



**REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
LE MOYNE COLLEGE
AS OF December 31, 2020**

EXAMINER: Manish Gera

DATE OF REPORT: July 28, 2022

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

REPORT ON EXAMINATION

OF THE

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KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

June 6, 2023

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

Madam:

In accordance with instructions contained in Appointment No. 32222, dated April 19, 2021 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Le Moyne College. The Fund's home office is located at 1419 Salt Springs Road, Syracuse, NY 13214.

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

1. EXECUTIVE SUMMARY

The examiner recommends that the Fund consistently use the name that appears on its board resolution as part of its permit application to the Department in all its operations. (See item 3E of this report)

The examiner recommends that the Fund uses on all annuity benefit checks the name it agreed to by board resolution as part of its permit application to the Department for a special permit to issue charitable gift annuities in New York. (See item 3E of this report)

The examiner recommends that the Fund adopt an Investment Policy 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 review at least annually its written investment policy setting forth guidelines on investments and delegation of management and the conformance of its delegates 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 examiner recommends that the Board of Trustees, or a committee thereof, be provided, at least annually, with a report concerning the Fund's investment of required admitted assets and note such in the minutes. (See item 4B of this report)

The examiner recommends that upon the death of an annuitant, the Fund obtain and maintain a death certificate or other reliable documentary evidence that supports such information terminating an annuity contract. (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 Le Moyne College Segregated Annuity Fund (the "Fund") through which Le Moyne College the ("College") 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 College, 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

Le Moyne College was chartered in 1946 and is organized for the purpose of establishing, operating and maintaining a college for the instruction of men and women in learned languages and in the liberal and useful arts, philosophy and science, and to maintain and conduct all such departments of knowledge as may be conducive to the attainment of those ends, including research in the various fields above set forth, but not thereby limiting in any way the purpose herein set forth. The College established the Fund to issue gift annuity agreements in return for gifts from donors in 2006. The Superintendent of Insurance granted to the College a Charitable Annuity Society special permit on September 7, 2006.

B. Structure

The Fund is overseen by the College's Board of Trustees. All operations related to the issuance, maintenance, and settlement of annuity agreements are handled by the College itself. Annuitant files are managed by the College.

C. Assets Under the Board of Trustees

As of May 31, 2020, the College's Board of Trustees oversaw an endowment comprising \$189,023,268 in total assets. The Fund, as of December 31, 2020, held total admitted assets of \$802,667.

D. Third-Party Payment Service Provider

KeyBank National Association ("Key Bank") is the Fund's custodian and Investment manager. Key Bank issues annuity benefit payments. Olbricht Storniolo (OS) Group LLC provides the annual statement reporting function for the Fund. Benefit Plans Actuarial Services performs the calculation of net reserves on behalf of the Fund.

E. Oversight Structure

The examiner's review of the Fund's bank account, custodian account and brokers advices noted that in some instances the account is in the name of the College or bank, not in the name of the Fund as agreed to by resolution of the board of trustees filed with the Department.

The examiner recommends that the Fund consistently use the name that appears on its board resolution as part of its permit application to the Department in all its operations.

The examiner's review of a sample of benefit payments made to annuitants during the examination period revealed that only the name of the bank, not the Fund's name, appeared on the annuity benefit checks.

The examiner recommends that the Fund uses on all annuity benefit checks the name it agreed to by board resolution as part of its permit application to the Department for a special permit to issue charitable gift annuities in New York.

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.”

The examiner’s review of the Fund’s Investment Policy 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 Policy 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.

KeyBank National Association (“Key Bank”) is the Fund’s investment adviser. Key Bank prepared and provided a form investment policy statement (“IPS”) for the Fund. The Fund adopted that form as its IPS.

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.

B. Monitoring

The examiner reviewed the Board of Trustees minutes to determine whether the board had been provided with a report concerning the Fund's investment of required admitted assets. The minutes did not contain any indication that the board was provided with a report concerning the Fund's investment of required admitted assets.

