



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

CONDITION:

DECEMBER 31, 2013

DATE OF REPORT:

OCTOBER 22, 2014

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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EXAMINER:

CHONG KIM

TABLE OF CONTENTS

<u>ITEM</u>		<u>PAGE NO.</u>
1.	Executive summary	2
2.	Scope of examination	3
3.	Description of Fund	4
4.	Significant financial information	5
5.	Treatment of annuitants	7
6.	Annual statement reporting	8
7.	Summary and conclusions	13



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Acting Superintendent

March 16, 2016

Honorable Maria T. Vullo
Acting Superintendent of Financial Services
New York, New York 10004

Madam:

In accordance with instructions contained in Appointment No. 31168, dated September 18, 2014 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, Inc., hereinafter referred to as “the Fund.” The Fund’s home office is located at One 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 examiner recommends that the Fund diversify its investment holdings. (See item 4 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 according to the Department's annual statement instructions. (See item 6 of this report)

2. SCOPE OF EXAMINATION

This is the first examination of the Fund since it received its special permit to issue gift annuity agreements in 2009. This examination covers the period from September 23, 2009 through December 31, 2013. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2013 but prior to the date of this report.

The examination comprised a verification of assets and liabilities as of December 31, 2013 to determine whether the Fund's filed 2013 annual statement fairly presents its financial condition. The examiner reviewed the Fund's income and disbursements necessary to accomplish such verification.

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 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. Under the provisions of its by-laws, the Foundation is permitted to issue gift annuity agreements in the year 2009 and it has done so since year 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.

Steuben Trust Company is the investment manager and custodian of the Fund’s assets.

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 30 regular voting directors. As of December 31, 2013, the board consists of 25 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.

4. SIGNIFICANT FINANCIAL INFORMATION

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

	<u>December 31,</u> <u>2009</u>	<u>December 31,</u> <u>2013</u>	<u>Increase</u>
Admitted assets	<u>\$130,113</u>	<u>\$259,893</u>	<u>\$129,780</u>
Liabilities	\$ <u>0</u>	\$ <u>41,711*</u>	\$ <u>41,711</u>
Minimum required fund balance	\$ <u>0*</u>	\$ <u>4,096*</u>	\$ <u>4,096</u>
Excess fund balance (surplus)	<u>130,113*</u>	<u>214,086*</u>	<u>83,973</u>
Total annuity fund balance	<u>\$130,113</u>	<u>\$218,182*</u>	<u>\$ 88,069</u>
Total liabilities and annuity fund balance	<u>\$130,113</u>	<u>\$259,893</u>	<u>\$129,780</u>

Note: Amounts denoted with an asterisk were determined during the examination. See item 6 of this report.

The increase in assets, liabilities and annuity fund balance reflects an increase in the total number of annuities in force. Annuities increased from zero with annual payment amounts of \$0 as of December 31, 2009 to a total of 3 with annual payment amounts of \$4,350 as of December 31, 2013.

The Fund's admitted assets, as of December 31, 2013, were invested mainly in common stocks (96.68%).

Section 1409(a) of the New York Insurance Law states,

“(a) Except as more specifically provided in this chapter, no domestic insurer shall have more than ten percent of its admitted assets as shown by its last statement on file with the superintendent invested in, or loaned upon, the securities (including for this purpose certificates of deposit, partnership interests and other equity interests) of any one institution.”

According to the 2013 Annual Statement on file, the Fund reported: 31.4% invested in the securities of Ishares S+P 500 Index Exchange Traded Fund (“ETF”); 17.3% invested in the securities of Vanguard Short Term Corporate; 16.2% invested in the securities of Barclays Intermediate; and 10.4% invested in the securities of Vanguard Emerging Markets ETF. The

Fund's current concentration in the four securities makes it highly unlikely that the Fund's other assets could provide a variability to offset the risks inherent in these funds.

The examiner recommends that the Fund diversify its investment holdings. A trustee using reasonable care, skill and caution should diversify the Fund's assets. A diversification is proper when it disperses the investments' risks consistent with the Investment Strategy Statement's ("ISS") risk, return, and time horizon objectives, and the various risks in the portfolio offset each other. Section 1409 of the New York Insurance Law is instructive. Limiting exposure to any assets of any one institution to ten percent of admitted assets would reasonably assure that the risks in the investment in that institution are offset by the rest of the portfolio. If the trustee has determined that it is in the interests of the beneficiaries not to diversify, then it should memorialize the reasons for that determination in terms of the ISS's risk, return, and time horizon parameters.

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. Instructions for Completing Line 10a (Additional reserve required by Regulation 126) in the Liabilities and Annuity Fund Balance section of the Annual Statement for the examination period states 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 2013, 2012, and 2011, report on this line 15% of the amount reported on Line 10, for both current and prior years.)..."

