



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
CULINARY INSTITUTE OF AMERICA

CONDITION:

DECEMBER 31, 2015

DATE OF REPORT:

JUNE 9, 2016

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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OF THE

CULINARY INSTITUTE OF AMERICA

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EXAMINER:

JUAN SOTO

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.	Corporate governance	5
5.	Significant financial information	6
6.	Treatment of annuitants	8
7.	Annual statement filing	9
8.	Annual statement reporting	10
9.	Custodian	12
10.	Subsequent Event	13
11.	Summary and conclusions	14



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

September 8, 2017

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

Madam:

In accordance with instructions contained in Appointment No. 31454, dated April 25, 2016 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Culinary Institute of America, hereinafter referred to as the “Fund.” The Fund’s home office is located at 1946 Campus Drive, Hyde Park, 12538-1499.

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's board of trustees review the activities of the Fund at least annually and note the same in the minutes. (See item 4 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 4 of this report)

The examiner recommends that the Fund execute service agreements with its third party service providers. (See item 4 of this report)

The Fund violated Section 1110(d) of the New York Insurance Law by failing to obtain a permit prior to the issuance of an annuity contract in which the Fund's aggregate reserves exceeded one million dollars. (See item 5 of this report)

The Fund violated Section 1110(b) of the New York Insurance Law by failing to maintain sufficient admitted assets as of year-ends 2012, 2013, and 2014. The examiner recommends that the Fund maintain sufficient admitted assets. (See item 5 of this report)

The examiner recommends that the Fund obtain copies of the death certificates of annuitants for annuity contracts terminated. (See item 6 of this report)

The Fund violated Section 307(a)(1) of the New York Insurance Law by failing to file its 2012, 2013, and 2014 annual statements before each March 1 deadline of the subsequent year. The examiner recommends that the Fund file its annual statement before the March 1 deadline. (See item 7 of this report)

The examiner recommends that the Fund prepare its annual statements according to the Department's instructions. (See item 8 of this report)

The examiner recommends that the Fund contract with a licensed bank or trust company to serve as the Fund's custodian for the Fund's securities. (See item 9 of this report)

On January 13, 2017, the Fund surrendered its permit to issue charitable gift annuities. (See item 10 of this report)

2. SCOPE OF EXAMINATION

This is the first examination of the Fund since it received its special permit to issue segregated gift annuity agreements in 2011. This examination covers the period from October 17, 2011 through December 31, 2015. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2015 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, 2015 to determine whether the Fund's filed 2015 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 Culinary Institute of America (the “Institute”) is a private, not-for-profit college dedicated to providing the world’s best professional culinary education. The Institute began issuing annuities in July 2008. A special permit was granted to the Institute, by the Department on October 17, 2011, for the purpose of issuing gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

Merrill Lynch is the Fund’s custodian. The Fund uses PG Calc, Inc. for the administration of its gift annuity program, namely for the calculation of reserves, determination of rates for the annuitants, and reporting of the gift annuities.

The management of the Institute and the Fund and all of its affairs and property are entrusted to a board of trustees. The number of trustees is limited to no fewer than 5 and no more than 25. As of December 31, 2015, the board consisted of 24 trustees. The trustees elect a Chair, a Vice Chair, a Secretary and a Treasurer. The board of trustees appoint the President of the Institute as well as one or more Vice Presidents. The nomination and election procedures of the trustees and their terms of office are set by the by-laws.

4. CORPORATE GOVERNANCE

The examiner requested the board of trustees' minutes for the examination period. The Fund provided the examiner with a copy of the board minutes for the board meeting conducted in 2008 only, which is outside the scope of the examination period. As such, the Fund failed to review the activities of the Fund at its board meetings during the examination period.

The examiner recommends that the Fund's board of trustees review the activities of the Fund at least annually and note the same in the minutes.

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.

Merrill Lynch performs custody services on behalf of the Fund; however, the Fund failed to execute and maintain a service agreement with its custodian. PG Calc performs actuarial services on behalf of the Fund; however, the Fund failed to execute and maintain a service agreement with PG Calc.

The examiner recommends that the Fund execute service agreements with its third party service providers.

