



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
GENESEO FOUNDATION, INC.

CONDITION:

DECEMBER 31, 2012

DATE OF REPORT:

NOVEMBER 21, 2013

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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EXAMINER:

ADELIA GBADAMOSI

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Anthony J. Albanese
Acting Superintendent

November 20, 2015

Honorable Anthony J. Albanese
Acting Superintendent of Financial Services
New York, New York 10004

Sir:

In accordance with instructions contained in Appointment No. 30923, dated March 18, 2013 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Geneseo Foundation, Inc., hereinafter referred to as “the Fund.” The Fund’s home office is located at Erwin 202, SUNY, 1 College Circle, Geneseo, New York 14454.

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 examiner recommends that the board of directors, or a committee thereof, approve the purchases and sales of all investments and note such approvals in the minutes. (See item 4 of this report)

The examiner's review of a sample of transactions revealed differences which materially affected the Fund's financial condition as presented in its financial statements contained in the December 31, 2012 filed annual statement. (See items 5 and 7 of this report)

The examiner recommends that the Fund adjust the interest rate from 9.5% paid to the annuitant to 9.8% and reimburse the difference in annual income of \$15 from 2011 until present. (See item 6 of this report)

The Fund violated Section 1110(a) of the New York Insurance Law by using gift annuity agreement forms that were not filed with the Superintendent. The examiner recommends that the Fund file with the Superintendent annuity agreement forms with wording updated to reflect the uses and purposes of the gifts. (See item 6 of this report)

The examiner recommends that the Fund prepare its annual statements in accordance with the Department's instructions. (See item 7 of this report)

2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2007. This examination covers the period from January 1, 2008 through December 31, 2012. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2012 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, 2012 to determine whether the Fund's filed 2012 annual statement fairly presents its financial condition. The examiner reviewed the Fund's income and disbursements necessary to accomplish such verification. The examiner reviewed the prior report on examination which did not contain any violations, recommendations or comments.

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

The Geneseo Foundation, Inc. (the “Foundation”) is organized for the purpose of receiving, holding, administering and distributing funds and property for the encouragement and promotion of education at the State University College of Arts and Science at Geneseo. Under the provisions of its by-laws, the Foundation is permitted to issue gift annuity agreements and it has done so since April 6, 1993. A special permit was granted to the Foundation by the Department on December 27, 1993, 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. State Street Bank and Trust Company is the custodian of the Fund’s securities. The Fund’s annual statements are prepared by Mengel, Metzger, Bar and Company, LLP, an independent CPA firm.

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 to 39 regular voting directors. As of December 31, 2012, the board consisted of 34 directors. The voting members of the board of directors elect the chairperson, vice chairperson, treasurer and secretary. The board of directors may elect and appoint such other officers as it deems appropriate. Each officer is elected for a period of three years. The nomination and election procedures of the directors and their terms of office are set by the by-laws.

4. CORPORATE GOVERNANCE

The examiner reviewed the Fund's minutes of its board of directors meetings to determine if the board approved the purchases and sales of investments during the examination period. The minutes did not contain any indication that the board approved the purchases and sales of investments during the examination period

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

5. SIGNIFICANT FINANCIAL INFORMATION

The following table indicates the Fund's financial growth (decline) during the period under review:

	<u>December 31,</u> <u>2007</u>	<u>December 31,</u> <u>2012</u>	<u>Increase</u> <u>(Decrease)</u>
Admitted assets	<u>\$764,960</u>	<u>\$693,529</u>	<u>\$(71,431)</u>
Liabilities	<u>\$487,276</u>	<u>\$356,342*</u>	<u>\$(130,934)</u>
Minimum required surplus	\$ 48,728	\$ 35,634*	\$(13,094)
Unassigned funds (surplus)	<u>228,956</u>	<u>301,552*</u>	<u>72,596</u>
Total surplus	<u>\$277,684</u>	<u>\$337,187</u>	<u>\$ 59,503</u>
Total liabilities and surplus	<u>\$764,960</u>	<u>\$693,529</u>	<u>\$(71,431)</u>

Note: Amounts noted with an asterisk were determined during the examination.

The decrease in assets and liabilities reflects a decrease in annuity payment amounts. Annuity payment amounts decreased from \$81,022 as of December 31, 2007 to \$55,015 as of December 31, 2012; however, annuities increased from 32 as of December 31, 2007 to a total of 34 as of December 31, 2012. Surplus increased due to the decrease in liabilities as of December 31, 2012.

The Fund's admitted assets, as of December 31, 2012, were mainly invested in bonds (56.45%), common stocks (32.2%), and mutual funds (9.94%). All bonds held were investment grade.

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.

The examiner noted that of seven cases reviewed, the Fund paid one annuitant a rate of 9.5% interest. However, the rate of the American Council on Gift Annuities (“ACGA”), based on the annuitant’s age of 93 and the issue date of October 15, 2011, is 9.8%. The Fund indicated that it is using the rates adopted by the American Council on Gift Annuities.

Amount per examiner	$\$5,000 \times 9.8\% = \490
Amount per Fund	$\$5,000 \times 9.5\% = \underline{\$475}$
Difference:	\$15

The examiner recommends that the Fund adjust the interest rate of 9.5% paid to the annuitant to 9.8% and reimburse the difference in annual income of \$15 from 2011 until present.

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 the seven gift annuity agreements issued in New York during the examination period revealed that in each instance the Fund used gift annuity agreement forms with wording which deviated from that in the forms which are on file with the Superintendent, either by deleting or adding new wording. Also, in six cases the forms did not contain the form number.

