



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
ROCHESTER INSTITUTE OF TECHNOLOGY

CONDITION:

DECEMBER 31, 2018

DATE OF REPORT:

JULY 5, 2019

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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EXAMINER:

JAMES WANG

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Linda A. Lacewell
Superintendent

September 10, 2019

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

Madam:

In accordance with instructions contained in Appointment No. 31922, 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 Rochester Institute of Technology, hereinafter referred to as “the Fund,” at its home office located at 1 Lomb Memorial Drive, Rochester, NY 14623.

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 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 3C of this report)

The examiner recommends that the Investment Strategy Statement be approved by the board of trustees. (See item 3C 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 5 of this report)

The examiner recommends that the Fund ensure that all gift annuity agreement forms have the appropriate form number as approved by the Superintendent printed on each form issued. (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 5 of this report)

2. SCOPE OF EXAMINATION

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).

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 recommendations contained in the prior report on examination. The results of such review are contained in item 6 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 Rochester Institute of Technology (the “University”), founded in 1829, is a privately endowed, coeducational university with nine (9) colleges and two (2) degree-granting academic units emphasizing career education and experiential learning. The University established a program to issue gift annuity agreements in return for gifts from donors, and it has done so since 1996. A special permit was granted to the University by the Department on September 27, 1999, authorizing it to issue gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

B. Services

Operations related to the issuance, maintenance and settlement of annuity agreements are handled by the Fund. The Fund has a custodian agreement with TIAA-CREF Trust Company (“TIAA-CREF”), under which TIAA-CREF performs custody services with respect to the Fund’s assets. The University has appointed TIAA Kaspick (“Kaspick”), a subsidiary of TIAA-CREF, to provide investment management and gift administration services, including, but not limited to, annuity benefit payments on behalf of the Fund. Charles Schwab & Company, Inc. (“Charles Schwab”) is the custodian for the account held with Kaspick. Charles Schwab is an SIPC member brokerage firm. The examiner determined that 81.52% of the Fund’s admitted assets were held and custodied at TIAA-CREF and 18.48% of its admitted assets were held and custodied with Charles Schwab.

C. Corporate Governance

The management of the University and the Fund and all of its affairs and property are entrusted to a board of trustees. The exact number of the trustees shall be set by the maximum number permitted under the University’s Charter or any amendments thereof, and by the resolution of the board at its annual meeting. As of December 31, 2018, the board consisted of 48 voting trustees. The trustees elect a Chairman, Vice-Chairman, President and an Executive Committee

annually. The nomination and election procedures of the trustees and their term of office are set by the 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 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.

The examiner’s review of the Fund’s Investment Strategy Statement (“ISS”) revealed that the board did not approve the ISS.

The examiner recommends that the Investment Strategy Statement be approved by the board of trustees.

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>2013</u>	<u>December 31,</u> <u>2018</u>	<u>Increase</u> <u>(Decrease)</u>
Admitted assets	<u>\$8,428,311</u>	<u>\$8,646,448</u>	<u>\$ 218,137</u>
Liabilities	<u>\$5,304,957</u>	<u>\$5,846,851</u>	<u>\$ 541,894</u>
Minimum required fund balance	\$ 528,316	\$ 581,780	\$ 53,464
Excess fund balance (surplus)	<u>2,595,039</u>	<u>2,217,817</u>	<u>(377,222)</u>
Total annuity fund balance	<u>\$3,123,354</u>	<u>\$2,799,597</u>	<u>\$(323,757)</u>
Total liabilities and annuity fund balance	<u>\$8,428,311</u>	<u>\$8,646,448</u>	<u>\$ 218,137</u>

The increase in assets is due to a rise in the market value of the Fund's investments, namely common stock. The increase in liabilities stems from the Fund issuing new annuities to younger donors, which skewed the required reserve toward higher amounts.

The Fund's admitted assets, as of December 31, 2018, were invested mainly in common stocks (99.41%).

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.

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 7 newly issued gift annuities by the Fund during the examination period noted that in 2 newly issued annuities, the Fund used forms that differed from the gift annuity agreements filed with the Superintendent. The deviating form numbers found in the sample are 1L-I and 1L-D. The forms used in the 2 offending newly issued annuities contained a paragraph that was not included in the approved forms.

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 reviewed a sample of new gift annuities issued by the Fund during the examination period. In the sample selected, the examiner noted that 4 out of the 7 newly issued gift annuities reviewed had contracts which did not have the appropriate form number as approved by the Superintendent printed on the forms.

The examiner recommends that the Fund ensure that all gift annuity agreement forms have the appropriate form number as approved by the Superintendent printed on each form issued.

The examiner’s review of a sample of 8 annuity contracts terminated revealed that in 7 of the 8 cases (87.5%) 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. PRIOR REPORT SUMMARY AND CONCLUSIONS

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

<u>Item</u>	<u>Description</u>
A	<p>The examiner recommends that the Fund obtain and maintain a copy of each deceased annuitant's death certificate. This is a repeat recommendation.</p> <p>Due to the perceived potential sensitivity of requesting an annuitant's death certificate and its potential impact on donor relationships, the University, as part of its standard procedures, continues to obtain an obituary print notice from local media and retain such print on file in lieu of a death certificate. A similar recommendation appears in this report on examination.</p>
B	<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 still has deposits with Charles Schwab. However, there is no repeat recommendation on examination because the examiner determined that SIPC member brokerages, such as Charles Schwab, are acceptable custodians for gift annuity funds.</p>

7. 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 Investment Strategy Statement be approved by the board of trustees.	5
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.	7
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.	7
F	The examiner recommends that the Fund ensure that all gift annuity agreement forms have the appropriate form number as approved by the Superintendent printed on each form issued.	7
G	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

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. 31922

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
ROCHESTER INSTITUTE OF TECHNOLOGY**

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

