



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
REPORT ON EXAMINATION  
OF THE  
SEGREGATED GIFT ANNUITY FUND  
OF THE  
ROMAN CATHOLIC DIOCESE OF ALBANY, NEW YORK

CONDITION:

DECEMBER 31, 2015

DATE OF REPORT:

MAY 27, 2016

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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EXAMINER:

CHONG KIM

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Linda A. Lacewell  
Superintendent

January 8, 2021

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

Madam:

In accordance with instructions contained in Appointment No. 31466, dated March 31, 2016 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Roman Catholic Diocese of Albany, New York, hereinafter referred to as the "Fund." The Fund's home office is located at 40 North Main Avenue, Albany, NY 12203.

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 directors, 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 maintain documentation supporting the amounts reported in its filed annual statement. (See item 5 of this report)

The Fund violated Section 1110(b) of the New York Insurance Law by failing to maintain minimum required assets as of December 31, 2015. The examiner recommends that the Fund maintain admitted assets at least equal to 110% of the amount of reserves on its outstanding agreements. (See item 5 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 the Fund prepare its annual statements according to the Department's instructions. (See item 7 of this report)

In a subsequent event, the Diocese took action to cure the aforementioned underfunded condition of the Fund. (See item 8 of this report)

## 2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2010. This examination covers the period from January 1, 2011 through December 31, 2015. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2015 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, 2015 to determine whether the Fund's filed 2015 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 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

The Roman Catholic Diocese of Albany, New York (the “Diocese”) is organized for the purpose of supporting, maintaining, aiding, advising and cooperating with any charitable, religious, benevolent, recreational, welfare or educational corporation, association, institution, committee, agency or activity, now or hereafter existing within the state of New York or elsewhere, and more particularly within the bounds of the Roman Catholic Diocese of Albany, New York. The Diocese maintains, as one of its primary purposes, a commitment to provide, improve, promote, create, and preserve affordable housing for persons of low income. Under the provisions of its by-laws, the Diocese is permitted to issue gift annuity agreements and it has done so since 1941. A special permit was granted to the Diocese by the Department on August 28, 2001, authorizing it to issue gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

The Fund issues annuity agreements, calculates annuity benefit payments and retains the original individual agreements at its home office. All other operations related to the maintenance and settlement of annuity agreements are handled by Merrill Lynch (Bank of America), the Fund's custodian and investment manager.

The management of the Diocese and the Fund and all of its affairs and property are entrusted to a Board of Trustees. The number of trustees is limited to three regular voting trustees. As of December 31, 2015, the board consisted of three trustees. The officers of the Fund are appointed by the Board of Trustees. The officers of the Diocese consist of a president, who is ex-officio the Bishop of the Diocese; a vice president, who is ex-officio the Vicar General of the Diocese; and a secretary, who is the ex-officio Chancellor of the Diocese.

#### 4. CORPORATE GOVERNANCE

The examiner's review of the board minutes revealed that the Fund did not annually note in the board minutes that the board of directors, or a committee thereof, reviewed the purchases and sales of investments reported in the annual statement for 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 table indicates the Fund's financial decline during the period under review:

	<u>December 31,</u> <u>2010</u>	<u>December 31,</u> <u>2015</u>	<u>(Decrease)</u>
Admitted assets	\$ <u>2,111,623</u>	\$ <u>1,217,269*</u>	\$( <u>894,354</u> )
Liabilities	\$ <u>1,718,036</u>	\$ <u>1,160,172</u>	\$( <u>557,864</u> )
Minimum required fund balance	\$ 161,079	\$ 112,278*	\$ (48,801)
Excess fund balance (surplus)	<u>232,508</u>	<u>(55,181)*</u>	<u>(287,689)</u>
Total annuity fund balance	\$ <u>393,587</u>	\$ <u>57,097</u>	\$( <u>336,490</u> )
Total liabilities and annuity fund balance	\$ <u>2,111,623</u>	\$ <u>1,217,269*</u>	\$( <u>894,354</u> )

Note: Items noted with an asterisk were determined during the examination. (See item 7 of this report)

The decrease in assets, liabilities and annuity fund balance reflects a decrease in annual payments despite an increase in annuities in force. Annual payments decreased from \$279,007 as of December 31, 2010 to \$167,700 as of December 31, 2015; in contrast, annuities in force increased from 49 as of December 31, 2010 to a total of 51 as of December 31, 2015.

The decrease in assets and annuity fund balance is also attributable to realized capital losses of \$162,105 and distributions to general funds of the corporation of \$584,455 during the examination period.

The Fund's admitted assets, as of December 31, 2015, were invested mainly in common stocks (54.30%) and bonds (35.26%).

Section 1110(b) of the New York Insurance states, in part:

“Every such domestic corporation or association shall maintain admitted assets at least equal to the greater of (i) the sum of its reserves on its outstanding agreements, calculated in accordance with section four thousand two hundred seventeen of this chapter, and a surplus of ten per centum of such reserves, or (ii) the amount of one hundred thousand dollars...”

On line 8.1 (miscellaneous assets section) in the Assets section in the Fund's 2015 Annual Statement, the Fund reported an admitted asset of \$37,394 as a receivable, "ANNUITY SHORTFALL DUE FROM BENEFICIARY." This receivable amount is due to the underlying annuities with negative balances, which Catholic Charities ("beneficiary") agrees to pay the Fund. The Fund does not maintain a written agreement with the beneficiary for the receivable amount. The Fund was unable to provide supporting documentation for the aforesaid receivable reported in 2015. As a result, this receivable is a non-admissible amount.

The examiner recommends that the Fund maintain documentation supporting the amounts reported in its filed annual statement.

The examiner's review of the 2015 annual statement revealed that the Fund failed to maintain sufficient admitted assets as of year-end 2015, upon non-admission of the above-mentioned receivable due from the beneficiary. The Fund is required to maintain admitted assets in excess of the sum of the Fund's reserve plus minimum fund balance of ten percent of its reserve per Section 1110(b) of the New York Insurance Law. The Fund reported total assets of \$1,217,269, net reserves of \$1,122,778, and minimum required fund balance (ten percent of net reserves) of \$112,278 in the 2015 annual statement. The Fund is required to maintain minimum required assets of \$1,235,056 based on the sum of the Fund's net reserves and minimum required fund balance. The Fund is therefore underfunded by \$17,787 as of December 31, 2015. The Fund has been underfunded throughout the examination period. On May 18, 2016, the Diocese cured the underfunded condition. (See item 8 of this report, for the Subsequent Event)

The Fund violated Section 1110(b) of the New York Insurance Law by failing to maintain minimum required assets as of December 31, 2015. The examiner recommends that the Fund maintain admitted assets at least equal to 110% of the amount of reserves on its outstanding agreements.

## 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 agreement with annuitants...”

The examiner’s review of a sample of five annuities issued during the examination period revealed that in all five instances, the Fund used annuity agreement forms which deviated from the forms filed with the Superintendent.

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.

## 7. ANNUAL STATEMENT REPORTING

The Department's Instructions for Completing the New York Segregated Gift Annuity Fund Annual Statement ("Annual Statement"), namely Line 20.1 (Minimum required fund balance) in the Liabilities and Annuity Fund Balance for the examination period state, in part, that:

“‘Current Year’ Column: A minimum required fund balance equal to 10% of the net reserve reported at Line 12 must be reported at this Line. Refer to Section 1110(b) of the New York Insurance Law. ‘Prior Year’ Column: Report prior year’s minimum required fund balance.”

The Fund reported “Net present value of annuities” of \$1,122,778 as of December 31, 2015. In accordance with the annual statement instructions cited above, the Fund should have reported 10% of net present value of \$1,122,778 or \$112,278 on line 20.1, "Minimum required fund balance" as of December 31, 2015. The Fund understated the minimum required fund balance by \$14,645. In addition, the Fund should not have admitted the receivable of \$37,394, “ANNUITY SHORTFALL DUE FROM BENEFICIARY,” as an admitted asset as of December 31, 2015. (See item 5 in this report). As a result, the Fund should have reported “Excess fund balance” of \$(55,181) and “Total Annuity Fund Balance” of \$57,097 as of December 31, 2015.

The Fund reported “Net present value of annuities” of \$1,335,704 as of December 31, 2014. In accordance with the annual statement instructions cited above, the Fund should have reported 10% of net present value of \$1,335,704 or \$133,570 on line 20.1, "Minimum required fund balance" as of December 31, 2014. The Fund understated the minimum required fund balance by \$17,422. As a result, the Fund should have reported “Excess fund balance” of \$(107,430) as of December 31, 2014.

The Fund reported “Net present value of annuities” of \$1,359,885 as of December 31, 2013. In accordance with the annual statement instructions cited above, the Fund should have reported 10% of net present value of \$1,359,885 or \$135,989 on line 20.1, "Minimum required fund balance" as of December 31, 2013. The Fund understated the minimum required fund balance by \$17,738. As a result, the Fund should have reported “Excess fund balance” of \$(73,373) as of December 31, 2013.

The Fund reported “Net present value of annuities” of \$1,427,566 as of December 31, 2012. In accordance with the annual statement instructions cited above, the Fund should have

reported 10% of net present value of \$1,427,566 or \$142,757 on line 20.1, "Minimum required fund balance" as of December 31, 2012. The Fund understated the minimum required fund balance by \$18,621. As a result, the Fund should have reported "Excess fund balance" of \$(164,795) as of December 31, 2012.

The Fund reported "Net present value of annuities" of \$1,391,478 as of December 31, 2011. In accordance with the annual statement instructions cited above, the Fund should have reported 10% of net present value of \$1,391,478 or \$139,148 on line 20.1, "Minimum required fund balance" as of December 31, 2011. The Fund understated the minimum required fund balance by \$18,150. As a result, the Fund should have reported "Excess fund balance" of \$(210,267) as of December 31, 2011.

The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.

## 8. SUBSEQUENT EVENT

As noted in Item 5 of this report, the Fund has been underfunded during the entire 5-year duration of the examination period. On May 18, 2016, the Diocese was informed of the underfunded condition of the Fund, with a request to cure the underfunded condition. By letter dated May 18, 2016, the Diocese informed the Department that it corrected the underfunded condition, by depositing funds in the amount of \$17,583. Such deposit was subsequently verified by the examiner.

## 9. 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 Fund violated Section 312(b) of the New York Insurance Law by failing to furnish a copy of the report to each member of its board of directors.</p> <p>The Fund maintained signed statements from the board members indicating that they received and read the prior report on examination.</p>
B	<p>The examiner recommended that the Fund maintain the statements, signed by the board members indicating that they received and read the prior report on examination, for the examiner's review during the ensuing examination.</p> <p>The Fund maintained signed statements from the board members indicating that they received and read the prior report on examination.</p>
C	<p>The examiner recommends that the board of directors, or a committee thereof, review the purchase and sale of investments annually and that such reviews be noted in the board minutes.</p> <p>The examiner's review of the board minutes reveals that the Fund failed, at least annually, to note in the board minutes that the board of directors, or a committee thereof, approved the purchases and sales of investments during the examination period. Thus, a similar recommendation is contained in this report.</p>
D	<p>The examiner recommends that the Fund prepare its annual statement in accordance with the Department's Instructions for Completing the New York State Gift Annuity Fund Annual Statement.</p> <p>The examiner's review of the Fund's annual statements filed during the examination period revealed that the Fund failed to report the correct amount on line 20.1, "Minimum required fund balance," in the Assets and Liabilities in each of the annual statements filed during the examination period. Thus, a similar recommendation is contained in this report.</p>

## 10. SUMMARY AND CONCLUSIONS

Following are the violations, recommendations, and comment contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	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
B	The examiner recommends that the Fund maintain documentation supporting the amounts reported in it filed annual statement.	7
C	The Fund violated Section 1110(b) of the New York Insurance Law by failing to maintain minimum required assets as of December 31, 2015.	7
D	The examiner recommends that the Fund maintain admitted assets at least equal to 110% of the amount of reserves on its outstanding agreements.	7
E	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
F	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
G	The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.	10
H	The Diocese took action to cure the underfunded condition of the Fund.	11



Respectfully submitted,

\_\_\_\_\_/s/  
Chong Kim  
Senior Insurance Examiner

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

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

\_\_\_\_\_/s/  
Chong Kim

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

**APPOINTMENT NO. 31466**

**NEW YORK STATE**

**DEPARTMENT OF FINANCIAL SERVICES**

I, **MARIA T. VULLO**, 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:

**CHONG KIM**

as a proper person to examine the affairs of the

**SEGREGATED GIFT ANNUITY FUND OF THE  
ROMAN CATHOLIC DIOCESE OF ALBANY, NEW YORK**

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 31st day of March, 2016

**MARIA T. VULLO**

Acting Superintendent of Financial Services

By:



**MARK MCLEOD**

**DEPUTY CHIEF - LIFE BUREAU**

