



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

CONDITION:

DECEMBER 31, 2018

DATE OF REPORT:

OCTOBER 11, 2019

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

REPORT ON EXAMINATION

OF THE

SEGREGATED GIFT ANNUITY FUND

OF THE

KEUKA COLLEGE

AS OF

DECEMBER 31, 2018

DATE OF REPORT:

OCTOBER 11, 2019

EXAMINER:

JAMES WANG

TABLE OF CONTENTS

<u>ITEM</u>		<u>PAGE NO.</u>
1.	Executive summary	2
2.	Scope of examination	3
3.	Description of Fund	4
	A. History	4
	B. Services	4
	C. Corporate governance	4
4.	Significant financial information	6
5.	Treatment of annuitants	7
6.	Annual statement reporting	8
7.	Prior report summary and conclusions	9
8.	Summary and conclusions	10



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Linda A. Lacewell
Superintendent

February 13, 2020

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

Madam:

In accordance with instructions contained in Appointment No. 31913, 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 Keuka College, hereinafter referred to as “the Fund,” at its home office located at 141 Central Avenue, Keuka Park, NY 14478.

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 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 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 adopt an Investment Strategy Statement (“ISS”) 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 3C of this report)

According to the 2018 annual statement, the Fund reported 11.39% of its admitted assets invested in DFA US Vector Equity Portfolio Institutional Class. The Fund’s current concentration in the fund could make it less likely that the Fund’s other assets can provide a variability to offset the risks inherent in this fund. (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 the report)

The examiner recommends that the Fund prepare its annual statements in accordance with the instructions for completing the New York State Segregated Gift Annuity Fund Annual Statement. (See item 6 of the 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 violation and recommendations contained in the prior report on examination. The results of such review are contained in item 7 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 Keuka College (the “College”) is organized for the purpose of providing a diverse, student-centered, liberal arts-based learning community for those with a range of educational goals, including undergraduate degrees, professional training, and advanced study. The College established a program to issue gift annuity agreements in return for gifts from donors, and it has done so since 1991. A special permit was granted to the College by the Department on October, 4, 1999, authorizing it to issue gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

B. Services

The College handles the issuance of annuity agreements, prepares the filed annual statements, and maintains the accounting records and individual annuity files at its principal office. Canandaigua National Bank and Trust Company performs a number of services on behalf of the Fund, including: managing the Fund’s investments; maintaining the Fund’s assets as custodian; and issuing gift annuity payments.

C. Corporate Governance

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 no fewer than 21 and no more than 40 regular voting trustees. As of December 31, 2018, the board consisted of 34 trustees. The trustees elect the chair, the vice chair, the secretary, and the treasurer. The trustees also elect the president of the college. The nomination and election procedures of the trustees and their terms 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 examiner's review revealed that the Fund failed to obtain 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 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 the signature of each board member indicating that they received and read the prior report on examination.

The examiner reviewed the Finance, Investment, and Advance Committee and Investment Sub-Committee minutes to determine whether the Committees approved the purchases and sales of investments during the examination period. The minutes did not contain any indication that the committee 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.

The examiner's review of the Fund's Investment Strategy Statement showed that it failed to reference 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.

4. SIGNIFICANT FINANCIAL INFORMATION

The following summary table indicates the 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>\$1,109,237</u>	<u>\$830,492</u>	<u>\$(278,745)</u>
Liabilities	<u>\$ 724,408</u>	<u>\$709,097</u>	<u>\$ (15,311)</u>
Minimum required fund balance	\$ 72,441	\$ 70,910	\$ (1,531)
Excess fund balance (surplus)	<u>312,389</u>	<u>50,485</u>	<u>(261,904)</u>
Total annuity fund balance	<u>\$ 384,830</u>	<u>\$121,395</u>	<u>\$(263,435)</u>
Total liabilities and annuity fund balance	<u>\$1,109,237</u>	<u>\$830,492</u>	<u>\$(278,745)</u>

The decrease in assets, liabilities, and annuity fund balance was mainly due to the termination of 9 annuity contracts over the five year examination period and the College's request of a \$75,000 payout from the Fund in June 2017.

The Fund's admitted assets, as of December 31, 2018, were invested mainly in common stocks (96.02%).

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 2018 annual statement, the Fund reported 11.39% of its admitted assets invested in DFA US Vector Equity Portfolio Institutional Class. The Fund's current concentration in the fund could make it less likely that the Fund's other assets can provide a variability to offset the risks inherent in this fund.

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 4 annuity contracts terminated revealed that in all 4 of the 4 cases (100%) 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. ANNUAL STATEMENT REPORTING

The examiner reviewed the Fund's filed annual statements for the examination period (2014 through 2018). Based upon such review, the examiner noted that there were discrepancies between the reserve reported on line 10 of page 2 of the Fund's filed annual statements for 2014 through 2017, as compared to the source data annuitant reserve listing. The following table illustrates the variances noted:

	2014	2015	2016	2017
Reserve per Annual Statement (page 2, line 10 of the A/S)	\$609,787	\$587,682	\$640,990	\$640,458
Reserve per Reserve Listing	\$667,618	\$601,736	\$683,352	\$675,886
Variance	\$(57,831)	\$(14,054)	\$(42,362)	\$(35,428)

The examiner's review noted that the Fund failed to provide adequate documentation that explained the variances in the above table.

The Fund reported minimum required fund balance of \$70,910 and excess fund balance of \$50,485 as of December 31, 2018. As calculated by the examiner, the Fund should have reported minimum required fund balance of \$66,706 and excess fund balance of \$54,690. As a result of the above-noted differences, the Fund overstated minimum required fund balance by \$4,204 and understated excess fund balance by \$4,204 as of December 31, 2018.

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

7. 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 board of trustees, or a committee thereof, approve the purchases and sales of all investments and note such approvals in the minutes.</p> <p>The board, or a committee thereof, failed to approve the purchases and sales of the Fund's investments. A similar recommendation appears in this report on examination.</p>
B	<p>The Fund violated Section 1110(a) of the New York Insurance Law by failing to submit to the Superintendent amended gift annuity agreement forms prior to using such forms. This is a repeat violation.</p> <p>The Fund submitted to the Superintendent amended gift annuity agreement forms.</p>
C	<p>The examiner recommends that that the Fund submit to the Superintendent any gift annuity agreement forms used during the examination period, or subsequent to that period, that differ from the forms previously submitted by the Fund to the Superintendent. This is a repeat recommendation.</p> <p>The Fund submitted to the Superintendent amended gift annuity agreement forms.</p>
D	<p>The examiner recommends that that the Fund maintain copies on file of the Department letters that acknowledge the submission of the annuity agreements. This is a repeat recommendation.</p> <p>The examiner's review revealed that the Fund maintained such copies.</p>
E	<p>The examiner recommends that the Fund prepare its annual statements in accordance with the Department's annual statement instructions.</p> <p>Additional errors were discovered during the examiner's review of the Fund's filed annual statements. A similar recommendation appears in this report on examination.</p>

8. SUMMARY AND CONCLUSIONS

Following are the violation, recommendations, and comment 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 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 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 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
E	According to the 2018 annual statement, the Fund reported 11.39% of its admitted assets invested in DFA US Vector Equity Portfolio Institutional Class. The Fund's current concentration in the fund could make it less likely that the Fund's other assets can provide a variability to offset the risks inherent in this fund.	6
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.	7

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
G	The examiner recommends that the Fund prepare its annual statements according to the Department's annual statement instructions.	8

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. 31913

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
KEUKA COLLEGE***

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 17th day of May, 2019

LINDA A. LACEWELL
Acting Superintendent of Financial Services

By:

Mark McLeod

MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU

