Charitable Gift Annuities and CCCC Certification

Preamble

CCCC publishes Standards of Organizational Integrity and Accountability. Until recently, all charities wishing to display the Seal of Accountability (i.e., a certified member) under those standards were not permitted to issue self-insured or reinsured annuities because CCCC viewed the practice as being non-compliant with Standard 6. CCCC took this position for two primary reasons, namely

(1) annuities were viewed as insurance products requiring the selling organizations and their staff engaged in issuing them to be licensed in most jurisdictions, and

(2) Canada Revenue Agency and the Ontario Public Guardian and Trustee expressed the view that each charitable gift annuity should be treated as an independent contract (i.e., they could not be pooled for risk management purposes).

Charitable gift annuities have been issued by charities in Canada for more than 100 years. The regulators have known of this practice, but have chosen not to act upon it. Since the regulators permit the practice of charities issuing such annuities by default, if not administrative practice, CCCC no longer takes the position that Standard 6 is breached when a certified member issues self-insured or reinsured charitable gift annuities.

As a result of the above noted policy, the Standards Committee met to discuss the operational concerns when CCCC certified members issue charitable gift annuities. A number of issues were identified as follows:

- Types of annuities that are of concern to CCCC.
- The corporate authority to issue charitable gift annuities.
- Pooling of annuities to spread risks.
- Actuarial reporting on annuity pools.
- The need for independent legal advice.
- The need for family involvement.

Types of Annuities

Three types of gift arrangements involving annuities were identified. These are:

(a) *Gift and annuity*. Under this arrangement the donor identifies the amount of funds that could be transferred and the periodic payment stream he or she desires in consideration of this transfer. The charity obtains quotes from a representative number of life-insurance issuers and selects the lowest premium quoting company to enter into an annuity directly with the donor/annuitant. The donor then issues a cheque to the insurance company and another for the difference between the insurance premium and the original intended transfer to the charity.

(b) *Gift plus annuity*. Under this arrangement the donor identifies the amount of funds that could be transferred and the periodic payment stream he or she desires in consideration of the transfer. The charity writes the annuity and subsequently enters into a separate annuity agreement between itself and an insurance company to ensure the payment stream required by its annuitant. The charity pays the required premium to the insurance company and retains the remainder for its own charitable purposes.

(c) *Self-insured annuity*. Under this arrangement the donor identifies the amount of funds that could be transferred and the periodic payment stream he or she desires in consideration of the transfer. The charity invests the amount paid by the annuitant either individually or on a pooled basis and pays the agreed periodic payment for life out of the premium received plus investment income. The pricing is designed to leave a substantial amount for the charity's purposes at the death of the annuitant.

Only annuities in (b) and (c) are of concern with respect to the application of CCCC's Standards.

Corporate Authority

Some charities issuing charitable gift annuities do not have the corporate authority in their Letters Patent to issue charitable gift annuities. **It is the decision of the Standards Committee that a certified member may issue annuities of either the (b) or (c) type described above if they have corporate objects that permit the activity**. This means that an unincorporated certified member also will not be permitted to issue such annuities.

Pooling Annuities

It is our view that pooling annuities is very important to ensure that the charity is not exposed to the premiums running out with respect to any one contract.

The Standards Committee requires certified members that issue self-insured charitable gift annuities to pool the premiums so as to ensure that the risk of individual annuitants outliving the premium of their specific contracts is minimized.

Actuarial Reporting

Actuarial reporting is possible only where annuity premiums are pooled and segregated from (a) the organization's property held to pursue its charitable purposes, and (b) any other trusteed or administered funds. Pooling in this context means that it will not be possible to identify a residual amount with respect to an individual annuity contract.

The Standards Committee requires every certified member that issues self-insured charitable gift annuities to obtain an actuarial report at least every three years and must maintain segregated assets sufficient to meet all future contractual payments as determined by such reports. Copies of such reports must be provided to CCCC.

Independent Legal Advice

There is a risk that a charity may be challenged by a person appointed as power of attorney (where an annuitant is no longer competent to look after his or her own affairs) because the periodic payments under the charitable gift annuity contract are not competitive with commercial annuities. Challenges could also arise for other reasons.

It is our view that charities are able to better defend themselves against such challenges if independent legal advice is obtained by the annuitant for higher value annuities.

All certified charities issuing self-insured charitable gift annuities must require all individuals purchasing $50,000 or more in the aggregate in such annuities from the charity to obtain independent legal advice.

The Standards Committee also strongly encourages that independent legal advice be obtained if there is reason to believe that annuities, although less that $50,000 in total, form a substantial portion of the annuitant's assets. This position is consistent with the spirit and intent of Standard 7.2.

Family Involvement

Based on the fact that Standard 7.2. already addresses family involvement, it was agreed that no additional requirement in this regard would be placed on those certified members that issue charitable gift annuities.