



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
CORTLAND COLLEGE FOUNDATION, INC.

CONDITION:

DECEMBER 31, 2016

DATE OF REPORT:

DECEMBER 20, 2017

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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OF THE

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OF THE

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EXAMINER:

JUAN SOTO

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

August 23, 2018

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

Madam:

In accordance with instructions contained in Appointment No. 31589, dated April 20, 2017 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Cortland College Foundation, Inc , hereinafter referred to as the “Fund.” The Fund’s home office is located at 35 Graham Avenue, Brockway Hall, Cortland, New York 13045.

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 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 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 ("ISS") risk, return, and time horizon parameters. (See item 5 of this report)

The examiner recommends that the Fund adopt an Investment Strategy Statement that refers 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 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 advisor and establishing a Board of Directors (or a committee thereof) or senior management-level policy or procedures related to conflicts of interest for investment advisors. (See item 5 of this report)

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 such information terminating an annuity contract. (See item 6 of this report)

The examiner recommends that the Fund prepare its filed annual statements in accordance with the instructions for completing the New York State Segregated Gift Annuity Fund Annual Statement. (See item 7 of this report)

The examiner recommends that the Fund prepare and maintain books and records, including a trial balance, general ledger, and transaction registers that reconcile to its filed annual statements. (See item 8 of this report)

2. SCOPE OF EXAMINATION

This is the first examination of the Fund since it received its special permit to issue gift annuity agreements in 2012. This examination covers the period from March 27, 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.

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 Cortland College Foundation, Inc. (the “Foundation”) was organized in 1948 for the purpose of soliciting and receiving contributions and pledges on behalf of the State University of New York at Cortland (the “College”). Assets received are used in assisting the College in funding worthwhile educational projects, scholarships and awards, which might otherwise not be supported. The Foundation is responsible for managing the college’s endowment, oversight of the gift annuity program, and also hold real property for the benefit of the College. The Foundation has been issuing gift annuity agreements since 2004. A special permit was granted to the Foundation by the Department on March 27, 2012 for the purpose of issuing gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

Glenmeade Trust Company performs investment management and custodial services on behalf of the Fund. PG Calc serves as the Fund’s program administrator and is responsible for the maintenance of gift annuities. All other operations related to the issuance and settlement of annuity agreements are handled by the Fund.

The management of the Foundation and the Fund and all of its affairs and property are entrusted to a board of directors consisting primarily of elected volunteers. The number of directors is limited to 35 regular voting directors. As of December 31, 2016, the board consisted of 25 directors. The directors elect a chairperson, a vice chairperson, a secretary and a treasurer. The nomination and election procedures of the trustees and their terms of office are set by the by-laws.

4. CORPORATE GOVERNANCE

The examiner reviewed the board of directors' minutes to determine whether the board approved the purchases and sales of investments during the examination period. The minutes did not contain any indication that the board approved the purchases and sales of investments during the examination period.

The examiner recommends that the board of directors, or a committee thereof, approve the purchases and sales of all investments and note such approvals in the minutes.

5. SIGNIFICANT FINANCIAL INFORMATION

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

	December 31, <u>2012</u>	December 31, <u>2016</u>	Increase (Decrease)
Admitted assets	\$ <u>228,149</u>	\$ <u>1,077,593</u>	\$ <u>849,444</u>
Liabilities	\$ <u>133,617</u>	\$ <u>683,231</u>	\$ <u>549,614</u>
Minimum required fund balance	\$ 13,362	\$ 68,323	\$ 54,961
Excess fund balance (surplus)	<u>81,170</u>	<u>326,039</u>	<u>244,869</u>
Total annuity fund balance	\$ <u>94,532</u>	\$ <u>394,362</u>	\$ <u>299,830</u>
Total liabilities and annuity fund balance	\$ <u>228,149</u>	\$ <u>1,077,593</u>	\$ <u>849,444</u>

The increase in assets, liabilities and annuity fund balance reflects an increase in the total number of annuities in force as a result of the assumption of 18 gift annuities transferred from the Research Foundation of the State University of New York (SUNY Research Foundation) during the year 2013. The assumption was reviewed by the Department and non-disapproved on June 4, 2013. Annuities increased from 5 with annual payment amounts of \$16,463 as of December 31, 2012 to a total of 26 with annual payment amounts of \$90,404 as of December 31, 2016.

The Fund's admitted assets, as of December 31, 2016, were invested mainly in other invested assets (97.19%). All bonds held were investment grade.

Section 1409(a) of the New York Insurance Law states, in part:

“(a)...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 2016 annual statement, the Fund reported 40.04% of its admitted assets invested in the securities of the Glenmeade Core Fixed Income and 24.45% in the Vanguard Index Funds S&P 500 ETF. The Fund's current concentration in the funds makes it highly unlikely that the Fund's other assets can provide a variability to offset the risks inherent in these two funds.

Based upon the concentration 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.

The examiner's review of the Fund's Investment Strategy Statement revealed that it failed to refer to the prudent investor standard as defined in Section 11-2.3 of the Estates, Powers and Trusts Law.

The examiner recommends that the Fund adopt an Investment Strategy Statement that refers 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.

According to the 2016 annual statement on file, the Fund reported 44.83% of its admitted assets invested in securities issued by Glenmeade Trust Company. Glenmeade Trust Company also serves as the Fund's investment advisor. 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 advisor and establishing a Board of Directors (or a committee thereof) or senior management-level policy or procedures related to conflicts of interest for investment advisors.

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 a sample of 2 annuity contracts terminated revealed that the Fund did not obtain a copy of the death certificate to confirm termination of the annuity contract in both cases.

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 such information terminating an annuity contract.

7. ANNUAL STATEMENT REPORTING

The Department's General Instructions for the New York State Segregated Gift Annuity Fund Annual Statement state, in part:

“(10) All amounts are to be reported based upon annuities issued in all states, **except for states that mandate a legally required segregated and distinct trust account for that particular state's annuitants (e.g., California).**”

The Fund reported \$600,000 in gifts received during the year conditioned upon annuity agreements in 2015. A review of the Fund's reserve listing for 2015 revealed that the Fund only received \$100,000 in gifts during the year. The \$500,000 difference arose from a California gift that was inappropriately included in the New York Annual Statement. The gift remained in the Fund until 2016, at which point it was deducted out as a transfer. As a result, the Fund overstated its income by \$500,000 in 2015 and overstated its disbursements in 2016 by approximately the same amount. Additionally, the 2015 annuity fund balance was overstated by approximately \$500,000, an amount which should have been recorded as a miscellaneous liability.

The Department's Instructions for Completing Line 15 (Annuity Fund Balance) in the Income and Disbursements page of the New York State Segregated Gift Annuity Fund Annual Statement for each of the years during the examination period (January 1, 2012 through December 31, 2016) states that:

“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 reported \$521,700 in annuity fund balance in its Liabilities and Annuity Fund Balance Section for 2014, while reporting \$130,578 in annuity fund balance in its Income and Disbursements page. The examiner's recalculation of annuity fund balance in the Liabilities and Annuity Fund Balance section was \$455,874 for 2014, obtained by subtracting liabilities of

\$658,263 from total assets of \$1,114,137. The examiner recalculated an annuity fund balance of \$535,084 in the Income and Disbursements page for 2014, obtained by adding net change in annuity fund of \$130,578 to the prior year annuity fund balance of \$404,506. The resulting examiner recalculations show an unexplained discrepancy of \$79,210 for annuity fund balance between the amount that would have been reported in the Liabilities and Annuity Fund Balance section of page 2 and that in the Income and Disbursements page.

The Fund reported \$846,423 in annuity fund balance in its Liabilities and Annuity Fund Balance Section for 2015. A comparison with the annuity fund balance amount reported of \$937,702 in the Income and Disbursements page revealed an unexplained discrepancy of \$91,279.

The Department's Instructions for Completing the New York State Segregated Gift Annuity Fund Annual Statement for the year ended December 31, 2012 through 2016 for the Income section of page 3 and Exhibit 1: Verification of Investment Income states, in part:

“Line 2: “Current Year” Column: Should agree with Exhibit 1, Column 3, Line 7. “Prior Year” Column: Report prior year’s investment income...

... Line 1... Column 8 [of Exhibit 1] should equal the amount reported in Totals in Schedule D, Part 1, Column 7.”

The Fund reported investment income of \$84,185 in the income section of page 3 and in Exhibit 1 of its filed 2014 annual statement, while it reported gross income earned of \$24,257 in Schedule D, Part 1 of its filed 2014 annual statement. The Fund reported investment income of \$101,094 in the income section of page 3 and in Exhibit 1 of its filed 2015 annual statement, while it reported gross income earned of \$33,836 in Schedule D, Part 1 of its filed 2015 annual statement. The Fund reported investment income of \$28,038 in the income section of page 3 and in Exhibit 1 of its filed 2016 annual statement, while it reported gross income earned of \$(60,170) in Schedule D, Part 1 of its filed 2016 annual statement. In none of the annual statements for 2014 through 2016 did the amounts reported in Schedule D, Part 1 match the amounts in the other two parts of the annual statement.

The Department's Instructions for Completing the New York State Segregated Gift Annuity Fund Annual Statement for the year ended December 31, 2012 through 2016 for the Income section of page 3 states, in part:

"Line 4: "Current Year" Column: Should agree with Exhibit 2, Column 5, Line 16.
"Prior Year" Column: Report prior year's unrealized capital gains/ (losses)."

The Fund reported unrealized capital losses of \$2,249 in the income section of page 3 of its filed 2015 annual statement, while it reported unrealized capital losses of \$151,835 in Exhibit 2 of its filed 2015 annual statement. The Fund reported unrealized capital losses of \$26,353 in the income section page 3 of its filed 2016 annual statement, while it reported unrealized capital losses of \$133,001 in Exhibit 2 of its filed 2016 annual statement.

The Department's Instructions for Completing the New York State Segregated Gift Annuity Fund Annual Statement for the year ended December 31, 2012 through 2016, namely the General Interrogatories, states, in part:

"Interrogatory 12: If the Segregated Gift Annuity Fund has issued annuities in the current or any previous year conditioned upon receipt of gifts **other than** cash, cash equivalents, mutual funds, bonds or stocks, AND the Segregated Gift Annuity Fund continues to hold the donated gift as of December 31 of the current year, indicate "**Yes**" at this Interrogatory and complete Schedule D. Schedule D must be completed even if such gifts were subsequently disposed of during the current year. Refer to the instructions herein for completion of Schedule D.

If the response is "**No**", you do not have to complete Schedule D; however, you must write "**None**" or "**NA**" somewhere in Schedule D."

In the Fund's filed annual statements, for all years under examination, the Fund checked "No" to Interrogatory 12. A review of the Fund's completed Schedule D revealed that the investments listed as other invested assets were actually mutual funds appropriately entered in Schedule A, Parts 3, 4 and 5 of the annual statement. No qualifying investments, such as hedge funds, real estate or other qualifying gifts were actually listed in Schedule D, Parts 1 through 3, other than cash, cash equivalents, mutual funds, bonds or stocks that should have been reported elsewhere.

The Fund erroneously reported the following common stock in Schedule D, Part 1:

Year	Cost	Market Value
2012	\$204,758	\$214,785
2013	\$850,204	\$895,225
2014	\$1,103,042	\$1,102,481
2015	\$1,695,651	\$1,543,255
2016	\$1,066,603	\$1,047,208

These totals should have been reported in Schedule A, Part 3.

The following common stock purchases were erroneously reported in Schedule D, Part 2:

Year	Cost	Market Value
2013	\$678,723	\$678,723
2014	\$309,082	\$309,082
2015	\$650,438	\$650,438
2016	\$4,367,809	\$4,296,870

These totals should have been reported in Schedule A, Part 4.

The following are the realized capital gains/(losses) that were erroneously reported in Schedule D, Part 3:

Year	Realized Gain/(Loss)
2013	\$28,197
2014	\$244
2015	(\$2,249)
2016	(\$60,170)

These totals should have been reported in Schedule A, Part 5.

The examiner recommends that the Fund prepare its filed annual statements in accordance with the instructions for completing the New York State Segregated Gift Annuity Fund Annual Statement.

8. ANNUAL STATEMENT WORKPAPERS

The examiner requested a copy of the Fund's 2016 trial balance, general ledger, and transaction registers. The Fund was unable to provide the requested books and records for 2016 or for any other years under examination.

The examiner recommends that the Fund prepare and maintain books and records, including a trial balance, general ledger, and transaction registers that reconcile to its filed annual statements.

9. 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 board of trustees, or a committee thereof, approve the purchases and sales of all investments and note such approvals in the minutes.	6
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.	7
C	The examiner recommends that the Fund adopt an Investment Strategy Statement that refers 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.	8
D	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 advisor and establishing a Board of Directors (or a committee thereof) or senior management-level policy or procedures related to conflicts of interest for investment advisors.	8
E	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 such information terminating an annuity contract.	9

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
F	The examiner recommends that the Fund prepare its filed annual statements in accordance with the instructions for completing the New York State Segregated Gift Annuity Fund Annual Statement.	13
G	The examiner recommends that the Fund prepare and maintain books and records, including a trial balance, general ledger, and transaction registers that reconcile to its filed annual statements.	14

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. 31596

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:*

JUAN SOTO

as a proper person to examine the affairs of the

**SEGREGATED GIFT ANNUITY FUND OF THE
CORTLAND COLLEGE 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 20th day of April, 2017

MARIA T. VULLO
Superintendent of Financial Services

By:

Mark McLeod

MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU

