



**REPORT ON EXAMINATION  
OF THE  
SEGREGATED GIFT ANNUITY FUND  
OF THE  
UNITED WAY WORLDWIDE**

**AS OF December 31, 2019**

**EXAMINER: Manish Gera**

**DATE OF REPORT: January 29, 2021**

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

REPORT ON EXAMINATION

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KATHY HOCHUL  
Governor



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ADRIENNE A. HARRIS  
Superintendent

December 28, 2022

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

Madam:

In accordance with instructions contained in Appointment No. 32182, dated December 17, 2020 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the United Way Worldwide. The Fund's home office is located at 701 North Fairfax Street, Alexandria, VA 22314.

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

## 1. EXECUTIVE SUMMARY

The Organization violated Section 312(b) of the New York Insurance Law by failing to maintain statements signed by its 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 have received and read any current or future filed report on examination. (See item 3E of this report)

The examiner recommends that the Organization amend its Fund custodial agreement to reflect its current name. (See item 3E 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 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. (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 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 United Way Worldwide Segregated Annuity Fund (the "Fund") through which United Way Worldwide (the "Organization") 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 Organization or Fund, in relation to their annuity activities, could have better satisfied statutory standards or to adhered to 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, 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 8 of this report.

### 3. DESCRIPTION OF FUND

#### A. History

The United Way Worldwide, formerly United Way of America, was chartered in 1932 and is organized for the purpose of providing leadership on behalf of the United Way system and to member United Way organizations to improve people's lives by mobilizing the caring power of communities worldwide. The Organization changed its name from United Way of America to United Way Worldwide in 2009. The Organization established the Fund to issue gift annuity agreements in return for gifts from donors in January 5, 2001. The Superintendent of Insurance granted to the Organization a Charitable Annuity Society special permit on September 8, 2005.

#### B. Structure

The management of the organization and the Fund and all of its affairs and property are entrusted to a board of trustees. All operations related to the issuance, maintenance and settlement of annuity agreements are handled by the Fund.

#### C. Assets under the Board of Trustees

As of the December 31, 2019 IRS Form 990, the Organization's Board of Trustees oversaw an endowment comprising \$5,663,568 in total assets. The Fund, as of December 31, 2019, held total admitted assets of \$441,090.

#### D. Third-Party Payment Service Provider

State Street Global Advisors ("State Street") is the custodian. State Street manages the investments and makes benefit payments to the annuitants.

#### E. Oversight Structure

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

"(a) The superintendent shall forward to every insurer or other person examined a copy of the report on examination as filed for public inspection . . . (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 examiner's review revealed that the Organization failed to obtain statements signed by each board member indicating that they received and read the prior report on examination.

The Organization violated Section 312(b) of the New York Insurance Law by failing to obtain statements signed by its 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 have received and read any current or future filed report on examination.

The Organization entered into a custodial agreement under the name of United Way of America, the Organization's prior name. The examiner noted that the Organization failed to amend its custodial agreement to reflect its current name.

The examiner recommends that the Organization amend its Fund custodial agreement to reflect its current name.



#### 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) calls for “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) states 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.

The Organization prepared and provided an investment policy statement (“IPS”) to the Fund. The Fund adopted that statement 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.

##### B. Monitoring

The examiner reviewed the board of trustees’ minutes to determine whether the board had been provided with a report concerning the Fund’s investment of required admitted assets. The minutes did not contain any indication that the board was provided with a report concerning the Fund’s investment of required admitted assets.

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.

## 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>2014</u>	<u>December 31,</u> <u>2019</u>	<u>Increase</u> <u>(Decrease)</u>
Admitted assets	<u>\$782,023</u>	<u>\$441,090</u>	<u>\$(340,933)</u>
Liabilities	<u>\$757,667</u>	<u>\$337,526</u>	<u>\$(420,141)</u>
Minimum required fund balance	\$ 75,767	\$ 33,753	\$ (42,014)
Excess fund balance (surplus)	<u>(51,411)</u>	<u>69,811</u>	<u>121,222</u>
Total annuity fund balance	<u>\$ 24,356</u>	<u>\$103,564</u>	<u>\$ 79,208</u>
Total liabilities and annuity fund balance	<u>\$782,023</u>	<u>\$441,090</u>	<u>\$(340,933)</u>

The decrease in assets, liabilities and annuity fund balance reflects a decrease in the total number of annuities in force. Annuities decreased from 50 with annual payment amounts of \$109,619 as of December 31, 2014 to a total of 25 with annual payment amounts of \$38,955 as of December 31, 2019.

The Fund's admitted assets, as of December 31, 2019, were invested mainly in equity securities (93.21%) and money market mutual funds (6.77%).

## 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 two newly issued gift annuities by the Fund during the examination period noted that in both newly issued annuities, the Fund used forms that differed from the gift annuity agreements filed with the Superintendent.

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’s review of a sample of 2 annuity contracts terminated revealed that in all 2 of the cases (100.00 %) reviewed, the Fund failed to 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 Organization violated Section 312(b) of the New York Insurance Law by failing to obtain and maintain statements signed by its board members indicating that they received and read the prior report on examination.</p> <p>The examiner's review revealed that the Fund failed to take remedial action. A similar violation appears in this report on examination.</p>
B	<p>The examiner recommends that the Organization comply with Section 312(b) of the New York Insurance Law by obtaining and maintaining the signature of each board member indicating that they received and read the prior report on examination.</p> <p>The Fund failed to comply with this recommendation. A similar recommendation appears in this report on examination.</p>
C	<p>The examiner recommends that the Organization amend its Fund custodial agreement to reflect its current name.</p> <p>The Fund failed to comply with this recommendation. A similar recommendation appears in this report on examination.</p>
D	<p>The examiner recommends that the board of trustees, or a committee thereof, approve the purchases and sales of all Fund investments and note such approvals in the minutes.</p> <p>The Fund still failed to review the admitted assets of the Fund at least annually. A similar recommendation appears in this report on examination.</p>
E	<p>The examiner's review revealed an apparent underfunded condition of \$51,411, as of December 31, 2014. The apparent underfunding was resolved subsequent to the examination period, by the correction of a reporting error.</p> <p>The Fund has complied with the recommendation.</p>

<u>Item</u>	<u>Description</u>
F	<p>The examiner recommends that the Fund strengthen the diversification of its investment holdings. If the trustee has determined that it is in the interests of the beneficiaries to deviate from such a recommendation, then it should memorialize the reasons for that determination in terms of the ISS's risk, return, and time horizon parameters.</p> <p>The Department no longer provides specific guidance for diversification.</p>

## 8. SUMMARY AND CONCLUSIONS

Following are the 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 have received and read any current or future filed report on examination.	5
C	The examiner recommends that the Organization amend its Fund custodial agreement to reflect its current name.	5
D	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.	6
E	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.	6
F	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.	8
G	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.	8
H	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.	8

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 his 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***  
***UNITED WAY WORLDWIDE***  
*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 December, 2020*

*LINDA A. LACEWELL  
Superintendent of Financial Services*

By:   
\_\_\_\_\_  
*MARK MCLEOD  
DEPUTY CHIEF - LIFE BUREAU*

