



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

REPORT ON EXAMINATION

OF THE

SEGREGATED GIFT ANNUITY FUND

OF THE

UNITED WAY WORLDWIDE

CONDITION:

DECEMBER 31, 2014

DATE OF REPORT:

DECEMBER 21, 2015

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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EXAMINER:

PHILIP YOUSSEF

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Linda A. Lacewell  
Superintendent

September 3, 2020

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

Madam:

In accordance with instructions contained in Appointment No. 31327, dated November 18, 2015 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the United Way Worldwide, hereinafter referred to as the "Fund." United Way Worldwide and the Fund's books and records are located at 701 North Fairfax Street, Alexandria, VA 22314.

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 Organization violated Section 312(b) of the New York Insurance Law by failing to maintain statements signed by its board members indicating that they received and read the prior report on examination. The examiner recommends that the Organization 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 4 of this report)

The examiner recommends that the Organization amend its Fund custodial agreement to reflect its current name. (See item 4 of this report)

The examiner recommends that the board of trustees, or a committee thereof, approve the purchases and sales of all Fund investments and note such approvals in the minutes. (See item 4 of this report)

The examiner's review revealed an apparent underfunded condition of \$51,411, as of December 31, 2014. The apparent underfunding was resolved subsequent to the examination period, by the correction of a reporting error. (See items 5 and 7 of this report)

The examiner recommends that the Fund strengthen the diversification of its investment holdings. If the trustee has determined that it is in the interests of the beneficiaries to deviate from such a recommendation, then it should memorialize the reasons for that determination in terms of the Investment Strategy Statement's ("ISS") risk, return, and time horizon parameters. (See item 5 of this report)

The examiner's review of the Organization's treatment of annuitants did not reveal significant instances which deviated from the New York Insurance Law, Department regulations and circular letters and the operating rules of the Fund. (See item 6 of this report)

### Subsequent Event

As noted in this report, the 2014 annual statement reported an apparent underfunded condition with respect to the Fund. (See item 5 of this report) Subsequent to the examination period, the Department discovered apparent insolvent conditions in the 2015 and 2018 filed annual statements. The apparent reported underfunding in 2014 and apparent insolvent condition in 2015 were due to reporting errors in the 2014 and 2015 annual statements. The correction of each year's

reporting error resolved the respective underfunded and insolvent conditions in 2014 and 2015. The insolvent condition in 2018 was cured by the addition of funds in early 2019, and also by the release of certain reserves. (See item 7 of this report)

## 2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2009. This examination covers the period from January 1, 2010 through December 31, 2014. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2014 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, 2014 to determine whether the Fund's filed 2014 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 United Way Worldwide with respect to the recommendations contained in the prior report on examination. The results of such review are contained in item 8 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 United Way Worldwide (the “Organization”), formerly United Way of America, is organized for the purpose of providing leadership on behalf of the United Way system and to member United Way organizations to improve people’s lives by mobilizing the caring power of communities worldwide. The Organization changed its name from United Way of America to United Way Worldwide in 2009. The organization established a program to issue gift annuity agreements in return for gifts from donors, and it has done so since January 5, 2001. A special permit was granted to the Organization by the Department on September 8, 2005, authorizing it to issue gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

The Organization entered into a reinsurance agreement on March 1, 2012, whereby it ceded a portion of the Fund’s annuity obligations to Metropolitan Life Insurance Company. As of December 31, 2014, 55.3% of its reserve obligation was ceded under this arrangement.

The Organization solicits new business and issues the annuity contracts. It maintains an agreement with State Street Global Advisors (“SSGA”) to act as the Fund’s custodian. The agreement also authorizes SSGA to: receive and acknowledge donor gifts; invest the Fund’s assets in accordance with approved investment guidelines; submit remittances to annuitants; send form 1099R to annuitants and file form 1096 together with copies of form 1099R to the Internal Revenue Service; maintain data on each gift annuity so that the residuum will be known when an annuity terminates; provide annual financial and performance reports to United Way Worldwide; and respond to questions from local United Way organizations and annuitants.

The management of the Organization and the Fund and all of its affairs and property are entrusted to a board of trustees. The board shall consist of no fewer than 10 and no greater than 25 members. As of December 31, 2014 the board consisted of 15 trustees. The trustees elect a chair of the Board of Trustees, one or more chairs-elect; two vice chairs; a president; a secretary of the Board; and a treasurer of the Board, all of whom shall be members of the Board of Trustees, except the President, who may, however, subsequently be elected to the Board of Trustees. The Board may also elect one or more secretaries of the Board, one or more treasurers of the Board, and such numbers of the other employees and/or agents as the Board of Trustees may from time to time deem advisable. The nomination and election procedures of the trustees and their terms of office are set by the by-laws.



