with a Conservation Easement

On July 1, 2023, Robert and Marcia, whose dates of birth are May 19, 1939 and February 14, 1941, respectively, contributed a conservation easement to a land trust in exchange for a gift annuity. According to an appraisal, the property was worth $750,000 prior to the granting of the easement, and will be worth $500,000 thereafter. The adjusted cost basis of the property was $180,000. The calculations below were based on the 4.6% CMFR for July 2023. Although the normal rate for beneficiaries their ages was 7.1%, they accepted a rate of 6.5% offered by the charity.

Value of easement	$250,000.00
Portion of cost basis allocated to the easement	60,000.00
Total annual payments	$16,250.00
Taxation of payments during each full year of life expectancy:	
Ordinary income	$4,403.75
Capital gain	9,003.15
Tax-free return of capital	2,843.10
	$16,250.00
Income tax charitable deduction	$122,027.50

A charity issuing a gift annuity for an easement must be prepared to make payments from its general funds and, in certain states, transfer from its general funds enough to meet state reserve requirements. In certain instances it might be able to sell the easement to another organization qualified to hold an easement.

quotations can be used to value publicly-traded securities, it will be necessary to establish the value of a cryptocurrency by securing a qualified appraisal. If the deduction claimed will be over $5,000, Part B of Form 8283 must be completed, signed by the charity, and submitted with Form 1040 on which the deduction is claimed. If the charity then disposes of the asset within three years, it must report the selling price on Form 8282. One problem is that finding a qualified properly credentialed appraiser may not be easy.

Given the volatility of cryptocurrencies, it is probably advisable to instruct the appraiser to complete the appraisal following the gift, determining the value as of the gift date. If the appraisal were done within the allowable 60-day period prior to the gift, there could be a significant difference between the values on the appraisal date and on the gift date. Note that in July 2023, legislation was reintroduced that would eliminate the need for a qualified appraisal to establish the value of an actively traded cryptocurrency. If it were to become law, the donor would be able to value the cryptocurrency by reference to the exchange where it is bought and sold. Although hearings were held in October 2023, no further action has occurred since then.

Assuming compliance with the substantiation requirements can he handled, a donor who has owned a cryptocurrency for more than a year may find a gift annuity quite attractive. A deduction will be allowed for fair market value, taxable gain can be reported ratably over life expectancy if the donor is the annuitant, and a volatile asset can be converted to predictable payments. The gift annuity could be appealing even if the cryptocurrency has been owned less than a year. Although the deduction will be lower, the taxable ordinary gain can still be reported ratably, and current value can be locked in.

Managing Risk to the Charity

If a donor were to contribute for a gift annuity 1,000 shares of XYZ stock on a day when the "high" was 67.5 and the "low" was 67.0, and the annuity rate based on the donor's age was 5.2 percent, the contribution would be 67.25 x 1000 = $67,250, and the annual annuity payment would be $3,497. Typically, the charity would sell the stock as soon as possible and transfer the proceeds to the agent retained to invest gift annuity reserves. There could be some fluctuation in price between the date of gift and the date of sale, but under normal circumstances, the fluctuation would not be very large. The charity might realize proceeds a little less or a little more than $67,250, but this would have a minor effect on the risk the charity is assuming.

However, cryptocurrencies are far more volatile than the typical publicly-traded stock, and there can be sudden and rather significant swings in value. If the annuity payment is based on the value of the cryptocurrency on the date of gift, and that value drops 20 percent before the crypto currency can be liquidated, the charity could be at risk of losing money on the gift annuity. An advantage of the cryptocurrency is that it normally can be sold very quickly, but a disadvantage is that it is usually more volatile.

Given the volatility of cryptocurrency, the charity should structure the gift so that the annual payment is based on the net sales proceeds realized by the charity rather than on the appraised value as of the date of the gift. The charity and the donor could enter into an agreement that specifies that the annuity payment shall be the net sales proceeds multiplied by the applicable published gift annuity rate. The agreement regarding the payment could be in a separate letter of understanding (with a gift annuity agreement prepared later), or it can be within the gift annuity agreement itself provided that would not be problematic in the governing state.

This was one of the risk-management strategies suggested when a gift annuity is funded with real estate, In that situation, there needed to be a contingency in case the property had not been sold by the time the donor's tax return was due. That is not likely to be an issue in the case of cryptocurrency because usually it can be sold very quickly. The question is how much the value may move in a relatively short time.

Charitable gifts of cryptocurrencies have increased manyfold within the past decade, and some individuals have made fortunes investing in them. Of course, others have sustained losses. Those who have fared well could be prospects for gift annuities and other types of charitable gifts. For this reason, charities are well advised to expand their gift acceptance polices to include these assets, subject, of course, to exercising due diligence and managing risk. It will also be important to pay attention to likely future regulations of cryptocurrency and adapt to them.

Gift Annuities Funded with Other Commodities, such as Crops

Commodities, such as corn, soybeans, cotton, or oranges, could be contributed for a gift annuity. Un-harvested crops could be sold with the land, but reference here is to harvested crops.

The farmer would prepare a conveyance document describing the commodity and the quantity being contributed, and in an accompanying letter the farmer should ask the charity where it wants the grain delivered. The charity would typically designate a grain elevator or other receiving station and would provide a receipt upon delivery. In the case of equipment there would be a deed of gift describing the items.

Harvested crops are tangible personal property, and the donor will be entitled to a deduction only for any costs of production that have not already been deducted as an expense. This means that in many cases there will be no deduction. However, the farmer-donor will not be subject to income or self-employment tax on the value of the donated crops. Equipment is also tangible personal property, so the charitable deduction will be limited to cost, which will likely be zero because the farmer probably has already deducted the cost on his income tax return.

Individuals who are retiring from farming might be interested in contributing farm equipment since the entire proceeds probably would be taxed as ordinary income, especially if they might receive life income in return for their contribution. Those still engaged in farming and who are facing large taxes because of an increase in the price of their crops, might be willing to make a gift of a portion of their crops. Again, this would be more appealing if they could receive life income in return.

These items could, of course, be given outright, but crops, such as grain, could be contributed for a gift annuity. The annuity would be low risk in the case of grain because the charity would know at the time of the contribution the approximate amount for which the grain could be sold.

Example: Roger and Thelma contribute corn valued at $400,000 to a gift annuity. At the time, they had already deducted most of the production costs, so the charitable deduction was very small. They would have incurred income tax plus self-employment tax of 13.3 percent on the profit if they had sold the corn. With the gift annuity, Roger and Thelma avoid these taxes and they receive payments for life. The real benefit, other than the satisfaction of making a gift, is receiving income from the entire proceeds from the sale of the corn and spreading the taxable income over time, which will likely result in Roger and Thelma being in a lower tax bracket than if they sold the corn.

Gift Annuity Funded with Assets in a Donor Advised Fund

Donors sometimes inquire as to whether they can recommend that a grant be made from a donor advised fund to a charity in exchange for a gift annuity. This definitely is not permissible. Contributions to the donor advised fund were outright gifts and they were fully deductible. Those assets now belong to the charitable organization that maintains the donor advised fund, and they can be used only for charitable purposes. To grant money under an arrangement where an individual receives a financial benefit is illegal.

What to Report on Form 8282

A donor who contributes an asset other than cash and publicly-traded securities, and who will claim a charitable deduction of more than $5,000 must submit a Form 8283 with the tax return on which the deduction is claimed. This form will state the fair market value of the asset as determined by an appraisal. The charity will sign the form acknowledging receipt of the property but not necessarily concurrence with the stated value.

If the recipient charity then sells the property within three years, it must file with the IRS a copy of Form 8282 indicating the selling date and price and send a copy of this form to the donor. Because of selling costs and fluctuations in the market, the net proceeds realized by the charity are likely to be different from the appraised value reported on Form 8283. Suppose, for example, that the sales price is $750,000, but after deducting all selling costs, the net proceeds for the charity are $720,000. Is the amount realized, which is reported on Form 8282, $750,000 or $720,000? It would be the sales price, $750,000.

As noted earlier in this chapter, a charity may choose to offer a lower-than-normal gift annuity rate because of uncertainty about the timing of the sale and the net amount that will be realized.

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Serial Number________

ABC Charity

GIFT ANNUITY AGREEMENT
One Life - Donor is the Annuitant
Funded with a QCD from Donor's IRA
Immediate Payments

This Agreement is made between *[name of donor]* of *[street address]*, *[city]*, *[state] [zip code]* (hereinafter "the Donor"), and ABC Charity, of 1234 Main Street, Seattle, Washington 98000 (hereinafter "Charity").

1.Transfer of Property by Donor
Charity certifies that the Donor, as an evidence of *[his/her]* desire to support the work of Charity and to make a charitable gift, on *[contribution date --month,day,year]* contributed to Charity the property described in Schedule A attached hereto, the fair market value of which is $*[amount]*.

2. Payment of Annuity
In consideration of the property transferred by the Donor, Charity shall pay an annual annuity of $*[amount]* from the date of this Agreement and shall pay such amount to the Donor so long as *[he/she]* is living.

3. Payment Dates; First Installment
The annuity shall be paid in *[monthly, quarterly, semi-annual, annual]* installments of $*[amount]*. The first installment shall be payable on *[month,day,year]*, and shall be prorated on the basis of the number of days in the initial payment period. Subsequent installments beginning on *[month,day,year]* and continuing every *[month,quarter,half-year,year]* thereafter shall be in the full amount of $*[amount]*. *[If the contribution is received on the first day of the period or if the first payment will be for the full amount in any case, delete the reference to proration and subsequent installments.]*

4. Birth Date of Donor
The birth date of the Donor is *[month,day,year]*.

5. Irrevocability; Non-assignability;Termination
This annuity is irrevocable and non-assignable. Charity's obligation under this Agreement shall terminate with the regular payment preceding the Donor's death.

6. Uses and Purposes of Gift
Upon Charity's satisfaction of its obligation under this Agreement, an amount equal to the residuum of the gift shall be used by Charity for *["its general purposes" if unrestricted; if restricted, state purpose]*.

Form: ABC-1da-QCD-I-XX Prototype materials: QCD agreements.docx

APPENDIX 1

7. Entire Agreement; Governing Law
This Agreement, together with Schedule A attached hereto, constitutes the entire agreement of the parties. This Agreement shall be governed by the laws of the State of *[state]*.

This Agreement is effective as of *[contribution date -- month,day,year]*.

DONOR:

____

ABC Charity:

By: ______________________________
[Name and title of officer]

ATTEST.

By: ______________________________

Form: ABC-1da-QCD-I-XX

Gift Annuity Agreement Between
***[Name of Donor]* and**
ABC Charity

Schedule A

Description of Property

[*Description of donated property*]

A P P E N D I X 1

Form: ABC-1da-QCD-I-XX

APPENDIX 1

Serial Number________

ABC Charity

Gift Annuity Agreement

One Life - Donor is not the Annuitant
Funded with a QCD from Donor's IRA
Immediate Payments

This Agreement is made between *[name of donor]* of *[street address]*, *[city]*, *[state] [zip code]* (hereinafter "the Donor"), and ABC Charity, of 1234 Main Street, Seattle, Washington 98000 (hereinafter "Charity").

1. Transfer of Property by Donor
Charity certifies that the Donor, as an evidence of *[his/her]* desire to support the work of Charity and to make a charitable gift, on *[contribution date --month,day,year]* contributed to Charity the property described in Schedule A attached hereto, the fair market value of which is $*[amount]*.

2. Payment of Annuity
In consideration of the property transferred by the Donor, Charity shall pay an annual annuity of $*[amount]* from the date of this Agreement and shall pay such amount to *[name of annuitant]* of *[street address]*, *[city]*, *[state] [zip code]* (hereinafter "the Annuitant"), so long as *[he/she]* is living.

3. Payment Dates; First Installment
The annuity shall be paid in *[monthly, quarterly, semi-annual, annual]* installments of $*[amount]*. The first installment shall be payable on *[month,day,year]*, and shall be prorated on the basis of the number of days in the initial payment period. Subsequent installments beginning on *[month,day,year]* and continuing every *[month,quarter,half-year,year]* thereafter shall be in the full amount of $*[amount]*. *[If the contribution is received on the first day of the period or if the first payment will be for the full amount in any case, delete the reference to proration and subsequent installments.]*

4. Birth Date of Annuitant
The birth date of the Annuitant is *[month,day,year]*.

5. Irrevocability; Non-assignability; Termination
This annuity is irrevocable and non-assignable. Charity's obligation under this Agreement shall terminate with the regular payment preceding the Annuitant's death.

[Alternate Paragraph 5 if power to revoke paragraph is included:]
Except as provided in Paragraph 6, this annuity is irrevocable. This annuity is also non-assignable. Charity's obligation under this Agreement shall terminate with the regular payment preceding the Annuitant's death, unless the Donor has exercised the right to revoke payments to the Annuitant per Paragraph 6 below.

Form: ABC-1dna-QCD-I-XX

6. Power to Revoke Payments

The Donor hereby reserves the power to revoke the right of the Annuitant to receive payments from Charity pursuant to this Agreement. This power is exercisable by the Donor either (1) during life by giving a written notice to Charity, or (2) at death, by a written notice to Charity, from the Donor's executor, trustee or personal representative, that the Donor, in *[his/her]* will or trust, has exercised this power to revoke. If the power is exercised, Charity's obligation to make annuity payments shall terminate with the payment preceding the exercise of this power.

[Option -- You may elect to exclude this revocation paragraph. If excluded, renumber successive paragraphs.]

7. Uses and Purposes of Gift

Upon Charity's satisfaction of its obligation under this Agreement, an amount equal to the residuum of the gift shall be used by Charity for *["its general purposes" if unrestricted; if restricted, state purpose]*.

8. Entire Agreement; Governing Law

This Agreement, together with Schedule A attached hereto, constitutes the entire agreement of the parties. This Agreement shall be governed by the laws of the State of *[state]*.

This Agreement is effective as of *[contribution date -- month,day,year]*.

DONOR:

____

ABC Charity:

By: ____________________________________

[Name and title of officer]

ATTEST.

By: ____________________________________

APPENDIX 1

Form: ABC-1dna-QCD-I-XX

APPENDIX 1

Gift Annuity Agreement Between
[Name of Donor] and
ABC Charity

Schedule A

Description of Property

[Description of donated property]

Form: ABC-1dna-QCD-I-XX

Serial Number________

ABC Charity

GIFT ANNUITY AGREEMENT
Two Lives - Joint and Survivor
Funded with a QCD from Donor's IRA
Immediate Payments

This Agreement is made between *[name of donor]* of *[street address]*, *[city]*, *[state] [zip code]* (hereinafter "the Donor"), and ABC Charity, of 1234 Main Street, Seattle, Washington 98000 (hereinafter "Charity").

1. Transfer of Property by Donor
Charity certifies that the Donor, as an evidence of *[his/her]* desire to support the work of Charity and to make a charitable gift, on *[contribution date --month,day,year]* contributed to Charity the property described in Schedule A attached hereto, the fair market value of which is $*[amount]*.

2. Payment of Annuity
In consideration of the property transferred by the Donor, Charity shall pay to the Donor and *[name of second annuitant]* of *[street address]*, *[city]*, *[state] [zip code]*, during their joint lives, and then to the survivor during *[his/her/his or her]* life, an annual annuity of $*[amount]* from the date of this Agreement.

3. Payment Dates; First Installment
The annuity shall be paid in *[monthly, quarterly, semi-annual, annual]* installments of $*[amount]*. The first installment shall be payable on *[month,day,year]*, and shall be prorated on the basis of the number of days in the initial payment period. Subsequent installments beginning on *[month,day,year]* and continuing every *[month,quarter,half-year,year]* thereafter shall be in the full amount of $*[amount]*. *[If the contribution is received on the first day of the period or if the first payment will be for the full amount in any case, delete the reference to proration and subsequent installments.]*

4. Birth Dates of Annuitants
The birth date of *[name of donor]* is *[month,day,year]*. The birth date of *[name of second annuitant]* is *[month,day,year]*.

5. Irrevocability; Non-assignability; Termination
This annuity is irrevocable and non-assignable. Charity's obligation under this Agreement shall terminate with the regular payment preceding the death of the survivor of the Donor and *[name of second annuitant]*. With respect to the first of the Donor or *[name of second annuitant]* to die, the obligation to pay such annuitant any share of the annuity shall terminate with the regular payment preceding the death of such annuitant, and all following payments shall be payable to the survivor of the Donor or *[name of second annuitant]*, during such surviving annuitant's lifetime.

Form: ABC-2J-SP-QCD-I-XX

APPENDIX 1

[Alternate Paragraph 5, if power to revoke paragraph is included:]
Except as provided in Paragraph 6, this annuity is irrevocable. This annuity is also non-assignable. Charity's obligation under this Agreement shall terminate with the regular payment preceding the death of the survivor of the Donor and *[name of second annuitant]*, unless the Donor has exercised the right to revoke payments to *[name of second annuitant]* per Paragraph 6 below. With respect to the first of the Donor or *[name of second annuitant]* to die, the obligation to pay such annuitant any share of the annuity shall terminate with the regular payment preceding the death of such annuitant, and all following payments shall be payable to the survivor of the Donor or *[name of second annuitant]*, during such surviving annuitant's lifetime.

6. Power to Revoke Payments
The Donor hereby reserves the power to revoke the right of *[name of second annuitant]* to receive survivorship annuity payments from Charity pursuant to this Agreement. This power is exercisable by the Donor either (1) during life by giving a written notice to Charity, or (2) at death, by a written notice to Charity, from the Donor's executor, trustee or personal representative, that the Donor, in *[his/her]* will or trust, has exercised this power to revoke. If the power is exercised, Charity's obligation to make annuity payments shall terminate with the payment preceding the death of the Donor.

[Option -- You may elect to exclude this revocation paragraph. If excluded, renumber successive paragraphs.]

7. Uses and Purposes of Gift
Upon Charity's satisfaction of its obligation under this Agreement, an amount equal to the residuum of the gift shall be used by Charity for *["its general purposes" if unrestricted; if restricted, state purpose]*.

8. Entire Agreement; Governing Law
This Agreement, together with Schedule A attached hereto, constitutes the entire agreement of the parties. This Agreement shall be governed by the laws of the State of *[state]*.

This Agreement is effective as of *[contribution date -- month,day,year]*.

DONOR:

____

ABC Charity:

By: ________________________________
[Name and title of officer]

ATTEST.

By: ________________________________

Form: ABC-2J-SP-QCD-I-XX

Gift Annuity Agreement Between
***[Name of Donor]* and**
ABC Charity

Schedule A

Description of Property

[Description of donated property]

Form: ABC-2J-SP-QCD-I-XX

APPENDIX 1

APPENDIX 1

Serial Number________

ABC Charity

Gift Annuity Agreement
Two Lives - Successive Interests
Donor is the First Annuitant
Funded with a QCD from Donor's IRA
Immediate Payments

This Agreement is made between *[name of donor]* of *[street address]*, *[city]*, *[state] [zip code]* (hereinafter "the Donor"), and ABC Charity, of 1234 Main Street, Seattle, Washington 98000 (hereinafter "Charity").

1. Transfer of Property by Donor
Charity certifies that the Donor, as an evidence of *[his/her]* desire to support the work of Charity and to make a charitable gift, on *[contribution date --month,day,year]* contributed to Charity the property described in Schedule A attached hereto, the fair market value of which is $*[amount]*.

2. Payment of Annuity
In consideration of the property transferred by the Donor, Charity shall pay an annual annuity of $*[amount]* from the date of this Agreement and shall pay such amount to the Donor so long as *[he/she]* is living, and thereafter to *[name of successor annuitant]* of *[street address]*, *[city]*, *[state] [zip code]*, continuing for the balance of *[his/her]* life.

3. Payment Dates; First Installment
The annuity shall be paid in *[monthly, quarterly, semi-annual, annual]* installments of $*[amount]*. The first installment shall be payable on *[month,day,year]*, and shall be prorated on the basis of the number of days in the initial payment period. Subsequent installments beginning on *[month,day,year]* and continuing every *[month,quarter,half-year,year]* thereafter shall be in the full amount of $*[amount]*. *[If the contribution is received on the first day of the period or if the first payment will be for the full amount in any case, delete the reference to proration and subsequent installments.]*

4. Birth Dates of Annuitants
The birth date of the Donor is *[month,day,year]*. The birth date of *[name of successor annuitant]* is *[month,day,year]*.

5. Irrevocability; Non-assignability; Termination
This annuity is irrevocable and non-assignable. Charity's obligation under this Agreement shall terminate with the regular payment preceding the death of the survivor of the Donor and *[name of successor annuitant]*. The obligation to pay the Donor any share of the annuity shall terminate with the regular payment preceding *[his/her]* death. If *[name of successor annuitant]* survives the Donor, all following payments shall be payable to *[name of successor annuitant]*.

Form: ABC-2Sda-QCD-I-XX

[Alternate Paragraph 5, if power to revoke paragraph is included:]
Except as provided in Paragraph 6, this annuity is irrevocable. This annuity is also non-assignable. Charity's obligation under this Agreement shall terminate with the regular payment preceding the death of the survivor of the Donor and *[name of successor annuitant]*, unless the Donor has exercised the right to revoke survivorship payments to *[name of successor annuitant]* per Paragraph 6 below. The obligation to pay the Donor any share of the annuity shall terminate with the regular payment preceding *[his/her]* death. If *[name of successor annuitant]* survives the Donor, and the Donor has not revoked *[his/her]* survivorship payments, all following payments shall be payable to *[name of successor annuitant]*.

6. Power to Revoke Payments
The Donor hereby reserves the power to revoke the right of *[name of successor annuitant]* to receive payments from Charity pursuant to this Agreement. This power is exercisable by the Donor either (1) during life by giving a written notice to Charity, or (2) at death, by a written notice to Charity, from the Donor's executor, trustee or personal representative, that the Donor, in *[his/her]* will or trust, has exercised this power to revoke. If the power is exercised, Charity's obligation to make annuity payments shall terminate with the payment preceding the death of the Donor.

[Option -- You may elect to exclude this revocation paragraph. If excluded, renumber successive paragraphs.]

7. Uses and Purposes of Gift
Upon Charity's satisfaction of its obligation under this Agreement, an amount equal to the residuum of the gift shall be used by Charity for *["its general purposes" if unrestricted; if restricted, state purpose]*.

8. Entire Agreement; Governing Law
This Agreement, together with Schedule A attached hereto, constitutes the entire agreement of the parties. This Agreement shall be governed by the laws of the State of *[state]*.

This Agreement is effective as of [*contribution date -- month,day,year*].

DONOR:	ABC Charity:
______________________________	By: ______________________________ *[Name and title of officer]*
	ATTEST.
	By: ______________________________

Form: ABC-2Sda-QCD-I-XX

APPENDIX 1

Gift Annuity Agreement Between
***[Name of Donor]* and**
ABC Charity

Schedule A

Description of Property

[Description of donated property]

Form: ABC-2Sda-QCD-I-XX

SUMMARY OF ACCOUNTING AND TAX INFORMATION
GIFT ANNUITY FUNDED WITH A QCD FROM DONOR'S IRA

Name of donor(s): ______________________________
Gift completion date: _______________
Value of property contributed: ______________

Annuity Payments

The wording below may need to be modified if the donor's spouse is also an annuitant or the sole annuitant.

Your first payment, prorated from the date of your gift to the end of the first payment period, will be for $__________, and will be made on *(date)*. Thereafter, you will receive *(monthly/quarterly/semi-annual/annual)* payments of $__________ at the end of each payment period.

Income Tax Charitable Deduction

A contribution using a Qualified Charitable Distribution from an IRA does not result in an income tax deduction. However, unlike other withdrawals you make from your IRA, a Qualified Charitable Distribution is not taxable to you as income.

Include the following if a spouse has been named as a successor (not joint) annuitant

Federal Gift Tax Return (Form 709)

You have made a gift of a future interest in the amount of $*[amount]* to *[name of spouse]*. Whether you need to file a Form 709, and whether you owe a gift tax, will depend on the size of the gift and whether you have previously used your lifetime unified gift and estate tax exemption.

Tax Reports

The ABC Charity will prepare an IRS Form 1099-R showing the amount of taxable income you received during the year and send it to you by January 31 of the following year. As shown in the table below, all payments will be taxable entirely as ordinary income.

Prototype materials: tax-info summary.QCD.docx

Substitute the following language if the sole annuitant is the donor's spouse:

The ABC Charity will prepare an IRS Form 1099-R showing the amount of taxable income *[name of spouse]* received during the year and send it to *[him/her/them]* by January 31 of the following year. As shown in the table below, all payments will be taxable entirely as ordinary income. The same numbers will appear on Form 1099-R.

Insert proper numbers. For example...

Year	Number of Payments	Total Annuity	Ordinary Income
2023	1 part, 1 full	$1,550.27	$ 325.56
2024 onward	4	3,500.00	

Notice Concerning Tax and Accounting Information

THIS TAX INFORMATION IS PROVIDED TO YOU AS A SERVICE OF THE ABC CHARITY. HOWEVER, WE ARE NOT PROVIDING LEGAL OR TAX ADVICE TO YOU. YOU SHOULD GIVE THIS INFORMATION TO YOUR ACCOUNTANT OR TAX ADVISOR AND HAVE THAT PERSON CONFIRM THE ACCURACY OF OUR COMPUTATIONS AND DETERMINE THE SCOPE OF THESE AND OTHER REPORTING REQUIREMENTS THAT MAY APPLY.

Private Letter Ruling 200230018

Issued: April 22, 2002
Published: July 26, 2002

Dear Sir or Madam:

This is in response to your April 2, 2001 letter and other correspondence requesting rulings concerning the tax treatment of funding a testamentary charitable gift annuity with assets from an individual retirement account.

You have requested the following rulings:

1. Charity's tax-exempt status will not be adversely affected because of the receipt of IRA proceeds upon Taxpayer's death in exchange for the annuity payable to the Annuitant, nor will Charity recognize taxable income as a result of its receipt of the IRA proceeds upon Taxpayer's death in exchange for the annuity payable to Annuitant.

2. For purposes of determining the character of the annuity payments received by Annuitant, her "investment in the contract" as defined in section 72(c) of the Internal Revenue Code is equal to the IRA proceeds transferred to Charity in exchange for the annuity less the estate tax charitable contribution deduction.

3. Taxpayer's gross estate, for federal estate tax purposes, will include the value of the IRA at the time of Taxpayer's death.

4. Taxpayer's estate may claim an estate tax charitable deduction equal to the value of the IRA less the value of the annuity to be paid to Annuitant.

5. Upon the death of Taxpayer, the proceeds from the IRA, which will be distributed to Charity in exchange for the annuity, will not be included in the gross income of the estate for Federal income tax purposes.

The facts submitted are as follows:

Taxpayer is the owner of an individual retirement account (IRA) described in section 408(a) of the Code. The current balance of the IRA is approximately $a. Taxpayer will enter into a "Gift Annuity Agreement" with Charity pursuant to which Taxpayer will agree to make a testamentary gift to Charity of the IRA. To facilitate the transfer, Taxpayer proposes to complete a beneficiary designation form for the IRA that provides that upon Taxpayer's death, the entire proceeds of the IRA will be transferred to Charity. Under the Gift Annuity Agreement, the IRA proceeds will be deposited in Charity's general fund. Under the Gift Annuity Agreement, in consideration for the testamentary transfer, Charity will pay an annuity to Annuitant, if Annuitant survives Taxpayer. Annuitant is to receive a fixed amount each year payable quarterly, determined based on the percentage rate recommended by Association. If Annuitant predeceases Taxpayer, the IRA proceeds will be transferred to Charity without any obligation on Charity's part. The annuity is irrevocable and non- assignable (except to Charity for no consideration), cannot be commuted and is to be paid from Charity's general fund.

Charity has been recognized as an entity that is exempt from tax under section 501(c)(3). Charity has also been recognized as a public charity under section 509(a)(1).

The annuity that will be paid by Charity to Annuitant will be a function of the amount contained in the IRA at Taxpayers' death, Annuitant's age at that time, and the gift annuity rates in effect as recommended by Association at Taxpayer's death.

LAW AND ANALYSIS

Ruling 1

Section 501(c)(3) provides for the exemption from federal income tax of organizations organized and operated "exclusively" for religious, charitable, educational, or other specified exempt purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and which does not engage in proscribed legislative and political activities.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations provides that the term "charitable" is used in section 501(c)(3) in its generally accepted legal sense and includes providing relief for the poor and distressed, lessening the burdens of government, and promoting social welfare in a number of specified ways.

Section 501(m)(1) provides that an organization described in section 501(c)(3) or 501(c)(4) shall be exempt from tax only if no substantial part of its activities consist of providing commercial-type insurance.

Section 501(m)(2) provides that with respect to a section 501(c)(3) or 501(c)(4) organization which remains tax exempt after the application of section 501(m)(1) - (A) the activity of providing commercial-type insurance shall be treated as an unrelated trade or business (as defined in section 513), and (B) in lieu of the tax imposed by section 511 with respect to such activity, such organization shall be treated as an insurance company for purposes of applying subchapter L with respect to such activity.

Section 501(m)(3)(E) provides that, for purposes of this subsection, the term "commercial-type insurance" shall not include charitable gift annuities. Section 501(m)(5) states that for purposes of paragraph (3)(E), the term "charitable gift annuity" means an annuity if – (A) a portion of the amount paid in connection with the issuance of the annuity is allowable as a deduction under section 170 or 2055, and (B) the annuity is described in section 514(c)(5).

Section 511 imposes a tax on the unrelated business taxable income (defined in section 512) of organizations exempt from tax under section 501(c).

Section 512(a)(1) defines the term "unrelated business taxable income" to mean the gross income derived by any organization from any unrelated trade or business (defined in section 513) regularly carried on by it, less the allowable deductions which are directly connected with the carrying on of such trade or business.

Section 513(a) provides that the term "unrelated trade or business" means, in the case of any organization subject to the tax imposed by section 511, any trade or business the conduct of which is not substantially related to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption.

Section 514(c)(5), titled "Annuities", provides that for purposes of this section, the term "acquisition indebtedness" does not include an obligation to pay an annuity which - (A) is the sole consideration (other than a mortgage to which (2)(B) applies) issued in exchange for property if, at the time of the exchange, the value of the annuity is less than 90 percent of the value of the property received in the exchange, (B) is payable over the life of one individual in being at the time the annuity is issued, or over the lives of two individuals in being at such time, and (C) is payable under a contract which - (i) does not guarantee a minimum amount of payments or specify a maximum amount of payments, and (ii) does not provide for any adjustment of the amount of the annuity payments by reference to the income received from the transferred property or any other property.

In this case, the annuity issued by Charity qualifies as a charitable gift annuity under section 514(c)(5) because it satisfies all the relevant criteria: the annuity has a value which is less than 90 percent of the value of the property received in exchange by Charity, the annuity is payable over the life of Annuitant, the annuity contract does not guarantee a minimum amount of payments or specify a maximum amount of payments, and does not provide for an adjustment which references the amount of income generated by the transferred property.

Based upon the foregoing, Charity's tax exempt status under section 501(c)(3) will not be adversely affected by the receipt of the IRA proceeds upon Taxpayer's death in exchange for the annuity payable to Annuitant. In addition, Charity will not recognize unrelated business taxable income as a result of its receipt of the proceeds from the IRA upon Taxpayer's death in exchange for the annuity payable to Annuitant.

Ruling 2
The taxpayer requested that the Service rule that, for purposes of determining the character of the annuity payments received by the Annuitant, Annuitant's "investment in the contract" is equal to the IRA proceeds transferred to the Charity in exchange for the annuity less the estate tax charitable contribution deduction. In order for the Service to issue a ruling on this issue, it would have to assume that the Annuitant will survive the Taxpayer. Such an assumption would involve a hypothetical situation, since both Annuitant and Taxpayer are presently living. Accordingly, pursuant to section 8.02 of Rev. Proc. 2001-4, 2001-1 I.R.B. 121, 134, the Service declines to issue a ruling on this issue.

Ruling 3
Section 2001(a) of the Internal Revenue Code imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

APPENDIX 3

Section 2031 of the Code provides that the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated.

Section 2033 of the Code provides that the value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death.

Section 20.2031-1(a) of the Estate Tax Regulations provides that the value of the gross estate of a decedent who was a citizen or resident of the United States at the time of his death is the total value of the interests described in sections 2033 through 2044.

Section 2039(a) provides that the value of the gross estate shall include the value of an annuity payment or other payment receivable by any beneficiary by reason of surviving the decedent under any form of contract or agreement entered into after March 1, 1931 (other than as insurance under policies of the life of the decedent), if, under such contract or agreement, an annuity or other payment was payable to the decedent, or the decedent possessed the right to receive such annuity or payment, either alone or in conjunction with another for his or her life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death.

Section 2039(b) provides that section 2039(a) shall apply to only such part of the value of the annuity or other payment receivable under such contract or agreement as is proportionate to that part of the purchase price thereof contributed by the decedent. For purposes of this section, any contribution by the decedent's employer or former employer to the purchase price of such contract or agreement (whether or not to an employee's trust or fund forming part of a pension, annuity, retirement, bonus or profit-sharing plan) shall be considered to be contributed by the decedent if made by reason of his employment.

In this case, Taxpayer possesses the right to receive payments from the IRA during her life and the right to designate the IRA beneficiaries. The IRA is funded with contributions made by Taxpayer. Therefore, based on the facts submitted and the representations made, the value of the IRA at Taxpayer's death will be included in Taxpayer's gross estate.

Ruling 4
Section 2055(a)(2) provides that the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises, or transfers to or for the use of a corporation or certain other organizations organized and operated exclusively for religious, charitable, scientific, literary or educational purposes.

Section 2055(e)(2)(A) provides that where an interest in property passes or has passed from the decedent to a person, or for a use, described in 2055 (a), and an interest in the same property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to a person, or for a use, not described in 2055(a), a deduction shall be allowed under this section for the interest which passes or has passed to the person, or for the use, described in 2055(a) if, in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust (described in 664) or a pooled income fund (described in 642(c)(5)).

Rev. Rul. 80-281, 1980-2 C.B. 282, considers a situation where the donor purchases an annuity from a charitable organization that is payable for the donor's life from the general funds of the charity. The ruling concludes that because the annuity is payable out of the charity's general funds, rather than the transferred funds, the donor has not retained any interest in the transferred funds. Accordingly, the provisions of section 2522(c)(providing gift tax rules similar to section 2055(e)(2)) are not applicable. The ruling concludes that a gift tax charitable deduction is allowable equal to the amount by which the value of the property transferred by the donor exceeds the present value of the annuity. Rev. Rul. 84-162, 1984-2 C.B. 200 provides that the valuation tables contained in sections 25.2512-5 of the gift tax regulations and section 20.2031-7 of the estate tax regulations, are to be used in determining the value of annuity purchased from a charitable organization.

In the instant case, pursuant to the Gift Annuity Agreement and the IRA beneficiary designation, the IRA proceeds will be paid to Charity in exchange for an annuity payable by Charity to Annuitant, if she is living on the date of Taxpayer's death. Under the annuity agreement, a specific amount, that is determinable as of the Taxpayer's date of death, will be payable annually to Annuitant for her lifetime. The annuity is not subject to sale, assignment, or commutation. Further, the annuity will be payable from the general funds of Charity. Under these circumstances, we conclude that an estate tax charitable deduction will be allowed to Taxpayer's estate equal to the value of the IRA on the date of death, less the present value, determined as of the date of death, of the annuity payable to Annuitant. The present value of the annuity will be determined under section 7520 and section 20.2031-7 of the Estate Tax Regulations.

Ruling 5
Section 691(a)(1) provides that the amount of all items of gross income in respect of a decedent which are not properly includible in respect of the taxable period in which falls the date of the decedent's death or a prior period (including the amount of all items of gross income in respect of a prior decedent, if the right to receive such amount was acquired by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent) shall be included in the gross income, for the taxable year when received, of: (A) the estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent; (B) the person who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent's estate from the decedent; or (C) the person who acquires from the decedent the right to receive the amount by bequest, devise, or inheritance, if the amount is received after a distribution by the decedent's estate of such right.

Section 1.691(a)-1(b) provides that the term "income in respect of a decedent" refers to those amounts to which a decedent was entitled as gross income but which were not properly includible in computing the decedent's taxable income for the taxable year ending with the date of the decedent's death or for a previous taxable year under the method of accounting employed by the decedent.

APPENDIX 3

Section 691(a)(3) provides that the right, described in section 691(a)(1), to receive an amount shall be treated, in the hands of the estate of the decedent or any person who acquired such right by reason of the death of the decedent, or by bequest, devise, or inheritance from the decedent, as if it had been acquired by the estate or such person in the transaction in which the right to receive the income was originally derived and the amount includible in gross income under section 691(a)(1) or (2) shall be considered in the hands of the estate or such person to have the character which it would have had in the hands of the decedent if the decedent had lived and received such amount.

Based on the information submitted and the representations made, we conclude that if Charity is named as the designated beneficiary of Taxpayer's IRA, then the proceeds distributed to the Charity from the Taxpayer's IRA will be items of income in respect of a decedent to the Charity under section 691(a)(1)(B) of the Code when distributed to the Charity. The proceeds from the IRA will not be income in respect of a decedent to the Taxpayers' estate. The character of the income in respect of a decedent in the hands of the Charity will be considered to have the character that it would have had in the hands of Taxpayer if Taxpayer had lived and received such amounts.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,

George L. Masnik
Chief, Branch 4
Office of the Associate Chief Counsel (Passthroughs and Special Industries)

Sample Agreement for Testamentary Gift Annuity Funded with IRA Assets

APPENDIX 4

Serial Number ____________

ABC Charity

Gift Annuity Agreement
One Life, Donor is Not Annuitant
(Modified for Testamentary Contribution)

This Agreement is made between [*name of donor*], of [*street address*], [*city*], [*state*] [*zip code*] (hereinafter "the Donor"), and ABC Charity, of 1234 Main Street, Seattle, Washington 98000 (hereinafter "Charity").

1. Transfer of Property by Donor
Charity certifies that the Donor, as an evidence of [*his/her*] desire to support the work of Charity and to make a testamentary charitable gift, has arranged to contribute to Charity upon [*his/her*] death the property described in Schedule A, attached hereto, the fair market value of which, for purposes of this Agreement, is to be determined upon [*his/her*] death. This transfer shall be deemed an irrevocable gift to Charity, and the property contributed shall be deposited in the general fund of Charity.

2. Payment of Annuity
In consideration of the property to be transferred to Charity upon the death of the Donor, Charity shall pay from the general fund of Charity to [*name of annuitant*] of [*street address*], [*city*], [*state*] [*zip code*] (hereinafter "the Annuitant"), for so long as the Annuitant may survive the Donor, an annual annuity equal to the fair market value of the property described in Schedule A multiplied by the charitable gift annuity rate [*then published by the American Council on Gift Annuities* or *then paid by Charity*] for a person the age of the Annuitant upon the date of death of the Donor.

3. Payment Dates; First Installment
The annuity shall be paid in equal [*monthly, quarterly, semi-annual, annual*] installments. The first installment shall be payable on the last day of the calendar [*month, quarter, half-year, year*] in which occurs the date of death of the Donor, and shall be prorated on the basis of the number of days in the initial payment period. Subsequent installments beginning on the last day of the following [*month, quarter, half-year, year*] and continuing every [*month, quarter, half-year, year*] thereafter shall be for the full [*monthly, quarterly, semi-annual, annual*] amount.

4. Birth Date of Annuitant
The birth date of the Annuitant is [*month, day, year*].

Prototype Materials: agreement-IRA.docx

APPENDIX 4

5. Irrevocability; Non-assignability; Termination

This annuity is irrevocable and non-assignable, except that it may be assigned to Charity for no consideration. In no event shall the Annuitant's interest be commuted, nor shall any prepayment or refund be made. Charity's obligation under this Agreement shall terminate upon the death of the Donor, if the Annuitant does not survive the Donor, or with the regular payment preceding the Annuitant's death, if the Annuitant does survive the Donor.

6. Uses and Purposes of Gift

Upon Charity's satisfaction of its obligation under this Agreement, an amount equal to the residuum of the gift or, in the event the Annuitant does not survive the Donor, the property described in Schedule A, shall be used by Charity for [*"its general purposes" if unrestricted; if restricted, state purpose*].

7. Entire Agreement; Governing Law

This Agreement, together with Schedule A attached hereto, constitutes the entire agreement of the parties. This Agreement shall be governed by the laws of the State of [*state*].

This Agreement is effective as of [*month, day, year*].

DONOR:

____

ABC CHARITY:

By: ______________________________

[*Name and title of officer*]

ATTEST

By: ______________________________

APPENDIX 4

Gift Annuity Agreement Between
[*Name of Donor*] and
ABC Charity

Schedule A

Description of Property

[*All* or *name a specific portion*] of the proceeds of the Donor's individual retirement account at [*name of IRA custodian*], Account Number [*number*].

Note: The agreement should also include any disclosure language or other provisions required by the state where the donor resides.

Chapter 17

Gift Annuity Funded with Remainder Interest in a Residence

Some people would be willing to give their residence to a charity, provided they can continue to live in it and also receive life payments. This objective cannot be accomplished by transferring the residence to a charitable remainder trust because (1) the trustee would be unable to make payments unless the property were sold and (2) continuing to live in the residence would constitute self-dealing. It can be accomplished by retaining a life estate in the property and contributing the remainder interest for a gift annuity.

Determination of Annuity Payments

The annual annuity paid to the donor (or donor and a spouse or other person) would be the present value of the remainder interest multiplied by whatever annuity rate the charity agrees to offer.

In this case, it is recommended that the annuity rate be lower than the charity would normally pay to a person or persons of the same age if the annuity were funded with cash or marketable securities. That is because the charity assumes significantly greater risk with this arrangement than with a typical gift annuity. See Figure 17.1.

If real estate values appreciate, and the charity does not have to make major investments for property improvement, these arrangements can be profitable. Certainly there is a large market for them. On the other hand, the charity assumes a significant risk, for it commits to advance a fixed amount for an indeterminate period and uncertain future proceeds. Thus, a charity entering into these arrangements is advised to be quite conservative in the annuity rates offered.

Determination of Income Tax Deduction

The income tax deduction is determined in the same way as for any gift annuity, except that the amount of the contribution for the gift annuity is the present value of the remainder interest in the real estate, not the fair market value of the entire property.

Text continues on page 3.

Figure 17.1

Risk to the Charity When It Issues a Gift Annuity in Exchange for the Remainder Interest in a Personal Residence

On July 1, 2024, Susan R, a single woman whose date of birth was July 16, 1947, contributed a remainder interest in a personal residence for a gift annuity. The property had recently been appraised for $800,000, and the adjusted cost basis was $200,000. The present value of the remainder interest was $444,212. (The calculation was based on land value of $300,000, a useful life of 45 years, salvage value of $100,000, and a CMFR of 5.0%.)

Although the ACGA rate for a person nearest age 77 is 7.7%, the charity in this instance agreed to pay a rate of 5.0% because of the risk inherent in the transaction. If the CMFR is low, the value of the remainder interest is enlarged, increasing the risk to the charity. That is why it is particularly important to reduce the gift annuity rate when the CMFR is very low.

Her annual annuity payment is $22,211 ($444,212 X 5.0%).

Suppose Susan lives another 17 years, which is nearly two years beyond life expectancy per the 2012 IAR Tables, and the charity could have realized a constant average net return of 5.0% on the money it advances from its invested funds for the payments.

Year	Payment by Charity	Future Value
1	22,211	50,908
2	22,211	48,484
3	22,211	46,175
4	22,211	43,976
5	22,211	41,882
6	22,211	39,888
7	22,211	37,988
8	22,211	36,179
9	22,211	34,457
10	22,211	32,816
11	22,211	31,253
12	22,211	29,765
13	22,211	28,347
14	22,211	26,998
15	22,211	25,712
16	22,211	24,487
17	22,211	23,322
	Total cost to charity	**602,637***

* These calculations assume all payments for the year are set aside by the charity at the beginning of the year. If the fact that payments are quarterly were taken into consideration, the future value would be a little less.

Continued on next page...

Figure 17.1 Continued

Risk to the Charity When It Issues a Gift Annuity in Exchange for the Remainder Interest in a Personal Residence

Value of residence at the end of the 17 years:	
No appreciation	$ 800,000
Annual appreciation of 2%	$1,120,193
Annual appreciation of 3%	$1,322,278

This scenario could be very appealing to Susan, but it could be too high risk for the charity. The risk might be more acceptable if the annuity payments were lower. Then the projected margin between the anticipated value of the residence at the death of the donor and the total cost to the charity would be larger.

Note: If the income interest in a charitable remainder trust were contributed for a gift annuity, the authors of this manual take the position that for the purpose of appraising the income interest one must use the CMFR for the month in which the income interest is contributed, but that for the purpose of determining the deduction for the contribution of the income interest for a gift annuity, one can use the CMFR for the month of the gift or for either of the two preceding months. (See the note at the end of Figure 20.10)

However, unlike the income interest of a charitable remainder trust, which is a property right that already exists at the time it is exchanged for a gift annuity, in this instance the remainder interest in the residence is created at the same time that the gift annuity is established. In order to calculate the deduction for the gift annuity, one must calculate the value of the remainder interest created simultaneously. In such a case that entails the transfer of more than one interest in the same property, the taxpayer should use the same rate with respect to both interests — that is, for the calculation of the present value of the remainder interest in the residence and for the calculation of the charitable interest in the gift annuity. Accordingly, it would appear that, although the donor could elect the CMFR for either the month of the gift or for either of the two preceding months, the same CMFR must be chosen for both calculations.

In this instance, a CMFR of 5.0% was selected. If a higher CMFR could have been selected, the remainder interest and consequently the annuity payment, would have been smaller, but the deduction would have been larger. In choosing the CMFR, one must take these factors into consideration, along with the requirement that the present value of the annuity payments be less than 90% of the value of the remainder interest in the residence.

Taxation of Annuity Payments

When a married couple who file a joint return dispose of a principal residence and meet certain occupancy requirements, $500,000 of the capital gain can be excluded from taxation. The limit is $250,000 for a single person or for a married person who files a separate return. The exclusion is allowed if the interest being disposed of is not the principal residence itself but a remainder interest in the principal residence. (See IRC Sec. 121.) Provided the total taxable gain in the property does not exceed the excludable amount, a gift annuity can be designed so that none of the capital gain is taxed to the donor, or to the annuitant (if the annuitant is different from the donor).

This result may be achieved by designing the gift in any of the following ways:

1. **The donor is the annuitant, and the gift annuity agreement is drafted so that the annuity is non-assignable except**

to the charity. The gain would be ratably reported, and the exclusion would be applied to the amount reported each year until the exclusion has been fully used. Afterwards, the remaining taxable gain would continue to be ratably reported, and it would be taxed to the donor. An alternative that some authorities believe to be possible is for the donor first to subtract the exclusion from total taxable gain and then report the remaining gain ratably over life expectancy. The first method is consistent with how the exclusion would be applied when an owner sells a principal residence on the installment basis. See Figure 17.2, Example 1.

2. **The donor is the annuitant, and the gift annuity agreement is drafted so that the annuity is assignable.** The assignability is not limited to the charity as in option (1.) above. This causes all of the taxable gain to be recognized in the year of the gift. The donor then uses the excludable amount to offset this taxable gain. Provided the taxable gain does not exceed the excludable amount, the donor will incur no out-of-pocket cost. Since the taxable gain will have been reported, the payments, as reported on each year's Form 1099-R, will be partly a tax-free return of principal and partly ordinary income. See Figure 17.2, Example 2.

3. **Someone other than the donor is the annuitant, and the gift annuity agreement, as is customary, is drafted so that the annuity is non-assignable except to the charity.** Because the annuitant is someone other than the donor, ratable reporting of gain is not allowed. As with option (2.) above, all of the taxable gain is recognized by the donor in the year of the gift, and the donor uses the excludable amount to offset that gain. Again, since the taxable gain will have been reported, the payments to the annuitant, as reported on each year's Form 1099-R, will be partly a tax-free return of principal and partly ordinary income. This situation is also referenced in Figure 17.2, Example 2.

Contribution Ceiling

Suppose that, per options 1, 2, and 3 described immediately above, taxable gain can be eliminated by the allowable exclusion of $250,000 or $500,000. Would the contribution ceiling be 30 percent or 50 percent of adjusted gross income? The same question could be asked regarding an outright gift of a principal residence where capital gain does not exceed the excludable amount.

IRC Sec. 170(b)(1)(C)(iv), which deals with percentage limitations, says that the 30 percent limitation applies to a gift of capital gain property, and it defines "capital gain property" as a capital asset the sale of which at its fair market value at the time of contribution would have resulted in gain that would have been capital gain.

IRC Sec. 121, dealing with the sale of a principal residence, says that gross income shall not include $250,000 of gain ($500,000 in the case of a married couple). If the selling price of a principal residence does not exceed the cost basis plus the excludable amount, then the seller(s) would have no taxable long-term capital gain.

One could argue that if the sale (in the case of a gift annuity, the bargain sale price) would have generated no taxable gain, the 50 percent limit should apply. The contrary argument is that the sale of a principal residence would have resulted in long-term capital gain, but $250,000 (or $500,000) of that gain is not taxed. Because it would have resulted in long-term capital gain, albeit gain that is not taxable, the 30 percent limit should apply.

