



**REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
ARCHDIOCESE OF NEW YORK**

AS OF December 31, 2019

EXAMINER: Chacko Thomas

DATE OF REPORT: August 5, 2020

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

March 24, 2023

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

Madam:

In accordance with instructions contained in Appointment No. 32107, dated June 24, 2020 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Archdiocese of New York. The Fund's home office is located at 1011 First Avenue, New York, New York 10022.

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

1. EXECUTIVE SUMMARY

The Fund violated Section 312(b) of the New York Insurance Law by failing to obtain signed statements from the board members indicating that they received and read the prior report on examination. The examiner recommends that the Fund comply with Section 312(b) of the New York Insurance Law by obtaining the signature of each board member indicating that they have received and read any current or future filed report on examination. (See item 3E of this report)

The examiner recommends that the Investment Strategy Statement be approved by the board of directors. (See item 4A of this report)

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 recommends that the Fund's board of directors, or a committee thereof, review the activities of the Fund at least annually and note the same in the minutes. (See item 4B 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)

The examiner recommends that the Fund ensure that all gift annuity agreement forms have the appropriate form number as approved by the Superintendent printed on each form issued. (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 Archdiocese of New York Segregated Annuity Fund (the "Fund") through which Archdiocese of New York (the "Archdiocese") provides annuity benefits.

The prior examination was conducted as of December 31, 2014. This examination covers the period from January 1, 2015 through December 31, 2019. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2019 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 Archdiocese 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, 2019 to determine whether the Fund's filed 2019 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

The Archdiocese of New York was chartered in 1808 and is a religious corporation organized for the purpose of providing grants to support certain pastoral, educational and administrative functions within the Roman Catholic Archdiocese of New York. The Archdiocese established the Fund to issue gift annuity agreements in return for gifts from donors in 1981. The Superintendent of Insurance granted to the Archdiocese a Charitable Annuity Society special permit on November 2, 1995.

B. Structure

The management of the Archdiocese and the Fund and all of its affairs and property are entrusted to a board of trustees. The Fund handles the issuance of annuity agreements and maintains the accounting records and individual annuity files at its principal office.

C. Assets under the Board of Trustees

As of the August 31, 2019 audited financial statement, the Archdiocese's Board of Trustees oversaw investments totaling \$66,368,865 and an endowment comprising \$527,817. The Fund, as of December 31, 2019, held total admitted assets of \$7,854,707.

D. Third-Party Payment Service Provider

The Bank of New York Mellon ("BNY Mellon") is the investment manager and acts as the custodian to the Fund's assets. Additionally, BNY Mellon: calculates the annuity amounts to be paid; issues all check for annuity payments; and, upon notification and receipt of a death certificate from the Fund, calculates the death payout and prepares the death payout check. BNY Mellon prepares the Fund's annual statements and prepares Form 1099 for the annuitants.

E. Oversight Structure

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

"(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 examiner's review revealed the Fund failed to obtain statements signed by each board member indicating that they received and read the prior report on examination.

The Fund violated Section 312(b) of the New York Insurance Law by failing to obtain signed statements from the board members indicating that they received and read the prior report on examination. The examiner recommends that the Fund comply with Section 312(b) of the New York Insurance Law by obtaining the signature of each board member indicating that they have received and read any current or future filed report on examination.

4. INVESTMENT REVIEW

A. Investment Policy 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.”

Interrogatory 18 in the Fund’s filed 2019 annual statement states the following:

“Has the board or other governing body of the segregated gift annuity fund adopted an Investment Strategy Statement specifying guidelines for the investment of the fund’s assets?”

The examiner’s review of the Fund’s filed 2019 annual statement showed that the Fund answered “yes” to interrogatory 18. The examiner’s review of the Fund’s Investment Strategy Statement (“ISS”) revealed that the board did not approve the ISS. Therefore, the Fund failed to answer interrogatory 18 in the 2019 annual statement correctly.

The examiner recommends that the Investment Strategy Statement be approved by the board of directors.

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.

