



**REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
NEW YORK PUBLIC LIBRARY, ASTOR, LENOX AND TILDEN
FOUNDATIONS**

AS OF December 31, 2019

EXAMINER: Manish Gera

DATE OF REPORT: August 26, 2020

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

August 1, 2022

Honorable Adrienne A. Harris
Superintendent of Financial Services
New York, New York 10004

Madam:

In accordance with instructions contained in Appointment No. 32076, dated April 24, 2020 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the New York Public Library, Astor, Lenox and Tilden Foundations. The Fund's home office is located at Fifth Avenue and 42nd Street, Room 73, New York, New York 10018.

The report indicating the results of this examination is respectfully submitted.

1. EXECUTIVE SUMMARY

The examiner recommends that the Fund review at least annually its written investment policy setting forth guidelines on investments and delegation of management and the conformance of its delegees to that investment policy and statutory guidance and that it memorialize those reviews in either board minutes or materials. (See item 4A of this report)

The Fund violated Section 1110(a) of the New York Insurance Law by using gift annuity agreement forms that differed from the gift annuity agreement forms that were filed with the Superintendent. The examiner recommends that the Fund file with the Superintendent all gift annuity agreement forms that were used and not previously filed with the Superintendent. (See item 6 of this report)

The examiner recommends that the Fund ensure that all gift annuity agreement forms have the appropriate form number as approved by the Superintendent printed on each form issued. (See item 6 of this report)

The examiner recommends that upon the death of an annuitant, the Fund obtain and maintain a death certificate or other reliable documentary evidence that supports such information terminating an annuity contract. (See item 6 of this report)

2. SCOPE OF EXAMINATION

This Scope of Examination summarizes the nature of the Superintendent of the Department of Financial Services' ("Department" or "DFS") examination and assessment of the New York Public Library, Astor, Lenox and Tilden Foundations Segregated Annuity Fund (the "Fund") through which New York Public Library, Astor, Lenox and Tilden Foundations (the "Library") provides annuity benefits.

The prior examination was conducted as of December 31, 2014. This examination covers the period from January 1, 2015 through December 31, 2019. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2019 but prior to the date of this report (i.e., the completion date of the examination).

This report outlines DFS's supervisory expectations or priorities and articulates DFS's general views regarding the exceptional circumstances where the Library or Fund, in relation to their annuity activities, could have better adhered to statutory standards and guidance or practices or methods of dealing that are regularly observed among similar circumstances.

The Fund is subject to the solvency and examination requirements of New York Insurance Law § 1110 and of New York Insurance Law articles 1, 2, 3, 25, and 74.

The examination comprised a verification of assets and liabilities as of December 31, 2019 to determine whether the Fund's filed 2019 annual statement fairly presents its financial condition. The examiner reviewed the Fund's income and disbursements necessary to accomplish such verification. The examiner also reviewed the corrective actions taken by the Fund with respect to the violations, recommendations and/or comments contained in the prior report on examination. The results of such review are contained in item 7 of this report.

3. DESCRIPTION OF FUND

A. History

The New York Public Library, Astor, Lenox and Tilden Foundations was chartered in 1901 and is organized for the purpose of providing free books, information, ideas, and education for all New Yorkers. The Library features a unique combination of neighborhood branches and scholarly research centers, bringing together an extraordinary richness of resources and opportunities available to all. The Library established the Fund to issue gift annuity agreements in return for gifts from donors in 1993. The Superintendent of Insurance/Financial Services granted to the Library a Charitable Annuity Society special permit on August 28, 1995.

B. Structure

The management of the Library and the Fund and all of its affairs and property are entrusted to a board of trustees.

C. Assets Under the Board of Trustees

As of the June 30, 2019, audited financial statement, the Library's Board of Trustees oversaw an endowment consisting of 430 individual funds comprising \$491,670,000 in total assets. The Fund, as of December 31, 2019, held total admitted assets of \$5,896,475.

D. Third Party Payment Service Provider

State Street Bank is the custodian. All operations related to the issuance, maintenance and settlement of annuity agreements are handled by the State Street Bank. State Street Bank and Trust Company ("State Street") is the custodian and investment manager of the Fund's investments and issues annuity benefit checks to the annuitants. State Street Bank also handles annuity payments and tax reporting. State Street compiles the financial data for the Fund's annual statements working with a third-party actuary. The Library staff reconciles, completes, and executes the statements for submission to the Department. The Library uses the services of OSGroup for completing the annual filing forms and Milliman & Company for actuarial services.

4. INVESTMENT REVIEW

A. Investment Policy Statement

New York Estate Powers and Trust Law § 11-2.3(b)(3)(A) requires trustees to “pursue an overall investment strategy to enable the trustee[s] to make appropriate present and future distributions to or for the benefit of the beneficiaries under the governing instrument, in accordance with risk and return objectives reasonably suited to the entire portfolio.”

New York Not-for-Profit Corporation Law § 552(e)(2) requires institutions to adopt “an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.” New York Not-for-Profit Corporation Law § 552(f) provides that each “institution shall adopt a written investment policy setting forth guidelines on investments ... and delegation of management and investment functions in accord with the standards of this article.”

State Street is the Fund’s investment adviser and custodian.

State Street prepared and provided a form investment policy statement (“IPS”) to the Fund. The Fund adopted that form as its IPS.

The examiner recommends that the Fund review at least annually its written investment policy setting forth guidelines on investments and delegation of management and the conformance of its delegees to that investment policy and statutory guidance and that it memorialize those reviews in either board minutes or materials.

5. ASSETS AND LIABILITIES SUMMARY

The following summary table indicates the decline in various categories of the Fund's assets, liabilities, and fund balance during the period under review:

	December 31, <u>2014</u>	December 31, <u>2019</u>	<u>(Decrease)</u>
Admitted assets	\$ <u>6,199,599</u>	\$ <u>5,896,475</u>	\$(<u>303,124</u>)
Liabilities	\$ <u>4,865,145</u>	\$ <u>4,644,408</u>	\$(<u>220,737</u>)
Minimum required fund balance	\$ 486,515	\$ 464,441	\$ (22,074)
Excess fund balance (surplus)	<u>847,940</u>	<u>787,626</u>	<u>(60,314)</u>
Total annuity fund balance	\$ <u>1,334,455</u>	\$ <u>1,252,067</u>	\$ <u>(82,388)</u>
Total liabilities and annuity fund balance	\$ <u>6,199,600</u>	\$ <u>5,896,475</u>	\$(<u>303,125</u>)

The decrease in assets, liabilities, and annuity fund balance reflects a decrease in the total number of annuities in force. Annuities decreased from 392 with annual payment amounts of \$727,232 as of December 31, 2014 to a total of 338 with annual payment amounts of \$614,387 as of December 31, 2019.

The Fund's admitted assets, as of December 31, 2019, were invested mainly in equity securities (98.07%).

6. TREATMENT OF ANNUITANTS

The examiner reviewed a sample of annuity files to determine whether the annuitants were treated fairly and in accordance with the provisions of the annuity agreements. The examination also consisted of a review of the various controls involved, a check of the accuracy of the computations and the tracing of accounting data to the books of account.

Section 1110(a) of the New York Insurance Law states, in part:

“. . . Every such corporation or association shall, before making such agreement, file with the superintendent copies of its forms of agreements with annuitants . . .”

The examiner’s review of a sample of 10 newly issued gift annuities by the Fund during the examination period noted that in 3 newly issued annuities, the Fund used forms that differed from the gift annuity agreements filed with the Superintendent. The deviating forms found in the sample are 1da-I-NY and 1da-D-NY.

The Fund violated Section 1110(a) of the New York Insurance Law by using gift annuity agreement forms that differed from the gift annuity agreement forms that were filed with the Superintendent. The examiner recommends that the Fund file with the Superintendent all gift annuity agreement forms that were used and not previously filed with the Superintendent.

The examiner reviewed a sample of new gift annuities issued by the Fund during the examination period. In the sample selected, the examiner noted that 7 out of the 10 newly issued gift annuities reviewed had contracts which did not have the appropriate form number as approved by the Superintendent printed on the forms.

The examiner recommends that the Fund ensure that all gift annuity agreement forms have the appropriate form number as approved by the Superintendent printed on each form issued.

The examiner’s review of a sample of 10 annuity contracts terminated revealed that in 5 of the 10 cases (50%) reviewed, the Fund did not obtain a copy of the death certificate to confirm termination of the annuity contract.

The examiner recommends that upon the death of an annuitant, the Fund obtain and maintain a death certificate or other reliable documentary evidence that supports such information terminating an annuity contract.

7. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the recommendations contained in the prior report on examination and the subsequent actions taken by the Fund in response to each citation:

<u>Item</u>	<u>Description</u>
A	<p>The examiner recommends that the Fund diversify its investment holdings.</p> <p>The Department no longer provides guidance for diversification.</p>
B	<p>The examiner recommends that the Fund adopt an Investment Strategy Statement. The Fund should exercise reasonable care, skill and caution to make and implement investment and management decisions as a prudent investor would for the entire portfolio. In doing so, the Fund should take into account present and future distributions to or for the beneficiaries and create a plan to meet the needs of those distributions to establish the ISS's risk, return, and time horizon objectives.</p> <p>The Fund has complied with the recommendation.</p>

8. SUMMARY AND CONCLUSIONS

Following are the violation and recommendations contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The examiner recommends that the Fund review at least annually its written investment policy setting forth guidelines on investments and delegation of management and the conformance of its delegees to that investment policy and statutory guidance and that it memorialize those reviews in either board minutes or materials.	5
B	The Fund violated Section 1110(a) of the New York Insurance Law by using gift annuity agreement forms that differed from the gift annuity agreement forms that were filed with the Superintendent.	7
C	The examiner recommends that the Fund file with the Superintendent all gift annuity agreement forms that were used and not previously filed with the Superintendent.	7
D	The examiner recommends that the Fund ensure that all gift annuity agreement forms have the appropriate form number as approved by the Superintendent printed on each form issued.	7
E	The examiner recommends that upon the death of an annuitant, the Fund obtain and maintain a death certificate or other reliable documentary evidence that supports such information terminating an annuity contract.	7

Respectfully submitted,

/s/

Manish Gera
Insurance Examiner

STATE OF NEW YORK)
)SS:
COUNTY OF NEW YORK)

MANISH GERA, being duly sworn, deposes and says that the foregoing report, subscribed by him, is true to the best of her knowledge and belief.

/s/

Manish Gera

Subscribed and sworn to before me

this _____ day of _____

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, **LINDA A. LACEWELL**, Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:

MANISH GERA

as a proper person to examine the affairs of the

**SEGREGATED GIFT ANNUITY FUND OF THE
NEW YORK PUBLIC LIBRARY, ASTOR, LENOX AND TILDEN FOUNDATIONS**

and to make a report to me in writing of the condition of said

FUND

with such other information as he shall deem requisite.

In Witness Whereof, I have hereunto subscribed my name
and affixed the official Seal of the Department
at the City of New York

this 24th day of April, 2020

LINDA A. LACEWELL
Superintendent of Financial Services

By:



MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU

