



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

REPORT ON EXAMINATION

OF THE

SEGREGATED GIFT ANNUITY FUND

OF THE

MEDECINS SANS FRONTIERES/

DOCTORS WITHOUT BORDERS USA, INC.

CONDITION:

DECEMBER 31, 2016

DATE OF REPORT:

JULY 10, 2017

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EXAMINER:

JUAN SOTO

## TABLE OF CONTENTS

<u>ITEM</u>		<u>PAGE NO.</u>
1.	Executive summary	2
2.	Scope of examination	3
3.	Description of Fund	4
4.	Corporate governance	5
5.	Significant financial information	6
6.	Treatment of annuitants	7
7.	Annual statement reporting	8
8.	Prior report summary and conclusions	9
9.	Summary and conclusions	10



NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

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Andrew M. Cuomo  
Governor

Maria T. Vullo  
Superintendent

June 11, 2018

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

Madam:

In accordance with instructions contained in Appointment No. 31603, dated April 20, 2017 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of Medecins Sans Frontieres/Doctors Without Borders USA, Inc., hereinafter referred to as the "Fund," at its home office located at 333 Seventh Avenue, New York, NY, 10001.

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 maintain 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 4 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 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 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 prepare its annual statements according to the Department's instructions. (See item 7 of this report)

## 2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2011. This examination covers the period from January 1, 2012 through December 31, 2016. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2016 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, 2016 to determine whether the Fund's filed 2016 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 recommendations contained in the prior report on examination. The results of such review are contained in item 8 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

The Medicins Sans Frontieres/Doctors Without Borders USA, Inc. (“Corporation”) is a private, international association, which is made up mainly of doctors and health sector workers, and is also open to all other professions which might help in achieving its aims. Under the provisions of its by-laws, the Corporation is permitted to issue gift annuity agreements and it has done so since October 13, 2006. A special permit was granted to the Corporation by the Department on December 4, 2007, authorizing it to issue gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

Wells Fargo Bank, N.A. is the Fund’s custodian and investment manager. Wells Fargo is also responsible for payments to annuitants. The Fund uses the New York State method in PGCalc’s Giftwrap software to calculate the net reserves. All operations related to the issuance, maintenance and settlement of annuity agreements are handled by the Fund.

The management of the Corporation and the Fund and all of its affairs and property are entrusted to a board of directors. The number of directors is limited to no less than 3 and no more than 15 directors. As of December 31, 2016, the board consisted of 13 directors. The board of directors, by resolution adopted by a majority of the entire board, may from time to time increase the number of directors. A majority of directors shall consist of individuals with a medical background, meaning individuals with a professional background that includes, during initial training and later practice, a practitioner-patient relationship. The directors appoint the President, the Secretary, the Treasurer, and one or more Vice Presidents, and such other officers as the directors may deem proper. The nomination and election procedures of the directors and their terms of office are set by the by-laws.

#### 4. CORPORATE GOVERNANCE

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 maintain 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 maintain 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 Investment Committee minutes to determine whether the Investment Committee approved the purchases and sales of investments during the examination period. The minutes did not contain any indication that the committee approved the purchases 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 approvals in the minutes.

## 5. SIGNIFICANT FINANCIAL INFORMATION

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>2011</u>	<u>December 31,</u> <u>2016</u>	<u>Increase</u> <u>(Decrease)</u>
Admitted assets	<u>\$6,216,745</u>	<u>\$18,907,150</u>	<u>\$12,690,405</u>
Liabilities	<u>\$3,596,529</u>	<u>\$11,799,998</u>	<u>\$ 8,203,469</u>
Minimum required fund balance	\$ 413,601	\$ 1,179,999	\$ 766,398
Excess fund balance (surplus)	<u>1,667,136</u>	<u>5,927,152</u>	<u>4,260,016</u>
Total annuity fund balance	<u>\$2,080,737</u>	<u>\$ 7,107,152</u>	<u>\$ 5,026,415</u>
Total liabilities and annuity fund balance	<u>\$6,216,745</u>	<u>\$18,907,150</u>	<u>\$12,690,405</u>

The increase in assets, liabilities and annuity fund balance reflects an increase in the total number of annuities in force. Annuities increased from 292 with annual payment amounts of \$507,853 as of December 31, 2016 to a total of 682 with annual payment amounts of \$1,242,049 as of December 31, 2016.

The Fund's admitted assets, as of December 31, 2016, were mainly invested in common stocks (92.10%) and money market mutual funds (7.21%).

## 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 the 7 gift annuity agreement forms used by the fund for gift annuities issued in New York during the examination period noted that in 1 instance, the Fund used a gift annuity agreement form 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 a gift annuity agreement form that differed from the gift annuity agreement form that was 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 16 terminated annuity contracts revealed that in 3 of the 16 cases (18.75 %) reviewed, the Fund did not obtain a copy of the death certificate to confirm termination of the annuity contract. In the three cases in which the Fund did not obtain a copy of the death certificate, the Fund obtained a copy of the obituary for each annuity termination.

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. ANNUAL STATEMENT REPORTING

The Department's Instructions for completing Lines 2 through 5 of the Income section on Page 3 of the 2014 annual statement states the following:

Line 2: "Current Year" Column: Should agree with Exhibit 1, Column 3, Line 7.  
"Prior Year" Column: Report prior year's investment income.

"Line 3: "Current Year" Column: Should agree with the sum of Schedule A, Part 5, Column 8, Totals - Bonds and Stocks plus Schedule D – Part 3, Column 8, Totals – Other Invested Assets.  
"Prior Year" Column: Report prior year's realized capital gains/(losses).

Line 4: "Current Year" Column: Should agree with Exhibit 2, Column 5, Line 16.  
"Prior Year" Column: Report prior year's unrealized capital gains/(losses).

Line 5: "Current Year" Column: Report and label separately any other income not reported at Lines 5.1 through 5.4. Note: Additional Lines may be inserted, if needed.  
"Prior Year" Column: Report prior year's other income."

The Fund reported other assets received of \$702,848 under line 5.2, "other income received" of page 3 of the annual statement. Instead, the examiner's review determined that the amount consisted of dividends and capital gains from common stock investments. Accordingly, this amount should have been distributed between lines 2, 3 and 4 of page 3, not line 5.2.

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

## 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 directors, or a committee thereof, review the purchases and sales of investments at least annually and note such reviews in the minutes.</p> <p>The examiner's review of the minutes indicated that the Fund's administrative committee reviewed, but did not approve, the investment transactions during the exam period. A similar recommendation appears in this report on examination.</p>
B	<p>The examiner recommends that the Fund's name, "Doctors Without Borders Charitable Annuity Unrestricted Reserve" be included on all annuity benefit checks issued to its annuitants.</p> <p>The examiner requested annuity payment cancelled checks copies to verify the pertinent name change per the report recommendation. The examiner determined that the proper name of the Fund is on the check.</p>
C	<p>The examiner recommends that the Fund change the name of its custodial account to Doctors Without Borders Charitable Gift Annuity Unrestricted Reserve.</p> <p>The examiner determined that the Fund implemented the name change to the custodial account as recommended by the report findings, as shown on the Wells Fargo bank statement of June 1 through June 30, 2014.</p>

## 9. SUMMARY AND CONCLUSIONS

Following are the violations, recommendations and comment 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 maintain 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 Fund violated Section 1110(a) of the New York Insurance Law by using a gift annuity agreement form that differed from the gift annuity agreement form that was filed with the Superintendent.	7
E	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.	7
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	7
G	The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.	8

Respectfully submitted,

\_\_\_\_\_/s/  
Juan Soto  
Senior Insurance Examiner

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

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

\_\_\_\_\_/s/  
Juan Soto

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_

*APPOINTMENT NO. 31603*

*NEW YORK STATE*

***DEPARTMENT OF FINANCIAL SERVICES***

*I, MARIA T. VULLO, 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:*

***JUAN SOTO***

*as a proper person to examine the affairs of the*

***SEGREGATED GIFT ANNUITY FUND OF THE  
MEDECINS SANS FRONTIERES/DOCTOR'S WITHOUT BORDERS, 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 20th day of April, 2017*

*MARIA T. VULLO  
Superintendent of Financial Services*

*By:*

*Mark McLeod*

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

