

**November 15, 2011 • 1:00 to 2:00 p.m. Eastern Time**



# **Most Compelling Opportunities Now: Making Two Years Last a Lifetime**

Presented by

**Paul S. Lee, J.D., LL.M.**

**Carl R. Waldman, J.D.**

  
WealthCounsel®

  
The Advisors Forum

# HOUSEKEEPING

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### Speaker Information

**Featured Speaker**

**Paul S. Lee, J.D., LL.M.**  
New York, NY  
National Managing Director  
Bernstein Global Wealth Management  
(An investment arm of AllianceBernstein  
Holding, L.P.)

**Moderator**

**Carl R. Waldman, J.D.**  
Westlake Village, CA  
Founder & Principal, WealthCounsel, LLC  
and The Advisors Forum, LLC  
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# TODAY'S MODERATOR



## **Carl R. Waldman, J.D.**

*Westlake Village, CA*

Founder and Principal, WealthCounsel, LLC

Founder and Principal, The Advisors Forum, LLC

Principal, Carl R. Waldman, A Law Corporation



# TODAY'S FEATURED SPEAKER



## **Paul S. Lee, J.D., LL.M.**

*New York, NY*

National Managing Director

Bernstein Global Wealth Management

(An investment arm of AllianceBernstein Holding, L.P.)

November 2011

# The Most Compelling Planning Opportunities Now Making Two Years Last a Lifetime

**Paul S. Lee, J.D., LL.M.**  
National Managing Director



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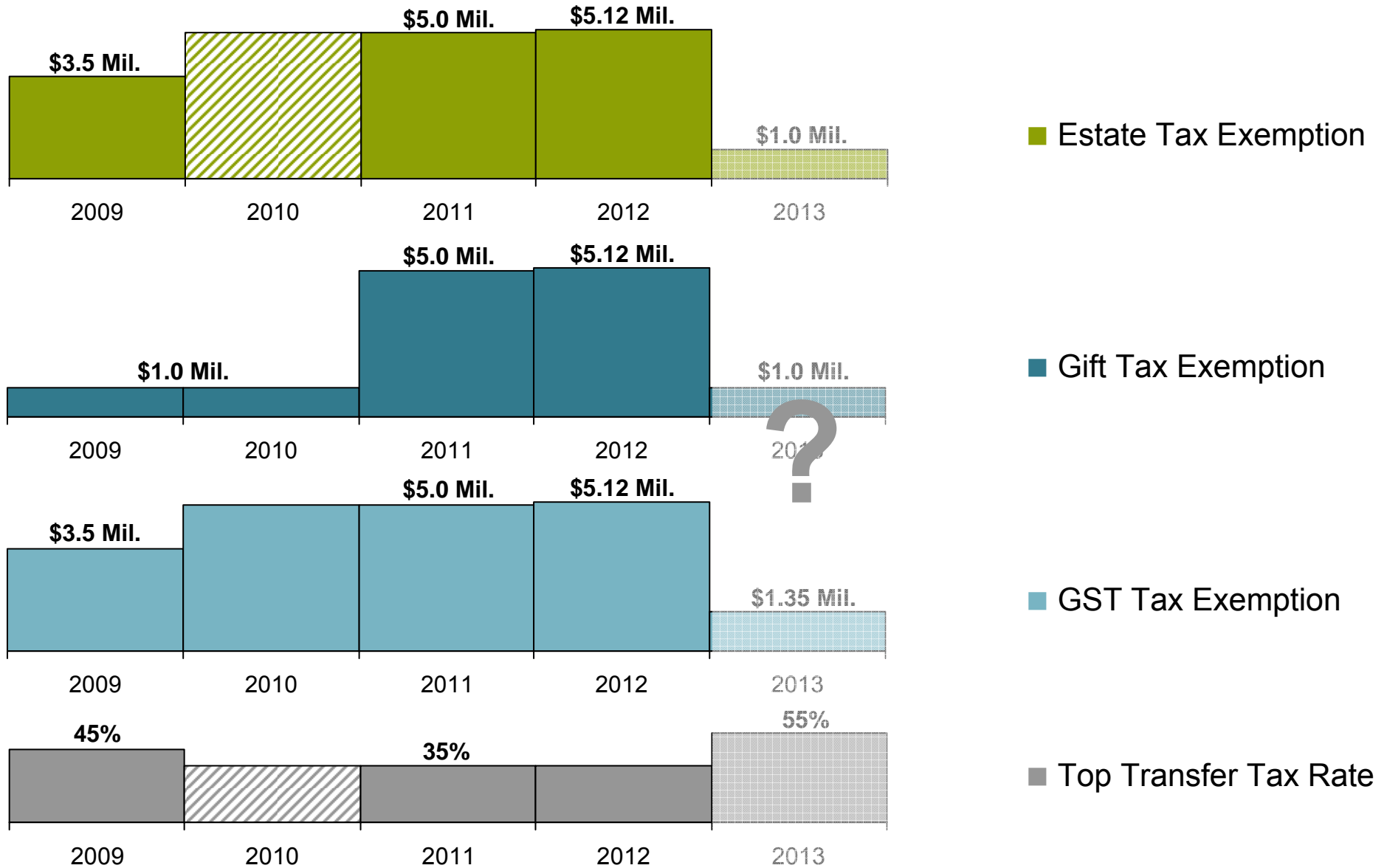
# The Temporary “Tax Relief ... Act of 2010”

## “Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010\*”

- Unification of Gift, Estate and GST Tax
- \$5.0 million Applicable Exclusion Amount (indexed beginning 2012)
- 35% maximum rate
- Portability of “deceased spousal unused exclusion amount”
- Sunset in 2013

\*P.L. 111-312, enacted December 17, 2010 (“TRA 2010”)

# The New Landscape & Paradigm ... Do You Feel Lucky, Punk?



# Should Client Make A \$5 Million Gift?

## Why No?

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- Client can't afford it
- Gifted asset might lose value
- Lose step up at death
- Risk of recapture?

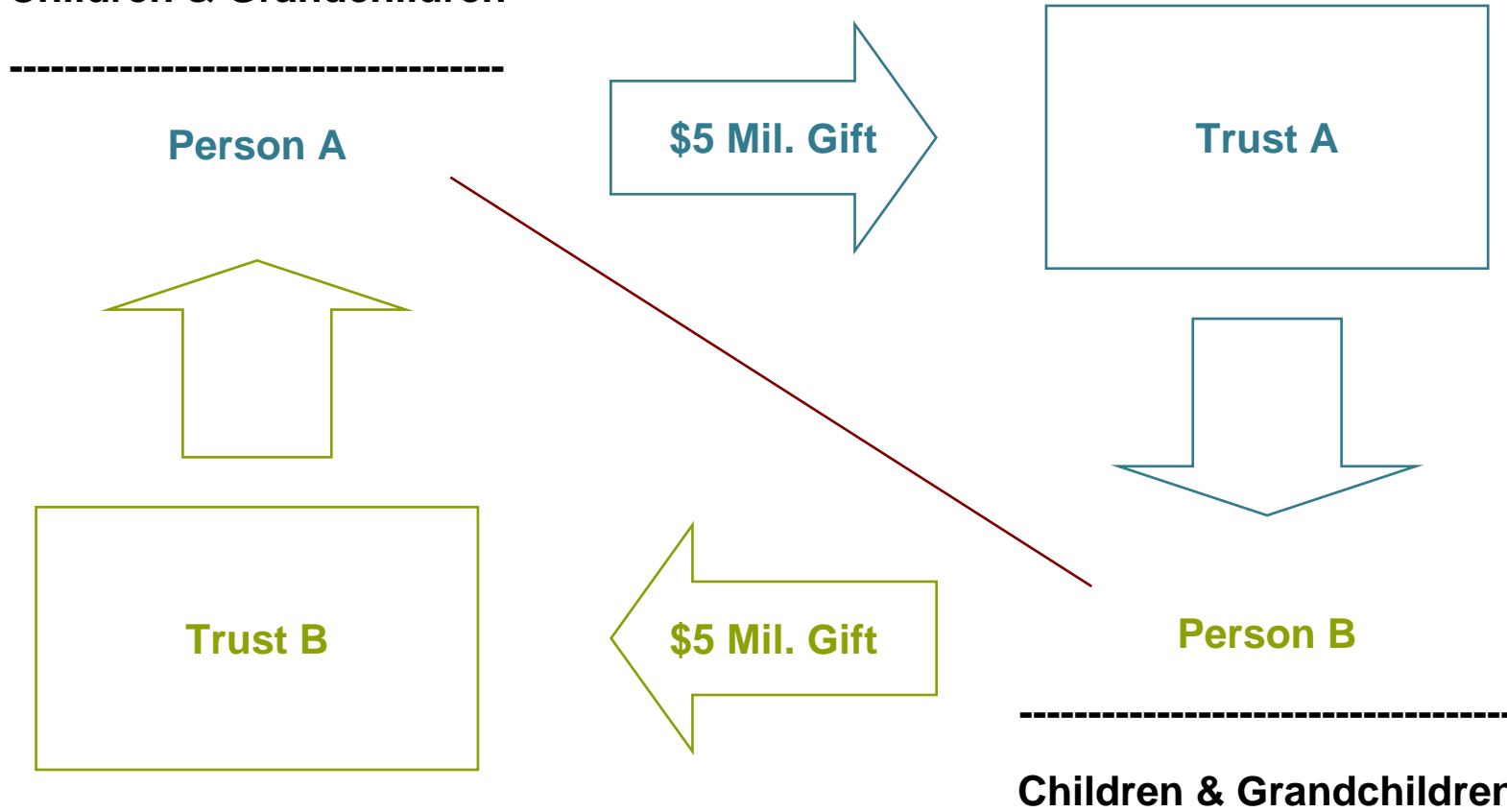
## Why Yes?