B. Monitoring

The examiner reviewed the board of trustees' minutes for the examination period. The examiner noted that the minutes did not discuss the activities of the Fund during the examination period.

The examiner recommends that the Fund's board of directors, or a committee thereof, review the activities of the Fund at least annually and note the same in the minutes.

5. ASSETS AND LIABILITIES SUMMARY

The following summary table indicates the growth in various categories of the Fund's assets, liabilities, and fund balance during the period under review:

	<u>December 31,</u> <u>2014</u>	<u>December 31,</u> <u>2019</u>	<u>Increase</u>
Admitted assets	<u>\$7,345,890</u>	<u>\$7,854,707</u>	<u>\$508,817</u>
Liabilities	<u>\$4,830,723</u>	<u>\$4,935,777</u>	<u>\$105,054</u>
Minimum required fund balance	\$ 483,072	\$ 493,578	\$ 10,506
Excess fund balance (surplus)	<u>2,032,095</u>	<u>2,425,353</u>	<u>393,258</u>
Total annuity fund balance	<u>\$2,515,167</u>	<u>\$2,918,930</u>	<u>\$403,763</u>
Total liabilities and annuity fund balance	<u>\$7,345,890</u>	<u>\$7,854,707</u>	<u>\$508,817</u>

The increase in assets and annuity fund balance reflects an increase in higher amounts of new gifts received and a net increase in investment income generated during the examination period. The increase in liabilities is due to the higher amounts of new gifts issued. Annuities decreased from 194 with annual payment amounts of \$581,679 as of December 31, 2014 to a total of 146 with annual payment amounts of \$508,454 as of December 31, 2019.

The Fund's admitted assets, as of December 31, 2019, were invested mainly in equity securities (98.18%).

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 7 newly issued gift annuities by the Fund during the examination period noted that in 2 newly issued annuities, the Fund used forms that differed from the gift annuity agreements filed with the Superintendent. The deviating form number found in the sample was AD3 Vinci 15 and AD7 Kim 15.

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.

The examiner reviewed a sample of new gift annuities issued by the Fund during the examination period. In the sample selected, the examiner noted that 1 out of the 7 newly issued gift annuities reviewed had contracts which did not have the appropriate form number as approved by the Superintendent printed on the forms.

The examiner recommends that the Fund ensure that all gift annuity agreement forms have the appropriate form number as approved by the Superintendent printed on each form issued.

7. 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 citation:

<u>Item</u>	<u>Description</u>
A	<p>The examiner recommends that the Fund diversify its investment holdings.</p> <p>The Department no longer provides specific guidance on diversification.</p>
B	<p>The examiner recommends that the Fund obtain copies of the death certificates of annuitants for annuity contracts terminated.</p> <p>The review showed that the Fund obtained the death certificate where it is possible or verified the information with death master file index information through Lexis Nexis.</p>

8. SUMMARY AND CONCLUSIONS

Following are the violations and recommendations contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The Fund violated Section 312(b) of the New York Insurance Law by failing to obtain signed statements from the board members indicating that they received and read the prior report on examination.	5
B	The examiner recommends that the Fund comply with Section 312(b) of the New York Insurance Law by obtaining the signature of each board member indicating that they have received and read any current or future filed report on examination.	5
C	The examiner recommends that the Investment Strategy Statement be approved by the board of directors.	6
D	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.	6
E	The examiner recommends that the Fund's board of directors, or a committee thereof, review the activities of the Fund at least annually and note the same in the minutes.	7
F	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.	9

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
G	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.	9
H	The examiner recommends that the Fund ensure that all gift annuity agreement forms have the appropriate form number as approved by the Superintendent printed on each form issued.	9

Respectfully submitted,

_____/s/
Chacko Thomas
Senior Insurance Examiner

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

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

_____/s/
Chacko Thomas

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:*

CHACKO THOMAS

as a proper person to examine the affairs of the

***SEGREGATED GIFT ANNUITY FUND OF THE
ARCHDIOCESE OF NEW YORK***

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 24th day of June, 2020

LINDA A. LACEWELL
Superintendent of Financial Services

By:



MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU

