



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
REPORT ON EXAMINATION  
OF THE  
SEGREGATED GIFT ANNUITY FUND  
OF THE  
ROCHESTER AREA COMMUNITY FOUNDATION

CONDITION:

DECEMBER 31, 2015

DATE OF REPORT:

JUNE 27, 2016

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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OF THE

SEGREGATED GIFT ANNUITY FUND

OF THE

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EXAMINER:

HASAN AHMED

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

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Andrew M. Cuomo  
Governor

Maria T. Vullo  
Superintendent

October 3, 2016

Honorable Maria T. Vullo  
Superintendent of Financial Services  
New York, New York 10004

Madam:

In accordance with instructions contained in Appointment No. 31465, 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 Rochester Area Community Foundation, hereinafter referred to as the "Fund." The Fund's home office is located at 500 East Avenue, Rochester, NY 14607.

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 Fund diversify its investment holdings. (See item 4 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 5 of this report)

The examiner recommends that the Fund prepare its annual statements according to the Department's instructions. (See item 6 of this report)

The examiner recommends that the Fund exercise due care in the preparation of its filed annual statements. (See item 6 of this report)

## 2. SCOPE OF EXAMINATION

This is the first examination of the Fund since it received its special permit to issue gift annuity agreements in 2011. This examination covers the period from October 4, 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).

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.

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

Rochester Area Community Foundation (the “Foundation”) is a not-for-profit corporation primarily serving the eight-county area of Monroe, Orleans, Genesee, Livingston, Ontario, Seneca, Yates and Wayne Counties, New York. The Foundation was incorporated in the United States on September 18, 1972. The Foundation was organized for the purpose of benefiting a broad spectrum of charitable activities, including but not limited to social services, community betterment, the fine and performing arts, equal justice, medical care and research, and education at all levels; with grants for special purposes. The Foundation serves as a focal point and administrator for agency endowments to benefit smaller charitable organizations which are unable to independently attract and/or manage permanent endowments. Under the provisions of its by-laws, the Foundation is permitted to issue gift annuity agreements and it has done so since December 8, 2000. A special permit was granted to the Foundation by the Department on October 4, 2011, authorizing it to issue gift annuity agreements as specified in Section 1110 of the New York Insurance Law. The Fund solicits new gift annuities and maintains the issued annuity files at its home office. The Fund files its annual statements with the Department. All other operations related to the maintenance of gift annuities are handled by the Fund’s custodian, U.S. Trust, Bank of America.

The management of the Foundation and the Fund and all of its affairs and property are entrusted to a board of trustees. The number of trustees is limited to a minimum of 12, and maximum of 35, elective trustees. As of December 31, 2015, the board consisted of 27 trustees. The board elects a Chairman, one or more Vice Chairs, a President, a Treasurer, a Secretary, a Counsel, and such other officers as the board may deem necessary. The nomination and election procedures of the trustees and their terms of office are set by the by-laws.

#### 4. SIGNIFICANT FINANCIAL INFORMATION

The following table indicates the Fund's financial growth during the period under review:

	December 31, <u>2011</u>	December 31, <u>2015</u>	<u>Increase</u>
Admitted assets	<u>\$785,662</u>	<u>\$1,484,101</u>	<u>\$698,439</u>
Liabilities	<u>\$601,998</u>	<u>\$ 789,035</u>	<u>\$187,037</u>
Minimum required fund balance	\$ 56,114	\$ 78,904	\$ 22,790
Excess fund balance (surplus)	<u>127,550</u>	<u>616,162</u>	<u>488,612</u>
Total annuity fund balance	<u>\$183,664</u>	<u>\$ 695,066</u>	<u>\$511,402</u>
Total liabilities and annuity fund balance	<u>\$785,662</u>	<u>\$1,484,101</u>	<u>\$698,439</u>

The increase in assets, liabilities and annuity fund balance reflects an increase in the total number of annuities in force. Annuities increased from 23 with annual payment amounts of \$54,560 as of December 31, 2011 to a total of 28 with annual payment amounts of \$95,624 as of December 31, 2015.

The increase in assets and annuity fund balance is also attributable to investment income from the Fund's investments and an increase in the market value of investments in common stocks. Specifically, the Fund reported investment income of \$24,649 in 2014 and realized capital gain of \$58,806 in 2014.

The Fund's admitted assets, as of December 31, 2015, were invested mainly in common stocks (96.41%). (See item 7 of this report)

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 2015 annual statement on file, the Fund reported 19.25% invested in the securities of SPDR Barclays Short Term Corporate Bond Exchange Traded Fund (“ETF”). The Fund’s current concentration in this ETF makes it highly unlikely that the Fund’s other assets could provide a variability to offset the risks inherent in the ETF.

The examiner recommends that the Fund diversify its investment holdings. 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 (“ISS”) 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. 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.

## 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. Based on the reviewed samples, the annuitants were fairly treated. 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.

## 6. ANNUAL STATEMENT REPORTING

The Department's Instructions for Completing Line 3 in the Assets page for the 2015 annual statement state, in part, that:

“Line 3 'Current Year' Column: Should agree with the total of Schedule A- Part 3, Column 7.”

The Department's Instructions for Completing Schedule A - Part 3 - Common Stocks for the 2015 annual statement state, in part, that:

“IMPORTANT NOTE: Mutual funds (funds that invest in stocks, bonds, options or currencies) are to be reported in Schedule A – Part 3 - Common Stocks.”

The Fund reported market value of bonds of \$421,462 in line 1 in the Assets page of the Fund's 2015 annual statement. The examiner reviewed the schedule for bonds held, Schedule A, Part 1, in the Fund's 2015 annual statement and noted the following investments: iShares MBS Exchange Traded Fund (“ETF”) with a market value of \$135,702 and SPDR Barclays Short Term Corporate Bond ETF with a market value of \$285,760. The examiner determined that the two ETFs were incorrectly reported as bonds in the annual statement. The examiner concluded that the ETFs should have been reported as mutual funds, to be reported in Schedule A - Part 3 - Common Stocks in the Fund's 2015 annual statement.

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

The examiner reviewed the Fund's filed annual statements during the examination period (2011-2015) and recalculated annuity fund balance for all years. The examiner's review revealed that the Fund overstated Total Annuity Fund Balance by \$34,346 in 2011 and \$40,855 in 2012, respectively.

The examiner recommends that the Fund exercise due care in the preparation of its filed annual statements.

## 7. 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 diversify its investment holdings.	6
B	The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.	8
C	The examiner recommends that the Fund exercise due care in the preparation of its filed annual statements.	8

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. 31465*

*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  
ROCHESTER AREA COMMUNITY FOUNDATION***

*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***