Unfortunately the Internal Revenue Code and Regulations do not provide a clear answer. The conservative reporting solution would be to apply the 30 percent limitation, but there is probably adequate authority in the language of the statute to avoid penalties, if one applies the 50 percent limitation, and the IRS challenges it and prevails.

Text continues on page 8.

Figure 17.2

Contributing a Remainder Interest in a Residence for a Gift Annuity

On July 1, 2024, Charles, age 75, contributed the remainder interest in his principal residence for a gift annuity. The appraised fair market value of the property was $1,200,000, and the adjusted cost basis was $220,000. The dwelling accounted for $800,000 of the value, and it was determined by the appraiser to have a useful life of 45 years and a salvage value of $200,000. Although the ACGA suggested rate for a person age 75 was 7.0%, the charity offered a 6.0% rate, which Charles accepted. Calculations were based on a CMFR of 5.0%.

Value of remainder interest in residence (What is contributed for the annuity)	$623,826
Cost basis allocated to remainder interest $\frac{\$623,826}{1,200,000} \times 220,000$	$114,368
Annual annuity (6.0% x 623,826)	$37,430

Annual annuity taxed as follows, not considering capital gain exclusion

Year(s)	Capital Gain	Tax-free	Ordinary Income	Total Annuity
2024	10,423.52	2,339.96	5,951.30	18,714.78
2025-2035	20,847.03	4,679.93	11,902.60	37,429.56
2036	18,865.13	4,235.15	14,329.28	37,429.56
2037+	0.00	0.00	37,429.56	37,429.56

Total reportable capital gain, not considering exclusion, is $258,605.98

See the following example as to how the $250,000 capital gain exclusion for disposition of a principal residence might be applied.

Continued on next page...

Figure 17.2 Continued

Contributing a Remainder Interest in a Residence for a Gift Annuity

Example 1

1. Suppose that Charles executes a normal gift annuity agreement, stating that the annuity is non-assignable except to the charity. In that case, gain can be reported ratably each year.

Charitable deduction	$307,165.68
Annual annuity	$37,429.56

There are no clear instructions regarding how to apply the exclusion when gain is ratably reported. Below are two possible ways of doing it.

(a) The exclusion is applied as quickly as possible to the taxable gain. The theory is that the exclusion can be used only on the gain as it is actually reported.

During the year 2035, Charles will have used all of his $250,000 exclusion to offset the reportable capital gain. Thereafter, the remaining $8,605.98 of gain will be taxed to him as it is prorated and paid.

By the end of 2036, all of the capital gain will have been reported, and all of the tax-free return of capital will have been distributed. Thereafter, his entire annuity payments will be ordinary income.

(b) The excludable amount ($250,000) is initially subtracted from total taxable gain of $258,605.98, leaving $8,605.98 to be ratably reported over life expectancy.

For each full year during life expectancy:

Ordinary income	$11,902.60
Capital gain ($8,605.98÷12.4)	694.03
Tax-free return of capital	24,832.93
	$37,429.56

After 12.4 years (life expectancy per IRS Return Multiple Tables), the entire payment is taxed as ordinary income.

Net taxable gain, taxed over life expectancy.	$8,605.98

Continued on next page...

Figure 17.2 Continued

Contributing a Remainder Interest in a Residence for a Gift Annuity

Example 2

Charles could cause all of the taxable gain to be recognized in the year of the gift. Then the entire exemption could definitely be used in that year. This can be accomplished by stating in the gift annuity agreement that the annuity is assignable, thereby disqualifying ratable reporting of gain. The financial consequences would be as follows:

Charitable deduction	$307,165.68
Annual annuity	$37,429.56
Taxation of payments in each full year of life expectancy, reported on Form 1099-R	
Ordinary income	$11,902.60
Tax-free return of capital	25,526.96
	$37,429.56
Taxable gain recognized in the year of the gift	$258,605.98
Exclusion (used in the year of the gift)	$250,000.00
Net taxable gain in the year of the gift	$8,605.98

If the entire deduction is usable, it could offset the taxable gain in which case no tax would be owed.

If the annuitant is someone other than the donor, taxable gain cannot be ratably reported, even if the annuity is assignable only to the charity. Therefore, the financial consequences would be the same as in this example.

Documentation Necessary to Complete Gift

The donor and charity should execute two agreements:

- An agreement pertaining to the retention of a life estate and conveyance of a remainder interest in the property. This agreement should spell out the responsibilities of the two parties, especially for payment of expenses. See the Appendix for a specimen agreement.
- A standard gift annuity agreement.
- The donor should also execute a deed conveying the property to the charity subject to a retained life estate.

Reasons for Caution

When the CMFR is low, the present value of the remainder interest will be larger. This, in turn, will result in larger gift annuity payments, which increases the charity's risk. Thus, the ACGA rate should probably be discounted more when the CMFR is low than when it is higher.

If a charity is registered to offer gift annuities in the State of New York, it cannot accept a gift of the remainder interest in a residence for a gift annuity. This is not because the asset itself is prohibited from being used as a funding asset – New York's gift annuity statute allows for a contribution of "cash and other property." However, in an opinion issued by the Office of General Counsel, the New York Department of Financial Services has indicated that accepting a gift of real property with a retained life estate would be contrary to the prudent investor standard that governs the gift annuity reserve fund, as the charity would not have full ownership and control over the property and thus have no discretion with respect to investment of the asset.

Certain other regulated states, such as California, do not explicitly prohibit receiving real property for a gift annuity. However, real estate is not an acceptable asset for satisfying reserve requirements. Therefore, the charity must be prepared to allocate other, acceptable assets for the required reserves.

Gift Annuity Funded with a Portion of the Remainder Interest in a Personal Residence

Suppose an individual wants to divide the remainder interest in a residence between a charity and an individual. For example, the charity receives 25 percent of the remainder interest, and the child of the owner receives 75 percent. Is a charitable deduction allowed for the value of the interest received by the charity?

This opens a planning opportunity for individuals or couples who want to continue living in their home, increase current cash flow, make a future charitable gift, and provide for children. This planning device will be particularly appealing to parents whose residence is their primary asset and who need to increase their cash flow.

In determining the amount of the deduction, the present value of the charity's portion of the remainder interest must be reduced to reflect the appropriate valuation discount. Also, the cost basis allocated to the charity's percentage of the remainder interest must be determined in order to calculate the taxation of annuity payments.

Preserving Flexibility

Some individuals, willing to give a charity the remainder interest in a personal residence, do not need additional income at this time. However, they are concerned that their situation could change. To be able to continue living in their residence and receive payments, should they ever need them, they might consider giving the remainder interest in their residence for a flexible deferred annuity. See Chapter 18 for a more detailed discussion of this arrangement.

Giving the remainder interest for a flexible deferred annuity, rather than outright, will reduce the charitable deduction, but it will preserve the future option of turning on cash flow without having to leave one's residence.

The charity would need to determine the level of payments to which it could prudently commit. The charitable deduction would be the lowest deduction that would result from a deferred gift annuity of the stipulated amount on any of the possible beginning dates.

A donor who never needs payments would not exercise the right to receive them. Yet, he or she would have the peace of mind of knowing payments could be turned on if ever needed. The above cautionary comments about California and certain other regulated states would also apply to this arrangement.

Using a Retained Life Estate to Fund a Gift Annuity

A donor who has already contributed the remainder interest in his or her personal residence to a charity – whether on an outright basis or in exchange for a gift annuity – may subsequently decide to move out and contribute the balance of his or her life estate to the charity. So long as this was not the donor's intent all along, such an arrangement does not violate the IRC Sec. 170(f)(3) prohibition against gifts of partial interests.

Moreover, the subsequent contribution of an interest in the residence can itself be made on an outright basis or to fund a gift annuity. In either case, once the second gift is completed, the charity will have full ownership of the residence. Unless it wishes to retain the property for its own purposes, the charity will then be free to sell the property. If the property can be sold fairly quickly, the charity will have liquid assets from which to make annuity payments. However, if the sale might be delayed, the charity will need to have sufficient general, unrestricted assets to cover the payments prior to the sale.

In states that require a segregated reserve fund, the remainder interest in a residence or farm may not be an acceptable asset for meeting reserve requirements. The charity would then have to satisfy the additional reserve requirement with general, unrestricted assets.

If the charity has already issued a gift annuity in exchange for a contribution of the remainder interest, care must be used in selecting a gift annuity rate that takes into account the net benefit to the charity in accepting the life estate. For example, if the charity has fared poorly as a result of issuing the first gift annuity, the terms of the second gift annuity should reflect this fact. In addition, the capital gains tax consequences for the donor will need to be analyzed in connection with the second gift annuity, just as they were in connection with the first one.

Based on IRC Sec. 1001(e), it appears the life interest in real property, like the income interest of a trust, would be treated as a capital asset with a zero basis. This means that the gift annuity payments resulting from a contribution of the life interest will be taxed partly as ordinary income and partly as capital gain. No part of the payments will be tax free.

If the charitable deduction arising from a gift of a life interest will exceed $5,000, it will be necessary to have it appraised by a qualified appraiser who is independent of the donor and the charity, complete Form 8283, and file it with the income tax return on which the deduction is claimed. The appraised value would be entered in a software program as the amount of the gift and "0" as the cost basis of the asset.

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Life Estate Contract for Personal Residence

THIS AGREEMENT is made between John D of Seattle, Washington ("Life Tenant") and the ABC Charity ("Charity"), a Washington Nonprofit Corporation having its principal office at Seattle, Washington.

John D residing at 1234 Pleasant Boulevard, Seattle, Washington 98100 has conveyed to the ABC Charity the real property commonly known as 1234 Pleasant Boulevard, Seattle, Washington 98100 ("the Premises"), reserving to himself a life estate for and during his life.

Life Tenant and Charity hereby enter into this Agreement establishing certain rights and responsibilities of each with respect to the Premises. Accordingly, Life Tenant and Charity hereby agree as follows:

Payments by Life Tenant

1. Life Tenant shall be responsible for the payment of all property taxes, assessments, utilities, and any mortgages secured by the Premises. Life Tenant shall pay all amounts due for such expenses on a timely basis and shall keep accurate records of payments.

2. Life Tenant shall pay for all ordinary repairs, both internal and external, to the Premises, including but not limited to mechanical, electrical and plumbing systems, yard, sidewalk and driveway maintenance.

3. If Life Tenant desires to make substantial improvements, such as for fixtures, additions, replacements, roofs, swimming pools, air conditioning and other major improvements, Life Tenant shall have the option of making such improvements at Life Tenant's own expense or making a determination in advance as to whether Charity is willing to participate in such expenditure. In the event that a major expenditure is necessary due to wear, tear, obsolescence or Act of God, and such expenditure is essential to the preservation of the value of the Premises, Life Tenant and Charity shall agree at that time as to the proportion of the expenditure to be borne by each party.

4. Life Tenant shall insure the Premises and improvements against damage by fire or other hazard in an amount not less than the replacement cost of the Premises, and shall name Charity as an additional insured. Life Tenant shall further obtain a policy of public liability insurance covering the Premises, with Charity as an additional named insured.

5. Life Tenant agrees to pay all taxes, encumbrances, and other charges which may be a lien on the Premises as of the date of termination of his life estate.

Maintenance and Inspection

6. Life Tenant shall maintain the Premises in good condition. No major improvements, including but not limited to additions and changes in floor plans, shall be undertaken without written consent of Charity.

APPENDIX

7. In the event of loss or damage to the Premises by fire or other cause, Life Tenant, except as provided below, shall repair or rebuild the Premises to its original condition, but shall not be obligated to spend in excess of the proceeds received from insurance required hereunder. In the event of substantial loss or damage which makes it appear impossible or impractical to rebuild the Premises, Life Tenant and Charity jointly shall determine whether it is economical and feasible to repair or rebuild the Premises. If not, the proceeds received from the insurance coverage shall be paid to Life Tenant and Charity in accordance with the actuarial values of their respective life estate and remainder interests, as determined at the date of damage and in the manner set forth in Internal Revenue Code section 170(f)(3)(B) and Regulation section 1.170A-12 thereunder used to value the gift of a remainder interest in real property.

8. Charity shall have the right to inspect the Premises with reasonable notice given to Life Tenant, but in no event less than 30 days notice.

Usage by Life Tenant

9. Life Tenant agrees to use the Premises for Life Tenant's residence and for no other purpose without written permission of Charity. Life Tenant shall have the right to rent the Premises with the approval of Charity as to the tenant for purposes of preserving the value of the property; however Charity shall have no right to approve or determine the amount of rent to be received. Both parties agree that they will not dispose, nor make any agreement to dispose, of any interest in the Premises during Life Tenant's lifetime except by mutual written consent.

10. Life Tenant reserves the right to terminate Life Tenant's life estate in the Premises by surrendering complete title to Charity. In the event the Premises are sold by mutual consent, the net proceeds from the sale shall be divided between Life Tenant and Charity in accordance with the then actuarial values of their respective life estate and remainder interests, as determined at the date of damage and in the manner set forth in Internal Revenue Code section 170(f)(3)(B) and Regulation section 1.170A-12 thereunder used to value the gift of a remainder interest in real property.

Termination of Life Estate

11. In the event of the death of Life Tenant the personal representative of Life Tenant will be allowed a reasonable time to appraise and remove household furnishings and contents from the Premises. Life Tenant authorizes and directs the personal representative of Life Tenant to pay all taxes, encumbrances, and other charges which may be a lien on the Premises as of the date of Life Tenant's death.

12. In the event of relinquishment of the life estate, Life Tenant shall have a reasonable time to remove household furnishings and contents from the Premises. Life Tenant shall pay all taxes, encumbrances, and other charges which may be due and owing or a lien on the Premises as of the date of relinquishment of the life tenancy.

Remainder Interest
13. In exchange for the remainder interest in the property, Charity agrees to issue a charitable gift annuity, the terms of which are described in the Gift Annuity Agreement dated September 16, 2024. Following the termination of the charitable gift annuity, Charity agrees to use the proceeds from disposition of the Premises that remain, after reimbursing itself for annuity payments and other expenses, for the purposes specified in the Gift Annuity Agreement.

Miscellaneous Provisions
14. This Agreement may only be amended by a written instrument executed by both parties, and it shall be binding upon and inure to the benefit of both parties and their respective successors, assigns, heirs, and legal representatives.

15. If the parties fail to agree on any provision in this Agreement, including the provisions that require later agreement in certain events, the unresolved issue shall be submitted to arbitration.

16. This Agreement shall be governed by the laws of the State of Washington.

IN WITNESS WHEREOF, Life Tenant and Charity hereby execute this Agreement on September 30, 2024.

John Doe, Life Tenant

ABC Charity

By:

[Name, Title]

Note: In most states the signatures must be notarized.

This agreement was adapted a number of years ago from the software program Docs in a Box and used by permission. The program, which provides specimen agreements for charitable remainder trusts and other gift arrangements, was developed by Lynda L. Sands (formerly "Moerschbaecher"): www.lyndasands.com.

APPENDIX

Chapter 18

Flexible Deferred Annuities & Step Annuities

Flexible Deferred Annuities

A charitable plan that appeals to professionals and other individuals during their working years is the deferred gift annuity. Many of these persons are already contributing the maximum allowable to their qualified retirement plans, and they would like to accumulate still more to assure a high quality of life in their later years. They are also likely to be in the top income tax brackets now, and they would welcome the opportunity to reduce their taxes.

As a result of a private letter ruling in 1997, the deferred gift annuity is more appealing than it was previously. In that letter ruling the IRS approved a deferred annuity in which the donor does not have to choose in advance the starting date for payments. That decision can be made later, depending on circumstances. The older the donor (or other annuitant(s)) when payments begin, the larger the payments.

Since the issuance of the private letter ruling, the "flexible" deferred gift annuity, where the annuitant can at a later time choose the payment-commencement date, has had steady growth. According to the 2021 ACGA national survey, 56 percent of charities reported issuing a flexible deferred annuity. In 1999, only 5 percent of charities were issuing them.

To enable charities to understand, market, and issue flexible deferred gift annuities, the following resources are provided in this chapter:

- Information on the private letter ruling approving a flexible deferred gift annuity. (Both the text of the private letter ruling itself and the tables accompanying the request for the ruling are included in Appendices 8 and 9.)
- Article entitled Providing a More Secure Retirement. This can be included in a newsletter, or adapted for a target mailer, to promote deferred gift annuities. See Appendix 1.
- Sample illustration for a flexible deferred gift annuity. See Appendix 2.
- Sample completed gift annuity agreement for a flexible deferred gift annuity. See Appendix 3.
- Sample Summary of Accounting and Tax Information for a flexible deferred annuity. See Appendix 4.

- Sample letter for use by the charity in prompting an annuitant to consider whether he or she is ready to have payments begin. See Appendix 5.
- Sample letter for use by the annuitant in electing the commencement date. See Appendix 6.
- Set of specimen Flexible Deferred Gift Annuity agreements. See Appendix 7.

Private Letter Ruling

In 1997, at the request of Frank Minton, David Newman, an attorney with Mitchell Silberberg & Knupp in Los Angeles submitted a Private Letter Ruling request on behalf of The Seattle Foundation for the following fact situation:

> *The proposed annuity contract would establish a deferred gift annuity, under which a donor makes a charitable contribution of $25,000 to a qualifying charitable organization in exchange for the obligation of that organization to pay an annuity to the donor or other annuitant in fixed amounts over the life of the annuitant, with the beginning date for payment deferred to some date in the future.*
>
> *The annuity contract allows the annuitant to elect the commencement date of the payments under the annuity at any time after the annuitant, who is currently age 50, reaches age 55. When this election is made by the annuitant, the annual annuity payment will be determined based on the age of the annuitant at the time payments begin, in accordance with Table 1*.*
>
> ** See Appendix 9, Table 1.*

The following specific rulings were requested:

1. Such a contract meets the definition of a charitable gift annuity as described in IRC Sec. 501(m)(5).
2. Issuance of charitable gift annuities of this type will not result in income from an unrelated trade or business as defined in IRC Secs. 511-513.
3. Income from the investment of annuity funds will not be unrelated debt-financed income under IRC Sec. 514.
4. The proposed gift acknowledgment will meet the requirements of IRC Secs. 170(f)(8)(B) and 6115(a).

To provide a gift acknowledgment in compliance with the substantiation requirements, it is necessary to determine the allowable deduction. The private letter ruling request proposed claiming the smallest charitable deduction that would result from any beginning date. Thus, for the fact situation submitted, and as shown on Appendix 9, Table 2, the deduction claimed would be $12,364.29.

The annuity payments for commencement ages 60-80 were those recommended by the American Council on Gift Annuities (ACGA) (under the March 1, 1997 rate schedule). The payments for commencement ages 55-59 were slightly lower than the ACGA rates. In this schedule, age 60 was taken as a base year, and payments for commencement ages below 60 were computed so as to result in a deduction equal to the base year deduction. To have maintained the same deduction throughout would have driven up the annuity payments beyond ACGA recommendations and higher than any charity would have been willing to offer. Thus, it was decided to keep the payments at or below the ACGA recommendations and claim the lowest deduction. Potentially sacrificing some deduction seemed a small price to pay for the added flexibility.

In this case the annuitant had a choice of electing payments commencing at any age from 55 to 80. Some charities might allow a narrower range of commencement options, and that range could depend on the annuitant's age at the time of the gift.

Note: *It is recommended that the gift annuity agreement specify the month and day on which the first payment would be made for each year in the range of years when payments may begin. For example, it would state that the annuitant could elect to start payments on the last day of March of any year between 2026 and 2036. Thus, the first payment would be not earlier than March 31, 2026 and not later than March 31, 2036. It may be that the annuitant turns age 65 in 2026 and age 75 in 2036, so he or she may elect payments between ages 65 and 75. However, the agreement will specify a range of dates rather than a range of ages at which payments may begin.*

Some individuals have asked whether, at some point after completion of the annuity, a donor or annuitant might ask to begin payments at an earlier date than the earliest date allowed in the agreement. If the agreement provided that the earliest date was March 31, 2033 and the payments for 2033 would be $10,000, it certainly would not be possible to elect $10,000 per year beginning in 2031, for the length of the deferral period, and hence the size of the payments, would be smaller. Also, the charitable deduction would be smaller than that which was claimed at the time of the gift.

Theoretically, the payment beginning in 2031 or any earlier age would be adjusted so that the deduction from it would have been no higher than the amount originally claimed, and possibly the IRS would approve it. However, since this is a departure from the PLRs that have been issued, it would be inadvisable to proceed with an advancement of payments without one's own PLR.

The IRS was not asked to rule on the gift tax implications. The safest course is probably to report the highest taxable gift that could result when the annuitant is other than the donor. If the annuitant is other than the donor, the donor would report a taxable gift equal to the highest present value of the annuity for any possible beginning year. Planned giving software programs that provide calculations for the flexible deferred annuity will select this number. The gift tax annual exclusion (which is $19,000 in 2025) is inapplicable since a gift of deferred annuity payments is not a present interest gift. However, the donor's retention of a right to revoke the annuitant's payments could delay any taxable gift until payments actually begin. The donor also makes a gift to the charity equal to the difference between the amount contributed and the applicable present value, but this gift qualifies for the gift tax charitable deduction.

In Private Letter Ruling 9017071 the IRS approved an annuity contract that provided that if one spouse died prior to the starting date specified in the annuity contract, the surviving spouse could elect to receive reduced annuity payments, commencing prior to the specified starting date. The IRS also approved in Private Letter Ruling 9042043 a deferred annuity in which the annuitant could assign his or her annuity to the charity or a third party in return for installment payments over several years. Because the IRS in these rulings permitted modifications of payment amounts so long as the actuarial value of those modified payments did not exceed the original actuarial value, the IRS had precedent for approving the flexible deferred gift annuity.

In August 1997 the IRS responded favorably to the private letter ruling request. See Appendix 8 for the text of Private Letter Ruling 9743054.

It was reassuring to see in Private Letter Ruling 200449033, issued seven years later, that the position of the IRS had not changed. In both cases, the IRS ruled that the flexible deferred gift annuity met the requirements of a gift annuity and that the charity would have no unrelated business taxable income.

Some individuals had been concerned that the right to elect payments might result in the constructive receipt of income. The IRS was asked to rule on this issue, and in a 2007 private letter ruling concluded, "Where payments are

Figure 18.1

Flexible Deferred Gift Annuity

Richard D, whose date of birth is June 3, 1969, wanted to supplement his income when he retired, but he did not know at the time when he would be ready to retire. On July 1, 2024, he contributed stock having a fair market value of $100,000 and a cost basis of $60,000 for a gift annuity, and he reserved the option to start quarterly payments on September 30 of any year during the period 2034-2044.

The income tax charitable deduction (the lowest deduction resulting from any of the possible payment start dates) was $40,807. The following table shows taxation of payments for full years during life expectancy. The calculations were based on a 5.0% CMFR.

Elective Start Date	Age at Start Date	Annuity Rate	Capital Gain	Tax-free Portion	Ordinary Income	Total Annuity
9/30/2034	65	9.1%	$ 1,190.28	$ 1,785.42	$ 6,124.30	$ 9,100.00
9/30/2035	66	9.7%	$ 1,237.72	$ 1,856.58	$ 6,605.70	$ 9,700.00
9/30/2036	67	10.3%	$ 1,293.68	$ 1,940.52	$ 7,065.80	$ 10,300.00
9/30/2037	68	11.2%	$ 1,352.96	$ 2,029.44	$ 7,817.60	$ 11,200.00
9/30/2038	69	11.9%	$ 1,418.49	$ 2,127.71	$ 8,353.80	$ 11,900.00
9/30/2039	70	12.6%	$ 1,486.80	$ 2,230.20	$ 8,883.00	$ 12,600.00
9/30/2040	71	13.5%	$ 1,555.20	$ 2,332.80	$ 9,612.00	$ 13,500.00
9/30/2041	72	14.5%	$ 1,635.60	$ 2,453.40	$ 10,411.00	$ 14,500.00
9/30/2042	73	15.4%	$ 1,718.65	$ 2,577.95	$ 11,103.40	$ 15,400.00
9/30/2043	74	16.4%	$ 1,810.56	$ 2,715.84	$ 11,873.60	$ 16,400.00
9/30/2044	75	17.7%	$ 1,911.60	$ 2,867.40	$ 12,921.00	$ 17,700.00

The entire annuity will become ordinary income after the life expectancy of the annuitant.

made to an annuitant in accordance with section 72 and Treas. Reg. section 1.72, no amount will be constructively received by the annuitant until the annuitant actually begins receiving payments." See PLR 200742010.

Note: *A private letter ruling applies only to the applicant's situation and cannot be relied upon by others as binding legal precedent. Nevertheless, it does reveal the thinking of the IRS, and, presumably, if the facts in another situation are similar, the IRS would rule the same way. As noted above, the first letter ruling dealing with the flexible deferred gift annuity was consistent with previous letter rulings, and the second ruling on the flexible deferred gift annuity reinforced the first one.*

See Figure 18.1 above for an example of a flexible deferred gift annuity.

Maximizing Flexibility

To maximize flexibility, a donor could bundle an immediate gift annuity with a number of flexible deferred gift annuities, or simply bundle a number of flexible deferred gift annuities. Then the annuitant could decide on a year-by-year basis, depending on personal circumstances and economic conditions, how much to increase payments. In any year, the annuitant could defer electing payments from any of the flexible deferred gift annuities, elect to start payments from one of them, or elect to start payments from more than one of them. The only disadvantage would be a reduced charitable deduction if the election period on all of the flexible deferred annuities begins only two or three years after the contribution date. The impact on the deduction would be less if the first election date on some of the flexible deferred annuities was farther into the future.

See Figure 18.3 for an example of bundled flexible deferred annuities, an arrangement that might be called "The Super Flexible Deferred Annuity."

Who Can Elect the Payment Commencement Date?

In most cases the donor will be the annuitant, and the donor will advise the charity when payments are to commence. However, the annuitant of a flexible deferred annuity could be someone other than the donor. In that case, could the donor be designated in the gift annuity agreement as the one who determines when payments are to begin? For example, the donor might want to turn on the payments only when the annuitant has met certain conditions.

This should be possible, and retention of this right should not cause the donor to be taxed under the assignment of income doctrine because the donor never had any right to the payments. To avoid a taxable gift, the donor could reserve the right to revoke the annuitant's payments entirely, as well as to determine the beginning date. A donor who wants to enable the annuitant to choose the payment-commencement date based on his or her circumstances would, of course, give that right to the annuitant in the gift annuity agreement.

The foregoing analysis notwithstanding, care should probably be exercised in having the selection of when payments are to begin be made by anyone other than an annuitant who is also a donor. Indeed, Private Letter rulings 9743054, 200449033, and 200742010 all address scenarios in which the donor(s) and the annuitant(s) are the same person(s), although in the most recent of the three rulings the two terms are sometimes used less precisely than one might wish.

Flexible Deferred Annuity as a Bequest Substitute

As a result of the doubling of the gift/estate tax exemption under the Tax Cuts and Jobs Act of 2017, a change made permanent by tax legislation passed in 2025, only about 0.1 percent of individuals will have taxable estates large enough to be subject to the federal estate tax. The remaining 99.9 percent will receive no federal estate tax benefit from a charitable bequest.

They could accelerate their gift by making an outright contribution instead of a bequest, and that would also enable them to see their gift in action. Since that outright gift would be deductible on their income tax return, they could realize tax savings, which would not be the case if the gift were by bequest. Although they believe they would have enough assets for retirement and contingencies after such an outright gift, they hesitate to make it because they fear that conditions might change and they will need all of the income from their capital.

To alleviate this concern, they could establish a flexible deferred gift annuity with a very long election period. For example a person, currently age 70 might provide the payments could be elected beginning at any age between 71 and 100. They don't expect ever to elect payments, but they can do so if they ever need extra income. They realize income tax savings now – not as much as from an outright gift but still some tax reduction – and they have access to income if it is ever needed.

This plan is more advantageous to the charity than a bequest of a fixed amount because the contribution will continue to grow, and the residuum may be considerably larger than what the bequest would have been.

Step Annuities

The advantage of a gift annuity to an annuitant is that payments never decrease. The disadvantage is that they never increase. While a gift annuity offers the security of predictable payments, it provides no inflation protection. Not surprisingly, most gift annuities are established by individuals who have reached the stage of life when secure cash flow is more important than potential growth in that cash flow, particularly if risk is involved.

A charitable remainder unitrust is particularly appealing to somewhat younger donors, whose life expectancies may be 20 years or more, for it offers the possibility of income growth that keeps pace with inflation. However, there is the concomitant risk that payments may decline. This often happens during a bear market when trust assets are invested in a balanced portfolio. Moveover, the practical minimum for establishing a charitable remainder unitrust may be larger than the amount a donor is prepared to contribute. Donors might be attracted to a plan that combines the security of fixed payments with periodic increases in cash flow designed to keep pace with inflation.

That plan is the step annuity. It is the bundling of an immediate gift annuity with a number of deferred gift annuities with successively later payment starting dates. For example, a donor might simulataneously establish an immediate gift annuity and five deferred gift annuities. The payment starting dates for the deferred gift annuities could be in 2025, 2028, 2031, 2034, and 2037. On each of these dates, cash flow would increase because the payment from another deferred gift annuity would be added to the payment the annuitant is already receiving. The arrangement is called a "step annuity" because on each of the predetermined dates the total payments step up to a higher level.

See Figure 18.2 below for examples of a step annuity.

Figure 18.2

Step Annuity

Option 1 — Payment Increases Every Three Years

Martha B, whose date of birth was September 20, 1959, wanted to provide for immediate cash flow as well as periodic payment adjustments. To accomplish this objective, she simultaneously established six gift annuities on July 1, 2024. One was an immediate gift annuty funded with $100,000 cash. The other five were deferred gift annuities, each funded with $10,000 cash. The payment-beginning dates of the deferred gift annuities were September 30 of 2027, 2030, 2033, 2036, and 2039. Martha will receive the following amounts, and her total income tax charitable deduction from the annuities was $64,715 based on the July 2024 CMFR of 5.6%.

Payment Beginning	Payment Increment	Total Payment per Year
9/30/2024	$5,700	$5,700
9/30/2027	$700	$6,400
9/30/2030	$850	$7,250
9/30/2033	$1,030	$8,280
9/30/2036	$1,290	$9,570
9/30/2039	$1,630	$11,200

Continued on next page...

Figure 18.2 Continued

Step Annuity

Option 2 — Payment Increases Every Year

Martha's increments occur every three years rather than annually, and they exceed the average historical rate of inflation. Suppose that a different donor, Matthew K, who was born May 23, 1957, wanted his annual payments to increase at approximately the historical average inflation rate (3.27%). The following chart shows how much he would have contributed on July 1, 2024, if he wanted these adjustments annually for eight years. Actually, he could have provided for them for whatever period he chose.

Type of Annuity	Contribution Amount	Payment Beginning Date	Payment Increment	Total Payment per year
Immediate	$100,000	9/30/2024	$5,900	$5,900
Deferred	$3,102	9/30/2025	$199	$6,099
Deferred	$3,000	9/30/2026	$204	$6,303
Deferred	$2,910	9/30/2027	$210	$6,513
Deferred	$2,845	9/30/2028	$219	$6,732
Deferred	$2,737	9/30/2029	$227	$6,959
Deferred	$2,654	9/30/2030	$236	$7,195
Deferred	$2,593	9/30/2031	$244	$7,439
Deferred	$2,489	9/30/2032	$251	$7,690

Matthew's total contribution on July 1, 2024 was $122,330, and his payments would retain their purchasing power for the next eight years (or for whatever period he chose), assuming the future rate of inflation approximates the historical average. His total income tax charitable deduction for his annuities was $48,673, based on the July 2024 CMFR of 5.6%.

A charity might hesitate to agree to this plan because the amount contributed for each deferred gift annuity is less than the stated minimum in the gift acceptance policies. However, the charity may be willing to make an exception because the total amount contributed is well above the minimum, the bundled annuities are identical except for the payment-beginning date and the annuity amount, and they can be consolidated for the purpose of making the payments and filing Form 1099-R. The plan should not prove to be an administrative burden, and it could appeal to donors concerned about escalating prices.

How a Step Annuity Might Compare to a Charitable Remainder Unitrust

Suppose that Matthew K. in figure 18.2 contributed $122,330 for a charitable remainder unitrust with a payout rate of 5 percent. Initially, the unitrust payments would be larger than the payments from the step gift annuity. Whether that continues to be the case depends, of course, on the total net return on trust assets. Matthew's payments might always be larger from a unitrust than from a step annuity, but there could also be periods, such as the first decade of the 21st century, when unitrust payments decline.

Donors who want to maximize upside potential and are willing to assume some risk will be more inclined towards a unitrust, but those who want to be assured of payments that retain their purchasing power may prefer the step annuity.

Text continues on page 9.

Figure 18.3

Super Flexible Deferred Gift Annuity

The disadvantage of a single flexible deferred gift annuity is that once the annuitant makes the election, he or she must start receiving the entire amount. To maximize flexibility, a donor could simultaneously establish a number of smaller flexible deferred gift annuities. Then the donor (or other person the donor may have designated as annuitant) could elect payments as needed.

Suppose that Richard D in Figure 18.1 created 11 flexible deferred gift annuities, each funded with $10,000, rather than a single flexible deferred gift annuity funded with $100,000. He could elect payments from any of the annuities per the following schedule:

Election Start Date	Age at Election Date	Annual Payment
9/30/2034	65	910
9/30/2035	66	970
9/30/2036	67	1,030
9/30/2037	68	1,120
9/30/2038	69	1,190
9/30/2039	70	1,260
9/30/2040	71	1,350
9/30/2041	72	1,450
9/30/2042	73	1,540
9/30/2043	74	1,640
9/30/2044	75	1,770

At age 65, Richard decides to reduce his work hours to allow more time for travel. Then, at age 68 he retires but continues to do some consulting. He elects to activate two of the annuities at age 68, three more at age 70, and one each year beginning at age 71. His payments would be:

Beginning at Age	Payment Increment	Total Payment per Year
68	$2,240	$2,240
70	$3,780	$6,020
71	$1,350	$7,370
72	$1,450	$8,820
73	$1,540	$10,360
74	$1,640	$12,000
75	$1,770	$13,770

There are two other reasons for choosing the step annuity. The amount the donor plans to contribute may fall short of the minimum required for a unitrust to be practical, and the annuity payments may be taxed more favorably than the unitrust payments. This is especially true when the donor will contribute cash, which results in a significant portion of the payments from the gift annuity being a tax-free return of capital. So even if the gross payments from the unitrust are consistently larger than the payments from the step annuity, the after-tax amounts may be smaller.

Documentation for the Step Annuity

While it might be possible to incorporate the step feature in a single gift annuity agreement, in the absence of an IRS ruling on the matter and in view of how state regulators might react to it, it is probably prudent to execute multiple gift annuity agreements. They would be identical except for different payment starting dates and, consequently, different payment amounts. The charity could issue a single check to the annuitant, however many contracts may have been executed.

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This article could also be adapted for a target mailer:

Providing a More Secure Retirement

Contributing to an IRA or a qualified plan, such as a 401(k) or 403(b), is an ideal way to save for retirement. Unfortunately, all of these plans are subject to contribution limitations.

If you would like to supplement the payments you receive from your retirement plan and Social Security, consider a deferred gift annuity. Not only will you have more to spend in your later years, but you may reduce your income tax now. You will also help assure that the ABC Charity will continue to serve as an important resource for all members of the community.

Unlike an employer-sponsored retirement plan, a deferred gift annuity enables you to

- contribute as much as you want without limitation,
- contribute appreciated stock as well as cash,
- decide in which years to make a contribution, and
- start receiving payments as early or as late as you wish.

In the event you own your own business, you can establish a deferred gift annuity for yourself only, without having to include employees.

To establish a deferred gift annuity with the ABC Charity, you would transfer cash or securities to the Charity and execute an agreement that states when payments are to begin and to whom they are to be made. Ordinarily, single persons have payments made to themselves, and married persons elect joint and survivor annuities. You could, however, direct the payments to augment retirement income for someone else – a sibling, for example.

In the year you make your contribution you will receive a charitable deduction, the size of which depends on the number of years before payments begin and the age(s) of the beneficiary(ies) at that time. If you contribute appreciated securities, and name yourself as the sole or initial beneficiary, you will not be taxed on the capital gain at the time of the contribution. A portion of your future payments will be taxed as capital gain, but this is preferable to having them taxed entirely as ordinary income, which is the case with payments from your qualified plan.

If you know exactly when you want to retire, you can select in advance the year in which payments begin. However, if your retirement date will depend on future circumstances, the agreement can provide for payments to begin in any year you later choose. The longer you wait, the larger your payments will be.

Prototype Materials: flex-article.docx

Assuming you are now age 50 and you contribute $10,000, this is the amount you would receive each year if you started payments at the following ages (for larger contributions the payments would be proportional):

Age Payments Begin	Annual Payment*
65	$1,090
66	$1,160
67	$1,240
68	$1,340
69	$1,430
70	$1,520
71	$1,620
72	$1,750
73	$1,860
74	$1,980
75	$2,130

Note: These amounts are based on gift annuity rates in effect at this time.

How does the ABC Charity benefit from this plan? At the end of your and/or another beneficiary's life (lives), whatever remains of your original contribution will be used by the ABC Charity to support its work. That amount may be more or less than your original contribution, depending on investment performance.

For more information about a deferred gift annuity, call or write the Development Office, 1234 Main Street, Seattle, Washington 98000, (206) 329-8144.

* *The annual payments will depend on the length of the deferral period, the compound interest factor during the deferral period, and the gift annuity rates offered by the charity.*

Financial Illustration

Flexible Deferred Charitable Gift Annuity for Richard D

Annuitant:	Richard D
Date of birth of annuitant:	June 15, 1974
Assumed date of gift:	July 1, 2024
Property contributed (cash):	$100,000

Fixed annual payments will be made to Mr. D in quarterly installments for the duration of his life, beginning not earlier than September 30, 2039 and not later than September 30, 2049.

The amount of the payments is based on the year in which payments commence, per the following schedule:

Date Payments Begin	Mr. D's Age	Annual Payment Amount *
9/30/2039	65	$11,400
9/30/2040	66	$12,200
9/30/2041	67	$13,000
9/30/2042	68	$14,100
9/30/2043	69	$15,000
9/30/2044	70	$15,900
9/30/2045	71	$17,000
9/30/2046	72	$18,300
9/30/2047	73	$19,500
9/30/2048	74	$20,700
9/30/2049	75	$22,300

* *This is the annualized amount. Since there would be two quarterly payments in any start year, the payments for the start year would be one-half of the amount shown.*

APPENDIX 2

How payments are taxed depends on the year in which they begin and on the IRS Expected Return Multiple Tables applicable to the annuity at that time. If payments begin on September 30, 2039 (the year in which Richard D becomes age 65) and the IRS Expected Return Multiple Tables have not changed in the meantime, payments will be taxed as follows:

Year	Payments	Total Annuity	Ordinary Income	Tax-free Return of Cap.
2039	2	5,700.00	4,275.00	1,425.00
2040 - 2058	4	11,400.00	8,550.00	2,850.00
2059	4	11,400.00	10,303.00	1,097.00
2060+	4	11,400.00	11,400.00	0.00

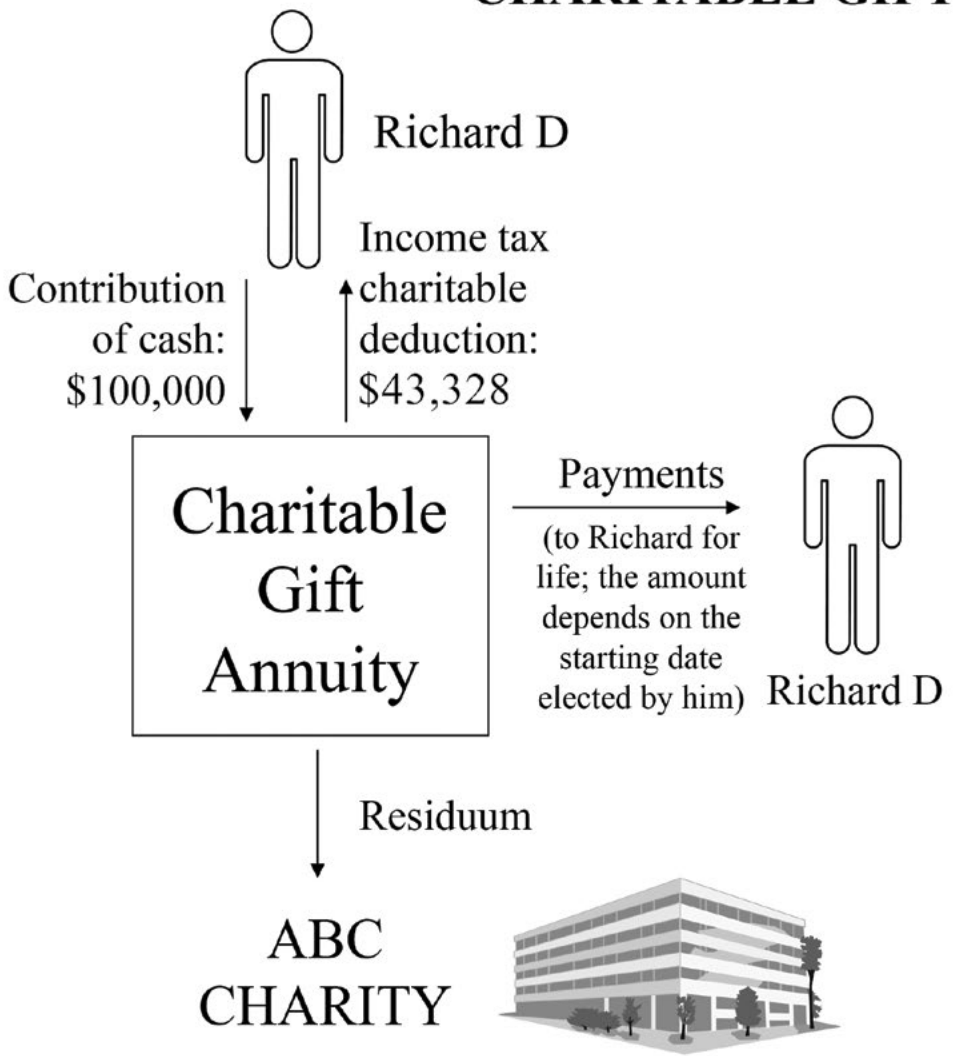
Income tax charitable deduction: $43,328

(Richard receives this deduction for 2024, the year he made the gift.

This illustration is based on a CMFR of 5.0 percent. A donor can elect the CMFR for the month of the gift or for either of the immediately preceding two months.

WITH A GIFT ANNUITY YOU SIMULTANEOUSLY MAKE A CHARITABLE GIFT AND PROVIDE FIXED PAYMENTS FOR LIFE TO YOURSELF AND/OR ANOTHER PERSON. THE FACT THAT YOU ARE MAKING A CHARITABLE GIFT MAY ENTITLE YOU TO INCOME, GIFT, AND ESTATE TAX DEDUCTIONS.HOWEVER, BECAUSE A CHARITABLE GIFT IS INVOLVED, THE ANNUITY RATES OFFERED BY THE ABC CHARITY ARE LOWER THAN THOSE AVAILABLE THROUGH COMMERCIAL ANNUITIES OFFERED BY INSURANCE COMPANIES AND OTHER FINANCIAL INSTITUTIONS.

A FLEXIBLE DEFERRED CHARITABLE GIFT ANNUITY



Richard contributes $100,000 cash to ABC Charity for a gift annuity, the terms of which are described in a signed agreement.

Richard receives an immediate income tax deduction of $43,328 based on his age and on a federal discount rate of 5.0%. This results in a tax savings in the year of the gift.

Beginning not earlier than September 30, 2039 and not later than September 30, 2049, he receives fixed annual payments for the rest of his life. The older he is when payments begin, the larger they will be.

A portion of the payments will be tax-free return of capital.

At the end of his life, the remaining assets will be used to support and enhance the work of the ABC Charity.

APPENDIX 2

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COMPLETED GIFT ANNUITY AGREEMENT

Situation

Richard D, whose date of birth is June 15, 1974, contributes $100,000 cash to the ABC Charity on July 1, 2024 in exchange for an annuity that will pay him a fixed amount for life with payments beginning at some future date. He wants to be able to decide later when payments are to begin.

APPENDIX 3

Serial Number _____________

ABC CHARITY

Gift Annuity Agreement

One Life – Donor is the Annuitant

Payments are Deferred – Flexible Commencement Date

This Agreement is made between Richard D, of 246 Lake Avenue, Cleveland, Ohio 44100, (hereinafter "the Donor"), and ABC Charity, of 1234 Main Street, Seattle, Washington 98000 (hereinafter "Charity").

1. Transfer of Property by Donor

Charity certifies that the Donor, as an evidence of his desire to support the work of Charity and to make a charitable gift, on July 1, 2024 contributed to Charity the property described in Schedule A attached hereto, the fair market value of which is $100,000.

2. Payment of Annuity

In consideration of the property transferred by the Donor, Charity shall pay to the Donor an annual annuity continuing for the rest of his life, the amount of which shall be based on the year in which payments commence, as determined under the table contained in Schedule B attached hereto. The annuity shall be paid in quarterly installments at the end of each calendar quarter. If the Donor dies before the commencement date of payments hereunder, Charity is released from all obligations under this Agreement.

3. Election of Commencement Date

To elect irrevocably the commencement date of payments hereunder, which shall be the last day of September and which shall not be earlier than September 30, 2039 nor later than September 30, 2048, the Donor during his life shall deliver written notice to Charity no later than ninety (90) days prior to the desired commencement date. If no election is made, annuity payments will commence on September 30, 2049.

4. Birth Date of Annuitant

The birth date of the Donor is June 15, 1974.

5. Irrevocability; Non-assignability; Termination

This annuity is irrevocable and non-assignable, except that it may be assigned to Charity. Charity's obligation under this Agreement shall terminate with the regular payment preceding the Donor's death.

Form: ABC-1da-D(flexible)-OH

6. Uses and Purposes of Gift
Upon Charity's satisfaction of its obligation under this Agreement, an amount equal to the residuum of the gift shall be used by Charity for its general purposes.

7. Entire Agreement; Governing Law
This Agreement, together with Schedules A and B attached hereto, constitutes the entire agreement of the parties. This Agreement shall be governed by the laws of the State of Ohio.

This Agreement is effective as of July 1, 2024.

DONOR:

____

ABC CHARITY:

By:

____

[Name and title of officer]

ATTEST

By:

____

Form: ABC-1da-D(flexible)-OH

A P P E N D I X 3

Gift Annuity Agreement Between
Richard D and
ABC Charity

Schedule A

Description of Property

$100,000.00 cash (check).

Form: ABC-1da-D(flexible)-OH

APPENDIX 3

Gift Annuity Agreement Between
Richard D and
ABC Charity

Schedule B

Annual Annuity Based on Year in Which Payments Commence

If payments commence on this date,	this will be the annual annuity amount:
9/30/2039	11,400
9/30/2040	12,200
9/30/2041	13,000
9/30/2042	14,100
9/30/2043	15,000
9/30/2044	15,900
9/30/2045	17,000
9/30/2046	18,300
9/30/2047	19,500
9/30/2048	20,700
9/30/2049	22,300

Form: ABC-1da-D(flexible)-OH

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Summary of Accounting and Tax Information

Flexible Deferred Gift Annuity

Name of donor: Richard D
Gift completion date: July 1, 2024
Value of property contributed: $100,000

Annuity Payments

Each year, beginning no earlier than September 30, 2039 but no later than September 30, 2049, ABC Charity will pay you an annuity as indicated on Schedule B of the Gift Annuity Agreement. Payments will be made in quarterly installments at the end of each calendar quarter. To elect the date on which payments are to begin, you will need to specify such date in a written notice provided to ABC Charity at least 90 days in advance.

Once the payments begin, they will be made to you for the rest of your life. If you were to die before the payments begin, however, then no payments would be made to anyone.

Income Tax Charitable Deduction

Your income tax charitable deduction of $43,328 may be used in 2024 to offset up to 60 percent of your adjusted gross income (determined without regard to any net operating loss carryback). If, due to this limitation, any part of the deduction cannot be utilized in 2024, you may carry the unused deduction forward for up to five succeeding tax years. The maximum amount of any carried forward deductions that can be used in any year depends on the deduction ceiling then in effect.

Substantiating Your Deduction (Form 1040)

To substantiate your income tax charitable deduction, we recommend that you file one copy of the enclosed deduction calculation sheet and one copy of the gift annuity agreement with your 2024 federal income tax return (IRS Form 1040).

Apart from the annuity described above, the present value of which is deemed to be $56,672, you have received no goods or services in return for this gift. Keep your original annuity agreement and this Summary of Accounting and Tax Information in your files as your acknowledgement for this gift.

APPENDIX 4

Tax Reports

For each year in which annuity payments are made, ABC Charity will prepare an IRS Form 1099-R showing the amount of taxable income you received during the year and send it to you by January 31 of the following year. The portions of payments received each year that are taxable as ordinary income and tax-free will differ, depending on the year in which payments begin. If, for example, payments were to begin on September 30, 2039 and the IRS Expected Return Multiple Tables had not changed in the meantime, the payments would be taxed as indicated in the table below (the same numbers would also appear on Form 1099-R):

Year	Payments	Total Annuity	Ordinary Income	Tax-free Return of Cap.
2039	2	5,700.00	4,275.00	1,425.00
2040 - 2058	4	11,400.00	8,550.00	2,850.00
2059	4	11,400.00	10,303.00	1,097.00
2060+	4	11,400.00	11,400.00	0.00

If you would like to know how payments would be taxed if they were to begin in any other year, please contact ABC Charity.

Notice Concerning Tax and Accounting Information

This tax information is provided to you as a service of ABC Charity. However, we are not providing legal or tax advice to you. You should give this information to your accountant or tax advisor and have that person confirm the accuracy of our computations and determine the scope of these and other reporting requirements that may apply.

Sample Letter Prompting an Annuitant of a Flexible Deferred Annuity to Consider Whether He or She Is Ready to Have Payments Begin

APPENDIX 5

[Date]

[Name of annuitant]
[Address]
[City/state/ZIP code]

Dear *[name of annuitant]*:

As you will recall, you set up a charitable gift annuity with *[name of charity]* back in *[year]*. That annuity will benefit you and, ultimately, *[name of charity]*.

Under the terms of the annuity, you have the option to ask *[name of charity]* to begin making lifetime payments to you starting *[month and day]* of any year up through *[year]*. Now that some years have passed since the annuity was established, I am sending this letter simply to remind you of this arrangement.

I want to assure you that the decision about when the annuity payments should begin remains strictly up to you. Until you are ready to have them begin, there is nothing you need to do. Nevertheless, whenever you do determine you would like to have the payments begin, you should provide *[name of charity]* with written notice no later than *[number of days, per gift annuity agreement]* in advance of the date you want them to begin.

Finally, if a few more years go by without you notifying *[name of charity]* that you would like for the annuity payments to begin, you may receive another letter similar to this. If you have not elected payments by the time of the last date for doing so, the payments will automatically begin as of that date.

Please contact us regarding any questions you have about your annuity.

Sincerely,

[name and title of contact person at charity]

Prototype Materials: flex dga-check-in letter.docx

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Sample Letter for Use by Annuitant When Electing Commencement Date

APPENDIX 6

Before furnishing this letter to the annuitant, the charity should fill in the addressee info, the Re: line, and the dates/amounts in the two columns. The annuitant can then fill in their chosen amount/date in the last paragraph and sign/date the letter.

[Date]

[Name, title, and address of contact person at charity]

Re: *[Annuity being commuted, including date of agreement and/or agreement number]*

Dear *[Salutation of contact person at charity]*:

Paragraph *[#]* of the agreement governing the annuity named above requires that I elect the date on which annuity payments are to commence. In addition, Schedule *[letter]* of the agreement indicates the annuity amount associated with each possible commencement date. Those dates and amounts appear below:

If payments commence on this date	this will be the annual annuity amount:
[Date]	*[Amount]*
[Date]	*[Amount]*

[List each elective payment start date and its associated elective payment amount in order from earliest to latest.]

I am sending you this letter to inform you that I am electing to receive an annual annuity of $*[amount]* beginning on *[elected payment start date]*.

Please contact me to confirm that you have received this letter, to review how the payments are to be made (e.g., by check, by direct deposit, etc.), and to advise me regarding how payments will be taxed.

Sincerely,

[Name, address, and phone # of annuitant]

Prototype Materials: flex dga-election letter.docx

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Specimen Flexible Deferred Annuity Agreements

The set of annuity agreements provided in flex dga agreements.docx in the prototype materials that accompany this manual use as their base the prototype annuity agreements contained in agreements-base.docx in the prototype materials with modifications to accommodate the flexible commencement date. These agreements may be used when issuing annuities to donors in Arkansas, Delaware, District of Columbia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Nebraska, Ohio, Rhode Island, South Carolina, Utah, and Wyoming. For your reference, the prototype agreement for a one-life flexible deferred annuity where the donor is the annuitant follows this page.

Flexible deferred annuity agreements are subject to the same state specific requirements detailed in Chapter 12 regarding additional provisions, particular phrasing or disclosure language. Therefore, changes must be made to these agreements for annuities issued to donors in Alabama, Alaska, Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Iowa, Maryland, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, and Wisconsin. Because New York has modified the manner for presenting text options within the agreement, a sample set of New York flexible deferred agreements is also contained among the prototype materials (NY flex dga agreements.docx).

The agreements included in flex dga agreements.docx reflect the most common donor/annuitant combinations. For other variations, including a joint and survivor agreement funded with separate property or a one-life agreement funded with community property, refer to the agreements contained in agreements-base.docx.

APPENDIX 7

Serial Number ____________

ABC Charity

Gift Annuity Agreement
One Life – Donor is the Annuitant
Payments are Deferred – Flexible Commencement Date

This Agreement is made between [*name of donor*], of [*street address*], [*city*], [*state*] [*zip code*] (hereinafter "the Donor"), and ABC Charity, of 1234 Main Street, Seattle, Washington 98000 (hereinafter "Charity").

1. Transfer of Property by Donor
Charity certifies that the Donor, as an evidence of [*his/her*] desire to support the work of Charity and to make a charitable gift, on [*contribution date – month, day, year*] contributed to Charity the property described in Schedule A attached hereto, the fair market value of which is $[*amount*].

2. Payment of Annuity
In consideration of the property transferred by the Donor, Charity shall pay to the Donor an annual annuity continuing for the rest of [*his/her*] life, the amount of which shall be based on the year in which payments commence, as determined under the table contained in Schedule B attached hereto. The annuity shall be paid in [*monthly, quarterly, semi-annual, annual*] installments at the [*beginning/end*] of each period. If the Donor dies before the commencement date of payments hereunder, Charity is released from all obligations under this Agreement.

3. Election of Commencement Date
To elect irrevocably the commencement date of payments hereunder, which shall be the [*day of the month*] day of [*month*] and which shall not be earlier than [*first possible commencement date*] nor later than [*last possible commencement date*], the Donor during [*his/her*] life shall deliver written notice to Charity no later than ninety (90) days prior to the desired commencement date. If no election is made, annuity payments will commence on [*last possible commencement date*].

4. Birth Date of Annuitant
The birth date of the Donor is [*month, day, year*].

5. Irrevocability; Non-assignability; Termination
This annuity is irrevocable and non-assignable, except that it may be assigned to Charity. Charity's obligation under this Agreement shall terminate with the regular payment preceding the Donor's death.

Form: ABC-1da-D(Flexible)-XX (8/16)   Prototype Materials: flex dga-agreements.docx

6. Uses and Purposes of Gift
Upon Charity's satisfaction of its obligation under this Agreement, an amount equal to the residuum of the gift shall be used by Charity for [*"its general purposes" if unrestricted; if restricted, state purpose*].

7. Entire Agreement; Governing Law
This Agreement, together with Schedules A and B attached hereto, constitutes the entire agreement of the parties. This Agreement shall be governed by the laws of the State of [*state*].

This Agreement is effective as of [*contribution date – month, day, year*].

DONOR:

____

ABC CHARITY:

By:

____

[*Name and title of officer*]

ATTEST

By:

____

Form: ABC-1da-D(Flexible)-XX (8/16)

APPENDIX 7

APPENDIX 7

Gift Annuity Agreement Between [*Name of Donor*] and ABC Charity

Schedule A

[*Description of Property*]

Form: ABC-1da-D(Flexible)-XX (8/16)

Gift Annuity Agreement Between
[*Name of Donor*] and
ABC Charity

Schedule B

Annual Annuity Based on Year in Which Payments Commence

If payments commence on this date,	**this will be the annual annuity amount:**
[month, day, year]	*[$annuity amount]*

List all possible payment commencement dates and corresponding annual annuity payments, See *page 21 of Chapter 18*.

APPENDIX 7

Form: ABC-1da-D(Flexible)-XX (8/16)

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Private Letter Ruling 9743054

APPENDIX 8

Issued: August 1, 1997
Published: October 24, 1997

Dear Sir or Madam:

This is in reference to a ruling request dated February 20, 1997, concerning the federal tax consequences of the proposed transaction described below.

The information provided indicates that you (the "Foundation") are a charitable organization described in section 501(c)(3) of the Internal Revenue Code. The Foundation proposes to offer an annuity contract to B, an individual.

The proposed annuity contract would establish a deferred gift annuity, under which a donor makes a charitable contribution of $25,000 to the Foundation in exchange for the obligation of the Foundation to pay an annuity to B or other annuitant in fixed amounts over the life of the annuitant, with the beginning date for payment deferred to some date in the future.

The annuity contract allows the annuitant to elect the commencement date of the payments under the annuity, at any time after the annuitant, who is currently age 50, reaches age 55. When the election is made by the annuitant, the annual annuity payment will be determined based on the age of the annuitant in accordance with pre-existing tables.

In a written acknowledgement to be provided to the donor at the time of the contribution, the Foundation will: (1) state the amount of cash contributed; (2) state that the Foundation provided something in return; (3) inform the donor that the amount of the contribution that is deductible is limited to the excess of money contributed over the value of the goods and services to the donor; and, (4) provide an estimated value of B's charitable contribution at an amount that reflects the maximum possible non-charitable value of the annuity, even though the donor may decide to defer the starting date of the annuity which could reduce the non-charitable value of the annuity contract.

Section 170(a)(1) of the Code allows as a deduction any charitable contribution (as defined in section 170(c)) payment of which is made within the taxable year.

Section 170(c) of the Code defines a "charitable contribution" as a contribution or gift to or for the use of a qualified charity.

Section 1.170A-1(d)(1) of the Income Tax Regulations states that in the case of an annuity purchased from a qualified charity, there shall be allowed as a deduction the excess of the amount paid over the value at the time of purchase of the annuity.

Section 170(f)(8) of the Code states that no deduction shall be allowed under section 170(a) for any contribution of $250 or more unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgment of the contribution by the donee organization.

APPENDIX 8

Section 1.170A-13(f)(16) of the regulations states that if a taxpayer purchases an annuity from a charitable organization and claims a charitable contribution deduction of $250 or more for the excess of the amount paid over the value of the annuity, the contemporaneous written acknowledgment must state whether any goods or services in addition to the annuity were provided to the taxpayer.

Section 511 of the Code imposes a tax upon the unrelated trade or business income of tax-exempt organizations.

Section 513(a) of the Code provides that the term "unrelated trade or business" means any trade or business, the conduct of which is not substantially related (aside from the need of an organization for funds) to the exercise or performance by such organization of its charitable, educational or other function which constitutes the basis for its exemption.

Section 1.513-1(d)(2) of the regulations provides that a trade or business is related to exempt purposes in the relevant sense, only where the conduct of the business activity has a causal relationship to the achievement of exempt purposes (other than through production of income) and is "substantially related" only if the causal relationship is a substantial one. The activity from which income is derived must contribute importantly to the accomplishment of exempt purposes.

Section 512(b)(1) of the Code excludes interest income from the computation of the tax on unrelated trade or business income. Section 514(a)(1) of the Code states that in computing the unrelated business income tax under section 512, income derived from debt-financed property should be included.

Section 514(c)(5) provides that the rules concerning debt-financed property should not apply to the sale of annuities where (1) the annuity is the sole consideration issued in exchange for the property if, at the time of the exchange, the value of the property is less than 90 percent of the value of the property received in the exchange, (2) the annuity is payable over the life of one individual in being at the time the annuity is issued or over the life of two individuals in being at such time, and (3) the annuity is payable under a contract which does not guarantee a minimum amount of payments and does not provide for any adjustment of the amount of the annuity payment by reference to the income received from the transferred property or any other property.

Section 501(m) was added to the Code by the Tax Reform Act of 1986, Pub. L. 99-514 (1986). The section states that an organization described in section 501(c)(3) or section 501(c)(4) of the Code may be exempt from tax under section 501(a) only if no substantial part of its activities consists of providing "commercial-type insurance." Section 501(m)(3) sets forth a list of items deemed not to be "commercial-type insurance." Section 501(m)(4) provides that the issuance of annuity contracts shall be treated as providing insurance.

Section 501(m)(2) of the Code provides that an organization that provides insurance as an insubstantial part of its activities shall be treated as an insurance company for purposes of applying Subchapter L (Insurance Companies) with respect to such activity.

The Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647 (1988) amended section 501(m) by adding 501(m)(3)(E) which adds the term "charitable gift annuities" to the list of exceptions from commercial-type insurance. Section 501(m)(5) provides that for purposes of 501(m)(3)(E) the term "charitable gift annuity" means an annuity if (A) a portion of the amount paid in connection with the issuance of the annuity is allowable as a deduction under section 170 or 2055, and (B) the annuity is described in section 514(c)(5) (determined as if any amount paid in cash in connection with such issuance were property).

The legislative history accompanying the 1988 Act provides that "[t]he present-law exception to the debt-financed property rules has historically exempted from tax any income resulting from the issuance of charitable gift annuities." H.R. Rep. No. 795, 100th Cong., 2d Sess. 116 (1988) emphasis supplied.

Section 6115(a) of the Code states that if a qualified charity receives a quid pro quo contribution in excess of $75, the charity shall, in connection with the solicitation or receipt of the contribution, provide a written statement that informs the donor that the amount of the contribution that is deductible for federal income tax purposes is limited to the excess of the amount of any money and the value of any property other than money contributed by the donor over the value of the goods or services provided by the organization, and provide the donor with a good faith estimate of the value of the goods or services.

Section 6115(b) of the Code defines quid pro quo contribution as a payment made partly as a contribution and partly in consideration for goods or services provided to the payor by the donee organization.

The regulations under section 170 of the Code allow a deduction for the excess of the amount paid by B over the value of the annuity provided by the Foundation. As the preamble to the final regulations under sections 170(f)(8) and 6115 states, "[t]here is no single correct way to determine fair market value; a charitable organization may use any reasonable methodology." The Foundation's proposed method of estimating the value of the annuity is not unreasonable.

Moreover, it appears that the issuance of "charitable gift annuities" has historically been treated as a borrowing of money by the issuing organization and the sales aspect of the transaction has been ignored. Section 514(c)(5) of the Code specifically exempts "charitable gift annuities" from being considered "acquisition indebtedness" and thereby ensures that the interest, rents or dividends secured by the educational institution from the investment of the proceeds it receives from issuing these annuities will not be subject to unrelated business income tax. This exception from the debt-financed income provisions of the unrelated business income tax would be virtually useless if the proceeds themselves were subject to the unrelated business income tax.

APPENDIX 8

Accordingly, we rule as follows:

1. The issuance of a deferred charitable gift annuity, as described above, will not result in income from an unrelated trade or business as defined in sections 511-513 of the Code.

2. The income earned by the Foundation from investment of charitable gift annuity funds will not be unrelated debt-financed income within the meaning of section 514 of the Code.

3. The annuity contract issued by the Foundation, as described above, is a charitable gift annuity within the meaning of section 501(m)(5) of the Code, as long as the value of the annuity is less than 90 percent of the value of the property received by the Foundation.

4. The proposed gift acknowledgement will meet the requirements of section 170(f)(8)(B) of the Code.

5. The proposed gift acknowledgement will meet the requirements of section 6115(a) of the Code.

This letter is directed only to the organization that requested it. Section 6110(j)(3) of the Internal Revenue Code provides that this letter may not be used or cited by others as precedent.

We are informing your key District Director of this ruling. Because this letter could help resolve any questions about your exempt status and foundation status, you should keep it in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Edward K. Karcher
Chief, Exempt Organizations
Technical Branch 3

Tables Submitted with PLR Request in 1997

APPENDIX 9

Table 1

Annual Annuity Based on Age at Starting Date

If the Annuitant Is This Age at the Commencement of the Annuity	This Will Be the Annual Annuity Amount
55	$1,787.31
56	1,966.16
57	2,166.14
58	2,390.16
59	2,641.80
60	2,925.00
61	3,125.00
62	3,325.00
63	3,575.00
64	3,850.00
65	4,075.00
66	4,375.00
67	4,700.00
68	5,050.00
69	5,425.00
70	5,825.00
71	6,250.00
72	6,725.00
73	7,300.00
74	7,825.00
75	8,500.00
76	9,225.00
77	10,000.00
78	10,850.00
79	11,750.00
80	12,725.00

This Table showing the amount of the annual annuity starting at various ages of the annuitant was included in the submission for the private letter ruling. The annuity amounts for commencement ages 60 and above are those recommended by the ACGA as of March 1, 1997. The annuity amounts for commencement ages 55-59 are slightly lower than those recommended by the ACGA at that time.

APPENDIX 9

Table 2

Charitable Deduction for Annuities at Various Ages of Commencement

Payment Age	Annuity	Deduction
55	$1,787.31	$12,364.29
56	1,966.16	12,364.29
57	2,166.14	12,364.29
58	2,390.16	12,364.29
59	2,641.80	12,364.29
60	2,925.00	12,364.29
61	3,125.00	12,830.31
62	3,325.00	13,350.20
63	3,575.00	13,754.12
64	3,850.00	14,150.70
65	4,075.00	14,737.11
66	4,375.00	15,177.25
67	4,700.00	15,618.33
68	5,050.00	16,063.52
69	5,425.00	16,515.84
70	5,825.00	16,976.06
71	6,250.00	17,443.75
72	6,725.00	17,890.33
73	7,300.00	18,278.89
74	7,825.00	18,753.30
75	8,500.00	19,143.50
76	9,225.00	19,542.49
77	10,000.00	19,948.00
78	10,850.00	20,347.52
79	11,750.00	20,751.20
80	12,725.00	21,148.14

This Table showing the amount of deductions for various commencement ages was also included in the submission for the private letter ruling. The deductions are based on the Charitable Midterm Federal Rate for March 1997 and on annuity amounts shown in Appendix 9, Table 1.

Chapter 19

COMMUTED ANNUITIES

Description

A commuted gift annuity is a deferred gift annuity where life payments are commuted (exchanged) either for a lump sum or for payments for a certain number of years. The IRS in certain private letter rulings has approved gift annuity agreements that permit such exchanges. See Private Letter Rulings 9042043, 9108021, 9527033, and 200233023. General Counsel Memorandum 39826 also provides tacit approval. The actuarial value of the lump sum or installments over a certain term must be the same as the actuarial value of the life payments.

In most instances, the commuted gift annuity has been used to provide educational expenses for a student attending a college or university, which is why it is often called "the college annuity." A grandparent might establish a gift annuity when a grandchild is young, stipulating that life payments begin when the grandchild is age 18. Then an authorized person commutes the life payments for eight or more semi-annual payments that can be made at the beginning of each semester the grandchild is in college. Each installment will, of course, be much larger than each life payment would have been. The charity would not have consented to an annuitant of such a young age if payments were for life, but it will agree when it must make payments only for a reasonably short period of time.

The commuted annuity could also be very useful in other circumstances when a person of any age wants fixed income for a certain period of time and it is not practical to establish a term-certain charitable remainder trust. The contributed amount might be below the minimum required for a charitable remainder trust, or perhaps the donor likes the simplicity and assurance of a gift annuity.

Analysis

In most instances the annuitant (or guardian in the care of an under-age student) exercises the commutation immediately after the annuity is funded. While the two events should not be simultaneous, commutation should promptly follow establishment of the annuity: a period of weeks or even just days should suffice to make the two events adequately distinct. If the commutation is delayed until later, the payments could be higher or lower, depending on the CMFR and mortality tables in effect at the time of the commutation, and the annuitant's age at the time. Both the charity and the annuitant may prefer to know from the outset what the installments will be.

In calculating the installments resulting from the commutation, the CMFR for the month of commutation must be used. This is because IRC Section 7520(a) affords a taxpayer the option to use the CMFR from either of the two prior months only in those instances in which a charitable deduction is involved. Thus, the option is available when the annuity is funded but not when payments are commuted. This means that even if the commutation right is exercised in the month the gift annuity was established, the present value of the annuity payments could be one amount for purposes of the deduction and another amount for purposes of the commutation, if the donor in seeking to maximize the deduction – or to maximize the tax-free return of capital – elected a CMFR from one of the two prior months at the time the annuity was funded.

In addition, so long as at the time the annuity is established the present value of the payments is less than 90 percent of the value of the assets contributed to establish the annuity, the present value of the payments at the time of commutation can be 90 percent or more of the contribution without the charity running afoul of IRC Sec. 514(c)(5). Of course, even though such a scenario would be legally permissible, it reflects just one reason that – at least from the charity's standpoint – the commutation option should be exercised shortly after the annuity is established.

Effect of the CMFR on the Size of the Payments

If the annuity is commuted when the CMFR is low, the annual installments will be larger. Thus, from the donor's standpoint, the annuity could be more attractive when the CMFR is low. However, that would diminish the benefit to the charity. A charity entering into one of these arrangements may want to insist that the commutation occur soon after the establishment of the annuity, so that the charity could determine from the outset what the installments would be and whether that amount would be acceptable. Otherwise, the annuitant, or the annuitant's guardian, might wait for a low CMFR before exercising the right of commutation, exposing the charity to uncertainty and risk.

Although the letter rulings permitting a commutation of lifetime gift annuity payments did not specify any required interval between the execution of the gift annuity agreement and the commutation of the annuity, it might be prudent to avoid executing them simultaneously so that initially, per IRC Sec, 514(c)(5), payments were to be made over the lifetime of an annuitant. On the other hand, the charity will want to do the commutation fairly soon to avoid the risk of having to make larger payments than expected.

Another reason the charity would want the right of commutation exercised soon is to eliminate any possibility of having to make modest payments for a long time, which could happen if the annuity were never commuted and the annuitant is young. It could also be advantageous for the annuitant if the commutation is exercised quickly, for if the CMFR rises prior to the commutation, payments would be smaller.

Commuted Annuity for College Expenses

Advantages and Disadvantages

A college annuity enables a donor to receive an income tax charitable deduction while providing for the education of a descendant or the child of a friend. Moreover, there is tax-free growth within the annuity, the payments are taxed at the student's low tax rate (subject to the so-called "kiddie tax" discussed later in this chapter), and the investment in the contract will be returned tax-free and prorated over the installment period.

On the other hand, the college annuity has a number of disadvantages:

1. The compound interest factor of 4.75 percent is still relatively low. The return of alternative education plans could be higher.
2. When the CMFR is very low, as it was two years ago, the charitable deduction, if ACGA rates are used, may not qualify per IRC Sec. 514(c)(5). In order to generate the required deduction (more than 10 percent of the contribution) it would be necessary to reduce the gift annuity rate to a level that may not be attractive to the donor.
3. The donor, who would be other than the annuitant, immediately recognizes the capital gain attributable to the present value of the annuity, if the annuity is funded with appreciated property.
4. The 10 percent penalty tax per IRC Sec. 72(q) apparently applies to the taxable portion of term payments started before the annuitant reaches age 59½. This tax would be in addition to the income tax on the installments. The penalty tax does not apply after a person attains age 59½ or when the person receives life payments, whatever the age of the person when those payments begin.
5. The donor makes a taxable gift to the annuitant of the present value of the annuity. The donor can delay completion of the gift by reserving the right to revoke the annuity interest of the annuitant. If the donor is still living when the installments begin, the installments paid each year will be completed gifts, but they can be reduced by the amount of the gift tax annual exclusion then in effect. If the donor dies before installments begin or while they are in progress, the then present value of the annuity will be included in the donor's estate.

See Figure 19.1 for an illustration of a commuted gift annuity for college expenses.

Generation-Skipping Transfer Tax

If the donor names a grandchild as an annuitant, and the grandchild's parent is still alive, a generation-skipping transfer will occur when the gift annuity is funded. In most cases, this will not be a problem because the portion of the contribution subject to the generation-skipping transfer tax will not be large, and the donor can eliminate any tax by allocating some portion of his or her generation-skipping transfer tax exemption, which is $13.99 million for 2025 (it will increase to $15 million for 2026). If a grandparent funded a grandchild's tuition by any other means, the same generation-skipping concerns would apply.

The charity should make sure that there is a provision for payment of any generation-skipping transfer tax from sources other than the funds it receives for the gift annuity.

Annuity Payments to an Education Trust

A donor who establishes a college annuity may want to assure that payments will be released to the annuitant only if he or she actually enrolls in a college and remains a student in good standing. To accomplish this objective, the donor might create a trust to receive the annuity payments, and the trustee of that trust would have a discretionary power to make or withhold payments to the student. Like other college annuities, this would be a deferred gift annuity with a commutation provision in the agreement, and the student's life would be the measuring life.

A charitable remainder trust with a term measured by the life of an individual can make payments only to that individual, subject to the limited exception of payments to a trust for a beneficiary lacking capacity. However, there is nothing comparable in the rules governing gift annuities. Therefore, it can reasonably be concluded that a gift annuity for the life of an individual could be paid to a trust for that individual.

Text continues on page 5

Figure 19.1

Commuted Gift Annuity for College Expenses

A grandparent contributed stock having a fair market value of $50,000 and a cost basis of $30,000 for a "college annuity" for a grandson, who was born April 13, 2021. The gift was made on July 1, 2023, and the agreement provided for the grandson to start receiving quarterly payments for life beginning September 30, 2039. It also contained a provision allowing a commutation of life payments. On July 25, 2023, the grandson's father, as his guardian, assigned his annuity interest to the charity in exchange for 16 quarterly installments.

Amount contributed	$50,000.00
Grandparent's income tax charitable deduction	20,037.00
Capital gain recognized by grandparent	11,985.20(1)
Taxable gift	29,963.00(2)
Total amount paid to grandson during each college year (Paid in quarterly installments of $4,244.60)	$16,978.403)

Payments taxed as follows:

	Tax-free Portion	Ordinary Income	Total Annuity
2039	3,745.38	4,743.82	8,489.20
2040–2042	7,490.76	9,487.64	16,978.40
2043	3,745.38	4,743.82	8,489.20

(1) When the donor is not the annuitant, the donor must recognize all of the taxable gain in the year of the gift.

(2) Since this was a future-interest gift, it did not qualify for the gift tax annual exclusion. The grandparent could have postponed any taxable gift by retaining the right to revoke the grandson's payments during the grandparent's life, or by will or other testamentary instrument.

(3) The size of the payments was based on the CMFR and mortality tables in effect at the time of the commutation. In this example, the annuitant's guardian exercised the right of commutation during the same month the gift was made. This fixed the installments that will be paid when the annuitant enters college. The charitable deduction was based on the July 2023 CMFR of 4.6%, and the amount of the commuted payment was also based on the July 2023 CMFR of 4.6%.

Note: When the CMFR is quite low, a college (or "commuted") gift annuity may fail to generate a charitable deduction of more than 10% of the contribution if payments are based on the ACGA rates. In that case, the payments must be reduced to an amount that would produce the minimum required deduction. In this example, the amount of the payment had to be reduced to meet that test.

The trust will include in its income the taxable portion of the annuity payments, but it will get a deduction for the distribution it makes to the individual beneficiary under the normal rules of IRC Sec. 662 that apply to complex trusts. That individual would then be taxed on the distributions. In the event the donor has a legal obligation to support the beneficiary, then the donor could be treated as the owner of the trust under the grantor trust rules, IRC Secs. 671-679, and would be taxed on the income.

Another question arises if the gift annuity is deferred. That is whether tax will be payable on the increasing value of the annuity during the deferral period. The normal rule in IRC Sec. 72(u)(1) is that the build-up is taxable if the annuitant is not a natural person. The trust is not a natural person; however, this Code Section provides an exception to the normal rule when the trust is an agent for a natural person, which would seem to be the case in this instance.

Charitable Remainder Trust Alternative to the College Annuity

A Net-Income with Make-up Provision Charitable Remainder Unitrust (NIMCRUT) can function as an alternative to the college annuity.

Description of a NIMCRUT

IRC Sec. 664(d)(3) allows the trustee of a charitable remainder unitrust to limit payments to beneficiaries during any year to the trust's distributable net income for the year if that income is less than the stipulated percentage of trust assets that would otherwise be paid for the year. It further provides in Sec. 664(d)(3)(B) for an optional make-up feature that allows the trustee to pay to beneficiaries excess distributable net income to the extent of accrued past deficiencies in payments.

The NIMCRUT has generally been the vehicle of choice when a donor wants to contribute an illiquid asset, such as real estate, for a unitrust. The NIMCRUT has also been used when the income beneficiary wants to defer income to some future time. After Treasury Regulations approved a trust starting out as a NIMCRUT and then "flipping" to a standard unitrust upon the occurence of a certain event or on a certain date, the NIMCRUT became even more useful for these two purposes.

Defining Trust Accounting Income to Include Realized Capital Gain

A unitrust may contain a provision defining accounting income to include realized capital gain if such a definition of income is permitted under the Principal and Income Act adopted by the state whose law governs the trust. Per the Regulations, only post-contribution gain can be included in income. Reg. Sec. 1.664-3(b)(4).

Features of NIMCRUT Used for College Education

One alternative is to provide in the trust agreement for the NIMCRUT to flip to a standard unitrust the year before the student is expected to enroll in college. Then the student would be assured of a set percentage of trust assets for the remainder of the trust term. See Figure 19.2. Another alternative is, in the trust agreement, to define income to include realized post contribution gain and invest for growth until the student enrolls in college. The trustee can sell assets, realize gain, and pay it to the student to the extent of accrued deficiencies in income. While this second alternative offers more flexibility, it could result in less income to the student if trust assets achieve little growth in value.

Text continues on page 8.

Figure 19.2

A College NIMCRUT

Howard and Linda C, both age 64, wanted to pay a substantial portion of the college expenses of their twin granddaughters, who were now age 7, and also make a gift to a favorite charity.

On July 1, 2023, they contributed stock having a value of $200,000 and a cost basis of $40,000, to a NIMCRUT, and named their twin granddaughters as income beneficiaries. The trust was for a 15-year term, has a 12% payout rate, and will flip to a standard charitable remainder unitrust (SCRUT) on January 22, 2033, the 17th birthday of the granddaughters. The trust starts functioning as a SCRUT on January 1, 2034 and payments will be semi-annual. The trustee sold the contributed stock and plans to invest the proceeds in a diversified growth portfolio for the next 10.5 years, realizing just enough dividends to cover administrative expenses. Once the trust has flipped, the trustee will sell enough shares each year to make the trust payments to the two granddaughters. The total growth of trust assets, net of administrative expenses, is presumed to average 6.0%. Howard and Linda receive an income tax charitable deduction of $30,527.

Presumed value of trust assets on January 1, 2034:	$368,758
Semi-annual payments to granddaughters (one half to each):	
June 30, 2034	$22,125
December 31, 2034	22,125
June 30, 2035	20,778
December 31, 2036	20,778
June 30, 2036	19,513
December 31, 2036	19,513
June 30, 2037	18,324
December 31, 2037	18,324
June 30, 2038	17,208
Amount remaining for charity:	$278,203
Total payments to granddaughters:	$178,688

Continued on next page...

Figure 19.2 Continued

A College NIMCRUT

Tax Implications

- Income tax charitable deduction for grandparents $30,527
- Taxable gifts to granddaughters $169,473

Through gift splitting and the use of gift tax annual exclusions, Howard and Linda can reduce the taxable gifts by $68,000. As an alternative, they can postpone a completed gift by retaining the right to revoke by will their granddaughters' income interests, thereby transforming each income interest into a series of annual gifts. If the beneficiaries of a charitable remainder trust are other than the donor, and the trust makes payments for the life of the beneficiaries, the trust would potentially be measured by the donor's life rather than the beneficiaries' lives. The IRS conceivably could argue that this would disqualify the trust, but so far it has not asserted this position in any rulings. A non-beneficiary donor can definitely retain the right to revoke by will beneficiaries' income interests if the trust is for a term of years. The trust qualifies because if the power to revoke is exercised, the trust is still measured by a term of years, albeit a shorter term. See Reg. Sec. 1.664-3(a)(5)(i) and Private Letter Ruling 8949061. Actually, the taxable gift may not be a concern to Howard and Linda since the lifetime federal gift/estate tax exemption was $12,920,000 per individual in 2023 ($25,840,000 for a married couple).

- Income is taxed to the granddaughters under the four-tier system. As explained above, the tax rate of the parents might be applicable due to the so-called "kiddie tax."
- Howard and Linda are not taxed on the capital gain in the stock they contribute.
- The charitable deduction is based on the July 2023 CMFR of 4.6%.

Comparison of College Annuity and College NIMCRUT

Advantages of College Annuity

- The donor may receive a larger income tax charitable deduction. This is more likely to be true when the CMFR rises.
- The annuity grows at a guaranteed rate, so the size of the payments is known in advance.
- The gift annuity entails no set-up costs and is administratively simple.

Advantages of College NIMCRUT

- The amount of payments during the college years is potentially much larger.
- A larger percentage of income may be taxed at capital gains rates rather than ordinary income tax rates.
- The donor will avoid being taxed on any of the capital gains attributable to appreciated assets donated to the trust.
- The 10 percent penalty tax does not apply to NIMCRUT payments.

If a college NIMCRUT is practical, given the size of the contribution, it appears on balance preferable to the college annuity. However, if the CMFR and annuity rates rise in the future, the college annuity could compare more favorably, especially when the donor wants the assurance of fixed payments known in advance.

Kiddie Tax

Per IRC Sec. 1(g), the investment income of a minor child may be subject to tax at the parent's marginal rate. This is often referred to as the "kiddie tax."

Previously the kiddie tax applied to any child under the age of 14 at the end of the tax year. Now it applies to any child under the age of 18 at the close of the year, and if the child is a full-time student, it would apply up to age 24 if the student's earned income does not exceed one-half of his or her support for the year.

This extension of the applicable age for the kiddie tax could result in the taxable portion of gift annuity payments from a college annuity, as well as the income from a charitable remainder trust established to assist with college expenses, being taxed at a higher rate than would normally apply to the student's level of income. This would not necessarily deter a donor from creating a charitable college plan, but it is a factor to be considered when weighing alternative ways of covering college expenses.

The kiddie tax is simply one of a number of issues to address not only before a college annuity is established, but also in post-gift documentation provided by the charity to the donor.

Commuted Annuity for Other Purposes

Although a commuted annuity may not be the best way to fund college expenses, it can work well in other circumstances, particularly when a person over age 59½ wants to receive fixed payments for a term of years. This is because the taxable portion of the annuity payments would not be subject to the 10 percent penalty tax.

If the donor is the annuitant, the taxable capital gain can be reported ratably over the term payments are received, rather than all in the year of the gift, which would be the case if a parent or grandparent funded the annuity to benefit a child or grandchild.

The payments will be more attractive than they would be in the case of a college annuity. That is because deferred gift annuity payments are determined by multiplying the deferral factor by the immediate gift annuity rate for the age of the annuitant when payments begin, and the immediate gift annuity rate for an 18-year-old is currently very low. Similarly, there will, of course, be no concern about the "kiddie tax."

See Figure 19.3 for an example of a commuted annuity where an older donor is also the

Text continues on page 10.

Figure 19.3

Commuted Gift Annuity for Older Donor/Annuitant

Marie Nelson's date of birth is June 4, 1963. She wants to work full time for two more years and then, at age 62, to reduce her hours until age 70, when she plans full retirement. At that time, she intends to begin withdrawals from her retirement fund. Once she reduces her hours, she would like another source of cash flow to compensate for the salary reduction. She wants that source to be certain, that is, fixed payments not subject to fluctuations in interest rates and stock values. She would be interested in a charitable gift that can be the source of these payments, and she would consider making the gift with stock valued at $200,000 with a cost basis of $40,000.

To accomplish her objectives she contributes on July 1, 2023 the stock for a deferred gift annuity with quarterly payments beginning on September 30, 2025. Shortly after the contribution on July 1, she commutes her life payments to payments over an eight-year period. The payments are quarterly. She uses the July 2023 CMFR of 4.6% for determining both the deduction and the amount of the commuted payment.

Amount contributed	$200,000.00
Income tax charitable deduction	86,848.00
Annual payments ($4,632.41 per quarter)	18,529.64
Taxed as follows each full year during payment period:	
Tax-free	2,828.81
Capital gain	11,315.20
Ordinary income	4,385.63
	18,529.64

$0 | **$18,529.64** | **$0**

Annual Payment

60 Age at contribution | **62** Age when payments begin | **70** Age when payments end

Gift annuity terminates and charity receives the residuum when Marie reaches age 70.

annuitant, and see Appendices 1, 2, and 3 for documentation for such an annuity.

Figure 19.3 pertains to an *inter vivos* gift annuity. It would also be possible for a donor to provide through his or her will for a testamentary deferred annuity, which the annuitant could commute to payments over a certain period.

Term-of-Years Gift Annuity

It is true that a gift annuity must initially be established for the life of one or two annuitants. According to IRC Sec. 501(c)(5), a gift annuity cannot be for a term of years or guarantee a maximum or minimum number of payments. However, a commuted gift annuity with installments for a certain number of years is effectively a gift annuity for a term of years. Such a gift annuity could be very useful when a person wants income for a certain period of time and it is not practical to establish a term-certain charitable remainder trust, or perhaps the beneficiary likes the simplicity and assurance of a gift annuity.

For example, a person like Marie Nelson in Figure 19.3, could use annuity payments for a term of years as a bridge between easing into retirement with a reduction of work hours and the start of required minimum distributions from a retirement plan, such as an IRA. The individual wants to delay distributions from a retirement plan so that they will be larger but wants to replace lost income due to a reduction of work hours. A gift annuity with payments during this interim period could be the solution.

Commuted Payment Gift Annuity vs. Term-Certain Charitable Remainder Annuity Trust

When the CMFR is very low, as it has been in recent years, it has been difficult to qualify charitable remainder annuity trusts that make payments to beneficiaries for life. There can be no more than a 5 percent probability that trust assets will be exhausted prior to the death of the beneficiaries, and when the interest rate for making that calculation is very low, many annuity trusts flunk the test, even when the payout rate is the lowest possible and beneficiaries are elderly. One way for the annuity trust to pass the probability test is to have payments made for a term of years rather than for life. Another way is to insert in the trust document contingency language that provides for early termination of the trust if the trust balance declines to a level determined by a stated formula (Revenue Procedure 2016-42), but that opens the possibility that payments could cease.

Charities that are authorized to issue gift annuities have often been proposing to risk-averse donors that they fund a gift annuity. It is simple to establish, payments are backed by the entire assets of the charity, and they are often taxed more favorably during the life expectancy of the recipient. Also, it might be the only viable alternative if the annuity trust would not pass the probability test, and the donor is not comfortable with contingency language about possible early termination.

One problem with the gift annuity is that payments must be for the lifetime of the annuitants (beneficiaries). However, there are circumstances, such as those of Marie Nelson in Figure 19.3, when it makes senses to receive larger payments for a stated period of time. Fortunately, with commutation, a gift annuity can make payments for a term of years, and that removes one of the disadvantages of a gift annuity.

Reasons for Caution

The IRS, prior to issuing Private Letter Ruling 200230018 dealing with a testamentary gift annuity funded with IRA assets, required that the gift annuity agreement contain language prohibiting a commutation of annuity payments. Similarly, in Private Letter Ruling 200152018, concerning the exchange of an income interest in a charitable remainder trust for a gift annuity, any commutation, prepayment, or refund would be prohibited by the gift annuity agreement.

While these rulings dealt with specific situations, they do suggest that the IRS might object to any gift annuity agreement that permits the commutation of life payments to installments over a period of time. Nevertheless, in Private Letter Ruling 200233023, which was issued after Private Letter Rulings 200230018 and 200152018, the IRS did explicitly approve a college annuity arrangement: an annuitant could "sell or assign" his or her annuity to the college "or to a third party in return for a lump sum payment or installment payments over several years." In light of these developments and in view of the fact that even favorable private letter rulings may not be relied upon as binding legal precedent, a donor contemplating establishment of a commuted annuity might find it prudent to obtain his or her own private letter ruling.

Finally, it should be noted that New York has indicated it will not permit a charity to issue a college annuity to a New York resident (or to a resident of any state if the charity is domiciled in New York). This position is based on the following analysis:

The rate requirements of New York Code Sec. §1110(a) appear to prohibit the issuance of a so-called "College Gift Annuity" in which the life annuity issued could be exchanged for a specific payment to be made annually for four years beginning with the annuitant's 18th birthday. The language of §1110(a) clearly contemplates that the charity will not obtain full benefit of the charitable gift until the annuitant's death. While the New York declaration mentioned the "College Gift Annuity," it would seem to apply to commuted annuities in general.

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Specimen Commuted Annuity Agreement

Serial Number _____________

ABC Charity

Gift Annuity Agreement
One Life – Donor is the Annuitant
Payments are Deferred

This Agreement is made between *[Name of Donor]*, of *[street address]*, *[city]*, *[state] [zip code]* (hereinafter "the Donor"), and ABC Charity, of 1234 Main Street, Seattle, Washington 98000 (hereinafter "Charity").

1. Transfer of Property by Donor
Charity certifies that the Donor, as an evidence of *[his/her]* desire to support the work of Charity and to make a charitable gift, on *[contribution date – month, day, year]* contributed to Charity the property described in Schedule A attached hereto, the fair market value of which is $*[amount]*.

2. Payment of Annuity
In consideration of the property transferred by the Donor, Charity shall pay to the Donor an annual annuity of *[amount]*, commencing *[date of first payment]* and continuing for the rest of *[his/her]* life. If the Donor dies before *[date of first payment]*, Charity is released from all obligations under this Agreement.

3. Payment Dates; First Installment
The annuity shall be paid in *[monthly, quarterly, semi-annual, annual]* installments of $*[amount]* at the *[beginning/end]* of the period. The first installment shall be payable on *[date of first payment]*.

4. Birth Date of Donor
The birth date of the Donor is *[month, day, year]*.

5. Irrevocability; Non-assignability
This annuity is irrevocable and non-assignable except under the following circumstances:

a. It may be assigned to Charity.

b. At any time between *[first possible date to commute payments]* and *[last possible date to commute payments]* the Donor may assign the annuity to Charity in return for *[monthly, quarterly, semiannual, annual]* installments to be paid at the end of each installment interval commencing on *[date of first payment]* and continuing for a period of not less than *[fewest number of years over which payments may be commuted]* years nor more than *[greatest number of years over which payments may be commuted]* years. The amount of each installment shall be such that the present value of the installments for the period of years selected shall equal

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APPENDIX 1

the present value of the life annuity if the assignment had not been made, based, in both cases, on the starting date of the annuity payments or installments and on the charitable midterm federal rate and mortality tables in effect at the time of the assignment.

6. Termination
Charity's obligation under this Agreement shall terminate with the final installment under Paragraph 5b, or with the regular payment or installment preceding the Annuitant's death.

7. Uses and Purposes of Gift
Upon Charity's satisfaction of its obligation under this Agreement, an amount equal to the residuum of the gift shall be used by Charity for *["its general purposes" if unrestricted; if restricted, state purpose]*.

8. Entire Agreement; Governing Law
This Agreement, together with Schedule A attached hereto, constitutes the entire agreement of the parties. This Agreement shall be governed by the laws of the State of *[state]*.

This Agreement is effective as of *[contribution date – month, day, year]*.

DONOR:

____

ABC CHARITY:
By:

____
[Name and title of officer]

ATTEST
By:

____

Commuted Annuity Agreement for Marie Nelson

See Figure 19.3 for the details of Marie Nelson's gift.

Serial Number 100

ABC Charity

Gift Annuity Agreement
One Life – Donor is the Annuitant
Payments are Deferred

This Agreement is made between Marie Nelson, of 101 First Avenue, Seattle, WA 98000 (hereinafter "the Donor"), and ABC Charity, of 1234 Main Street, Seattle, Washington 98000 (hereinafter "Charity").

1. Transfer of Property by Donor
Charity certifies that the Donor, as an evidence of her desire to support the work of Charity and to make a charitable gift, on July 1, 2023 contributed to Charity the property described in Schedule A attached hereto, the fair market value of which is $200,000.

2. Payment of Annuity
In consideration of the property transferred by the Donor, Charity shall pay to the Donor an annual annuity of $11,000, commencing September 30, 2025 and continuing for the rest of her life. If the Donor dies before September 30, 2025, Charity is released from all obligations under this Agreement.

3. Payment Dates; First Installment
The annuity shall be paid in quarterly installments of $2,750 at the end of the period. The first installment shall be payable on September 30, 2025.

4. Birth Date of Donor
The birth date of the Donor is June 4, 1963.

5. Irrevocability; Non-assignability
This annuity is irrevocable and non-assignable except under the following circumstances:

a. It may be assigned to Charity.

b. At any time between July 15, 2023 and July 31, 2023 the Donor may assign the annuity to Charity in return for quarterly installments to be paid at the end of each installment interval commencing on September 30, 2025 and continuing for a period of not less than eight years nor more than twelve years. The amount of each installment shall be such that the present value of the installments for the period of years selected shall equal the present value of the life annuity if the assignment had not been made, based, in both

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cases, on the starting date of the annuity payments or installments and on the charitable midterm federal rate and mortality tables in effect at the time of the assignment.

6. Termination

Charity's obligation under this Agreement shall terminate with the final installment under Paragraph 5b, or with the regular payment or installment preceding the Annuitant's death.

7. Uses and Purposes of Gift

Upon Charity's satisfaction of its obligation under this Agreement, an amount equal to the residuum of the gift shall be used by Charity for its general purposes.

8. Entire Agreement; Governing Law

This Agreement, together with Schedule A attached hereto, constitutes the entire agreement of the parties. This Agreement shall be governed by the laws of the State of Washington.

This Agreement is effective as of July 1, 2023.

DONOR:

____

Marie Nelson

ABC CHARITY:
By:

____

John Doe, Vice President of Finance

ATTEST
By:

____

Gift Annuity Agreement Between
[*Name of Donor*] and
ABC Charity

Schedule A

2000 shares of common stock of XYZ Company

APPENDIX 1

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COMMUTATION LETTER

APPENDIX 2

[Addressed to appropriate office of charity that issued the gift annuity.]

[Date]

Barbara Thompson, Director of Planned Giving
ABC Charity
1234 Main Street
Seattle, WA 98000

Dear Ms. Thompson:

I am named as annuitant of a gift annuity established with the ABC Charity (hereinafter "the Charity") on July 1, 2023. Per that annuity agreement, I am entitled to an annual annuity of $11,000 for life, commencing on September 30, 2025 and payable in quarterly installments of $2,750.00.

The annuity agreement permits me to assign to the Charity my right to life payments in return for "quarterly installments to be paid at the end of each calendar quarter commencing on September 30, 2025 and continuing for a period of not less than two years and not more than ten years." It further requires that "the present value of the installments for the period of years selected shall equal the present value of the life annuity if the assignment had not been made."

As of July 15, 2023, I exercise my right to assign to the Charity my life payments in return for installments over an eight-year period of time. The payments are to be made in quarterly installments at the end of each calendar quarter commencing on September 30, 2025. I understand that the amount of my payments shall be such that their present value equals the present value of the life payments I would have received, based, in both cases, on the starting date of the annuity payments or installments and on the Charitable Midterm Federal Rate and mortality tables in effect at the time of the assignment.

I further understand that at the end of the payment period or earlier if I die before the end of the payment period, the Charity is released from all obligations under the gift annuity agreement and that the Charity will use the remaining funds for the purposes stipulated by me in the gift annuity agreement.

Sincerely yours,

____

Marie Nelson

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Completed Summary of Accounting and Tax Information

APPENDIX 3

Summary of Accounting and Tax Information

Deferred Gift Annuity (Payments Have Been Commuted)

Name of donor: Marie Nelson
Gift completion date: July 1, 2022
Value of property contributed: $200,000.00

Annuity Payments

ABC Charity will pay an annuity to you ("the Annuitant") beginning September 30, 2025. Even though the Gift Annuity Agreement indicates that the amount of the annuity is $11,000.00 per year and that it is to be paid to the Annuitant for the balance of her life in quarterly installments of $2,750.00, the annuity amount will actually be $18,529.64 and it will be paid to you for a period of eight years in quarterly installments of $4,632.41. This is because on July 15, 2023, you, pursuant to Paragraph 5b of the Gift Annuity Agreement, exercised your right to assign the annuity to ABC Charity in return for annual installments paid at the end of each installment interval beginning September 30, 2025 and continuing for a period of eight years.

Note: If you die prior to September 30, 2025, ABC Charity will have no obligation to make any payments under the Gift Annuity Agreement. Similarly, if you die after September 30, 2025 but before payment of the final installment is made, ABC Charity will have no obligation to pay any further installments.

Income Tax Charitable Deduction

Your income tax charitable deduction of $86,848 may be used in 2023 to offset up to 30 percent of your adjusted gross income (determined without regard to any net operating loss carryback). If, due to this limitation, any part of the deduction cannot be utilized in 2023, you may carry the unused deduction forward for up to five succeeding tax years.

APPENDIX 3

Substantiating Your Deduction (Form 1040)

To substantiate your income tax charitable deduction, we recommend that you file one copy of the enclosed deduction calculation sheet and one copy of the Gift Annuity Agreement with your 2022 federal income tax return (IRS Form 1040).

Aside from arranging for annuity payments to be made to the Annuitant pursuant to the Gift Annuity Agreement, the present value of which is $120,350, you have received no goods or services from ABC Charity in return for the contribution referenced above. Keep your original Gift Annuity Agreement and this Summary of Accounting and Tax Information in your files as your acknowledgment of this gift.

Reporting Noncash Gifts (Form 8283)

Because the securities transferred were valued at more than $500, Section A of IRS Form 8283 (Noncash Charitable Contributions) will need to be completed and filed with your 2023 federal income tax return. You should seek your tax advisor's assistance in completing this form.

Tax Reports

For each year in which annuity payments are made, ABC Charity will prepare an IRS Form 1099-R showing the amount of taxable income received by the Annuitant during the year and then send the form to you by January 31 of the following year. Based on current IRS Expected Return Multiple Tables, the portions of each year's payments that will be taxable as ordinary income, that will be taxed as capital gain, and that will be considered a tax-free return of capital are indicated in the table at the top of the next page. If the IRS Expected Return Multiple Tables should change before your payments begin, it may be necessary to recalculate how the payments are taxed. However, the total amount the Annuitant receives would be unaffected.

Year	Payments	Total Annuity	Ordinary Income	Capital Gain	Tax-free Portion
2025	2	9,264.82	2,192.81	5,657.60	1,414.41
2026–2032	4	18,529.64	4,385.63	11,315.20	2,828.81
2033	2	9,264.82	2,192.90	5,657.60	1,414.32

Notice Concerning Tax and Accounting Information

This tax information is provided to you as a service of ABC Charity. Nevertheless, we are not providing legal or tax advice to you. You should give this information to your accountant or tax advisor and have that person confirm the accuracy of our computations and determine the scope of these and other reporting requirements that may apply.

Note: The above calculations were based on the July 2023 CMFR of 4.6 percent.

Chapter 20

SPECIAL SITUATIONS

Deduction When the Sole or Last Annuitant Dies Prior to End of Life Expectancy

An annuitant of a one-life annuity who dies before the end of his/her life expectancy – or the surviving annuitant of a two-life annuity who dies prior to the end of the applicable joint life expectancy – is entitled to a posthumous income tax deduction for the unrecovered investment in the contract. See IRC Sec. 72(b)(3)(A). The annuitant is entitled to this deduction for use on the final income tax return regardless of whether the annuitant or another person funded the annuity. See IRC Sec. 72(b)(3)(B).

Per Reg. Sec. 1011-2(a)(4)(iii), when a donor-annuitant dies before the end of life expectancy, any unreported gain is not taxed on the final income tax return.

Determining the Deduction Amount

The deduction equals the total investment in the contract that would have been returned over the annuitant's life expectancy minus the portion of that investment returned as of the date of death.

If cash was contributed for the gift annuity, the investment in the contract would have been the present value of the annuity payments at the time the annuity was established (the non-deductible portion of the contribution). The tax-free portion of each payment would have been a return of the investment in the contract.

If appreciated property was contributed, the investment in the contract would have been the portion of the cost basis allocated to the present value of the annuity payments. The portion of each payment that was tax-free, but not the portion that was reported as capital gain, would have been a return of the investment in the contract.

Suppose a donor, who is also the annuitant, contributes $100,000 cash for a gift annuity, and the gift value is $40,000.

Present Value of Payments	Gift Value
$60,000	$40,000

In this case, the present value of the payments is the investment in the contract. Whatever portion of that $60,000 had not been returned at the time of the donor's death could be claimed as a deduction on his or her final income tax return.

Now suppose the donor contributed stock having a fair market value of $100,000 and a cost basis of $20,000.

Present Value of Payments $60,000		Gift Value $40,000	
$12,000 Basis Allocated to Present Value	$48,000 Gain Allocated to Present Value	$8,000 Basis Allocated to Gift Value	$32,000 Gain Allocated to Gift Value

For the purpose of determining the deduction per IRC Sec. 72(b)(3)(A), only the $12,000 is the investment in the contract, and the deduction on the donor's final income tax return is limited to the portion of the $12,000 that had not been returned by the time of death. See Figure 20.1 for examples of the calculation.

A Contrary Position

Some authorities believe that the deduction on the final return would be the same whether the annuity was funded with cash or appreciated property. They contend that the deduction in the immediately-preceding example would be $60,000 minus both the total amount received tax-free and the total amount taxed as capital gain up to the date of the annuitant's death. In other words, the entire present value of the payments would be regarded as the investment in the contract, and each payment in excess of the interest portion that is taxed as ordinary income would be a return of the investment in the contract.

In support of this position, they point out that IRC Sec. 72 was drafted specifically for insurance companies to which premiums were always paid in cash, but that it would be consistent with IRC Sec. 170 and Reg. Sec. 1-1011 to allow a deduction for a gift annuity funded with appreciated property.

Although Sec. 72 may have been drafted with commercial annuities in mind, it has been applied by the courts and the IRS to situations in which the annuity was acquired with appreciated property. In one instance, Rev. Rul. 69-74, the definition of "investment in the contract" with reference to IRC Sec. 72 is specifically addressed. The ruling defines the term thusly:

"(4)The investment in the contract for purposes of Section 72 of the 1954 Code is the transferor's basis in the property transferred. Since the amount of the gain is not taxed in full at the time of the transaction, such amount does not represent a part of the premium or other consideration paid for the annuity contract..."

Because of this ruling, and because there is no indication that IRC Sec. 72, unlike IRC Sec. 170, makes an exception to the general tax law principle that a deduction is not allowed for an item that has not previously been taken into income, the authors believe the weight of the evidence favors the position that the deduction, in the case of an annuity funded with appreciated property, is limited to the total amount that would have been paid tax-free, if the donor had lived to life expectancy, minus the total of the tax-free amounts paid up to the time of death.

Deduction in the Case of Very Highly-appreciated Stock

Where the gift annuity is funded with stock having practically a zero cost basis, the payments would be a combination of ordinary income and capital gain with no tax-free component. Thus, there will be no capital to be returned and, consequently, no deduction in the event of premature death.

Calculating the Deduction

Some software programs display a schedule showing how annuity payments are taxed year by year. If this schedule is on file, the deduction can be calculated by totaling the tax-free amounts received up to the date of death and then subtracting that total from the investment in the contract. It may be that the software will determine the unrecovered investment in the contract, thus eliminating the necessity of doing these calculations manually.

Text continues on page 5.

Figure 20.1

Determining the Deduction Amount When Death Occurs Before Investment in the Contract Fully Returned Cash Contributions

On July 1, 2012, Martha B, whose date of birth was February 22, 1940, contributed $50,000 cash for a gift annuity. The annuity agreement stipulated that she would receive an annual annuity of $2,700 (based on a 5.4% annuity rate), paid in installments of $675.00 at the end of each calendar quarter. It further provided that the initial payment would be prorated from the date of the gift to the end of the quarter in which the gift occurred, and that the charity's obligation would cease with the payment next preceding the annuitant's death. A CMFR of 1.6% was used to calculate the charitable deduction and taxation of payments. Martha died on January 10, 2023.

Amount Contributed	$50,000.00
Charitable Deduction	- 19,349.00
Investment in the Contract (Present value of the annuity)	$30,651.00

Last Payment December 31, 2022

Portion of investment in the contract returned tax-free:

2012	1,057.05
2013	2,114.10
2014	2,114.10
2015	2,114.10
2016	2,114.10
2017	2,114.10
2018	2,114.10
2019	2,114.10
2020	2,114.10
2021	2,114.10
2022	2,114.10
Total	$22,198.05

Deduction on final return:

Investment in the contract	$30,651.00
Portion of investment in the contract actually returned	- 22,198.05
Deduction	**$ 8,452.95**

Continued on next page...

Figure 20.1 Continued

Determining the Deduction Amount when Death Occurs Before Investment in the Contract Fully Returned Contribution of Appreciated Stock

Suppose that Martha had funded the annuity with long-term appreciated stock having a fair market value of $50,000 and a cost basis of $20,000.

Amount contributed	$50,000.00
Charitable deduction	- 19,349.00
Present value of the annuity	$30,651.00

Portion of the present value of the annuity that is capital gain to be reported ratably:

$$\frac{\$30{,}651.00}{50{,}000.00} \times \$30{,}000 = \$18{,}390.60$$

Portion of the present value of the annuity to be returned tax-free:

$$\frac{\$30{,}651.00}{50{,}000.00} \times \$20{,}000 = \$12{,}260.40$$

This is the investment in the contract per IRC Sec. 72(b)(3)(A).

Tax-free amounts returned:		Capital gain reported ratably:	
2012	422.82	2012	634.23
2013	845.64	2013	1,268.46
2014	845.64	2014	1,268.46
2015	845.64	2015	1,268.46
2016	845.64	2016	1,268.46
2017	845.64	2017	1,268.46
2018	845.64	2018	1,268.46
2019	845.64	2019	1,268.46
2020	845.64	2020	1,268.46
2021	845.64	2021	1,268.46
2022	845.64	2022	1,268.46
Total	$8,879.22	Total	$13,318.83

Investment in the contract	$12,260.40
Portion of investment in the contract returned	8,879.22
Portion of investment in the contract not returned at time of death	$3,381.18
Capital gain to be reported over life expectancy	$18,390.60
Capital gain reported	13,318.83
Capital gain not reported at the time of death	$5,071.77
Deduction on final tax return	$3,381.18
Capital gain taxed on final return	-0-

If the annuitant died during the last year in which the investment in the contract was to have been returned, care must be taken in calculating the amount of unreturned investment in the contract at the time of death (as well as reporting on Form 1099-R the amount of the investment in the contract that was, in fact, returned during the year in which the donor died). See Figure 20.2 below.

Claiming the Deduction

The deduction for unreturned capital may be claimed as an itemized deduction (not a charitable deduction) on the decedent's final income tax return. This deduction has been reported under "other itemized deductions" on Schedule A of IRS Form 1040 and included in the listing of such deductions in the instructions for Schedule A. However, before claiming the deduction in any given year, the instructions for Schedule A should be checked to confirm where the deduction should be listed. See Appendix 1 for the latest Schedule A available as of this manual update. See Appendix 2 for the latest applicable instructions available as of this manual update.

Figure 20.2

Analysis If Final Payment Occurs in the Year during Which Return of the Investment in the Contract Is Completed

On July 1, 2013, Genevieve, whose date of birth was May 14, 1934, established a gift annuity with a contribution of $100,000 cash. In return, she would receive $6,600 each full year for the rest of her life, which, at the time she made her gift, was expected to end in 2023. Payments were to be made in quarterly installments, beginning with an initial installment on September 30, 2013.

During the years 2013 through 2022, $5,451.60 of each full year's payment was to be treated as a tax-free return of her investment in the contract. This worked out to $1,362.90 of each $1,650.00 quarterly installment.

At the beginning of 2023, the investment in the contract remaining to be returned was $2,178.80. Genevieve received her first quarterly installment on March 31, but then died on June 12 of 2023. The gift annuity agreement provided that the charity's payment obligation ceased with the regular installment preceding Genevieve's death. The amount of the unreturned investment in the contract that could be claimed as a deduction on her final income tax return was calculated as follows:

Investment in the contract to be returned during 2023	$2,178.80
Investment in the contract attributable to 1st quarter 2023 payment	- 1,362.90
Investment in the contract not returned during life	$ 815.90

Note that the amount of the investment in the contract attributable to the first quarter of 2023 was not one-fourth of the $2,178.80 remaining to be returned at the beginning of 2023. Rather, it was the same $1,362.90 that was attributable to each quarter during the years 2013 through 2023. This is considered to be the meaning of ratable reporting as described in Reg. Sec. 1.1011-2(a)(4). The conclusion is further supported by IRS Form 6252 pertaining to accounting for installment obligations, which asks the taxpayer to list "payments received during year."

Thus, the Form 1099-R prepared by the charity for 2023 will reflect a total of $1,650.00, with $1,362.90 treated as a tax-free return of the investment in the contract. The same basic approach would be used in reporting on Form 1099-R the amount of long-term capital gain returned to Genevieve in 2023, had she funded the annuity with long-term appreciated assets.

The instructions regarding the applicable line are expected to continue to refer to IRS Publication 529, and this Publication provides that if a retiree dies before his or her entire investment in an annuity contract is recovered, the unrecovered investment may be deducted on the retiree's final income tax return. In addition, IRS Publication 575 provides an example of how to treat the recovery of a husband's and wife's investment in a joint-and-survivor annuity if both spouses die before receiving a return of the entire investment amount. The publication provides that if the wife is the last to die and her death occurs before recovering the entire investment, the unrecovered cost may be claimed as a miscellaneous itemized deduction on the wife's final income tax return. The publication further provides that this deduction is not subject to the two-percent-of-adjusted-gross-income threshold.

Note: In some cases, the unrecovered investment may be so large, in comparison with the annuitant's income for the year in which he or she died, that the deduction can be used as the basis for claiming a net operating loss carry-back (or, in rare instances involving an annuitant survived by a spouse who is not an annuitant, a carry-forward).

See the Appendices to this chapter for copies of (1) Schedule A of Form 1040, (2) instructions regarding Line 16, and (3) an excerpt from Publication 529. For a sample letter a charity can send the personal representative of the annuitant's estate, see Appendix 15 of Chapter 5.

Changing the Frequency of Annuity Payments

Occasionally, an annuitant wants to change the schedule of payments. For example, an annuitant may want to receive quarterly payments rather than the semi-annual payments stipulated in the original agreement. Changing the payment frequency should be permissible so long as the new schedule of payments does not result in a higher present value of the annuity payments.

Whenever payment frequency is changed, whoever is administering the charity's gift annuities should be informed of the change. Moreover, the ideal timing is for the change to take effect with the first payment to be made in a calendar year, in order to simplify preparation of IRS Form 1099-R.

Less Frequent Payments

If payments will be made less frequently – quarterly instead of monthly, semi-annually instead of quarterly, etc. – and the total amount paid each full year remains unchanged, the present value of the payments will be lower. Since the annuitant receives no added benefit, it is unnecessary to change the total amount (though a slightly higher annual amount is supportable). See Figure 20.3.

Figure 20.3

Less Frequent Payments

Mildred N has been receiving monthly annuity payments of $100, and she wants to receive quarterly payments. She and the charity could execute an agreement containing the following wording:

Mildred N and [*Charity*] hereby agree that, effective January 1, 2024, the annual annuity amount of $1,200, currently paid in monthly installments of $100 at the end of each calendar month, shall be paid in quarterly installments of $300 at the end of each calendar quarter. The first quarterly payment under the new schedule shall be made on March 31, 2024.

More Frequent Payments

If payments will be made more frequently, the present value will be higher if the total amount paid each full year remains unchanged. This is not permitted because it would result in a smaller

Figure 20.4

Methodology for Calculating Annuity Amount When Payment Frequency Changes

Margaret, whose date of birth was October 27, 1938, contributed $100,000 for a gift annuity on July 1, 2008. She has been receiving an annual annuity of $6,100 paid in semi-annual installments of $3,050 at the end of each calendar period. On July 1, 2023 she entered into an agreement with the charity to change to quarterly payments, with the first quarterly installment due on September 30, 2023. What is the amount of the quarterly installment she should receive from the charity?

1. Determine the present value of $1 per year, paid in semi-annual payments, over her life expectancy, using the July 2023 CMFR of 4.6%. In Margaret's case that will be 5.2651. (Your planned giving software will show you this number—just enter as the gift date the date the payment frequency change becomes effective. You can also find these factors in IRS Publication 1457.)

2. Determine the present value of $1 per year, paid in quarterly installments, over her life expectancy, again using the July 2023 CMFR of 4.6%. In Margaret's case that would be 5.2948.

3. Divide the factor for semi-annual payments by the factor for quarterly payments and multiply the result by $6,100. The answer will be the total annual annuity Margaret will receive once the payment frequency is changed to quarterly.

$$\frac{5.2651}{5.2948} \times \$6{,}100 = \$6{,}065.78$$

4. Divide the new annual annuity amount by the number of installments under the new frequency arrangement (4 in the case of Margaret).

$$\$6{,}065.78 \div 4 = \$1{,}516.45$$

This is the amount of the quarterly payment that Margaret will receive.

Note: Use the CMFR for the month frequency is changed, 4.6% in this case. The lower the CMFR, the smaller the reduction in the annual annuity when payments become more frequent.

charitable deduction than originally claimed. Consequently, when the annuity payments become more frequent, it is necessary to reduce the total annual amount to maintain an equivalent present value. See Figures 20.4 and 20.5.

In calculating the equivalent present values, use the CMFR for the month in which the change in frequency becomes effective.

Timing of Payments

If an annuitant wants to alter the timing of payments – for instance, receive monthly payments on the 15th rather than the end of the month – it would again be necessary to reduce the total annual payment to maintain an equivalent present value if the annuitant receives payments at an earlier date than the date specified in the agreement, which was used in calculating the original charitable deduction.

However, if the annuitant and the charity agree to have payments made on a later date than the date specified in the agreement – for example, quarterly payments on March 31, June 30, September 30, and December 31, instead of on March 15, June 15, September 15, and December 15, as stipulated in the agreement – then no

Figure 20.5

Change to More Frequent Payments

Harold J, age 74, has been receiving quarterly installments of $3,922.50 from his annuity. In the future he wants to be paid in monthly installments. Currently, payments total $15,690.00 per year ($3,922.50 × 4). To maintain an equivalent present value, the total payments made each year must be reduced to $15,631.77. Thus, monthly installments will be $1,302.65. To make the change, Harold and the charity could execute an agreement containing the following wording:

> Harold J and *[Charity]* hereby agree that, effective July 1, 2023, the annual annuity amount paid to Harold J shall be $15,631.77, and it shall be paid in equal monthly installments of $1,302.65 at the end of each calendar month. The first monthly payment under the new schedule shall be made on July 31, 2022.
>
> They further agree that this adjustment in the annual annuity amount and payment frequency does not change the present value of the annuity, because the present value of an annual annuity of $15,631.77 paid in monthly installments of $1,302.65 at the end of the month is equal to the present value of an annual annuity of $15,631.77 paid in quarterly installments of $3,922.50 at the end of the quarter. The calculations are based on the July 2023 IRC Sec. 7520 rate (CMFR) of 4.6%.

reduction in the annual payment should be necessary. That is because the annuitant would not be accelerating receipt of money, which would slightly increase the present value of the payments.

Taxation of Payments

When the payment frequency is changed and, as a consequence, the annual annuity is somewhat smaller, reduce the ordinary income (interest) portion of the annual annuity by the amount of the reduction. The portion that is a tax-free return of capital and the portion (if any) that is capital gain do not change. See the example in Figure 20.6.

Contributing the Right to Annuity Payments to the Charity

Some annuitants, discovering that they do not need the annuity payments, are willing to forfeit permanently their future right to them. They may reach this conclusion on their own or they may be prompted by the charity to make this decision in situations where the principal backing the annuity is nearly or completely exhausted. This is to be contrasted with the option an annuitant has to instruct the charity to retain on a temporary or indefinite basis each regular payment as it comes due. That option is discussed in Chapter 5.

Once an annuitant assigns his or her right to payments, the charity's obligation under the contract will terminate, and it will be free to use the residuum.

As indicated in Chapter 2, a gift annuity agreement will typically include language such as the following: "This annuity is irrevocable and non-assignable, except that it may be assigned to the charity." Clearly, this wording would allow an annuitant to assign his or her interest to the charity. If, however, the agreement were to say simply, "This annuity is irrevocable and non-assignable," then an assignment likely would not be possible, unless legal counsel for the annuitant and for the charity concluded that an exception

Figure 20.6

Effect of Change of Payment Frequency on Taxation of Payments

On July 1, 2023, Robert, whose date of birth was June 6, 1939, contributed $100,000 cash for a gift annuity and received $5,700 each year paid in semi-annual installments of $2,850. His payments during each full year of life expectancy were taxed as follows:

Tax-free Return of Capital	$4,605.60	
Ordinary Income	1,094.40	
Total Annual Annuity Amount	$5,700.00	paid semi-annually

If on July 1, 2023 he changed his payment frequency to quarterly, his annual annuity amount would have been adjusted and taxed as follows:

Tax-free Return of Capital	$4,605.60	
Ordinary Income	1,062.51	
Total Annual Annuity Amount	$5,668.11	paid quarterly

If Robert had funded his annuity with securities having a fair market value of $100,000 and a cost basis of $40,000, his annual annuity amount would have been taxed as follows prior to changing from semi-annual to quarterly payments:

Tax-free Return of Capital	$1,842.23	
Capital Gain	2,763.37	
Ordinary Income	1,094.40	
Total Annual Annuity Amount	$5,700.00	paid semi-annually

After the payment frequency was changed to quarterly, his annual annuity amount would have been taxed in this manner:

Tax-free Return of Capital	$1,842.23	
Capital Gain	2,763.37	
Ordinary Income	1,062.51	
Total Annual Annuity Amount	$5,668.11	paid quarterly

By the end of Robert's life expectancy, all of his capital (cost basis of the present value of his payment) will have been returned, and all of his taxable capital gain will have been reported. Thereafter, the payments will be entirely taxable as ordinary income whatever the payment frequency.

Note that only the amount of ordinary income (the interest portion of annuity payments) is affected by the change of frequency.

permitting assignment of the annuity interest to the charity could be inferred or would at least be legally defensible.

The Amount of the Gift

The amount of the gift is the present value of the remaining annuity payments as of the date of assignment.

This is computed by entering into a planned giving software program the original amount contributed, the annuity rate, the payment frequency, the date(s) of birth of the annuitant(s), the date of the assignment as the gift date, and the CMFR for the month of the assignment or for either of the two immediately-preceding months. See IRC Sec. 7520(a) which refers to "the value of any annuity" and "any interest for life or a term of years."

The amount of the gift would be entered in the charity's contribution totals, and presumably donor recognition would be based on it.

The Amount of the Charitable Deduction

The income tax charitable deduction that can be claimed by a donor is not always the same as the amount of a gift (i.e., the benefit to a charity). Suppose, for example, that a donor on November 4, 2023 contributed outright stock valued at $30,340, which he or she had purchased on February 8, 2023 for $24,000. The amount of the gift would be $30,340. However, because the gain in this stock is short-term, the income tax charitable deduction would be limited to cost basis, which is $24,000.

In the case of an assignment to the charity of the right to annuity payments, the income tax charitable deduction is the lesser of the present value of the annuity and the unreturned investment in the contract. If the gift annuity was funded with appreciated property, the unreturned investment in the contract includes any taxable long-term capital gain that has not yet been distributed.

As explained above, when an annuitant dies before the end of life expectancy, the deduction that can be claimed on that person's final income tax return is limited to the cost basis of the unreturned investment in the contract, in other words to the amount that would have been returned tax-free had the annuitant lived to the end of life expectancy. Thus, it seems inconsistent to conclude that in the case of a lifetime assignment, there would be a deduction for the entire unreturned investment in the contract, while, if the annuitant dies before the end of life expectancy, the deduction is limited to the cost basis of the unreturned investment in the contract. The reason is that IRC Sec. 170 governs the former while IRC Sec. 72 governs the latter.

See Figure 20.7 for illustrations of how to determine the charitable deduction when an annuity interest is assigned.

The value of the annuity interest is affected by factors that may change. For example, (1) a decrease in the CMFR between the date the annuity was established and the date it was assigned and (2) issuance of new mortality tables with longer life expectancies between the establishment of the annuity and assignment of the annuity interest, would increase the value of the annuity interest. Some argue that an increase in the value of the annuity interest because of such factors should increase the charitable deduction because the annuity is a capital asset. However, we do not find such arguments to be persuasive, and the position taken in this manual is:

- The income tax deduction for an assignment of an annuity interest is the lesser of the unreturned investment in the contract and the current value of the annuity interest.
- The investment in the contract includes the capital gain in those assets that constitute the investment in the contract.
- If an assignment is made after the entire investment in the contract has been returned, there will be no charitable deduction.

Figure 20.7

Calculating the Deduction When an Annuity Interest Is Assigned

Scenario 1 – Gift annuity funded with cash

Minoru, whose date of birth was August 13, 1942, contributed $100,000 cash for a gift annuity on October 1, 2012. The charity issued a gift annuity that would pay him $5,100 per year in quarterly installments. Based on the applicable August 2012 CMFR of 1.2%, Minoru's charitable deduction was $34,693, and his investment in the contract was $65,307. Having decided that he did not need the payments from this annuity, and wanting to accelerate the gift, he assigned his right to payments to the charity effective July 1, 2023. His last quarterly payment was received in June 30, 2023.

As of July 1, 2023, the value of his annuity interest was $33,715. This was based on the July 2023 CMFR of 4.6%.

Original investment in the contract	$65,307.00
Investment in the contract returned through June 30, 2023	44,134.12
Unreturned investment in the contract as of 7/1/2022 which would be all tax-free return of capital	21,172.88
Since the unreturned investment in the contract is less than the value of the annuity interest ($33,715), based on the July 2023 CMFR of 4.6%, the charitable deduction is	$21,172.88

Scenario 2 – Gift annuity funded with long term appreciated securities

The facts are the same except that Minoru's original contribution was long-term appreciated securities with a value of $100,000 and a cost basis of $40,000.

Original investment on the contract	$65,307.00
Investment in the contract returned through July 1/2023, which would consist of $26,480.48 of capital gain plus $17,653.64 of tax-free return of capital	44,134.12
Charitable deduction	$21,172.88

Pre-1987 Gift Annuities

In the case of annuities established prior to 1987, the portion of payments that is a tax-free return of capital continues for the entire life of the annuitant. Thus, if the annuitant lives past life expectancy, the total amount received tax-free may exceed the investment in the contract. If a pre-1987 annuity is assigned to the charity after the annuitant has outlived life expectancy, determined at the time of the gift, probably no deduction would be allowed because there is no unreturned investment in the contract. However, in the unlikely event that such an annuity was assigned before all of the investment in the contract had been returned, a deduction may be allowable for the lesser of the present value of the remaining annuity payments and the unreturned investment in the contract.

Contribution Limitation

There are no rulings or case law addressing the contribution ceiling for the deduction resulting from the assignment of a gift annuity. If the annuity was funded with cash, and the deduction, as we have concluded, is limited to the unreturned capital, it would seem that the person is making a gift of cash. Under the Tax Cuts and Jobs Act, the ceiling for gifts of cash was raised to 60 percent of adjusted gross income. However, the 60 percent ceiling might be construed to apply only to outright gifts of cash because with the assignment a person is contributing an annuity interest, not the cash itself. Even if the 60 percent ceiling is not applicable, it would seem that a strong case could be made for the 50 percent ceiling since one is giving a non-appreciated asset. On the other hand, if the annuity was funded with appreciated property, the 30 percent ceiling may apply because the unreturned investment in the contract given to the charity would consist partly of capital gain.

When contributing an annuity interest results in a deduction of more than $5,000, is it necessary to secure a qualified appraisal, complete Part B of Form 8283, and file it with the Form 1040 on which the deduction is claimed?

The answer is “yes” even if the annuity was originally funded with cash or publicly-traded securities. If the deduction exceeds $500 and is not more than $5,000, it can be reported on Part A of Form 8283. However, if it exceeds $5,000, an appraisal will be required and Part B of the form must be completed instead of Part A. Even though a charity’s planned giving officer may be able to calculate the value of the annuity interest on planned giving software, it will be necessary to retain someone independent of the charity to do the appraisal and sign Form 8283. Any accountant, attorney, planned giving consultant, or other professional who regularly determines present values of annuity interests and deductions for charitable gift annuities, and who is unrelated to the donor and the charity, could be a qualified appraiser, so long as other criteria are met.

It is not the appraiser’s duty to determine the allowable deduction but rather the present value of the annuity payments. That value will be entered on Form 8283, and the deduction claimed will be determined in accordance with applicable rules. Regardless of whether Part A or Part B is completed, if the deduction is less than the present value of the annuity payments, the donor should attach to Form 8283 a statement explaining how the deductible amount was determined.

Note: Even when the deduction is less than $5,000, if this is due to the fact that the present value of the annuity payments is something more than the unreturned investment in the contract, then it is advisable for the donor to have some type of documentation to support the fact that the unreturned investment in the contract is indeed less than the present value of the annuity payments and is therefore the measure of the deduction.

Can a non-donor annuitant assign his or her annuity interest to the charity, if the donor has retained the right to revoke the annuitant’s annuity interest? If such an assignment is possible, is a charitable deduction allowed and,

if so, who would be entitled to it, the donor or the annuitant?

The annuitant is entitled to the payments so long as the power of revocation is not exercised, and he or she may convey to the charity the contingent right to the payments. The charity, relieved of any future payment obligation, would be free to use the reserves held for the annuity. The donor is powerless to prevent this outcome, and, at most, is merely able to bring about the same outcome by exercising a power of revocation.

Assuming the donor had retained a power of revocation, the annuitant's interest would have no value, for it could be terminated at any moment. On the other hand, if the donor had not retained a power of revocation, the annuitant should be able to claim a deduction equal to the lesser of the unreturned capital or the present value of the payments for the duration of the donor's life expectancy.

The donor would not be entitled to a deduction in any case. For one thing, the donor did not voluntarily transfer money or property, so the requirement of a charitable gift was not met. Also, the donor never had a right to the payments and thus would not be giving up anything of material value.

If at the time an annuitant decides to contribute the annuity interest its present value has risen to something greater than or equal to 90 percent of what was originally donated for the gift annuity, is the contribution permissible?

Yes. Even though – as noted in Chapter 2 – at the time a gift annuity is established the present value of the annuity interest must be less than 90 percent of the value of the assets donated, this requirement is of no relevance thereafter. A scenario such as the one described in the question will be actually quite likely in the case of a deferred annuity or in the case of a significant decrease in the CMFR during the period since the gift annuity was established.

Can only one annuitant of a two-life annuity assign his or her interest to the charity?

Yes, either annuitant can assign his or her interest. If an annuitant has a vested interest – i.e., the donor did not retain a power to revoke the annuitant's right to payments – then the annuitant making the assignment should be entitled to income tax and gift tax charitable deductions.

Suppose, for example, that A is the first annuitant and B is the successor annuitant, and that no power of revocation over either of their annuity interests was retained. If B assigns her interest, she will make a gift equal to the present value of the annuity payments measured by A's and her joint life expectancy minus the present value of the annuity payments measured only by A's life expectancy. The actual amount of the deduction, per the above discussion, will be the lesser of the unreturned capital attributable to the value of her successor annuity interest and the value of her successor interest.

Can an annuitant contribute only a portion of his or her annuity interest?

In general, a charitable deduction is not allowed for a contribution that is less than the donor's entire interest in the property transferred to the charity. IRC Sec. 170(f)(3)(A). However, there are certain exceptions to this general rule, one of which is a gift of an undivided portion of a donor's entire interest. IRC Sec. 170(f)(3)(B)(ii). A gift of a fractional portion – 50 percent, for example – of a donor's entire interest should fall within this exception, provided the gift annuity was not established in the first place to avoid the partial interest rule. If the gift annuity is governed by California law, however, then the charity should first contact the Department of Insurance to determine what amount, if any, may be withdrawn from the California trust account.

See Appendix 4 for sample language for assigning an annuity interest to charity.

Assignment of the Annuity Interest of a Flexible Deferred Gift Annuity

If the payments have already begun, everything in the immediately-preceding pages would apply. If the payments have not yet started, two steps are recommended.

First, the annuitant (or annuitants) should elect a payment-beginning date by duly notifying the charity.

Second, after electing this date, the annuitant(s) should proceed with the assignment.

If no payment-beginning date has been elected at the time of the assignment, the appraiser will have to choose one when calculating the value of the annuity interest. A case can be made for selecting the earliest possible commencement date remaining because the annuitant had a right to begin payments on that date. Thus, the most conservative approach would be to base the appraisal on whatever commencement date would have resulted in the lowest value of the annuity interest since the annuitant might have chosen that date. If this latter methodology is followed, the value of the annuity interest could be less than the unreturned investment in the contract, resulting in a reduced charitable deduction. To avoid uncertainty about the proper methodology and to assure the largest possible deduction, the annuitant should select a commencement date in advance of the assignment.

Cash-out of a Gift Annuity

This should be possible provided the cash settlement does not exceed the present value of the annuity payments determined as of the date of settlement. The annuitant would be exchanging one property right (fixed payments for life) for another property right (a cash sum) of equivalent or lesser value. Here, as in the case of the sale of the income interest of a charitable remainder trust, it is advisable to secure an affidavit from a physician certifying under penalties of perjury that the annuitant has no known medical condition that could result in a shorter-than-normal life expectancy.

In certain private letter rulings, dealing with the so-called "college annuity" (PLR 200233023, for example), the IRS did approve an annuity contract under which an annuitant could "sell or assign" his or her annuity interest to the charity "or to a third party in return for a lump sum payment or installment payments over several years." However, in Private Letter Ruling 200152018, concerning the exchange of an income interest in a remainder trust for a gift annuity, the IRS required that any commutation would be prohibited in the gift annuity agreement. Apparently, the IRS was specifically concerned about an indirect conversion of the income interest of the trust to either a lump sum payment or payments for a limited period of time, for in the later private letter ruling dealing with the college annuity, a commutation provision was approved. A cash-out of the annuity would be consistent with that position.

If the annuity was funded with cash, the amount of the lump sum payment in excess of the unreturned capital would be taxed as ordinary income. If the annuity was funded with appreciated property and the gain was being reported ratably because the donor was the annuitant, then the lump sum payment would consist of (1) capital gain to the extent of the capital gain not yet reported and (2) tax-free return of capital to the extent of the portion of the cost basis allocated to the investment in the contract that had not yet been paid, with (3) the balance being taxed as ordinary income. Note: Any portion of the lump sum not consisting of a return of capital could be subject to the 3.8 percent net investment income surtax, depending on the annuitant's tax situation.

Finally, it should be possible for an annuitant to receive a lump sum in exchange for only a

Text continues on page 16.

Figure 20.8

Gift Annuity Cash-out — One Annuitant

Suppose that Minoru in the previous Figure 20.7 wanted to receive a lump sum instead of payments for life, and suppose further that he had originally funded the gift annuity with the securities having a value of $100,000 and a cost basis of $40,000. On July 1, 2023 he executed an agreement with the charity under which he received a cash settlement of $33,715 in exchange for the present value of his annuity interest at the time. The July 2023 CMFR of 4.6% was used in valuing the annuity interest. The charity might have insisted on some lesser amount for the cash out, say $30,000 — but in this case it agreed to pay the full present value as of July 1, 2023.

Original investment in the contract	$65,307.00
Cash settlement paid to Minoru	33,715.00
Capital gain to be reported ratably over Minoru's life expectancy	39,184.20
Capital gain reported through June 30, 2023	26,480.48
Unreported capital gain	$12,703.72
Portion of investment in the contract to be returned tax-free over Minoru's life expectancy	26,110.98
Amount returned through June 30, 2023	17,653.64
Unreturned portion	$ 8,457.34
Lump sum paid to Minoru taxed as follows:	
Capital gain	$12,703.72
Tax-free	8,457.34
Ordinary income	12,553.94
	$33,715.00

WARNING: When the CMFR is low, the present value of an annuity interest will be inflated. Thus, it may not be in the charity's interest to pay a cash settlement for that present value. Instead, it may wish to negotiate a lower sum or postpone the transaction until the CMFR increases.

If the annuitant agrees to a cash payment that is less than the present value of the annuity interest, he or she will effectively have made a bargain sale and should be entitled to a deduction for the difference between the present value of the annuity interest less the cash payment reduced by any ordinary income attributable to that difference.

portion of his or her interest. The lump sum would be taxed on a pro rata basis with respect to what would be taxable if the entire interest were cashed out. For example, if one-half of the annuity interest were cashed out, the amount of the lump sum payment in excess of one-half of any unreturned capital would be taxed as ordinary income and/or capital gain. See Figure 20.8.

If an annuitant under age 59½ cashes out a gift annuity, a 10 percent penalty tax may apply to the taxable amount per IRC Sec. 72(q).

The charity will provide the annuitant with a Form 1099-R showing the taxable annuity payments received during the year of the cash-out. While it might include on that 1099-R the taxable distribution resulting from the cash-out, it would probably be preferable to issue two Form 1099-Rs, one for annuity payments received during the year when the cash-out occurred, and one for the cash-out distribution.

See Appendix 5 for sample language to be used when cashing out a gift annuity.

Contributing the Income Interest in a Charitable Remainder Trust for a Gift Annuity

Private Letter Ruling Authorizing the Exchange

In Private Letter Ruling 200152018, the IRS permitted the trustor (who was also the income beneficiary) of a charitable remainder unitrust to transfer his income interest to the charitable remainder beneficiary in exchange for a gift annuity. The annuity payments were to be made from the charity's general funds, the donor of the income interest was to be the sole annuitant, the annuity would be non-assignable except to the charity, and a commutation, prepayment, or refund would be prohibited by the gift annuity agreement.

While this private letter ruling dealt specifically with a gift of the income interest in a charitable remainder unitrust, the contribution of the income interest in a charitable remainder annuity trust for a gift annuity is conceptually the same and should also be permitted.

Determination of the Gift Annuity Payments

The annual annuity will be the annuity rate offered by the charity multiplied by the present value of the income interest in the trust, not by the fair market value of trust assets as some have mistakenly assumed. Suppose that at the time the income interest in the trust is contributed, the fair market value of trust assets is $600,000, the present value of the income interest is $400,000, and the present value of the remainder interest is $200,000. The annual annuity is $400,000 multiplied by the annuity rate.

Choosing the Annuity Rate

If the charity pays the American Council on Gift Annuities (ACGA) rate, the annual annuity will often be less than the beneficiary was receiving from the trust. To produce an annual annuity equal to, or greater than, the current trust income, the charity may have to pay a rate higher than the ACGA rate. That does not put the charity at risk if the annual annuity, as a percentage of total trust assets distributed by the charity, does not exceed the ACGA rate.

Assume, for example, that the ACGA rate at the time of the exchange is 7 percent, and that the trust income for the year is $600,000 x 6 percent (the trust payout rate), which equals $36,000. If the charity pays the ACGA rate, the annual annuity will be $400,000 (the present value of the income interest in the trust) x 7 percent, which equals $28,000, and the donor is unlikely to be interested in the exchange.

Suppose the charity pays an annuity rate of 9 percent. The annual annuity will then be

9 percent x $400,000, which equals $36,000 – the same amount as the current trust payments. Based on the amount actually received from the trust, the annuity rate is 6 percent, which is actually lower than the rate suggested by the ACGA.

Note: In choosing an annuity rate, the charity must ensure that the present value of the annuity payments is less than 90 percent of the present value of the income interest of the trust. See IRC Sec. 514(c)(5)(A).

If the annuity is to be established in a regulated state to which the charity has submitted a schedule of rates, it cannot offer a rate higher than the rate listed on the schedule for a person of the donor's age. However, if all of the assets from the termination of the charitable remainder trust (or the severance of units from a pooled income fund) will be added to the reserve fund, it may be acceptable to the state to show, for state reporting purposes, those assets as the amount of the gift. In that case, the rate, as a percentage of the assets added to the gift annuity reserve fund would be lower than the rate on the submitted schedule. Of course, this should be done pursuant to the donor's knowledge and consent.

Allowance of an Income Tax Deduction

The donor will be allowed an income tax deduction for the amount by which the date-of-gift present value of the income interest of the trust exceeds the present value of the annuity payments. IRS Form 8283 must be filed if the deduction claimed exceeds $500 and an independent appraisal will be required if it exceeds $5,000. To qualify for a deduction, the income interest in the trust must not have been created to avoid the partial interest rules of IRC Sec. 170(f)(3)(A). In other words, the trust must not have been created with the intention of giving the income interest.

Allowance of a Gift Tax Deduction

The donor will be entitled to a gift tax deduction under IRC Sec.2522(a), to the extent the date-of-gift present value of the income interest of the trust exceeds the present value of the annuity payments. In the case of a Net-Income Charitable Remainder Unitrust (NICRUT) or a Net-Income with Make-up Provision Charitable Remainder Unitrust (NIMCRUT) where a couple have contributed jointly-owned or community property and are joint-and-survivor beneficiaries, or where a donor has contributed separate property and named a successor beneficiary, each beneficiary should disclaim his or her successor interest prior to the assignment. Otherwise, the assignment will not qualify for the gift tax charitable deduction.

Recognition of Capital Gain

Even if the trust realized capital gain in prior years that has never been distributed to the income beneficiary and taxed under the four-tier system, that person will not be taxed on any of the gain at the time the income interest in the trust is contributed for a gift annuity.

Taxation of Annuity Payments

According to IRC Sec. 1001(e)(1), the basis of the income interest in a trust will be disregarded. If the income interest is in a trust that has been in existence for more than a year (which will normally be the case), the income interest will be treated as a long-term capital asset with a zero basis. Thus, the donor of the income interest (assuming he or she is the annuitant) will have long-term capital gain equal to the present value of the income interest, and it can be reported ratably as provided in Example 8 of Reg. Sec. 1.1011-2(c).

This means that the payments will be partly ordinary income and partly capital gain for the duration of the donor's life expectancy. Then they will become entirely ordinary income. No part of the payments will be tax-free. When operating a planned giving software program, the present value of the income interest of the trust should be entered as the amount contributed and "0" as the cost basis.

Procedure

To complete the exchange of an income interest in a charitable remainder trust for a gift annuity, the following steps must be taken:

1. If the donor has named more than one remainder beneficiary, or has named a remainder beneficiary other than the charity with which he or she wishes to establish the gift annuity, and has reserved the right to change charitable beneficiaries, the donor must sign a declaration designating the charity that will issue the gift annuity as the sole, irrevocable remainder beneficiary of the trust.
2. The donor (or income beneficiary if different from the donor) obtains a physician's statement attesting to his or her life expectancy being no shorter than average, and also provides his or her own statement to this effect. This action was mentioned in Private Letter Rulings 200725044 and 200733014, among others.
3. The donor (or income beneficiary if different from the donor) executes a form assigning the income interest to the charity. (Care must be taken to ascertain and conform with applicable state law regarding the assignment of an interest in a trust and subsequent termination of the trust.)
4. The gift annuity agreement is drafted and signed per the charity's standard procedure. The agreement should specifically state that "*[Charity]* shall pay from the general fund of *[Charity]* an annual annuity of $*[amount]*." Also, the agreement should contain a statement indicating that in no event shall the annuitant's interest be commuted. (These were provisions in the gift annuity agreement that Private Letter Ruling 200152018 approved.)
5. The income and remainder interests having merged, the trust is terminated and all of the assets are transferred to the charity.
6. The trustee files a final tax return for the charitable remainder trust.

A risk averse donor might be interested in exchanging a life interest in a charitable remainder unitrust for a gift annuity. Having seen unitrust payments decrease as the market value of trust assets has declined, this donor may prefer to lock in future payments. If a donor has an annuity trust that is likely to become exhausted before the end of the donor's life expectancy, such an exchange would assure payments for life, though the annuity payments would likely be smaller than the payments from the annuity trust. The exchange could also make sense when a person is income beneficiary of a small charitable remainder annuity trust or unitrust, and administrative expenses as a percentage of trust assets are quite high because of minimum fees. See Figures 20.9 and 20.10 for examples.

Multiple Trust Beneficiaries

The contribution of an income interest in a charitable remainder trust for a gift annuity becomes more complicated when there are two or more income beneficiaries.

If a trust makes payments to a husband and wife jointly, and then to the survivor, then the two of them acting together should assign simultaneously the totality of their interests in the trust to the charitable beneficiary.

If a trust provides for two successive income beneficiaries - for example, the donor and her sister - and the donor did not retain the right to revoke the successor beneficiary's interest, the beneficiaries would each assign their respective interests, either for a two-life annuity, or for two one-life annuities. Each would be entitled to an income tax charitable deduction, though for unequal amounts. Depending on how the transaction is structured and the value of their respective interests, either or both might have to report a taxable gift to the other.

If the donor has retained a testamentary right to revoke the successor beneficiary's income interest, the successor beneficiary probably would

Text continues on page 21.

Figure 20.9

The Underperforming NIMCRUT
(Net income with make-up provision charitable remainder unitrust)

In 2000, Manuel and Margarita, whose dates of birth were, respectively, July 14, 1943 and April 9, 1945, transferred some of their community property for a NIMCRUT, and named themselves as joint and survivor beneficiaries and a certain charity as the remainder beneficiary. The trust was not "flipped" to a standard unitrust, and their income, paid quarterly, has been approximately 2.0% of trust assets, well below the 6.0% payout rate.

On July 1, 2023, they assigned their entire income interest to the remainder beneficiary in exchange for a gift annuity, from which they receive quarterly payments. Before doing so, each of them disclaimed his or her successor interest to assure a gift tax charitable deduction. At the time of the assignment the fair market value of trust assets was $620,000.

The present value of the income interest they assigned was $321,228.20 based on the July 2023 CMFR of 4.6%, and the charity agreed to pay them an annuity rate of 8.0%. Thus, their annual annuity will be $25,698.26 ($321,228.20 x 8.0%), which is larger than the $12,400 they were receiving from the trust.

The annual annuity, as a percentage of trust assets actually received by the charity, is only 4.14% ($25,698.26 ÷ 620,000), which is well below the current ACGA rate of 6.4%. Upon the merger of the income and remainder interests, the trust terminated, and the charitable organization had $620,000, a portion of which was available for current needs after adding the required amount to the gift annuity segregated reserve fund.

Manuel and Margarita, in addition to increasing their annual payments, received an income tax charitable deduction of $79,150.63, also based on the July 2023 CMFR of 4.6%. Their payments will be partly ordinary income and partly capital gain. No part of the gift annuity payments will be tax-free because the income interest of the trust, which was contributed for the gift annuity, is construed to be a capital asset with a zero basis. See IRC Sec. 1001(e).

Previously, in Private Letter Rulings 200725044 and 200733014, the IRS had taken the position that the income interest of a net-income charitable remainder unitrust must be valued using the lesser of the CMFR for the month of the valuation or the stated payout rate. In the case of Manuel's and Margarita's net-income unitrust, this would have reduced the value of the income interest. Consequently, the size of their annuity payments would also have been reduced.

The Protecting Americans from Tax Hikes (PATH) Act, signed into law in December of 2015 clarified the rule for the early termination of a net-income charitable remainder trust. The clarification was that the present value of the income interest of a net-income charitable remainder unitrust would be determined the same way as for a standard charitable remainder unitrust, in both cases basing the deduction of the stated payout percentage.

Figure 20.10

Trust Payout Rate Is Too High

A 9.0% payout rate for his unitrust seemed reasonable to John when the stock market was booming. Gradually he has realized that the rate was too high. The combination of the decline in stock values and the 9.0% payout rate had caused his trust value to decrease from its original $1,000,000 to $750,000. He was concerned that the charitable organization he had named as remainder beneficiary would receive far less than he intended. That prompted him to ask if he could reduce the payout rate of the trust from 9 percent to 5 percent.

He was advised that the statute and regulations governing charitable remainder trusts did not permit an alteration of the payout rate of the existing trust even though, in this instance, it would enhance the charitable gift. He was further advised of two possible options.

One was to continue receiving payments from the unitrust and contribute a portion of them to the trust. For instance, if he regularly contributed back to the trust four-ninths of each payment received, the result from the trust's standpoint would be equivalent to a 5 percent payout rate. Unfortunately, this option could result in a tax cost, for the charitable deduction generated by the unitrust additions might only partially offset the tax on the portion of the trust payments contributed back to the trust.

The second option was to exchange his income interest in the trust for a gift annuity that would pay an amount equal to 5 percent of the current fair market value of trust assets. The primary disadvantage was that the payments would never increase, as unitrust payments might have, and he would have no inflation protection. Even though he is only age 71, John did not regard this as a problem because he has significant income from other sources. All he wanted from the annuity was a base amount for household expenditures.

On July 1, 2023, when he assigned his income interest, the present value of that interest was $482,520 (based on the July 2023 CMFR of 4.6%). The charity pays him an annuity of $37,492, which is approximately 5% of the $750,000 it received upon the merger of the income and remainder interests, and which is slightly lower than the ACGA rate for an annuitant age 71. However, the actual gift annuity rate is 7.77% ($482,520 x 7.77% = $37,492). The charity can pay this rate and satisfy the requirement that the present value of the annuity payments be less than 90% of the contribution. The charity was willing to pay this rate because the rate, as a percentage of the amount actually received, is less than the ACGA rate.

In addition to the satisfaction of protecting the charity's interest by reducing his payments, John received an income tax charitable deduction of $106,106, which will reduce his income tax. The main disadvantage is that he forfeits any possibility of growth in cash flow.

Note: The value of the income interest of the charitable remainder unitrust must be determined by an appraisal, and Form 8283 must be signed by the appraiser and filed when the donor claims the charitable deduction. Since this is a pre-existing property right, the authors of this manual believe that the CMFR used to determine the value of the income interest must be the CMFR for the month of the gift, 4.6% in this case. The deduction, however, arises from the contribution of this income interest for the gift annuity. Thus, for purposes of determining the amount of the deduction, the donor should be able to select the CMFR for the month of the gift or for either of the two preceding months. In this example, the July 2023 CMFR of 4.6% was used to determine both the value of the income interest and the deduction arising from the contribution of that interest.

not be allowed an income tax charitable deduction for the assignment of his or her interest. Again, the income interest could be used to establish one or two gift annuities, and there could be gift tax implications, depending on the circumstances.

It should be noted that the more beneficiaries a charitable remainder trust has or the more complex the terms of the trust, the more difficult it may be to single out an income interest suitable to contribute for a gift annuity.

Contributing the Income Interest in a Pooled Income Fund for a Gift Annuity

Some charities have dormant pooled income funds that they would like to close, but the few participants do not want to surrender their right to life income. The charity might propose to them that they contribute their income interests in exchange for gift annuities. The tax implications and procedures for making such gifts would be like those discussed in connection with an exchange of an income interest in a charitable remainder trust for a gift annuity.

It is important to keep in mind that the annual annuity will be the gift annuity rate multiplied by the present value of the beneficiary's income interest in the fund. As noted earlier in this chapter in connection with contributing the income interest in a charitable remainder trust for a gift annuity, sometimes it will be necessary to pay a gift annuity rate higher than the ACGA rate for gift annuity payments to equal the current payments from the pooled fund. This is possible if the annuity amount, divided by the distribution from the pooled fund, does not exceed the ACGA rate and if the present value of the annuity is less than 90 percent of the present value of the beneficiary's income interest, as required by IRC Sec. 514(c)(5)(A). See Figure 20.11. However, if the annuity is to be established in a regulated state to which the charity has submitted a schedule of rates, it must be able to demonstrate to the state's satisfaction that the rate offered, taking into consideration the amount added to the reserve fund, will be acceptable. Once again, refer to the portion of this chapter above where this issue is discussed in connection with the contribution of an income interest in a charitable remainder trust for a gift annuity.

Assigning an Annuity Interest to the Charity in Exchange for a New Annuity

There might be a circumstance when the annuitant of an existing gift annuity would prefer a different annuity. For example, the annuitant may have married and would like an annuity with the spouse as a successor annuitant.

It should be possible to assign one's right to payments to the charity in exchange for the new annuity. The contribution for the new annuity would be the current present value of the annuity payments from the existing annuity. This means in particular that if the existing annuity is a deferred annuity, the current present value could be quite high.

Nevertheless, the income tax charitable deduction will be based on the lesser of (1) the current present value of the annuity payments from the existing annuity and (2) the unreturned investment in the contract from the existing annuity (see Contributing the Right to Annuity Payments to the Charity in this chapter.) Moreover, the new arrangement might result in the ratable reporting of a considerable amount of ordinary income.

Because the contribution from the new annuity may be relatively small, the annuity payments from the new annuity may be too low to be appealing. Still, the arrangement could make sense if the annuitant/donor can accept lower payments and would like for the charity to be able to withdraw some reserves for current purposes. This would be possible to the extent current

Figure 20.11

Conversion of Pooled Income Fund Interest to a Gift Annuity

A charity had a dormant pooled income fund with only three participants and total assets of $63,500. The charity wanted to shut down the fund and save the operating costs, and the participants were willing to contribute their life interests for gift annuities, provided there were no significant reductions in cash flow. The fund's highest adjusted rate of return during the immediately-preceding three years was only 4.0%, and that is also the current return. One of the participants was Harry G, a single man, whose date of birth was September 2, 1951. On July 1, 2023 he contributed his life interest, and at that time his units were valued at $30,000.

Value of Units This amount was transferred to the charity for Harry's annuity	$30,000
Present Value of Life Interest Calculation based on fund's highest rate of return during past three years and beneficiary's current age (rounded up to the nearest dollar)	11,980
Annuity Rate Offered by Charity	9.25%[1]

Continued on next page...

reserves for the existing annuity exceed the amount of the contribution for the new annuity. See Figure 20.12 for an example.

Testamentary Gift Annuity

A gift annuity can be established under a person's will or living trust to provide payments to one or two surviving individuals.

Immediate Annuity Funded with a Specific Sum or with the Residuary Estate

It is possible to designate a specific sum or all or a portion of the residuary estate to fund the gift annuity. In that case, the size of the payments will depend on the amount transferred to the charity and the annuity rate then in effect for a person or persons the nearest age(s) of the annuitant(s) as of the time of the donor's death.

Here is possible language that could be used in the case of one annuitant:

> I give, devise, and bequeath ($*[amount]* or "the residue of my estate") to *[Charity]* provided that if *[annuitant]* survives me, *[Charity]* shall pay *[him/her]*, in quarterly installments at the end of each calendar quarter, a life annuity, the annual payments of which shall be equal to the value of the property transferred to *[Charity]* multiplied by the charitable gift annuity rate suggested as of the date of my death by the American Council on Gift Annuities for a person then *[his/her]* nearest age.

The language might refer to the "charitable gift annuity rate then paid by the charity." This alternate language should only be used if the

Text continues on page 25.

Figure 20.11 Continued

Conversion of Pooled Income Fund Interest to a Gift Annuity

Annual payments $11,980 x 9.25%	$1,108
Taxed as Follows During Each Full Year of Life Expectancy	
Ordinary income	367
Long-term capital gain	741 (2)
	1,108
After-tax Payments from Gift Annuity 24% tax rate on ordinary income and 15%(2) tax rate on capital gain	909
Approximate Annual Payments Currently Received from Pooled Income Fund (such payments could be higher or lower in future years)	1,200
After-tax Payments from Pooled Income Fund 24% tax rate	912
Decrease in After-tax Cash Flow	3
Charitable Deduction	$1,228(3)

(1) In July 2023, the ACGA rate for a person nearest Harry's age was 6.2%. If the charity had paid that rate, Harry would have received pre-tax cash flow of only $742 per year, considerably less than he would have received from the pooled income fund. The charity was willing to offer a higher rate because it had $30,000 to invest in the gift annuity reserve fund. By increasing the ACGA rate, the after-tax income from the pooled income fund and a gift annuity funded with pooled income units are approximately the same.

(2) The overall rate at which capital gain is taxed could be higher than 15% depending on the donor's adjusted gross income and net investment income.

(3) This figure is rounded to the nearest dollar. To meet the requirements of IRC Sec. 514(c)(5)(A), the charitable deduction must exceed 10% of the value of the property contributed for the annuity. The annuity rate was as high as the charity could offer and still meet that requirement. Currently it is more difficult to convert a pooled income fund interest to a gift annuity and have gift annuity payments equal the payments from the pooled income fund. The reason is that a low CMFR requires a lower gift annuity rate in order to generate a charitable deduction that is more than 10% of the contribution.

To calculate the charitable deduction from the gift annuity, the July 2023 CMFR of 4.6% was used.

Figure 20.12

Exchanging One Annuity for Another

Ronald was single when he contributed $500,000 cash for a gift annuity, but he got married in June 2023 and decided to convert his one-life annuity to a two-life annuity. At the same time, he wanted to establish at the charity which issued the annuity an endowed fund named for himself and his new bride. She is age 75 and he is 76. He has been receiving $30,000 per year from his annuity, and the charity informs him that the reserve balance of his annuity is now $490,000 and that the unreturned capital is 250,000.

On July 1, 2023 he assigned the annuity interest in his one-life annuity for a new two-life annuity. At the time of the assignment, the annuity interest in the old annuity (based on the July 2023 CMFR of 4.6%) was $248,110. The yearly amount from the new annuity is $14,639, and it will be paid to him and his wife jointly and then to the survivor.

The charity then removed $200,000 from the gift annuity reserve fund and used it to create the endowment. The remaining $290,000 is more than enough to meet the reserve requirement for an annuity paying $14,639 per year to the two annuitants.

Ronald also received an income tax charitable deduction for (1) the lesser of the value of the annuity interest in the old annuity ($248,110) and the unreturned investment in the contract for that annuity minus (2) the value of the annuity interest of the new annuity. That deduction, based on the July 2023 CMFR of 4.6%, was $90,977.

Note: The value of an annuity interest which is assigned must be determined by an appraisal, and Form 8283 must be signed by the appraiser and filed when the donor claims the income tax charitable deduction. Since this is a pre-existing property right, the authors of this manual believe that the CMFR used to determine its value must be that for the month of the gift, which in this example was the July 2023 rate of 4.6%. The deduction arises from the contribution of this annuity interest for a new annuity. For purposes of determining the amount of the deduction, however, the donor should be able to select the CMFR for the month of the gift or for either of the two preceding months. In this example, the July 2023 CMFR of 4.6% was also used for determination of the deduction and taxation of payments for the new annuity.

charity publishes and adheres to a schedule of rates.

Immediate Annuity, Payments of a Specific Amount

If a donor wants his or her survivor to receive a specific amount, the following language could be used:

> I give, devise, and bequeath to *[Charity]* the amount *[Charity]* requires as a contribution to provide a life annuity of $*[Amount]* to *[annuitant]* based on the charitable gift annuity rate suggested as of the date of my death by the American Council on Gift Annuities for a person then *[his/her]* nearest age, and I direct that the annuity be paid in quarterly installments at the end of each calendar quarter.

The language would have to be modified slightly if there are two annuitants. Also, as an alternative to referencing the annuity rate then suggested by the ACGA, the agreement could reference the annuity rate then offered by the charity.

Date the Obligation to Make Payments Begins

In the case of a testamentary immediate gift annuity, the charity's obligation is presumed to have begun at the donor's death, and the annual annuity is the amount received by the charity multiplied by the ACGA rate for a person of the annuitant's nearest age at the time of the donor's death. The problem is that considerable time may elapse between the date of the donor's death and the actual distribution from the donor's estate to fund the gift annuity. If the charity does not receive the distribution until some time after the beginning of the obligation, and the amount received by the charity is the exact amount on which the annuity payment is based, the charity would effectively be paying a higher gift annuity rate. To rectify this situation, the charity should ask the personal representative to make the distribution as early as possible and see that it receives all of the earnings on the distributable amount to which it is entitled. If, because of the complexity of the estate, it is anticipated that distributions might be delayed, the charity may want to encourage the donor to add, to the bequest language above, the phrase ",with the first quarterly installment payable at the end of the calendar quarter during which [Charity] receives from my estate the distribution for the annuity." No matter when the first payment is made, the date of the gift is the date of the donor's death.

In some instances the charity may not have received a distribution from the estate by the end of the calendar year in which death occurred. For example, the donor died on July 26, 2023, and the charity received the estate distribution on April 24, 2024. If the charity is required by the laws of one or more states to calculate each year the minimum amount that must be held in its reserve account and then report that amount to the state(s), would the charity report a new gift annuity established in 2023 and deposit whatever reserve is required for that annuity even though the charity has not yet received money or started making payments? As a practical matter, the authors of this manual suggest that the annuity first be included on the state report for the year funding is received for it and payments are first made (in the case of an immediate annuity).

In any case, the charity should issue a gift annuity agreement setting forth the amount of the annuity, the date payments begin, and other terms, and give copies to the donor's personal representative and to the annuitant.

Distribution in Kind

It is possible, though very unlikely, that an executor would want to transfer securities to a charity to fund the testamentary gift annuity for which the will provides. That is unlikely, because there would have been a step-up in basis, eliminating any tax on capital gain if the executor liquidates the securities and gives cash to the charity. There could be an instance in which the will specifically states that XYZ security is to be given to the charity in exchange for an annuity. In that case, the amount of the annuity payments and how they are taxed would be based on the market value of the securities on the date of death, and the cost basis would be stepped up to that market value. Any gain or loss between the date of death and the actual transfer of the securities to the charity would be gain or loss to the charity.

Deferred Annuity Funded with a Specific Sum or with the Residuary Estate

This language would be used where a donor wants to fund an annuity at death and provide payments to a survivor, beginning when the survivor attains a certain age. In the sample language that follows, it is presumed that payments are to begin when the annuitant's nearest age becomes 60. The donor may or may not die before the annuitant's nearest age becomes 60, so the annuity established at the donor's death could be immediate or deferred.

> I give, devise, and bequeath ($*[amount]* or "the residue of my estate") to *[Charity]* provided that if *[annuitant]* survives me, *[Charity]* shall pay *[him/her]*, in quarterly installments at the end of each calendar quarter, a life annuity, the annual payments of which shall be equal to the value of the property transferred to *[Charity]* multiplied by the charitable gift annuity rate suggested as of the date of my death by the American Council on Gift Annuities for an immediate gift annuity for a person then *[his/her]* nearest age, although if such date is prior to *[date on which annuitant's nearest age becomes 60]*, the annual payments of the life annuity shall be equal to the value of the property transferred multiplied by the charitable gift annuity rate suggested as of the date of my death by the American Council on Gift Annuities for a deferred gift annuity for a person then *[his/her]* nearest age, the first quarterly payment from which shall be made *[indicate specific date which is the end of the calendar quarter during which the annuitant's nearest age becomes 60]*.

Here again, in lieu of referencing the annuity rate suggested by the ACGA as of the date of death of the donor, the agreement could reference the annuity rate offered by the charity as of the date of death of the donor. It could even stipulate the amount the annuitant is to receive starting at a specified age.

Determination of Charitable Deduction

An estate tax charitable deduction will be allowed for the amount by which the bequest for the annuity exceeds the present value of the annuity. The deduction is calculated by entering in a planned giving software program (a) the amount transferred, (b) the annuity rate, (c) the date(s) of birth of the annuitant(s), (d) the payment frequency, (e) the date of the donor's death as the gift date, and (f) the CMFR for the month of the donor's death or for either of the two months immediately preceding the month of death.

If the gift annuity is funded with all or a portion of the residuary estate, an interactive computation may be necessary to determine the amount transferred for the gift annuity and the amount withheld for taxes.

It is recommended that the charity's standard disclosure statement, prepared in compliance with the Philanthropy Protection Act of 1995, be given to any donor who is thinking about arranging a testamentary gift annuity.

See Chapter 2 for a discussion of not only the estate tax charitable deduction but also, when applicable, the estate tax marital deduction.

Testamentary Gift Annuity Funded with IRA Assets

See Chapter 16 for a discussion of a private letter ruling regarding a testamentary gift annuity funded with IRA assets remaining at death.

Gift Annuity to Benefit More than One Charity

Donors regularly establish charitable remainder trusts and divide the remainder interest among several charities. They also reserve the right to change the charitable beneficiaries. Sometimes, donors who fund gift annuities are also interested in benefiting more than one charity.

A gift annuity is not a trust, nor is the charity that issues a gift annuity acting as a trustee. The annuity is, rather, a contract under which a donor transfers property in exchange for fixed payments for the life of one or two annuitants. The charity that enters into the contract takes possession of the contributed property and assumes the obligation to make annuity payments.

Other charities can benefit by receiving grants from the charity that issues the annuity. One type of public charity whose mission is to make grants to various charitable organizations is a community foundation. Thus a donor could contribute property to a community foundation for a gift annuity and specify that the residuum be used for either an advised or a designated fund.

If it goes to an advised fund, a person or persons appointed by the donor can recommend charitable recipients and the amounts paid to each. If it goes to a designated fund, the donor can preselect the charities that will receive distributions from the fund.

Other types of charities, as well, may be willing to share some portion of the residuum with different charities the donor wants to support. Obviously, a charity will be unwilling to assume the financial risk of a gift annuity unless it retains some portion of the residuum for itself or is otherwise compensated. However, if it is sufficiently rewarded for its efforts, it may accommodate the donor's wishes. Those wishes might be conveyed through a separate letter, filed with the gift annuity agreement, or through language in the gift annuity agreement itself. Before representing to the donor that it will distribute a portion of the residuum to another charity, it should make sure that its articles of incorporation and bylaws permit it to grant any of its funds to other charities, and whether those other charities must be pursuing a similar mission, such as health care or education.

Obviously, if all of the charities a donor wishes to benefit issue gift annuities, the donor should establish a gift annuity with each of them. Sharing the residuum would be a solution when only one of the charities issues gift annuities.

A charity that agrees in advance to distribute a portion of the residuum to another charity may wish to get a letter from that other charity guaranteeing that it will pay its proportionate share of any losses sustained and will hold the issuing charity harmless for any investment losses resulting in the diminishment of the residuum.

Gift Annuity Issued by One Charity to Benefit Another

The previous section dealt with a situation when a donor would like to establish a gift annuity with a charity and then have that charity retain a portion of the residuum and share the rest with one or more other charities. A more common scenario is when a charity would like to offer gift annuities to its donors, but for various reasons does not issue gift annuities itself. Perhaps its potential for gift annuities does not justify establishing a program, it is insufficiently capitalized, it would not meet state requirements, or its board is unwilling to assume the risk inherent in gift annuities. Or possibly it does issue gift annuities in some states but not in the state where a prospective donor resides.

Let's assume that a donor would like to support Charity A through a gift annuity, but Charity A does not issue gift annuities. However, Charity B is authorized to issue gift annuities in the state where the donor resides. Pursuant to an understanding of all parties, the donor establishes a gift annuity with Charity B, which makes payments directly to the donor, assumes all risks, and handles all administration. Upon termination of the annuity, Charity B distributes the residuum, or the income from an endowment created with the residuum, to Charity A. Thereby, Charity A is able to make this vehicle available to donors without establishing a gift annuity program. Although Charity B assumes all risk and administrative responsibility, Charity A maintains the personal relationship with the donor, taking responsibility for recognition and stewardship. In other words, the Charity A staff person who meets with the donor is the face of the program, and Charity B works through that person. However, all financial illustrations, drafting of agreements, and calculations are done by Charity B since it, as the contracting organization, bears ultimate responsibility and wants to assure quality control.

Charity B will require some compensation for assuming the risk, investing reserves, and performing all of the other tasks of an issuer. This could be a front-end fee (a percentage of the contribution), annual fee (percentage of reserves as annually determined), a back-end fee (percentage of the residuum at the termination of the annuity), or some combination of these types of fees. The back-end fee likely would not be charged if Charity B requires that the residuum be retained as a permanent endowment, for it would collect an annual fee equal to a percentage of the endowment.

There are two ways Charity B might distribute the residuum (minus any applicable fees) to Charity A. One is to make the residuum payable to a Donor Advised Fund at Charity B and have Charity A serve as the advisor. Then Charity A would recommend that Charity B distribute funds to it from the Donor Advised Fund. This might be the procedure followed if Charity A regularly refers gift annuity donors to Charity B and Charity B establishes donor advised funds. A simpler procedure is to state in the gift annuity agreement that Charity B agrees to distribute the residuum, minus any back-end fee, or the income from an endowment created with the residuum, to Charity A. (Note again that such distributions need to be within the purview of Charity B's mission and allowable by its governing documents.) It must also be permitted by state law. Some states may not allow one charity to issue a gift annuity for the benefit of another charity.

Before entering into an arrangement with Charity B, Charity A will want to make sure that Charity B is financially strong, has the capacity to deliver good services, would have credibility with donors, and charges reasonable fees.

The arrangement is not ideal. It is necessary to explain to donors why they must write a check to an institution different from the one they wish to support, fees are assessed to reserves, the charity may receive income from the residuum rather than the residuum itself, and the charity cannot book gift revenue until it receives a distribution from the issuing organization. Even so, with the right partner organization and terms, the arrangement can be workable and profitable, and it entails no financial risk and few administrative responsibilities. For some charities, it may be the only way to offer gift annuities to interested donors.

Assigning Liability for Existing Annuities to Another Charity

A charity might want to do this when it has relatively few gift annuities and sees little potential for additional ones, or when it has a larger volume but its board no longer wants to be at risk.

This charity could transfer to another willing charity both all existing reserves and future payment obligations. If actual reserves are below required reserves for outstanding obligations, the transferring charity would probably have to use general funds to make up the difference. After the execution of documents effecting the transfer, the transferee charity would assume all responsibility for investment of reserves, making payments, and tax reporting.

Certain states may require the transferring charity to obtain permission of the state and of the donors in order to transfer liabilities. The state will want to be assured that the charity assuming the liability is as financially strong as the charity transferring that liability. Whether or not formal approval by the state and donors is required, the transferring charity should notify donors about the action being taken and reassure them that this will have no bearing on their payments.

The donors will have established their gift annuities for the benefit of the transferring charity, and possibly they will have designated them for particular purposes within that charity and described the purposes within the gift annuity agreements. The transferee charity should honor all of these donor intentions unless consent to a change in purpose is obtained in writing from the donor. Most likely, any charity that assumes liability will have a mission very similar to the transferring charity, or it will be an organization, like a community foundation, whose mission is to provide support to various charitable organizations. The contract it executes with the transferring charity will allow it to charge certain fees to compensate it for the responsibilities and liabilities it is assuming.

Contribution of Both Appreciated and Depreciated Securities

Ordinarily, a donor who wants to contribute depreciated securities should first sell the securities and then give the cash proceeds. Thereby, the donor may be able to claim the capital loss as well as the charitable deduction. However, a charity sometimes learns after securities have been contributed and sold that some had appreciated in value since the donor purchased them while others had depreciated. See Figure 20.13 for an explanation of how to combine gains and losses when a donor contributes two stocks, one with capital gain and one with capital loss.

Contribution of Appreciated Securities and Cash

It is a common practice for a donor who wants to fund a gift annuity with a target amount - $100,000 for instance - to contribute appreciated securities plus enough cash to make up the difference between the date-of-gift value of the securities and the target amount. The taxation of payments and the deductibility ceiling for gifts of appreciated property and cash are different, and this fact must be taken into consideration in the calculations. See Figure 20.14 for an example of a gift funded with both cash and appreciated securities.

Gift Annuity to Benefit an Employee

An employer may want to provide additional retirement cash flow for a faithful employee, and one way to do that is to fund an annuity, naming the employee as the annuitant. See Figure 20.15.

Under some circumstances, a company might fund an annuity for a shareholder. See Figure 20.16 for an explanation.

Effect of a Gift Annuity on Medicaid Eligibility

From time to time, donors may inquire about how establishing a gift annuity could affect their current or future eligibility to obtain Medicaid coverage for expenses such as those associated with nursing home care. Although Medicaid is ultimately a federal program, it is administered primarily by the states. This means that the requirements for Medicaid eligibility are a function of both federal law and the law of the state in which the donor lives. In order to qualify for Medicaid, a person's

Text continues on page 34.

Figure 20.13

Gift Annuity Funded With Two Different Stocks: Capital Gain and Capital Loss

On July 1, 2023, Louise, whose date of birth is October 20, 1949, contributed for a gift annuity the following stocks, each of which she had owned more than one year. The payments are quarterly, and the gift annuity rate is 6.4%.

Stock A	FMV — $18,500	Cost Basis $10,600
Stock B	FMV — $16,500	Cost Basis $20,000

Obviously, Louise should have sold Stock B, reported a capital loss, and contributed the cash proceeds. However, now that the gift is complete, the question is how to calculate the taxation of gift annuity payments. Which of the following methods is correct?

Method One
Calculate separately the amount of gain in each stock that can be reported ratably, and then combine the two sets of numbers.

Stock A	
Fair market value	$18,500.00
Charitable deduction (30% AGI limit)	7,819.77
Present value of annuity	10,680.23
Total amount of gain to be reported ratably	4,560.75
Taxation of payments each full year of life expectancy:	
Ordinary income	$368.22
Capital gain	348.27
Tax-free return of capital	467.41
	$1,184.00

Stock B	
Fair market value	$16,500.00
Charitable deduction (50% AGI limit)	6,974.39
Present value of annuity	9,525.61
Total amount of gain to be reported ratably	-0-
Taxation of payments each full year of life expectancy:	
Ordinary income	$328.42
Tax-free return of capital	727.58
	$1056.00

Continued on next page...

Figure 20.13 Continued

Gift Annuity Funded With Two Different Stocks: Capital Gain and Capital Loss

Stock A contribution plus Stock B contribution

Charitable deduction:	
30% limit deduction	$7,819.77
50% limit deduction	6,974.39
Total	$14,794.16
Total amount of gain to be reported ratably	$4,560.75
Taxation of payments each full year of life expectancy:	
Ordinary income	$696.64
Capital gain	348.37
Tax-free return of capital	1,194.99
	$2,240.00

Method Two

Combine the stocks, netting the gains and losses and then do the calculation.

FMV	$35,000.00
Cost Basis	$30,600.00
Charitable deduction (30% AGI limit)	$14,794.16
Present value of annuity	$20,205.84
Total amount of gain to be reported ratably	$2,540.10

Taxation of payments each full year of life expectancy:

Ordinary income	$696.64
Capital gain	194.03
Tax-free return of capital	1,349.33
	$2,240.00

The charitable deductions are based on the July 2023 CMFR of 4.6%.

Both methods result in the same annuity payment and total charitable deduction. However, with the first method a portion of the deduction is subject to a 50%-of-adjusted-gross-income ceiling, while the entire deduction under the second method is subject to a 30% ceiling. Thus, with the first method, the donor may be able to use the deduction more quickly.

The second method leads to a more favorable taxation of annuity payments. A larger portion of payments is tax-free and a smaller portion taxed as capital gain. In most cases, less tax on the payments will be more beneficial than a higher ceiling for part of the charitable deduction, so the second method would generally be preferable.

The second method should be followed. In sales—and the gift annuity is a form of bargain sale—capital gains and losses are netted.

Figure 20.14

Gift Annuity Funded With Both Appreciated Stock and Cash

On July 1, 2023, Jason, whose date of birth was May 29, 1947, contributed for a gift annuity long-term appreciated stock having a fair market value of $71,678 and cash in the amount of $28,322 for a total of $100,000. The cost basis of the stock was $29,704. The payments were quarterly, the charity paid a gift annuity rate of 6.8%, and the July CMFR of 4.6% was used.

In this case the charitable deduction and the taxation of payments must be determined for each asset and the numbers then combined.

Contribution of Stock

Charitable deduction (30% of AGI limit)	$31,071.70
Taxation of payments each full year for duration of life expectancy:	
Ordinary income	1,432.99
Capital gain	2,015.10
Tax-free return of capital	1,426.03
Total payment	$4,874.12

Contribution of Cash

Charitable deduction (60% * of AGI limit)	$12,277.30
Taxation of payments for duration of life expectancy:	
Ordinary income	566.22
Tax-free return of capital	1,359.70
Total payment	$1,925.92

Contribution of Cash and Stock Gifts

Total contribution	$100,000.00
Charitable deduction	
30% of AGI limit	$31,071.70
60% * of AGI limit	12,277.30
Total deduction	$43,349.00
Taxation of payments for duration of life expectancy:	
Ordinary income	1,999.21
Capital gain	2,015.10
Tax-free return of capital	2,785.73
Total payment	$6,800.04

* The income tax deduction for a cash contribution to a public charity, including to fund a gift annuity, is subject to a 60% of AGI limit.

Figure 20.15

Gift Annuity to Benefit an Employee

On July 1, 2023, Company X contributed $100,000 cash for a gift annuity, naming as the annuitant a long-time employee who was born on June 3, 1948. The employee will receive an annual annuity of $6,600 paid in quarterly installments of $1,650.00. The present value of the annuity payments and the deduction were based on the July 2023 CMFR of 4.6%.

In the year the gift annuity was funded:

- Company X could deduct $100,000:
  - $42,734 as a charitable deduction
  - $57,266 as employee compensation (This was subject to the normal withholding rules.)
- The employee reported as taxable income $57,266. See IRC Sec. 83.
- The employee received payments totaling $3,300 for the balance of 2023, and $6,600 for each year thereafter.

Starting in the year 2023 (on a prorated basis), and thereafter for each full year of life expectancy, the employee's annual payments will be taxed as follows: $1,980 as ordinary income and $4,620 as tax-free return of capital. Since the employee has already been taxed on the entire present value of the payments, the portion of each payment representing a return of this capital amount is tax-free.

In this example, the employee incurred an out-of-pocket cost in the year the gift annuity was funded. She was taxed on $57,266 but received only $3,300. Of course, it is well worth paying some tax up front in order to be entitled to life payments. The company could pay an additional sum to the employee to cover taxes and other withholding so that the employee would incur no out-of-pocket costs. An interactive calculation is required to determine the amount of the additional sum paid to the employee because that additional sum would itself be taxable.

The company could have reserved the right, at any time, to revoke the employee's payments. In that case for the year of the gift:

- Company X could deduct $42,734 representing the charitable gift, plus $2,310, representing the portion of the present value of annuity payments paid to the employee during the year of the gift.
- The employee would have taxable income of $3,300 in 2023. Since the employee was not taxed on any portion of the contribution for the annuity, she would have no capital to be returned tax-free. Of the first year's payment, $2,310 would be taxable as employee compensation, and $990 would be the ordinary income portion of the payment.

Continued on next page...

Figure 20.15 Continued

Gift Annuity to Benefit an Employee

For each following full year during the employee's life expectancy:

- Company X could deduct $4,620, the portion of the present value of payments paid to the employee.
- The employee would have a taxable income of $6,600 composed of $4,620 of employee compensation and $1,980 of interest.

At the end of the employee's life expectancy:

- Company X could no longer take deductions.
- The employee would continue to be taxed on all of the income.

In the event Company X used appreciated stock to fund the gift annuity, it would have been taxed on the capital gain allocated to the present value of the annuity payments, and it would have recognized this gain in the year of the contribution.

If a trust were to fund an annuity for an individual, other than the owner of the trust, the tax implications would be similar. Of course, using the assets in one's revocable living trust is equivalent to contributing personal assets.

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income and assets must be below a certain level, and those levels vary by state.

The Deficit Reduction Act of 2006 created a five-year "look-back period." Any gifts made during this period are totaled, and the applicant must pay privately nursing home costs until payments equal those total gifts. This can create a problem because the applicant's total assets must have dropped below the asset eligibility level, and if they have, there may be no money to pay costs equal to gifts made during the five-year period.

The question is whether a gift annuity, funded within five years of applying for Medicaid could delay eligibility, just as a gift to an individual within the same time frame could delay eligibility.

If a person purchases a commercial annuity that makes fixed payments for life or a period of years, and the state is beneficiary of any amount payable at death to the extent of total Medicaid payments, the premium paid for the commercial annuity would not be a countable asset that could delay eligibility. Payment from the annuity would be made to the nursing home, and Medicaid would pay the difference.

To qualify the annuity must be a fixed, immediate annuity. A deferred variable annuity that builds up cash value, such as are often sold by insurance companies, would not qualify. The annuity must also be actuarially sound meaning that the entire purchase price must be paid back.

Suppose a person contributed for a gift annuity within five years of applying for Medicaid. Would the amount contributed also not be a countable asset that could delay eligibility for Medicaid? Likely, the entire contribution would be counted because a gift annuity is partly a gift and partly purchase of a gift annuity. The amount contributed for the gift annuity and the payments are not of equivalent value.

One might argue that only the deductible portion of the gift annuity should be a countable asset in determining Medicaid eligibility because the actuarial value of the gift annuity payments is equivalent to the purchase of a commercial annuity, but it is uncertain whether such an argument would prevail. Another complicating factor is variation in state laws regarding countable assets.

Therefore, an older person who might, at some point, need to depend on Medicaid for nursing care, should be made aware that contributing for a gift annuity could affect future eligibility.

This does not mean that all older individuals should be cautioned about establishing a gift annuity, for most persons who make such a gift will never have to depend on Medicaid. However, if someone who is considering a gift annuity, or a member of that person's family, is concerned about qualifying for Medicaid should that ever be necessary, then the potential effect of a gift annuity on eligibility should be mentioned.

There may be occasions when a charity receives a form from the Department of Social Services about income being paid by the charity to one of its annuitants. Possibly, the annuitant is in process of qualifying for Medicaid, and information is being gathered to determine eligibility. The charity should consult its counsel and provide such information as counsel recommends.

Payments from a Gift Annuity to a Special Needs Trust

In Chapter 19 it was noted that payments from a gift annuity might be made to an education trust, and that the trustee of that trust could have the discretionary power to distribute income and/or principal to a student who was beneficiary of the trust. The annuity payments would be made for the life of the student.

It would also be possible for gift annuity payments to be made to a special needs trust, established for the benefit of an individual with disabilities. As with the education trust, distributions would be at the discretion of the trustee. If the trust is properly designed so that distributions are limited to those associated with meeting special needs and cannot be used for basic care, then the individual may not be disqualified from continuing to receive governmental assistance. The annuity payments would be made until the death of the disabled individual, whereupon the obligation would terminate.

IRC Sec 514(c)(5) requires only that the annuity period be measured by an individual's life. It does not require that payments be made to the donor or, indeed, to any individual. Thus, it should be possible to have the payments made to a trust for the life of an individual who is beneficiary of the trust.

The trust will include in its income the taxable portion of the annuity payments, but it will get a deduction for the distribution it makes to the individual beneficiary under the normal rules of IRC Sec. 662 that apply to complex trusts. That individual would then be taxed on the distributions. In the event the donor has a legal obligation to support the beneficiary, then the donor could be treated as the owner of the trust under the grantor trust rules, IRC Secs. 671–679 and would be taxed on the income.

Qualifying a Gift Annuity for Matching Funds

Sometimes the company for which a donor works is willing to match an employee's charitable gifts to a certain maximum. Fundamentally, whether a gift annuity qualifies for any sort of matching funds is a matter to be determined by the individual or entity sponsoring the matching

Figure 20.16

Gift Annuity for a Shareholder

If the shareholder is also an employee of the company, the present value of the annuity might be construed to be compensation, taxed at ordinary income tax rates. The discussion above in Figure 20.15 would then apply.

If the shareholder is not an employee, or it can be documented that the present value of the annuity is a dividend, not compensation, then it would appear that the consequences would be as follows:

The company would get the charitable deduction. If it is a C corporation, the deduction could be claimed on the company's income tax return and potentially reduce the company's taxes. If it is an S corporation, the deduction would flow through to the shareholders, according to their proportionate ownership, and they could use the deduction to the extent of their basis in their S stock.

The taxation of the shareholder would also depend on whether it is an S or C corporation. If it is a C corporation, the present value of the annuity would be taxed like any other dividend distributed to a shareholder. If it is an S corporation, the present value of the annuity would be a distribution in the year the annuity is funded, which would be tax-free to the extent of the shareholder's cost basis in his or her corporation shares, but taxable over that.

On the gift annuity agreement the president of the company, or other officer of the company authorized to execute such contracts, would sign as donor.

If there are several shareholders, the company might fund gift annuities for each of them, and the present value of each annuity would be based on the shareholder's percentage of ownership.

opportunity. Any matching money would benefit strictly the charity (as opposed to the donor or the annuitant) and strictly on an outright basis (as opposed to being treated as a component of the overall transfer of assets in exchange for which the gift annuity is being issued).

Still, it may be necessary or at least wise for the donor or the charity to provide the source of the matching funds with some basic explanation of what a gift annuity is. In this regard, the source of the matching funds would probably be most interested in learning how the charitable element associated with a gift annuity is calculated, as it would be reasonable for the matching funds to be tied to this figure, rather than to the value of the assets transferred in exchange for the gift annuity.

Gift Annuity Combined with Outright Gifts — Variation One

Some individuals would like to create an endowment now and have the satisfaction of seeing the endowment income put to use, but they hesitate for fear that they might need all of the income from their capital in the future. A possible solution to this dilemma is to establish a gift annuity and authorize the charity to retain the payments until such time as the donor might need them. So long as the gift annuity payments are retained, the gift annuity functions as a virtual endowment. When the annuity terminates at the death of the annuitant, the residuum constitutes a permanent endowment.

Example: Mary, age 75, currently has more than enough cash flow from her Social Security, retirement fund distributions, and investments. While she expects this to continue, she cannot be absolutely certain. She would very much like to fund scholarships at her university while she is living and have the scholarships continue beyond her life. One possibility is to contribute outright $20,000 per year for the scholarships and include in her will a bequest provision to create a permanent endowed scholarship fund. An alternative, which she chooses, is to contribute stock valued at $350,000 with a cost basis of $250,000 for a gift annuity. She then authorizes the university to retain the annuity payments, using $20,000 for current scholarships and the excess to start building the permanent endowment.

Amount of gift annuity payments	$23,100
Taxed as follows each full year during life expectancy:	
Tax-free	$11,550
Capital gain	$4,620
Ordinary income	$6,930
Amount used for scholarships	$20,000
Amount added to permanent endowment each year	$3,100
Initial charitable deduction (July 2023 CMFR of 4.6 percent)	$149,569

The taxable portion of the payments will be reported to Mary on Form 1099-R as if she were receiving it, and she will receive a deduction for the total amount of the payments, for she is, in fact, contributing them. Because the deduction will exceed the taxable portion of the annuity payments, she will realize some additional tax savings each year if she itemizes her deductions. The withholding arrangement merely avoids having to make a decision and write a check each time she receives a payment. If she ever needs the annuity payments for living expenses, she will simply advise the university to start sending them to her.

Gift Annuity Combined with Outright Gifts — Variation Two

Many donors would be interested in an arrangement that enables them to increase both their current giving and their cash flow. The following example, also involving a gift annuity can enable a person to do that.

Example: Roger, age 76, has been contributing $1,500 per year to a certain charity. He observes that he is earning a low rate of interest on cash and other fixed income investments, and that this interest is subject to a federal tax rate of 32 percent. He has been considering investing $50,000 in a tax-exempt bond fund that would pay an interest rate of 3.0 percent, which would be tax-free. An alternative he might consider is to contribute the $50,000 for a gift annuity, instruct the charity to pay him the tax-free portion of the annuity payments, and retain the taxable portion as a contribution. He would be issued a Form 1099-R indicating the taxable portion he must report, and he would receive a deduction for the same amount. Assuming he can use the deduction, it will offset the taxable portion of the payments.

Amount of gift annuity payments	$3,400
Taxed as follows during each full year of life expectancy:	
Tax-free return of capital	$2,400
Ordinary income	$1,000
Charitable deduction (CMFR of 4.6 percent)	$21,675
Amount paid to him each year	$2,400
Amount withheld as a contribution each year	$1,000
Cash flow if the $50,000 were invested in the bond fund	$1,500
Increase in cash flow using the gift annuity (2,400 - 1,500)	$900
Annual giving increases from current $1,500 to	$2,400

This plan might be marketed as the tax-free gift annuity. However, it must be noted that the payments received are only tax-free for the duration of the donor's life expectancy. If Roger outlives his life expectancy, he could always request that the entire payments be made to him so that he has extra cash to cover the tax on the payments.

Gift Annuity Combined with a Charitable Remainder Unitrust

The advantage of a gift annuity is that payments never go down; the disadvantage is that they never go up to keep pace with inflation. The advantage of the charitable remainder unitrust is that payments may increase over time, retaining their purchasing power; the disadvantage is the payments could decrease, and most certainly they will fluctuate. A donor who wants to make a gift to charity that pays a life income may be wondering whether to opt for the safety of a gift annuity or the promise of a charitable remainder unitrust. The solution, if the amount of the proposed gift is sufficiently large, could be to split the gift, simultaneously establishing a gift annuity and a charitable remainder unitrust.

Example: Henry and Delores, ages 76 and 75, are interested in contributing $600,000 provided they can receive life income, and they are in a quandary whether to choose a gift annuity or a charitable remainder unitrust. Recalling that their brokerage account is balanced between equities and fixed-income investments, they decide to seek the same balance with their intended gift. Thus, they contribute $300,000 of securities for a gift annuity and $300,000 of securities for a charitable remainder unitrust. The cost basis of the securities contributed for each plan is $200,000

The gift annuity will pay them $17,700 per year, of which, for the duration of their joint life expectancy $7,918 will be tax-free, $3,959 will be capital gain, and $5,823 will be ordinary income.

The unitrust will pay them 5.0 percent of trust assets as revalued each year. Initially this will be $15,000, but there is the potential for growth, though there is also a downside risk. Most of the payments will likely be a combination of ordinary income and capital gain. The charitable deduction from the gift annuity will be $110,004, and the charitable deduction from the unitrust will be $144,213.

Divorcing Annuitants

Occasionally, two spouses who established a joint and survivor gift annuity will obtain a divorce. Then the charity needs to determine to whom to make the payments and in what amounts. The first step is to request a copy of the divorce decree, which should stipulate how the annuity payments are to be allocated. Any of the following provisions are possible:

- The joint and survivor annuity is divided into two one-life annuities with spouse A and spouse B each entitled to one-half of the payments for the duration of his or her life. The decrees could say that at the death of an ex-spouse, the surviving ex-spouse would be entitled to the entire annuity payments for the remainder of his or her life. That scenario is probably not very likely because the lives of the ex-spouses would still be intertwined, and the surviving ex-spouse would benefit financially from the death of the first ex-spouse to die.
- If the annuity is divided into two one-life annuities, probably when each ex-spouse dies, one-half of the charity's payment obligation will end, which means that the payments to each ex-spouse are not affected by the longevity of the other.
- Possibly, the divorce decree will award the annuity payments entirely to one of the spouses. This decision could depend on whose assets initially funded the annuity, or it could be part of a plan to achieve an equitable distribution of assets. If the spouse who was

awarded the annuity payments dies first, the surviving ex-spouse could receive the annuity payments for the balance of his or her life. However, again the more likely scenario is that payments would cease at the death of the person who had been awarded all of the payments.

- The annuity could be divided into two one-life annuities but with unequal payments. For example, ex-spouse A might be awarded 60 percent of the payments and ex-spouse B awarded 40 percent of the payments. Again, there would be the same options as to whether the charity's payment obligation terminated at the death of the first or second ex-spouse.

None of the above scenarios would result in a present value of the gift annuity payments that is larger than what the present value would be if the spouses had not divorced. Thus, any of these arrangements should be acceptable from a tax standpoint.

The next question is how to determine the taxation of payments. Presumably they would be taxed as they were prior to the divorce for the remainder of the original joint life expectancy. Consider the following example.

When John and Jane established their joint and survivor gift annuity 10 years ago, their payments totaled $20,000 per year, and for the duration of their life expectancy their payments for each full year would consist of $8,000 tax-free return of capital, $7,000 capital gain, and $5,000 of ordinary income. At the time they established the gift annuity their joint life expectancy per the IRS tables was 22.4 years. The divorce decree stipulated that each would receive payments totaling $10,000 per year for life, and that when one of them died, the charity's payment obligation would end as to the deceased spouse's annuity.

At the time of the divorce the remaining joint life expectancy is 12.4 years. For the next 12.4 years or until his death, if earlier, John will receive: $4,000 tax-free, $3,500 capital gain, and $2,500 ordinary income. Jane would receive the same

Now suppose that the divorce decree awarded Jane 60 percent of the annuity payments and John 40 percent of them. In that case John would receive $8,000 each year consisting of $3,200 tax-free, $2,800, and $2,000 or ordinary income. Jane would receive each year $12,000 consisting of $4,800 tax-free, $4,200 or capital gain, and $3,000 of ordinary income.

While this methodology seems reasonable for completing the Forms 1099-R, it is not prescribed, and there may be other acceptable ways to do the calculations. There could also be complications depending on the divorce decree and ownership of assets with which the annuity was created. Thus, the charity may want to consult an accountant or attorney as to how to report taxation of payments in particular situations.

See Chapter 5 for how to administer payments for annuitants who divorce.

Gift Annuity in Lieu of a Bequest

Only one tenth of one percent of estates are large enough to be subject to the federal estate tax. A somewhat larger percentage may be subject to state estate tax if they live in a state with such a tax. Yet, the fact remains that most individuals who leave a bequest to a charity do not realize tax savings from the gift, so their gift was not motivated by tax savings.

However, there are individuals who might be more inclined to make a legacy gift if doing so would save taxes. Suppose, for example, that Fred would like to leave 10 percent of his $2 million estate to charity and the remaining 90 percent in equal shares to his two daughters. Since Fred lives in a state without a state estate tax, his $200,000 charitable bequest will not generate any tax benefits. That would also be the case if he lived in a state with a state estate tax but with an exemption larger than his estate. While he wants to create an endowment named for him and his late wife at an institution both admired, he is disappointed to learn that there will be no tax savings.

One possibility is for Fred to give $200,000 outright during his lifetime and thereby reduce the income tax he would pay. However, he may hesitate to forfeit the income that he earns on those assets. In that case, me might contribute $200,000 for a gift annuity, and the income tax charitable deduction from that gift would reduce his current income tax. Although his legacy gift results in no estate tax savings, it can be structured so that it saves income tax. The gift annuity will also increase his current cash flow if the annuity payments exceed the interest and dividends earned on the $200,000 in assets he contributes.

IRS Form 1040 Schedule A

APPENDIX 1

SCHEDULE A (Form 1040)

Department of the Treasury
Internal Revenue Service

Itemized Deductions

Attach to Form 1040 or 1040-SR.

Go to *www.irs.gov/ScheduleA* for instructions and the latest information.

Caution: If you are claiming a net qualified disaster loss on Form 4684, see the instructions for line 16.

OMB No. 1545-0074

2024

Attachment Sequence No. **07**

Name(s) shown on Form 1040 or 1040-SR

Your social security number

Medical and Dental Expenses		**Caution:** Do not include expenses reimbursed or paid by others.		
	1	Medical and dental expenses (see instructions)	1	
	2	Enter amount from Form 1040 or 1040-SR, line 11 | 2 |		
	3	Multiply line 2 by 7.5% (0.075)	3	
	4	Subtract line 3 from line 1. If line 3 is more than line 1, enter -0-		4
Taxes You Paid	5	State and local taxes.		
	a	State and local income taxes or general sales taxes. You may include either income taxes or general sales taxes on line 5a, but not both. If you elect to include general sales taxes instead of income taxes, check this box ☐	5a	
	b	State and local real estate taxes (see instructions)	5b	
	c	State and local personal property taxes	5c	
	d	Add lines 5a through 5c	5d	
	e	Enter the smaller of line 5d or $10,000 ($5,000 if married filing separately)	5e	
	6	Other taxes. List type and amount:	6	
	7	Add lines 5e and 6		7
Interest You Paid (**Caution:** Your mortgage interest deduction may be limited. See instructions.)	8	Home mortgage interest and points. If you didn't use all of your home mortgage loan(s) to buy, build, or improve your home, see instructions and check this box ☐		
	a	Home mortgage interest and points reported to you on Form 1098. See instructions if limited	8a	
	b	Home mortgage interest not reported to you on Form 1098. See instructions if limited. If paid to the person from whom you bought the home, see instructions and show that person's name, identifying no., and address	8b	
	c	Points not reported to you on Form 1098. See instructions for special rules	8c	
	d	Reserved for future use	8d	
	e	Add lines 8a through 8c	8e	
	9	Investment interest. Attach Form 4952 if required. See instructions	9	
	10	Add lines 8e and 9		10
Gifts to Charity (**Caution:** If you made a gift and got a benefit for it, see instructions.)	11	Gifts by cash or check. If you made any gift of $250 or more, see instructions	11	
	12	Other than by cash or check. If you made any gift of $250 or more, see instructions. You **must** attach Form 8283 if over $500	12	
	13	Carryover from prior year	13	
	14	Add lines 11 through 13		14
Casualty and Theft Losses	15	Casualty and theft loss(es) from a federally declared disaster (other than net qualified disaster losses). Attach Form 4684 and enter the amount from line 18 of that form. See instructions		15
Other Itemized Deductions	16	Other—from list in instructions. List type and amount:		16
Total Itemized Deductions	17	Add the amounts in the far right column for lines 4 through 16. Also, enter this amount on Form 1040 or 1040-SR, line 12		17
	18	If you elect to itemize deductions even though they are less than your standard deduction, check this box ☐		

For Paperwork Reduction Act Notice, see the Instructions for Form 1040. Cat. No. 17145C **Schedule A (Form 1040) 2024**

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Other Itemized Deductions

Line 16

Increased Standard Deduction Reporting

If you have a net qualified disaster loss on Form 4684, line 15, and you aren't itemizing your deductions, you can claim an increased standard deduction using Schedule A by doing the following.

1. List the amount from Form 4684, line 15, on the dotted line next to line 16 as "Net Qualified Disaster Loss," and attach Form 4684.
2. List your standard deduction amount on the dotted line next to line 16 as "Standard Deduction Claimed With Qualified Disaster Loss."
3. Combine the two amounts on line 16 and enter on Form 1040 or 1040-SR, line 12.

Do not enter an amount on any other line of Schedule A. For more information on how to determine your increased standard deduction, see Pub. 976.

Net Qualified Disaster Loss Reporting

If you have a net qualified disaster loss on Form 4684, line 15, and you are itemizing your deductions, list the amount from Form 4684, line 15, on the dotted line next to line 16 as "Net Qualified Disaster Loss" and include with your other miscellaneous deductions on line 16. Also be sure to attach Form 4684.

CAUTION *Don't include your net qualified disaster loss on line 15.*

Other Itemized Deductions

List the type and amount of each expense from the following list next to line 16 and enter the total of these expenses on line 16. If you are filing a paper return and you can't fit all your expenses on the dotted lines next to line 16, attach a statement instead showing the type and amount of each expense.

CAUTION *Only the expenses listed next can be deducted on line 16. For more information about each of these expenses, see Pub. 529.*

- Gambling losses (gambling losses include, but aren't limited to, the cost of non-winning bingo, lottery, and raffle tickets), but only to the extent of gambling winnings reported on Schedule 1 (Form 1040), line 8b.
- Casualty and theft losses of income-producing property from Form 4684, lines 32 and 38b, or Form 4797, line 18a.
- Federal estate tax on income in respect of a decedent.
- A deduction for amortizable bond premium (for example, a deduction allowed for a bond premium carryforward or a deduction for amortizable bond premium on bonds acquired before October 23, 1986).
- An ordinary loss attributable to a contingent payment debt instrument or an inflation-indexed debt instrument (for example, a Treasury Inflation-Protected Security).
- Deduction for repayment of amounts under a claim of right if over $3,000. See Pub. 525 for details.
- Certain unrecovered investment in a pension.
- Impairment-related work expenses of a disabled person.

Total Itemized Deductions

Line 18

If you elect to itemize for state tax or other purposes even though your itemized deductions are less than your standard deduction, check the box on line 18.

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Unrecovered Investment in Annuity

A retiree who contributed to the cost of an annuity can exclude from income a part of each payment received as a tax-free return of the retiree's investment. If the retiree dies before the entire investment is recovered tax free, any unrecovered investment can be deducted on the retiree's final income tax return. See Publication 575, Pension and Annuity Income, for more information about the tax treatment of pensions and annuities.

