



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

CONDITION:

DECEMBER 31, 2012

DATE OF REPORT:

DECEMBER 6, 2013

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

REPORT ON EXAMINATION

OF THE

SEGREGATED GIFT ANNUITY FUND

OF THE

UNIVERSITY AT BUFFALO FOUNDATION, INC.

AS OF

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EXAMINER:

PHILIP YOUSSEF

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Shirin Emami  
Acting Superintendent

January 25, 2016

Honorable Shirin Emami  
Acting Superintendent of Financial Services  
New York, New York 10004

Madam:

In accordance with instructions contained in Appointment No. 30941, 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 University at Buffalo Foundation, Inc., hereinafter referred to as “the Fund.” The Fund’s home office is located at The Center For Tomorrow, Flint and Service Center Roads, Amherst, New York 14260.

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's review of a sample of transactions did not reveal any 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 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 contract with a licensed bank or trust company to serve as the Fund's custodian for the Fund's securities. (See item 6 of this report)

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

The examiner recommends that the Fund exercise due care in the preparation of its filed annual statements. (See item 7 of this report)

The examiner recommends that the Fund obtain yearly valuations of its investment in real estate. (See item 8 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 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 9 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

The University at Buffalo Foundation, Inc. (the “Foundation”) is organized for the purpose of promoting education at the University at Buffalo, State University of New York. Under the provisions of its by-laws, the Foundation is permitted to issue gift annuity agreements and it has done so since 1990. A special permit was granted to the Foundation by the Department on December 18, 1998, 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 Foundation on behalf of the Fund. The Fund uses Gift Wrap, a planned giving software, from PG Calc Inc., which provides custom computer programming services for charitable organizations, to calculate the annuity benefits and reserves. The Fund’s custodian is Charles Schwab & Company, Inc.

The management of the Foundation 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 5 and not more than 25 regular voting trustees. As of December 31, 2012, the board consisted of 25 trustees. The trustees elect a chair of the board of trustees, the vice chair of the board trustees, the secretary, the treasurer, and such other officers as the trustees shall from time to time deem necessary. The term of office of the trustees are set by the charter and by-laws.

#### 4. SIGNIFICANT FINANCIAL INFORMATION

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

|                               | <u>December 31,</u><br><u>2007</u> | <u>December 31,</u><br><u>2012</u> | <u>Increase</u>    |
|-------------------------------|------------------------------------|------------------------------------|--------------------|
| Admitted assets               | <u>\$3,243,597</u>                 | <u>\$9,434,301</u>                 | <u>\$6,190,704</u> |
| Liabilities                   | <u>\$1,890,362</u>                 | <u>\$4,765,633*</u>                | <u>\$2,875,271</u> |
| Minimum required surplus      | \$ 189,036                         | \$ 476,563*                        | \$ 287,527         |
| Unassigned funds (surplus)    | <u>1,164,199</u>                   | <u>4,192,104</u>                   | <u>3,027,905</u>   |
| Total surplus                 | <u>\$1,353,235</u>                 | <u>\$4,668,668*</u>                | <u>\$3,315,433</u> |
| Total liabilities and surplus | <u>\$3,243,597</u>                 | <u>\$9,434,301</u>                 | <u>\$6,190,704</u> |

Note: Items noted with an asterisk were determined during the examination. See item 7 of this report.

The increase in assets, liabilities and surplus reflects an increase in the total number of annuities in force. Annuities increased from 45 with annual payment amounts of \$221,991 as of December 31, 2007 to a total of 70 with annual payment amounts of \$468,095 as of December 31, 2012.

The increase in assets and surplus is also attributable to gross amounts transferred from general funds of the corporation of: \$658,532 in 2008; \$202,277 in 2009; \$715,834 in 2011; and \$1,337,462 in 2012. The gross amounts transferred from general funds of the corporation incurred during the examination period is offset by gross amounts transferred to general funds of the corporation of \$884,595 in 2010.

The Fund's admitted assets, as of December 31, 2012, were mainly invested in common stocks (90.56%) and other invested assets, real estate (9.27%).

## 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. CUSTODIAN

The Fund maintains Charles Schwab & Company, Inc. (“Charles Schwab”) as custodian of the Fund’s legal reserve assets. The examiner determined that Charles Schwab 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 the Fund’s securities.

## 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 the 2012 and 2011 Annual Statements 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 and 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 the 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 the 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 the 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 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 each of the years during the exam period (January 1, 2008 through December 31, 2012), state:

Instructions for Completing Line 20.1 for the 2008, 2009, 2010, 2011, and 2012 annual statements 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 failed to report any 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.

The Fund reported “Net present value of annuities” of \$4,144,029 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 \$621,604, 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 \$4,765,633, or \$476,563. The Fund therefore understated net reserve and total liabilities by \$621,604, and overstated total annuity fund balance by the same amount. Taking into account the above errors, the Fund should have reported “Total Annuity Fund Balance” of \$4,668,668 as of December 31, 2012.

The Fund reported “Net present value of annuities” of \$4,543,433 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 \$681,515, 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 \$5,224,948, or \$522,495. The Fund therefore understated net reserve and total liabilities by \$681,515, and overstated total annuity fund balance by the same amount. Taking into account the above errors, the Fund should have reported “Total Annuity Fund Balance” of \$2,313,987 as of December 31, 2011.

