



**REPORT ON EXAMINATION  
OF THE  
SEGREGATED GIFT ANNUITY FUND  
OF THE  
CENTER FOR CONSTITUTIONAL RIGHTS, INC.  
AS OF December 31, 2022**

**EXAMINER: Hasan Ahmed**

**DATE OF REPORT: August 7, 2024**

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KATHY HOCHUL  
Governor



ADRIENNE A. HARRIS  
Superintendent

September 16, 2024

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

Dear Adrienne A. Harris:

In accordance with instructions contained in Appointment No. 32501, dated April 7th, 2023, and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Center for Constitutional Rights, Inc. The Fund's home office is located at 666 Broadway, 7<sup>th</sup> Floor, New York, NY 10012.

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 of trustees 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 Fund obtain broker's advices or other supporting documentation for its investment transactions and that this documentation be reviewed on a timely basis and reconciled to the applicable custodial statements for that period. (See item 3E 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 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 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 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 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)

The examiner recommends that the Fund maintain a copy of the annuity agreement and a copy of the canceled check or other documentary evidence showing proof of residuum transfer in its documentation for terminated contracts. (See item 6 of this report)

The examiner recommends that the Fund prepare its filed annual statements in accordance with the instructions for completing the New York State Segregated Gift Annuity Fund Annual Statement. (See item 7 of this report)

## 2. SCOPE OF EXAMINATION

This Scope of Examination summarizes the nature of the Superintendent of the Department of Financial Services' (the "Department") examination and assessment of the Center for Constitutional Rights, Inc. Gift Annuity Fund (the "Fund") through which the Center for Constitutional Rights, Inc. (the "Organization") provides annuity benefits.

The prior examination was conducted as of December 31, 2017. This examination covers the period from January 1, 2018 through December 31, 2022. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2022 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 Foundation or Fund, in relation to their annuity activities, could have better satisfied statutory standards or to adhered to 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, 2022 to determine whether the Fund's filed 2022 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 8 of this report.

### 3. DESCRIPTION OF FUND

#### A. History

The Center for Constitutional Rights was chartered in 1966 and is organized for the purpose of advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. The Organization established the Fund to issue gift annuity agreements in return for gifts from donors in 1998. The Superintendent of Insurance granted to the Organization a Charitable Annuity Society special permit on November 11, 2013.

#### B. Structure

The Fund is overseen by the Organization's board of trustees. All operations related to the issuance, maintenance and settlement of annuity agreements are handled by the Fund.

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

As of the June 30, 2022 audited financial statement, the Organization's Board of Trustees endowment comprising \$6,201,115 in total assets. The Fund, as of December 31, 2022, held total admitted assets of \$1,901,890.

#### D. Third Party Service Provider

The Fund has a service agreement with First State Trust Company ("FST") for investment management and accounting related services. FST registers the Fund's securities, conducts all investment transactions, collects income and makes investments, and prepares the Fund's annual statement.

#### 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 Fund failed to obtain statements signed by each member of its board of trustees 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 of trustees 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.

The examiner reviewed the investment transactions for the period under examination and noted that the Fund failed to obtain broker's advices or other supporting documentation for its investment transactions to reconcile such advices to the monthly statements furnished by the custodian.

The examiner recommends that the Fund obtain broker's advices or other supporting documentation for its investment transactions and that this documentation be reviewed on a timely basis and reconciled to the applicable custodial statements for that period.



#### 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.”

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.

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 Organization prepared and provided an 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.

##### B. Monitoring

New York Estate Powers and Trust Law § 11-2.3(c)(1) requires trustees to exercise care, skill and caution in periodically reviewing the delegee’s exercise of the delegated function and compliance with the scope and terms of the delegation.

New York Not-for-Profit Corporation Law § 554(a)(3) provides that, when delegating investment functions, an institution must monitor its agents' performance and compliance with the scope and terms of each's respective delegation. In so doing, the institution must use the care that an ordinarily prudent person in a like position would exercise under similar circumstances.

The examiner reviewed the Board of Trustees minutes to determine if 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:

	December 31, <u>2017</u>	December 31, <u>2022</u>	Increase (Decrease)
Admitted assets	\$ <u>1,478,839</u>	\$ <u>1,901,890</u>	\$ <u>423,051</u>
Liabilities	\$ <u>567,870</u>	\$ <u>418,135</u>	\$ <u>(149,735)</u>
Minimum required fund balance	\$ 56,711	\$ 41,813	\$ (14,898)
Excess fund balance (surplus)	<u>854,258</u>	<u>1,441,942</u>	<u>587,684</u>
Total annuity fund balance	\$ <u>910,969</u>	\$ <u>1,483,755</u>	\$ <u>572,786</u>
Total liabilities and annuity fund balance	\$ <u>1,478,839</u>	\$ <u>1,901,890</u>	\$ <u>423,051</u>

The increase in admitted assets and annuity fund balance resulted from the large value of gifts received during the examination period and investment gains. The decrease in liabilities reflects a decrease in the total number of annuities in force. Annuities decreased from 39 with annual payment amounts of \$64,851 as of December 31, 2017 to a total of 32 with annual payment amounts of \$45,494 as of December 31, 2022.

The Fund's admitted assets, as of December 31, 2022, were invested in equity securities (62.14%), and bonds (35.23%).

## 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 2 newly issued gift annuities by the Fund during the examination period noted that in 2 cases (100%) reviewed, the Fund used forms that differed from the gift annuity agreements filed with the Superintendent. The forms used failed to contain proper form numbers.

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's review of a sample of 5 annuity contracts terminated revealed that in 4 of the 5 cases (80%) 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.

The examiner's review of a sample of 5 annuity contracts terminated revealed that in 5 of the 5 cases (100%) reviewed, the Fund failed to provide evidence of payment showing the annuitants were paid before the contracts were terminated, and in 2 of the 5 cases (40%), the Fund failed to provide a copy of the annuity agreements that were issued for each sample contract.

The examiner recommends that the Fund maintain a copy of the annuity agreement and a copy of the canceled check or other documentary evidence showing proof of residuum transfer in its documentation for terminated contracts.

## 7. ANNUAL STATEMENT REPORTING

The Department's Instructions for Completing the New York State Segregated Gift Annuity Fund Annual Statement for the year ended December 31, 2022, namely the General Instructions, states, in part:

“(8) All amounts are to be reported based upon annuities issued in all states, except for states that mandate a legally required segregated and distinct trust account for that particular state's annuitants (e.g., California ) or where a legally segregated and distinct trust account for a particular state's annuitants was established under an option to do so.”

Further, the Department's Instructions for Completing the New York State Segregated Gift Annuity Fund Annual Statement for the year ended December 31, 2022, namely the amount of gifts received during the year conditioned upon annuity agreements, states, in part:

“Line 1

Current Year” Column: Should reflect the gross amount of gifts received during the year conditioned upon annuity agreements.”

The examiner reviewed the Fund's filed annual statements for the examination period (2018 through 2022). Based upon his review, the examiner noted that the Fund reported \$75,000 as the amount of gifts received during the year conditioned upon annuity agreements in 2022. This was also evidenced in the supporting workpapers for 2022 as well. However, the examiner's review of the reserve listings indicated that the Fund reported only \$25,000 as the amount of gifts received during the year conditioned upon annuity agreements in 2022. The examiner determined that the other \$50,000 gift received was from a California annuitant. Therefore, the Fund should have reported \$25,000 as the amount of gifts received during the year conditioned upon annuity agreements in 2022.

The examiner recommends that the Fund prepare its filed annual statements in accordance with the instructions for completing the New York State Segregated Gift Annuity Fund Annual Statement.

## 8. 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 board of trustees, or a committee thereof, review the activities of the Fund at least annually and note the same in the minutes.</p> <p>The board of trustees, or a committee thereof, review the activities of the Fund annually and note the same in the minutes.</p>
B	<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 Department no longer provides guidance on approval of the purchases and sales of investments. However, the board, or a committee thereof, failed to review the investments of the Fund at least annually. A similar recommendation appears in this report on examination.</p>
C	<p>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.</p> <p>The Fund failed to obtain and maintain a death certificate or other reliable evidence that supports that information terminating an annuity. A similar recommendation appears in this report on examination.</p>
D	<p>The examiner recommends that the Fund use the name, as agreed upon by resolution of the board of trustees, for its custodian account.</p> <p>The Fund used the name of the Fund, as agreed upon resolution of the board of trustees, for its custodian account.</p>

## 9. 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 of trustees indicating that they received and read the prior report on examination. .	6
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.	6
C	The examiner recommends that the Fund obtain broker's advices or other supporting documentation for its investment transactions and that this documentation be reviewed on a timely basis and reconciled to the applicable custodial statements for that period.	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.	7
E	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.	7

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
F	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.	8
G	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.	10
H	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.	10
I	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.	10
J	The examiner recommends that the Fund maintain a copy of the annuity agreement and a copy of the canceled check or other documentary evidence showing proof of residuum transfer in its documentation for terminated contracts.	10
K	The examiner recommends that the Fund prepare its filed annual statements in accordance with the instructions for completing the New York State Segregated Gift Annuity Fund Annual Statement.	11



Respectfully submitted,

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/s/

Hasan Ahmed  
Senior 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 \_\_\_\_\_

***NEW YORK STATE***

***DEPARTMENT OF FINANCIAL SERVICES***

*I, **ADRIENNE A. HARRIS**, 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  
CENTER FOR CONSTITUTIONAL RIGHTS, 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 7th day of April, 2023*

***ADRIENNE A. HARRIS***  
*Superintendent of Financial Services*

*By:*



***MARK MCLEOD***  
***DEPUTY CHIEF - LIFE BUREAU***

