

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
GENESEE COMMUNITY COLLEGE FOUNDATION

CONDITION:

DECEMBER 31, 2018

DATE OF REPORT:

OCTOBER 4, 2019

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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EXAMINER:

JAMES WANG

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Department of Financial Services

KATHY HOCHUL
Governor

ADRIENNE A. HARRIS
Acting Superintendent

October 19, 2021

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

Madam:

In accordance with instructions contained in Appointment No. 31926, dated May 16, 2019 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Genesee Community College Foundation, hereinafter referred to as “the Fund,” at its home office located at 1 College Road, Batavia, NY 14020.

Wherever “Department” appears in this report, it refers to the New York State Department of Financial Services.

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

1. EXECUTIVE SUMMARY

The Fund violated Section 312(b) of the New York Insurance Law by failing to obtain signed statements from the board members indicating that they received and read the prior report on examination. The examiner recommends that the Fund comply with Section 312(b) of the New York Insurance Law by obtaining the signature of each board member indicating that they received and read the prior report on examination. (See item 3C of this report)

The examiner recommends that the Fund obtain broker's advices or other supporting documentation for its investment transactions and that this documentation be reviewed on a timely basis and reconciled to the applicable custodial statements for that period. (See item 3C of this report)

The examiner recommends that the board of trustees, or a committee thereof, approve the purchases and sales of all investments and note such approvals in the minutes. (See item 3C of this report)

The examiner's review of the Fund's treatment of annuitants did not reveal significant instances which deviated from the New York Insurance Law, Department regulations and circular letters and the operating rules of the Fund. (See item 5 of this report)

The examiner recommends that the Fund prepare its annual statements in accordance with the instructions for completing the New York State Segregated Gift Annuity Fund Annual Statement. (See item 6 of this report)

2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2013. This examination covers the period from January 1, 2014 through December 31, 2018. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2018 but prior to the date of this report (i.e., the completion date of the examination).

The examination comprised a verification of assets and liabilities as of December 31, 2018 to determine whether the Fund's filed 2018 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 recommendations contained in the prior report on examination. The results of such review are contained in item 7 of this report.

This report on examination is confined to financial statements and comments on those matters which involve departure from laws, regulations, or rules or which require explanation or description.

3. DESCRIPTION OF FUND

A. History

The Genesee Community College Foundation, Inc. (“Foundation”) was organized in June 1985 for the purpose of receiving and maintaining a fund or funds or real and personal property, or both, and to use and apply the income on the whole or any part of the principal within the limitation, exclusively to aid and advance the welfare, development, purposes and programs of Genesee Community College, a community college organized pursuant to the provisions of the Education Law of the State of New York. The Foundation established a program to issue gift annuity agreements in return for gifts from donors, and it has done so since 2010. A special permit was granted to the Foundation by the Department on September 23, 2009, authorizing it to issue gift annuity agreements as specified in Section 1110 of the New York Insurance Law. All operations related to the issuance, maintenance and settlement of annuity agreements are handled by the Fund.

B. Services

Steuben Trust Company is the investment manager and custodian of the Fund’s assets. Steuben Trust Company also provides annuity payment service to the Fund.

C. Corporate Governance

The management of the Foundation and the Fund and all of its affairs and property are entrusted to a board of directors. The number of directors is limited from a minimum of 3 to a maximum of 32 regular voting directors. As of December 31, 2018, the board consists of 23 directors. The directors elect a President, one or more Vice Presidents, a Treasurer, a Secretary, and such other officers in accordance with the by-laws. The nomination and election procedures of the directors and their terms of office are set by the by-laws.”

Section 312(b) of the New York Insurance Law states, in part:

“(b) A copy of the report shall be furnished by such insurer or other person to each member of its board of directors and each such member shall sign a statement which

shall be retained in the insurer's files confirming that such member has received and read such report . . .”

The Fund failed to obtain statements signed by each board member indicating that they received and read the prior report on examination.

The Fund violated Section 312(b) of the New York Insurance Law by failing to obtain signed statements from the board members indicating that they received and read the prior report on examination. The examiner recommends that the Fund comply with Section 312(b) of the New York Insurance Law by obtaining the signature of each board member indicating that they received and read the prior report on examination.

The examiner reviewed the investment transactions for the period under examination and noted that the Fund did not obtain broker's advices or other supporting documentation for its investment transactions to reconcile such advices to the monthly statements furnished by the custodian.

The examiner recommends that the Fund obtain broker's advices or other supporting documentation for its investment transactions and that this documentation be reviewed on a timely basis and reconciled to the applicable custodial statements for that period.

The examiner reviewed the Investment Committee minutes to determine whether the Investment Committee approved the purchases and sales of investments during the examination period. The minutes did not contain any indication that the committee approved the purchases and sales of investments during the examination period.

The examiner recommends that the board of trustees, or a committee thereof, approve the purchases and sales of all investments and note such approvals in the minutes.

4. SIGNIFICANT FINANCIAL INFORMATION

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>2013</u>	<u>December 31,</u> <u>2018</u>	<u>Increase</u> <u>(Decrease)</u>
Admitted assets	<u>\$259,893</u>	<u>\$277,798</u>	<u>\$ 17,905</u>
Liabilities	<u>\$ 41,711</u>	<u>\$ 16,243</u>	<u>\$ (25,468)</u>
Minimum required fund balance	\$ 4,096	\$ 1,624	\$ (2,472)
Excess fund balance (surplus)	<u>214,086</u>	<u>259,931</u>	<u>45,845</u>
Total annuity fund balance	<u>\$218,182</u>	<u>\$261,555</u>	<u>\$ 43,373</u>
Total liabilities and annuity fund balance	<u>\$259,893</u>	<u>\$277,798</u>	<u>\$ 17,905</u>

The increase in assets and annuity fund balance is primarily due to interest income and gains in the investment portfolio. The decrease in liabilities is mainly attributed to annuity payments and the Fund not accepting any new gift annuities during the examination period.

The Fund's admitted assets, as of December 31, 2018, were invested mainly in common stocks (98.98%).

5. 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. Based upon the sample reviewed, no significant findings were noted.

6. ANNUAL STATEMENT REPORTING

The Department's Instructions for Completing the New York Segregated Gift Annuity Fund Annual Statement ("Annual Statement") instruct as follows for these line items:

1. The instructions for the Disbursements section of the annual statement state the following, in part:

"Line 14 "Current Year" Column: Should agree with Page 2, Line 20.3, "Prior Year" Column, as well as Page 3, Line 15, "Prior Year" Column."

The following tables illustrate the differences between the total annuity fund balance found on page 2, line 20.3 and page 3, line 15 of the Fund's filed annual statement for 2017 and 2018 for both the current and prior year:

2017:

Examiner's Review of Annuity Fund Balance per 2017 Annual Statement			
Line Item	Per Balance Sheet (Pg. 2)	Per Income Statement (Pg.3)	Variance
Prior Year Annuity Fund Balance (Pg. 3, Line 14)	\$244,321	\$270,596	\$26,275
Annuity Fund Balance at End of Year (Pg. 3, Line 15)	\$279,429	\$301,424	\$21,995

2018:

Examiner's Review of Annuity Fund Balance per 2018 Annual Statement			
Line Item	Per Balance Sheet (Pg. 2)	Per Income Statement (Pg. 3)	Variance
Prior Year Annuity Fund Balance (Pg. 3, Line 14)	\$279,429	\$301,424	\$21,995
Annuity Fund Balance at End of Year (Pg. 3, Line 15)	\$261,555	\$277,798	\$16,243

The examiner determined that the correct figures for the annuity fund balance should be the ones reported on Page 2, line 20.3 of the annual statement.

2. The instructions for Exhibit 1 – Verification of Investment Income state the following, in part:

“Line 1...Column 6 should equal the sum of:

(1) the amount reported for Totals in Schedule A, Part 2, Column 9, and

(2) the amount reported for Totals in Schedule A, Part 3, Column 9....

...Column 8 should equal the amount reported in Totals in Schedule D, Part 1, Column 7.

Line 3...Column 5 should equal the amount reported for Totals in Schedule A, Part 1, Column 8.”

In the Fund’s filed annual statement for 2016, it reported \$7,927 in dividends reported during the year on Line 1, Column 6 of Exhibit 1 – Verification of Investment Income. The Fund should have reported \$7,855 in interest and dividends received on Line 1, Column 6 and \$72 on Line 2, Column 6 for dividends received on stocks sold or otherwise disposed of during the year.

A review of the Fund’s filed annual statement for 2018 indicated that it reported \$6,741 in dividends reported during the year on Line 1, Column 8 and \$110 in interest and dividends received on Line 1, Column 6. These figures should have been reported in Column 6 of Exhibit 1 – Verification of Investment Income, Lines 1 and 2, respectively.

3. The instructions for Exhibit 2 – Unrealized Capital Gains and Losses state the following, in part:

“Column 3 Cost

Report the amount from the “Cost” column of the various Schedules for the current year and prior year in each of the categories.

Column 4 Market Value, End of Year

Report the amount from the “Market Value End of Year” column of the various Schedules for the current year and prior year in each of the categories.

Column 5 Unrealized Capital Gains/(Losses)

The amount is the difference between Column 3 and Column 4.”

A review of Exhibit 2 in the Fund's filed 2014 annual statement revealed that it reported \$87,905 as the prior year cost of bonds and \$87,149 as the prior year market value of bonds in the prior year (2013). In the filed 2013 annual statement, the Fund reported for the current year \$88,080 as the cost of bonds and \$87,149 as the market value of bonds. The examiner determined that the prior year cost of bonds should have been \$88,080 in the Fund's filed 2014 annual statement. Further, the Fund subtracted cost from market value in their filed 2014 annual statement for the prior year. Therefore, the Fund overstated realized capital gains, total income, and net change in annuity fund in 2014 by \$1,687.

In Exhibit 2 of the Fund's filed 2018 annual statement, it reported \$249,900 as the prior year cost of bonds and \$301,424 as the prior year market value of bonds. In the filed 2017 annual statement, the Fund reported for the current year \$246,319 as the cost of bonds and \$297,843 as the market value of bonds. The examiner determined that the prior year cost of bonds should have been \$246,319 and the market value should have been \$297,843 in Exhibit 2 of the Fund's filed 2018 annual statement.

Furthermore, the CUSIP number of the securities was left blank on Schedule A Part 4 of the annual statement.

The examiner recommends that the Fund prepare its annual statements in accordance with the instructions for completing the New York State Segregated Gift Annuity Fund Annual Statement.

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	The examiner recommends that the Fund diversify its investment holdings. The Fund's holdings were properly diversified.
B	The examiner recommends that the Fund prepare its annual statements according to the Department's annual statement instructions. Additional discrepancies were discovered during the examiner's review. A similar recommendation appears in this report on examination.

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 Fund violated Section 312(b) of the New York Insurance Law by failing to obtain signed statements from the board members indicating that they received and read the prior report on examination.	5
B	The examiner recommends that the Fund comply with Section 312(b) of the New York Insurance Law by obtaining the signature of each board member indicating that they received and read the prior report on examination.	5
C	The examiner recommends that the Fund obtain broker's advices or other supporting documentation for its investment transactions and that this documentation be reviewed on a timely basis and reconciled to the applicable custodial statements for that period.	5
D	The examiner recommends that the board of trustees, or a committee thereof, approve the purchases and sales of all investments and note such approvals in the minutes.	5
E	The examiner recommends that the Fund prepare its annual statements in accordance with the instructions for completing the New York State Segregated Gift Annuity fund Annual Statement.	10

Respectfully submitted,

_____/s/
James Wang
Senior Insurance Examiner

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

JAMES WANG, being duly sworn, deposes and says that the foregoing report, subscribed by him,
is true to the best of his knowledge and belief.

_____/s/
James Wang

Subscribed and sworn to before me
this _____ day of _____

APPOINTMENT NO. 31926

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, LINDA A. LACEWELL, Acting 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:

JAMES WANG

as a proper person to examine the affairs of the

**SEGREGATED GIFT ANNUITY FUND OF THE
GENESEE COMMUNITY COLLEGE FOUNDATION, INC.**

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 17th day of May, 2019

LINDA A. LACEWELL
Acting Superintendent of Financial Services

By:



MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU

