NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

REPORT ON EXAMINATION

OF THE

SEGREGATED GIFT ANNUITY FUND

OF THE

NEW YORK UNIVERSITY

CONDITION: DECEMBER 31, 2013

DATE OF REPORT: JULY 11, 2014

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EXAMINER:	CHRISTINE D. MAVOUR

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NEW YORK STATE
DEPARTMENT of
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Linda A. Lacewell
Acting Superintendent

February 6, 2019

Honorable Linda A. Lacewell
Acting Superintendent of Financial Services
New York, New York 10004

Madam:

In accordance with instructions contained in Appointment No. 31160 dated April 9, 2014, and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of New York University, hereinafter referred to as "the Fund," at its home office located at 105 East 17th Street, 3rd Floor, New York, NY 10003.

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 maintain 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 and maintaining the signature of each board member indicating that they received and read the prior report on examination. (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 amend its Investment Strategy Statement ("ISS") to remove the authorization for investing in derivatives and refrain from investing in such financial instruments. The examiner further recommends that, should the Fund decide to invest in derivatives, the Fund first file with the Department and receive approval for a derivative use plan, prior to any such investment. (See item 4 of this report)

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 not to diversify, then it should memorialize the reasons for that determination in terms of the Investment Strategy Statement's risk, return, and time horizon parameters. (See item 5 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, 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 the Fund prepare its annual statements according to the Department's instructions. The examiner recommends that the Fund exercise due care in the preparation of its filed annual statements. (See item 7 of this report)

The Fund violated Section 1110(b) of the New York Insurance Law by failing to maintain segregation of the assets of the Fund separate from the assets of the University. The examiner recommends that the proceeds from the gifts received for the gift annuity program be deposited directly into the Fund's account upon receipt of the gift. (See item 8 of this report)

The examiner recommends that the Fund record in the proper accounting period as assets of the Fund the proceeds of gifts received, to avoid understatement of current year assets and overstatement of the following year's assets. (See item 8 of this report)

Subsequent Events

The examiner's review of the Fund's 2014 and 2015 annual statement reserve listings revealed that the same issues regarding gifts received in one year not being deposited into the Fund's custodian account until the following year continued. As a result, the Fund understated Fund assets by $16,766 and $306,423, respectively, in its 2014 and 2015 annual statements. (See item 9 of this report)

A desk audit of the Fund's 2015 annual statement revealed an underfunding in the amount of $(643,937). This deficiency was cured on March 1, 2016. (See item 9 of this report)

2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2008. This examination covers the period from January 1, 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 (i.e., the completion date of the examination).

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. The examiner also reviewed the corrective actions taken by the Fund with respect to the recommendation contained in the prior report on examination. The results of such review are contained in item 10 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

New York University (the "University") is organized for the purpose of providing higher learning in liberal arts and science, and per the University's description, is considered to be the largest private research university in the United States. The University established a program to issue gift annuity agreements in return for gifts from donors, and it has done so since 1973. A special permit was granted to the University by the Department on July 19, 1974, 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.

Bank of New York ("BNY") Mellon Bank is the Fund's investment manager and custodian of the Fund's assets.

The management of the University and the Fund and all of its affairs and property are entrusted to a board of trustees. The number of trustees is limited to not less than 25, and not more than 70 regular voting trustees. As of December 31, 2013, the board consisted of 64 trustees. The trustees elect a chairperson, and one or more vice chairpersons. The nomination and election procedures of the trustees and their terms of office are set by the by-laws.

4. CORPORATE GOVERNANCE

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 examiner was unable to review the minutes of the board of trustees of the University and was informed that the minutes do not make reference to the Fund. As a result, the examiner was unable to determine whether each board member had reviewed the report on examination. The Fund did not produce any signed affidavits indicating that the trustees had received and read the prior report on examination.

The Fund violated Section 312(b) of the New York Insurance Law by failing to maintain 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 and maintaining the signature of each board member indicating that they received and read the prior report on examination.

The examiner reviewed the Investment Committee and the Finance Committee minutes to determine whether the Investment Committee or the Finance Committee approved the purchases and sales of investments during the examination period. The minutes did not on a consistent basis indicate 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.

The New York University Charitable Gift Annuity Fund Investment Policy states the following with regard to derivative investments in its "Common Guidelines" section:

> "B. Derivatives
> Exchange cleared derivatives may be used to hedge investment risks or achieve market exposures in both the CGA Fund by replicating positions that would otherwise be implemented in the cash markets."

The Fund, in its Investment Policy Statement, thereby indicated that it has the option to invest in derivatives. The Department's position is that derivatives are risky investments whose value are based upon the value of other underlying asset(s). For the Fund, the use of derivatives may be inappropriate as fluctuations in the value of derivatives may have a detrimental effect on the ability of the Fund to pay annuitants according to contract provisions. Furthermore, derivatives are inherently riskier and more complex than other investments. Therefore, it would be inappropriate for the Fund to use derivatives as investments, as the cash flows from their use are unpredictable.

The examiner recommends that the Fund amend its ISS to remove the authorization for investing in derivatives and refrain from investing in such financial instruments. The examiner further recommends that, should the Fund decide to invest in derivatives, the Fund first file with the Department and receive approval for a derivative use plan, prior to any such investment.

5. 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:

	December 31, 2008	December 31, 2013	Increase (Decrease)
Total assets	$17,088,422	$17,891,774	$ 803,352
Liabilities	$14,717,576	$14,338,484	$ (379,092)
Minimum required annuity fund balance	$ 1,471,758	$ 1,433,848	$ (37,910)
Excess fund balance (surplus)	899,088	2,119,442	1,220,354
Total annuity fund balance	$ 2,370,846	$ 3,553,290	$1,182,444
Total liabilities and annuity fund balance	$17,088,422	$17,891,774	$ 803,352

The increase in assets and annuity fund balance reflects an increase in the market value of investments in common stocks.

The decrease in liabilities reflects a decrease in the total number of annuities in force. Annuities decreased from 628 with annual payment amounts of $2,136,846 as of December 31, 2008 to a total of 605 with annual payment amounts of $2,041,702 as of December 31, 2013.

The Fund's admitted assets, as of December 31, 2013, were invested mainly in bonds (32.02%) and common stocks (65.82%). All bonds held were investment grade.

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: 10.51% invested in the securities of Dreyfus Inflation Adjusted Securities Fund; and 16.57% invested in the securities of Dreyfus Basic S&P 500 Stock Index Fund. The Fund's current concentration in the two mutual funds could make it less likely that the Fund's other assets could provide a variability to offset the risks inherent in these funds.

Based upon the concentrations in the above funds, 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 not to diversify, then it should memorialize the reasons for that determination in terms of the ISS's risk, return, and time horizon parameters. 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 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.

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's review of the 18 gift annuity agreement forms used by the Fund for gift annuities issued in New York during the examination period noted that in all 18 instances, the Fund used gift annuity agreement forms that were not filed with the Superintendent.

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, all gift annuity agreement forms that were used and not previously filed with the Superintendent.

7. ANNUAL STATEMENT REPORTING

The Instructions for the Exhibit of Annuities In Force section of the New York State Segregated Gift Annuity Fund Annual Statement for the year ended December 31, 2013 states, in part:

> IMPORTANT NOTE: For all calendar years (Columns 1 through 9), the number, annualized amount of payments on annuities in force, and reserve thereon should exclude California business and business from any state(s) that mandate a legally required segregated and distinct trust account for that particular state's annuitants.

The examiner's review of the Fund's 2013 annual statement, namely the Exhibit of Annuities In-Force, revealed several errors, including failure to provide reserve state information for all annuities in the reserve listing backing up the annuity information reported in the exhibit and the erroneous inclusion of California business in the exhibit. The examiner was unable to determine the reserve state for 301 out of the 605 annuities listed in the reserve listing backing up the Fund's 2013 Exhibit. As a result, the examiner was unable to identify the total number of annuities that were issued in states that mandate a legally required segregated and distinct trust account for that particular state's annuitants, and thereby should be excluded from the New York annual statement.

Further, the examiner determined that there are at least eight California annuities contained in the 2013 Exhibit. The eight identified California annuities along with the gift date, gift key number, gift amount, and reserve amount are noted in the table below:

California ("CA") business incorrectly included in the 2013 Exhibit of Annuities In-Force			
Gift Date	**Gift Key**	**Gift Amount**	**Reserves**
8/11/1998	44451	$ 20,000.00	$ 11,480.77
8/3/2004	44951	$ 2,000.00	$ 956.78
11/29/2004	45002	$ 50,000.00	$ 57,277.73
12/24/2004	45031	$ 14,973.35	$ 8,662.91
2/15/2008	47105	$ 100,000.00	$ 61,838.42
12/27/2010	122084	$ 200,000.00	$ 97,595.52
12/27/2012	2284484	$ 125,000.00	$ 66,352.66
12/27/2013	2289256	$ 390,000.00	$ 220,728.29
Overstatement of net present value ("NPV") of annuities			$ 524,893.08
Overstatement of net reserves reported on line 12			$ 603,627.04

Based on the above table, the examiner determined that the Fund the overstated net present value of annuities reported in the 2013 annual statement by at least $524,893.08, by the inclusion of the California annuities. The examiner further determined that the Fund overstated the net reserve by such inclusion, by $603,627.04, which is obtained by multiplying the net present value of annuities of $524,893.08 by 15%, and adding the calculated additional required reserve of $78,733.96 to the net present value of annuities to obtain the $603,627.04 overstatement of the net reserve. For the examination period, by erroneously including the California business in its income statement, the Fund overstated the amount of gifts received during the year by at least $390,000 in 2013, $125,000 in 2012, and $200,000 in 2010.

The examiner's review of the Fund's 2013 reserve listing revealed that the Fund received total gifts of $660,568 in 2013 (excluding annuities issued in California), whereas the Fund reported "amount of gifts received during the year conditioned upon annuity agreements" of $710,947 in its 2013 annual statement. Thus, the Fund overstated by $50,379 the amount of gifts received during the year in its 2013 annual statement, the amount of the difference.

The examiner recommends that the Fund prepare its annual statements according to the Department's instructions. The examiner further recommends that the Fund exercise due care in the preparation of its filed annual statements.

8. SEGREGATION OF ASSETS AND INTERNAL CONTROL

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

> "(b) … Such assets shall be segregated as separate and distinct funds, independent of all other funds of such corporation or association …"

The examiner's review of gifts received by the Fund during 2013 noted that the proceeds were deposited into a University general gift bank account before being transferred to the segregated gift annuity account. The examiner determined that on average the proceeds of the gifts were transferred from the University general gift bank account to the gift annuity account 30 days from the date of the gift. By not depositing gifts received directly into the accounts of the gift annuity fund, the Fund failed to maintain segregation of the assets of the Fund separate from the assets of the University.

The Fund violated Section 1110(b) of the New York Insurance Law by failing to maintain segregation of the assets of the Fund separate from the assets of the University. The examiner recommends that the proceeds from the gifts received for the gift annuity program be deposited directly into the Fund's account upon receipt of the gift.

The examiner's review of the Fund's 2013 annual statement reserve listing along with a review of the underlying documentation revealed that there were three gifts received in 2013 in which the proceeds of the gifts were not deposited into the Fund's accounts until 2014. Instead, the gift proceeds were deposited in the general funds of the University. The three gifts in question are: gift key No. 2289254 in the amount of $25,000.00 received on December 17, 2013; gift key No. 2289212 in the amount of $55,276.50 received on December 19, 2013; and gift key No. 2289256 in the amount of $390,000.00 received on December 27, 2013. In fact, the proceeds were only subsequently transferred to the Fund's custodian account with BNY Mellon Bank respectively on January 29, 2014, February 7, 2014, and January 29, 2014. By not recording proceeds of the three gifts received in late 2013 until 2014, the Fund understated the amount of the Fund's assets and its annuity fund balance as of December 31, 2013 by $470,276.50. A similar circumstance occurred after the end of the examination period. (See item 9 of this report).

Based on the examiner's review and the above description, the Fund does appropriately record any gifts received as income in the year received, and in addition, it does set up the appropriate reserves for each new annuitant in the year of the gift. However, by not recording the deposit within the books and records of the Fund in the same period as the recording of the receipt of the gift, the effect of such failure is that of understating the assets of the Fund and understating annuity fund balance, in addition to being inadequate accounting control.

The examiner recommends that the Fund record in the proper accounting period as assets of the Fund the proceeds of gifts received, to avoid understatement of current year assets and overstatement of the following year's assets.

9. SUBSEQUENT EVENTS

(1) The examiner's review of the Fund's 2014 and 2015 annual statement reserve listings revealed that the same issues (see item 8 of this report) regarding gifts received in one year not being deposited into the Fund's custodian account until the following year continued. For 2014, gift key No. 2289916 in the amount of $16,776.00 was received by the Fund on December 5, 2014, according to the annual statement reserve listing. The cash proceeds of the gift were transferred to the BNY Mellon Bank custodian account on February 10, 2015. As a result, the Fund understated Fund assets by $16,776 in its 2014 annual statement. For 2015, gift keys No. 2290779, 2290785, 2290787, and 2290781, in the amounts of $5,348.20, $27,087, $23,987.80, and $250,000, respectively, were received by the Fund on December 16, 2015, December 18, 2015, December 21, 2015 and December 30, 2015, respectively. The cash proceeds for gift keys No. 2290779, 2290785, and 2290787 were received by the Fund on January 5, 2016. The cash proceeds for gift key No. 2290781 were received by the Fund on January 8, 2016. As a result, the Fund understated Fund assets by $306,423 in its 2015 annual statement.

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

> "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 . . . ."

Based upon a desk audit of the Fund's 2015 annual statement, it was noted that the Fund was underfunded as of December 31, 2015, by failing to maintain the minimum surplus required pursuant to Section 1110(b) of the New York Insurance Law. The Fund reported reserves in the amount of $15,661,655 on page 2, line 12 of the filed 2015 annual statement. Accordingly, the Fund needed to maintain at least $1,566,165 in surplus (10% of net reserves of $15,661,655), at December 31, 2015. As of December 31, 2015, the Fund reported $922,228 in annuity fund balance on page 2, line 20.3 of the annual statement, indicating a deficiency of $(643,937), derived by subtracting $1,566,165 from $922,228.

Subsequently on March 1, 2016, the University deposited funds sufficient to cure the deficiency.

10. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following is the recommendation contained in the prior report on examination and the subsequent action taken by the Fund in response to the comment:

Item	Description
A	The examiner recommends that the Fund exercise due care in the preparation of its filed annual statement. The examiner's review of the annual statements filed during the examination period revealed several recurring errors in the Fund's 2013 annual statement and the exhibit of annuities. (See item 7 of this report)

11. SUMMARY AND CONCLUSIONS

Following are the violations and recommendations contained in this report:

Item	Description	Page No(s).
A	The Fund violated Section 312(b) of the New York Insurance Law by failing to maintain signed statements from the board members indicating that they received and read the prior report on examination.	6
B	The examiner recommends that the Fund establish procedures to ensure compliance 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.	6
C	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.	6
D	The examiner recommends that the Fund amend its ISS to remove the authorization for investing in derivatives and refrain from investing in such financial instruments. The examiner further recommends that, should the Fund decide to invest in derivatives, the Fund first file with the Department and receive approval for a derivative use plan, prior to any such investment.	7
E	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 not to diversify, then it should memorialize the reasons for that determination in terms of the ISS's risk, return, and time horizon parameters.	9
F	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.	10
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.	10

Item	Description	Page No(s).
H	The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.	12
I	The examiner recommends that the Fund exercise due care in the preparation of its filed annual statements.	12
J	The Fund violated Section 1110(b) of the New York Insurance Law by failing to maintain segregation of the assets of the Fund separate from the assets of the University.	13
K	The examiner recommends that the proceeds from the gifts received for the gift annuity program be deposited directly into the Fund's account upon receipt of the gift.	13
L	The examiner recommends that the Fund record in the proper accounting period as assets of the Fund the proceeds of gifts received, to avoid understatement of current year assets and overstatement of the following year's assets.	14
M	The examiner's review of the Fund's 2014 and 2015 annual statement reserve listings revealed that the same issues regarding gifts received in one year not being deposited into the Fund's custodian account until the following year continued. As a result, the Fund understated Fund assets by $16,766 and $306,423, respectively, in its 2014 and 2015 annual statements.	15
N	A desk audit of the Fund's 2015 annual statement revealed an underfunding in the amount of $(643,937). This deficiency was cured on March 1, 2016.	15

Respectfully submitted,

/s/

Christine D. Mavour
Senior Insurance Examiner

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

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

/s/

Christine D. Mavour

Subscribed and sworn to before me

this _________ day of _________________________

APPOINTMENT NO. 31160

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:

CHRISTINE MAVOUR

as a proper person to examine the affairs of the

SEGREGATED GIFT ANNUITY FUND OF THE
NEW YORK UNIVERSITY

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 9th day of April, 2014

BENJAMIN M. LAWSKY
Superintendent of Financial Services

By:

MICHAEL MAFFEI
ASSISTANT DEPUTY SUPERINTENDENT
AND CHIEF OF THE LIFE BUREAU

NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
EXCELSIOR