



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
COLLEGE OF NEW ROCHELLE

CONDITION:

DECEMBER 31, 2013

DATE OF REPORT:

MARCH 20, 2015

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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EXAMINER:

PABLO RAMOS

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

March 16, 2017

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

Madam:

In accordance with instructions contained in Appointment No. 31142, dated April 8, 2014 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the College of New Rochelle, hereinafter referred to as “the Fund.” The Fund’s home office is located at 29 Castle Place, New Rochelle, New York 10805.

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 Fund obtain brokers' advices or other supporting documentation for its investment transactions and reconcile such advices to the monthly statements provided by the custodian. (See item 4 of this report)

The Fund violated Section 1110(b) of the New York Insurance Law when it failed to maintain admitted assets at least equal to 110% of the total amount of reserves on its outstanding agreements. (See item 5 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 to deviate from such a recommendation, 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 examiner recommends that the Fund adopt an Investment Strategy Statement ("ISS"). Such a Statement should refer to the prudent investor standard as defined in Section 11-2.3 of the Estates, Powers and Trusts Law, which standard, as specified in Section 1110(b) of the New York Insurance Law, governs the manner in which the required admitted assets of a segregated gift annuity fund shall be invested. The Fund should exercise reasonable care, skill and caution to make and implement investment and management decisions as a prudent investor would for the entire portfolio. In doing so, the Fund should take into account present and future distributions to or for the beneficiaries and create a plan to meet the needs of those distributions to establish the ISS's risk, return, and time horizon objectives. (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 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 7 of this report)

The examiner recommends that the Fund prepare and maintain accounting records, including but not limited to, a trial balance, general ledger, and transaction registers that reconcile to its filed annual statements. A similar recommendation appeared in the prior report on examination. (See item 8 of this report)

Subsequent Events

On October 18, 2016, the College's president resigned her position. She was replaced by an interim president. (See item 9 of this report)

On May 12, 2016, the Department notified the Fund of its insolvent condition. The College subsequently cured the insolvency by making two payments into the Fund. (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

The College of New Rochelle (“the College”) is organized for the purpose of encouraging the intellectual development of persons through the maintenance of the highest standards of academic excellence and educational growth. Under the provisions of its by-laws, the College is permitted to issue gift annuity agreements and it has done so since 1994. A special permit was granted to the College by the Department on July 6, 1999, authorizing it to issue gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

Charles Schwab Institutional (“Charles Schwab”) is the custodian for the Fund’s investments. The Fund retains Cornerstone Advisors Asset Management, Inc. (“Cornerstone”) for investment management services and administration of the gift annuity program, including processing of gift annuity applications, calculating reserves, and remitting annuity payments to annuitants. Cornerstone retains PG Calc Corporation Incorporated, a support service company for charitable organizations, to provide the database of gifts, issue annuity payments, and prepare the reserve and liability reports required for the Fund’s annual statements. The Fund engages with the Bookkeeping Agency for the preparation of the annual statements. The Fund issues the annuities and maintains the annuity contract files at its home office. The Fund reviews its investment transactions and maintains all records of the gift annuity program.

The management of the College and the Fund and all of its affairs and property are entrusted to a board of trustees. The number of trustees is limited to 28 and not less than 5 regular voting trustees. As of December 31, 2013, the board consisted of 26 trustees. The trustees elect a Chairman, President, Vice Chairman, Secretary, and a Treasurer-Business Manager. The nomination and election procedures of the trustees and their term of office are set by the by-laws. The current President of the College is serving on an interim basis. (See item 9 of this report)

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 Fund failed to maintain statements signed by each board member indicating that they 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 transactions for the period under examination and noted that the Fund did not obtain brokers’ advices or other supporting documentation for its investment transactions to reconcile such advices to the monthly statements furnished by the custodian.

The examiner recommends that the Fund obtain brokers’ advices or other supporting documentation for its investment transactions and reconcile such advices to the monthly statements provided by the custodian.