The Fund violated Section 1110(a) of the New York Insurance Law by using gift annuity agreement forms that were not filed with the Superintendent. The examiner recommends that the Fund file with the Superintendent annuity agreement forms with wording updated to reflect the uses and purposes of its gifts.

7. ANNUAL STATEMENT REPORTING

The Instructions for Completing Line 10a (additional reserve required by Regulation 126) in the Liabilities and Annuity Fund Balance section of the New York State Segregated Gift Annuity Fund Annual Statement for each of the years during the exam period (January 1, 2008 through December 31, 2012), state:

Instructions for Completing Line 10a for 2012 Annual Statement state (in part), that:

“Report the amount of additional reserve required as pursuant to Department Regulation No. 126 as of December 31 of the current year. (i.e.: In accordance with Department Regulation No. 126, for 2012, report on this line 15% of the amount reported on Line 10, for both current and prior years.)”

Instructions for Completing Line 10a for 2011 Annual Statement state (in part), that:

“Report the amount of additional reserve required as pursuant to Department Regulation No. 126 as of December 31 of the current year. (i.e.: In accordance with Department Regulation No. 126, for 2011, report on this line 15% of the amount reported on Line 10, for both current and prior years.)”

Instructions for Completing Line 10a for 2010 Annual Statement state (in part), that:

“Report the amount of additional reserve required as pursuant to Department Regulation No. 126 as of December 31 of the current year. (i.e.: In accordance with Department Regulation No. 126, for 2010, report on this line 15% of the amount reported on Line 10.) ‘Prior year’ column: report 10% of the amount on Line 10.”

Instructions for Completing Line 10a for 2009 Annual Statement state (in part), that:

“Report the amount of additional reserve required as pursuant to Department Regulation No. 126 as of December 31 of the current year. (i.e.: In accordance with Department Regulation No. 126, for 2009, report on this line 10% of the amount reported on Line 10.) ‘Prior year’ column: report 5% of the amount on Line 10.”

Instructions for Completing Line 10a for 2008 Annual Statement state (in part), that:

“Report the amount of additional reserve required as pursuant to Department Regulation No. 126 as of December 31 of the current year. (i.e.: In accordance with Department Regulation No. 126, for 2008, report on this line 5% of the amount reported on Line 10.) ‘Prior year’ column: leave blank or enter ‘0’.”

The Fund failed to report any amount for “Additional reserve required by Regulation 126” in its annual statements for all years during the examination period (January 1, 2008 through December 31, 2012). The “Net present value of annuities” reported as of December 31, 2012 was \$309,863; the Fund should have reported “Additional reserve required by Regulation 126” of \$46,479. The Fund understated total liabilities by \$46,479, understated minimum required surplus by \$4,648, overstated excess fund balance (surplus) by \$51,127 and overstated total surplus by \$46,479 as of December 31, 2012.

The “Net present value of annuities” reported as of December 31, 2011 was \$327,532; the Fund should have reported “Additional reserve required by Regulation 126” of \$49,130. The Fund understated total liabilities by \$49,130, understated minimum required surplus by \$4,913, overstated excess fund balance (surplus) by \$54,043 and overstated total surplus by \$49,130 as of December 31, 2011.

The “Net present value of annuities” reported as of December 31, 2010 was \$322,929; the Fund should have reported “Additional reserve required by Regulation 126” of \$48,439. The Fund understated total liabilities by \$48,439, understated minimum required surplus by \$4,844, overstated excess fund balance (surplus) by \$53,283 and overstated total surplus by \$48,439 as of December 31, 2010.

The “Net present value of annuities” reported as of December 31, 2009 was \$331,578; the Fund should have reported “Additional reserve required by Regulation 126” of \$33,158. The Fund understated total liabilities by \$33,158, understated minimum required surplus by \$3,316, overstated excess fund balance (surplus) by \$36,474 and overstated total surplus by \$33,158 as of December 31, 2009.

The “Net present value of annuities” reported as of December 31, 2008 was \$342,829; the Fund should have reported “Additional reserve required by Regulation 126” of \$17,141. The Fund understated total liabilities by \$17,141, understated minimum required surplus by \$1,714, overstated excess fund balance (surplus) by \$18,856 and overstated total surplus by \$17,141 as of December 31, 2008.

The examiner recommends that the Fund prepare its annual statements in accordance with the Department’s instructions.

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 board of directors, or a committee thereof, approve the purchases and sales of all investments and note such approvals in the minutes.	5
B	The examiner recommends that the Fund adjust the interest rate of 9.5% paid to the annuitant to 9.8% and reimburse the difference in annual income of \$15 from 2011 until present.	7
C	The Fund violated Section 1110(a) of the New York Insurance law by using gift annuity agreement forms which were not filed with the Superintendent.	7
D	The examiner recommends that the Fund file with the Superintendent annuity agreement forms with wording updated to reflect the uses and purposes of the gifts.	7
E	The examiner recommends that the Fund prepare its annual statements in accordance with the Department's instructions.	9

Respectfully submitted,

_____/s/
Adelia Gbadamosi
Insurance Examiner

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

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

_____/s/
Adelia Gbadamosi

Subscribed and sworn to before me
this _____ day of _____

APPOINTMENT NO. 30923

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, BENJAMIN M. LAWSKY, 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
GENESEO 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 18th day of March, 2013

*BENJAMIN M. LAWSKY
Superintendent of Financial Services*

By:



*MICHAEL MAFFEI
ASSISTANT DEPUTY SUPERINTENDENT
AND CHIEF OF THE LIFE BUREAU*

