



**REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
BUFFALO STATE COLLEGE FOUNDATION**

AS OF DECEMBER 31, 2020

EXAMINER: Adelia Gbadamosi

DATE OF REPORT: October 17, 2022

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

REPORT ON EXAMINATION

OF THE

SEGREGATED GIFT ANNUITY FUND

OF THE

BUFFALO STATE COLLEGE FOUNDATION

AS OF

DECEMBER 31, 2020

DATE OF REPORT:

OCTOBER 17, 2022

EXAMINER:

ADELIA GBADAMOSI

TABLE OF CONTENTS

<u>ITEM</u>		<u>PAGE NO.</u>
1.	Executive summary	2
2.	Scope of examination	3
3.	Description of Fund	4
	A. History	4
	B. Structure	4
	C. Assets under the board of directors	4
	D. Third-party payment service provider	4
	E. Oversight structure	4
4.	Investment review	5
5.	Assets and liabilities summary	6
6.	Treatment of annuitants	7
7.	Annual statement reporting	8
8.	Prior report summary and conclusions	9
9.	Summary and conclusions	11

KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

December 1, 2022

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

Madam:

In accordance with instructions contained in Appointment No. 32214, dated March 16, 2022 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Buffalo State College Foundation, Inc. The Fund's home office is located at Cleveland Hall 508, 13 Elmwood Avenue, Buffalo, NY 14222.

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

1. EXECUTIVE SUMMARY

The examiner recommends that the Fund use on all annuity benefit checks the name it agreed to by board resolution as part of its permit application to the Department for a special permit to issue charitable gift annuities in New York. (See item 3E of this report)

The examiner recommends that the Investment Strategy Statement be approved by the Board of Directors. (See item 4A of this report)

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 prepare its annual statements according to the Department's instructions. (See item 7 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 Buffalo State College Foundation Fund, Inc. Segregated Annuity Fund (the "Fund") through which Buffalo State College Foundation Fund, Inc. (the "Foundation") provides annuity benefits.

The prior examination was conducted as of December 31, 2015. This examination covers the period from January 1, 2016 through December 31, 2020. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2020 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 Foundation 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 investment of the Fund's required admitted assets is subject to N.Y. Estates, Powers and Trust Law § 11-2.3. The investment of the remainder of the Fund's admitted assets is subject to N.Y. Not-for-Profit Corporation Law Article 5-a. Both establish that the trustees are to invest the assets consistent with prudent person standards.

The examination comprised a verification of assets and liabilities as of December 31, 2020 to determine whether the Fund's filed 2020 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 8 of this report.

3. DESCRIPTION OF FUND

A. History

The Buffalo State College Foundation, Inc. was chartered in 1963 and is organized for the purpose of promoting the interests of the State University of New York College of Buffalo (the “College”) and to support its students. The Foundation established the Fund to issue gift annuity agreements in return for gifts from donors in 1996. The Superintendent of Insurance granted to the Buffalo State College a Charitable Annuity Society special permit on May 31, 2002.

B. Structure

The Fund is overseen by the Foundation’s board of directors. The Foundation performs the financial reporting recordkeeping function on behalf of the Fund.

C. Assets under the Board of Directors

As of the June 30, 2021 audited financial statement, the Foundation’s board of directors oversaw an endowment comprising \$77,072,645 in total assets. The Fund, as of December 31, 2020, held total admitted assets of \$1,655,874.

D. Third-Party Payment Service Provider

State Street Bank is the Fund’s custodian. Commonfund is the Fund’s investment manager. The Fund uses PG Calc to administer the Fund’s gift annuity program, namely the calculation of reserves. Crescendo performs functions related to annuity contracts on behalf of the Fund.

E. Oversight Structure

The examiner’s review of a sample of benefit payments made to annuitants during the examination period revealed that only the name of the Organization, not the Fund’s name, appeared on the annuity benefit checks.

The examiner recommends that the Fund use on all annuity benefit checks the name it agreed to by board resolution as part of its permit application to the Department for a special permit to issue charitable gift annuities in New York.

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.”

The examiner’s review of the Fund’s Investment Strategy Statement (“ISS”) revealed that the board did not approve the ISS.

The examiner recommends that the Investment Strategy Statement be approved by the Board of Directors.

The Foundation prepared and provided a custom tailored investment policy statement (“IPS”) for the Fund. The Fund adopted that statement as its IPS. The examiner’s review of the board minutes revealed that the Foundation failed to review the Fund’s IPS after adoption.