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SAMPLE LETTER ASSIGNING AN ANNUITY INTEREST TO THE CHARITY

APPENDIX 4

[*Addressed to appropriate office of charity that issued the gift annuity.*]

[*Date*]

[*Name of contact person at charity*]
[*Name of charity*]
[*P.O. Box or Street Address*]
[*City/state/ZIP Code*]

Dear ___________:

For the purpose of making a charitable gift, the undersigned irrevocably assigns and transfers to [*name of charity*] (hereinafter "the Charity") [*all or an undivided _____ percent*] of the undersigned's interest in the Charity's Gift Annuity No.[*number*], the terms of which are set forth in the Gift Annuity Agreement made [*date*] between [*name of donor*] and the Charity, and hereby confirms that the Charity shall hereafter have no further payment obligation with respect to what has been assigned.

Sincerely,

_________________________ _________________
[*Name of annuitant*] Date

Prototype Materials: Assignment-CGA interest.docx

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Sample Letter Cashing Out a Gift Annuity

[*Addressed to appropriate office of charity that issued the gift annuity.*]

[*Date*]

[*Name of contact person at charit*y]
[*Name of charity*]
[*P.O. Box or Street Address*]
[*City/state/ZIP Cod*e]

Dear ___________:

The undersigned irrevocably assigns and transfers to [*name of charity*] (hereinafter "the Charity") all of the undersigned's interest in the Charity's Gift Annuity No.[*number*], the terms of which are set forth in the Gift Annuity Agreement made [*date*] between [*name of donor*] and the Charity, in exchange for a lump sum payment of $[amount], which is [*equal to / less than*] the present value of future payments, determined as of the date of this assignment.

In making this assignment, the undersigned understands that periodic payments from the Gift Annuity will cease, that a portion of the lump sum payment to be made in lieu of future payments may be taxed as ordinary income (and that another portion may be taxed as capital gain*), and that the undersigned is responsible for the payment of any taxes arising therefrom.

Sincerely,

___________________________ ________________

[*Name of annuitant*] Date

* *Include the clause in the parenthesis if appreciated property was contributed and all of the gain has not yet been reported ratably.*

Prototype Materials: Cash out-CGA interest.docx

Chapter 21

Cross-border Annuities — Particularly From Canadian Donors

Rules Regarding Gift Annuities

Canadian Gift Annuity Rates

Previously the Canadian Charitable Annuity Association (CCAA) recommended gift annuity rates to member charities, but it has discontinued doing so out of concern that the practice might be viewed as a violation of the Competition Act, which prohibits price fixing.

It is not clear whether the CCAA and member charities were at risk, for compliance with the recommended rates was voluntary. It could be argued that the organization was merely giving guidance as to what rates would be actuarially sound and result in a significant gift to the charity. However, CCAA has taken the cautious approach and will focus on education as to best practices in operating a gift annuity program. Member charities can still use a computer program (discussed later in this chapter) as an aid in determining the rates they will offer, but they will choose their own assumptions regarding projected return, expenses, and mortality. Consequently, charities that self-insure gift annuities will in the future have different rate schedules.

It was also formerly the practice to provide guidance on rates to charities that reinsured their gift annuities. At different times the CCAA and the Canadian Association of Gift Planners (CAGP) took responsibility for this. Schedules of rates were developed, and from time to time either the CCAA or the CAGP (whichever was currently responsible) would recommend which schedule to use. Sometimes the recommendation was to use one schedule for male annuitants and another for female annuitants. By using the recommended schedule, the charity would retain 25-30 percent of the contribution after it purchased an annuity from an insurance company to cover the payment obligation to the annuitant(s). The rates were sometimes based on the assumption that the annuity would guarantee payments for a certain number of years. For example, if the guarantee period was 10 years and the annuitant died after six years, the charity would receive the payments for the remaining four years, or the commuted value of four years of payments. Although a guaranteed period increased the premium somewhat, it assured a larger benefit for the charity in case of the premature death of the annuitant.

Neither the CCAA or the CAGP now recommends a schedule of rates to charities that reinsure gift annuities. The prevailing practice is for a charity to offer whatever rate will result in a certain percentage (e.g., 25 percent or 30 percent) for charitable purposes. The rates are determined on a case-by-case basis and they regularly fluctuate.

It should be noted that Canadian gift planners often refer to a reinsured gift annuity as a "gift plus annuity" to distinguish it from a self-insured gift annuity.

When an American charity issues a gift annuity to a Canadian donor, it can follow the American Council on Gift Annuities (ACGA) suggested rate, or other schedule it has adopted, provided that, per the Canadian methodology for calculating the gift amount, that amount be at least 20 percent of the contribution. There will be some instances in which that gift amount will be less than 20 percent of the contribution if the current ACGA rates are used. Thus, when issuing a gift annuity to a Canadian donor, it may be necessary to pay a lower rate than would be offered to an American donor of the same age.

The rates offered by most Canadian charities are sex-based, whereas ACGA rates are unisex. For example, a Canadian charity will probably pay a male, age 70, a higher rate than it will pay a female, age 70, because of his shorter life expectancy. U.S. charities, on the other hand, would pay them the same rate.

Figure 21.1 below explains how age is determined for the purpose of determining the tax consequences of a gift annuity.

Donation Receipt

The donation receipt for a contribution for a gift annuity made before December 21, 2002 was determined in accordance with Canadian Interpretation Bulletin IT-111R2. It stated that a donation receipt could be issued for the amount (if any) by which the amount contributed exceeded the total expected return.

Figure 21.1

Determination of Age

The method for determining the age of the donor or other beneficiary of an annuity is very simple: subtract the year of birth from the year in which the annuity payments commence.

Example 1
Donor born September 12, 1947, establishes a gift annuity on May 14, 2023 that will start making payments on June 30, 2023. The donor's age for determination of the tax consequences is 76. It does not matter that the donor has not yet had his/her 76th birthday.

Example 2
Donor born February 16, 1945 establishes an annuity on December 10, 2023 that will start making payments on March 31, 2024. The donor's age for determination of tax consequences is 79.

The total expected return was determined by multiplying the annual annuity payment by the life expectancy of the annuitant, or, in the case of a joint and survivor annuity, by the joint life expectancy of the two annuitants.

For a contribution for a gift annuity made after December 20, 2002, the donation receipt is equal to the excess of the contribution over the amount that would be paid at that time to an arm's length third party to acquire an annuity to fund the promised payments.

See Figure 21.2 for an example of how the donation receipt would differ before and after the December 2002 date.

The annual annuity paid by the charity and the cost of purchasing the annuity from an insurance company will vary depending on the rate a given charity offers and the premium cost of the annuity at a given time. In any event, the cost of the annuity should not exceed 80 percent of the amount contributed. If a donor receives a

Figure 21.2

Calculation of Donation Receipt—Contrasting Methodologies

Floyd J, age 75 contributes $50,000 for a gift annuity. He will receive an annual annuity of $2,900, paid in quarterly installments of $725.00 for the balance of his life. The cost of purchasing from an insurance company an annuity paying to him $2,900 per year for life is $34,500.

If his contribution was made on or before December 20, 2002:

Amount Contributed	$50,000
Life Expectancy (1983 Table)	11.7 years
Total Expected Return	33,930
$2,900 × 11.7	
Donation Receipt	16,070
$50,000 – 33,930	

If his contribution was made after December 20, 2002:

Amount Contributed	$50,000
Cost of annuity from an insurance	
Company paying $2,900 per year	36,900 *
Donation receipt ($50,000 - 36,900)	13,100

** The actual cost will fluctuate.*

material benefit from the contribution and that benefit exceeds 80 percent of the value of the contribution, the donor must satisfy the Canada Revenue Agency (CRA) that he or she intended to make a gift to the charity. Otherwise, the charity is not permitted to issue a receipt.

The current position of the CRA is conceptually correct and consistent with its general position that, when a donor receives a material benefit in return for a gift, the donation receipt should be the value of the property transferred reduced by the value of the material benefit. One way to determine the value of the annuity payments (the benefit received) is to obtain a quotation from a third-party insurer for the cost of an annuity paying the stipulated amount.

Another, preferable, way would be for the CRA to approve mortality tables and interest factors which would enable charities to calculate the value of the annuity payments without having to get a quotation from an insurance company. This would certainly be welcomed by the charities that self-insure gift annuities and have no intention of making a purchase through the broker from whom they obtain the quotation. It would also be more fair.

For example if three 80-year-old males each contribute $25,000 on the same day to three different charities for gift annuities, and each receives identical payments, their donation receipts may nevertheless vary. That is because each charity may obtain a quotation from a different insurance company. Providing a methodology for calculating the value of an annuity based on mortality tables and interest factors would assure equal treatment of donors.

The CCAA has, in fact, developed such a methodology, and some charities that self-insure gift annuities are now using it. The computer program is called QUALGA (an acronym for "Quotation Algorithm for Gift Annuities"). It was calculating the value of an annuity based on the Annuity 2000 Tables with a three-year age set back, and a certain percent return assumption. These factors are adjusted periodically, and the most recent adjustments are not known.

The CRA has neither approved nor rejected the QUALGA program. The Agency did indicate in a letter that a charity could use any reasonable methodology for pricing an annuity. The QUALGA program is regularly tested by comparing the price of an annuity it generates with quotations from insurance companies. The results are quite similar, which indicates that QUALGA meets the requirement of being a reasonable method of pricing the annuity. Although the CRA has not officially blessed the program, it has apparently not questioned the donation receipts generated by it.

Obtaining Premium Quotations

A prescribed annuity from an insurance company may provide payments for life only, or for the longer of life or a term of years. For example, the payments might be paid for the life of the annuitant, but in case the annuitant died prior to the end of a 10-year period, the payments would be paid to a named beneficiary annuitant for the balance of the 10-year period. The premium cost will be somewhat higher when there is a guarantee period. Since gift annuity agreements provide for payments to be paid to the annuitant for life with no guarantee period, the premium quotation for purpose of determining the donation receipt should be for life only.

A charity that reinsures gift annuities might elect to have a guarantee period so that it does not leave so much money with the insurance company if the annuitant dies prematurely. For example, if the annuity had a 10-year guarantee period, and the annuitant died after six years, the charity would be entitled to payments for four years. Since a guarantee period does not benefit the annuitant, the extra cost for including it should not be a factor in calculating the donation receipt. The donation receipt is the amount contributed minus the premium for a life-only annuity.

In the case of a quite elderly donor, an insurance company may insist on a minimum guaranteed period in order to issue a quotation. In that case, the charity may have no choice but to use the premium cost for an annuity with that guarantee period in order to calculate the donation receipt. This should not be an issue with CRA because the charity benefits.

Taxation of Payments

The portion of each annuity payment representing a return of capital is tax-free, and the balance is taxable as ordinary income. See Figures 21.3 and 21.4 for examples of how the taxable and tax-free portions of payments are determined.

Note: Whatever is tax-free initially will continue to be tax-free even if an annuitant lives beyond life expectancy.

Life Expectancies

The 1971 Individual Mortality Table was used through 2016 for determining the total expected return, which, as noted above, is the total amount expected to be paid to an annuitant for the duration of his or her life expectancy. Beginning on January 1, 2017 the Annuity 2000 Basic Mortality Table must be used in calculating total expected return. Because the average life expectancies per the Annuity 2000 Basic Mortality Table are longer than the life expectancies per the Annuity 1971 Individual Mortality Table, the total expected return for annuities established after 2016 have increased. That will result in a larger portion of the payments being taxable and a smaller portion being tax-free.

Life expectancies per the 1971 and 2000 Tables, for single lives (male and female) are provided in Appendices A and B. Because female life expectancies are longer than male life expectancies, the capital investment, in the case of a female annuitant, is presumed to be returned over a longer period.

Deferred Annuities

Deferred annuities are effectively precluded in Canada because the annuitant is deemed to recognize as taxable income the compound

Figure 21.3

Calculation of Donation Receipt and Taxation of Payments—One Life

On July 1, 2024, Constance A, whose date of birth is May 10, 1946, contributes $50,000 for a charitable gift annuity. She will receive an annual annuity of $3,000, paid in quarterly installments of $750, starting September 30, 2024, and continuing for the balance of her life.

Computation of Donation Receipt	
Amount Contributed	$50,000
Premium quotation for a pure-life annuity paying $3,000 per year (capital investment)	37,000
Donation Receipt	13,000

Computation of Taxable and Tax-free Portions of Annuity Payment	
Amount Contributed	$50,000
Annuity Rate	6.0%
Annual Payments	3,000
Life Expectancy (Annuity 2000 Table)	12.7 years
Total Expected Return (Annuity 2000 Table) $3,000 × 12.7	38,100
Fraction of annual payment tax-free 37,000 ÷ 38,100	.9711
Amount of annual payment tax-free .9711 x 3,000	2,913
Amount of annual payment taxable	$87

Note: These numbers are selected to explain taxation of payments. They are not necessarily the annuity rate a charity would pay nor the actual cost of reinsurance.

interest credited to the annuity contribution each year during the deferral period. Even if the deferred annuity were established in the U.S., the Canadian annuitant would probably be taxed on the growth in value each year. Thus, establishing deferred gift annuities for Canadian donors is not advised.

Taxable Gifts

Since 1971, Canada has had neither an estate tax nor a gift tax. Thus, an individual who funds a gift annuity and names another person as annuitant, does not make a taxable gift to that person. However, in the event a spouse uses his or her assets to create a gift annuity for the other spouse, the taxable portion of the annuity payments will be attributed to the donor spouse. The income attribution rules are designed to block attempts to shift income to a person who is subject to a lower tax rate than the transferor. In Canada, each individual, married or single, files a separate income tax return.

Testamentary Gift Annuities

It should be possible for a Canadian donor, like an American donor, to provide in his/her will for the establishment of a testamentary gift annuity for a survivor funded with some portion of estate assets. The donation receipt, determined in the manner described above, would result in an

Figure 21.4

Calculation of Donation Receipt and Taxation of Payments—Two Lives

On July 1, 2024 Samuel and Sarah R, whose dates of birth are August 8, 1949 and September 10, 1949, respectively, contribute $50,000 for a charitable gift annuity. Annual payments of $2,400 ($600 per quarter) starting September 30, 2024 will be made to them jointly, and then to the survivor for life.

Computation of Donation Receipt

Amount Contributed	$50,000
Annuity Rate	4.8%
Annual Payments	2,400
Premium quotation for a pure-life annuity paying $2,400 per year (capital investment)	38,900
Donation Receipt ($50,000 - 38,900)	11,100

Computation of Taxable and Tax-free Portions of Annuity Payment

Amount Contributed	$50,000
Annuity Rate	4.8%
Annual Payments	2,400
Life Expectancy (Annuity 2000 Table)	18.4 years
Total Expected Return (Annuity 2000 Table) $2,400 × 18.4	44,160
Fraction of annual payment tax-free 38,900 ÷ 44,160	.8809
Amount of annual payment tax-free .8809x 2,400	2,114
Amount of annual payment taxable	$286

Note: These numbers are selected to explain taxation of payments. They are not necessarily the annuity rate a charity would pay nor the actual cost of reinsurance.

income tax credit on the donor's terminal income tax return filed by the executor. (**Note:** Effective 2016, it became possible to apply the credit either on the donor's terminal tax return or on a tax return of the estate.)

As noted above, Canada has neither a gift tax nor an estate tax. A person who dies is deemed to have disposed of all of his or her property the moment before death, and capital gain (with the exception of gain in a principal residence, which is not taxed, and gain in property passing to a spouse or spousal trust, the taxation of which is deferred until the disposition of the property) is reported on the terminal income tax return. A charitable bequest, or the gift portion of an estate contribution for a testamentary gift annuity, generates a tax credit to be applied against whatever tax may be owing on the terminal income tax return. (Note: Effective in 2016, it became possible to apply the credit either on the donor's terminal income tax return or on an income tax return of the estate.)

Contributions by Canadians to American Charities for Gift Annuities

Allowance of Tax Credit in General

Canadians who make charitable gifts to a qualified charity receive a donation receipt from the charity, and they can use the donation receipt to claim a tax credit on their income tax return.

Section 118.1(1) of the Canadian Income Tax Act states that a gift to "a university outside Canada that is prescribed to be a university the student body of which ordinarily includes students from Canada" is a charitable gift that qualifies for an income tax credit. Per Section 3503 of the Canadian Income Tax Regulations, universities outside of Canada "named in Schedule VIII are hereby prescribed to be universities the student body of which ordinarily includes students from Canada." (The term *university* includes an accredited degree-granting college.) Thus, if a gift annuity is issued to a Canadian donor by a U.S. college or university listed on Schedule VIII, the college or university may give the Canadian a donation receipt for the amount, if any, by which the amount contributed exceeds the cost of a commercial annuity that pays the amount specified in the gift annuity arrangement, provided the cost of the commercial annuity does not exceed 80% of the amount contributed.

If the gift annuity is issued by a college or university not listed on Schedule VIII, the college or University may still issue a donation receipt for the amount described above if the gift is "to a college or university at which the resident (of Canada) or a member of the resident's family is or was enrolled." See Article XXI of the Canada-United States Income Tax Convention.

A Canadian who files a U.S. income tax return because of having U.S.-source income and who makes a gift to a U.S. charity, should be able to claim a charitable deduction on the U.S. tax return as well as a credit on the Canadian return. In both cases, the limits in the respective countries would apply.

If the gift annuity is issued by a U.S. charity that is not a college or university, the donation receipt, if any, is creditable if the donor has United States-source income. However, the maximum amount of the donation receipt that is creditable would be 75 percent of United States-source income.

If the gift annuity is not issued by a college or university listed on Schedule VIII, or a college or university where the donor or an immediate family member is or was enrolled, and the donor has no United States-source income, then the contribution for the gift annuity will not result in a tax credit however large the donation receipt.

The fact that a gift annuity results in no tax credit will not necessarily deter the Canadian donor from establishing one. This is because the real tax benefit of a gift annuity for a Canadian is not the tax credit but the fact that all or a substantial portion of the annuity payments are tax-free on the Canadian return.

Donation Receipt Issued by an American Charity

Canadians must have donation receipts in order to claim a tax credit, and those receipts must contain certain information. The general requirements for a donation receipt are described in Section 3501(1.1) of the Canadian Income Tax Regulations. These requirements may be summarized as follows:

- The name and address of the donee organization. (If the donee is a Schedule VIII college or university, the name, city, and state on the receipt must be the same as mentioned in Schedule VIII.)
- The serial number of the receipt.
- The place or locality where the receipt was issued.
- The date on which the donation was received.
- For cash gifts, the sum contributed.

- In the case of a non-cash donation, a description of the property, and the name of the appraiser if an appraisal was done. If the gift consists of publicly-traded securities, the securities should be described and the number of shares donated should be indicated.
- The name and address of the donor.
- The signature of a person authorized to acknowledge donations.
- For non-cash gifts, the fair market value of the property on the date of the gift.
- The following notice: "For information, contact the website of Canada Revenue Agency ("CRA"), which is https://www.canada.ca/en/revenue-agency.html."

These are the general requirements for a donation receipt acknowledging outright gifts and bequests.

In the case of a contribution for a gift annuity, the gift value (if any) calculated as described under *Donation Receipt*, should be shown as the sum contributed. See Appendix 1 for a sample receipt.

When Canadians make a gift to a registered charity in Canada, they are accustomed to seeing the charity's registration number on the receipt. An American charity will not have a Canadian registration number, so inclusion of the U.S. tax identification number is advised.

The receipting rules, which are applicable to Canadian charities, also pertain to charitable organizations outside of Canada, such as colleges and universities listed on Schedule VIII. This means that all of the above items, including a serial number and the CRA website address, must now appear on the receipt issued to the Canadian donor. Thus, the standard gift receipt the charity provides to American donors will probably be insufficient, and a customized receipt for Canadian donors must be devised.

Note: For calculation of the donation receipt, it is recommended that the premium quotation be obtained from a Canadian insurance company. If it is obtained from an American company, the charity will need to convert the premium quotation and the contributed amount to Canadian currency in order to determine the donation receipt and thus qualify for a tax credit.

Authority and Tax Consequences

Provided an American charity is authorized to issue gift annuities under its state of domicile, it should be able to issue one to a Canadian donor. It is not known whether provincial insurance departments would try to assert jurisdiction over an American charity that issues gift annuities to their citizens, but American colleges and universities and other American charities as well are, in fact, receiving gift annuity contributions from Canadians, and their authority to do so has not been questioned in Canada.

Presumably, the computation of the donation receipt and the tax-free return of capital would be in accordance with applicable Bulletins issued by the CRA. American software should not be used to compute the donation receipt and taxation of payments.Instead, do the calculations in this manner:

- To determine the amount of the donation receipt, subtract the premium for acquiring a pure-life prescribed annuity, paying the stipulated amount, from the amount contributed.
- To determine the tax-free portion of payments, first multiply the annual annuity by the years of life expectancy per Appendix 7 of this chapter using the Annuity 2000 mortality table. The result is the total expected return. Next divide the premium by the total expected return and multiply the result by the annual annuity. The result is the portion of each payment that is tax-free. If the premium exceeds the total expected return, the entire annuity payment will be tax-free.

Even if the donor will not be entitled to a donation receipt, the way in which payments are taxed under Canadian law must still be determined. Thus, if in the example in Figure 21.4 the donor's $50,000 contribution was made to a U.S. charity but the contribution did not qualify for a donation receipt, the capital investment would be considered to be $50,000, and 100 percent (because $50,000 is greater than $44,160) of each payment would be tax free.

A Canadian donor could have totally tax-free payments on the Canadian tax return by selecting a gift annuity rate such that the amount paid for the annuity exceeds the total expected return. Suppose, for example, that a female donor, age 80, wants to contribute $100,000 to an American charity for a gift annuity, and suppose that none of the qualifications are met for a charitable donation tax credit on her Canadian return, so no donation receipt is issued. From a Canadian tax standpoint, this is not a charitable gift but simply the purchase of an annuity from a foreign organization.

Per the 2000 Tables, her life expectancy is 11.3 years. If she elects an annual annuity of $8,000 per year, her total expected return would be $96,000. Since this is less than the amount she invested, her entire payments would be a tax-free return of capital. She might decide that the security of receiving this amount tax-free for life while making a gift to a favorite organization is a sufficient reason to proceed. Of course, she must consider the fact that even though none of the payments would be subject to tax in Canada, there would likely be some withholding for tax in the United States. However, the amount withheld (described below) probably would not be very large.

Reporting and Withholding

The charity should report to the annuitant and the CRA the taxable portion of annuity payments on Form T4A. This form can be obtained on the Internet. If the payments are entirely tax-free, it is unnecessary to file Form T4A. The taxable portion of payments should be computed in accordance with the CRA's December 24, 2002 Technical News Bulletin described and illustrated above. (See Appendix 2 for a copy of Form T4A.)

The charity issuing the annuity must withhold a certain percentage of the taxable portion of each annuity payment. It should report to the Canadian annuitant on IRS Form 1042-S the amount withheld, and then file with the IRS Form 1042 together with the Form1042-S and a Form 1042-T, which functions in relation to Form 1042-S in the same way that, as noted in Chapter 5, Form 1096 functions in relation to Form 1099-R. The taxable portion, for purpose of U.S. withholding, is computed per the method specified in the Treasury Regulations. In other words, U.S. planned giving software is used to compute the taxation of payments in the normal way. Forms 1042, 1042-S, and 1042-T appear in Appendices 3, 4, and 5. Finally, even though the way in which payments are taxed will change for U.S. tax purposes once an annuitant lives as long as expected when the annuity was established, for Canadian tax purposes the amounts reported on Form T4A for each full year will remain the same no matter how long an annuitant lives.

Note: Per the U.S.-Canadian Tax Treaty, a withholding rate of 15 percent with respect to the taxable portion of annuity payments applies, but only if the annuitant has completed and submitted to the charity IRS Form W-8BEN certifying Canadian citizenship and residence. If the charity has not received this form, it must withhold 30 percent of the taxable amount. A copy of the form is found in Appendix 6. Not included in this manual are the lengthy instructions applicable to the form.

The Canadian does not have to file a U.S. tax return unless he or she has other U.S. income that would necessitate it. If a portion of the annuity payments are subject to tax both in Canada and the United States, Canada will generally allow the Canadian to deduct the U.S. withholding tax from Canadian tax on that income. That prevents the person from being subject to double taxation.

Canadian as Successor Annuitant

Suppose an American donor establishes a two-life gift annuity of which he or she is the first annuitant and a Canadian citizen and resident is the successor annuitant. The donor dies first, and then payments are made to the Canadian. Although this eventuality is not specifically addressed in any rulings, it seems reasonable that the taxable portion of payments to the Canadian would be subject to withholding as described above. The taxable portion would likely be determined in accordance with U.S. rules.

If the successor annuitant were a citizen or resident of a foreign country other than Canada, withholding would likely also be required, but the withholding rate could be different depending on the tax treaty with that country.

Gift Annuity Agreement and Currency

The U.S. charity may use its standard gift annuity agreement even though the annuitant is Canadian, but it should indicate whether payments will be made in U.S. or Canadian dollars.

The agreement could state in Canadian dollars the amount of the gift and also in Canadian dollars the amount of the annuity payments. This may be preferable to the Canadian donor, and it would avoid any question by the Canadian Revenue Agency ("CRA") about the size of the donation receipt.

However, the disadvantage is that the U.S. charity could wind up paying more in U.S. dollars than it anticipated. Suppose that when a Canadian dollar was worth 90 cents U.S. a Canadian contributed $100,000 for a gift annuity with a 6.0 percent annuity rate, and suppose that the U.S. charity agreed to make payments of $6,000 per year Canadian. The charity would have agreed to pay $5,400 U.S. for a gift worth $90,000 U.S. If the Canadian dollar should become equal to the U.S. dollar, the charity would be paying $6,000 U.S. for a gift of $90,000, which would be an annuity rate of 6.67 percent.

The gift annuity agreement could state in U.S. dollars the amount of the gift and in U.S. dollars the amount of the annuity payment. This would require converting a contribution of Canadian currency to its U.S. dollar value, based on the exchange rate at the time of the contribution. Although the Canadian annuitant would receive a fixed amount of U.S. dollars, the amount of Canadian dollars to which the annuity payment could be converted would fluctuate.

Canadian insurance companies will provide a premium quotation in Canadian dollars. If all numbers in the gift annuity agreement are in Canadian dollars, the donation receipt will be the difference between the amount contributed and the premium quotation, and the proportion of each payment that is tax free will be the total expected return in Canadian dollars divided by the amount contributed in Canadian dollars. However, if all numbers in the gift annuity agreement are in U.S. dollars, it will be necessary to convert all numbers – amount contributed, annuity payment, premium quotation, and the tax-free and taxable portions of the payments, to U.S. dollars based on the exchange rate at the time the annuity is established.

For purposes of tax reporting to the IRS, as explained on page 8, it will be necessary to convert the contribution and payments to U.S. dollars, whether or not they are paid in U.S. or Canadian dollars to the annuitant.

Contribution of Appreciated Assets

If a Canadian contributes qualifying appreciated securities, they will be taxed on 50 percent of the capital gain allocable to the present value of the annuity payments. For a few months in 2024, if the capital gain allocable to the present value of the annuity payments exceeded $250,000, then they were taxed on 66.67% of the capital gain in excess of $250,000. As of this writing, this rule has been suspended until January 1, 2026. Donors who could be affected by this rule should

Figure 21.5

Taxation of Gain When Appreciated, Listed Securities are Contributed for a Gift Annuity

George K contributes listed securities having a fair market value of $100,000 and a cost basis of $40,000 for a gift annuity. The present value of his payments, based on a premium quotation from an insurance company, is $70,000.

His donation receipt is $30,000 ($100,000 - 70,000)

Total gain is $60,000 ($100,000 - 40,000)

The gain allocable to the present value of the payments is $\frac{\$70{,}000}{100{,}000} \times \$60{,}000 = \$42{,}000$

The gain allocable to the gift portion (the amount for which a donation receipt is issued) is

$\frac{\$30{,}000}{100{,}000} \times \$60{,}000 =$ $18,000

The taxable gain is:

50%	x	$42,000	=	$21,000
0%	x	18,000	=	0
Total taxable gain				$21,000

Taxable gain is added to income, and then the amount of income tax is determined. The tax is then reduced by the amount of credit resulting from the donation receipt.

Note: There is no distinction between short-term and long-term capital gain in Canada. In both cases, the includible portion of gain (currently 50%) is added to income.

consult a tax professional about whether the rule is in effect and applies to their gift.

Qualifying, listed securities include stocks, bonds, bills, warrants, and futures traded on approved stock exchanges in Canada, the United States, and certain other countries. They also include mutual funds.

For tax purposes a gift annuity is treated like a simultaneous purchase of an annuity and an outright gift. Since 2006, when the Canadian Federal Budget excluded from taxation the gain in listed securities contributed outright to a public charity, none of the gain allocated to the gift portion is taxable. Fifty percent of the rest of the gain is taxable. Unless there is a change included in the 2025 Canadian Budget, 66.67 percent of any gain in excess of $250,000 will be taxable starting on January 1, 2026. See page 10. In the case of a gift annuity funded with appreciated securities, it is as if the donor sold enough securities to generate the cash needed to purchase the annuity and then made a charitable contribution of the remaining securities.

The 2024 Canadian Budget made a change regarding donors who are subject to the alternative minimum tax. When a donor is subject to this tax the donor can claim only 80 percent of the charitable donation tax credit, rather than 100 percent. The alternative minimum tax in Canada, like the alternative minimum tax in the United States, requires that high-income earners and trusts calculate their income tax liability based on rules that allow for fewer tax deductions, exemptions, and credits, as well as the regular way, and pay whichever is higher. Donors for gift annuities are rarely subject to the alternative minimum tax.

U.S. Citizen Who Is a Resident of Canada

It may be that the donor is a U.S. citizen living in Canada. If so, the donor will be filing both Canadian and U.S. tax returns because the United States taxes citizens on worldwide income. So that they are not doubly taxed on the same income, they are allowed a credit on their U.S. return for foreign taxes paid.

In the case of a citizen living in Canada, the charity probably needs to provide (1) a calculation of the deduction and taxation of payments using U.S. planned giving software and (2) a calculation of the donation receipt, if any, and taxation of payments following Canadian calculation methodology.

The donor would receive an IRS Form 1099-R to use for tax reporting on the U.S. tax return and a Form T4A (assuming any portion of payments is taxable) for reporting on the Canadian tax return. In this case it should be unnecessary to file Forms 1042 and 1042-T or to send the donor a Form 1042-S because the taxable portion of the annuity payments will be reported on the U.S. tax return.

Gifts of Canadian Property Owned by Americans

A number of American residents and citizens own real property in Canada, and sometimes they inquire about donating that property to an American charity.

If the property is either sold or donated to a U.S. charity, the owner will be taxed on 50 percent of the gain, subject to certain reductions in taxable gain if the property was purchased prior to 1985. Taxation of gain can be eliminated in the case of an outright gift of the property to an American college or university listed on Schedule VIII, by having the donor elect to value the gift at cost per section 118.1(6) of the *Income Tax Act*. This makes sense if the donor has no Canadian-source income that would be taxable in Canada. However, a donor who has Canadian-source income may be better off paying tax on the taxable capital gain and obtaining a credit, based on the market value of the donated property, to shelter some of that Canadian income.

If the Canadian property is contributed for a gift annuity issued by an American college or university listed on Schedule VIII, the taxable gain attributable to the present value of the annuity would be taxed in Canada. This is the sale portion. However, it should be possible to elect to value the gift portion at cost, thereby at least reducing the amount of taxable gain.

Annuity 2000 Mortality Tables Life Expectancies

These figures are located in Appendices 7 and 8.

Gift Annuities for Donors from a U.S. Territory

Sometimes a resident of a U.S. territory, such as the Virgin Islands, Puerto Rico, Guam, or American Samoa, wants to establish a gift annuity with a charity domiciled within the United States. Residents of these territories, unless they immigrated and have not been naturalized, are U.S. citizens, and they are subject to U.S. income tax, though it may be collected within the territory. When this is the case it would appear that the charity can proceed as it would with a mainland donor, calculating the deduction and taxation of payments using its planned giving software, providing a Form 1099-R each year, and not withholding anything for federal income tax.

Puerto Rico does regulate the issuance of gift annuities (26 LPRA Sections 4201 – 4210), and requires a charity to apply for and receive a special license. The charity must have been in active operation for at least five years, and must also be registered to do business in Puerto Rico.

A charity must maintain a segregated reserve fund holding an amount equal to the calculated reserves on its outstanding gift annuity agreements plus a 10 percent surplus. A deduction in reserves may be made for any portion of the annuity risk that is reinsured by an authorized life insurance company. Investment of the reserves is subject to the restrictions imposed on life insurance companies, unless a charity has requested approval to invest in accordance with the laws of its state of domicile. An annual report on the reserve fund must be submitted by March 31.

A charity must disclose to donors that annuities are backed solely by the charity and not by the Government of Puerto Rico. Suggested language is:

> *Payments made under charitable gift annuities are backed solely by the full faith and credit of the issuing organization, are not guaranteed or insured by an insurer, are not protected by a surety association, and are not backed in any way by the Government of Puerto Rico.*

Donors must either acknowledge receipt in writing of such disclosure, or sign an annuity agreement that includes the disclosure language. Specific provisions are also required in the annuity agreement (including the age of the annuitant and the present value of the annuity benefits), and such provisions must separately be acknowledged by the donor unless the donor signs the agreement.

Gift Annuities for Donors from Other Countries

While the greatest volume of foreign contributions comes from Canada, residents of other countries also make donations to American charities, and occasionally one of these individuals wants to contribute for a gift annuity.

The tax consequences within the country where the donor resides depend on the laws of that country and on whatever tax treaty that country may have with the United States. To discuss the consequences in the various countries is beyond the scope of this manual. Thus, a charity cannot send a foreign national the typical gift annuity illustration generated by U.S. software and represent that the illustration displays the tax implications for that person.

If a charity does issue a gift annuity to a resident and citizen of another country, the taxable portion of the annuity payments may be subject to withholding. The withholding rate will vary depending on the provisions of the tax treaty with the country where the donor resides. For example, the withholding rate applicable to Canadians is different from the rate for residents and citizens of the United Kingdom. (IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Corporations, contains tax treaty tables outlining the different withholding rates.) In the absence of a treaty, the withholding rate is 30 percent. Even if an applicable treaty exists, however, a withholding rate of 30 percent will apply unless the annuitant submits a completed IRS Form W-8BEN to the charity and complies with any particular requirements set forth in the treaty.

The foregoing also applies if the donor is a U.S. citizen, but the annuitant is a nonresident alien. Depending on the laws of the annuitant's country and any Tax Treaty in effect, the annuitant might be entitled to claim the tax withheld as a credit against the income tax payable in his or her own country.

Possible Applicability of the USA PATRIOT Act

This federal legislation, the official title of which is "United and Strengthening America by Providing Appropriate Tools to Interrupt and Obstruct Terrorism Act of 2001," but which is more often referred to as simply "the Patriot Act," is extensive and complex, and it addresses numerous matters entirely unrelated to gift annuities. Nevertheless, the portions of the legislation that pertain to money laundering can potentially apply to gift annuities, although as a practical matter they generally have not had that effect during the period of more than a decade since the legislation was passed.

The focus of the money laundering provisions is on identifying the parties to various international financial transactions. In the typical gift annuity scenario involving a U.S. charity and a foreign donor and/or a foreign annuitant, the identity of the parties can readily be determined by the federal government or by any financial institution with a role in receiving a contribution or processing payments. In some cases, usually due to an overabundance of caution on the part of a financial institution, such an institution may insist on documenting the identity of a foreign donor or annuitant to its satisfaction before agreeing to process a transaction related to a gift annuity.

On the one hand, a charity might reasonably question the necessity of whatever the financial institution is insisting upon, and perhaps this will lead the institution to rethink its position. On the other hand, even if certain financial institution requirements must indeed be met, they ultimately will not preclude the charity from issuing the contemplated gift annuity. In short, in the absence of any truly criminal activity (which is extremely rare in the context of a gift annuity), the Patriot Act may represent at most a source of some inconvenience, as opposed to an insurmountable impediment.

DONATION RECEIPT

APPENDIX 1

Suggested language to be used for a donation receipt if the amount contributed is at least 125 percent of the cost of a commercial annuity that pays the amount specified in the gift annuity arrangement:

Official donation receipt for income tax purposes
Receipt No. ____________

The gift was to ABC University
1234 Main Street
Seattle, WA 98000

ABC University is a United States educational institution listed on Schedule VIII and, thus, per Section 3503 of the Canadian Income Tax Regulations, is prescribed to be a university, the student body of which ordinarily includes students from Canada.

Date gift received – May 10, 2024

Donor's name and address:

Susan Smith
8000 Oak Street
Vancouver, B.C. V6K 2Z8
Telephone (604) 360-9000

Amount contributed for a charitable gift annuity: $100,000 *

Value of annuity payments (the advantage) paid to donor: $70,000

Eligible amount of contribution (net donation): $30,000

Description of advantage to donor

The donor will receive fixed payments of $5,000 per year for life. The value of these payments per a quotation obtained from a third party insurer (Insert name of insurance company) was $70,000.

Date receipt issued:________________

Authorized signature on behalf of ABC University: ________________________

Title: ________________________

For information, contact the website of Canada Revenue Agency ("CRA") which is https://www.canada.ca/en/revenue-agency.html.

** This would be stated in U.S. currency if the donor contributed U.S. funds.*

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CRA Form T4A

APPENDIX 2

Payer's name – Nom du payeur

Canada Revenue Agency | Agence du revenu du Canada

Year
Année

T4A

Statement of Pension, Retirement, Annuity, and Other Income
État du revenu de pension, de retraite, de rente ou d'autres sources

061 Payer's program account number
Numéro de compte de programme du payeur

Payer-offered dental benefits
Prestations dentaires offertes par le payeur
015

Pension or superannuation – line 11500
Prestations de retraite ou autres pensions – ligne 11500
016

Income tax deducted – line 43700
Impôt sur le revenu retenu – ligne 43700
022

Social insurance number
Numéro d'assurance sociale
012

Recipient's program account number
Numéro de compte de programme du bénéficiaire
013

Lump-sum payments – line 13000
Paiements forfaitaires – ligne 13000
018

Self-employed commissions
Commissions d'un travail indépendant
020

Recipient's name and address – Nom et adresse du bénéficiaire
Last name (print) – Nom de famille (en lettres moulées) | First name – Prénom | Initials – Initiales

Annuities
Rentes
024

Fees for services
Honoraires ou autres sommes pour services rendus
048

Other information (see page 2)
Autres renseignements (voir à la page 2)

Box – Case	Amount – Montant	Box – Case	Amount – Montant

Box – Case	Amount – Montant	Box – Case	Amount – Montant

T4A (24) **Protected B** when completed / **Protégé B** une fois rempli

Payer's name – Nom du payeur

Canada Revenue Agency | Agence du revenu du Canada

Year
Année

T4A

Statement of Pension, Retirement, Annuity, and Other Income
État du revenu de pension, de retraite, de rente ou d'autres sources

061 Payer's program account number
Numéro de compte de programme du payeur

Payer-offered dental benefits
Prestations dentaires offertes par le payeur
015

Pension or superannuation – line 11500
Prestations de retraite ou autres pensions – ligne 11500
016

Income tax deducted – line 43700
Impôt sur le revenu retenu – ligne 43700
022

Social insurance number
Numéro d'assurance sociale
012

Recipient's program account number
Numéro de compte de programme du bénéficiaire
013

Lump-sum payments – line 13000
Paiements forfaitaires – ligne 13000
018

Self-employed commissions
Commissions d'un travail indépendant
020

Recipient's name and address – Nom et adresse du bénéficiaire
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Annuities
Rentes
024

Fees for services
Honoraires ou autres sommes pour services rendus
048

Other information (see page 2)
Autres renseignements (voir à la page 2)

Box – Case	Amount – Montant	Box – Case	Amount – Montant

Box – Case	Amount – Montant	Box – Case	Amount – Montant

T4A (24) **Protected B** when completed / **Protégé B** une fois rempli

APPENDIX 2

CRA Form T4A

Report these amounts on your tax return.

Box 016, Pension or superannuation – Enter this amount on line 11500. It may qualify for the pension income amount. See Retirement income summary table in the Appendix at **canada.ca/fed-tax-information**.
The amount in the following box is included in box 016:
- Box 128, Veterans' benefits eligible for pension splitting – See Form T1032, Joint Election to Split Pension Income

Box 015, Payer-offered dental benefits – Go to **canada.ca/t4a-information-payers**.

Box 018, Lump-sum payments – In most cases, enter this amount on line 13000. For lump sum payments from a specified pension plan or money purchase RPP, see the Retirement income summary table in the Appendix at **canada.ca/fed-tax-information**.
The amounts in the following boxes are included in box 018:
- Box 102, Lump-sum payments – non-resident services transferred under paragraph 60(j)
- Box 108, Lump-sum payments from a registered pension plan (RPP) that you cannot transfer
- Box 110, Lump-sum payments accrued to December 31, 1971
- Box 158, Lump-sum payments that you cannot transfer that are not reported elsewhere
- Box 180, Lump-sum payments from a deferred profit sharing plan (DPSP) that you cannot transfer
- Box 190, Lump-sum payments from an unregistered plan

Box 020, Self-employed commissions – Enter your gross commissions income on line 13899 and your net commissions income on line 13900.

Box 022, Income tax deducted – Enter this amount on line 43700.

Box 024, Annuities – See Retirement income summary table in the Appendix at **canada.ca/fed-tax-information**.
The amounts in the following boxes are included in box 024:
- Box 111, Income averaging annuity contracts (IAAC)
- Box 115, Deferred profit sharing plan (DPSP) annuity or instalment payments

Box 028, Other income – Amounts not reported anywhere else on the T4A slip. See line 13000 and lines 13499 to 14300 at **canada.ca/fed-tax-information**.

Box 030, Patronage allocations – Enter this amount on line 13000. Do not report the amount if it was for goods or services you consumed and for which you cannot deduct the cost when you calculate your income. This amount does not qualify for the federal dividend tax credit.

Box 032, Registered pension plan contributions (past service) – Enter the amount you can deduct on line 20700 (go to **canada.ca/RRSP**).
- Box 126, Pre-1990 past service contributions while a contributor (included in box 032)
- Box 162, Pre-1990 past services contributions while not a contributor (included in box 032)

Box 034, Pension adjustment – Enter this amount on line 20600. This amount is not an income or a deduction.

Box 040, RESP accumulated income payments – Enter this amount on line 13000 and fill out the Form T1172, Additional Tax on Accumulated Income Payments from RESPs.
- Box 122, RESP accumulated income payments paid to other (included in box 040)

Box 042, RESP educational assistance payments – Enter this amount on line 13000. For details, see Information Sheet RC4092, Registered Education Savings Plans.

Box 046, Charitable donations – See Pamphlet P113, Gifts and Income Tax.

Box 048, Fees for services – Report this amount as business or professional income.

Box 129, Tax deferred cooperative share. Enter this amount on line 13000. This amount may be deferred. For more information, go to **canada.ca/checklist-small-businesses**.

Box 133, Variable pension benefits – See Retirement income summary table in the Appendix at **canada.ca/fed-tax-information**.

Box 135, Recipient-paid premiums for private health services plans – Go to **canada.ca/line-33099**.

Box 196 – Tuition assistance for adult basic education – Enter at line 25600 the amount of tuition assistance that is more than the scholarship exemption you can claim for this tuition assistance.

Box 201 – Repayment of COVID-19 financial assistance – Enter on line 23200 the amount repaid of federal, provincial, and territorial COVID-19 benefits received in a prior year.

Enter on line 10400:
- Box 104, Research grants – Go to **canada.ca/line-10400**.
- Box 107, Payments from a wage-loss replacement plan – Go to **canada.ca/line-10400**.
- Box 118, Medical premium benefits
- Box 119, Premiums paid to a group term life insurance plan
- Box 127, Veterans' benefits
- Box 132, Wage Earner Protection Program
- Box 152, SUBP qualified under the Income Tax Act
- Box 156, Bankruptcy settlement

Enter on line 11500:
- Box 194, PRPP payments – See Retirement income summary table in the Appendix at **canada.ca/fed-tax-information**.

Enter on line 12500:
- Box 131, Registered disability savings plan

Enter on line 13000:
- Box 106, Death benefits – Go to **canada.ca/line-13000**.
- Box 109, Periodic payments from an unregistered plan
- Box 117, Loan benefits
- Box 123, Payments from a revoked DPSP
- Box 125, Disability benefits paid out of a superannuation or pension plan
- Box 130, Apprenticeship Incentive Grant, Apprenticeship Incentive Grant for Women or Apprenticeship Completion Grant
- Box 136, Parents of Murdered or Missing Children/Parents of Young Victims of Crimes
- Box 150, Labour Adjustment Benefits Act and Appropriation Acts
- Box 154, Cash award or prize from payer
- Box 197, Canada Emergency Response Benefit (CERB)
- Box 198, Canada Emergency Student Benefit (CESB)
- Box 199, Canada Emergency Student Benefit (CESB) for eligible students with disabilities or those with children or other dependents
- Box 200, Provincial/Territorial COVID-19 financial assistance payments
- Box 202, Canada Recovery Benefit (CRB)
- Box 203, Canada Recovery Sickness Benefit (CRSB)
- Box 204, Canada Recovery Caregiving Benefit (CRCB)
- Box 211, Canada Worker Lockdown Benefit (CWLB)

Box 134 – Tax-free savings account (TFSA) taxable amount or taxable FHSA amount for a qualified donee – Go to **canada.ca/taxes-t4a-codes**

Enter on line 13010:
- Box 105, Scholarships, fellowships, bursaries, and artists' project grants – Go to **canada.ca/line-13010**.

Enter on line 13499/13500:
- Box 105, when self-employed. Scholarships, bursaries, fellowships, artists' project grants, and prizes – See line 13499 and line 13500 at **canada.ca/fed-tax-information**.

T4A (24) See the privacy notice on your return

Do not report on your tax return – Canada Revenue Agency use only
- Box 014, Recipient number
- Box 036, Plan registration number
- Box 037, Advanced life deferred annuity purchase
- Box 116, Medical travel assistance
- Box 124, Board and lodging at special work sites
- Box 210, Postdoctoral Fellowship Income

The Canada Revenue Agency uses the term **Indian** as it has legal meaning in the Indian Act.
See Form T90.
- Box 144, Indian Act (exempt income) – Other income
- Box 146, Indian Act (exempt income) – Pension or superannuation
- Box 148, Indian Act (exempt income) – Lump-sum payments
- Box 195, Indian Act (exempt income) – PRPP payments

Déclarez ces montants dans votre déclaration de revenus.

Case 016, Prestations de retraite ou autres pensions – Inscrivez ce montant à la ligne 11500. Vous pourriez avoir droit au montant pour revenu de pension. Voir Tableau sommaire du revenu de retraite dans l'Annexe à **canada.ca/renseignements-impot-fed**.
Le montant figurant dans la case suivante est inclus dans la case 016 :
- Case 128, Prestations pour vétérans admissibles au fractionnement du revenu de pension. Consultez le formulaire T1032, Choix conjoint visant le fractionnement du revenu de pension.

Case 015, Prestations dentaires offertes par le payeur – Allez à **canada.ca/t4a-information-payeurs**.

Case 018, Paiements forfaitaires – Dans la plupart des cas, inscrivez ce montant à la ligne 13000. Pour les paiements forfaitaires provenant d'un régime de pension déterminé ou d'un RPA à cotisations déterminées, consultez le tableau récapitulatif des revenus de retraite dans l'annexe à **canada.ca/renseignements-impot-fed**.
Les montants figurant dans les cases suivantes sont inclus dans la case 018 :
- Case 102, Paiements forfaitaires – transfert de services de non-résidents selon l'alinéa 60j)
- Case 108, Paiements forfaitaires d'un régime de pension agréé (RPA) non admissible à un transfert
- Case 110, Paiements forfaitaires accumulés avant le 31 décembre 1971
- Case 158, Paiements forfaitaires non admissibles à un transfert, et qui ne sont pas déclarés ailleurs
- Case 180, Paiements forfaitaires versés à partir d'un régime de participation différée aux bénéfices (RPDB) non admissibles à un transfert
- Case 190, Paiements forfaitaires – Prestations d'un régime de pension non agréé

Case 020, Commissions d'un travail indépendant – Inscrivez le montant brut de vos revenus de commissions à la ligne 13899 et le montant net de vos revenus de commissions à la ligne 13900.

Case 022, Impôt sur le revenu retenu – Inscrivez ce montant à la ligne 43700.

Case 024, Rentes – Voir Tableau sommaire du revenu de retraite dans l'Annexe à **canada.ca/renseignements-impot-fed**.
Les montants figurant dans les cases suivantes sont inclus dans la case 024 :
- Case 111, Contrat de rentes à versement invariable (CRVI)
- Case 115, Paiements d'une rente ou versements selon un régime de participation différée aux bénéfices (RPDB)

Case 028, Autres revenus – Montants non déclarés à d'autres endroits sur le feuillet T4A. Lisez la ligne 13000 ainsi que les lignes 13499 à 14300 à **canada.ca/renseignements-impot-fed**.