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- GST exemption can be applied
- Growth out of the estate
- Grantor trust
- Avoid state death/inheritance tax

# Lifetime Exclusion Trusts: Non-Identical Trusts for each Other

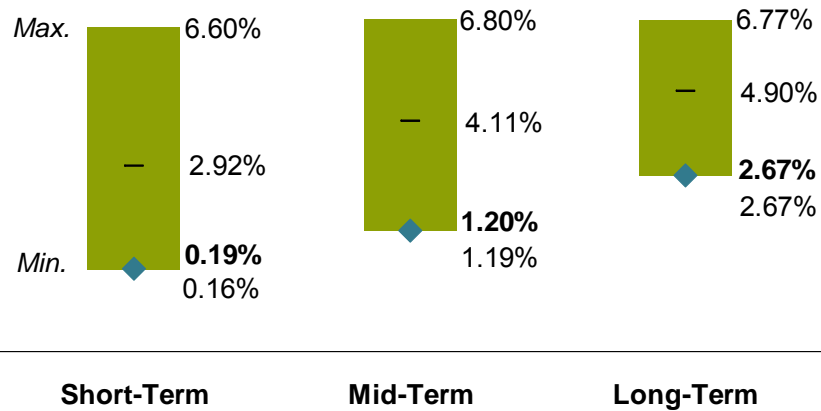
Children & Grandchildren



Reciprocal Trust Doctrine? See [Estate of Levy](#), 25 T.C.M. 910 (1983) & PLR 200426008

# Very Low AFR and Section 7520 Rates

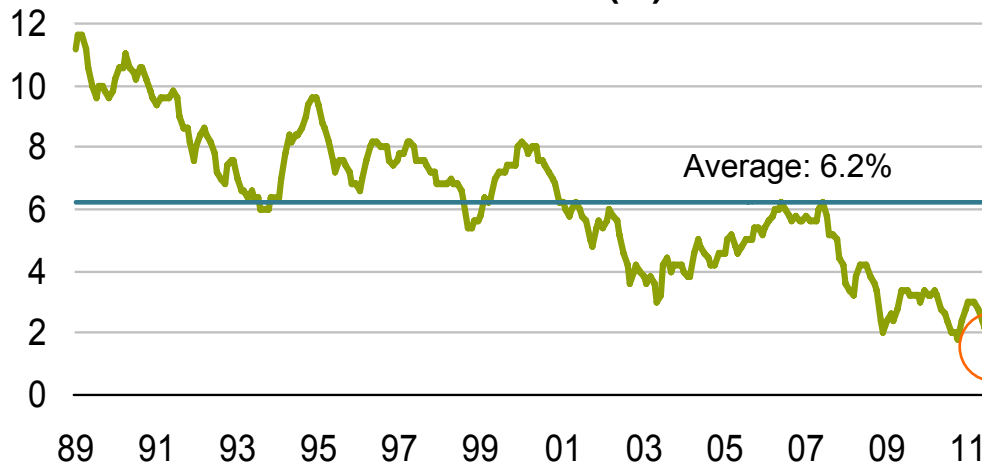
## Applicable Federal Rates\* Jan. 1998–Nov. 2011



◆ Nov. 2011  
(Annual)

**Installment Sales to IDGTs  
&  
Intra-Family Loans**

## Section 7520 Rate (%)\*\*



Nov. 2011 (1.4%)

**GRATs  
&  
CLATs**

\*Section 1274(d) of the Internal Revenue Code of 1986, as amended (Code)

\*\*Code Section 7520. As of November 2011.

Source: Internal Revenue Service (IRS) and AllianceBernstein

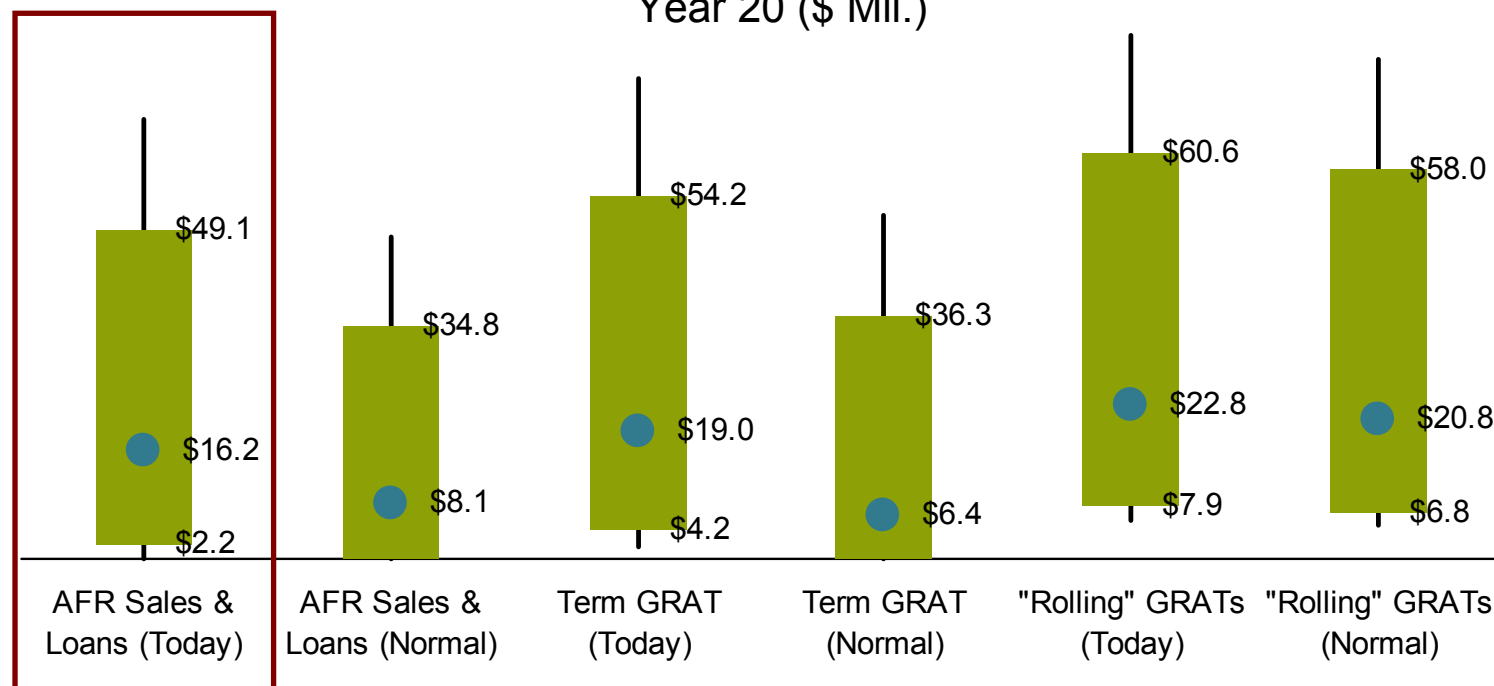
# Low Interest Rates & Improving Economy vs. "Normal" Market Conditions

## Inflation-Adjusted Remainder Values\*

\$10 Mil. Initial Sale/Contribution

Year 20 (\$ Mil.)