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:

	<u>December 31,</u> <u>2008</u>	<u>December 31,</u> <u>2013</u>	<u>Increase</u> <u>(Decrease)</u>
Admitted assets	\$ <u>697,560</u>	\$ <u>744,994</u>	\$ <u>47,434</u>
Liabilities	\$ <u>596,986</u>	\$ <u>735,871</u>	\$ <u>138,885</u>
Minimum required fund balance	\$ 59,699*	\$ 73,587	\$ 13,888
Excess fund balance (surplus)	<u>40,875*</u>	<u>(64,464)</u>	<u>(105,339)</u>
Total annuity fund balance	\$ <u>100,574</u>	\$ <u>9,123</u>	\$ <u>(91,451)</u>
Total liabilities and annuity fund balance	\$ <u>697,560</u>	\$ <u>744,994</u>	\$ <u>47,434</u>

Note: The amounts denoted with an asterisk were determined during the current examination. Any differences are due to rounding.

The increase in liabilities reflects an increase in annual payments despite a decrease in annuities in force. Annual payments increased from \$75,898 in 2008 to \$93,283 in 2013; in contrast, annuities in force decreased from 30 as of December 31, 2008 to 27 as of December 31, 2013.

The decrease in annuity fund balance is due in part to net increases in actuarial reserves of: \$47,055 in 2013, \$54,752 in 2011, \$51,392 in 2010, and \$9,805 in 2009. The net increase in actuarial reserves during the examination period also reflected a net decrease in actuarial reserves of \$24,117 in 2012.

Section 1110(b) of the New York Insurance Law states, in 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 . . . and a surplus of ten per centum of such reserves, or (ii) the amount of one hundred thousand dollars.”

As of December 31, 2013, the Fund reported admitted assets of \$744,994, net reserves of \$735,871, total annuity fund balance of \$9,123 and minimum required fund balance of \$73,587. The Fund is required to maintain admitted assets at least equal to \$809,458 (110% of \$735,871). Therefore, the Fund is underfunded in the amount of \$64,464.

The Fund violated Section 1110(b) of the New York Insurance Law when it failed to maintain admitted assets at least equal to 110% of the total amount of reserves on its outstanding agreements.

After the completion date of field work, based on an audit of the 2015 annual statement, it was further determined that the Fund was insolvent, with a deficiency in the amount of \$195,677. Subsequently, the College injected additional funds into the Fund, curing the deficiency. (See item 9 of this report)

The Fund's admitted assets, as of December 31, 2013, were invested mainly in bonds (93.94%).

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 34.43% of invested assets invested in the securities of Federal Home Loan Mortgage Corporation (“FHLMC”) bond and 23.49% invested in the securities of Federal National Mortgage Association (“FNMA”) bond. The Fund's current concentration in the two U.S. government sponsored mortgage-backed bonds make it highly unlikely that the Fund's remaining assets could provide the variability to offset the risks inherent in the bonds. In fact, the Fund invests 62.37% of its admitted assets in U.S. government sponsored mortgage-backed bonds.

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 to deviate from such a recommendation, then it should memorialize the reasons for that determination in terms of the Investment Strategy Statement's (“ISS”) 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 ISS'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.

The examiner recommends that the Fund adopt an Investment Strategy Statement. Such a Statement should refer to the prudent investor standard as defined in Section 11-2.3 of the Estates, Powers and Trusts Law, which standard, as specified in Section 1110(b) of the New York Insurance Law, governs the manner in which the required admitted assets of a segregated gift annuity fund shall be invested. The Fund should exercise reasonable care, skill and caution to make and implement investment and management decisions as a prudent investor would for the entire portfolio. In doing so, the Fund should take into account present and future distributions to or for the beneficiaries and create a plan to meet the needs of those distributions to establish the ISS's risk, return, and time horizon objectives.

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.

Based on the examiner's review of a sample of six annuity contracts terminated during the examination period, in four of the six cases reviewed the Fund failed to obtain a copy of the death certificate to confirm termination of the contract.

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

7. CUSTODIAN

The Fund maintains 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.

8. ANNUAL STATEMENT WORKPAPERS

The examiner requested a copy of the Fund's trial balance, general ledger, and transaction registers for the Fund's 2013 annual statement. The Fund was unable to produce a copy of the Fund's trial balance and general ledger for the 2013 annual statement or for any annual statements filed during the period under examination.

