



**REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND**

OF THE

BUFFALO STATE COLLEGE FOUNDATION, INC.

AS OF DECEMBER 31, 2015

EXAMINER: Hasan Ahmed

DATE OF REPORT: July 28, 2016

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

February 1, 2022

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

Madam:

In accordance with instructions contained in Appointment No. 31452, dated April 25, 2016 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Buffalo State College Foundation, Inc. The Fund's home office is located at Cleveland Hall 508, 1300 Elmwood Avenue, Buffalo, NY 14222-1095.

The report indicating the results of this examination is respectfully submitted.

1. EXECUTIVE SUMMARY

The examiner recommends that the Fund adopt an Investment Strategy Statement. Such a Statement should refer to the prudent investor standard as defined in Estates, Powers and Trusts Law § 11-2.3, which standard, as specified in New York Insurance Law § 1110(b), 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 New York Insurance Law § 1110(a) 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 use the name it agreed to by board resolution as part of its permit application to the Department for a special permit to issue charitable gift annuities in New York. (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 annual statements according to the Department's instructions. (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 Buffalo State College Foundation Segregated Annuity Fund (the "Fund") through which the Buffalo State College Foundation (the "Foundation") provides annuity benefits.

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).

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, 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 8 of this report.

3. DESCRIPTION OF FUND

A. History

The Buffalo State College Foundation, Inc. is organized for the purpose of promoting the interest of the State University of New York College of Buffalo (the “College”) and to support its students. Funds generated from the Foundation’s activities, solicitations, and investments are used to assist College programs, provide student financial aid and for the operation of the Foundation. The Foundation established the Fund to issue gift annuity agreements in return for gifts from donors in 1996. The Superintendent of Insurance granted to the Foundation a Charitable Annuity Society special permit on May 31, 2002.

B. Structure

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

C. Assets under the Board of Directors

As of the June 30, 2015 Form 990, the Foundation’s Board of Directors oversaw an endowment consisting of \$36,499,505 in total assets. The Fund, as of December 31, 2015, held total admitted assets of \$1,329,444.

D. Third-party Payment Service Provider

Annuity payments and tax reporting is outsourced by the Fund to HSBC Private Bank. The Foundation performs the financial reporting recordkeeping function on behalf of the Fund. Commonfund is the Fund’s investment manager. The Fund uses PG Calc to administer the Fund’s gift annuity program, namely the calculation of reserves. Crescendo performs functions related to annuity contracts on behalf of the Fund.

4. INVESTMENT REVIEW

A. Investment Strategy 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) requires institutions to adopt “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) provides 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 revealed the Foundation’s board of directors failed to adopt a written Investment Strategy Statement (“ISS”). Such a statement should be reviewed at least annually to determine compliance.

The examiner recommends that the Fund adopt an Investment Strategy Statement. Such a Statement should refer to the prudent investor standard as defined in Estates, Powers and Trusts Law § 11-2.3, which standard, as specified in New York Insurance Law § 1110(b), 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 LIABILITES SUMMARY

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>2010</u>	<u>December 31,</u> <u>2015</u>	<u>(Decrease)</u>
Admitted assets	\$ <u>1,494,816</u>	\$ <u>1,329,444</u>	\$ <u>(165,372)</u>
Liabilities	\$ <u>1,149,358*</u>	\$ <u>1,015,207</u>	\$ <u>(134,151)</u>
Minimum required fund balance	\$ 102,403*	\$ 100,939	\$ (1,464)
Excess fund balance (surplus)	<u>243,055*</u>	<u>213,298</u>	<u>(29,757)</u>
Total annuity fund balance	\$ <u>345,458*</u>	\$ <u>314,237</u>	\$ <u>(31,221)</u>
Total liabilities and annuity fund balance	\$ <u>1,494,816</u>	\$ <u>1,329,444</u>	\$ <u>(165,372)</u>

Note: The amounts denoted with an asterisk were determined by the examiner during the prior examination. Any differences are due to rounding.

Assets, liabilities and annuity fund balance decreased, and as well, there was an increase in annual payments. Annuities decreased from 44 as of December 31, 2010 to 41 as of December 31, 2015; in contrast, annual payments increased from \$119,742 as of December 31, 2010 to \$148,815 as of December 31, 2015.

The decrease in assets and annuity fund balance is attributable to unrealized capital losses. Specifically, the Fund reported an unrealized capital loss of \$21,906 in 2015. The decrease in assets and annuity fund balance is also attributable to disbursements in the Fund's annual statements: Liquidations of \$3,208 in 2012 and \$102,009 in 2013 along with BSCF - annuity contract liquidations of \$12,415 in 2014 and \$5,817 in 2015.

The decrease in liabilities is attributable to contract liquidation of \$125,327 that was a liability as of December 31, 2010.

The Fund's admitted assets, as of December 31, 2015, were invested mainly in equity securities (96.94%).

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.

New York Insurance Law § 1110(a) 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 the 5 gift annuity agreements issued by the fund in New York during the examination period noted that in 2 instances, the Fund used gift annuity agreement forms that differed from the gift annuity agreements filed with the Superintendent.

The Fund violated New York Insurance Law § 1110(a) 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 the payments made to the annuitants during the examination period showed that the Fund’s name did not appear on the benefit payment checks. Instead, the name of the Fund’s custodian of its checking account, “HSBC,” appeared on the checks.

The examiner recommends that the Fund use the name it agreed to by board resolution as part of its permit application to the Department for a special permit to issue charitable gift annuities in New York.

The examiner’s review of a sample of 5 terminated annuity contracts revealed that in 2 out of 5 (40%) cases reviewed, the Fund did not obtain a copy of the death certificate to confirm termination of the annuity contract. For the one annuitant for whom the Fund did not obtain a copy of the death certificate, the Fund obtained copies of the obituaries.

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 REPORTING

The Department's instructions for the 2012, 2013, 2014, and 2015 annual statements, namely line item 11 (Gross amount transferred to general funds of the corporation) in its Income and Disbursements page state, in part:

“Report any gross amount transferred to the general funds of the corporation/reporting entity from the Segregated Gift Annuity Fund in the current year and prior year.”

The Fund incorrectly reported other expenses and disbursements in its 2012, 2013, 2014, and 2015 annual statements of Liquidations of \$3,208 in 2012 and \$102,009 in 2013 along with BSCF - annuity contract liquidations of \$12,415 in 2014 and \$5,817 in 2015. The examiner determined that these amounts reported as other expenses and disbursements should have been reported as gross amount transferred to general funds of the corporation, in line 11 in the Income and Disbursements page of the annual statements.

The Department's instructions for the annual statements for all years under examination state the following with regard to Exhibit 2 – Unrealized Capital Gains and Losses:

“Column 3 Cost

Report the amount from the “Cost” column of the various Schedules for the current year and prior year in each of the categories.”

The following was reported during the examination period in Exhibit 2, Unrealized Capital Gains and Losses for the cost and market value of common stocks:

Year	Cost	Market Value	Unrealized Gain/(Loss)
2011	\$359,617	\$1,072,700	\$713,083
2012	\$356,626	\$1,186,272	\$829,646
2013, per 2013 statement	\$364,529	\$1,394,305	\$1,029,776
2013, per 2014 statement	\$1,847,992	\$1,394,305	\$(453,687)
2014	\$1,754,981	\$1,339,047	\$(415,934)
2015	\$1,726,652	\$1,288,812	\$(437,840)

During the examination period, the Fund reported incorrectly the acquisition cost of its common stocks, in its annual statements filed for the years 2011 through 2013, as the reported cost was observed to be disproportionately lower than the market value of the investments. Upon the

examiner's review and discussion with the Fund, it was acknowledged that the reported cost basis of the common stock investments was recorded inaccurately in the filed annual statements for those years, and adjustments made accordingly during the 2014 calendar year. However, the examiner was able to verify the accuracy of the reported market value of the Fund's common stock investments for each year under examination, as well as the reserve calculations for the Fund's annuity obligations. Accordingly, the overall financial solvency of the Fund, as reflected by each year's reported annuity fund balance, was not affected by the reporting errors uncovered.

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

8. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violation and 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 Fund violated New York Insurance Law § 312(b) by failing to maintain statements signed by each board member indicating that they received and read the prior report on examination.</p> <p>The Fund maintained statements signed by each board member indicating that they received and read the prior report on examination.</p>
B	<p>The examiner recommends 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 statements signed by each board member indicating that they received and read the prior report on examination.</p>
C	<p>The examiner recommends that the Fund prepare its Annual Statements in accordance with the Department's instructions for completing the New York State segregated gift annuity fund annual statement.</p> <p>The examiner's review of the Fund's filed annual statements during the examination period revealed instances in which the Fund failed to prepare its annual statements according to the Department's instructions. (See item 6 of this report)</p>

9. 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 examiner recommends that the Fund adopt an Investment Strategy Statement. Such a Statement should refer to the prudent investor standard as defined in Estates, Powers and Trusts Law § 11-2.3, which standard, as specified in New York Insurance Law § 1110(b), 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
B	The Fund violated New York Insurance Law § 1110(a) by using gift annuity agreement forms that differed from the gift annuity agreement forms that were filed with the Superintendent.	7
C	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
D	The examiner recommends that the Fund use the name it agreed to by board resolution as part of its permit application to the Department for a special permit to issue charitable gift annuities in New York.	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.	7
F	The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.	9

Respectfully submitted,

_____/s/
Hasan Ahmed
Insurance Examiner

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

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

_____/s/
Hasan Ahmed

Subscribed and sworn to before me
this _____ day of _____

APPOINTMENT NO. 31452

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:

HASAN AHMED

as a proper person to examine the affairs of the

**SEGREGATED GIFT ANNUITY FUND OF THE
BUFFALO STATE COLLEGE 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 25th day of April, 2016

MARIA T. VULLO

Acting Superintendent of Financial Services

By:

Mark McLeod

MARK MCLEOD

DEPUTY CHIEF - LIFE BUREAU