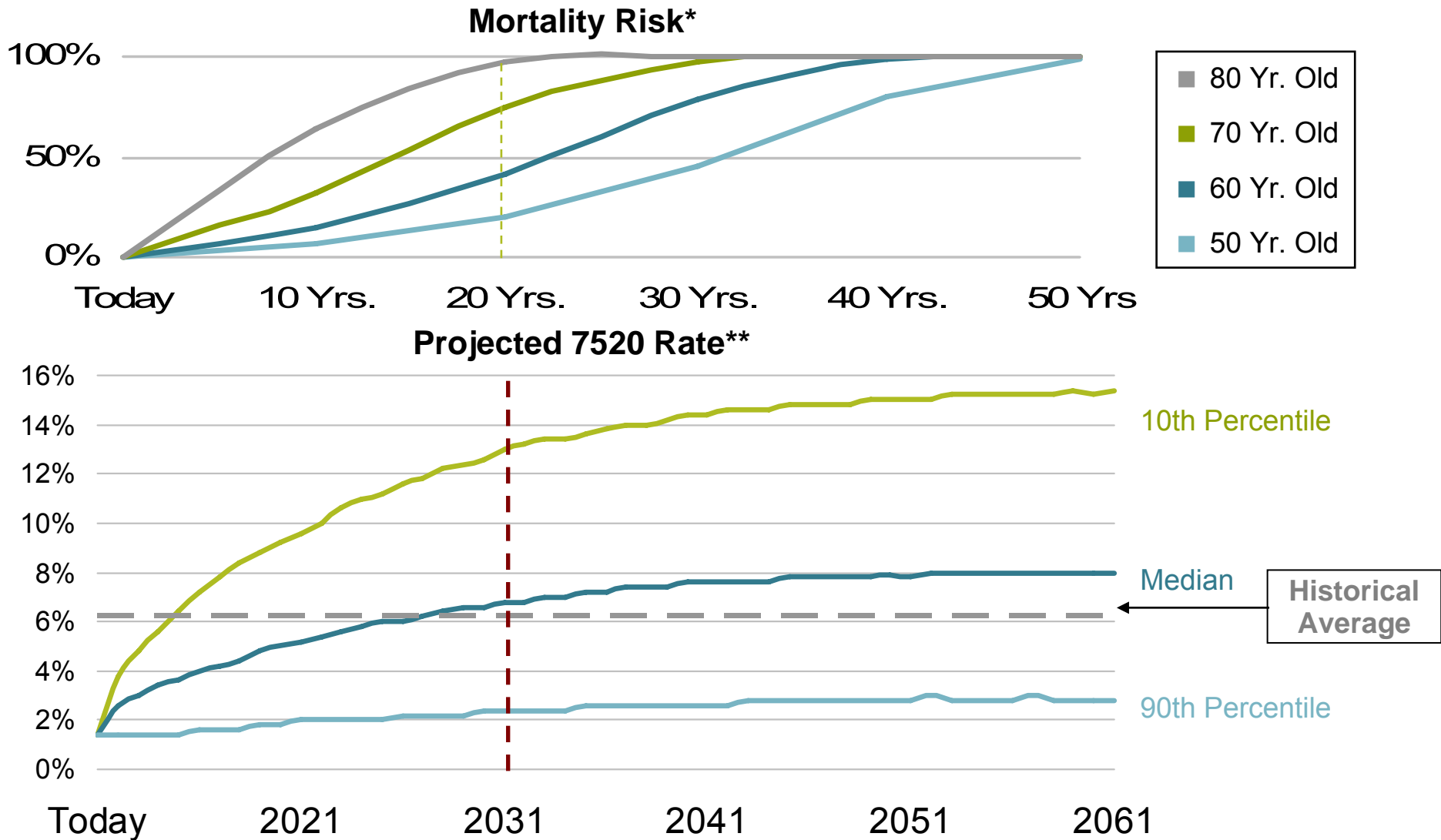
**x 9**



<b>Probability &gt; \$0 Mil</b>	<b>95%</b>	<b>79%</b>	<b>98%</b>	<b>69 %</b>	<b>&gt;98%</b>	<b>&gt;98%</b>
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\*All strategies are assumed to be funded with \$10 million and all assets invested in 100% global equities (35% US value, 35% US growth, 25% developed international and 5% emerging markets). GRAT strategy assets/remainders and intra-family loan assets are assumed to be held in intentionally defective grantor trusts. For comparability the loan strategy does not include a seed gift. All GRATs and CLATs have been "zeroed-out" for gift-tax purposes. GRAT annuity payments are grown by 20% each year. For "Today's Conditions" the initial GRATs and CLATs are assumed to be funded at the October 2011 7520 rate of 1.4% and the intra-family loan at the October 2011 long-term AFR of 2.95%. For "Normal" Conditions the initial GRATs and CLATs are assumed to be funded at 7.2% and the intra-family loan at 6.00%. Based on Bernstein's estimates of the range of returns for the applicable capital markets. Data do not represent past performance and are not a promise of actual future results or a range of future results. See Notes on Wealth Forecasting System for details.

# What about a 100 Year GRAT? ... 360 Year GRAT?

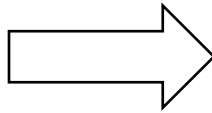


\*Based on 2000-RP mortality tables, single life, male.

\*\*"Today" is 11/1/11. Based on Bernstein estimates of the range of returns for the applicable capital markets over the periods analyzed. Source: AllianceBernstein

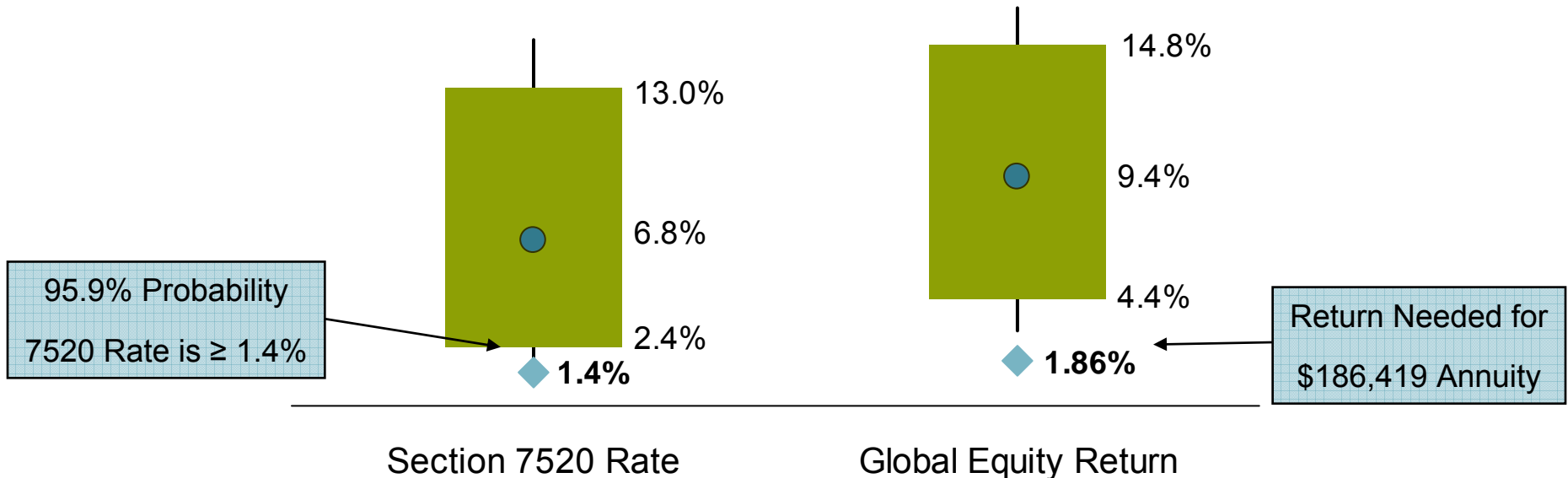
# What about a 100 Year GRAT? ... 360 Year GRAT?

**\$10 Mil. Contribution**  
**“Zeroed-Out” GRAT**



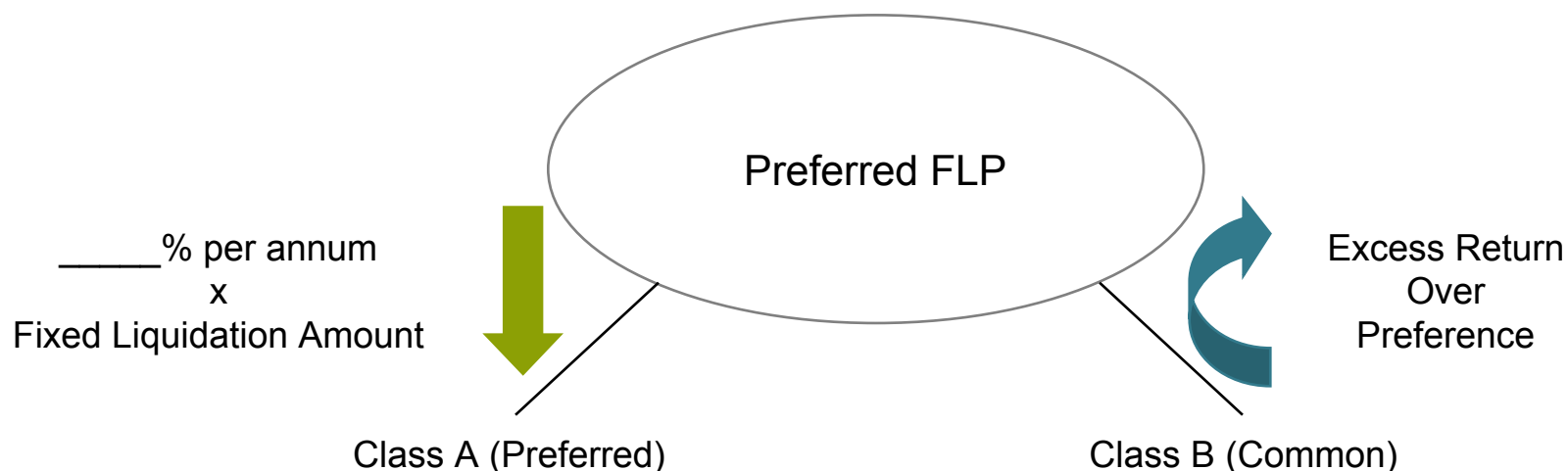
§ 20.2036-1(c)(2): Maximum Amount Includible*		
7520 Rate	100 Year GRAT (\$186,419 Annuity)	360 Year GRAT (\$140,945 Annuity)
1.4%	\$ 13,315,632	\$ 10,067,493
2.0%	\$ 9,320,942	\$ 7,047,245
3.0%	\$ 6,213,961	\$ 4,698,163
4.0%	\$ 4,660,471	\$ 3,523,622
5.0%	\$ 3,728,377	\$ 2,818,898
6.0%	\$ 3,106,981	\$ 2,349,082
7.0%	\$ 2,663,126	\$ 2,013,499

## Year 20: Projected 7520 Rate & Annualized Returns



\*See § 20.2036-1(c)(2)(iii), examples 1 and 2. \*\*Based on Bernstein's estimates of the range of returns for the applicable capital markets over the periods analyzed. Global equity is 35% US value and 35% US growth, 25% developed international and 5% emerging markets. Source: AllianceBernstein

# Section 2701 Qualified Payment Preferred Investment FLPs



## PREFERRED SHARES

### Preferred Return:

- Annual Distribution Payable at Fixed Rate
- Cumulative (4 Year Deferral Allowable)

### Liquidation Preference:

- Fixed Amount + Unpaid Preference

### Valuation:

- Fixed Liquidation Amount (No Discount)

## COMMON SHARES

### Return:

- No Distributions Until Preferred Return Paid
- Excess Return Above Cumulative Preferred Return

### Liquidation:

- All Assets After Liquidation Preference to Preferred

### Valuation:

- Minority, Lack of Marketability & Subordination Discount

Section 2701 of the Code and the Treasury Regulations thereunder. Revenue Ruling 83-120, 1983-2 C.B. 170.