The examiner recommends that the Fund prepare and maintain accounting records, including but not limited to, a trial balance, general ledger, and transaction registers that reconcile to its filed annual statements. A similar recommendation appeared in the prior report on examination.

9. SUBSEQUENT EVENTS

On October 18, 2016, the President of the College resigned her position. This event occurred after it became known around the beginning of the school year that the College had significant unmet financial obligations that had accrued over a period of time. The investigation into the matter is ongoing and now involves the U.S. Attorney's Office. An Interim President of the College has been named.

After an audit of the College's 2015 annual statement ("statement"), it was determined that the Fund was insolvent. On page 2, line 12 of the statement, the Fund reported reserves in the amount of \$639,928. Based on this amount, the Fund was required to maintain at least \$703,921 in admitted assets. Assets were \$508,244 as of December 31, 2015, indicating a deficiency of \$195,677. Furthermore, it was noted that \$92,623 was withdrawn from the Fund during the period from 2012 through 2015, thereby exacerbating the financial insolvency of the Fund.

On May 12, 2016, the Department notified the Fund of the insolvency and the need to fund the deficiency immediately. In response, the College made two payments of \$97,838.50 each, one on October 20, 2016 and the second on November 18, 2016. The two payments were sufficient to cover the deficiency causing the Fund's insolvent condition.

10. PRIOR REPORT SUMMARY AND CONCLUSIONS

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

<u>Item</u>	<u>Description</u>
A	<p>The examiner recommends that the Fund exercise due care in the preparation of its filed annual statement.</p> <p>The Fund failed to produce a copy of its trial balance and general ledger for the 2013 annual statement or for any annual statements filed during the period under examination. A similar recommendation is contained in this report. (See item 8 of this report)</p>

11. SUMMARY AND CONCLUSIONS

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

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
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 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.	6
C	The examiner recommends that the Fund obtain brokers' advices or other supporting documentation for its investment transactions and reconcile such advices to the monthly statements provided by the custodian.	6
D	The Fund violated Section 1110(b) of the New York Insurance Law when it failed to maintain admitted assets at least equal to 110% of the total amount of reserves on its outstanding agreements.	8
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 to deviate from such a recommendation, then it should memorialize the reasons for that determination in terms of the ISS's risk, return, and time horizon parameters.	8

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
F	The examiner recommends that the Fund adopt an Investment Strategy Statement. Such a Statement should refer to the prudent investor standard as defined in Section 11-2.3 of the Estates, Powers and Trusts Law, which standard, as specified in Section 1110(b) of the New York Insurance Law, governs the manner in which the required admitted assets of a segregated gift annuity fund shall be invested. The Fund should exercise reasonable care, skill and caution to make and implement investment and management decisions as a prudent investor would for the entire portfolio. In doing so, the Fund should take into account present and future distributions to or for the beneficiaries and create a plan to meet the needs of those distributions to establish the ISS's risk, return, and time horizon objectives.	9
G	The examiner recommends that the Fund obtain copies of the death certificates of annuitants for annuity contracts terminated.	10
H	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.	11
I	The examiner recommends that the Fund prepare and maintain accounting records, including but not limited to, a trial balance, general ledger, and transaction registers that reconcile to its filed annual statements. A similar recommendation appeared in the prior report on examination.	11
J	On October 18, 2016, the President of the College resigned her position.	12
K	On May 12, 2016, the Department notified the Fund of its insolvent condition. The Fund subsequently received two injections of funds resolving the insolvent condition existing at December 31, 2015.	12

Respectfully submitted,

_____/s/
Pablo Ramos
Insurance Examiner

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

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

_____/s/
Pablo Ramos

Subscribed and sworn to before me
this _____ day of _____

APPOINTMENT NO. 31142

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:

PABLO RAMOS

as a proper person to examine the affairs of the

**SEGREGATED GIFT ANNUITY FUND OF THE
COLLEGE OF NEW ROCHELLE**

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 8th day of April, 2014

BENJAMIN M. LAWSKY
Superintendent of Financial Services

By:


MICHAEL MAFFEI

ASSISTANT DEPUTY SUPERINTENDENT
AND CHIEF OF THE LIFE BUREAU

