



**REPORT ON EXAMINATION  
OF THE  
SEGREGATED GIFT ANNUITY FUND  
OF THE  
UNITED CHURCH FUNDS  
AS OF December 31, 2020**

**EXAMINER: James Wang**

**DATE OF REPORT: October 15, 2021**

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

REPORT ON EXAMINATION

OF THE

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KATHY HOCHUL  
Governor



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ADRIENNE A. HARRIS  
Superintendent

September 29, 2022

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

Madam:

In accordance with instructions contained in Appointment No. 32232, dated September 9, 2021 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the United Church Funds. The Fund's home office is located at 475 Riverside Drive, New York, NY 10115.

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

## 1. EXECUTIVE SUMMARY

The examiner recommends that the Fund review at least annually its written investment policy setting forth guidelines on investments and delegation of management and the conformance of its delegees to that investment policy and statutory guidance and that it memorialize those reviews in either board minutes or materials. (See item 4A of this report)

The Fund violated Section 1110 (b) of the New York Insurance Law by failing to segregate its unrestricted net assets as separate and distinct funds. The examiner recommends the Fund to segregate the unrestricted net assets into a separate and distinct fund. (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)

## 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 United Church Funds Segregated Annuity Fund (the "Fund") through which United Church Funds (the "Church") 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 Church 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 violations, recommendations and/or comments 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

United Church Funds, Inc. was chartered in 1909 and is organized to promote religious, educational and charitable work for the advancement of the general interests and purposes of the United Church of Christ and its affiliates. The Church established the Fund to issue gift annuity agreements in return for gifts from donors in 1948. Prior to November 1, 2010, the name of the Church was the United Church Foundation, Inc. On November 1, 2010, the Church assumed its current name. The Superintendent of Financial Services granted to the Church a Charitable Annuity Society special permit on October 4, 2011.

#### B. Structure

The Fund is overseen by the Church's board of directors. The Church solicits new gifts from potential annuitants and maintains the individual annuity files.

#### C. Assets under the Board of Directors

As of the December 31, 2020 annual report, the Church's Board of Trustees oversaw an endowment consisting of comprising \$110,060,000 in total assets. The Fund, as of December 31, 2020, held total admitted assets of \$10,693,873.

#### D. Third-Party Payment Service Provider

Fifth Third Bank is the Custodian of the Fund's non invested assets. For the Fund's invested assets, the custodian is Bank of New York Mellon (BNY Mellon). The Fund engages the Boston law firm Weston Patrick P.A. ("WP") to handle the administration of its gift annuity agreements. This includes the preparation of donor agreements, receipt of funds, reporting to donors, payment of annuities, coordination of actuarial valuations, closing of agreements, and final payment to third party beneficiaries. For gift annuity arrangements, a representative at the Church, which is in New York, New York, inputs all of the information from the annuity application into PG Calc/GiftWrap, a secure web-based system used to process charitable contribution arrangements. This input is reviewed by WP and any corrections are noted but input into the control software is reserved to the Church.

#### 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.”

BNY Mellon is the Fund’s investment adviser and custodian.

The Church prepared and provided a form investment strategy statement (“ISS”) to the Fund. The Fund adopted that form as its ISS.

The examiner recommends that the Fund review at least annually its written investment policy setting forth guidelines on investments and delegation of management and the conformance of its delegees to that investment policy and statutory guidance and that it memorialize those reviews in either board minutes or materials.



## 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>\$13,503,992</u>	<u>\$10,693,873</u>	<u>\$(2,810,119)</u>
Liabilities	<u>\$11,674,692</u>	<u>\$ 9,555,267</u>	<u>\$(2,119,425)</u>
Minimum required fund balance	\$ 1,167,469	\$ 955,527	\$ (211,942)
Excess fund balance (surplus)	<u>661,831</u>	<u>183,079</u>	<u>(478,752)</u>
Total annuity fund balance	<u>\$ 1,829,300</u>	<u>\$ 1,138,606</u>	<u>\$ (690,694)</u>
Total liabilities and annuity fund balance	<u>\$13,503,992</u>	<u>\$10,693,873</u>	<u>\$(2,810,119)</u>

The decrease in assets, liabilities and annuity fund balance reflects a decrease in the total number of annuities in force. Annuities decreased from 1,079 with annual payment amounts of \$1,383,986 as of December 31, 2015 to a total of 846 with annual payment amounts of \$1,290,718 as of December 31, 2020.

The Fund's admitted assets, as of December 31, 2020, were invested mainly in equity securities (66.35%) and other invested assets (33.42%).

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

“(b) ...Such asset shall be segregated as separate and distinct funds, independent of all other funds of such corporation or association, and shall not be applied to pay its debts and obligations or for any purpose except the aforesaid annuity benefits.”

The Fund was unable to provide a statement of confirmation for the examiner to confirm the \$3,380,874 of Unrestricted Net Assets as reported in Schedule D, Part 1, of the 2020 annual statement. Therefore, the examiner was unable to verify whether the assets were held segregated as separate and distinct funds.

The Fund violated Section 1110(b) of the New York Insurance Law by failing to segregate its unrestricted net assets as separate and distinct funds. The examiner recommends the Fund to segregate the unrestricted net assets mentioned above into a separate and distinct fund.

## 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 agreements with annuitants . . .”

The examiner’s review of a sample of 3 newly issued gift annuities by the Fund during the examination period noted that in all 3 annuities the Fund used language not previously approved. The language not previously approved reads as follows:

“If at the time of the distribution of the residuum of the gift the beneficiary is not a public charity (as described in Sections 170(c), 170(b)(1)(A), 2055(a) and 2522(a) of the Internal Revenue Code of 1986, as may be amended from time to time, or any successor statute thereto), the residuum of the gift shall be distributed as the UCF shall determine in its discretion amongst any of the councils, commissions, boards, societies, institutions, local churches, conferences, associations, synods, instrumentalities, or covenanted ministries of, or organizations affiliated with the United Church of Christ insofar as it is a Public charity, and insofar as it is listed as such in the Year Book of the United Church of Christ. If any amount is undesignated, or if the designated purpose no longer exists, it shall be used by UCF for its general purposes. if any amount is undesignated, or if the designated purpose no longer exists, it shall be used by UCF for its general purposes.”

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. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violations, recommendations and comments 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, approve the purchases and sales of all investments and note such approvals in the minutes.</p> <p>The board of directors, or a committee thereof, approved the purchases and sales of investments and noted such approvals in the minutes.</p>
B	<p>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.</p> <p>The Department no longer provides guidance for investment diversification.</p>
C	<p>The examiner recommends that the Fund adopt an Investment Strategy Statement. Such a Statement should refer 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.</p> <p>The Fund adopted an Investment Strategy Statement.</p>
D	<p>The examiner recommends that the Fund perform monthly bank reconciliations.</p> <p>The Fund performed monthly bank reconciliations</p>

<u>Item</u>	<u>Description</u>
E	<p>The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.</p> <p>The examiner's review revealed no instances where the Fund failed to prepare its annual statements in accordance with the Department's instructions.</p>

## 8. SUMMARY AND CONCLUSIONS

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

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The examiner recommends that the Fund review at least annually its written investment policy setting forth guidelines on investments and delegation of management and the conformance of its delegees to that investment policy and statutory guidance and that it memorialize those reviews in either board minutes or materials.	5
B	The Fund violated Section 1110(b) of the New York Insurance Law by failing to segregate its unrestricted net assets as separate and distinct funds.	6
C	The examiner recommends the Fund to segregate the unrestricted net assets into a separate and distinct fund.	6
D	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.	7
E	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

Respectfully submitted,

\_\_\_\_\_/s/  
James Wang  
Senior Insurance Examiner

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

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

\_\_\_\_\_/s/  
James Wang

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

*APPOINTMENT NO. 32232*

*NEW YORK STATE*

***DEPARTMENT OF FINANCIAL SERVICES***

*I, **SHIRIN EMAMI**, 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:*

***JAMES WANG***

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

***SEGREGATED GIFT ANNUITY FUND OF THE  
UNITED CHURCH FUNDS, 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 9th day of September, 2021*

***SHIRIN EMAMI***

*Acting Superintendent of Financial Services*

*By:*



***MARK MCLEOD***

***DEPUTY CHIEF - LIFE BUREAU***

