



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
REPORT ON EXAMINATION  
OF THE  
SEGREGATED GIFT ANNUITY FUND  
OF THE  
OUR LADY OF VICTORY HOMES OF CHARITY

CONDITION:

DECEMBER 31, 2018

DATE OF REPORT:

JULY 19, 2019

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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SEGREGATED GIFT ANNUITY FUND

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EXAMINER:

ADELIA GBADAMOSI

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Linda A. Lacewell  
Superintendent

January 17, 2020

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

Madam:

In accordance with instructions contained in Appointment No. 31919, dated May 16, 2019 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of Our Lady of Victory Homes of Charity, hereinafter referred to as “the Fund,” at its home office located at 780 Ridge Road, Lackawanna, New York 14218.

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 3C 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 not to diversify, 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 4 of this report)

The Fund violated Section 1110(a) of the New York Insurance Law by issuing annuities that exceeded the maximum rates allowed. The examiner recommends that the Fund implement appropriate monitoring controls that will ensure that when annuities are issued, payout rates do not exceed the maximum rates provided in the filed schedule, in compliance with Section 1110 (a) of the New York Insurance Law. (See item 6 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 recommendation 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

Our Lady of Victory Homes of Charity (the “Corporation”) is organized for the purpose of running an orphanage. The orphanage ceased to exist as of October 1956. Currently, Our Lady of Victory Homes of Charity promotes devotion to Our Lady of Victory and supports needy children and families of Western New York by supporting the Institutions founded by Father Baker. The Corporation was originally formed under the name Association of Our Lady of Victory. The Corporation’s name changed to its present name on January 27, 1961. The Corporation has been issuing gift annuities since 1977. A special permit was granted to the Corporation by the Department on January 16, 1984, for the purpose of issuing gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

#### B. Services

Key Bank is the custodian of the Fund’s investments and the Fund’s investment manager. All operations related to the issuance, maintenance and settlement of annuity agreements are handled by the Fund. The Fund maintains a checking account with Key Bank from which annuity benefit payments are issued. The Fund also maintains a licensing agreement with PG Calc, Inc. to manage its gift illustrations and calculations.

#### C. Corporate Governance

The management of the Corporation and the Fund and all of its affairs and property are entrusted to a board of directors. The number of directors shall be no less than three and no greater than 15. As of December 31, 2018, the board consisted of 13 directors. The officers of the Corporation shall be elected by Our Lady of Victory Institutions, Inc., as the Member, in the case of the chair and chief executive officer. The directors elect a secretary, a treasurer, and such additional officers as the board of directors may deem desirable, such as one or more managing directors and vice presidents.

The examiner reviewed the board of directors' minutes to determine whether the board approved the purchases and sales of investments during the examination period. The minutes did not contain any indication that the board approved the purchases and sales of investments during 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.



#### 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>\$8,188,491</u>	<u>\$7,815,621</u>	<u>\$ (372,870)</u>
Liabilities	<u>\$5,463,570</u>	<u>\$4,462,808</u>	<u>\$(1,000,762)</u>
Minimum required surplus	\$ 475,093	\$ 446,281	\$ (28,812)
Unassigned funds (surplus)	<u>2,249,828</u>	<u>2,906,532</u>	<u>656,704</u>
Total surplus	<u>\$2,724,921</u>	<u>\$3,352,813</u>	<u>\$ 627,892</u>
Total liabilities and surplus	<u>\$8,188,491</u>	<u>\$7,815,621</u>	<u>\$ (372,870)</u>

The decrease in assets and liabilities reflects a decrease in the total number of annuities in force. Annuities decreased from 599 with annual payment amounts of \$669,263 as of December 31, 2013 to a total of 484 with annual payment amounts of \$578,659 as of December 31, 2018.

The Fund's admitted assets, as of December 31, 2018, were invested mainly in stocks (98.62%) and mutual funds (1.12%).

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 80.2% of its admitted assets invested in the following 3 funds:

Vanguard 500 Index Fund (11.68%)

Metropolitan West T/R Bond Fund (52.37%)

Western Asset Total Return (16.17%)

The Fund's current concentration in these funds could make it highly unlikely that the Fund's other assets can provide a variability to offset the risks inherent in these funds.

Based upon the concentrations in the above 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 not to diversify, 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.

## 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. Except for the rate finding(s) noted in Section 6 – Annuity Rates, no significant findings were noted.

## 6. ANNUITY RATES

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 and a schedule of its maximum annuity rates....”

The examiner’s review of the reserve report noted that eight (8) out of the nineteen (19) annuities issued in the New York during the examination period, had payout rates greater than the maximum rates provided in the filed schedule.

The Fund violated Section 1110(a) of the New York Insurance Law by issuing annuities that exceeded the maximum rates allowed. The examiner recommends that the Fund implement appropriate monitoring controls that will ensure that when annuities are issued, payout rates do not exceed the maximum rates provided in the filed schedule, in compliance with Section 1110 (a) of the New York Insurance Law.

## 7. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following is the recommendation 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 Fund obtain copies of the death certificates of annuitants for annuity contracts terminated.</p> <p>The Fund maintained copies of death certificates of annuitants for annuity contracts terminated.</p>

## 8. 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 board of directors, of a committee thereof, approve the sales and purchases of all investments and note such approval in the minutes.	5
B	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 not to diversify, then it should memorialize the reasons for that determination in terms of the ISS's risk, return, and time horizon parameters.	7
C	The Fund violated Section 1110(a) of the New York Insurance law by issuing annuities that exceeded the maximum rates allowed.	8
D	The examiner recommends that the Fund implement appropriate monitoring controls that will ensure that when annuities are issued, payout rates do not exceed the maximum rates provided in the filed schedule, in compliance with Section 1110(a) of the New York Insurance Law.	8

Respectfully submitted,

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/s/  
Adelia Gbadamosi  
Senior Insurance Examiner

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

ADELIA GBADAMOSI, being duly sworn, deposes and says that the foregoing report, subscribed by her, is true to the best of her knowledge and belief.

\_\_\_\_\_  
/s/  
Adelia Gbadamosi

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

*APPOINTMENT NO. 31919*

*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:*

***ADELIA GBADAMOSI***

*as a proper person to examine the affairs of the*

***SEGREGATED GIFT ANNUITY FUND OF THE  
OUR LADY OF VICTORY HOMES OF CHARITY***

*and to make a report to me in writing of the condition of said*

***FUND***

*with such other information as she 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**