Case 030, Répartitions selon l'apport commercial – Inscrivez ce montant à la ligne 13000. Ne déclarez pas ce montant s'il concerne des produits de consommation ou des services dont vous ne pouvez pas déduire le coût dans le calcul de votre revenu. Ce montant ne vous donne pas droit au crédit d'impôt fédéral pour dividendes.

Case 032, Cotisations à un régime de pension agréé (services passés) – Inscrivez le montant que vous pouvez déduire à la ligne 20700 (allez à **canada.ca/REER**).
- Case 126, Cotisations pour services passés avant 1990 alors que vous cotisiez (incluses à la case 032)
- Case 162, Cotisations pour services passés avant 1990 alors que vous ne cotisiez pas (incluses à la case 032)

Case 034, Facteur d'équivalence – Inscrivez ce montant à la ligne 20600. Ce montant n'est ni un revenu ni une déduction.

Case 040, Paiements de revenu accumulé d'un REEE – Inscrivez ce montant à la ligne 13000. Vous devez aussi remplir le formulaire T1172, Impôt supplémentaire sur les paiements de revenu accumulé de REEE.
- Case 122, Paiements de revenu accumulé d'un REEE payé à un tiers (inclus dans la case 040)

Case 042, Paiements d'aide aux études d'un REEE – Inscrivez ce montant à la ligne 13000. Pour en savoir plus, consultez la feuille de renseignements RC4092, Les régimes enregistrés d'épargne-études.

Case 046, Dons de bienfaisance – Consultez la brochure P113, Les dons et l'impôt.

Case 048, Honoraires ou autres sommes pour services rendus – Déclarez ce montant comme un revenu d'entreprise ou de profession libérale.

Case 129, Part de votre coopérative à imposition différée. Inscrivez ce montant à la ligne 13000. Ce montant pourrait être différé. Pour en savoir plus, allez à **canada.ca/liste-controle-petites-entreprises**.

Case 133, Prestations de retraite variables – Voir Tableau sommaire du revenu de retraite dans l'Annexe à **canada.ca/renseignements-impot-fed**.

Case 135, Primes versées à un régime privé d'assurance-maladie – Allez à **canada.ca/ligne-33099**.

Case 196 – Aide visant les frais de scolarité pour la formation de base des adultes – Inscrivez à la ligne 25600 le montant d'aide admissible qui dépasse le montant d'exemption pour bourses d'études que vous pouvez demander pour ces frais de scolarité.

Case 201, Remboursement de soutien financier en réponse à la COVID-19 – Inscrivez à la ligne 23200 le montant remboursé des prestations fédérales, provinciales et territoriales liées à la COVID-19 reçues au cours d'une année précédente.

Inscrivez à la ligne 10400 :
- Case 104, Subventions de recherche – Allez à **canada.ca/ligne-10400**.
- Case 107, Paiements reçus d'un régime d'assurance-salaire – Allez à **canada.ca/ligne-10400**.
- Case 118, Avantages pour primes de soins médicaux
- Case 119, Primes payées pour une police d'assurance-vie collective temporaire
- Case 127, Prestations pour vétérans
- Case 132, Programme de protection des salariés
- Case 152, PSC admissible à ce titre selon la Loi de l'impôt sur le revenu
- Case 156, Règlements d'une société en faillite

Inscrivez à la ligne 11500 :
- Case 194, Paiements d'un RPAC – Voir Tableau sommaire du revenu de retraite dans l'Annexe à **canada.ca/renseignements-impot-fed**.

Inscrivez à la ligne 12500 :
- Case 131, Régime enregistré d'épargne-invalidité

Inscrivez à la ligne 13000 :
- Case 106, Prestations consécutives au décès – Allez à **canada.ca/ligne-13000**.
- Case 109, Paiements périodiques d'un plan non agréé
- Case 117, Avantages liés à un prêt
- Case 123, Paiements provenant d'un RPDB dont l'agrément a été retiré
- Case 125, Prestations d'invalidité payées à même un régime de prestations de retraite ou d'autres pensions
- Case 130, Subvention incitative aux apprentis, Subvention incitative aux apprentis pour les femmes ou à l'achèvement de la formation d'apprenti
- Case 136, Parents d'enfants assassinés ou disparus/Parents de jeunes victimes de crimes
- Case 150, Loi sur les prestations d'adaptation pour les travailleurs et Lois de crédits
- Case 154, Prime en espèces ou prix payé d'un payeur
- Case 197, Prestation canadiennes d'urgence (PCU)
- Case 198, Prestation canadiennes d'urgence pour les étudiants (PCUE)
- Case 199, Prestation canadiennes d'urgence pour les étudiants (PCUE) admissibles ayant un handicap ou ceux qui ont des enfants ou autres personnes à charge
- Case 200, Prestation provinciales ou territoriales de soutien financier en réponse à la COVID-19
- Case 202, Prestation canadienne de la relance économique (PCRE)
- Case 203, Prestation canadienne de maladie pour la relance économique (PCMRE)
- Case 204, Prestation canadienne de la relance économique pour proches aidants (PCREPA)
- Case 211, Prestation canadienne pour les travailleurs en cas de confinement (PCTC)

Case 134 – Compte d'épargne libre d'impôt (CELI) – montant imposable du CELI ou montant imposable du CELIAPP pour un donataire reconnu – Allez à **canada.ca/impots-t4a-codes**

Inscrivez à la ligne 13010 :
- Case 105, Bourses d'études, de perfectionnement et d'entretien, et subventions reçues par un artiste pour un projet – Allez à **canada.ca/ligne-13010**.

Inscrivez à la ligne 13499/13500 :
- Case 105, pour les travailleurs indépendants. Bourses d'études, de perfectionnement et d'entretien; subventions reçues par un artiste pour un projet et récompenses – Lisez la ligne 13499 et ligne 13500 à **canada.ca/renseignements-impot-fed**.

Ne déclarez pas les renseignements suivants dans votre déclaration de revenus – À l'usage de l'Agence du revenu du Canada seulement
- Case 014, Numéro du bénéficiaire
- Case 036, Numéro d'agrément du régime
- Case 037, Achat de rente viagère différée à un âge avancé
- Case 116, Aide financière pour voyages pour soins médicaux
- Case 124, Logement et repas sur les chantiers particuliers
- Case 210, Revenu de bourses de perfectionnement postdoctorales

L'Agence du revenu du Canada utilise le terme **Indien** en raison de la signification légale dans sa Loi sur les Indiens.
Consultez le formulaire T90.
- Case 144, Loi sur les Indiens (revenu exonéré) – Autres revenus
- Case 146, Loi sur les Indiens (revenu exonéré) – Prestations de retraite ou autres pensions
- Case 148, Loi sur les Indiens (revenu exonéré) – Paiements forfaitaires
- Case 195, Loi sur les Indiens (revenu exonéré) – Paiements d'un RPAC

T4A (24) Consultez l'avis de confidentialité dans votre déclaration Page 2 of / de 2

IRS Form 1042

APPENDIX 3

Form **1042**
Department of the Treasury
Internal Revenue Service

Annual Withholding Tax Return for U.S. Source Income of Foreign Persons
Go to *www.irs.gov/Form1042* for instructions and the latest information.

OMB No. 1545-0096
2024

If this is an amended return, check here . . . . ☐

Name of withholding agent	Employer identification number	For IRS Use Only	
Ch. 3 Status Code	Ch. 4 Status Code	CC	FD
Number, street, and room or suite no. (If a P.O. box, see instructions.)		RD	FF
		CAF	FP
City or town, state or province, country, and ZIP or foreign postal code		CR	I
		EDC	SIC

If you do not expect to file this return in the future, check here ☐ Enter date final income paid

Section 1 Record of Federal Tax Liability (do not show federal tax deposits here)

Line No.	Period ending		Tax liability for period (including any taxes assumed on Form(s) 1000)	Line No.	Period ending		Tax liability for period (including any taxes assumed on Form(s) 1000)	Line No.	Period ending		Tax liability for period (including any taxes assumed on Form(s) 1000)
1	Jan.	7		21	May	7		41	Sept.	7	
2		15		22		15		42		15	
3		22		23		22		43		22	
4		31		24		31		44		30	
5	Jan. total			25	May total			45	Sept. total		
6	Feb.	7		26	June	7		46	Oct.	7	
7		15		27		15		47		15	
8		22		28		22		48		22	
9		29		29		30		49		31	
10	Feb. total			30	June total			50	Oct. total		
11	Mar.	7		31	July	7		51	Nov.	7	
12		15		32		15		52		15	
13		22		33		22		53		22	
14		31		34		31		54		30	
15	Mar. total			35	July total			55	Nov. total		
16	Apr.	7		36	Aug.	7		56	Dec.	7	
17		15		37		15		57		15	
18		22		38		22		58		22	
19		30		39		31		59		31	
20	Apr. total			40	Aug. total			60	Dec. total		

Note: The totals from the above table are to be entered on lines 64b through 64d (as indicated in the instructions for those lines).

61 **No. of Forms 1042-S filed: a** On paper ________ **b** Electronically ________

62 Total gross amounts reported on all Forms 1042-S and 1000:

a Total U.S. source FDAP income (other than U.S. source substitute payments) reported **62a**

b Total U.S. source substitute payments reported:

(1) Total U.S. source substitute dividend payments reported . . . . . . **62b(1)**

(2) Total U.S. source substitute payments reported other than substitute dividend payments . . . **62b(2)**

c **Total gross amounts reported** (add lines 62a–b) **62c**

d Enter gross amounts actually paid if different from gross amounts reported **62d**

Third Party Designee
Do you want to allow another person to discuss this return with the IRS? See instructions. ☐ Yes. Complete the following. ☐ No
Designee's name | Phone no. | Personal identification number (PIN)

Sign Here
Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than withholding agent) is based on all information of which preparer has any knowledge.
Your signature | Date | Capacity in which acting | Daytime phone number

Paid Preparer Use Only
Print/Type preparer's name | Preparer's signature | Date | Check ☐ if self-employed | PTIN
Firm's name | Firm's EIN
Firm's address | Phone no.

For Privacy Act and Paperwork Reduction Act Notice, see instructions. Cat. No. 11384V Form **1042** (2024)

APPENDIX 3

IRS Form 1042

Form 1042 (2024) Page 2

63	Total tax reported as withheld or paid by withholding agent on all Forms 1042-S and 1000:		
a	Tax withheld by withholding agent	63a	
b	Tax withheld by other withholding agents:		
	(1) For payments other than substitute dividends	63b(1)	
	(2) For substitute dividends	63b(2)	
c	Adjustments to withholding:		
	(1) Adjustments to overwithholding	63c(1)	( )
	(2) Adjustments to underwithholding	63c(2)	
d	Tax paid by withholding agent	63d	
e	**Total tax reported as withheld or paid** (add lines 63a–d)	63e	
	Computation of Tax Due or Overpayment		
64	Total net tax liability		
a	Adjustments to total net tax liability	64a	
b	Total net tax liability under chapter 3	64b	
c	Total net tax liability under chapter 4	64c	
d	Excise tax on specified federal procurement payments (total payments made x 2% (0.02))	64d	
e	**Total net tax liability** (add lines 64a–d)	64e	
65	Total paid by electronic funds transfer (or with a request for extension of time to file):		
a	Total paid during calendar year	65a	
b	Total paid during subsequent year	65b	
66	Enter overpayment applied as credit from 2023 Form 1042	66	
67	Credit for amounts withheld by other withholding agents:		
a	For payments other than substitute dividend payments	67a	
b	For substitute dividend payments	67b	
68	**Total payments.** Add lines 65 through 67	68	
69	If line 64e is larger than line 68, enter balance due here	69	
70a	Enter overpayment attributable to overwithholding on U.S. source income of foreign persons	70a	
b	Enter overpayment attributable to excise tax on specified federal procurement payments	70b	
71	Apply overpayment (sum of lines 70a and 70b) to (**check one**): ☐ Credit on 2025 Form 1042 or ☐ Refund		

Section 2 Reconciliation of Payments of U.S. Source FDAP Income

1	Total U.S. source FDAP income required to be withheld upon under chapter 4	1	
2	Total U.S. source FDAP income required to be reported under chapter 4 but not required to be withheld upon under chapter 4 because:		
a	Amount of income paid to recipients whose chapter 4 status established no withholding is required	2a	
b	Amount of excluded nonfinancial payments	2b	
c	Amount of income paid with respect to grandfathered obligations	2c	
d	Amount of income effectively connected with the conduct of a trade or business in the United States	2d	
e	Total U.S. source FDAP income required to be reported under chapter 4 but not required to be withheld upon under chapter 4 (add lines 2a–d)	2e	
3	Total U.S. source FDAP income reportable under chapter 4 (add lines 1 and 2e)	3	
4	Total U.S. source FDAP income reported on all Forms 1042-S (from lines 62a, 62b(1), and 62b(2))	4	
5	Total variance, subtract line 3 from line 4; if amount other than zero, provide explanation on line 6	5	
6			

Section 3 Potential Section 871(m) Transactions

Check here if any payments (including gross proceeds) were made by the withholding agent under a potential section 871(m) transaction, including a notional principal contract or other derivatives contract that references (in whole or in part) a U.S. stock or other underlying security. See instructions ☐

Section 4 Payments by a Qualified Derivatives Dealer (QDD)

Check here if any payments were made by a QDD ☐

If the box is checked, you must do the following.

(1) Attach Schedule(s) Q (Form 1042). See instructions.

(2) Enter your EIN (other than your QI-EIN)

Form **1042** (2024)

IRS Form 1042-S

Form **1042-S**

Department of the Treasury
Internal Revenue Service

Foreign Person's U.S. Source Income Subject to Withholding **2024**

Go to *www.irs.gov/Form1042S* for instructions and the latest information.

UNIQUE FORM IDENTIFIER ☐ AMENDED ☐ AMENDMENT NO.

OMB No. 1545-0096

Copy A for Internal Revenue Service

1 Income code	**13e** Recipient's U.S. TIN, if any
2 Gross income	**13f** Ch. 3 status code
3 Chapter indicator. Enter "3" or "4"	**13g** Ch. 4 status code
3a Exemption code	**13h** Recipient's GIIN
4a Exemption code	**13i** Recipient's foreign tax identification number, if any
3b Tax rate .	**13j** LOB code
4b Tax rate .	
5 Withholding allowance	**13k** Recipient's account number
6 Net income	**13l** Recipient's date of birth (YYYYMMDD)
7a Federal tax withheld	**14a** Primary Withholding Agent's Name (if applicable)
7b Check if federal tax withheld was not deposited with the IRS because escrow procedures were applied (see instructions) ☐	**14b** Primary Withholding Agent's EIN
7c Check if withholding occurred in subsequent year with respect to a partnership interest ☐	**15** Check if pro-rata basis reporting ☐
8 Tax withheld by other agents	**15a** Intermediary or flow-through entity's EIN, if any
9 Overwithheld tax repaid to recipient pursuant to adjustment procedures (see instructions) ( )	**15b** Ch. 3 status code
10 Total withholding credit (combine boxes 7a, 8, and 9)	**15c** Ch. 4 status code
11 Tax paid by withholding agent (amounts not withheld) (see instructions)	**15d** Intermediary or flow-through entity's name
12a Withholding agent's EIN	**15e** Intermediary or flow-through entity's GIIN
12b Ch. 3 status code	**15f** Country code
12c Ch. 4 status code	**15g** Foreign tax identification number, if any
12d Withholding agent's name	**15h** Address (number and street)
12e Withholding agent's Global Intermediary Identification Number (GIIN)	**15i** City or town, state or province, country, ZIP or foreign postal code
12f Country code	**16a** Payer's name
12g Foreign tax identification number, if any	**16b** Payer's TIN
12h Address (number and street)	**16c** Payer's GIIN
12i City or town, state or province, country, ZIP or foreign postal code	**16d** Ch. 3 status code
13a Recipient's name	**16e** Ch. 4 status code
13b Recipient's country code	**17a** State income tax withheld
13c Address (number and street)	**17b** Payer's state tax no.
13d City or town, state or province, country, ZIP or foreign postal code	**17c** Name of state

For Privacy Act and Paperwork Reduction Act Notice, see instructions. Cat. No. 11386R Form **1042-S** (2024)

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DO NOT STAPLE

Form **1042-T** Department of the Treasury Internal Revenue Service	**Annual Summary and Transmittal of Forms 1042-S** **Go to *www.irs.gov/Form1042T* for the latest information.**	OMB No. 1545-0096 **2024**
Name of withholding agent	Ch. 4 status code ☐ Ch. 3 status code ☐	**Employer identification number**
Number, street, and room or suite no.		
City or town, state or province, country, and ZIP or foreign postal code		

1 Type of paper Forms 1042-S attached:

a Choose only one: ☐ Chapter 4 or chapter 3 (enter 4 or 3)

b Check only one box: ☐ Original ☐ Amended

c Check if pro rata ☐

d Enter the number of paper Forms 1042-S attached ____________

e Check if you are a partnership reporting withholding that occurred in the subsequent year. See instructions. ☐

f Check if you are a Qualified Intermediary, Withholding Foreign Partnership, or Withholding Foreign Trust revising its reporting on Form 1042-S to report to a specific recipient. See instructions. ☐

2 Total gross income reported on all paper Forms 1042-S (box 2) attached . . . . $____________________

3 Total federal tax withheld on all paper Forms 1042-S attached:

a Total federal tax withheld under chapter 4 . . . . $____________________

b Total federal tax withheld under chapter 3 . . . . $____________________

Caution: If you have already filed a Form 1042 and an attached Form 1042-S causes the gross income or tax withheld information shown on your previously filed Form 1042 to change, you must file an amended Form 1042. See the instructions on page 2.

If this is your FINAL return, enter an "X" here. See instructions. ☐

Please return this entire page to the Internal Revenue Service.

Sign Here	Under penalties of perjury, I declare that I have examined this return and accompanying documents and, to the best of my knowledge and belief, they are true, correct, and complete.			
	Your signature	**Title**	**Date**	**Daytime phone number**

For more information and the Privacy Act and Paperwork Reduction Act Notice, see Form 1042-S. Cat. No. 28848W Form **1042-T** (2024)

APPENDIX 5

IRS Form 1042-T Instructions

Instructions

Future Developments

For the latest information about developments related to Form 1042-T and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/Form1042T*.

Purpose of Form

Use this form to transmit paper Forms 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, to the Internal Revenue Service. Use a separate Form 1042-T to transmit each type of Form 1042-S. See the instructions for line 1 below.

CAUTION *Do not use Form 1042-T if you submit Forms 1042-S electronically. See the Instructions for Form 1042-S for the electronic filing requirements for Form 1042-S.*

Filing Forms 1042 and 1042-S

Use of this form to transmit paper Forms 1042-S does not affect your obligation to file Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.

If you have not yet filed a Form 1042 for 2024, you may send in more than one Form 1042-T to submit paper Forms 1042-S prior to filing your Form 1042. You may submit amended Forms 1042-S even though changes reflect differences in gross income and tax withheld information of Forms 1042-S previously submitted with a Form 1042-T.

If you have already filed a Form 1042 for 2024 and an attached Form 1042-S caused the gross income or tax withheld information previously reported on line 62c or 63e of your Form 1042 to change, you must file an amended Form 1042.

Where and When To File

File Form 1042-T (and Copy A of the paper Forms 1042-S being transmitted) with the Ogden Service Center, P.O. Box 409101, Ogden, UT 84409, by March 17, 2025. Send the forms in a flat mailing (not folded).

Line Instructions

Identifying information at top of form. The name, address, employer identification number, and chapter 4 and chapter 3 status codes of the withholding agent named on this form must be the same as those you enter on Forms 1042 and 1042-S. See the Instructions for Form 1042 for the definition of withholding agent. See the Instructions for Form 1042-S for the withholding agent codes for the chapter 4 and chapter 3 status codes. You must enter both a chapter 4 and a chapter 3 withholding agent status code regardless of the type of payment being made.

Line 1. You must file a separate Form 1042-T for each type of paper Form 1042-S you are transmitting.

Line 1a. Withholding agents are not permitted to file a single Form 1042-T to transmit both chapter 4 and chapter 3 amounts. Withholding agents must indicate either chapter 4 or chapter 3 to designate the chapter for which they are filing a given Form 1042-T. The chapter you designate on this form must be the same as that on all attached Forms 1042-S. See *Chapter indicator* in the Form 1042-S instructions for additional information.

Line 1b. Check either the *Original* or *Amended* box (but not both).

Line 1c. Check the box on this line 1c if you are filing pro rata Forms 1042-S. See the Form 1042-S instructions.

Line 1e. Check the box on line 1e if you are a partnership reporting withholding that occurred in the subsequent year with respect to a foreign partner's share of undistributed income for the prior year. The attached Form(s) 1042-S should have the checkbox checked in box 7c.

As a result of the above rules, there are many possible types of Form 1042-S that may be transmitted, and each type requires a separate Form 1042-T. For example:

- Chapter 4, original, pro rata.
- Chapter 4, original, non-pro rata.
- Chapter 4, amended, pro rata.
- Chapter 4, amended, non-pro rata.
- Chapter 4, original, pro rata, partnership.
- Chapter 4, original, non-pro rata, partnership.
- Chapter 4, amended, pro rata, partnership.
- Chapter 4, amended, non-pro rata, partnership.
- Chapter 3, original, pro rata.
- Chapter 3, original, non-pro rata.
- Chapter 3, amended, pro rata.
- Chapter 3, amended, non-pro rata.
- Chapter 3, original, pro rata, partnership.
- Chapter 3, original, non-pro rata, partnership.
- Chapter 3, amended, pro rata, partnership.
- Chapter 3, amended, non-pro rata, partnership.

Each type must be transmitted with a separate Form 1042-T. For example, you must transmit only chapter 3, original, pro rata Forms 1042-S with one Form 1042-T.

Line 1f. This box should be checked only if a Qualified Intermediary, Withholding Foreign Partnership, or Withholding Foreign Trust originally filed a Form 1042-S to report an amount subject to withholding in a withholding rate pool and is reducing the amount reported by the amounts reported on one or more Forms 1042-S issued to one or more specific recipients in accordance with the provisions of the QI Agreement (Rev. Proc. 2022-43) or the WP/WT Agreement (Rev. Proc. 2017-21).

Line 2. Enter the total of the gross income amounts shown on the Forms 1042-S (box 2) being transmitted with this Form 1042-T.

Line 3. Enter the total of the federal tax withheld amounts shown on all Forms 1042-S (total of amounts reported in boxes 10 and 11) being transmitted with this Form 1042-T. On this Form 1042-T, complete either line 3a or line 3b, but not both. If you indicated "chapter 4" on line 1a, complete line 3a to report the total amounts withheld pursuant to chapter 4. If you indicated "chapter 3" on line 1a, complete line 3b to report the total amounts withheld pursuant to chapter 3.

Final return. If you will not be required to file additional Forms 1042-S, including amended Forms 1042-S for the 2024 year (on paper or electronically), enter an "X" in the *FINAL return* box.

Paperwork Reduction Act Notice. The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is 12 minutes.

IRS Form W-8BEN

APPENDIX 6

Form **W-8BEN**

(Rev. October 2021)

Department of the Treasury
Internal Revenue Service

Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)

► For use by individuals. Entities must use Form W-8BEN-E.
► Go to *www.irs.gov/FormW8BEN* for instructions and the latest information.
► Give this form to the withholding agent or payer. Do not send to the IRS.

OMB No. 1545-1621

Do NOT use this form if:	**Instead, use Form:**
• You are NOT an individual	W-8BEN-E
• You are a U.S. citizen or other U.S. person, including a resident alien individual	W-9
• You are a beneficial owner claiming that income is effectively connected with the conduct of trade or business within the United States (other than personal services)	W-8ECI
• You are a beneficial owner who is receiving compensation for personal services performed in the United States	8233 or W-4
• You are a person acting as an intermediary	W-8IMY

Note: If you are resident in a FATCA partner jurisdiction (that is, a Model 1 IGA jurisdiction with reciprocity), certain tax account information may be provided to your jurisdiction of residence.

Part I — Identification of Beneficial Owner (see instructions)

1 Name of individual who is the beneficial owner

2 Country of citizenship

3 Permanent residence address (street, apt. or suite no., or rural route). **Do not use a P.O. box or in-care-of address.**

City or town, state or province. Include postal code where appropriate.

Country

4 Mailing address (if different from above)

City or town, state or province. Include postal code where appropriate.

Country

5 U.S. taxpayer identification number (SSN or ITIN), if required (see instructions)

6a Foreign tax identifying number (see instructions)

6b Check if FTIN not legally required . . . ☐

7 Reference number(s) (see instructions)

8 Date of birth (MM-DD-YYYY) (see instructions)

Part II — Claim of Tax Treaty Benefits (for chapter 3 purposes only) (see instructions)

9 I certify that the beneficial owner is a resident of ______________________ within the meaning of the income tax treaty between the United States and that country.

10 **Special rates and conditions** (if applicable—see instructions): The beneficial owner is claiming the provisions of Article and paragraph ______________ of the treaty identified on line 9 above to claim a ____ % rate of withholding on (specify type of income): ______________________________.

Explain the additional conditions in the Article and paragraph the beneficial owner meets to be eligible for the rate of withholding: ____________

Part III — Certification

Under penalties of perjury, I declare that I have examined the information on this form and to the best of my knowledge and belief it is true, correct, and complete. I further certify under penalties of perjury that:

- I am the individual that is the beneficial owner (or am authorized to sign for the individual that is the beneficial owner) of all the income or proceeds to which this form relates or am using this form to document myself for chapter 4 purposes;
- The person named on line 1 of this form is not a U.S. person;
- This form relates to:
  - (a) income not effectively connected with the conduct of a trade or business in the United States;
  - (b) income effectively connected with the conduct of a trade or business in the United States but is not subject to tax under an applicable income tax treaty;
  - (c) the partner's share of a partnership's effectively connected taxable income; or
  - (d) the partner's amount realized from the transfer of a partnership interest subject to withholding under section 1446(f);
- The person named on line 1 of this form is a resident of the treaty country listed on line 9 of the form (if any) within the meaning of the income tax treaty between the United States and that country; and
- For broker transactions or barter exchanges, the beneficial owner is an exempt foreign person as defined in the instructions.

Furthermore, I authorize this form to be provided to any withholding agent that has control, receipt, or custody of the income of which I am the beneficial owner or any withholding agent that can disburse or make payments of the income of which I am the beneficial owner. **I agree that I will submit a new form within 30 days if any certification made on this form becomes incorrect.**

Sign Here ► ☐ I certify that I have the capacity to sign for the person identified on line 1 of this form.

Signature of beneficial owner (or individual authorized to sign for beneficial owner) — Date (MM-DD-YYYY)

Print name of signer

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 25047Z Form **W-8BEN** (Rev. 10-2021)

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Annuity 2000 male

APPENDIX 7

Age	Life exp.	Age	Life exp.	Age	Life exp.
5	76.6	42	40.8	79	10.8
6	75.6	43	39.8	80	10.2
7	74.7	44	38.9	81	9.7
8	73.7	45	37.9	82	9.2
9	72.7	46	37.0	83	8.7
10	71.7	47	36.1	84	8.2
11	70.8	48	35.2	85	7.8
12	69.8	49	34.2	86	7.3
13	68.8	50	33.3	87	6.9
14	67.8	51	32.4	88	6.5
15	66.9	52	31.5	89	6.2
16	65.9	53	30.7	90	5.8
17	64.9	54	29.8	91	5.5
18	63.9	55	28.9	92	5.2
19	63.0	56	28.0	93	4.9
20	62.0	57	27.2	94	4.6
21	61.0	58	26.3	95	4.3
22	60.1	59	25.4	96	4.1
23	59.1	60	24.6	97	3.8
24	58.1	61	23.7	98	3.6
25	57.2	62	22.9	99	3.4
26	56.2	63	22.1	100	3.1
27	55.2	64	21.3	101	2.9
28	54.3	65	20.4	102	2.7
29	53.3	66	19.6	103	2.4
30	52.3	67	18.9	104	2.2
31	51.4	68	18.1	105	2.0
32	50.4	69	17.3	106	1.8
33	49.5	70	16.6	107	1.6
34	48.5	71	15.9	108	1.4
35	47.5	72	15.2	109	1.3
36	46.6	73	14.5	110	1.1
37	45.6	74	13.8	111	1.0
38	44.6	75	13.2	112	0.8
39	43.7	76	12.5	113	0.7
40	42.7	77	11.9	114	0.6
41	41.7	78	11.3	115	0

APPENDIX 7

Annuity 2000 female

Age	Life exp.
5	80.7
6	79.7
7	78.7
8	77.7
9	76.7
10	75.7
11	74.7
12	73.7
13	72.8
14	71.8
15	70.8
16	69.8
17	68.8
18	67.8
19	66.8
20	65.8
21	64.9
22	63.9
23	62.9
24	61.9
25	60.9
26	60.0
27	59.0
28	58.0
29	57.0
30	56.0
31	55.1
32	54.1
33	53.1
34	52.1
35	51.2
36	50.2
37	49.2
38	48.2
39	47.3
40	46.3
41	45.3
42	44.3
43	43.4
44	42.4
45	41.4
46	40.5
47	39.5
48	38.6
49	37.6
50	36.7
51	35.7
52	34.8
53	33.8
54	32.9
55	32.0
56	31.1
57	30.1
58	29.2
59	28.3
60	27.4
61	26.5
62	25.6
63	24.8
64	23.9
65	23.0
66	22.2
67	21.3
68	20.5
69	19.6
70	18.8
71	18.0
72	17.2
73	16.4
74	15.6
75	14.9
76	14.1
77	13.4
78	12.7
79	12.0
80	11.3
81	10.7
82	10.1
83	9.5
84	8.9
85	8.4
86	7.9
87	7.4
88	6.9
89	6.5
90	6.1
91	5.7
92	5.4
93	5.1
94	4.8
95	4.5
96	4.2
97	4.0
98	3.8
99	3.5
100	3.3
101	3.0
102	2.8
103	2.6
104	2.3
105	2.1
106	1.9
107	1.7
108	1.5
109	1.3
110	1.2
111	1.0
112	0.9
113	0.7
114	0.6
115	0

Annuity 2000 Table Life Expectancies — Two Lives 60-90

APPENDIX 8

Male is younger		
male age	female age	life exp.
60	60	31.8
60	61	31.3
60	62	30.7
60	63	30.2
60	64	29.8
60	65	29.3
60	66	28.9
60	67	28.5
60	68	28.2
60	69	27.8
60	70	27.5
60	71	27.2
60	72	27.0
60	73	26.7
60	74	26.5
60	75	26.3
60	76	26.1
60	77	25.9
60	78	25.8
60	79	25.6
60	80	25.5
60	81	25.4
60	82	25.3
60	83	25.2
60	84	25.1
60	85	25.1
60	86	25.0
60	87	25.0
60	88	24.9
60	89	24.9
60	90	24.8
61	61	30.9
61	62	30.3
61	63	29.8
61	64	29.3
61	65	28.8
61	66	28.4
61	67	28.0
61	68	27.6
61	69	27.3
61	70	26.9
61	71	26.6

Male is younger		
male age	female age	life exp.
61	72	26.3
61	73	26.1
61	74	25.8
61	75	25.6
61	76	25.4
61	77	25.2
61	78	25.1
61	79	24.9
61	80	24.8
61	81	24.6
61	82	24.5
61	83	24.4
61	84	24.4
61	85	24.3
61	86	24.2
61	87	24.2
61	88	24.1
61	89	24.1
61	90	24.0
62	62	29.9
62	63	29.4
62	64	28.9
62	65	28.4
62	66	27.9
62	67	27.5
62	68	27.1
62	69	26.7
62	70	26.3
62	71	26.0
62	72	25.7
62	73	25.4
62	74	25.2
62	75	24.9
62	76	24.7
62	77	24.5
62	78	24.3
62	79	24.2
62	80	24.0
62	81	23.9
62	82	23.8
62	83	23.7
62	84	23.6

Male is younger		
male age	female age	life exp.
62	85	23.5
62	86	23.4
62	87	23.4
62	88	23.3
62	89	23.3
62	90	23.2
63	63	29.0
63	64	28.4
63	65	27.9
63	66	27.5
63	67	27.0
63	68	26.6
63	69	26.2
63	70	25.8
63	71	25.4
63	72	25.1
63	73	24.8
63	74	24.5
63	75	24.3
63	76	24.0
63	77	23.8
63	78	23.6
63	79	23.5
63	80	23.3
63	81	23.2
63	82	23.0
63	83	22.9
63	84	22.8
63	85	22.7
63	86	22.6
63	87	22.6
63	88	22.5
63	89	22.5
63	90	22.4
64	64	28.0
64	65	27.5
64	66	27.0
64	67	26.5
64	68	26.1
64	69	25.7
64	70	25.3
64	71	24.9

Male is younger		
male age	female age	life exp.
64	72	24.5
64	73	24.2
64	74	23.9
64	75	23.6
64	76	23.4
64	77	23.2
64	78	22.9
64	79	22.8
64	80	22.6
64	81	22.4
64	82	22.3
64	83	22.2
64	84	22.1
64	85	22.0
64	86	21.9
64	87	21.8
64	88	21.7
64	89	21.7
64	90	21.6
65	65	27.1
65	66	26.6
65	67	26.1
65	68	25.6
65	69	25.2
65	70	24.8
65	71	24.4
65	72	24.0
65	73	23.6
65	74	23.3
65	75	23.0
65	76	22.8
65	77	22.5
65	78	22.3
65	79	22.1
65	80	21.9
65	81	21.7
65	82	21.6
65	83	21.4
65	84	21.3
65	85	21.2
65	86	21.1
65	87	21.0

Annuity 2000 Table Life Expectancies - Two Lives 60-90 Continued

Male is younger			Male is younger			Male is younger			Male is younger		
male age	female age	life exp.	male age	female age	life exp.	male age	female age	life exp.	male age	female age	life exp.
65	88	21.0	67	81	20.4	69	78	19.9	71	79	18.5
65	89	20.9	67	82	20.2	69	79	19.6	71	80	18.2
65	90	20.8	67	83	20.1	69	80	19.4	71	81	18.0
66	66	26.2	67	84	19.9	69	81	19.1	71	82	17.8
66	67	25.7	67	85	19.8	69	82	18.9	71	83	17.5
66	68	25.2	67	86	19.7	69	83	18.8	71	84	17.4
66	69	24.7	67	87	19.6	69	84	18.6	71	85	17.2
66	70	24.3	67	88	19.5	69	85	18.4	71	86	17.0
66	71	23.9	67	89	19.4	69	86	18.3	71	87	16.9
66	72	23.5	67	90	19.3	69	87	18.2	71	88	16.8
66	73	23.1	68	68	24.4	69	88	18.1	71	89	16.7
66	74	22.8	68	69	23.9	69	89	18.0	71	90	16.6
66	75	22.4	68	70	23.4	69	90	17.9	72	72	20.9
66	76	22.2	68	71	22.9	70	70	22.6	72	73	20.4
66	77	21.9	68	72	22.5	70	71	22.1	72	74	19.9
66	78	21.7	68	73	22.1	70	72	21.6	72	75	19.5
66	79	21.4	68	74	21.7	70	73	21.2	72	76	19.1
66	80	21.2	68	75	21.4	70	74	20.8	72	77	18.7
66	81	21.0	68	76	21.0	70	75	20.4	72	78	18.3
66	82	20.9	68	77	20.7	70	76	20.0	72	79	18.0
66	83	20.7	68	78	20.4	70	77	19.7	72	80	17.7
66	84	20.6	68	79	20.2	70	78	19.3	72	81	17.4
66	85	20.5	68	80	20.0	70	79	19.1	72	82	17.2
66	86	20.4	68	81	19.8	70	80	18.8	72	83	17.0
66	87	20.3	68	82	19.6	70	81	18.6	72	84	16.8
66	88	20.2	68	83	19.4	70	82	18.3	72	85	16.6
66	89	20.1	68	84	19.2	70	83	18.1	72	86	16.4
66	90	20.1	68	85	19.1	70	84	18.0	72	87	16.3
67	67	25.3	68	86	19.0	70	85	17.8	72	88	16.1
67	68	24.8	68	87	18.9	70	86	17.7	72	89	16.0
67	69	24.3	68	88	18.8	70	87	17.5	72	90	15.9
67	70	23.8	68	89	18.7	70	88	17.4	73	73	20.0
67	71	23.4	68	90	18.6	70	89	17.3	73	74	19.5
67	72	23.0	69	69	23.5	70	90	17.2	73	75	19.1
67	73	22.6	69	70	23.0	71	71	21.7	73	76	18.7
67	74	22.2	69	71	22.5	71	72	21.2	73	77	18.3
67	75	21.9	69	72	22.0	71	73	20.8	73	78	17.9
67	76	21.6	69	73	21.6	71	74	20.3	73	79	17.5
67	77	21.3	69	74	21.2	71	75	19.9	73	80	17.2
67	78	21.0	69	75	20.8	71	76	19.5	73	81	16.9
67	79	20.8	69	76	20.5	71	77	19.2	73	82	16.7
67	80	20.6	69	77	20.2	71	78	18.8	73	83	16.4

Annuity 2000 Table Life Expectancies - Two Lives 60-90 Continued

Male is younger		
male age	female age	life exp.
73	84	16.2
73	85	16.0
73	86	15.8
73	87	15.7
73	88	15.5
73	89	15.4
73	90	15.3
74	74	19.2
74	75	18.7
74	76	18.3
74	77	17.8
74	78	17.5
74	79	17.1
74	80	16.8
74	81	16.5
74	82	16.2
74	83	15.9
74	84	15.7
74	85	15.5
74	86	15.3
74	87	15.1
74	88	15.0
74	89	14.8
74	90	14.7
75	75	18.4
75	76	17.9
75	77	17.4
75	78	17.0
75	79	16.7
75	80	16.3
75	81	16.0
75	82	15.7
75	83	15.4
75	84	15.2
75	85	15.0
75	86	14.8
75	87	14.6
75	88	14.4
75	89	14.3
75	90	14.1

Male is younger		
male age	female age	life exp.
76	76	17.5
76	77	17.1
76	78	16.7
76	79	16.3
76	80	15.9
76	81	15.6
76	82	15.2
76	83	15.0
76	84	14.7
76	85	14.5
76	86	14.2
76	87	14.1
76	88	13.9
76	89	13.7
76	90	13.6
77	77	16.7
77	78	16.3
77	79	15.9
77	80	15.5
77	81	15.1
77	82	14.8
77	83	14.5
77	84	14.2
77	85	14.0
77	86	13.8
77	87	13.6
77	88	13.4
77	89	13.2
77	90	13.1
78	78	16.0
78	79	15.5
78	80	15.1
78	81	14.8
78	82	14.4
78	83	14.1
78	84	13.8
78	85	13.5
78	86	13.3
78	87	13.1
78	88	12.9

Male is younger		
male age	female age	life exp.
78	89	12.7
78	90	12.6
79	79	15.2
79	80	14.8
79	81	14.4
79	82	14.0
79	83	13.7
79	84	13.4
79	85	13.1
79	86	12.9
79	87	12.6
79	88	12.4
79	89	12.3
79	90	12.1
80	80	14.5
80	81	14.1
80	82	13.7
80	83	13.3
80	84	13.0
80	85	12.7
80	86	12.5
80	87	12.2
80	88	12.0
80	89	11.8
80	90	11.6
81	81	13.8
81	82	13.4
81	83	13.0
81	84	12.7
81	85	12.4
81	86	12.1
81	87	11.8
81	88	11.6
81	89	11.4
81	90	11.2
82	82	13.1
82	83	12.7
82	84	12.3
82	85	12.0
82	86	11.7

Male is younger		
male age	female age	life exp.
82	87	11.4
82	88	11.2
82	89	11.0
82	90	10.8
83	83	12.4
83	84	12.0
83	85	11.7
83	86	11.4
83	87	11.1
83	88	10.8
83	89	10.6
83	90	10.4
84	84	11.7
84	85	11.4
84	86	11.1
84	87	10.8
84	88	10.5
84	89	10.3
84	90	10.1
85	85	11.1
85	86	10.8
85	87	10.5
85	88	10.2
85	89	10.0
85	90	9.7
86	86	10.5
86	87	10.2
86	88	9.9
86	89	9.7
86	90	9.4
87	87	9.9
87	88	9.6
87	89	9.4
87	90	9.1
88	88	9.4
88	89	9.1
88	90	8.9
89	89	8.9
89	90	8.6
90	90	8.4

Annuity 2000 Table Life Expectancies - Two Lives 60-90 Continued

Female is younger			Female is younger			Female is younger			Female is younger		
female age	male age	life exp.	female age	male age	life exp.	female age	male age	life exp.	female age	male age	life exp.
60	60	31.8	61	72	27.9	62	85	26.0	64	72	25.7
60	61	31.4	61	73	27.8	62	86	25.9	64	73	25.5
60	62	31.1	61	74	27.6	62	87	25.9	64	74	25.4
60	63	30.7	61	75	27.5	62	88	25.9	64	75	25.2
60	64	30.4	61	76	27.4	62	89	25.8	64	76	25.1
60	65	30.1	61	77	27.3	62	90	25.8	64	77	24.9
60	66	29.9	61	78	27.2	63	63	29.0	64	78	24.8
60	67	29.6	61	79	27.1	63	64	28.6	64	79	24.7
60	68	29.4	61	80	27.1	63	65	28.3	64	80	24.6
60	69	29.2	61	81	27.0	63	66	27.9	64	81	24.5
60	70	29.0	61	82	27.0	63	67	27.6	64	82	24.5
60	71	28.9	61	83	26.9	63	68	27.3	64	83	24.4
60	72	28.7	61	84	26.9	63	69	27.1	64	84	24.3
60	73	28.6	61	85	26.8	63	70	26.9	64	85	24.3
60	74	28.4	61	86	26.8	63	71	26.6	64	86	24.2
60	75	28.3	61	87	26.8	63	72	26.4	64	87	24.2
60	76	28.2	61	88	26.7	63	73	26.3	64	88	24.2
60	77	28.1	61	89	26.7	63	74	26.1	64	89	24.1
60	78	28.1	61	90	26.7	63	75	26.0	64	90	24.1
60	79	28.0	62	62	29.9	63	76	25.8	65	65	27.1
60	80	27.9	62	63	29.5	63	77	25.7	65	66	26.8
60	81	27.9	62	64	29.2	63	78	25.6	65	67	26.4
60	82	27.8	62	65	28.9	63	79	25.5	65	68	26.1
60	83	27.8	62	66	28.6	63	80	25.4	65	69	25.8
60	84	27.7	62	67	28.3	63	81	25.3	65	70	25.5
60	85	27.7	62	68	28.0	63	82	25.3	65	71	25.3
60	86	27.7	62	69	27.8	63	83	25.2	65	72	25.0
60	87	27.6	62	70	27.6	63	84	25.2	65	73	24.8
60	88	27.6	62	71	27.4	63	85	25.1	65	74	24.6
60	89	27.6	62	72	27.2	63	86	25.1	65	75	24.5
60	90	27.6	62	73	27.0	63	87	25.0	65	76	24.3
61	61	30.9	62	74	26.9	63	88	25.0	65	77	24.2
61	62	30.5	62	75	26.7	63	89	25.0	65	78	24.0
61	63	30.1	62	76	26.6	63	90	24.9	65	79	23.9
61	64	29.8	62	77	26.5	64	64	28.0	65	80	23.8
61	65	29.5	62	78	26.4	64	65	27.7	65	81	23.7
61	66	29.2	62	79	26.3	64	66	27.3	65	82	23.6
61	67	28.9	62	80	26.2	64	67	27.0	65	83	23.6
61	68	28.7	62	81	26.2	64	68	26.7	65	84	23.5
61	69	28.5	62	82	26.1	64	69	26.4	65	85	23.5
61	70	28.3	62	83	26.1	64	70	26.2	65	86	23.4
61	71	28.1	62	84	26.0	64	71	25.9	65	87	23.4

Annuity 2000 Table Life Expectancies - Two Lives 60-90 Continued

Female is younger			Female is younger			Female is younger			Female is younger		
female age	male age	life exp.	female age	male age	life exp.	female age	male age	life exp.	female age	male age	life exp.
65	88	23.3	67	81	22.2	69	78	21.1	71	79	19.6
65	89	23.3	67	82	22.1	69	79	21.0	71	80	19.4
65	90	23.2	67	83	22.0	69	80	20.8	71	81	19.3
66	66	26.2	67	84	21.9	69	81	20.7	71	82	19.1
66	67	25.8	67	85	21.8	69	82	20.6	71	83	19.0
66	68	25.5	67	86	21.8	69	83	20.5	71	84	18.9
66	69	25.2	67	87	21.7	69	84	20.4	71	85	18.8
66	70	24.9	67	88	21.7	69	85	20.3	71	86	18.7
66	71	24.6	67	89	21.6	69	86	20.2	71	87	18.6
66	72	24.4	67	90	21.6	69	87	20.1	71	88	18.5
66	73	24.1	68	68	24.4	69	88	20.1	71	89	18.5
66	74	23.9	68	69	24.0	69	89	20.0	71	90	18.4
66	75	23.8	68	70	23.7	69	90	20.0	72	72	20.9
66	76	23.6	68	71	23.4	70	70	22.6	72	73	20.5
66	77	23.4	68	72	23.1	70	71	22.3	72	74	20.2
66	78	23.3	68	73	22.8	70	72	21.9	72	75	19.9
66	79	23.2	68	74	22.6	70	73	21.6	72	76	19.6
66	80	23.0	68	75	22.4	70	74	21.4	72	77	19.4
66	81	22.9	68	76	22.2	70	75	21.1	72	78	19.2
66	82	22.9	68	77	22.0	70	76	20.9	72	79	19.0
66	83	22.8	68	78	21.8	70	77	20.7	72	80	18.8
66	84	22.7	68	79	21.7	70	78	20.5	72	81	18.6
66	85	22.6	68	80	21.5	70	79	20.3	72	82	18.4
66	86	22.6	68	81	21.4	70	80	20.1	72	83	18.3
66	87	22.5	68	82	21.3	70	81	20.0	72	84	18.2
66	88	22.5	68	83	21.2	70	82	19.8	72	85	18.1
66	89	22.4	68	84	21.1	70	83	19.7	72	86	18.0
66	90	22.4	68	85	21.1	70	84	19.6	72	87	17.9
67	67	25.3	68	86	21.0	70	85	19.5	72	88	17.8
67	68	24.9	68	87	20.9	70	86	19.4	72	89	17.7
67	69	24.6	68	88	20.9	70	87	19.4	72	90	17.7
67	70	24.3	68	89	20.8	70	88	19.3	73	73	20.0
67	71	24.0	68	90	20.8	70	89	19.2	73	74	19.7
67	72	23.7	69	69	23.5	70	90	19.2	73	75	19.4
67	73	23.5	69	70	23.1	71	71	21.7	73	76	19.1
67	74	23.3	69	71	22.8	71	72	21.4	73	77	18.8
67	75	23.1	69	72	22.5	71	73	21.1	73	78	18.6
67	76	22.9	69	73	22.2	71	74	20.8	73	79	18.3
67	77	22.7	69	74	22.0	71	75	20.5	73	80	18.1
67	78	22.5	69	75	21.7	71	76	20.2	73	81	18.0
67	79	22.4	69	76	21.5	71	77	20.0	73	82	17.8
67	80	22.3	69	77	21.3	71	78	19.8	73	83	17.6

Annuity 2000 Table Life Expectancies - Two Lives 60-90 Continued

Female is younger			Female is younger			Female is younger			Female is younger		
female age	male age	life exp.	female age	male age	life exp.	female age	male age	life exp.	female age	male age	life exp.
73	84	17.5	76	76	17.5	78	89	13.7	82	87	11.9
73	85	17.4	76	77	17.2	78	90	13.6	82	88	11.7
73	86	17.3	76	78	16.9	79	79	15.2	82	89	11.5
73	87	17.2	76	79	16.6	79	80	14.9	82	90	11.4
73	88	17.1	76	80	16.4	79	81	14.6	83	83	12.4
73	89	17.0	76	81	16.2	79	82	14.4	83	84	12.1
73	90	16.9	76	82	16.0	79	83	14.1	83	85	11.9
74	74	19.2	76	83	15.8	79	84	13.9	83	86	11.6
74	75	18.8	76	84	15.6	79	85	13.7	83	87	11.4
74	76	18.5	76	85	15.4	79	86	13.5	83	88	11.2
74	77	18.3	76	86	15.3	79	87	13.4	83	89	11.0
74	78	18.0	76	87	15.2	79	88	13.2	83	90	10.9
74	79	17.8	76	88	15.0	79	89	13.1	84	84	11.7
74	80	17.5	76	89	14.9	79	90	13.0	84	85	11.5
74	81	17.3	76	90	14.8	80	80	14.5	84	86	11.2
74	82	17.1	77	77	16.7	80	81	14.2	84	87	11.0
74	83	17.0	77	78	16.4	80	82	13.9	84	88	10.8
74	84	16.8	77	79	16.1	80	83	13.7	84	89	10.6
74	85	16.7	77	80	15.9	80	84	13.4	84	90	10.4
74	86	16.6	77	81	15.6	80	85	13.2	85	85	11.1
74	87	16.5	77	82	15.4	80	86	13.0	85	86	10.9
74	88	16.4	77	83	15.2	80	87	12.8	85	87	10.6
74	89	16.3	77	84	15.0	80	88	12.7	85	88	10.4
74	90	16.2	77	85	14.8	80	89	12.5	85	89	10.2
75	75	18.4	77	86	14.7	80	90	12.4	85	90	10.0
75	76	18.0	77	87	14.5	81	81	13.8	86	86	10.5
75	77	17.7	77	88	14.4	81	82	13.5	86	87	10.3
75	78	17.4	77	89	14.3	81	83	13.2	86	88	10.0
75	79	17.2	77	90	14.2	81	84	13.0	86	89	9.8
75	80	16.9	78	78	16.0	81	85	12.7	86	90	9.6
75	81	16.7	78	79	15.7	81	86	12.5	87	87	9.9
75	82	16.5	78	80	15.4	81	87	12.3	87	88	9.7
75	83	16.4	78	81	15.1	81	88	12.2	87	89	9.5
75	84	16.2	78	82	14.9	81	89	12.0	87	90	9.3
75	85	16.0	78	83	14.6	81	90	11.9	88	88	9.4
75	86	15.9	78	84	14.4	82	82	13.1	88	89	9.2
75	87	15.8	78	85	14.3	82	83	12.8	88	90	8.9
75	88	15.7	78	86	14.1	82	84	12.5	89	89	8.9
75	89	15.6	78	87	13.9	82	85	12.3	89	90	8.7
75	90	15.5	78	88	13.8	82	86	12.1	90	90	8.4

Chapter 22

BEST PRACTICES

Gift annuities appeal to a wide range of donors and, compared to charitable remainder trusts, they are relatively easy to set up and administer. For these reasons, gift annuities are the most common form of life income gift.

However, to be successful, a charity must look beyond the simplicity of the gift annuity and contend with the policies, processes, and procedures involved in the operation of a gift annuity program. This investment of time and effort will avoid mistakes, lead to happy donors, and inspire repeat gifts.

The path toward satisfied donors and a successful annuity program begins with diligence and care in the establishment of each gift annuity arrangement. Whenever a charity accepts a gift annuity contribution, whether for the first time or the thousandth time, it must ensure that a number of essential considerations have been addressed. The following best practices include:

Pre-planning: Several elements must be in place before marketing and soliciting gift annuities, including policies to ensure compliance with regulatory requirements, procedures with clearly defined roles and responsibilities, a way to generate financial illustrations and persuasive presentations, and a library of approved prototype documents and presentations.

Securing the gift: Prior to accepting any gift annuity, the charity must take care to disclose certain information to the prospective donor. Full disclosure is not just good practice, it is also a requirement under Federal law. Establishment of the precise date and amount of the gift and verification of annuitant(s) birthdate(s) are essential when preparing the gift annuity contract. In addition, variables including payment schedule, annuitants other than the donor, and restrictions on the use of the residuum must be considered.

Stewarding the gift: Satisfied gift annuity donors inevitably result in more gifts and encourage more donors. The keys to donor satisfaction include a seamless process, accurate and on-time payments and tax forms, and ongoing contact from the organization.

Mitigating risk: Financial risk is a consideration because required payments under a charitable gift annuity contract are a primary obligation of the issuing charity. Adherence to the rates suggested by the American Council on Gift Annuities (ACGA) can help mitigate this risk. In addition, the organization should adopt best practices including minimum and maximum annuitant age(s), minimum gift amounts, and marketing guidelines.

Evaluating the gift annuity program: Ultimately, the gift annuity program must produce a positive financial return for the organization. Annual monitoring of the financial health of each annuity contract is key. In addition, the amount and timing of anticipated releases from the gift annuity program should be projected for planning purposes and periodic program reviews will identify necessary corrections.

Pre-Gift Planning

Careful preparation and thoughtful anticipation of details will ensure a positive experience for the donor and establish a framework within the organization that includes your partners in the business or finance office and ensures gift annuities are accepted, administered, and closed without interruption.

Policies Governing the Gift Annuity Program

Before offering gift annuities, the organization should adopt policies governing issuance and administration. A well-rounded policy should encompass several areas.

- **Annuity Rates:** The annuity amount depends upon the age(s) of the annuitant(s) at the time of the gift and is usually larger for older annuitants. Establishing a table of rates for various ages will guide marketing and gift negotiation. In addition, some states require the organization to publish gift annuity rates (see Chapter 11). Gift annuity rates suggested by the American Council on Gift Annuities seek to balance the interests of the annuitant and the charity. The policy may also consider circumstances under which alternate rates could be negotiated, e.g., when a donor wishes to maximize their deduction and residuum or if an annuitant has a shortened life expectancy.
- **Annuity Types:** At a minimum, the organization should plan to issue immediate payment gift annuities and probably deferred payment gift annuities with a fixed start date. In addition, consider the circumstances under which the organization would issue deferred annuities with a flexible start date or commuted payment annuities.
- **Minimum contribution:** A minimum contribution amount should be low enough to encourage donors, many of whom will become serial gift annuity donors, but not so low that it will divert current contributions. In addition, there are both practical considerations (cost of administering small annuities) and ethical concerns (pursuing irrevocable contributions from an individual who needs a small annuity amount for financial reasons) to weigh when establishing a minimum contribution amount. In general, $10,000 is a bare minimum and $25,000 is increasingly common.
- **Maximum contribution amount:** Consider whether a maximum contribution amount is needed to avoid unduly weighting the gift annuity reserve pool toward an individual annuitant. A fixed maximum dollar amount is common. However, expressing the maximum as a percentage of the reserve pool allows greater flexibility over time.
- **Minimum age for an annuitant at time payments begin:** A minimum age is an important factor in managing risk of the overall portfolio. For current gift annuities, the minimum age when payments begin will limit the appeal because it disqualifies younger donors. However, younger donors could be encouraged to consider a deferred gift annuity. Age 65 is typical for both current and deferred gift annuities.
- **Minimum age or maximum deferral period for a deferred annuity:** An additional risk factor for deferred gift annuities is the length of the deferral period. This policy can be expressed as a minimum age, maximum deferral period, or

a combination. For deferred gift annuities, a typical minimum annuitant age on the date of gift is 55, which would allow for a minimum ten-year deferral if the minimum age for an annuitant at the time payments begin is 65.

See Chapter 5 for a sample policy document and later in this chapter for a discussion of how policies can mitigate risk.

Compliance with State Law and Regulatory Requirements

There can be no argument: the organization must comply with Federal and state law and regulations regarding charitable gift annuities. Determining which state's laws and regulations apply to a specific charity are important business decisions for the organization and should be undertaken by the governing board with advice of legal counsel familiar with the states' interpretations and requirements.

In all instances, the organization should comply with the laws and regulations of the state in which it is domiciled. However, the laws and regulations of the state in which the donor or annuitant resides at the time the gift annuity is established may apply too. While there is consensus that a charitable organization should register in the state(s) in which it is doing business, a difference of opinion exists over what "doing business" means.

Some maintain that "doing business" in a state requires a physical presence. Under this analysis, if a charity has a single office location, then it is operating its gift annuity "business" in only one state, regardless of where its donors reside, and thus is subject only to regulation by that state. However, some states maintain that a physical presence – an office or a permanent staff person – is not the sole determinant that a charity is doing business in the state and subject to its regulation. And some states have taken the position that sending marketing materials into the state, visiting with prospective donors in the state, or any kind of communication with prospective donors within the state regarding a contribution for a gift annuity is "doing business" in the state.

Defining "doing business" and determining whether a charity is subject to a given state's regulation are matters of legal interpretation. It is wise to seek an opinion from legal counsel, particularly if the organization is inclined to disregard certain states' viewpoint on their interpretations. Finally, it is unwise to decide whether to register based on what another charity may have decided, or because not registering is the path of least resistance.

A common misperception is that there is a certain minimum number of annuities an organization can issue in a state before the regulation is applicable. Unfortunately for charities this is not the case. In all states in which registration is mandatory, a charity must either apply for and obtain a permit prior to issuing any gift annuities in the state or submit a notification no later than concurrent with entering into the first annuity in the state.

In addition to specific gift annuity regulations, there may be applicable state laws concerning data privacy and financial practices. And a Federal law (Philanthropy Protection Act of 1995) requires a formal written disclosure to donors prior to acceptance of the gift in order to avoid regulation of the gift annuity as a securities transaction.

See Chapter 11, Regulations Regarding Issuance of Gift Annuities and Chapter 8, Disclosure Requirements.

Establish Roles and Responsibilities

Successful gift annuity programs ensure that all relevant departments at the organization understand and embrace their role. Depending on the organization, this may include the finance office, the mail room, donor database, advancement services, and other development staff that may work with gift annuity donors.

For example, if a donor mails a check for a gift annuity, the staff opening the mail should know to retain the envelope for documentation of the postmark, which is required to determine the precise date of the gift. Likewise, if an annuity payment is rejected by the annuitant's bank due to account closure, it should be clear exactly who is responsible for contacting the individual to obtain new bank information, and where that contact information is stored.

Identifying roles and responsibilities at the outset, and ensuring they are understood and accepted, can help prevent confusion, frustration, and loss of important information. It is key to a high-quality donor experience that paves the way for future gifts.

Prepare to Generate Gift Annuity Illustrations and Agreements

The organization will need to create financial illustrations for interested donors. PG Calc's *PGM Anywhere* can produce illustrations, presentations, and suggested proposal letters, as well as gift annuity agreements and disclosure statements required to execute gifts. While *PGM Anywhere* provides efficiency and minimizes opportunity for error, some organizations elect to use their own gift annuity agreements and disclosure statements. For organizations choosing not to invest in *PGM Anywhere*, PG Calc can provide gift calculations and illustrations for a fee.

Prepare Prototype Documents

A library of prototype documents and templates will allow prompt and consistent responses to donors at all stages of gift negotiations. In addition to approved gift annuity agreements, the library should include letters to explain financial illustrations, required disclosures; letters to accompany completed contracts, letters requesting donor signature and where to mail completed documents, and letters to executors or other representatives upon termination of a gift annuity, including circumstances where there is unrecovered investment in the contract.

Securing the Gift

When a donor is interested in a gift annuity, successful gift annuity programs follow several best practices.

A Well-Informed Donor is a Satisfied Donor

Charitable gift annuities are irrevocable. If for no other reason, it is critical that donors are well informed about the details of their gift annuity before they make their contribution. Once the gift annuity has been issued, it is difficult and often impossible to amend the details if there are misunderstandings.

There are two important categories of information to provide donors interested in establishing a gift annuity with your organization: clear and accurate financial illustrations and projections and legally required disclosures.

1. **Financial illustration:** Clear and accurate financial illustrations help the donor understand how their gift annuity will impact their own financial and tax circumstances. Illustrations should show the amount of the annuity payments, taxation of the payments, and the amount of the charitable deduction based on the property expected to be contributed. Donors should be urged to review these financial illustrations with their tax and financial advisors and discuss the gift with family members and others. This will assure each donor, as required by the Model Standards of Practice for the Charitable Gift Planner, receives a full explanation and has the opportunity to make an informed decision.

2. **Projections:** Projections of the financial performance of the gift annuity and the ultimate benefit for the charity can be a persuasive tool that helps donors envision the charitable purpose of their gift, which should be the essential motivation for their contribution. Care should be exercised to ensure these projections are reasonable and attainable, and it must be made clear that there can be no guarantee that a specific amount will be left for charitable purposes.

3. **Disclosure statement:** Federal law, the Philanthropy Protection Act of 1995 (PPA), requires any charity that pools its gift annuity contributions for investment purposes to provide donors with a statement disclosing information about the operation of the fund. This disclosure statement must be provided to the donor prior to execution of the gift annuity agreement. Establishing a standard practice, such as including the required disclosures with the gift illustration, will ensure this critical step is not overlooked. Apart from the PPA requirements, two states – Alabama and Arizona – have their own specific disclosure requirements that may be required to be in the gift annuity agreement itself.

   See Chapter 8, Disclosure Requirements.

The Gift Annuity Agreement

A gift annuity agreement is a contract, legally binding on the organization. This contract can be generated using *PGM Anywhere*. Because the gift annuity agreement entails legal obligations, the agreement should be reviewed by legal counsel for the organization and there should be a clear delegation of authority authorizing certain individuals to sign gift annuity agreements on behalf of the organization.

Preparing a gift annuity agreement requires careful attention to detailed information about the payment amount and schedule and especially the dates of the gift and of the contract, as these dates might not be the same.

When to Prepare the Gift Annuity Contract Agreement

Some development officers want to prepare a completed contract to bring to a meeting for the donors to sign at the time they make the gift or during another face-to-face meeting. Some refer to this meeting as a "closing" and feel providing a ready-to-sign contract is a part of stewardship. The challenge with this approach is that the gift date must be known in order to prepare the contract. But the gift date cannot be determined until the check is handed over or in the mail (see details below) or securities or other assets funding the gift are transferred.

Despite best efforts to plan ahead for a closing meeting, and even if the donor expects to transfer assets on a particular date, things can go awry and make the expected gift date no longer accurate. In this situation, the pre-prepared contract is no longer valid and must be recreated with a new gift date. It is better to advise your donors during the early phases of gift discussion that the contract will follow the donation of the assets. Providing the financial illustration, required disclosure statement, and, if utilized, a gift annuity application during the pre-gift planning phase will reassure your donor that you will execute the contract and other details of their gift appropriately.

Date of Gift

An accurate gift annuity contract cannot be finalized until the gift has been completed: meaning the check, securities, or other assets have been received.

The date of gift is affected by the nature of the asset being contributed and the method of delivery. The time required to complete the steps should be built into the schedule to establish realistic expectations by all parties about when the gift will be completed. This planning is especially important if a donor initiates a gift late in the year and intends to complete it by year's end.

IRS rules define the date of gift for the most common assets contributed for a gift annuity.

Cash (check)

- If handed to you in person, the date of gift is the date you accept the check unless it is post-dated (i.e., written for a future date), in which case the date of gift is the date written on the check.
- If mailed, the date of gift is the postmark date. This applies when sending through the US Postal Service. If the check is sent via a commercial service (e.g., FedEx or UPS) the date of gift may be the date it is delivered to the delivery service or the date it is delivered to the charity, depending on several factors. See Chapter 7 for a detailed discussion.
- Those responsible for opening the mail should understand the importance of retaining the envelope, particularly at year-end. A check dated December 31, might arrive in an envelope postmarked January 2, in which case the gift has been made in the new year, not the old.

Securities

- Correctly determining the date for a gift of securities is especially important because the value of the contribution will be determined as of that date.
- Most securities transfers are processed electronically. For an electronic transfer, the gift is complete on the date the shares are received by the charity's account.
- If a donor hands over actual physical certificates, then the date of gift is determined in the same way as cash, depending on whether in person or via the mail.
- If the transfer is completed by reregistering ownership of the shares, the date of the gift is the date the new ownership is recorded by the issuing corporation. Donors should avoid this approach near year-end because reregistering ownership of securities shares can take several weeks.

Other assets

Although most gift annuities are funded with cash or publicly traded securities, it is possible to fund them with other assets, including closely held stock, real estate, tangible personal property, commercial annuities, retirement accounts, and life insurance policies.

Assets other than cash or publicly traded securities may require additional steps, either before the gift is accepted (e.g., environmental review of real estate) or as part of the transfer process itself (e.g., re-reregistering closely held stock in the charity's name).

See Chapter 7, Transferring Assets & Executing Agreements.

Gift Amount

In addition to the date of gift date, an accurate gift amount must be determined. This is simple enough for gifts of cash, but additional information may be required for gifts of securities or other assets.

Cash (check)

The value of a gift of cash, whether paid by check, credit card or other means, is simply the dollar value of the check, cash transferred, or credit card amount.

Securities

Once the date of gift completion is determined, the value of the gift can be calculated. For publicly traded securities, the gift value is the average of the high and low share prices on the date of gift multiplied by the number of shares transferred. Different rules apply for bonds if high and low prices are not available but closing prices are. For mutual fund shares, the gift value is based on the net asset value per share on the date of the gift. See the current version of IRS Publication 561, "Determining the Value of Donated Property" for more information.

See Chapter 7 for more information on transfers of publicly traded securities.

Donor/Annuitant Information

Certain biographical and other information is required to create a gift annuity contract. A gift annuity application is a good way to collect this information. An application form can help minimize back and forth communications with the donor trying to nail down details. In addition, a signed application form can document the donor's confirmation of important details such as birthdates.

A gift annuity application should collect the following information:

- Date(s) of birth (not just ages) for all annuitant(s)
- Current postal and email address(es) of annuitant(s)
- Assets to be donated:
    - Cash (e.g., checks and credit cards)
    - Securities or other assets, including cost basis
    - IRA Qualified Charitable Distribution
    - Other
- Ownership of assets donated
- Annuity payment start date
- Payment frequency (annual, semi-annual, quarterly, monthly, as allowed by the organization's gift acceptance policy)
- Payment method for annuity payments:
    - Check
    - ACH or electronic payment
- Uses/purposes of gift (if designated purposes are allowed by the organization)
- Emergency contact in case checks go uncashed, ACH or electronic payments are returned, mail is undeliverable, etc.

Personally Identifiable Information (PII)

In the course of compiling the information needed for a gift annuity contract, the organization may gather certain Personally Identifiable Information (PII), including things like Social Security Numbers or bank account numbers. The handling of PII is governed by Federal and State laws and there can be serious consequences in the event of a data breach. Be sure to consult the organization's data protection policies before accepting or recording potentially sensitive information provided by donors.

See Chapter 5, Appendix 4 for a sample gift annuity application.

Annuity Rate

Most charities follow the rates suggested by the American Council on Gift Annuities (ACGA). However, donors seeking to maximize the benefit to the charity (and their charitable deduction) should consider an annuity rate lower than the ACGA suggested rates. It these cases, it is wise to document that the donor was made aware of the regular rate and chose a lower rate. In fact, California requires an addendum to the gift annuity contract documenting the donor's acceptance of the lower rate. See Chapter 5, Appendix 6.

As discussed later, issuing a gift annuity using a higher than standard rate raises concerns regarding risk to the charity and violation of state regulatory requirements.

Proof of Annuitant's Age

The amount of the annuity payments, the charitable deduction, and the taxation of annuity payments all depend on the age(s) of the annuitant(s). It is prudent for the charity to require proof of the date of birth for each annuitant. A driver's license is likely to be the easiest proof for most annuitants, although a birth certificate or passport would certainly be acceptable.

Some states require the annuity contract to provide for payment correction in case of a misstatement of the age(s) of the annuitant(s). In other states, a correction is allowed but not required (See Chapter 12). If such a provision is included in the annuity contract and it is later discovered that the date of birth used in calculating the payment was incorrect, then it will be necessary to adjust future payments to the correct amount and potentially to recover past overpayments (See Chapter 5).

Determining the Donor(s)

Gift annuities are often established by married couples using jointly-owned or community property. Determining ownership of the property is important to correctly identify who is making the gift and who needs to sign the gift annuity contract. It is also important for reporting and taxation of capital gains, as discussed below. (Note that gift tax is not an issue with spouses, assuming both are U.S. citizens, because of the unlimited marital deduction for Gift and Estate Taxes.)

Sometimes an asset that two spouses believe is owned by both of them turns out to be owned by only one of them. In these cases, the one owner will be the donor unless steps are taken to modify ownership into a joint form. Likewise, one spouse may not be aware an asset he or she thinks is separate property is owned jointly with the other spouse although, once again, the two spouses could change the form of ownership, if they wish.

The fact that an asset is owned by two people does not preclude it from funding an annuity for just one of them. Likewise, separately owned assets can be used to fund an annuity for a married couple.

All of this underscores the importance of understanding both the donor's marital status and, in the case of a married person, who owns the asset to be contributed.

Annuitant Is Not the Donor

There are important tax considerations when the annuitant is someone other than the donor:

Gift Tax

A donor who funds a gift annuity and names an annuitant in addition to, or instead of, herself makes two gifts: one to the charity and one to the annuitant. The gift to the annuitant is potentially subject to Federal Gift and Estate taxes. The gift to the annuitant may or may not be reportable and taxable depending on the specific circumstances. If the present value of the lifetime annuity to the non-donor annuitant exceeds the gift tax annual exclusion amount ($19,000 in 2025, the amount is periodically adjusted for inflation), the donor should file a gift tax return (Form 709). In such a situation, the donor can either pay the applicable gift tax or use some of their lifetime estate/gift tax exemption ($13.99 million in 2025, $15 million in 2026, and thereafter adjusted for inflation annually) to offset the tax. Alternatively, the donor can retain the right to revoke the annuitant's payments, which has the effect of turning the annuity into a series of annual gifts in the amount of the annuity payment each year rather than a single gift of the present value of the full lifetime stream of payments. See Chapter 2.

Capital Gains Tax

If a donor funds a gift annuity with long-term appreciated property and names someone else as the first or only annuitant, the capital gain allocated to the present value of the annuity interest (i.e., to the present value of the right to receive payments for life) must be recognized by the donor in the year of the gift. The taxable gain cannot be ratably reported over the annuitant's life expectancy as it can be if the donor is the annuitant. It is important to highlight this limitation to the donor prior to the contribution. The donor may still choose to proceed with the arrangement but elect to change the contribution to cash to avoid the capital gains tax. Even if the donor proceeds with a gift of appreciated property, it is far better for them to understand the tax consequences beforehand rather than being surprised after the fact, which could create a particularly negative donor relations challenge. See Chapter 2, Appendix 2.

Choosing the CMFR (IRS discount rate)

The CMFR is the interest rate used to calculate the charitable deduction and taxation of annuity payments. The IRS issues an updated CMFR each month and the donor can elect to use the rate for the month of the gift or for either of the preceding two months. With a gift annuity, choosing a higher CMFR results in a larger charitable deduction but lowers the tax-free portion of the payments; a lower CMFR results in a smaller deduction but increases the tax-free portion.

In most circumstances, the highest available CMFR is the best option because it maximizes the deduction. However, if the donor will not be itemizing deductions, or would be unable to utilize the entire deduction for a large gift, selecting a lower CMFR may provide better tax savings by increasing the tax-free portion of the annuity payments. Rather than presuming the best choice, inquire about the donor's tax situation to help them select the CMFR that will be most beneficial.

Obtaining Cost Basis

As noted previously, when appreciated property is contributed for a gift annuity where the owner is an annuitant, part of each annuity payment will be taxed as capital gain. It is important for the charity to obtain from the donor the cost basis of the property. If the donor cannot locate a record of the purchase price or obtain this information, it may be possible to ascertain the cost basis by researching records of title transfers and historical market quotations. If the donor is unable to provide cost basis information, the charity may have to assume a zero cost basis when calculating the taxation of annuity payments. Assuming a zero cost basis will maximize the reportable capital gain and minimize the tax-free portion of the payments. (See IRS Sec. 1015(a) for guidance about this issue.)

Payment Frequency and First Payment Date

Although quarterly payments are most common for gift annuities, semi-annual, annual, or even monthly payments are an option. Many charities do not allow monthly payments (to avoid the administrative burden) and, while quarterly payments are most common, some donors prefer to receive payments semi-annually or annually.

Donors should be made aware that options exist and that their choice will affect the deduction and tax-free annuity amounts. For an immediate annuity, the less frequent the payments the higher both the charitable deduction and amount of the tax-free portion of the payment. With a deferred annuity, less frequent payments can result in a slightly lower annuity rate because the deferral period runs from the date of gift to the first day of the payment period that ends on the date of first payment. In this way, less frequent payments make the deferral period shorter, which can reduce the annuity amount slightly.

For administrative expediency, the payment date should not be driven by the date of the gift. Instead, the first payment should always be made on a standard date, the end of the applicable calendar period being most common. For example, a contribution made on July 15th, with quarterly payments to start immediately, should have the first payment made on September 30th, not on October 15th. This ensures all gift annuities in the program have common payment dates and avoids administrative chaos that could result if varied payments dates were allowed.

Finally, note that, for immediate annuities, the first payment date can be anytime up to a year after the gift date (after that it becomes a deferred annuity). For example, with a July 15th contribution date, the donor could elect a first payment date of March 31st of the following year.

How Will the Residuum Be Used?

Some charities have a standard policy requiring that the residua from all gift annuities will be available for its general purposes, while others allow for any reasonable use a donor might specify. If such restrictions are allowed, they could be incorporated into the gift annuity contract, but if the description of the purpose is quite detailed or lengthy, or if the gift is to be split into use for multiple purposes, it may be preferable to spell out the restrictions in a separate document that is referenced in the gift annuity contract. The agreement should acknowledge that if the designated purpose ceases to exist or becomes impractical to perform, the charity may use the residuum for its general purposes.

Signing the Agreement and Acknowledging the Gift

The donor(s) and someone granted signing authority for the charity must sign the gift annuity contract. However, some organizations ask the donor to sign an application form prior to the gift, with the gift annuity contract signed by the charity representative only, in which case the signed application form should be attached to the gift annuity contract. See Chapter 5 for further information, including which states require the donor to sign the agreement and a sample application form in Appendix 4.

Regardless of the signing process, **the gift annuity contract should not be signed until after the contribution is received**. This is necessary so that the date of the gift, the amount of the contribution, and the annuity amount can be stated correctly and, most importantly, so that there will be no ambiguity about whether the charity has committed to make annuity payments.

In most cases, the gift annuity contract will not be signed on the gift date. Indeed, this would be impossible in most situations, such as when the contribution check is mailed or a transfer of stock must be completed. Since the gift annuity contract will be signed on a later date, it should indicate that it is being executed "as of" the date the gift (or transfer) was completed. Whether the donor or the charity representative signs first is immaterial, although common practice is for the charity to sign last.

In addition to the gift annuity contract, the charity should provide a written acknowledgment of the gift along with information showing the calculation of the charitable deduction and how the annuity payments will be taxed. See Chapter 9. This acknowledgement can be sent along with the gift annuity contract for signature or at a later date to minimize the number of mailings. Some charities choose to withhold the acknowledgement until the gift annuity contract has been fully signed.

STEWARDING THE GIFT

Repeat gift annuity contributions are very common. Research conducted by the American Council on Gift Annuities (ACGA) finds that as many as 50% of the gift annuities charities receive each year are from donors who have previously contributed a gift annuity to the charity. Stewarding existing annuity contracts well is imperative. Doing so will provide donors the confidence to give again, and sometimes again and again. What does good stewardship look like?

Create a Frictionless Experience

Following best practices – educating prospective donors, providing clear and compelling financial illustrations, being prepared with pre-approved documents, disclosures, and smooth processes – will make the process friction free for your donors and reinforce for them that they have made a wise choice.

Make Accurate, On-time Payments

While delivering annuity payments accurately and on-time might seem like an obvious requirement of good stewardship, execution can go awry, especially when payment processing is in-house or when there are staff changes. Often, organizations task the finance department with gift annuity payments, which issues them via an existing accounts payable system. Sometimes these systems are not adept at handling pro-rated first payments that are followed by regular full payments. Or the system may not be equipped to issue payments via ACH direct deposit or electronic transfer, which is becoming the expected standard payment method among annuitants.

Merely setting up a recurring payment in an automatic system does not ensure accurate on-time payments. There are other challenges. For example, if a check is mailed to an annuitant, who is monitoring for returned mail? How does this information get into the hands of the individual who can follow up with the annuitant to determine if they have moved or are still living? If you are not confident that your organization can handle flawlessly all aspects of making annuity payments, consider hiring an outside vendor, such as PG Calc, to perform these tasks.

Send Accurate, On-time 1099-R Tax Forms

The IRS requires the charity to mail a Form 1099-R to each annuitant on or before January 31 each year and to file the same information with the IRS (although the IRS deadline is later). Knowing what information goes on the 1099R is important and it can change in certain years during the life of an annuity. The first year is likely to have a different set of dollar amounts on the form than the second year. Then, when the tax-free income is exhausted, the dollar amounts on the form will change again. Accurately tracking these details is crucial to meeting the charity's obligation to donors and successfully stewarding the gift. As with making annuity payments, outside vendors, such as PG Calc, can perform 1099-R processing for the charity.

Maintain Contact with Annuitants

As important as accurate and timely annuity payments and tax forms are, they are just one element of stewarding the gift. Great stewardship is not just maintaining the transactional contacts with donors and annuitants, it's also about deepening and reinforcing their engagement with the organization. Stewardship steps can include periodically enclosing a personalized letter with the annuity payment highlighting something made possible by the donors, regular "insider" updates about your organization's work, and special invitations to events. Since you have birthdates for annuitants, PG Calc's *BatchCalcs* service can produce customized communications with the results of a new gift annuity.. These efforts let donors know you value their gift and can invite them to discuss another gift annuity, beneficiary designation, or other gift to support the organization's mission.

See Appendix for a calendar of the gift administration tasks that relate to good stewardship.

Mitigating Risk

When assets are contributed for a gift annuity, the full amount of the contribution is typically used to give credit to the donor. This is also likely the amount credited to the gift planner toward their fundraising goals. While crediting this way makes sense in these contexts – the donor has in fact parted with that amount – it is important to remember that making annuity payments is a general obligation of the charity.

When a charity receives a contribution for a gift annuity, the fair market value of the contribution is recorded on the charity's financial statements as an asset. The present value of the future annuity payments is recorded as a liability. The difference is contribution revenue. Each year the charity's financials will show the fair market value of all gift annuity reserves and the present value of all gift annuity liabilities as of the last day of the fiscal year. The difference between the value of the assets held in reserve and the present value of the liabilities will change from year to year, and the fluctuations will be recognized as changes in the value of the annuity agreements.

The ultimate risk to the charity is that the amount contributed could be exhausted before the payment obligation ends. Because the payment obligation is absolute, the charity would then need to draw upon other assets to make the remaining payments. When the obligation finally ends, nothing would be left for charitable use. This outcome is particularly disappointing when a gift annuity was established to further a specific charitable purpose. Even the most robust gift annuity programs occasionally lose money on a specific gift annuity. Strong programs, however, can absorb individual losses without a material effect on the program as a whole.

Weaker programs can suffer from the related risk that the overall financial benefits derived from the gift annuity program are subpar. An organization can't take comfort in minimizing the number of gift annuities that lose money if it typically nets only modest amounts on each annuity.

A good working benchmark for the residuum, the amount left for the charity when an annuity ends, is half of the amount contributed. For many decades, the American Council on Gift Annuities (ACGA) has used a target residuum of 50 percent in formulating its suggested maximum gift annuity rates.

Since 2011, ACGA has also employed a 20-percent present value target; the present value of the residuum must be at least 20 percent of the contribution at the time the gift annuity is established. This 20-percent target has the effect of reducing the ACGA's suggested maximum rates for annuitant ages where the annuity rate that meets the 50-percent residuum target has a present value under 20 percent. Because the overwhelming majority of U.S. charities follow the ACGA rates, achieving the target residuum is likely an organizational expectation. Recurring surveys by the ACGA since 1994 show that charities, on average, wind up with more than half of what was contributed for each annuity, though the percentage has decreased over the years, from a high of 98 percent in 1999 to 66 percent in the most recent survey (2021).

There are multiple factors that can weaken a gift annuity program:

A. Gift annuity rates offered by the charity are too high.

B. Policies regarding minimum annuitant ages and contribution amounts are not in place or are inappropriate.

C. Net investment returns are lower than the assumptions on which the charity's rates are based, or gift annuity reserves sustain significant investment losses.

D. Marketing of gift annuities is inconsistent.

E. Individual annuities in the program are not effectively tracked.

No charity can completely eliminate risks, especially those beyond its control, such as market fluctuations and annuitant lifespans. However, risk can be reduced by establishing and adhering to sensible policies and procedures for the factors a charity can control.

Gift Annuity Rates

According to the 2021 ACGA survey, 96 percent of charities always or usually follow the maximum rates suggested by the ACGA, a result consistent with prior surveys. Beyond using the ACGA rates, it's important to understand the assumptions that underlie them.

The assumptions underlying the current ACGA rates, which went into effect on January 1, 2024, include

1. The residuum (amount of the contribution remaining for the charity at the end of the annuity) will be 50 percent of the amount contributed. In addition, the present value of the projected residuum will be at least 20 percent of the original contribution.
2. Life expectancies are based on the 2012 Individual Annuity Reserving Table with a 45-55 blend of the 2012 IAR male and female mortality.
3. Annual expenses for investment and administration are assumed to be 1 percent of those funds.
4. The total annual return on gift annuity reserves is 5.75 percent.
5. The rates for the oldest ages are lower than what the above assumptions would produce: one-life rates are capped at 10.1 percent for ages 90 and above, rates for annuitants between ages 89 and 81 are graduated downward from the rate cap, And two-life rates are capped at 9.9 percent when both annuitant ages are above 90 and similarly graduated downward.
6. The compound interest factor for deferred gift annuities is 4.75 percent.

Meeting the Assumptions

While a primary goal is to achieve at least a 50 percent residuum, that result is not the most probable outcome for any given annuity. This is because no single annuity is likely to perform exactly according to the assumptions, particularly those for mortality and investment earnings. Some annuitants will die earlier than expected and some will live much longer than expected. Investment returns will fluctuate over the years. These issues are completely out of the control of the charity.

However, the average performance of a program as a whole will come closer to the ACGA's assumptions, provided the program's actions align with those assumptions. If a charity's practices differ from those assumptions, its results should also be expected to differ. For example, if a charity spends a portion of the contribution up front, or if its expenses or investment returns differ from the assumptions, the residuum will likely differ from the 50 percent assumption that underlies the ACGA rates. (See Chapter 3 for a detailed discussion of all the assumptions behind the ACGA's rates.)

Impact of Exceeding ACGA Rates

If a charity issues a gift annuity at a higher rate than the ACGA suggests, it will need to realize a higher net return on investments or have lower expenses or annuitants dying earlier than the ACGA assumes to realize a 50 percent residuum. Otherwise, the residuum will be lower than 50 percent and the charity will also run a higher risk of completely exhausting the funds before the gift annuity payment obligation ends.

In addition to decreasing the residuum and increasing the risk of exhaustion, a charity must consider whether offering a higher rate would violate the requirements of any states where it issues gift annuities. New Hampshire specifically prohibits offering annuity rates higher than those suggested by the ACGA. Other states, including Alabama, Arkansas, California, Maryland, New Jersey, New York, Tennessee, and Washington, require a charity to file a schedule of its maximum rates. Once filed, the charity is not authorized to offer rates higher than those in the schedule. California, in particular, views offering a higher rate as a discriminatory rating practice. Even if offering a higher rate is allowed, any state with a reserve requirement would compel the charity to hold a larger amount of money in its reserve account.

Since most organizations adopt the ACGA's suggested maximum rate schedule, the decision to offer a higher rate usually arises when making an exception for a specific gift. This is typically prompted by a donor's request, often involving a large contribution – precisely when you don't want to increase risk to the organization. If a charity wishes to create a rate schedule different from the ACGA's, it would be wise to create its own set of assumptions to determine its rates. Randomly increasing rates without understanding the expected outcome puts the charity at greater risk of a low-performing program and an increased number of underwater annuities.

Policies Regarding Annuitant Age and Contribution Amount

Gift acceptance policies provide a roadmap as to the assets and gift vehicles a charity will accept, ensuring that gifts align with its mission and risk tolerance. Since gift annuities create a financial liability for the charity, a primary purpose of these policies is to protect the organization.

According to the 2021 ACGA survey, 65 is the most common minimum age (30 percent) for annuitants of an immediate payment gift annuity. However, a combined 43 percent of charities had a younger minimum age, and a surprising 21 percent had no minimum age at all.

A challenge with younger annuitants is that the long time until the gift is realized results in a lower present value of the residuum. An annuity with a large projected residuum for a young annuitant may have a lower present value than an annuity with a smaller residuum for an annuitant with a shorter life expectancy. For example, a projected $15,000 residuum for someone with a 30-year life expectancy has a present value of $3,471, assuming a discount rate of 5 percent while a projected residuum of $10,000 for someone with a 10-year life expectancy has a present value of $6,139.

Issuing to younger annuitants can increase risk. A long payout period can increase the likelihood of a gift going "underwater," requiring more years of out-of-pocket payments and administrative costs. While a charity can't control everything, it can determine an acceptable anticipated time horizon before the gift is realized.

For deferred annuities, the earliest start date for payments should reflect the minimum age for immediate annuities. It is common for the minimum age at time of contribution for a deferred annuity to be not more than 10 years younger than the minimum age for an immediate annuity. For a two-life annuity, both annuitants should meet the age minimum.

The concern with small contributions is also primarily a matter of the present value of the future residuum, which may be consumed by administrative costs. The minimum contribution amount reported in ACGA surveys has been increasing over time; in 2021, 77 percent of charities had a minimum of $10,000 or higher, compared to 61 percent with such minimums in 2009.

Charities should also consider establishing a maximum contribution amount, which only 11 percent of respondents to the 2021 survey had done. The healthiest gift annuity programs have large numbers of annuities issued in relatively similar amounts to distinct individuals. A concentration of large payments to any one individual increases risk. If the annuities from that person suffer significant investment losses or if the annuitant lives well beyond their life expectancy, the entire program could be negatively affected.

This risk can be offset by setting a maximum amount that can be contributed by any one individual, or by deciding to reinsure any amount that exceeds that maximum. (See Chapter 10 for a discussion of reinsurance.) This acceptable maximum amount can be a fixed dollar amount or a percentage of the overall gift annuity pool. For example, a charity might decide that it would not allow an individual annuitant to receive 10 percent or more of the charity's total annual gift annuity payments. For large annuities, risk control strategies could include asking the annuitant to accept a lower annuity rate or reinsurance of some or all of the annuity.

Investment Returns/Expenses

The January 1, 2024 ACGA rates are based on a net investment return of 4.75 percent. This figure is derived from a 5.75 percent gross return, less 1 percent for expenses. Higher-than-expected expenses or lower-than-expected returns would result in a lower net return. It is not realistic for a charity to expect to earn each year the amount needed for annuity payments. Some of the annuity payments will come out of principal. It is crucial to be aware of how the investment allocation and actual returns affect the residua a charity receives. Investing reserves prudently is the best way to limit risk.

The asset allocation used for an endowment or charitable remainder unitrusts is generally not appropriate for gift annuity reserves. If equity exposure is too high and values drop, a charity will have difficulty restoring reserves because annuity payments are not reduced when market values decrease. Conversely, overly conservative investment may lead to steady erosion of reserves because the resulting meager return is below the return on which ACGA rates are based.

The ACGA uses an assumed asset allocation of 40 percent equities, 55 percent 10-year Treasury Notes, and 5 percent cash (3-month Treasury Bills) to determine its gross return figure. This allocation is not a specific recommendation but can serve as a guide for the percent of equities in a prudent portfolio. The gift annuity reserve portfolio should include both equity and fixed-income investments, with fixed-income investments comprising a higher percentage than for an endowed fund. Of course, diversification is advisable whatever the portfolio mix.

Charities may also need to account for investment restrictions imposed by state law. (See Chapter 13.) Only California and Florida place specific limitations on how the reserve fund is invested. The investment restrictions include:

- Stock limited to 50 percent of required reserve assets
- Mutual funds limited to no more than 10 percent in any one fund in Florida, or considered as part of the stock limitation in California
- Real estate is not permitted as a reserve investment in California and is limited to 5 percent in Florida.

In creating a prudent investment strategy, a charity should balance risk and potential return, diversification within each asset class, and select investments based on expected cash flow needs.

It is also important to ensure that expenses charged to the reserve fund are not excessively high. For example, if a charity pays 100 basis points for investment management and administration services and charges the reserve fund an additional 75 basis points for internal costs, it would need to have a gross return of 6.5 percent to achieve the 4.75 percent net return on which the ACGA rates are based.

Investment returns and expenses should be reviewed at least annually, and adjustments made as needed. While the charity cannot control market fluctuations, it can control the allocation of the assets backing its gift annuities.

Marketing Gift Annuities Consistently

Just as a charity is unlikely to be successful in timing the stock market, "timing" the issuance of gift annuities is also not likely to be a successful strategy. There is no way to know what will happen with a particular gift annuity based on what happened before it was issued. For example, many charities temporarily stopped issuing gift annuities after the market events of 2008-09 when their gift annuity reserves dropped. However, in the wake of the Great Recession gift annuity rates were lowered and investment returns rebounded. For charities that continued with their marketing efforts, the annuities issued during that time have, in fact, turned out to have among the best results.

Choosing to pull back can "lock in" lower residua and result in missed opportunities from gifts issued under what turn out to be more favorable circumstances. An analysis from the 2017 ACGA survey compared rapidly growing programs (those that saw an increase of 50 percent or more in dollar volume from 2013 to 2017) with rapidly contracting programs (those that saw a decrease of 50 percent or more). Contracting programs were more likely to report that limitations had been placed on their ability to market gift annuities or that more restrictive administrative procedures had been put in place that hindered issuance. Growing programs were also more likely to have a higher focus on contributions of non-cash assets. A minority of respondents to the 2019 ACGA survey (14 percent) who noted increased marketing and donor education about non-cash contributions also saw an increase in gift annuity contributions of stock and real estate. Face-to-face donor conversations were also noted as a strong contributing factors in these gifts. However, in-person conversations about gift annuities seem to be less common, even pre-Covid. Almost 7 percent of respondents noted no face-to-face visits to discuss gift annuities, while 27 percent reported 0 – 3 visits and 28 percent reported 4 – 10 visits.

The larger the pool of gift annuities and the more evenly spread the timing of when its annuities were funded, the better the program can achieve an economy of scale where the results average out closer to the assumptions. A small pool can magnify the effects of each individual annuity. Consistent marketing efforts and continued issuance over time helps mitigate the risk of market fluctuations to the health of the overall gift annuity pool.

See Chapter 15 for a detailed discussion of marketing gift annuities.

Tracking Individual Market Values

Technically, there is no requirement to track and maintain a record of the individual market value for each gift annuity contract. Payment obligations are fixed, and thus not dependent on the current market value of a particular contract. Still, tracking market values is beneficial for several reasons. It is necessary for charities that allow donors to restrict the residuum to a specific purpose as it ensures there is a known ending value to be withdrawn when the annuity terminates and is used for its restricted purpose. Even if all a charity's annuities are for general purposes, tracking individual values allows for accurate withdrawal of funds and better monitoring of the annuity program's overall health and financial viability.

Without actual market values, the amount to be withdrawn at termination must be determined by another method. If the charity is subject to state reserve requirements, it might use the reserve liability as the withdrawal figure. However, this calculated liability is disconnected from actual earnings or losses and whether the person has lived longer than was expected. Using the reserve liability can result in too much or too little being taken out.

Sometimes the charity will instead periodically distribute the excess funds above what it is required to hold in its aggregate reserve fund. This practice, however, also makes it likely that for any given annuity, the amount distributed is too much or too little. If "lump sum" distributions are followed, it is recommended that the charity maintain reserves of at least 125 percent of the present value (aka, the actuarial value) of annuity obligations, or of any applicable state required reserve (including any state required surplus) A charity that takes out too much when annuities terminate is withdrawing funds that are in part attributable to annuities still in force. This approach will increase the likelihood that a charity will need to use general assets later to meet state reserve requirements or to make annuity payments.

Along with prescribing the amount a charity must hold in reserve, some states require that a charity hold its gift annuity assets in a segregated fund. This practice, whether or not the charity issues annuities in one of these states, provides for better monitoring of the program. Without a segregated account, the contributed assets are frequently placed in one account, while the annuity payments are made from another, often without recognition of the connection between the asset and the liability. Without this connection, it can be difficult to document the program's effectiveness, which can lead to incorrect assumptions about its performance.

Evaluating the Gift Annuity Program

The ultimate tool in managing risk is consistent monitoring over the years, not just in times of market declines. Bull markets can mask problem policies and procedures, making the resulting residuum seem fine and further review or analysis seem unnecessary. But even in those times, poor decisions can reduce program performance and, when the inevitable market downturn occurs, the situation simply becomes more visible. A continuous eye on the factors within a charity's control will better position the program to weather market fluctuations and result in better long-term performance.

Monitoring the program and making adjustments is also beneficial for maintaining a strong internal perception of the program. In the 2019 ACGA survey, 51 percent of respondents noted a positive attitude from the CFO and others toward gift annuities. However, almost 6 percent noted a negative attitude, 23 percent indicated a cautious attitude, and 17 percent noted indifference. These less positive responses could be changed by a regular quantitative assessment of the program and considering of ways to make it more productive.

Measuring the Profitability of a Gift Annuity Program

One formula for determining the profit of a gift annuity program is:

$P \quad = (Dp + Df) - E$, where

P is profit,

Dp is the total of all past distributions ("residua") received by the charity

Df is the total of projected future distributions to be received by the charity

E is the total of direct administrative expenses, past and projected, paid from general institutional funds and not deducted from gift annuity reserves

If the charity has kept good records, past distributions (Dp) are easily determined and would include transfers of residua when payment obligations terminated, as well as any amounts spent for charitable purposes at the time annuities were established and withdrawals from the gift annuity reserve fund not associated with the termination of obligations. While it is impossible to know future distributions (*Df*) precisely, they can be approximated.

Most charities charge the direct costs of investing reserves and administering gift annuities to the gift annuity reserve fund. These costs are therefore factored into the profit equation by lowering the net return and thus the amount available for distribution. Only if such expenses were paid from funds other than the gift annuity reserves would they constitute "E" in the formula. Other costs, such as regulatory compliance, marketing, or salaries can be challenging to apportion to gift annuities. It is preferable not to count them as direct expenses against the gift annuity program unless they can be directly attributed to gift annuities.

Projecting Distributions from Existing Gift Annuities

The value of future distributions (*Df*) cannot be known for certain, but it can be approximated to determine the likely profitability of the program. Two models are discussed here: the constant-net-return model and the Monte Carlo model.

- **Constant-Net-Return Model:** This model assumes that the charity earns a fixed, constant net return on gift annuity reserves until the annuity terminates. It also assumes that every annuitant lives to the end of their life expectancy, determined as of the date the analysis is done. The advantage of this model is its simplicity. The obvious disadvantage is that actual returns will not be constant, and the timing of returns affects outcomes. However, this model can identify problematic annuities and provide a sense of the program's overall health and financial viability
- **Monte Carlo Model:** Instead of assuming a fixed return, a Monte Carlo program randomly generates returns to simulate performance under historically representative conditions, and it overlays these returns with randomly-generated life spans. The program can run in seconds a thousand trials of any specific annuity, each with a different date of death and different return on various classes. The program will show the percentage probability that the residuum from a gift annuity will be a certain amount or higher. The advantage of this model is that its return projections are more likely to reflect what will actually happen over the life of the annuities. However, it is not as useful as the constant-net-return model for providing yearly cash flow projections.

The Value of Using Multiple Models

The constant-net-return model provides a good baseline analysis and is an efficient way to look at the gift annuity program as a whole. The Monte Carlo method is a more effective way to look at outcomes for individual annuities and is particularly helpful for projecting the likelihood of a negative residuum. Combining the two models offers the most comprehensive evaluation. Any differences between the two models can be analyzed, taking into account the strengths and limitations of each method.

Gift Annuity Administration Tasks Calendar

APPENDIX

Gift Administration Tips

- Prepare annuitant payments – quarterly, semiannual, or monthly – and send them prior to the last day of the month to ensure on-time delivery.
- Maintain a monthly schedule for reconciling the checking account and follow up with annuitants who have not cashed checks.
- For gift annuities that come in late in the year, prepare contracts and calculations to combine the first partial December payment with the first full payment in the following year.
- Where applicable, your charity should submit timely annual filings regarding its gift annuity program to the states that require them. (See Chapter 14 for details.)

Calendar

January

- Perform FASB calculations for charities with a 12/31 fiscal year-end
- Mail 1099-Rs to annuitants by 1/31
- Calculate quarterly CGA market values

March

- Calculate quarterly CGA market values
  Submit aggregate filing of tax information and E-file with the IRS

April

- Calculate quarterly CGA market values

June

- Anticipate a higher payment volume for CGAs this month due to gifts with semiannual payments, in addition to monthly and quarterly

July

- Calculate quarterly gift annuity market values
- Perform FASB calculations for charities with a 6/30 fiscal-year end
- There may be quarterly reporting requirements for the charity and its gift annuity program

October

- Calculate quarterly CGA market values
- Perform FASB calculations for charities with a 9/30 fiscal year-end

November

- Finance and Development should coordinate and prepare for year-end increase in gift activity

December

- Prepare for production of 1099-Rs in January by ordering forms, envelopes, and confirming annuitant addresses

TIP: December is the month with the highest number of gifts and of annuities making payments and the greatest number of holiday closings and vacations, so plan accordingly.

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AFTERWORD

This book is intended to be a technical resource. Yet, however immersed we may be in Internal Revenue Code sections, state regulations, present value calculations and administrative procedures, we must never lose sight of the fact that these mundane, and sometimes tedious facts, are such things as dreams are made of. Because we are attentive to these details, communities are improved and donors realize their philanthropic dreams while providing financial security for themselves and their families.

May our credo, while engaging in this work, be what is expressed in this statement of George Bernard Shaw, which was called to my attention by my friend Terry Simmons:

> *I am of the opinion that my life belongs to the whole community and, as long as I live, it is my privilege to do for it whatever I can. I want to be thoroughly used up when I die. For the harder I work the more I live. I rejoice in life for its own sake. Life is no brief candle to me. It's a sort of splendid torch which I've got to hold up for the moment and I want to make it burn as brightly as possible before handing it on to future generations.*