



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
REPORT ON EXAMINATION  
OF THE  
SEGREGATED GIFT ANNUITY FUND  
OF THE  
LINCOLN CENTER FOR THE PERFORMING ARTS, INC.

CONDITION:

DECEMBER 31, 2016

DATE OF REPORT:

SEPTEMBER 29, 2017

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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OF THE

SEGREGATED GIFT ANNUITY FUND

OF THE

LINCOLN CENTER FOR THE PERFORMING ARTS, INC.

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EXAMINER:

IKENNA ONYEGWARA

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

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Andrew M. Cuomo  
Governor

Maria T. Vullo  
Superintendent

February 6, 2018

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

Madam:

In accordance with instructions contained in Appointment No. 31602, dated April 20th 2017 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Lincoln Center for the Performing Arts, Inc., hereinafter referred to as “the Fund,” at its home office located at 70 Lincoln Center Plaza, New York, NY 10023.

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 directors 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 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. (See item 5 of this report).

The examiner recommends that the Fund avoid or mitigate situations that have the appearance of a conflict of interest, by paying greater scrutiny to any high concentrations in investments that are either issued or sponsored by the investment manager and establishing a Board of Directors (or a committee thereof) or senior management-level policy or procedures related to conflicts of interest for investment managers. (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 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 social security death index information as documentary evidence that supports the termination of an annuity contract. (See item 6 of this report).

## 2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2011. This examination covers the period from January 1, 2012 through December 31, 2016. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2016 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, 2016 to determine whether the Fund's filed 2016 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 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 Lincoln Center for the Performing Arts, (the “Center”) is organized for the purpose of sustaining, encouraging and promoting musical and performing arts, including opera, concerts, ballet, drama and other forms of artistic expressions. The Center has been issuing gift annuity agreements since 1994. A special permit was granted to the Center by the Department on February 11, 1997, authorizing it to issue gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

The Fund’s custodian is Bank of New York Mellon (“BNY Mellon”). BNY Mellon handles all the investment transactions of the Fund, including the collection of interest and dividend payments. BNY Mellon also serves as the Fund’s attorney-in-fact, prepares the Fund’s annual statement, handles the payments to annuitants and calculates the reserve liability of the Fund.

The management of the Center 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 three and not more than 80 regular voting trustees. As of December 31, 2016, the board consisted of 80 trustees. The trustees elect the Chairman of the Board, one or more Vice Chairmen, the President, the Managing Director, the Secretary, the Treasurer, one or more Vice Presidents, and one or more Assistant Treasurers as the Board sees fit. The nomination and election procedures of the directors and their terms of office are set by the by-laws.

#### 4. CORPORATE GOVERNANCE

The examiner requested the minutes of the meetings of the board of directors and all committees thereof pertaining to the Fund for the examination period, in order to determine board review of Fund activities. The Fund was unable to provide evidence of any board review. In response to the request the Fund stated that, “The segregated gift annuities held by Lincoln Center for the Performing Arts, Inc. total approximately 0.1% of the institution’s total assets. Based on the immateriality, LCPA passed on discussing at a board meeting.”

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



## 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, <u>2011</u>	December 31, <u>2016</u>	Increase (Decrease)
Admitted assets	\$ <u>1,020,208</u>	\$ <u>858,135</u>	\$( <u>162,073</u> )
Liabilities	\$ <u>924,507</u>	\$ <u>764,315</u>	\$( <u>160,192</u> )
Minimum required fund balance	\$ 92,451	\$ 76,431	\$ (16,020)
Excess fund balance (surplus)	<u>3,250</u>	<u>17,388</u>	<u>14,138</u>
Total annuity fund balance	\$ <u>95,701</u>	\$ <u>93,819</u>	\$ <u>(1,882)</u>
Total liabilities and annuity fund balance	\$ <u>1,020,208</u>	\$ <u>858,134</u>	\$( <u>162,074</u> )

The decrease in assets, liabilities and annuity fund balance reflects a decrease in the total number of annuities in force. Annuities decreased from 24 with annual payment amounts of \$103,805 as of December 31, 2011 to a total of 22 with annual payment amounts of \$99,496 as of December 31, 2016.

The Fund's admitted assets, as of December 31, 2016, were invested mainly in bonds (53.20%) and common stock (40.96%). All bonds held were investment grade.

According to the 2016 annual statement, the Fund reported 21.2% of its admitted assets invested in the securities of the Dreyfus Strategic Value Fund and 19.75% of its admitted assets invested in the securities of the BNY Mellon Large Cap STK-M. The Fund's current concentration in these holdings could make it less likely that the Fund's other assets can provide a variability to offset the risks inherent in these investments.

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 ("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.

According to the 2016 annual statement on file, the Fund reported 19.75% of its admitted assets invested in securities issued by BNY Mellon. BNY Mellon also serves as the Fund's investment manager. This relationship may create a conflict of interest that can negatively impact the interests of the Fund's annuitants.

The examiner recommends that the Fund avoid or mitigate situations that have the appearance of a conflict of interest, by paying greater scrutiny to any high concentrations in investments that are either issued or sponsored by the investment manager and establishing a Board of Directors (or a committee thereof) or senior management-level policy or procedures related to conflicts of interest for investment managers.

## 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 the 3 gift annuity agreement forms used by the fund for gift annuities issued in New York during the examination period noted that in all 3 instances, the Fund used gift annuity agreement 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 five annuity contracts terminated during the examination period revealed that in all of the five cases (100%) reviewed, the Fund did not 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 the termination of an annuity contract.

## 7. SUMMARY AND CONCLUSIONS

Following are the violations and recommendations 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 directors review the activities of the Fund at least annually and note the same in the minutes.	5
B	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.	6
C	The examiner recommends that the Fund avoid or mitigate situations that have the appearance of a conflict of interest, by paying greater scrutiny to any high concentrations in investments that are either issued or sponsored by the investment manager and establishing a Board of Directors (or a committee thereof) or senior management-level policy or procedures related to conflicts of interest for investment managers.	7
D	The Fund violated Section 1110(a) of the New York Insurance Law by using gift annuity agreement form that differed from the gift agreement forms that were filed with the Superintendent.	8
E	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
F	The examiner recommends that upon the death of the annuitant, the Fund obtain and maintain a death certificate or other reliable documentary evidence that supports the termination of an annuity contract.	8

Respectfully submitted,

\_\_\_\_\_/s/  
Ikenna Onyegwara  
Insurance Examiner

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

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

\_\_\_\_\_/s/  
Ikenna Onyegwara

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_

*APPOINTMENT NO. 31602*

*NEW YORK STATE*

*DEPARTMENT OF FINANCIAL SERVICES*

*I, MARIA T. VULLO, 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:*

*IKENNA ONYEGWARA*

*as a proper person to examine the affairs of the*

*SEGREGATED GIFT ANNUITY FUND OF THE  
LINCOLN CENTER FOR THE PERFORMING ARTS, 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 20th day of April, 2017*

*MARIA T. VULLO  
Superintendent of Financial Services*

*By:*

*Mark McLeod*

*MARK MCLEOD  
DEPUTY CHIEF - LIFE BUREAU*