# Rev. Rul. 83-120, 1983-2 C.B. 170

## ■ Major factors

- Yield
- Dividend Coverage
- Dissolution Protection

## ■ Minor Factors

- Voting rights
- Lack of marketability



**“high-grade, publicly traded preferred stocks”**

### Preferred Stock Sectors

Financial Services

Oil & Gas

Real Estate

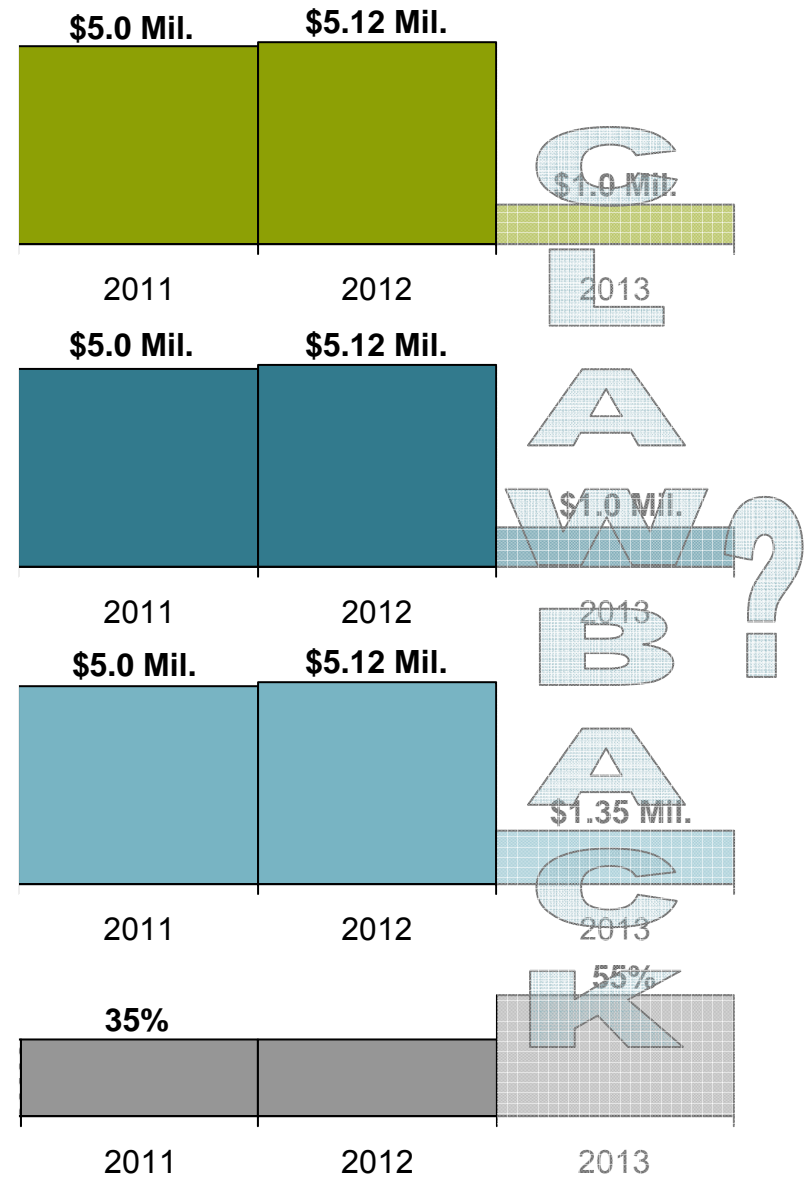
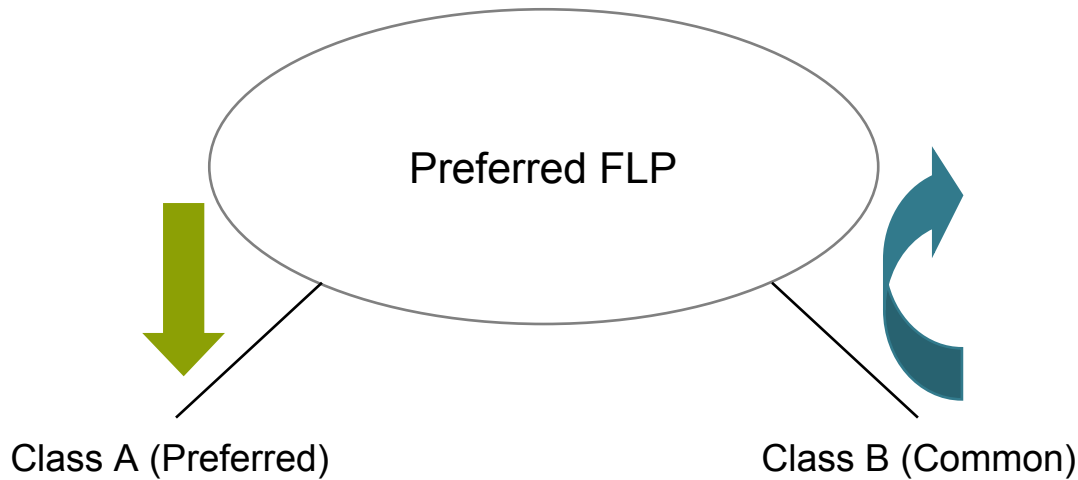


### Preferred Stock Yields

6% to 14%



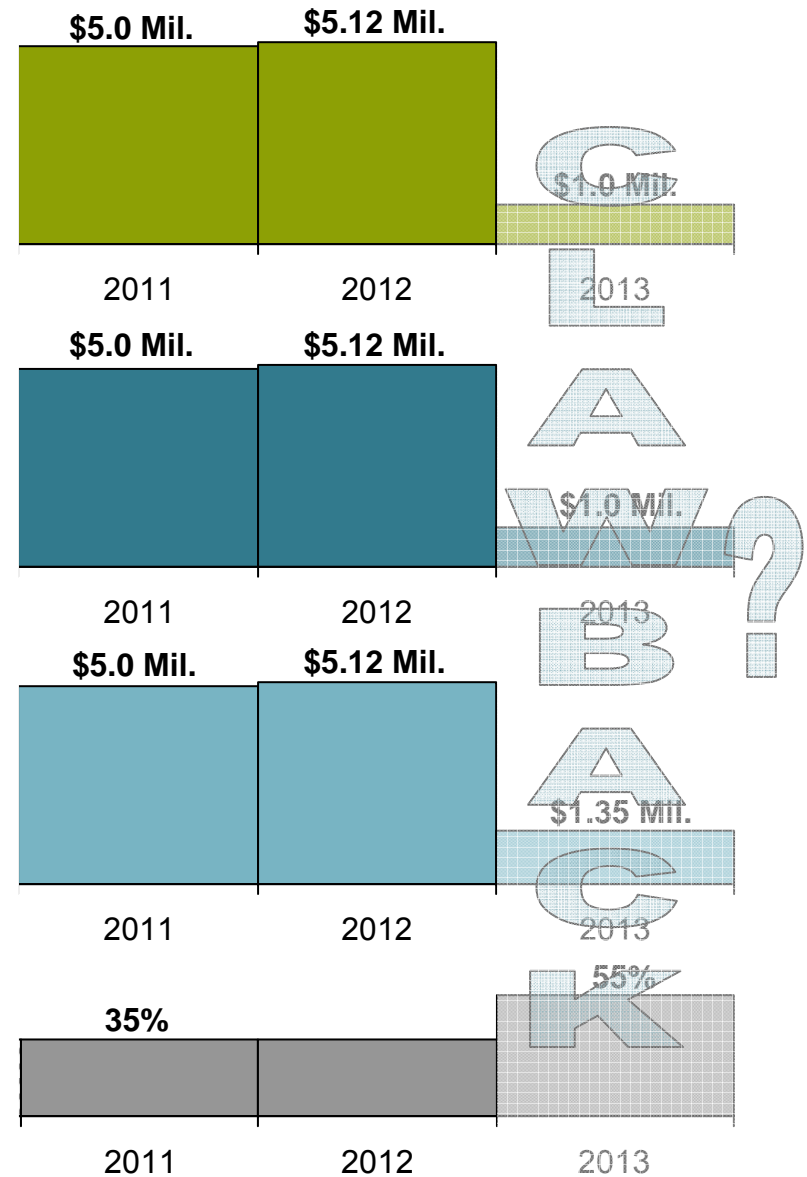
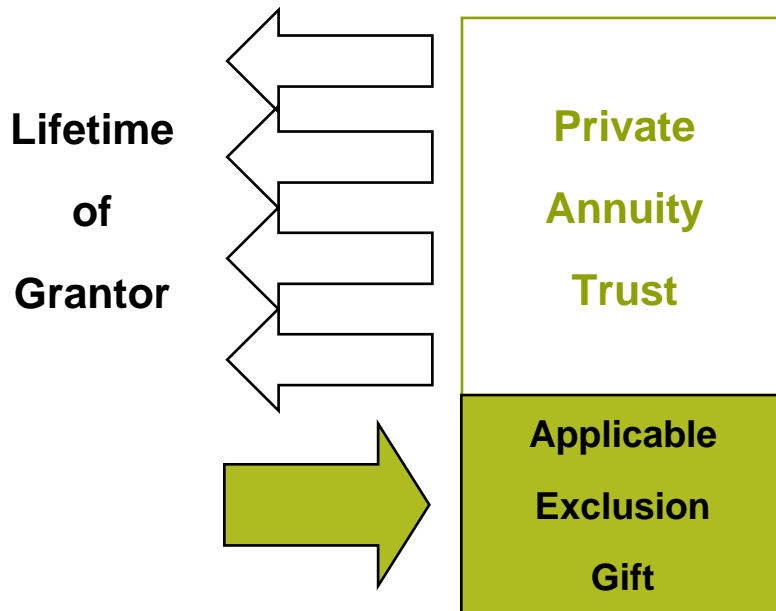
# Preferred Investment FLPs: The Perfect Applicable Exclusion Gift?