5. SIGNIFICANT FINANCIAL INFORMATION

The following summary table indicates the decline in various categories of the Fund's assets, liabilities, and fund balance during the period under review:

	<u>December 31,</u> <u>2011</u>	<u>December 31,</u> <u>2015</u>	<u>(Decrease)</u>
Admitted assets	\$ <u>1,231,796</u>	\$ <u>109,942</u>	\$(<u>1,121,854</u>)
Liabilities	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Minimum required fund balance	\$ 0	\$ 0*	\$ 0
Excess fund balance (surplus)	<u>1,231,796</u>	<u>109,942</u> *	<u>(1,121,854)</u>
Total annuity fund balance	\$ <u>1,231,796</u>	\$ <u>109,942</u>	\$(<u>1,121,854</u>)
Total liabilities and annuity fund balance	\$ <u>1,231,796</u>	\$ <u>109,942</u>	\$(<u>1,121,854</u>)

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

The decrease in assets, liabilities and annuity fund balance reflects the fact that the Fund issued one gift annuity on July 29, 2008 before the Fund received its special permit to issue gift annuities on October 17, 2011. The annuitant of the only annuity issued by the Fund died in September 2011. Subsequent to the annuitant's death, the Fund released the reserves on the annuity and transferred the property to the "general funds of the corporation" in 2012.

The Fund's admitted assets, as of December 31, 2015, were invested mainly in U.S. Treasury STRIPS (100%). All securities held were investment grade.

Section 1110(d) of the New York Insurance Law state, in part:

“(d) No such corporation or association shall make or issue in this state any annuity contract before obtaining a permit issued in accordance with the provisions of this section except that if its requisite reserve on its outstanding annuity agreements computed in accordance with section four thousand two hundred seventeen of this chapter does not exceed the amount of one million dollars...”

The Fund issued its only gift annuity agreement in 2008 prior to the Fund receiving its permit on October 17, 2011. The Fund established reserves of \$1,113,491 in 2008 for the annuity

agreement. By issuing the agreement, the Fund failed to obtain a permit as required by Section 1110(d) of the New York Insurance Law, prior to issuance of annuity contracts where the Fund's aggregate reserves exceeded one million dollars.

The Fund violated Section 1110(d) of the New York Insurance Law by failing to obtain a permit prior to the issuance of an annuity contract in which the Fund's aggregate reserves exceeded one million dollars.

Section 1110(b) of the New York Insurance Law states, in part:

“(b) Every such domestic corporation or association shall maintain admitted assets at least equal to the greater of (i) the sum of its reserves on its outstanding agreements, calculated in accordance with section four thousand two hundred seventeen of this chapter, and a surplus of ten per centum of such reserves, or (ii) the amount of one hundred thousand dollars....”

The Fund is required to maintain admitted assets in excess of the greater of the sum of the Fund's reserves, and a surplus of ten percent of such reserves, or the amount of one hundred thousand dollars. Since the Fund had no annuities outstanding after 2011, and therefore zero reserves, the annual minimum asset requirement is \$100,000. The examiner's review revealed that the Fund failed to file its 2012, 2013, and 2014 annual statements before each March 1 deadline the subsequent year. In response to the examiner's request, the Fund provided copies of these delinquent annual statements; however, the Fund reported zero assets for each year. Thus, the Fund was underfunded by \$100,000 as of year-ends 2012, 2013, and 2014.

The Fund violated Section 1110(b) of the New York Insurance Law by failing to maintain sufficient admitted assets as of year-ends 2012, 2013, and 2014. The examiner recommends that the Fund maintain sufficient admitted assets.

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 reviewed the one annuity contract terminated by the Fund during the examination period. The examiner's review of the file for the terminated annuity revealed that the Fund failed to obtain a copy of the death certificate of the deceased annuitant.

The examiner recommends that the Fund obtain copies of the death certificates of annuitants for annuity contracts terminated.

7. ANNUAL STATEMENT FILING

Section 307(a)(1) of the New York Insurance Law states, in part:

“Every insurer...shall file in the office of the superintendent, annually on or before the first day of March, a statement, to be known as its annual statement... showing its condition at last year-end...”

The Fund failed to file its 2012, 2013, and 2014 annual statements before each March 1 deadline of the subsequent year.

The Fund violated Section 307(a)(1) of the New York Insurance Law by failing to file its 2012, 2013, and 2014 annual statements before each March 1 deadline of the subsequent year. The examiner recommends that the Fund file its annual statement before the March 1 deadline.

8. ANNUAL STATEMENT REPORTING

The Department's Instructions for Completing Line 20.1 (Minimum required fund balance) in the Liabilities and Annuity Fund Balance section of the New York State Segregated Gift Annuity Fund Annual Statement for the year ended December 31, 2015 state, 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 \$100,000 for line 20.1, minimum required fund balance, in the Assets and Liabilities page in its 2015 Annual Statement. Since the Fund had zero reserves, the minimum required fund balance should also have been zero. The Fund overstated minimum required fund balance by \$100,000 and understated excess fund balance by the same amount in its 2015 Annual Statement. The errors above did not have an impact on total annuity fund balance in its 2015 Annual Statement.

The Department's Instructions for Completing Schedule A of the New York State Segregated Gift Annuity Fund Annual Statement for the year ended December 31, 2015 state, in part, that:

“Schedule A: Bonds – Column 1 – CUSIP Identification: CUSIP identification numbers must be listed for all publicly traded securities. If the security was owned during the previous year, the CUSIP will be from the previous year's Statement. If the security was purchased in the current year, the CUSIP can be obtained from the broker's confirmation or certificate. Leave blank for private placements...

...Column 2 – Description: Give a complete description, including the full name of the security...”

The Fund reported \$109,942 in Money Market Mutual Funds on Page 2, line 4 of its 2015 filed annual statement. In Schedule C of its filed annual statement, the Fund reported \$109,901 in cash on deposit. The examiner reviewed the Fund's bank statements and noted that \$109,942 was invested in U.S. Treasury STRIPS. The \$109,942 should have been reported on Page 2, line 1 and in Schedule A, Part 1 of its 2015 filed annual statement.

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

9. CUSTODIAN

Merrill Lynch performs custody services on behalf of the Fund. The examiner determined that Merrill Lynch is a brokerage firm, not a licensed bank or trust company.

The examiner recommends that the Fund contract with a licensed bank or trust company to serve as the Fund's custodian for its securities.

10. SUBSEQUENT EVENT

On January 13, 2017, the Fund surrendered its permit to issue charitable gift annuities.

11. SUMMARY AND CONCLUSIONS

Following are the violations, recommendations and comment contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The examiner recommends that the Fund's board of trustees review the activities of the Fund at least annually and note the same in the minutes.	5
B	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
C	The examiner recommends that the Fund execute service agreements with its third party service providers.	5
D	The Fund violated Section 1110(d) of the New York Insurance Law by failing to obtain a permit prior to the issuance of an annuity contract in which the Fund's aggregate reserves exceeded one million dollars.	7
E	The Fund violated Section 1110(b) of the New York Insurance Law by failing to maintain sufficient admitted assets as of year-ends 2012, 2013, and 2014.	7
F	The examiner recommends that the Fund maintain sufficient admitted assets.	7
G	The examiner recommends that the Fund obtain copies of the death certificates of annuitants for annuity contracts terminated.	8
H	The Fund violated Section 307(a)(1) of the New York Insurance Law by failing to file its 2012, 2013, and 2014 annual statements before each March 1 deadline of the subsequent year.	9
I	The examiner recommends that the Fund file its annual statement before the March 1 deadline.	9
J	The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.	11

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
K	The examiner recommends that the Fund contract with a licensed bank or trust company to serve as the Fund's custodian for its securities.	12
L	On January 13, 2017, the Fund surrendered its permit to issue charitable gift annuities.	13

Respectfully submitted,

_____/s/
Juan Soto
Senior Insurance Examiner

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

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

_____/s/
Juan Soto

Subscribed and sworn to before me
this _____ day of _____

APPOINTMENT NO. 31454

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, MARIA T. VULLO, 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:

JUAN SOTO

as a proper person to examine the affairs of the

***SEGREGATED GIFT ANNUITY FUND OF THE
CULINARY INSTITUTE OF AMERICA***

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 25th day of April, 2016

*MARIA T. VULLO
Acting Superintendent of Financial Services*

By:

Mark McLeod

*MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU*