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...

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 20.1 (Minimum required fund balance) in the Liabilities and Annuity Fund Balance section of the Annual Statement for the examination period states in part, that:

"'Current Year' Column: A minimum required fund balance equal to 10% of the net reserve reported at Line 12 must be reported at this Line. Refer to Section 1110(b) of the New York Insurance Law. 'Prior Year' Column: Report prior year's minimum required fund balance."

The Fund reported "Net present value of annuities" of \$35,618 as of December 31, 2013. In accordance with the annual statement instructions cited above, the Fund should have reported an amount on line 10a for "Additional reserve required by Regulation 126" of \$5,343, an amount consisting of 15% of the net present value of annuities. In addition, the Fund calculated line 20.1, "Minimum required fund balance" incorrectly; this amount should be 10% of net reserve of

\$40,961, or \$4,096. The Fund therefore overstated net reserve and total liabilities by \$4,096, and understated total annuity fund balance by the same amount. Taking into account the above errors, the Fund should have reported "Total Annuity Fund Balance" of \$218,182 as of December 31, 2013.

The Fund reported "Net present value of annuities" of \$39,968 as of December 31, 2012. In accordance with the annual statement instructions cited above, the Fund should have reported an amount on line 10a for "Additional reserve required by Regulation 126" of \$5,995, an amount consisting of 15% of the net present value of annuities. In addition, the Fund calculated line 20.1, "Minimum required fund balance" incorrectly; this amount should be 10% of net reserve of \$45,963, or \$4,596. The Fund therefore overstated net reserve and total liabilities by \$4,597, and understated total annuity fund balance by the same amount. Taking into account the above errors, the Fund should have reported "Total Annuity Fund Balance" of \$190,037 as of December 31, 2012.

The Fund reported "Net present value of annuities" of \$43,658 as of December 31, 2011. In accordance with the annual statement instructions cited above, the Fund should have reported an amount on line 10a for "Additional reserve required by Regulation 126" of \$6,549, an amount consisting of 15% of the net present value of annuities. In addition, the Fund calculated line 20.1, "Minimum required fund balance" incorrectly; this amount should be 10% of net reserve of \$50,207, or \$5,021. The Fund therefore overstated net reserve and total liabilities by \$5,020, and understated total annuity fund balance by the same amount. Taking into account the above errors, the Fund should have reported "Total Annuity Fund Balance" of \$164,886 as of December 31, 2011.

The Fund reported "Net present value of annuities" of \$29,779 as of December 31, 2010. In accordance with the annual statement instructions cited above, the Fund should have reported an amount on line 10a for "Additional reserve required by Regulation 126" of \$4,467, an amount consisting of 15% of the net present value of annuities. In addition, the Fund calculated line 20.1, "Minimum required fund balance" incorrectly; this amount should be 10% of net reserve of \$34,246, or \$3,425. The Fund therefore overstated net reserve and total liabilities by \$3,424, and understated total annuity fund balance by the same amount. Taking into account the above errors, the Fund should have reported "Total Annuity Fund Balance" of \$160,766 as of December 31, 2010.

The Fund reported “Net present value of annuities” of \$0 as of December 31, 2009. In accordance with the annual statement instructions cited above, the Fund should have reported an amount on line 10a for “Additional reserve required by Regulation 126” of \$0, an amount consisting of 15% of the net present value of annuities. In addition, the Fund calculated line 20.1, “Minimum required fund balance” incorrectly; this amount should be 10% of net reserve of \$0, or \$0. The Fund therefore overstated minimum required fund balance by \$121,000 and understated excess fund balance by \$121,000. Taking into account the above errors, this error did not have an impact on “Total Annuity Fund Balance” as of December 31, 2009.

The Fund failed to report the correct amount for line 10a in the Assets and Liabilities page, “Additional reserve required by Regulation 126,” in its annual statements for all years during the examination period.

2. Instructions for Completing Line 10.1 (Net increase/(decrease) in actuarial reserves) in the Disbursements section of the Annual Statement for the examination period states in part, that:

“Line 10.1 Report the net increase/(decrease) in actuarial reserves as of December 31 of the current year. This is the change in the amount of actuarial reserves (as shown on Page 2, Line 10b) between December 31 current year and December 31 prior year.”

Instructions for Completing Line 20.3 (Total Annuity Fund Balance) in the Liabilities and Annuity Fund Balance section of the Annual Statement for the years 2013, 2012, 2011, and 2010 states in part, that:

“Line 20.3 Total Annuity Fund Balance:
 ‘Current Year’ Column: The difference of the Total Assets (Page 2, Line 9) and Total Liabilities (Page 2, Line 19). This amount must equal to the sum of Lines 20.1 and 20.2, as well as the amount on Page 3, Line 15. ‘Prior Year’ Column: Report prior year’s Total Annuity Fund Balance.”

Instruction for Completing Line 15 (Annuity Fund Balance at end of year) in the Income and Disbursement section of the Annual Statement for the years 2013, 2012, 2011, and 2010 states in part, that:

“Line 15 ‘Current Year’ Column: Must equal the sum of Lines 13 and 14, as well as Page 2, Line 20.3. ‘Prior Year’ Column: Report prior year’s Annuity Fund Balance at end of year.”

The Fund reported Annuity Fund Balance of \$214,086 in the Income and Disbursements page of its 2013 Annual Statement which agreed with the amount reported for Annuity Fund Balance of \$214,086 in the Assets and Liabilities page of its 2013 Annual Statement, which amount was also inaccurate due to the failure to take into account the correct amount for additional reserve required by Regulation 126. However, as calculated in the prior section, the examiner determined that the Fund should have reported Annuity Fund Balance of \$218,182 in its 2013 Annual Statement.

The Fund reported Annuity Fund Balance of \$185,440 in the Income and Disbursements page of its 2012 Annual Statement which agreed with the amount reported for Annuity Fund Balance of \$185,440 in the Assets and Liabilities page of its 2012 Annual Statement, which amount was also inaccurate due to the failure to take into account the correct amount for additional reserve required by Regulation 126. However, as calculated in the prior section, the examiner determined that the Fund should have reported Annuity Fund Balance of \$190,037 in its 2012 Annual Statement.

The Fund reported Annuity Fund Balance of \$195,387 in the Income and Disbursements page of its 2011 Annual Statement which did not agree with the amount reported for Annuity Fund Balance of \$159,866 in the Assets and Liabilities page of its 2011 Annual Statement, which amount was also inaccurate due to the failure to take into account the correct amount for additional reserve required by Regulation 126. As calculated in the prior section, the examiner determined that the Fund should have reported Annuity Fund Balance of \$164,886 in its 2011 Annual Statement.

The Fund reported Annuity Fund Balance of \$157,342 in the Income and Disbursements page of its 2010 Annual Statement which agreed with the amount reported for Annuity Fund Balance of \$157,342 in the Assets and Liabilities page of its 2010 Annual Statement, which amount was also inaccurate due to the failure to take into account the correct amount for additional reserve required by Regulation 126. However, as calculated in the prior section, the examiner

determined that the Fund should have reported Annuity Fund Balance of \$160,766 in its 2010 Annual Statement.

3. The Instructions for Completing Schedule A - Part 3 - Common Stocks section of the Annual Statement for the examination period states that:

“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 (Schedule A, Part 1, Column 7) of \$52,833 in 2009; \$76,171 in 2010; \$82,569 in 2011; \$90,983 in 2012; and \$87,149 in 2013 in each of the filed annual statements. The examiner determined that all of the investments reported as bonds in each of the filed annual statements are actually either mutual funds or exchange traded funds (“ETFs”) that invest in bonds. The Fund incorrectly reported its mutual funds and ETFs that invest in bonds as bonds in each of the annual statements filed during the examination period. The Fund should have reported its mutual funds and ETFs as common stock, to be reported in Schedule A - Part 3 - Common Stocks in each of the filed annual statements during the examination period.

4. The Instructions for Completing Schedule B - Money market mutual funds section of the Annual Statement for the year 2013 states in part, that:

“Report only money market mutual funds in this Schedule. Examples of money market mutual funds are funds that invest solely in money market instruments, such as commercial paper, Treasury bills and other highly liquid securities.”

The Fund reported cash on deposit of \$8,632 in its 2013 Annual Statement. The examiner determined that \$7,901.71 of the cash on deposit of \$8,632 actually refers to two money market accounts based on information provided by Steuben Trust Company, the Fund’s custodian.

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

7. SUMMARY AND CONCLUSIONS

Following are the recommendations contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The examiner recommends that the Fund diversify its investment holdings.	6
B	The examiner recommends that the Fund prepare its annual statements according to the Department's annual statement instructions.	12

Respectfully submitted,

_____/s/
Chong Kim
Senior Insurance Examiner

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

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

_____/s/
Chong Kim

Subscribed and sworn to before me
this _____ day of _____

APPOINTMENT NO. 31168

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:

CHONG KIM

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 18th day of September, 2014

BENJAMIN M. LAWSKY
Superintendent of Financial Services

By:


MICHAEL MAFFEI

ASSISTANT DEPUTY SUPERINTENDENT
AND CHIEF OF THE LIFE BUREAU

