



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
ENVIROMENTAL DEFENSE FUND, INC.

CONDITION:

DECEMBER 31, 2018

DATE OF REPORT:

OCTOBER 11, 2019

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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EXAMINER:

ADELIA GBADAMOSI

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Linda A. Lacewell
Superintendent

March 18, 2020

Honorable Linda A. Lacewell
Superintendent of Financial Services
New York, New York 10004

Madam:

In accordance with instructions contained in Appointment No. 31904, dated May 16, 2019 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Environmental Defense Fund, Inc. hereinafter referred to as “the Fund,” at its home office located at 257 Park Avenue South, New York 10010.

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 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 and maintaining the signature of each board member indicating that they received and read the prior report on examination. (See item 3C of this report)

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. (See item 3C of this report)

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 not to diversify, then it should memorialize the reasons for that determination in terms of the Investment Strategy Statement's ("ISS") risk, return, and time horizon parameters. (See item 4 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 5 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. This is a repeat recommendation. (See item 5 of this report)

2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2013. This examination covers the period from January 1, 2014 through December 31, 2018. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2018 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, 2018 to determine whether the Fund's filed 2018 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 recommendation contained in the prior report on examination. The results of such review are contained in item 6 of this report.

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

A. History

The Environmental Defense Fund, Inc. (the “Corporation”) is organized for the purpose of preserving the natural systems on which all life depends. Guided by science, the Corporation designs and transforms markets by creating partnerships between public and private entities to bring lasting solutions to the most serious environmental problems. The Corporation established a program to issue gift annuity agreements in return for gifts from donors, and it has done so since 1991. A special permit was granted to the Corporation by the Department on November 4, 1994, for the purpose of issuing gift annuity agreements as specified in Section 1110 of the New York Insurance Law. The permit was amended on April 16, 2008. On April 16, 2008, the Corporation changed its name from “Environmental Defense, Inc.” to “Environmental Defense Fund, Inc.” and filed the same with the Department.

B. Services

The Fund issues the annuities and maintains the annuity contact files at its home office. The Fund’s custodian, State Street Global Advisors (“State Street”) provides custodial and investment services, prepares the annual statement, provides actuarial services, and issues annuity payments on behalf of the Fund.

C. Corporate Governance

The management of the organization and the Fund and all of its affairs and property are entrusted to a board of trustees. The number of trustees is set by a majority vote of the entire board which shall not be less than five. As of December 31, 2018, the board consisted of 40 trustees. The Trustees elect a chairman, a vice chairman, a secretary, a treasurer and may appoint additional officers as deemed necessary. The nomination and election procedures of the trustees and their term of office are set by the by-laws.

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 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 and maintaining the signature of each board member indicating that they received and read the prior report on examination.

The examiner reviewed the board of trustees’ minutes to determine whether the board approved the purchases and sales of investments during the examination period. The minutes did not contain any indication that the board approved the purchase and sales of investments during the examination period.

The examiner recommends that the board of trustees, or a committee thereof, approve the purchases and sales of all investments and note such approval in the minutes.

4. SIGNIFICANT FINANCIAL INFORMATION

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

	<u>December 31,</u> <u>2013</u>	<u>December 31,</u> <u>2018</u>	<u>Increase</u> <u>(Decrease)</u>
Admitted assets	<u>\$6,159,647</u>	<u>\$5,271,983</u>	<u>\$(887,664)</u>
Liabilities	<u>\$4,657,965</u>	<u>\$4,324,581</u>	<u>\$(333,384)</u>
Minimum required fund balance	\$ 465,796	\$ 432,458	\$ (33,338)
Excess fund balance	<u>1,035,886</u>	<u>514,944</u>	<u>(520,942)</u>
Total annuity fund balance	<u>\$1,501,682</u>	<u>\$ 947,402</u>	<u>\$(554,280)</u>
Total liabilities and annuity fund balance	<u>\$6,159,647</u>	<u>\$5,271,983</u>	<u>\$(887,665)</u>

The decrease in assets and annuity fund balance reflects a decrease in the total number of annuities in force. Annuities decreased from 198 with annual payment amounts of \$583,743 as of December 31, 2013 to a total of 189 with annual payment amounts of \$482,069 as of December 31, 2018.

The Fund's admitted assets, as of December 31, 2018, were invested mainly in stocks (92.29%).

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 2016 annual statement, the Fund reported: 58% of its admitted assets invested in Intermediate U.S Govt/Credit Bond Index and 19.6% in S&P 500 CTF. The Fund's

current concentration in these funds could make it highly unlikely that the Fund's other assets can provide a variability to offset the risks inherent in these funds.

Based upon the concentrations in the above funds, 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 not to diversify, then it should memorialize the reasons for that determination in terms of the ISS's risk, return, and time horizon parameters. 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 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.

5. TREATMENT OF ANNUITANTS

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 eight newly issued gift annuities by the Fund during the examination period noted that in three newly issued annuities, the Fund used forms that differed from the gift annuity agreements filed with the Superintendent.

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 five annuity contracts terminated revealed that in 4 of the 5 cases (80%) reviewed, the Fund did not 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.

6. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following is the recommendation 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 obtain copies of the death certificates of annuitants for annuity contracts terminated.</p> <p>The Fund did not obtain copies of death certificates of all annuitants for annuity contract terminated.</p>

7. SUMMARY AND CONCLUSIONS

Following are the violations and recommendations and comments 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 and maintaining the signature of each board member indicating that they received and read the prior report on examination.	5
C	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.	5
D	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 not to diversify, then it should memorialize the reasons for that determination in terms of the ISS's risk, return, and time horizon parameters.	7
E	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	8
F	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.	8
G	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.	8

Respectfully submitted,

/s/

Adelia Gbadamosi
Senior Insurance Examiner

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

ADELIA GBADAMOSI, being duly sworn, deposes and says that the foregoing report, subscribed by her, is true to the best of her knowledge and belief.

/s/

Adelia Gbadamosi

Subscribed and sworn to before me
this _____ day of _____

APPOINTMENT NO. 31904

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, LINDA A. LACEWELL, 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:

ADELIA GBADAMOSI

as a proper person to examine the affairs of the

**SEGREGATED GIFT ANNUITY FUND OF THE
ENVIRONMENTAL DEFENSE FUND, INCORPORATED**

and to make a report to me in writing of the condition of said

FUND

with such other information as she 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 16th day of May, 2019

LINDA A. LACEWELL
Acting Superintendent of Financial Services

By:



MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU

