



**REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
AMERICAN ASSOCIATES, BEN-GURION UNIVERSITY OF
THE NEGEV**

AS OF December 31, 2018

EXAMINER: James Wang

DATE OF REPORT: September 20, 2019

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

REPORT ON EXAMINATION

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AMERICAN ASSOCIATES, BEN-GURION UNIVERSITY OF THE NEGEV

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KATHY HOCHUL
Governor

ADRIENNE A. HARRIS
Superintendent

September 2, 2020

Honorable Adrienne A. Harris
Superintendent of Financial Services
New York, New York 10004

Madam:

In accordance with instructions contained in Appointment No. 31890, dated May 16, 2019 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the American Associates, Ben-Gurion University of the, at its home office located at 1001 6th Avenue, 19th Floor, New York, NY 10018.

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 obtain and 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 3E 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 4A 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 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)

2. SCOPE OF EXAMINATION

This Scope of Examination summarizes the nature of the Superintendent of the Department of Financial Services' (the "Department" or "DFS") examination and assessment of the American Associates, Ben-Gurion University of the Negev, Inc. Segregated Annuity Fund (the "Fund") through which the American Associates, Ben-Gurion University of the Negev, Inc. (the "University") provides annuity benefits.

The prior examination was conducted as of December 31, 2013. This examination covers the period from January 1, 2014 through December 31, 2018. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2018 but prior to the date of this report (i.e., the completion date of the examination).

This report outlines DFS's supervisory expectations or priorities and articulates DFS's general views regarding the exceptional circumstances where the College or Fund, in relation to their annuity activities, could have better satisfied statutory standards or adhered to practices or methods of dealing that are regularly observed among similar circumstances.

The Fund is subject to the solvency and examination requirements of New York Insurance Law § 1110 and of New York Insurance Law articles 1, 2, 3, 25, and 74.

The investment of the Fund's required admitted assets is subject to N.Y. Estates, Powers and Trust Law § 11-2.3. The investment of the remainder of the Fund's admitted assets is subject to N.Y. Not-for-Profit Corporation Law Article 5-a. Both establish that the trustees are to invest the assets consistent with prudent person standards.

The examination comprised a verification of assets and liabilities as of December 31, 2018 to determine whether the Fund's filed 2018 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 violation and recommendations contained in the prior report on examination. The results of such review are contained in item 8 of this report.

3. DESCRIPTION OF FUND

A. History

The American Associates, Ben-Gurion University of the Negev, Inc. was chartered in 1973 and is organized for the purpose of promoting, encouraging, aiding and advancing higher and secondary education, research and training in all branches of knowledge in Israel and elsewhere. The University established the Fund to issue gift annuity agreements in return for gifts from donors in 1994. The Superintendent of Insurance granted to the University a Charitable Annuity Society special permit on February 17, 1999.

B. Structure

The management of the University and the Fund and all of its affairs and property are entrusted to the board of directors.

C. Assets under the Board of Directors

As of the September 30, 2018, Form 990, the University's Board of Directors oversaw an endowment comprising \$647,275,354 in total assets. The Fund, as of December 31, 2018, held total admitted assets of \$14,507,691.

D. Third Party Payment Service Provider

The Fund maintains a services agreement with Daniel O'Connell, CPA, and PNC Bank. Under the service agreement, Mr. O'Connell performs accounting and tax services for the Fund and prepares the annual statement of the Fund to New York State. The Fund's custodian, PNC Bank, administers annuity benefit payments to annuitants and manages the Fund's investments.

E. Oversight Structure

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 examiner's review revealed that the Fund failed to obtain and 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 obtain and 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.

4. INVESTMENT REVIEW

A. Investment Policy Statement

New York Estate Powers and Trust Law § 11-2.3(b)(3)(A) requires trustees to “pursue an overall investment strategy to enable the trustee[s] to make appropriate present and future distributions to or for the benefit of the beneficiaries under the governing instrument, in accordance with risk and return objectives reasonably suited to the entire portfolio.”

New York Not-for-Profit Corporation Law § 552(e)(2) calls for “an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.” New York Not-for-Profit Corporation Law § 552(f) states that each “institution shall adopt a written investment policy setting forth guidelines on investments ... and delegation of management and investment functions in accord with the standards of this article.”

The examiner’s review of the Fund’s Investment Strategy Statement showed that it failed to refer to the prudent investor standard as specified in Section 1110(b) of the New York Insurance 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.

5. ASSETS AND LIABILITIES SUMMARY

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>2013</u>	<u>December 31,</u> <u>2018</u>	<u>Increase</u> <u>(Decrease)</u>
Admitted assets	<u>\$7,067,738</u>	<u>\$14,507,691</u>	<u>\$7,439,953</u>
Liabilities	<u>\$5,181,920</u>	<u>\$12,723,799</u>	<u>\$7,541,879</u>
Minimum required fund balance	\$ 518,192	\$ 1,272,380	\$ 754,188
Excess fund balance (surplus)	<u>1,367,626</u>	<u>511,512</u>	<u>(856,114)</u>
Total annuity fund balance	<u>\$1,885,818</u>	<u>\$ 1,783,892</u>	<u>\$ (101,926)</u>
Total liabilities and annuity fund balance	<u>\$7,067,738</u>	<u>\$14,507,691</u>	<u>\$7,439,953</u>

The increase in assets and liabilities reflects an increase in the total number of annuities in force. Annuities increased from 169 with annual payment amounts of \$735,902 as of December 31, 2013 to a total of 218 with annual payment amounts of \$1,520,533 as of December 31, 2018. Annuity fund balance declined during the exam period due primarily to transfers totaling \$1,134,955 to the Organization's general account in 2014 and 2015, and \$868,536 in unrealized capital losses in 2018.

The Fund's admitted assets, as of December 31, 2018, were invested mainly in equity securities (89.30%) and mutual funds (10.70%).

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 a sample of 8 newly issued gift annuities by the Fund during the examination period noted that in all 8 annuities the Fund used language not previously approved, employing three separate policy forms that each differed from the gift annuity agreement forms filed with the Superintendent. The deviating language found in all the forms were the addition of “This represents an annuity rate of [Number]%,” in each form.

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 9 annuity contracts terminated revealed that in 1 of the 9 cases (11.11%) 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.

7. ANNUAL STATEMENT WORKPAPERS

The examiner's review of the Fund's filed annual statements for all years under examination noted that the CUSIP numbers for common stocks were left blank on Schedule A, Parts 3, 4, 5 and Schedule B of the annual statement.

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. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violation and 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 diversify its investment holdings.</p> <p>The Department no longer provides guidance for diversification.</p>
B	<p>The examiner recommends that the Fund adopt an Investment Strategy Statement. 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.</p> <p>The Fund adopted an Investment Strategy Statement.</p>
C	<p>The Fund violated Section 1110(a) of the New York Insurance Law by using gift annuity agreement forms that were not filed with the Superintendent.</p> <p>The Fund again used gift annuity agreement forms that were not filed with the Superintendent. A similar violation appears in this report on examination.</p>
D	<p>The examiner recommends that the Fund submit to the Superintendent any gift annuity agreement forms used during the examination period that have not been previously filed with the Superintendent.</p> <p>The Fund still failed to submit to the Superintendent gift annuity agreement forms used during the examination period that have not been previously filed with the Superintendent. A similar recommendation appears in this report on examination.</p>
E	<p>The examiner recommends that the Fund obtain copies of the death certificates of annuitants for annuity contracts terminated.</p> <p>The Fund again did not obtain copies of death certificates of all annuitants for annuity contracts terminated. A similar recommendation appears in this report on examination.</p>

<u>Item</u>	<u>Description</u>
F	<p>The examiner recommends that the Fund contract with a licensed bank or trust company to serve as custodian for the Fund's securities.</p> <p>The Fund contracted with a licensed bank to serve as custodian for the Fund's securities.</p>
G	<p>The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.</p> <p>A review of the Fund's filed annual statements indicated that additional discrepancies were noted.</p>

9. 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 Fund violated Section 312(b) of the New York Insurance Law by failing to obtain and 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 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.	6
D	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.	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 an annuitant, the Fund obtain and maintain a death certificate or other reliable documentary evidence that supports such information terminating an annuity contract.	8

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
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.	9

Respectfully submitted,

_____/s/
James Wang
Senior Insurance Examiner

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

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

_____/s/
James Wang

Subscribed and sworn to before me
this _____ day of _____

APPOINTMENT NO. 31890

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, **LINDA A. LACEWELL**, Acting 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:

JAMES WANG

as a proper person to examine the affairs of the

**SEGREGATED GIFT ANNUITY FUND OF THE
AMERICAN ASSOCIATES, BEN-GURION UNIVERSITY OF THE NEGEV**

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 16th day of May, 2019

LINDA A. LACEWELL
Acting Superintendent of Financial Services

By:

Mark McLeod

MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU

