Don’t Be Scared Off by CGA Regulations

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For any charity operating a gift annuity program, the question, “In what states do we need to register?” has likely come up (perhaps more than once). That may be closely followed by a declaration “we’re not registering in…” and the naming of one or more states accompanied by horror stories of the level of regulation they impose. Although complying with state gift annuity regulations does not top anyone’s “things I enjoy” list, the desire to avoid a certain state’s regulations can interfere with the success of your program.

Fortunately, a charity can issue in half of the states without being subject to any gift-annuity-specific registration, and if you tack on the 14 states that require only a notice of intent to issue, then the total grows to 39 states. The complexity really comes with the 11 more highly regulated states:

- Alabama
- Arkansas
- California
- Florida
- Hawaii
- Maryland
- New Jersey
- New York
- North Dakota
- Tennessee
- Washington

While for some organizations, their donor base is such that they want to be able to issue gift annuities in all states, for many it will make sense to weigh the cost (in time and dollars) of compliance with the benefit of expected gifts.

The question of where to register and issue should take into account the geographic reach of an organization and where it might have donors, but also the level of regulation in a given state as compared to the potential for gifts. While a charity understandably wants to be in a position to accept any gift, registering to issue gift annuities may be counterproductive in a state with a high level of regulation and where the charity has identified very few prospective gift annuity donors. The charity may expend significant time and money maintaining compliance, only to issue a single small annuity or none at all. Conducting a "cost/benefit" analysis helps to determine where it makes sense to issue/register, staying out of those states where the "cost" (in actual expense or in time) of registration vastly outweighs the potential "benefit" of gifts. Such an analysis might be revisited over time as the charity grows its gift annuity program (when the cost of registration can be borne more easily) or because there is a higher-than-expected level of interest in a previously passed-over state (either from a larger than expected number of donors or a single donor interested in one or more particularly large gifts). Note, though, that some of the more likely states for a charity to stay clear of also have a longer registration process, so if a revisited decision to issue in a state is driven by a particular donor's interest, there will likely be some delay in being able to issue an annuity while the charity completes the registration.

The key point in conducting the analysis and revisiting it for any previously excluded states is to ensure that the charity is giving its gift annuity program the best chance for success by issuing gift annuities where it has the most potential for such gifts. If your organization can receive a steady flow of contributions without issuing in California or New York, for example, then staying clear of those states and the ongoing reporting requirements may be a good choice. But if those states contain large numbers of prospects in the applicable age range for gift annuities, staying clear of them may actually be a disservice to the program and your organization's fundraising. There is outside assistance to be had both in completing the initial registration and ongoing reporting requirements (PG Calc provides this service, for example), taking the sting out of the regulatory compliance. There are also options for having the donor make the gift to another organization (e.g., a community foundation or other third-party issuer), with your organization receiving the remainder after the annuity has terminated. In that situation the issuer rather than the charity would be responsible for administering the gift, taking the risk, and meeting any applicable state regulations.

The flipside of all the above is that a charity may have previously opted to register in a given state, yet finds itself having issued no annuities there, or having issued just one or

two that have now terminated. In that situation it may be time for the charity to revisit the cost/benefit analysis in deciding whether to continue to maintain its permit or to turn it back. Certainly, if a charity anticipates future gifts, it should hold on to the permit to avoid having to go through the application process again. But if a review shows minimal potential for future gifts, it may be better to get out from under the regulation and avoid the time and cost involved in ongoing reporting. Of course, being without a permit means being unable to issue an annuity should a prospective donor pop up, but the third-party option discussed above might then be an option.

Most importantly, don't let the fear of regulatory compliance limit the growth of your gift annuity program. Decide where your organization should be issuing based on a thoughtful analysis of where your prospects are concentrated and what that means in terms of regulation. Receiving gifts always helps counter the annoyance of filing regulatory reports!