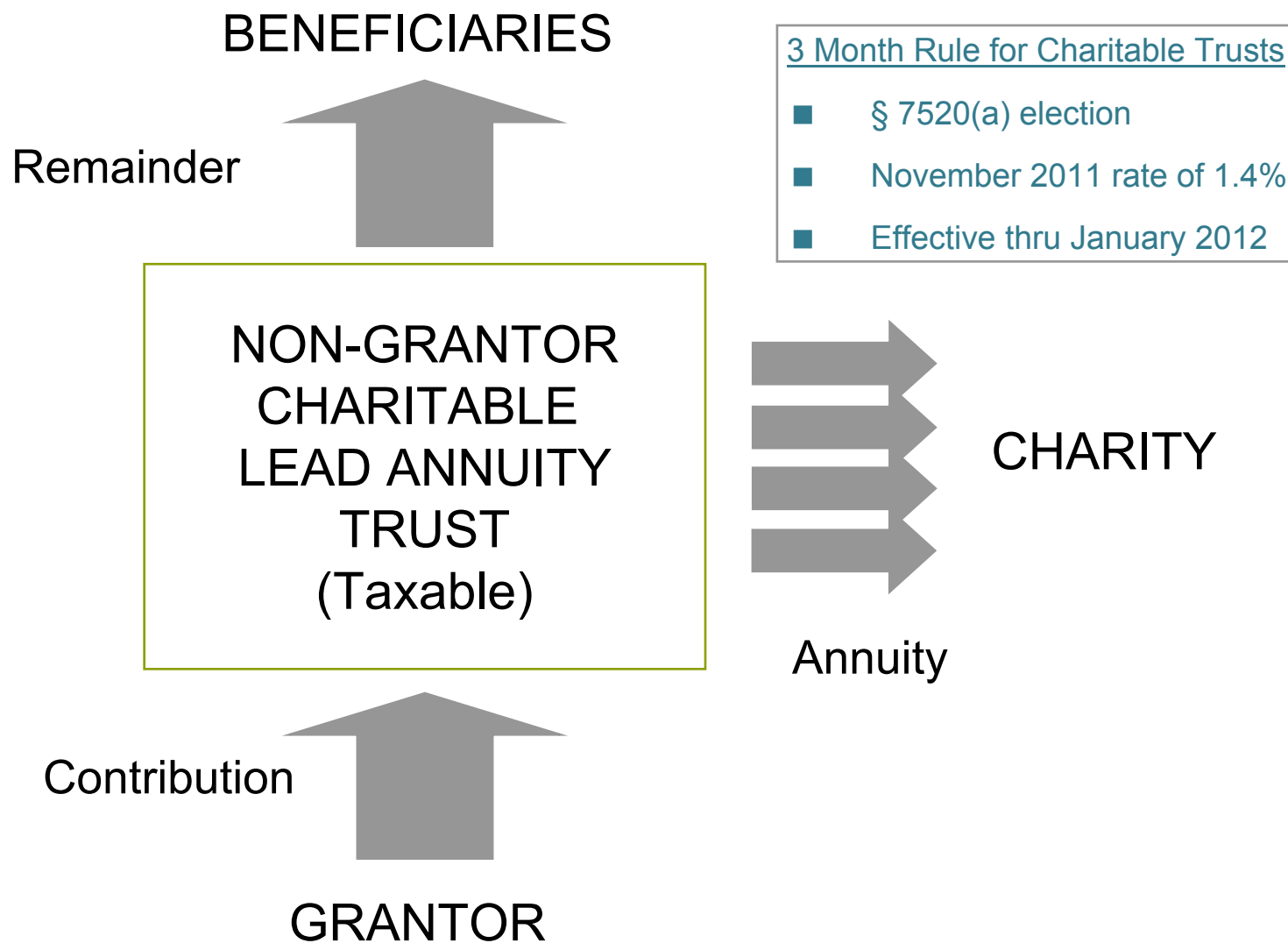
# Private Annuity Sale: The Perfect Applicable Exclusion Gift?

## Private Annuity

- Section 7520
- Mortality Tables
- Valuation Factors in § 20.2031-7(d)
- IRS Publication 1457
- 110 Year Exhaustion Test
- Grantor Trust



# Charitable Lead Annuity Trusts



Charitable Lead Trusts, as defined under Sections 170, 170A, 2055 and 2522 of the Internal Revenue Code of 1986, as amended from time to time (the "Code"), and the Treasury Regulations thereunder.

## Rev. Proc. 2007-45, 2007-29 IRB 89

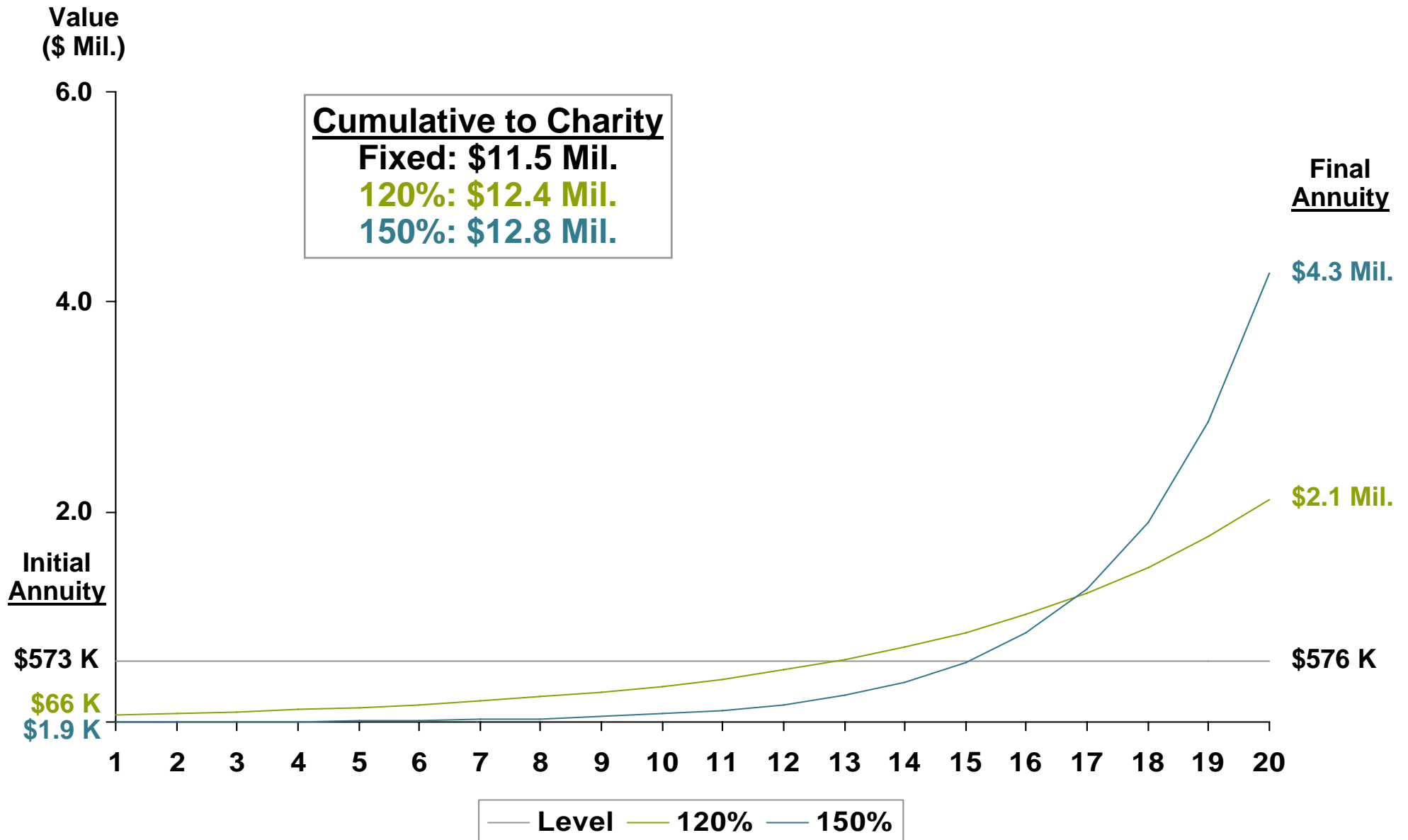
### ■ Guaranteed Annuity

- Determinable amount
- Paid periodically
- Not less than annually

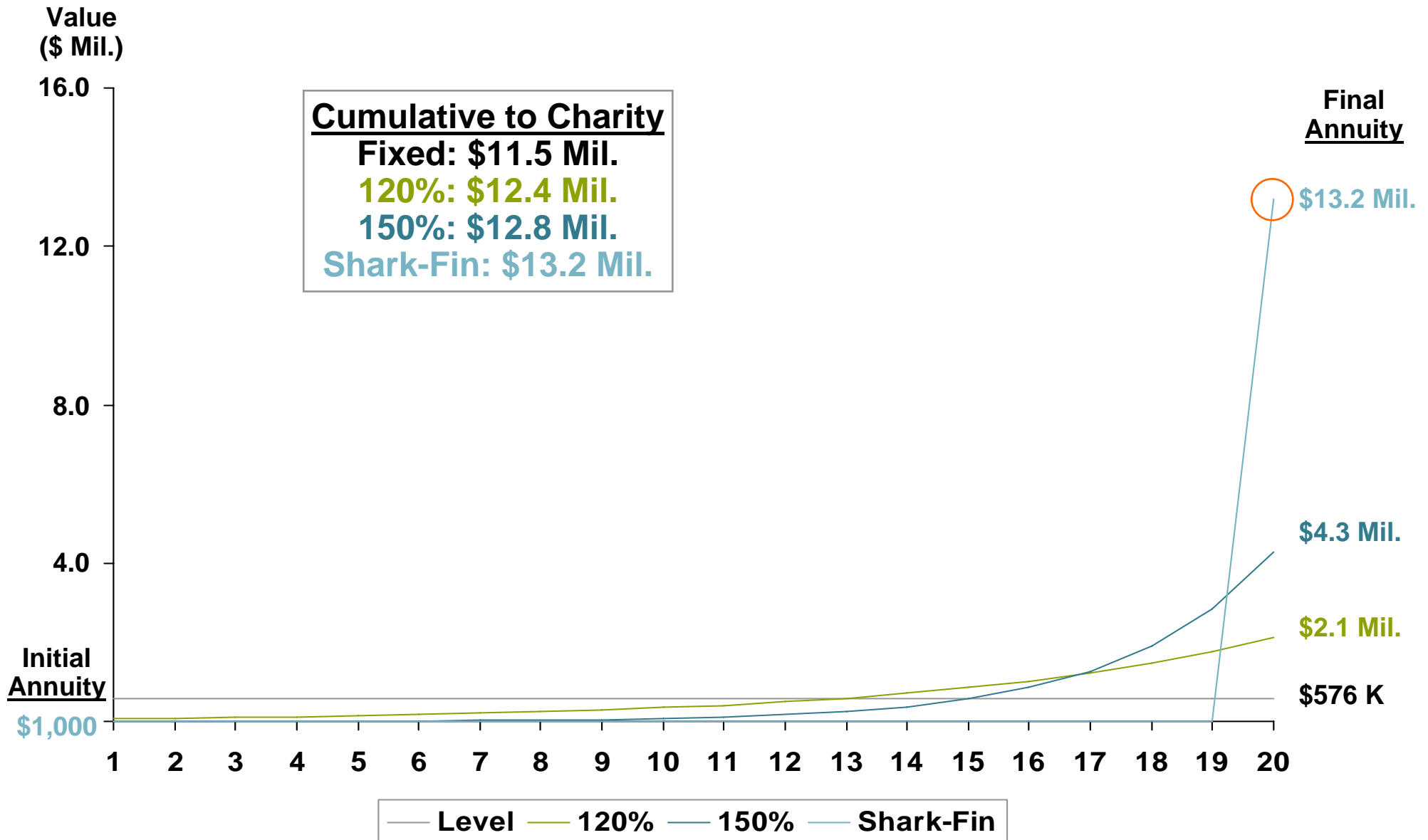
### ■ Payment Requirements

- Not subject to any minimum or maximum payout
- May provide for an annuity amount that is:
  - Fixed dollar
  - But increases during the annuity period
  - Provided that the value of the annuity is ascertainable at the time the trust is funded

# Possible Guaranteed Annuities (\$10 Mil. CLAT for 20 Years)

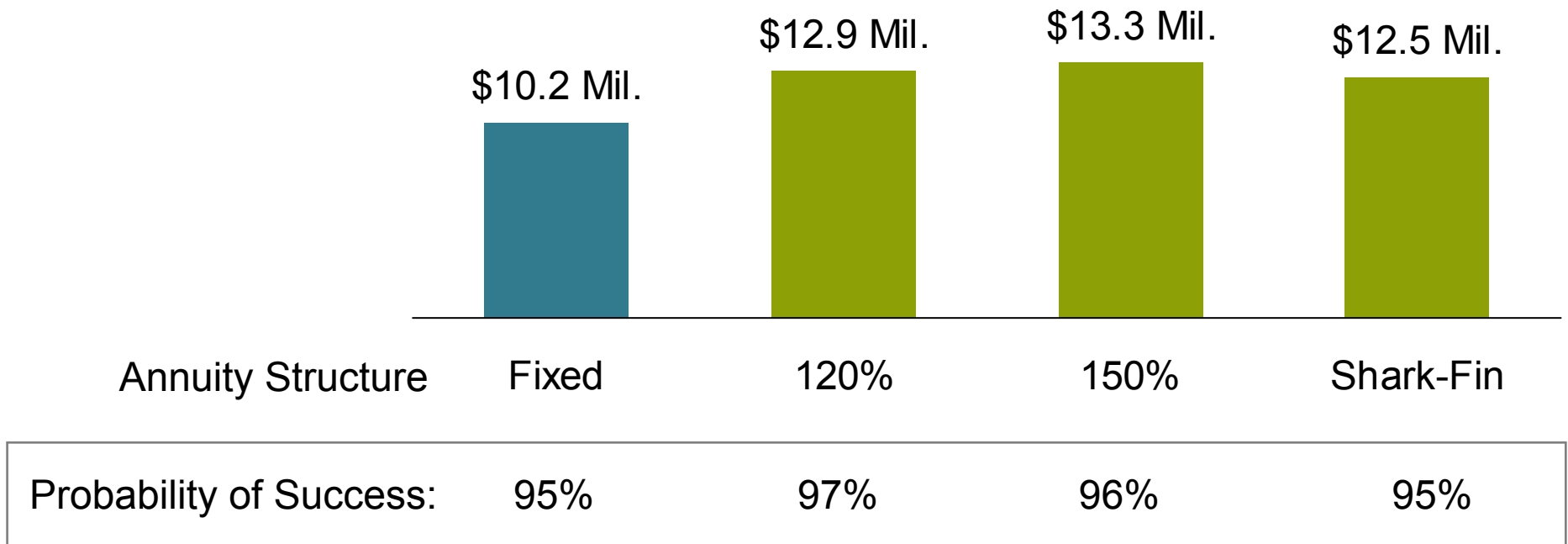


# Possible Guaranteed Annuities?



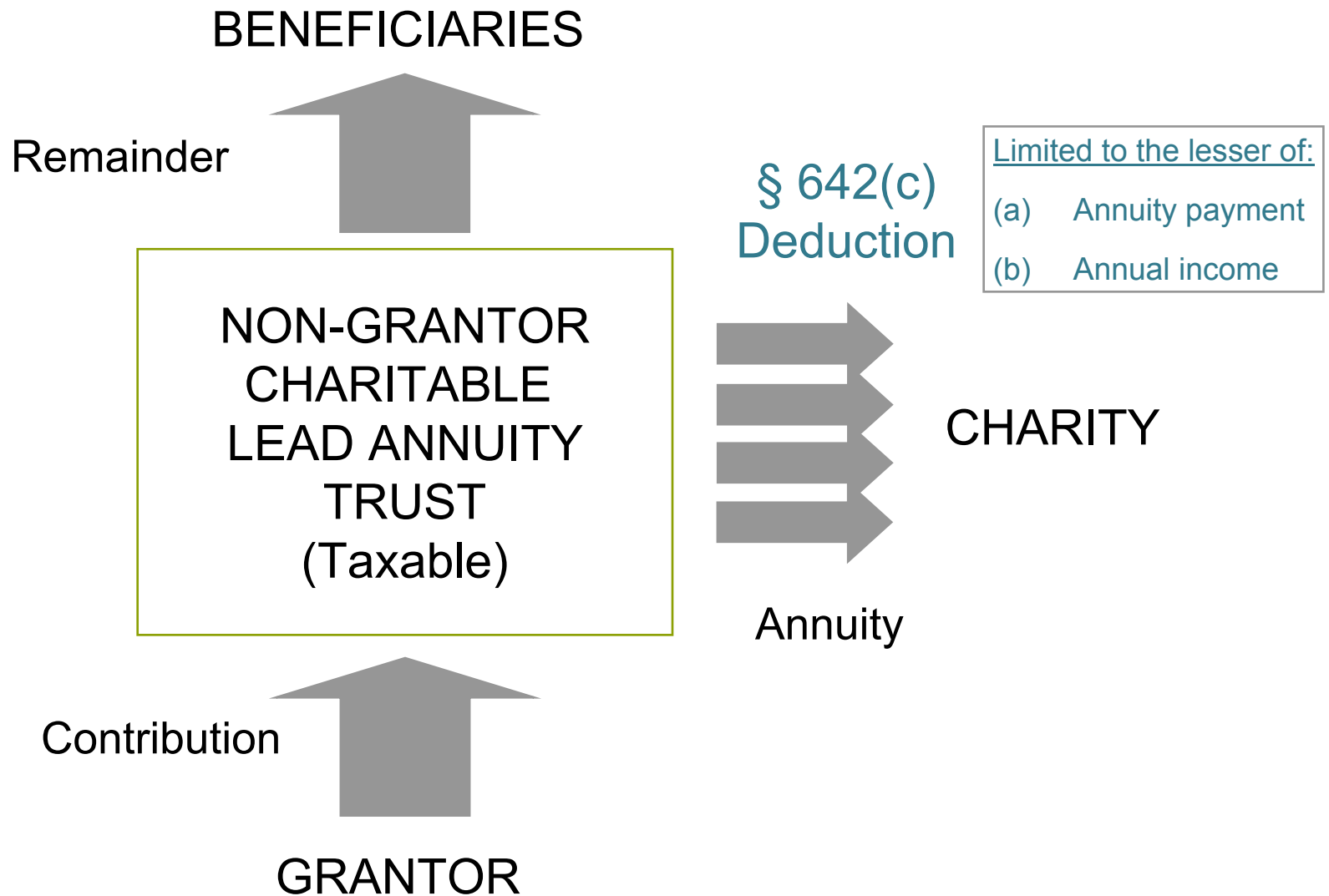
# Back-Loading Increases Wealth Transfer...Only to a Point

**Median Wealth Transferred\***  
 \$10 Million, 20-Year Term CLAT  
 (Real, \$ Millions)



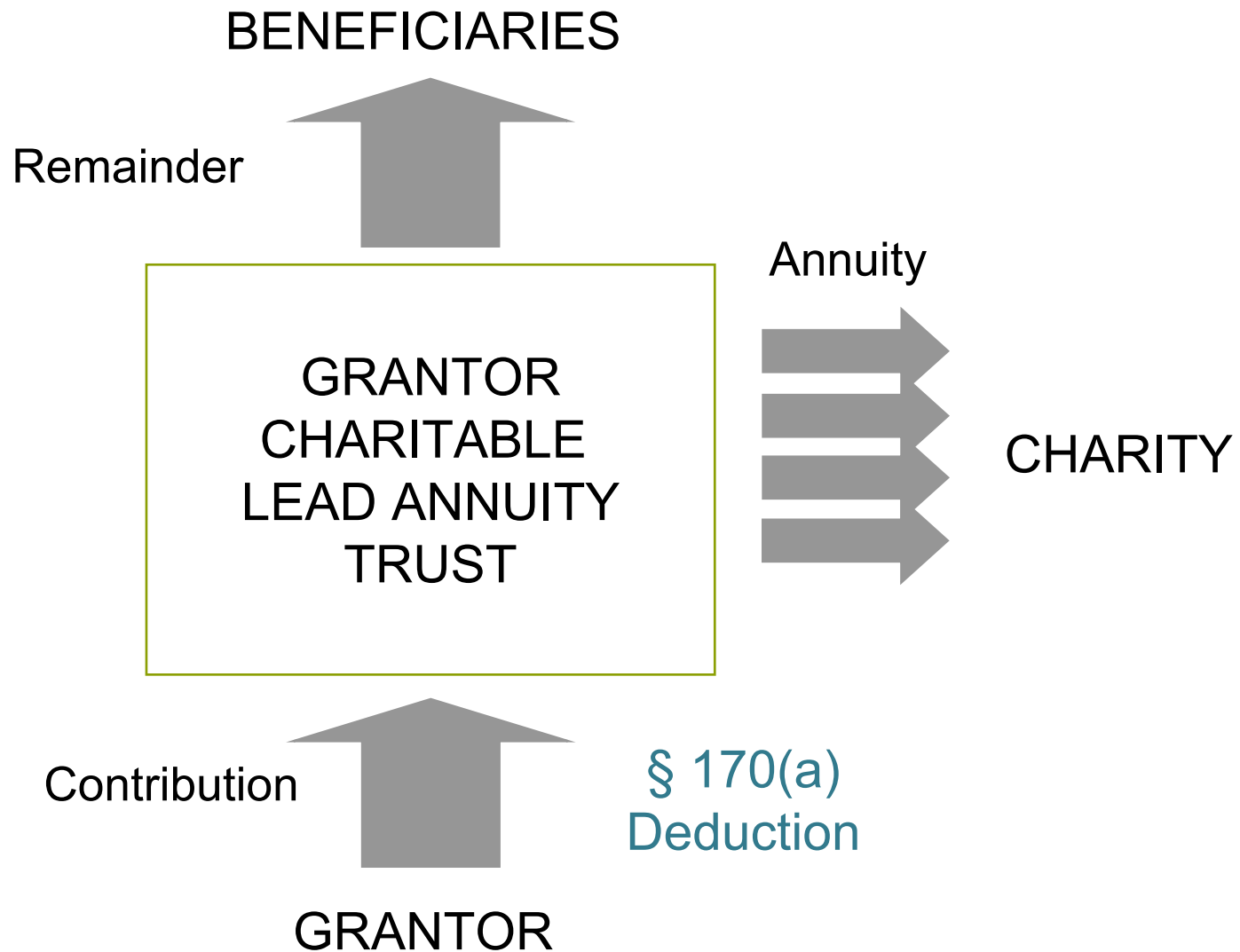
\*Median inflation-adjusted non-grantor CLAT remainder assuming \$10 million zeroed-out 20-year CLAT funded at the October 2011 Section 7520 rate, invested 100% global equity. Probability of success defined as remainder interest >\$1,000.

# Non-Grantor Charitable Lead Trusts



Charitable Lead Trusts, as defined under Sections 170, 170A, 2055 and 2522 of the Internal Revenue Code of 1986, as amended from time to time (the "Code"), and the Treasury Regulations thereunder.

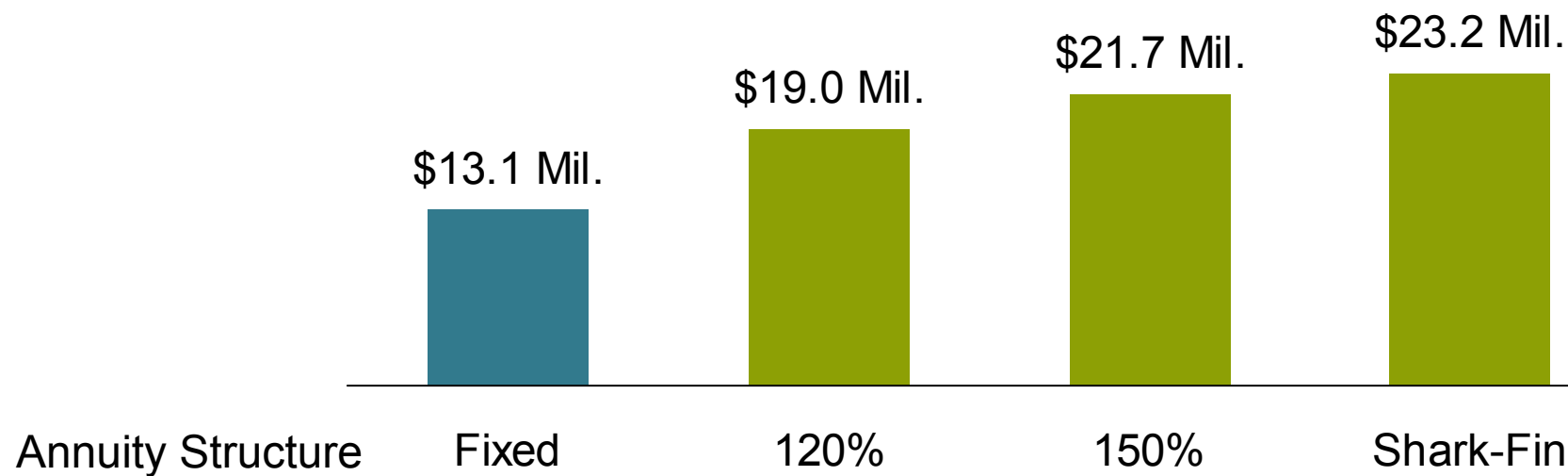
# “Intentionally Defective” Grantor Charitable Lead Trusts



Charitable Lead Trusts, as defined under Sections 170, 170A, 2055 and 2522 of the Internal Revenue Code of 1986, as amended from time to time (the “Code”), and the Treasury Regulations thereunder.

# Grantor CLATs

## Median Wealth Transferred\* \$10 Million, 20-Year Term CLAT (Real, \$ Millions)

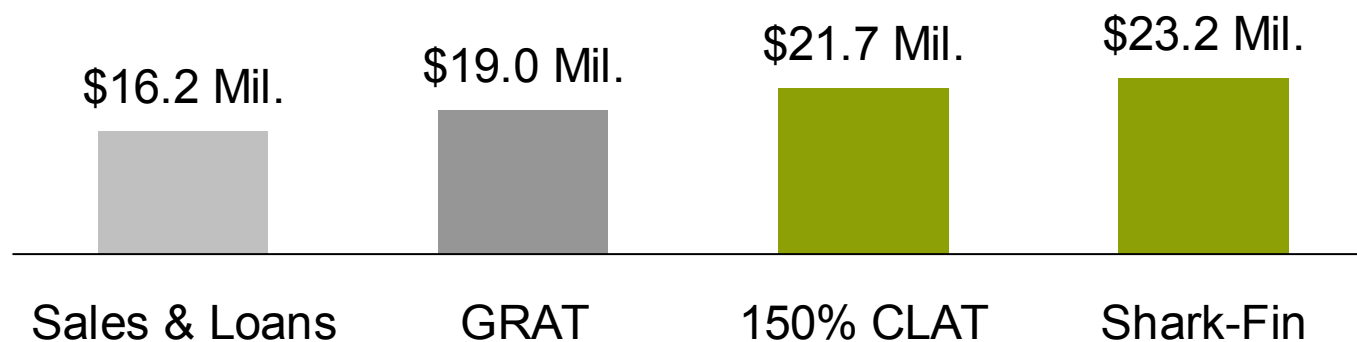


Probability of Success:	95%	98%	>98%	>98%
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\*Median inflation-adjusted grantor CLAT remainder assuming \$10 million zeroed-out 20-year CLAT funded at October 2011 Section 7520 rate, invested 100% global equity. Probability of success defined as remainder interest >\$1,000.

# CLATs Compared to Other Planning Techniques

## Median Wealth Transferred\* \$10 Million, 20-Years (Real, \$ Millions)



Taxable Gift?	<b>Yes</b>	No	No	No
Mortality Risk?	No	<b>Yes</b>	No	No
Income Tax Deduction?	No	No	<b>Yes</b>	<b>Yes</b>

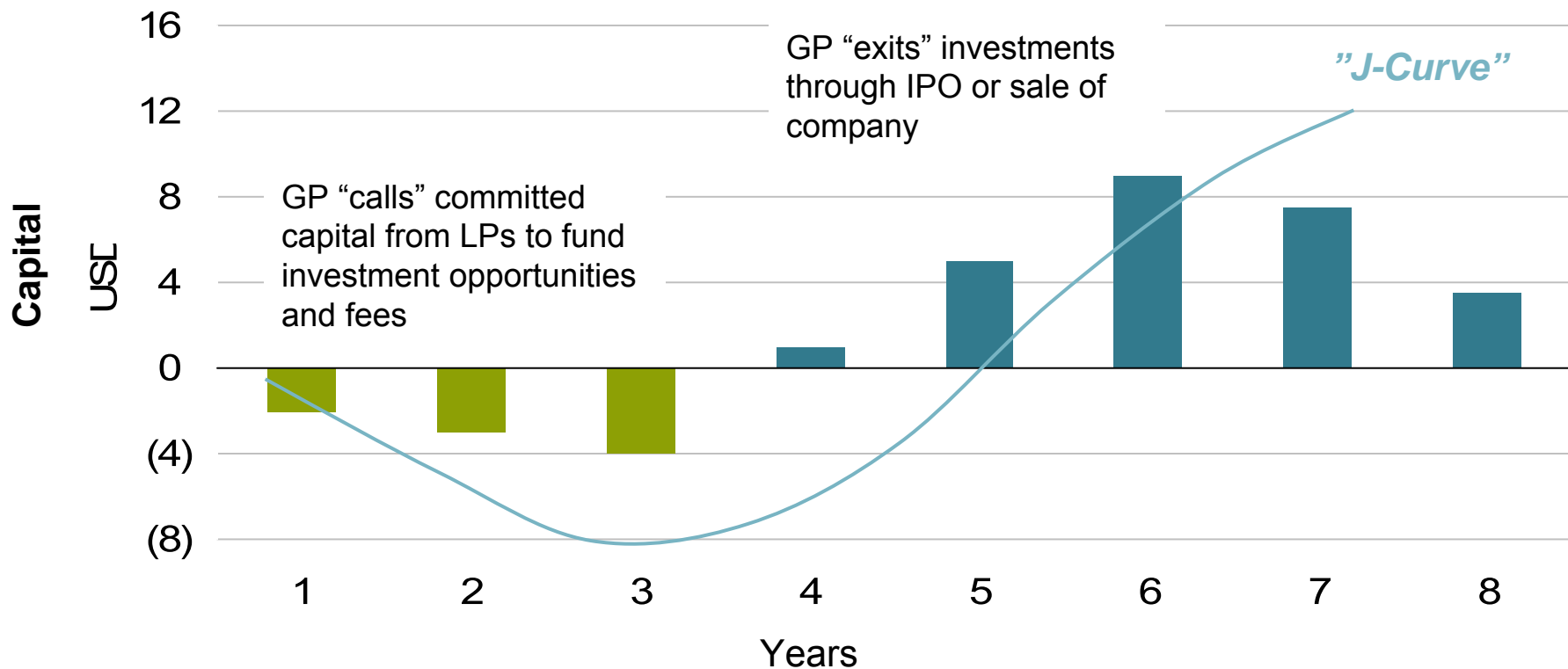
\*Median inflation-adjusted remainders. For the sale to IDGT, assumes \$10 million intra-family loan to intentionally defective grantor trust with a promissory note paying interest only at the appropriate applicable federal rate for October 2011 with a balloon payment at the end of the term. For comparability the strategy does not include a seed gift. For GRATs, assumes \$10 Mil. funded at the October 2011 Section 7520 rate. Assumes "zeroed-out" GRATs with 20% increasing annuities. For CLATs, assumes \$10 million zeroed-out 20-year grantor CLATs funded at October 2011 Section 7520 rate. All assets assumed to be invested in 100% global equity. Global equity has been modeled as 35% US value and 35% US growth, 25% developed international, and 5% emerging markets. Based on Bernstein estimates of the range of returns for the applicable capital markets over the periods analyzed. Data do not represent past performance and are not a promise of actual future results. See Notes on Wealth Forecasting at the end of this presentation for further details.

## Is a Shark-Fin Advisable?

- Annually increasing annuities (e.g., 150%) should be used under most circumstances:
  - Income tax mortality risk (grantor to non-grantor trust)
  - Lifetime CLATs with annually increasing annuities have little or no “mortality risk”
  - Perception that a “Shark-Fin” is too good to be true
  
- Shark-Fin CLATs might be advisable:
  - Lifetime Shark-Fin CLATs are superior ways of fulfilling a testamentary charitable bequest
  - Nature of the assets:
    - Lack liquidity
    - Volatile
    - Limited diversification opportunities

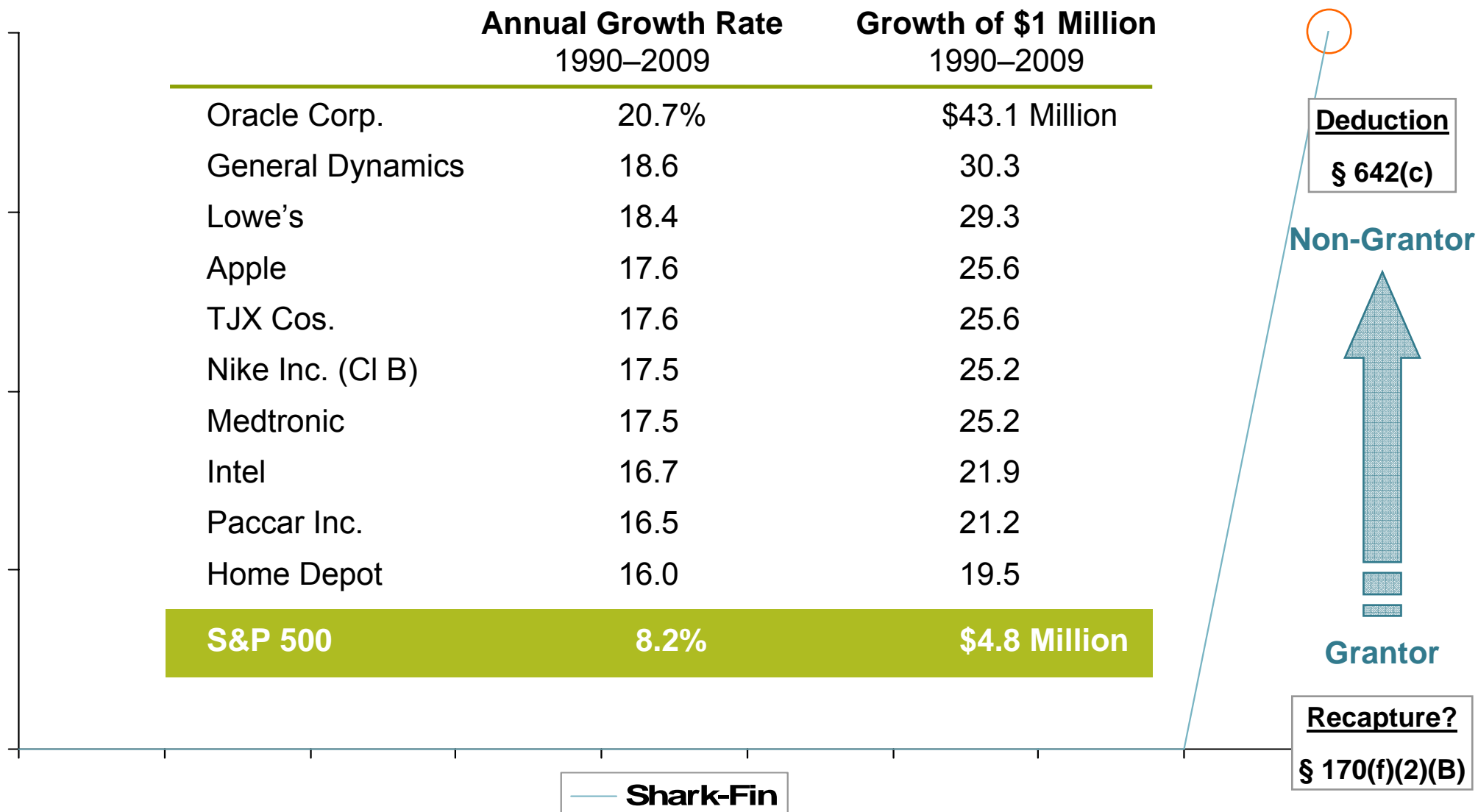
# Interesting Application #1: Private Equity Investments

## Net Investor Cash Flows Hypothetical Venture Capital Fund



■ Remember gifts of speculative property are NOT jeopardy investments (Treas. Reg. § 53.4944-1(a)(2)(ii)(a))

## Interesting Application #2: Single Stock Positions



Source: Center for Research in Security Prices (CRSP) and AllianceBernstein

# Planning for the Generations Symposium

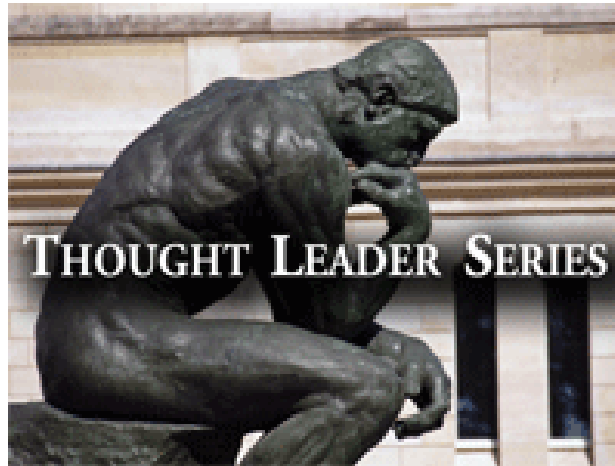
## July 18-20, 2012 in Denver, CO



[www.planning4generations.com](http://www.planning4generations.com)



## Question & Answer Segment



## THANK YOU!

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