#### 4. CORPORATE GOVERNANCE

Section 312 of the New York Insurance Law states, in part:

“(a) The superintendent shall forward to every insurer or other person examined a copy of the report on examination as filed for public inspection . . . (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 Organization failed to obtain and maintain statements signed by each board member indicating that they received and read the prior report on examination.

The Organization violated Section 312(b) of the New York Insurance Law by failing to obtain and maintain statements signed by its board members indicating that they received and read the prior report on examination. The examiner recommends that the Organization 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 Organization entered into a custodial agreement under the name of United Way of America, the Organization’s prior name. The examiner noted that the Organization failed to amend its custodial agreement to reflect its current name.

The examiner recommends that the Organization amend its Fund custodial agreement to reflect the its current name.

The examiner’s review of the Pension and Investment Committee minutes revealed that the committee does not approve the purchases and sales of investments.

The examiner recommends that the board of trustees, or a committee thereof, approve the purchases and sales of all Fund investments and note such approvals in the minutes.

## 5. 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>2009</u>	<u>December 31,</u> <u>2014</u>	<u>(Decrease)</u>
Admitted assets	\$ <u>1,446,112</u>	\$ <u>782,023</u>	\$( <u>664,089</u> )
Liabilities	\$ <u>1,147,067</u>	\$ <u>757,667</u>	\$( <u>389,400</u> )
Minimum required fund balance	\$ 114,707	\$ 75,767	\$ (38,940)
Excess fund balance (surplus)	<u>204,338</u>	<u>(51,411)</u>	<u>(255,750)</u>
Total annuity fund balance	\$ <u>319,045</u>	\$ <u>24,356</u>	\$( <u>294,690</u> )
Total liabilities and annuity fund balance	\$ <u>1,466,112</u>	\$ <u>782,023</u>	\$( <u>684,090</u> )

Note: Any differences in the above table are due to rounding.

The decrease in assets, liabilities and annuity fund balance reflects a decrease in annual payment amounts despite an increase in annuities in force. Annual payments decreased from \$162,903 as of December 31, 2009 to \$109,619 as of December 31, 2014; in contrast, annuities in force increased from 47 as of December 31, 2009 to 50 as of December 31, 2014.

The decrease in assets and annuity fund balance is also attributable to gross amounts transferred to general funds of the corporation during the examination period: \$427,648 in 2014; \$332,239 in 2013; \$132,749 in 2012; \$171,894 in 2011; and \$89,248 in 2010. The impact of gross amounts transferred to general funds of the corporation was partially offset by the increase in the market value of the Fund's investments in common stocks.

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

“(b) 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....”

The Fund is required to maintain admitted assets in excess of the sum of the Fund's reserve and ten percent of its reserve per Section 1110(b) of the New York Insurance Law. The Fund reported total assets of \$782,023, net reserves of \$757,667, and minimum required fund balance (ten percent of net reserves) of \$75,767 in the filed 2014 annual statement. The Fund is required to maintain minimum required assets of \$833,434 based on the sum of the Fund's net reserves and minimum required fund balance. The examiner's review revealed an apparent underfunded condition of \$51,411 (\$782,023 minus \$833,434), as of December 31, 2014.

The apparent underfunding was resolved subsequent to the examination period, by the correction of a reporting error. (See item 7 of this report)

The Fund's admitted assets, as of December 31, 2014 were invested mainly in common stocks (96.70%).

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 2014 annual statement, the Fund reported 67.39% of its admitted assets invested in the securities of Intermediate U.S. Government/Credit Bond Index Common Trust Fund (“CTF”) and 29.31% invested in the securities of S&P 500 CTF. The Fund's current concentration could make it highly unlikely that the Fund's other assets can provide a variability to offset the risks inherent in these two funds.

The examiner recommends that the Fund strengthen the diversification of its investment holdings. If the trustee has determined that it is in the interests of the beneficiaries to deviate from such a recommendation, then it should memorialize the reasons for that determination in terms of the ISS's risk, return, and time horizon parameters. A trustee using reasonable care, skill and caution should diversify the Fund's assets. A diversification is proper when it disperses the investments' risks consistent with the Investment Strategy Statement's risk, return, and time horizon objectives, and the various risks in the portfolio offset each other. Section 1409 of the New York Insurance Law is instructive. Limiting exposure to any assets of any one institution to

ten percent of admitted assets would reasonably assure that the risks in the investment in that institution are offset by the rest of the portfolio.

## 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. Based upon the sample reviewed, no significant findings were noted.

## 7. SUBSEQUENT EVENT

The examiner reviewed the Fund's subsequent annual statements in connection with the underfunding discovered in the 2014 statement. (See item 5 of this report) The examiner determined that the Fund was also apparently insolvent in 2015 and 2018, based on the respective filed annual statements.

The Fund reported total assets of \$701,124, net reserves of \$734,166, and minimum required fund balance (ten percent of net reserves) of \$73,417 in the filed 2015 annual statement. The Fund is required to maintain minimum required assets of \$807,583 based on the sum of the Fund's net reserves and minimum required fund balance. The examiner's review revealed an apparent insolvent condition of \$106,459 (\$701,124 minus \$807,583), as of December 31, 2015.

The Fund reported total assets of \$467,217, net reserves of \$483,509, and minimum required fund balance (ten percent of net reserves) of \$48,351 in the filed 2018 annual statement. The Fund is required to maintain minimum required assets of \$531,860 based on the sum of the Fund's net reserves and minimum required fund balance. The examiner's review revealed an apparent insolvent condition of \$64,643 (\$467,217 minus \$531,860), as of December 31, 2018.

The review of the apparent insolvent condition in 2015 also included an order to cease issuing gift annuities in New York, dated May 12, 2016. Based upon discussions between the Department and the Organization, it was determined that the cause of the apparent reported underfunding in 2014 and apparent insolvent condition in 2015 were due to reporting errors in the 2014 and 2015 annual statements, arising from failing to deduct, on line 11 of page 2 of the annual statement, the 15% additional reserve calculated on line 10a of page 2, for reinsured annuities backed out on line 11. The correction of each year's reporting error resolved the respective underfunded and insolvent conditions in 2014 and 2015.

The insolvent condition in 2018 was cured by the addition of funds in early 2019, and also by the release of reserves resulting from two of its largest non-reinsured annuities terminating in 2019.

## 8. PRIOR REPORT SUMMARY AND CONCLUSIONS

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

<u>Item</u>	<u>Description</u>
A	<p>The examiner recommends that the board of trustees review the activities of the Fund at least annually and note said review in the minutes.</p> <p>The examiner's review of the Pension and Investment Committee minutes revealed that the committee does not approve the purchases and sales of investments. Thus, a similar recommendation is contained in this report. (See item 4 of this report)</p>
B	<p>The examiner recommends that the Fund maintain a trial balance, general ledger, and transaction registers for its annual statements on a going-forward basis.</p> <p>The examiner's review of the Fund's books of account revealed that SSGA maintains the trial balance, general ledger, and transaction registers for its annual statements on behalf of the Fund.</p>

## 9. 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 Organization violated Section 312(b) of the New York Insurance Law by failing to obtain and maintain statements signed by its board members indicating that they received and read the prior report on examination.	6
B	The examiner recommends that the Organization 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.	6
C	The examiner recommends that the Organization amend its Fund custodial agreement to reflect its current name.	6
D	The examiner recommends that the board of trustees, or a committee thereof, approve the purchases and sales of all Fund investments and note such approvals in the minutes.	6
E	The examiner's review revealed an apparent underfunded condition of \$51,411, as of December 31, 2014. The apparent underfunding was resolved subsequent to the examination period, by the correction of a reporting error.	8
F	The examiner recommends that the Fund strengthen the diversification of its investment holdings. If the trustee has determined that it is in the interests of the beneficiaries to deviate from such a recommendation, then it should memorialize the reasons for that determination in terms of the ISS's risk, return, and time horizon parameters.	8



<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
G	The apparent reported underfunding in 2014 and apparent insolvent condition in 2015 were due to reporting errors in the 2014 and 2015 annual statements. The correction of each year's reporting error resolved the respective underfunded and insolvent conditions in 2014 and 2015. The insolvent condition in 2018 was cured by the addition of funds in early 2019, and also by the release of certain reserves.	11

Respectfully submitted,

\_\_\_\_\_/s/  
Philip Youssef  
Insurance Examiner

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

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

\_\_\_\_\_/s/  
Philip Youssef

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

APPOINTMENT NO. 31327

NEW YORK STATE

**DEPARTMENT OF FINANCIAL SERVICES**

I, ANTHONY J. ALBANESE, 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:

**PHILIP YOUSSEF**

as a proper person to examine the affairs of the

**SEGREGATED GIFT ANNUITY FUND OF THE  
UNITED WAY WORLDWIDE**

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 18th day of November, 2015

ANTHONY J. ALBANESE  
Acting Superintendent of Financial Services

By:



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MARK MCLEOD  
ASSISTANT CHIEF - LIFE BUREAU

