

## APPENDIX 3C

## Comparison of Various Types of Transfers to Minors

Attribute	Outright Gift	Guardianship	UGMA/UTMA	Crummey Trust	Section 2503(b) Trust	Section 2503(c) Trust
<b>Transfer description/requirements</b>	Property vests in the minor at the date of transfer.	Property vests in the minor at the date of transfer.	Property vests in the minor at the date of transfer.	For a specified period of time, beneficiaries must have power to remove trust assets. Notice must be given to beneficiaries of any additions to the trust subject to the power. Beneficiary must be given a reasonable time to exercise the power. Donee's lapse of power may create a gift if assets subject to withdrawal exceed the five and five limitation.	Income must be distributed to the beneficiary. Principal can be retained by the trust.	Trustee must have the power to use property and/or income for the benefit of the donee until age 21. The donee must receive all accumulated income and principal at age 21. If donee dies before age 21, all accumulated income and principal must pass to the donee's estate or as the donee appoints.
<b>Amount of current year transfer qualifying for annual exclusion</b>	Entire FMV.	Entire FMV.	Entire FMV.	FMV of property subject to the withdrawal power.	FMV of income interest. Must be funded with income-producing property to qualify for annual exclusion.	Generally FMV.
<b>Fiduciary/custodian selection</b>	N/A	Court appoints.	Donor selects.	Donor/Settlor (person who funds the trust) selects.	Donor/Settlor (person who funds the trust) selects.	Donor/Settlor (person who funds the trust) selects.
<b>Consequences of donor also being custodian/fiduciary</b>	N/A	Included in donor's estate if guardian at the time of death.	Included in donor's estate if custodian at the time of death.	If donor has the discretionary power to distribute income and principal, then included in donor's estate.	If donor has the discretionary power to distribute principal, then included in donor's estate.	If donor has the discretionary power to distribute income and principal, then included in the donor's estate.
<b>Attribute</b>	<b>Outright Gift</b>	<b>Guardianship</b>	<b>UGMA/UTMA</b>	<b>Crummey Trust</b>	<b>Section 2503(b) Trust</b>	<b>Section 2503(c) Trust</b>

<b>Generation-skipping transfer (GST) considerations</b>	Qualifies for GST tax annual exclusion.	Qualifies for GST tax annual exclusion.	Treated as gift in trust. Qualifies for GST tax annual exclusion.	Qualifies for GST tax annual exclusion if (1)distributions are made only to skip person during skip person's life and (2) the trust assets are in skip person's estate if skip person dies before trust terminates.	Qualifies for GST tax annual exclusion if (1) distributions are made only to skip person during skip person's life and (2) the trust assets are in skip person's estate if skip person dies before trust terminates.	Qualifies for GST tax annual exclusion if (1) distributions are made only to skip person during skip person's life and (2) the trust assets are in skip person's estate if skip person dies before trust terminates.
<b>Income distribution</b>	Donee/minor has the right to all income.	May be used to benefit the donee/minor.	May accumulate in account or be distributed to or for the benefit of the minor/donee.	Trustee must follow trust instrument. May accumulate income in trust or be distributed to beneficiary.	Must be distributed to beneficiary.	Trustee must follow trust instrument. May accumulate income in trust or be distributed to the beneficiary. If donor is trustee, trust may be treated as grantor trust.
<b>Income taxation</b>	To minor/donee. If under age 18 (or through age 23 in certain circumstances), taxed at parents' marginal rates (i.e., kiddie tax rules, see paragraph 310.15).	To minor/donee. If under age 18 (or through age 23 in certain circumstances), taxed at parents' marginal rates (i.e., kiddie tax rules, see paragraph 310.15).	To minor/donee. If under age 18 (or through age 23 in certain circumstances), taxed at parents' marginal rates (i.e., kiddie tax rules, see paragraph 310.15). If income is used to satisfy the donor/grantor's legal obligation to support, that portion of income is taxed to the donor/grantor.	Generally, taxed at trust level unless distributed. IRS may consider donee to be the owner of any portion subject to withdrawal power. If distributed, taxed to beneficiary. If income is used to satisfy the donor/grantor's legal obligation to support, that portion of income is taxed to the donor/grantor.	Donee/beneficiary is taxed on income since it is required to be distributed. If income is used to satisfy the donor/ grantor's legal obligation to support, then that portion of income is taxed to the donor/grantor.	Taxed at trust level unless distributed. If distributed, taxed to beneficiary. If any of the income is used to satisfy the donor/ grantor's legal obligation to support, that portion of income is taxed to the donor/ grantor.
<b>Income tax return requirements</b>	Donee files Form 1040 (or possibly included on parents' return).	Donee files Form 1040 (or possibly included on parents' return).	Donee files Form 1040 (or possibly included on parents' return).	Trust files Form 1041 with Schedule K-1 reporting income to beneficiary if distributions are made. Trust may be a grantor trust to extent of portion subject to beneficiary withdrawal power.	Trust files Form 1041 with Schedule K-1 reporting income to beneficiary. Beneficiary files Form 1040.	Trust files Form 1041 with Schedule K-1 reporting income to beneficiary if distributions are made. Beneficiary files Form 1040. If grantor trust, income to donor before beneficiary is21, income to beneficiary after age21.

Attribute	Outright Gift	Guardianship	UGMA/UTMA	Crummey Trust	Section 2503(b) Trust	Section 2503(c) Trust
<b>Investments allowable</b>	N/A	Investment types restricted.	State statute may limit the type of investments.	Generally, “prudent man” or “prudent investor” standard although instrument may provide limitations and/or discretion.	Generally, “prudent man” or “prudent investor” standard although instrument may provide limitations and/or discretion. Trust must be funded with income producing assets.	Generally, “prudent man” or “prudent investor” standard although instrument may provide limitations and/or discretion.
<b>Administrative Issues</b>	Form 709 may be required in the year of gift.	Typically, limitations are placed on guardian with court approval necessary for transactions outside of these limitations. A formal accounting required by the court. Form 709 may be required in the year of gift.	Not accountable to court. Form 709 may be required in the year of gift.	Informal accounting. Notification requirement. Annual FAI calculation. Form 709 may be required in the year of gift.	Informal accounting. Annual FAI calculation. Form 709 may be required in the year of gift.	Informal accounting. Annual FAI calculation. Form 709 may be required in the year of gift.
<b>Guardian/fiduciary relationship terminates</b>	N/A	Age of majority as determined under state law.	Determined under state law.	Trust instrument determines termination.	Trust instrument determines termination.	Age 21.
<b>Donee/beneficiary dies before property is distributed?</b>	Property passes to donee’s estate and will generally pass to heirs under state law. Typically, the parents receive the property because minors usually cannot make a valid will under state law.	Property passes to donee’s estate and will generally pass to heirs under state law. Typically, the parents receive the property because minors usually cannot make a valid will under state law.	Property passes to donee’s estate and will generally pass to heirs under state law. Typically, the parents receive the property because minors usually cannot make a valid will under state law.	Property distributed per the terms of the trust instrument.	Property distributed per the terms of the trust instrument.	Property passes to the donee’s estate or can be directed by donee’s appointee (under general power of appointment). Alternatively a donor can name a contingent beneficiary.
<b>Included in gross estate of donee/beneficiary</b>	Yes.	Yes.	Yes.	Yes—if instrument provides for distribution to estate or <i>Crummey</i> power holder has testamentary power of appointment. No—if trust is distributed to others.	No—unless trust instrument requires payment to donee’s estate or the donee has a general power of appointment over the trust property.	Yes—because instrument requires distribution to donee’s estate or to donee’s appointee under a general power of appointment.