



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

CONDITION:

DECEMBER 31, 2016

DATE OF REPORT:

SEPTEMBER 21, 2017

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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OF THE

SEGREGATED GIFT ANNUITY FUND

OF THE

NATURAL RESOURCES DEFENSE COUNCIL, INC.

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EXAMINER:

MATTHEW POLVINO

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

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Andrew M. Cuomo  
Governor

Maria T. Vullo  
Superintendent

May 29, 2018

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

Madam:

In accordance with instructions contained in Appointment No. 31605, dated April 20, 2017 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Natural Resources Defense Council, Inc., hereinafter referred to as “the Fund,” at its home office located at 40 West 20<sup>th</sup> Street, New York, NY 10011.

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 and 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 Fund's board of directors review the activities of the Fund at least annually and note the same in the minutes. (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 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 5 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 5 of this report)

The Fund violated Section 1110(a) of the New York Insurance Law by using gift annuity agreement forms that were not filed with the Superintendent and approved. 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, and retain evidence that the forms were approved. (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 filed annual statements in accordance with the Department's instructions for completing the New York State segregated gift annuity fund annual statement. (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 violations 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 Natural Resources Defense Council, Inc. (the “Council”) is organized for the purpose of preserving, protecting and defending natural resources, wildlife and the environment against encroachment, misuse and destruction; conducting research and collecting, compiling and publishing facts, information and statistics concerning natural resources, wildlife and the environment; and conducting public education programs with respect thereto. The Council has been issuing gift annuity agreements since 1989. A permit was granted to the Council by the Department on June 16, 1992, for the purpose of issuing gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

The Fund solicits charitable contributions and issues gift annuity agreements.

State Street Global Advisors is a licensed bank that handles the following functions for the Fund: sending benefit payments to the Fund’s annuitants; providing the annuitants with the necessary tax information at the end of each calendar year; and investing the annuity fund’s assets. Milliman, Inc. performs valuation of charitable gift annuities and provides an actuarial opinion on the Fund’s reserves. State Street Global Advisors Trust Company is the custodian for the Fund.

The management of the Council and the Fund and all of its affairs and property are entrusted to a board of trustees. The number of trustees is limited to not less than five (5) and not more than forty-two (42) regular voting trustees. As of December 31, 2016, the board consisted of 36 trustees. The trustees elect a Chair, a President, an Executive Director, one or more Vice Chairs, a Secretary, Treasurer, and such other officers as may from time to time be appointed by the board of trustees. The nomination and election procedures of the trustees 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 obtain and 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 obtain and 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 requested the board of trustees’ minutes for the examination period. The Fund provided the examiner with a copy of the board minutes for the board meetings conducted in 2012, 2013 and 2014 only.

The examiner recommends that the Fund’s board of directors review the activities of the Fund at least annually and note the same in the minutes.

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 purchases and sales of investments during the 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 (decline) 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>\$18,553,797</u>	<u>\$17,199,723</u>	<u>\$(1,354,074)</u>
Liabilities	<u>\$14,899,094</u>	<u>\$13,190,213</u>	<u>\$(1,708,882)</u>
Minimum required fund balance	\$ 1,489,909	\$ 1,319,021	\$ (170,888)
Excess fund balance (surplus)	<u>2,164,794</u>	<u>2,690,489</u>	<u>525,695</u>
Total annuity fund balance	<u>\$ 3,654,703</u>	<u>\$ 4,009,511</u>	<u>\$ 354,808</u>
Total liabilities and annuity fund balance	<u>\$18,553,797</u>	<u>\$17,199,723</u>	<u>\$(1,354,074)</u>

The decrease in assets and liabilities reflects a decrease in the total number of annuities in force. Annuities decreased from 909 with annual payment amounts of \$1,790,832 as of December 31, 2011 to a total of 767 with annual payment amounts of \$1,653,390 as of December 31, 2016. The gain in the excess fund balance is attributable to gifts from terminations (deceased annuitants) being held in the account. The terminations were left in the fund to provide a cushion of reserves in the event of a market downturn and/or decreased gift activity.

The Fund's admitted assets, as of December 31, 2016, were invested mainly in bonds (54.5%) and common stocks (43.84%). All bonds held were investment grade.

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 on file, the Fund reported 23.94% of its admitted assets invested in the securities of US Tot Mkt Index CTF and 13.23% of its admitted assets invested in the securities of EAFE Index CTF. The Fund's current concentration in the two

securities makes it highly unlikely that the Fund's other assets could provide a variability to offset the risks inherent in the 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.

The examiner's review of the Fund's Investment Strategy Statement revealed that it failed to refer to the prudent investor standard as defined in Section 11-2.3 of the Estates, Powers and Trusts 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.

## 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 eight gift annuity agreement forms used by the fund for gift annuities issued in New York during the examination period noted that in all instances, the Fund failed to provide evidence that the forms were submitted and approved by the Department.

The Fund violated Section 1110(a) of the New York Insurance Law by using gift annuity agreement forms that were not filed with the Superintendent and approved. 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, and retain evidence that the forms were approved.

The examiner reviewed a sample of fifteen annuity contracts terminated during the exam period (January 1, 2012 through December 31, 2016). The examiner determined that for 4 of the 15 terminated annuities selected for review, the Fund did not obtain a copy of the death certificate to confirm termination of the annuity contract associated with the deceased annuitant.

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 Instructions for the Exhibit of Annuities in Force section of the New York State Segregated Gift Annuity Fund Annual Statement for the year ended December 31, 2016 state, in part:

**IMPORTANT NOTE:** For all calendar years (Columns 1 through 9), the number, annualized amount of payments on annuities in force, and reserve thereon should exclude California business and business from any state(s) that mandate a legally required segregated and distinct trust account for that particular state's annuitants.

The examiner's review of the Fund's reserve listing provided in conjunction with its 2016 Annual Statement revealed that the Fund included 96 annuities issued in California with total reserves of \$1,358,405 as of December 31, 2016. The examiner determined that the Fund failed to adhere to the Department's annual statement instructions which state that the Fund is required to report any amounts for its annuity program, exclusive of annuities issued in states such as California that mandate a legally required segregated and distinct trust account.

The Instructions for the Exhibit of Annuities in Force in New York section of the New York State Segregated Gift Annuity Fund Annual Statement for the years ended December 31, 2015 and 2016 state, in part:

“Line 1 Report the reserve amount included in the Exhibit of Annuities in Force, Line 1, Column 1, that pertains to New York annuitants.

Line 2 Report the number of annuities, included in the Exhibit of Annuities in Force, Line 1, Column 8, in force at the end of the current year on New York annuitants.

Line 3 Report the annualized amount of annuity payments, included in the Exhibit of Annuities in Force, Line 1, Column 9, payable under contracts that are in force at the end of the current year on New York annuitants.”

The examiner's review of the Fund's reserve listing provided in conjunction with its 2015 and 2016 Annual Statements revealed that there were 92 annuities issued in New York with total reserves of \$1,358,405 as of December 31, 2015 and 84 annuities issued in New York with total reserves of \$1,386,434 as of December 31, 2016. The Fund reported 157 annuities issued in New

York with total reserves of \$3,288,823 as of December 31, 2015 and 113 annuities issued in New York with total reserves of \$2,802,142 as of December 31, 2016 in its Exhibit of Annuities in Force in New York. Beyond this New York Exhibit, these discrepancies did not carry forward to any other amounts reported in the Fund's filed annual statement.

The examiner recommends that the Fund prepare its filed annual statements in accordance with the Department's instructions for completing the New York State segregated gift annuity fund annual statement.

## 8. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violations 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 Fund violated Section 312(b) of the New York Insurance Law by failing to maintain statements signed by each board member indicating that they received and read the prior report on examination.</p> <p>The examination revealed that the Fund failed to take corrective action in response to this prior report violation. See item 4 of this report.</p>
B	<p>The Fund violated Section 1110(a) of the New York Insurance Law by using annuity agreement forms that were not filed with the superintendent.</p> <p>The examination revealed that the Fund failed to take corrective action in response to this prior report violation. See item 6 of this report.</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 and maintain signed statements from the board members 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 and maintaining the signature of each board member indicating that they received and read the prior report on examination.	6
C	The examiner recommends that the Fund's board of directors review the activities of the Fund at least annually and note the same in the minutes.	6
D	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.	6
E	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.	8
F	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.	8

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
G	The Fund violated Section 1110(a) of the New York Insurance Law by using gift annuity agreement forms that were not filed with the Superintendent and approved.	9
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, and retain evidence that the forms were approved.	9
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.	9
J	The examiner recommends that the Fund prepare its filed annual statements in accordance with the Department's instructions for completing the New York State segregated gift annuity fund annual statement.	11

Respectfully submitted,

\_\_\_\_\_/s/  
Matthew Polvino  
Insurance Examiner

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

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

\_\_\_\_\_/s/  
Matthew Polvino

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

*APPOINTMENT NO. 31605*

*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:*

*MATTHEW POLVINO*

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

*SEGREGATED GIFT ANNUITY FUND OF THE  
NATURAL RESOURCES DEFENSE COUNCIL, 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  
DEPUTY CHIEF - LIFE BUREAU*

