



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, 2017

DATE OF REPORT:

OCTOBER 14, 2018

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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SEGREGATED GIFT ANNUITY FUND

OF THE

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EXAMINER:

JULIUS ASUBONTENG

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Linda A. Lacewell  
Acting Superintendent

May 7, 2019

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

Madam:

In accordance with instructions contained in Appointment No. 31749, dated April 13, 2018 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 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 3C 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 3C 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 4 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 5 of this report)

The examiner recommends that the Fund maintain all of the Fund's securities with a licensed bank or trust company. (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 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, 2012. This examination covers the period from January 1, 2013 through December 31, 2017. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2017 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, 2017 to determine whether the Fund's filed 2017 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 recommendations 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

#### A. History

The University at Buffalo Foundation, Inc. (the “Foundation”) is organized for the purpose of promoting education, research, and public service mission of the University at Buffalo, State University of New York and to support the University at Buffalo’s fundraising initiatives by providing advice and counsel regarding philanthropy. The Foundation established a program to issue gift annuity agreements in return for gifts from donors, and it has done so since 1990. A permit was granted to the Foundation by the Department on December 18, 1998, for the purpose of issuing gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

In February 2017, the Foundation changed its custodian from Charles Schwab & Co. Inc., an institution that is neither a bank nor a trust company, to Bank of New York Mellon Trust Company, N.A.

#### B. Services

The Foundation’s custodian is Bank of New York Mellon Trust Company, N.A., effective February 16, 2017. All of the Foundation’s assets were with Charles Schwab & Co. Inc. from January 1, 2013 through February 15, 2017. All operations related to the issuance, maintenance and settlement of annuity agreements are handled by 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.

#### C. Corporate Governance

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 five (5) and not more than 25 regular voting trustees. As of December 31, 2017, the board consisted of 22 trustees. The trustees elect a chair of the board of trustees, the secretary, the treasurer, and such other officers as the trustees shall from time to time deem necessary. The trustees also elect the executive director of the Foundation. The term of office of the trustees are set by the charter and by-laws.

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 board of trustees’ 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 trustees, or a committee thereof, approve the purchases and sales of all investments and note such approvals in the minutes.

#### 4. 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>2012</u>	<u>December 31,</u> <u>2017</u>	<u>Increase</u> <u>(Decrease)</u>
Admitted assets	<u>\$9,434,301</u>	<u>\$8,182,178</u>	<u>\$(1,252,123)</u>
Liabilities	<u>\$4,765,633</u>	<u>\$5,858,473</u>	<u>\$(1,092,840)</u>
Minimum required fund balance	\$ 476,563	\$ 585,847	\$ 109,284
Excess fund balance (surplus)	<u>4,192,104</u>	<u>1,737,858</u>	<u>(2,454,246)</u>
Total annuity fund balance	<u>\$4,668,667</u>	<u>\$2,323,705</u>	<u>\$(2,344,962)</u>
Total liabilities and annuity fund balance	<u>\$9,434,301</u>	<u>\$8,182,178</u>	<u>\$(1,252,122)</u>

The decrease in assets, liabilities and annuity fund balance is mainly due to a \$2,454,246 reduction in excess fund balance (surplus). This is attributed to the Fund management's decision to transfer some of the excess assets that were no longer required to be held in the Fund to the Foundation's main investment pool. Annuities decreased from 70 with annual payment amounts of \$468,095 as of December 31, 2012 to a total of 69 with annual payment amounts of \$937,427 as of December 31, 2017. The increase in annual payments stems from several large gift annuities that were effectuated during the examination period.

The Fund's admitted assets, as of December 31, 2017, were invested mainly in common stocks (97.09%), and other invested assets, namely real estate (2.91%).

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 2017 annual statement, the Fund reported: 28.52% of its admitted assets invested in VANGUARD DEVELOPED MARKETS, 22.96% invested in VANGUARD TOTAL

STOCK MARKET INDEX, 20.59% invested in VANGUARD TOTAL BOND MKT INDEX and 10.45% invested in VANGUARD DIV APPR INDEX. The Fund's current concentration in these funds could make it highly unlikely that the Fund's other assets can 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.

## 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.

The examiner's review of a sample of 10 annuity contracts terminated revealed that in 9 of the 10 cases (90%) 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 such information terminating an annuity contract.

## 6. CUSTODIAN

The Foundation's custodian is Bank of New York Mellon Trust Company, N.A. effective as of February 16, 2017. Approximately 2.4% of the Fund's assets were with Charles Schwab & Co. Inc. ("Charles Schwab") as of December 31, 2017. Charles Schwab is a brokerage firm, not a licensed bank or trust company.

The examiner recommends that the Fund maintain all of the Fund's securities with a licensed bank or trust company.

## 7. ANNUAL STATEMENT REPORTING

The Department's Instructions for Completing the New York State Segregated Gift Annuity Fund Annual Statement for the year ended December 31, 2016, namely Exhibit 2, column 4, states the following:

“Column 4 Market Value, End of Year: Report the amount from the “Market Value End of Year” column of the various Schedules for the current year and prior year in each of the categories.”

In the Fund's filed 2016 annual statement, the Foundation reported \$705,050 as the market value of its other admitted assets in Exhibit 2, Line 13, Column 4. On Page 2, Line 5 of the 2016 annual statement as well as Schedule D, Part 1, Column 4, the Fund reported a market value of \$215,000 for its other admitted assets. The examiner determined that the Fund should have reported a market value of \$215,000 for its other admitted assets in Schedule D, Part 1, Column 4, as a result of inquiring the Fund.

The Department's Instructions for Completing the New York State Segregated Gift Annuity Fund Annual Statement for the year ended December 31, 2017, namely Exhibit 1, Line 2 states the following, in part:

“Line 2...

...Column 6 should equal the amount reported for Sub-Totals - Stocks in Schedule A, Part 5, Column 10.”

The Fund reported \$7,822 in dividends on stocks received during the year in Schedule A, Part 5, Column 10 of its filed 2017 annual statement. On line 3, column 6 of Exhibit 1, Verification of Investment Income, the Fund reported \$0 in dividends declared and unpaid for 2017. Per inquiring the Fund, the examiner determined that \$0 should have been reported as dividends declared and unpaid in Schedule A, Part 5, Column 10.

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. OTHER INVESTED ASSETS

The Fund reported market value of other invested assets of \$875,000 in each of the Fund's filed annual statements for the years 2013, 2014 and 2015, and \$215,000 in each of the Fund's filed annual statements for the years 2016 and 2017. The other invested asset is a real estate holding of three lots in Placerville, California. Schedule D - Part 1 of the Fund's 2017 Annual Statement reveals the most recent valuation of the real estate holding was as of November 16, 2017.

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

## 9. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the recommendations contained in the prior report on examination and the subsequent actions taken by the Fund in response to each citation:

<u>Item</u>	<u>Description</u>
A	<p>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.</p> <p>The Fund contracted with Bank of New York Trust Company, a trust company, to serve as the Fund's custodian for the Fund's securities. A similar recommendation appears in this report on examination.</p>
B	<p>The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.</p> <p>Additional issues were discovered during the examiner's review of the Fund's annual statements. A similar recommendation appears in this report on examination.</p>
C	<p>The examiner recommends that the Fund exercise due care in the preparation of its filed annual statements.</p> <p>The annuity fund balance was reported erroneously in the 2013 through 2016 annual statements. The annuity fund balance was reported correctly in the 2017 annual statement.</p>
D	<p>The examiner recommends that the Fund obtain yearly valuations of its investment in real estate.</p> <p>The Fund failed to obtain yearly valuations of its investment in real estate. A similar recommendation appears in this report on examination.</p>

## 10. SUMMARY AND CONCLUSIONS

Following are the violation and recommendations 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.	5
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.	5
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.	5
D	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
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.	8
F	The examiner recommends that the Fund maintain all of the Fund's securities with a licensed bank or trust company.	9
G	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.	10
H	The examiner recommends that the Fund obtain yearly valuations of its investment in real estate.	11

Respectfully submitted,

\_\_\_\_\_/s/  
Julius Asubonteng  
Senior Insurance Examiner

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

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

\_\_\_\_\_/s/  
Julius Asubonteng

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

APPOINTMENT NO. 31749

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:

**JULIUS ASUBONTENG**

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 13th day of April, 2018

MARIA T. VULLO  
Superintendent of Financial Services

By:

*Mark McLeod*

MARK MCLEOD  
DEPUTY CHIEF - LIFE BUREAU

