



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

CONDITION:

DECEMBER 31, 2016

DATE OF REPORT:

SEPTEMBER 12, 2017

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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OF THE

SEGREGATED GIFT ANNUITY FUND

OF THE

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EXAMINER:

ASHOK REDDY

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Maria T Vullo  
Superintendent

February 22, 2018

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

Madam:

In accordance with instructions contained in Appointment No. 31608, 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 ORT America, Inc., hereinafter referred to as “the Fund,” at its home office located at 75 Maiden Lane, New York 10038.

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 statements signed by its 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 directors, 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. 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. (See item 5 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 and 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

ORT America, Inc. (the “Corporation”) is organized: for the purpose of promoting vocational, technical and related education and training in countries throughout the world where the need for such education and training exists and where it may ameliorate the economic, social, or educational status of Jews or other persons needing such education and training; to promote the goals of the ORT program; to combat anti-Semitism; and to promote the understanding and appreciation of Jewish values. ORT America, Inc. is an autonomous national membership organization, which is a corporation organized and existing under the Not-for-Profit Corporation Law of the State of New York. On September 23, 2008 the Corporation changed its name from Women’s American ORT, Inc. to ORT America, Inc.

The Corporation has been issuing gift annuity agreements since 1994. A special permit was granted to the Corporation by the Department on March 14, 1997, for the purpose of issuing gift annuity agreements as specified in Section 1110 of the New York Insurance Law. All operations related to the issuance, maintenance and settlement of annuity agreements are handled by the Fund’s custodian and investment manager, PNC Institutional Investments.

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 a minimum of 25 and a maximum of 35 members. As of December 31, 2016, the board consisted of 28 directors. The directors elect the president, chair of the executive committee, vice president(s), a treasurer, and a secretary/associate treasurer in accordance with the by-laws. The nomination and election procedures of the trustees and their terms of office are set by the by-laws.

#### 4. CORPORATE GOVERNANCE

Section 312 of the New York Insurance Law states, in part:

“(a)The superintendent shall forward to every insurer or other person examined a copy of the report on examination... (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 on the insurer’s files confirming that such member has received and read such report...”

The Fund did not 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 statements signed by each board member 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 directors’ minutes for the examination period. The Fund did not provide the examiner with a copy of the board minutes.

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 recommends that the board of directors, 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:

	December 31, <u>2011</u>	December 31, <u>2016</u>	Increase (Decrease)
Admitted assets	\$ <u>2,408,253</u>	\$ <u>2,475,615</u>	\$ <u>67,362</u>
Liabilities	\$ <u>2,089,718</u>	\$ <u>1,753,896</u>	\$ (335,822)
Minimum required surplus	\$ 207,355	\$ 175,390	\$ (31,965)
Unassigned funds (surplus)	<u>111,180</u>	<u>546,329</u>	<u>435,149</u>
Total surplus	\$ <u>318,535</u>	\$ <u>721,719</u>	\$ <u>403,184</u>
Total liabilities and surplus	\$ <u>2,408,253</u>	\$ <u>2,475,615</u>	\$ <u>67,362</u>

The increase in assets and surplus reflects capital gains and investment income earned during the examination period.

The decrease in liabilities reflects a decrease in the total number of annuities in force. Annuities decreased from 189 as of December 31, 2011 to a total of 165 as of December 31, 2016. Annual payment amounts decreased from \$267,489 as of December 31, 2011 to \$221,841 as of December 31, 2016.

The Fund's admitted assets, as of December 31, 2016, were invested mainly in stocks (94%).

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: 13.76% invested in the securities of Dodge & Cox Income Fund FD#147; 15.59% invested in PNC Limited Maturity Bond

Fund Class Fund #413; 13.57% invested in Blackrock; 13.60% invested in Baird Aggregate Bond Fund FD #72; and 24.02% invested in Ishares Core S&P 500 ETF. The Fund's current concentration in these funds makes it less likely that the Fund's other assets could provide a variability to offset the risks inherent in the four ETFs.

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. 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.

## 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.

Based upon the sample reviewed, no significant findings were noted.

## 7. ANNUAL STATEMENT REPORTING

The Instructions for Completing Line 1, Column 1 of 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:

**“Reserve”** - The amount reported on Line 1 (i.e., the current year) should agree with the amount reported at Page 2, Line 10b.

The Fund reported \$1,753,896 in page 2, line 10b in its 2016 Annual Statement; however, the Fund reported a reserve of \$1,525,157 in column 1, line 1 in the exhibit of annuities in force, which does not agree with the amount reported in page 2, line 10b. The examiner determined that the Fund should have reported a reserve of \$1,753,896 in its exhibit of annuities in force.

The Fund reported \$1,798,804 in page 2, line 10b in its 2015 Annual Statement; however, the Fund reported a reserve of \$1,564,177 in column 1, line 1 in the exhibit of annuities in force, which does not agree with the amount reported in page 2, line 10b. The examiner determined that the Fund should have reported a reserve of \$1,798,804 in its exhibit of annuities in force.

The Fund reported \$1,686,100 in page 2, line 10b in its 2014 Annual Statement; however, the Fund reported a reserve of \$1,466,174 in column 1, line 1 in the exhibit of annuities in force, which does not agree with the amount reported in page 2, line 10b. The examiner determined that the Fund should have reported a reserve of \$1,686,100 in its exhibit of annuities in force.

The Fund reported \$1,708,205 in page 2, line 10b in its 2013 Annual Statement; however, the Fund reported a reserve of \$1,485,396 in column 1, line 1 in the exhibit of annuities in force, which does not agree with the amount reported in page 2, line 10b. The examiner determined that the Fund should have reported a reserve of \$1,708,205 in its exhibit of annuities in force.

The Fund reported \$2,012,171 in page 2, line 10b in its 2012 Annual Statement; however, the Fund reported a reserve of \$1,749,714 in column 1, line 1 in the exhibit of annuities in force, which does not agree with the amount reported in page 2, line 10b. The examiner determined that the Fund should have reported a reserve of \$2,012,171 in its exhibit of annuities in force.

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 48 annuities issued in California with total reserves of \$339,835 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 Line 10.1 of the Disbursements section of the New York State Segregated Gift Annuity Fund Annual Statement for all years under examination states:

“Report the net increase/(decrease) in actuarial reserves as of December 31 of the current year.”

The examiner's review of the Fund's filed 2013 annual statement revealed that it overstated the Net Increase (Decrease) in Actuarial Reserves. The Fund reported a \$(326,612) decrease in actuarial reserves as of December 31, 2013. The examiner's recalculation of the decrease in actuarial reserves indicated that the decrease was actually \$(303,966), which resulted in the net change in annuity fund balance being overstated by \$22,646. Further, in 2014, the Fund reported a \$(327,952) decrease in actuarial reserves in the prior year.

The Instructions for Exhibit 2 – Unrealized Capital Gains and Losses, Bonds, Stocks, Money Market Mutual Funds, and Other Invested Assets of the New York State Segregated Gift Annuity Fund Annual Statement for the year ended December 31, 2015 state, in part:

“Column 3: Cost Report - the amount from the “Cost” column of the various Schedules for the current year and prior year in each of the categories.

Column 4: Market Value, End of Year - Report the amount from the “Market Value End of Year” column of the various Schedules for the current year and prior year in each of the categories.”

The examiner’s review of the 2015 annual statement revealed that the Fund entered the “prior year” cost and market value in Exhibit 2 incorrectly. The Fund should have reported \$1,990,898 in the cost column and \$2,430,148 in the market value column. This would have resulted in a \$10,898 increase in unrealized capital losses in the Fund’s 2015 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 and recommendations contained in the prior report on examination and the subsequent actions taken by the Fund in response to each recommendation:

<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 Fund failed to furnish the statements duly signed by each board member indicating that they received and read the prior report on the examination. This is a repeat violation.</p>
B	<p>The examiner recommends that the Fund maintain the statements, signed by the board members indicating that they received and read the prior report on examination, for the examiner's review during the ensuing examination.</p> <p>The Fund failed to furnish the statements duly signed by each board member indicating that they received and read the prior report on the examination. This is a repeat recommendation.</p>
C	<p>The Fund violated Section 325 of New York Insurance Law by failing to maintain all annual statements and all support worksheets at its principal office in this state.</p> <p>The Fund maintains its annual statements and all support worksheets at its principal office in this State.</p>
D	<p>The examiner recommends that the Fund prepare its Annual Statements in accordance with the Department's instructions for completing the New York State segregated gift annuity fund annual statement.</p> <p>The Fund failed to take corrective action.</p>

## 9. 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 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.	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 Fund's board of directors review the activities of the Fund at least annually and note the same in the minutes.	5
D	The examiner recommends that the board of directors, or a committee thereof, approve the purchases and sales of all investments and note such approvals in the minutes.	5
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.	7
F	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.	7



<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
G	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/  
Ashok Reddy  
Senior Examiner

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

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

\_\_\_\_\_/s/  
Ashok Reddy

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

*APPOINTMENT NO. 31608*

*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:*

***ASHOK REDDY***

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

***SEGREGATED GIFT ANNUITY FUND OF THE  
ORT AMERICA, 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*