The examiner recommends that the Board of Trustees, or a committee thereof, be provided, at least annually, with a report concerning the Fund's investment of required admitted assets and note such in the minutes.

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>\$685,182</u>	<u>\$802,667</u>	<u>\$117,485</u>
Liabilities	<u>\$559,856</u>	<u>\$453,849</u>	<u>\$106,007</u>
Minimum required fund balance	\$ 55,986	\$ 45,385	\$ (10,601)
Excess fund balance (surplus)	<u>69,340</u>	<u>303,433</u>	<u>234,093</u>
Total annuity fund balance	<u>\$125,326</u>	<u>\$348,818</u>	<u>\$223,492</u>
Total liabilities and annuity fund balance	<u>\$685,182</u>	<u>\$802,667</u>	<u>\$117,485</u>

The increase in assets, liabilities and annuity fund balance reflects an increase in the total number of annuities in force. Annuities increased from 11 with annual payment amounts of \$70,486 as of December 31, 2015, to a total of 12 with annual payment amounts of \$60,971 as of December 31, 2020.

The Fund's admitted assets, as of December 31, 2020, were invested mainly in equity securities (100%).

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.

The examiner's review of a sample of 2 annuity contracts terminated revealed that in 1 of the 2 cases (50%) reviewed, the Fund failed to obtain a copy of the death certificate to confirm termination of the annuity contract.

The examiner recommends that upon the death of an annuitant, the Fund obtain and maintain a death certificate or other reliable documentary evidence that supports such information terminating an annuity contract.

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 trustees, or a committee thereof, approve the purchases and sales of all investments and note such approvals in the minutes.</p> <p>The Fund has not complied with the recommendation. A similar recommendation appears in this report on examination.</p>
B	<p>The examiner recommends that the Fund obtain broker's advices or other supporting documentation for its investment transactions and reconcile such advices to the monthly statements provided by the custodian.</p> <p>The Fund has complied with the recommendation.</p>
C	<p>The examiner recommends that the Fund diversify its investment holdings.</p> <p>The Department no longer offers specific guidance for diversification.</p>
D	<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 Policy Statement, but that statement failed to include a reference to the prudent investor standard.</p>

<u>Item</u>	<u>Description</u>
E	<p>The examiner recommends that the Fund use the name it agreed to by board resolution as part of its permit application to the Department for a special permit to issue charitable gift annuities in New York.</p> <p>The Fund has not complied with the recommendation. A similar recommendation appears in this report on examination.</p>
F	<p>The examiner recommends that the Fund exercise due care in the preparation of its filed annual statements.</p> <p>The examiner noted no new discrepancies during his review.</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 Fund consistently use the name that appears on its board resolution as part of its permit application to the Department in all its operations.	5
B	The examiner recommends that the Fund uses on all annuity benefit checks the name it agreed to by board resolution as part of its permit application to the Department for a special permit to issue charitable gift annuities in New York.	5
C	The examiner recommends that the Fund adopt an Investment Policy 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
D	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.	6
E	The examiner recommends that the Board of Trustees, or a committee thereof, be provided, at least annually, with a report concerning the Fund's investment of required admitted assets and note such in the minutes.	7

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
F	The examiner recommends that upon the death of an annuitant, the Fund obtain and maintain a death certificate or other reliable documentary evidence that supports such information terminating an annuity contract.	9

Respectfully submitted,

/s/

Manish Gera
Insurance Examiner

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

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

/s/

Manish Gera

Subscribed and sworn to before me

this _____ day of _____

APPOINTMENT NO. 32222

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:*

MANISH GERA

as a proper person to examine the affairs of the

***SEGREGATED GIFT ANNUITY FUND OF THE
LE MOYNE COLLEGE***

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 19th day of April, 2021

LINDA A. LACEWELL
Superintendent of Financial Services

By:



MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU

