



**REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
AMERICAN CANCER SOCIETY**

AS OF DECEMBER 31, 2020

EXAMINER: Adelia Gbadamosi

DATE OF REPORT: June 22, 2022

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

REPORT ON EXAMINATION

OF THE

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KATHY HOCHUL
Governor

ADRIENNE A. HARRIS
Superintendent

September 30, 2022

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

Madam:

In accordance with instructions contained in Appointment No. 32207, dated April 6, 2021 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the American Cancer Society. The Fund's home office is located at 3380 Chastain Meadows Parkway N.W., Suite 200, Kennesaw, GA 30144.

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 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 4A of this report)

The examiner's review of a sample of transactions did not reveal any differences which materially affected the Fund's financial condition as presented in its financial statements contained in the December 31, 2020 filed annual statement. (See item 5 of this report)

The examiner's review of the Fund'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)

2. SCOPE OF EXAMINATION

This Scope of Examination summarizes the nature of the Superintendent of the Department of Financial Services' ("Department" or "DFS") examination and assessment of the American Cancer Society Segregated Annuity Fund (the "Fund") through which the American Cancer Society (the "Society") provides annuity benefits.

The prior examination was conducted as of December 31, 2015. This examination covers the period from January 1, 2016 through December 31, 2020. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2020 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 Organization or Fund, in relation to their annuity activities, could have better adhered to statutory standards and guidance or 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, 2020 to determine whether the Fund's filed 2020 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.

3. DESCRIPTION OF FUND

A. History

The American Cancer Society, Inc. was chartered in 1922 and is organized for being a nationwide, community based, voluntary health organization dedicated to eliminating cancer as a major health problem by preventing cancer, saving lives, and diminishing suffering from cancer through research, education, advocacy, and service. Effective September 1, 2012, the Society's chartered divisions merged with the American Cancer Society, Inc., resulting in a nationwide vertically integrated organization. The Superintendent of Insurance granted to the Society a Charitable Annuity Society special permit on June 8, 2011.

B. Structure

The management of the Society and the Fund and all of its affairs and property are entrusted to a Board of Directors. The Society solicits and finalizes the annuity agreements for the Fund, prepares and submits quarterly and annual filings, and reviews the Fund's investment strategy.

C. Assets under the Board of Directors

As of the December 31, 2020 IRS Form 990, the Board of Directors oversaw an endowment consisting of 280 individual funds comprising \$142,586,713 in total assets. The Fund, as of December 31, 2020, held total admitted assets of \$34,224,567.

D. Third-Party Payment Service Provider

BNY Mellon is the Fund's custodian and is responsible for asset management, gift management and beneficiary distributions.

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 of the Fund’s Investment Strategy Statement showed that it does not contain reference to 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.

5. ASSETS AND LIABILITIES SUMMARY

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>2015</u>	<u>December 31,</u> <u>2020</u>	<u>Increase</u> <u>(Decrease)</u>
Admitted assets	<u>\$31,869,730</u>	<u>\$34,224,567</u>	<u>\$ 2,354,839</u>
Liabilities	<u>\$17,533,637</u>	<u>\$11,672,026</u>	<u>\$(5,861,611)</u>
Minimum required fund balance	\$ 1,753,364	\$ 1,167,203	\$ (586,161)
Excess fund balance (surplus)	<u>12,582,729</u>	<u>21,385,340</u>	<u>8,802,611</u>
Total annuity fund balance	<u>\$14,336,093</u>	<u>\$22,552,543</u>	<u>\$ 8,216,450</u>
Total liabilities and annuity fund balance	<u>\$31,869,730</u>	<u>\$34,224,569</u>	<u>\$ 2,354,839</u>

The increase in assets and annuity fund balance is due to investment gains earned and new charitable gifts from December 31, 2015 through December 31, 2020. The decrease in the liabilities for the same period is due to the termination of 306 gifts as well as for annuity payments paid. Annuities decreased from 959 as of December 31, 2015 with annuity payments of \$2,367,519 to 653 as of December 31, 2020 with annuity payments of \$1,526,274.

The Fund's admitted assets, as of December 31, 2020, were invested in equity securities (67.08%) and bonds (29.42%).

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. 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 directors, or a committee thereof, review the activities of the Fund at least annually and note the same in the minutes.</p> <p>During the examination period, the board of directors or the Finance Committee reviewed the activities of the Fund at least annually and noted the same in the minutes.</p>
B	<p>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.</p> <p>During the examination period, the board of directors or the Finance Committee approved the purchases and sales of all investments and noted such approvals in the minutes.</p>
C	<p>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.</p> <p>The sample reviewed by the examiner revealed the Fund used only gift annuity agreement forms that were filed with the Superintendent.</p>
D	<p>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.</p> <p>The sample reviewed by the examiner revealed the Fund used only gift annuity agreement forms that were filed with the Superintendent.</p>
E	<p>The examiner recommends that the Fund obtain and maintain a copy of each deceased annuitant's death certificate.</p> <p>The Fund obtained and maintained a copy of each deceased annuitant's death certificate and information from the Social Security Death Index.</p>

<u>Item</u>	<u>Description</u>
F	<p>The examiner recommends that the Fund exercise due care in the preparation of its filed annual statements.</p> <p>The examiner's review revealed no new discrepancies.</p>
G	<p>The examiner recommends that the Fund prepare and maintain a trial balance, general ledger, and transaction registers that reconcile to its filed annual statements.</p> <p>The Fund maintained a trial balance, general ledger, and transaction registers.</p>

8. SUMMARY AND CONCLUSIONS

Following are the 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 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

Respectfully submitted,

/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 _____

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, LINDA A. LACEWELL, 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
AMERICAN CANCER SOCIETY, INC.***

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 6th day of April, 2021

*LINDA A. LACEWELL
Superintendent of Financial Services*

By:



*MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU*