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 growth (decline) in various categories of the Fund's assets, liabilities, and fund balance during the period under review:

	<u>December 31,</u> <u>2015</u>	<u>December 31,</u> <u>2020</u>	<u>Increase</u> <u>(Decrease)</u>
Admitted assets	<u>\$1,329,444</u>	<u>\$1,655,874</u>	<u>\$326,430</u>
Liabilities	<u>\$1,015,207</u>	<u>\$1,102,739</u>	<u>\$ 87,532</u>
Minimum required fund balance	\$ 100,939	\$ 79,406	\$ (21,533)
Excess fund balance (surplus)	<u>213,298</u>	<u>473,729</u>	<u>260,431</u>
Total annuity fund balance	<u>\$ 314,237</u>	<u>\$ 553,135</u>	<u>\$238,898</u>
Total liabilities and annuity fund balance	<u>\$1,329,444</u>	<u>\$1,655,874</u>	<u>\$326,430</u>

The increase in assets and fund balance reflects the positive investment performance and new annuity contributions offset by annuity payments. The increase in liabilities is due to annuity payments and contract liquidations offset by a decrease in the net present value of annuities. Annuities decreased from 40 with annual payment amounts of \$151,650 as of December 31, 2015 to a total of 39 with annual payment amounts of \$130,295 as of December 31, 2020.

The Fund's admitted assets, as of December 31, 2020, were invested mainly in bonds (86.75%).

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 9 newly issued gift annuities by the Fund during the examination period noted that in all 9 newly issued annuities, the Fund used forms that differed from the gift annuity agreements filed with the Superintendent. The deviating form numbers found in the sample are NY JP 2L Immediate and NY SGL Immediate.

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.

7. ANNUAL STATEMENT REPORTING

The Department's Instructions for Completing the Segregated Gift Annuity Fund Annual Statement for the year ended December 31, 2021 for Schedule A - Part 3 - Common Stocks state, in part:

“IMPORTANT NOTE: Mutual funds (funds that invest in stocks, bonds, options or currencies) are to be reported in Schedule A – Part 3 - Common Stocks.”

The Fund reported market value of bonds of \$1,436,398 in its 2020 Annual Statement, namely page 2, line 1. The examiner determined that the CF Global Multi Asset Portfolio is a mutual fund, and as such, should have been reported as common stock. The Fund reported the \$1,436,398 investment in the CF Global Multi Asset Portfolio as common stock in Schedule A, Part 3 of its filed 2020 annual statement. Accordingly, the Fund should have reported this as common stock on page 2, line 3, of the Fund's filed 2020 annual statement.

The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.

8. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violation and 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 adopt an Investment Strategy Statement.</p> <p>The Fund adopted an Investment Strategy Statement.</p>
B	<p>The examiner recommends that the Fund's investments be further diversified. If the Fund's board of trustees reasonably determines that it is in the interest of the beneficiaries not to diversify, then a proper memorialization of either decision and the supporting rationale, should be prepared when that decision is made.</p> <p>The Department no longer provides guidance on investment diversification.</p>
C	<p>The examiner recommends that the board of trustees, or a committee thereof, be provided, at least annually, with a report concerning the Fund's investment of required admitted assets and note such in the minutes.</p> <p>The investment committee is provided, at least annually, with a report concerning the Fund's investment of required assets. The investment committee in turn provides the report to the board of directors.</p>
D	<p>The Fund violated New York Insurance Law § 1110(a) by using gift annuity agreement forms that differed from the gift annuity agreement forms that were filed with the Superintendent.</p> <p>During the examination period, the Fund used gift annuity agreement forms which were not on file with the Superintendent. (See item 6 of this report)</p>
E	<p>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.</p> <p>The Fund failed to 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)</p>

<u>Item</u>	<u>Description</u>
F	<p>The examiner recommends that the Fund use the name it agreed to by board resolution as part of its permit application to the Department for a special permit to issue charitable gift annuities in New York.</p> <p>The fund used the name it agreed to by board resolution as part of its permit application to the Department for a special permit to issue charitable gift annuities in New York.</p>
G	<p>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.</p> <p>During the examination period, the Fund obtained and maintained a death certificate or other reliable documentary evidence that supports such information terminating an annuity contract.</p>
H	<p>The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.</p> <p>During the examination period, the examiner noted no new discrepancies.</p>

9. 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 use on all annuity benefit checks the name it agreed to by board resolution as part of its permit application to the Department for a special permit to issue charitable gift annuities in New York.	4
B	The examiner recommends that the Investment Strategy Statement be approved by the Board of Directors.	5
C	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
D	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
E	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
F	The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.	8

APPOINTMENT NO. 32214

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, ADRIENNE A. HARRIS, 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:

ADELIA GBADAMOSI

as a proper person to examine the affairs of the

***SEGREGATED GIFT ANNUITY FUND OF THE
BUFFALO STATE COLLEGE FOUNDATION, INC.***

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

FUND

with such other information as she 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 16th day of March, 2022

*ADRIENNE A. HARRIS
Superintendent of Financial Services*

By:



***MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU***