The Fund reported “Net present value of annuities” of \$3,559,938 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 \$533,991, 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 \$4,093,929, or \$409,393. The Fund therefore understated net reserve and total liabilities by \$533,991, and overstated total annuity fund balance by the same amount. Taking into account the above errors, the Fund should have reported "Total Annuity Fund Balance" of \$1,717,745 as of December 31, 2010.

The Fund reported “Net present value of annuities” of \$2,772,738 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 \$277,274, an amount consisting of 10% 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 \$3,050,012, or \$305,001. The Fund therefore understated net reserve and total liabilities by \$277,274, and overstated total annuity fund balance by \$277,184. Taking into account the above errors, the Fund should have reported "Total Annuity Fund Balance" of \$2,166,096 as of December 31, 2009.

The Fund reported “Net present value of annuities” of \$2,035,229 as of December 31, 2008. 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 \$101,761, an amount consisting of 5% 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 \$2,136,990, or \$213,699. The Fund therefore understated net reserve and total liabilities by \$101,761, and overstated total annuity fund balance by the same amount. Taking into account the above errors, the Fund should have reported "Total Annuity Fund Balance" of \$1,095,869 as of December 31, 2008.

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

The Department's instructions for all annual statements for the examination period (2008, 2009, 2010, 2011, and 2012 annual statements), namely line item 20.3 (Total Annuity Fund Balance), in its Assets and Liabilities page state, in part:

“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.”

The Department's instructions for all annual statements for the examination period (2008, 2009, 2010, 2011, and 2012 annual statements), namely line item 15 (Annuity Fund Balance at end of year), in its Income and Disbursements page state, in part:

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 erroneously reported Annuity Fund Balance of \$9,434,301 in the Income and Disbursements page of its 2012 Annual Statement which did not agree with the amount reported for Annuity Fund Balance of \$5,290,272 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 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 \$4,668,668 in its 2012 Annual Statement.

The Fund erroneously reported Annuity Fund Balance of \$7,538,935 in the Income and Disbursements page of its 2011 Annual Statement which did not agree with the amount reported for Annuity Fund Balance of \$2,995,502 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 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 \$2,313,987 in its 2011 Annual Statement.

The Fund erroneously reported Annuity Fund Balance of \$5,811,674 in the Income and Disbursements page of its 2010 Annual Statement which did not agree with the amount reported for Annuity Fund Balance of \$2,251,736 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 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 \$1,717,745 in its 2010 Annual Statement.

The Fund erroneously reported Annuity Fund Balance of \$5,216,108 in the Income and Disbursements page of its 2009 Annual Statement which did not agree with the amount reported for Annuity Fund Balance of \$2,443,280 in the Assets and Liabilities page of its 2009 Annual Statement, which amount was also inaccurate due to the failure to take into account the 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 \$2,166,096 in its 2009 Annual Statement.

The Fund erroneously reported Annuity Fund Balance of \$3,232,859 in the Income and Disbursements page of its 2008 Annual Statement which did not agree with the amount reported for Annuity Fund Balance of \$1,197,630 in the Assets and Liabilities page of its 2008 Annual Statement, which amount was also inaccurate due to the failure to take into account the 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 \$1,095,869 in its 2008 Annual Statement.

The examiner recommends that the Fund exercise due care in the preparation of its filed annual statements.

## 8. OTHER INVESTED ASSETS

The Fund reported market value of other invested assets of \$875,000 in each of the Fund's filed annual statements during the examination period (January 1, 2008 through December 31, 2012). The other invested asset is a real estate holding of three lots in Placerville, California. Schedule D - Part 1 of the Fund's 2012 Annual Statement reveals the most recent valuation of the real estate holding was as of May 23, 2005.

The examiner recommends that the Fund obtain yearly valuations of its investment in real estate.

## 9. 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 citation:

| <u>Item</u> | <u>Description</u>   |
|-------------|--|
| A           | <p>The examiner recommends the Fund maintain a death certificate or an obituary in the annuitant's file as a supporting documentation for policy terminations.</p> <p>The Fund obtains a copy of the death certificate associated with each annuity termination.</p> |

10. 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 contract with a licensed bank or trust company to serve as the Fund's custodian for the Fund's securities. | 7                  |
| B           | The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.                                  | 10                 |
| C           | The examiner recommends that the Fund exercise due care in the preparation of its filed annual statements.                                       | 12                 |
| D           | The examiner recommends that the Fund obtain yearly valuations of its investment in real estate.   | 13                 |

Respectfully submitted,

\_\_\_\_\_/s/  
Philip Youssef  
Insurance Examiner

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

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

\_\_\_\_\_/s/  
Philip Youssef

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

APPOINTMENT NO. 30941

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:

**PHILIP YOUSSEF**

as a proper person to examine the affairs of the

**SEGREGATED GIFT ANNUITY FUND OF THE  
UNIVERSITY AT BUFFALO 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 March, 2013

BENJAMIN M. LAWSKY  
Superintendent of Financial Services

By:

  
\_\_\_\_\_  
MICHAEL MAFFEI  
ASSISTANT DEPUTY SUPERINTENDENT  
AND CHIEF OF THE LIFE BUREAU

