



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
REPORT ON EXAMINATION  
OF THE  
SEGREGATED GIFT ANNUITY FUND  
OF THE  
ACTORS' FUND OF AMERICA

CONDITION:

DECEMBER 31, 2015

DATE OF REPORT:

NOVEMBER 14, 2016

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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OF THE

SEGREGATED GIFT ANNUITY FUND

OF THE

ACTORS' FUND OF AMERICA

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EXAMINER:

DENISE SAUNDERS

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Maria T. Vullo  
Superintendent

December 22, 2016

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

Madam:

In accordance with instructions contained in Appointment No. 31444, dated July 12, 2016 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Actors' Fund of America, hereinafter referred to as the "Fund," at its home office located at 729 Seventh Avenue, 10<sup>th</sup> Floor, New York, NY 10019.

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 statements signed by every board member indicating that they received and read the prior report on examination. The examiner recommends that the Fund obtain statements signed by every 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 examiner recommends that the Fund obtain broker's advices or other supporting documentation for its investment transactions and reconcile such advices to the monthly statements provided by the custodian. This is a repeat recommendation. (See item 4 of this report)

The examiner recommends that the Fund execute a service agreement with each third party service provider. (See item 4 of this report)

The examiner recommends that the Fund diversify its investment holdings. (See item 5 of this report)

The examiner recommends that the Fund adopt an Investment Strategy Statement ("ISS"). 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 ensure for all gift annuity agreements issued that the forms have the appropriate form number as approved by the Superintendent. (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, 2010. This examination covers the period from January 1, 2011 through December 31, 2015. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2015, 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, 2015 to determine whether the Fund's filed 2015 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 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 Actors' Fund of America ("the Corporation") is a national humane nonprofit service corporation that is organized exclusively for the purpose of providing philanthropic, social, mental health and medical care services to all professionals in entertainment and performing acts. Under the provisions of its by-laws, the Corporation is permitted to issue gift annuity agreements and it has done so since 1995. A special permit was granted to the Corporation by the Department on November 20, 2006, authorizing it to issue gift annuity agreements as specified in Section 1110 of the New York Insurance Law.

The Fund solicits gift annuity contracts, presents the donor with an application and related schedules, maintains relations with annuitants, prepares accounting records and reconciles statements received from its custodian to recorded accounting and financial data. Wells Fargo Bank, N.A (the "Bank") is the Fund's custodian and asset manager. The Bank receives donations from annuitants, makes annuity payments and mails 1099R tax forms to annuitants. Hemmenway & Reinhardt, Inc. prepares state filings and calculates the reserve valuation for the Fund.

The management of the Corporation and the Fund and all of its affairs and property are entrusted to a board of trustees. The number of trustees is limited to 55 regular voting trustees. As of December 31, 2015 the board consisted of 52 trustees. The trustees elect a president, one or more vice presidents, a secretary, a treasurer and may elect or appoint a third vice president, an assistant secretary, honorary secretaries and other officers deemed appropriate by the board in accordance with its 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(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 every 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 statements signed by every board member indicating that they received and read the prior report on examination. The examiner recommends that the Fund obtain statements signed by every board member indicating that they received and read the prior report on examination.

The examiner reviewed the Budget and Finance Committee minutes to determine whether the 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.

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.

The examiner reviewed the investment transactions for the period under examination and noted that the Fund did not 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 reconcile such advices to the monthly statements provided by the custodian. This is a repeat recommendation.

Hemmenway & Reinhardt, Inc., a third party service provider, prepares annual statement filings and calculates the reserve valuation for the Fund; however, the examiner determined that the Fund does not have a service agreement with Hemmenway & Reinhardt, Inc.

The examiner recommends that the Fund execute a service agreement with each third party service provider.



## 5. SIGNIFICANT FINANCIAL INFORMATION

The following table indicates the Fund's financial decline during the period under review:

	<u>December 31,</u> <u>2010</u>	<u>December 31,</u> <u>2015</u>	<u>(Decrease)</u>
Admitted assets	<u>\$2,148,383</u>	<u>\$1,191,317</u>	<u>\$(957,066)</u>
Liabilities	<u>\$1,498,120</u>	<u>\$1,129,816</u>	<u>\$(368,304)</u>
Minimum required fund balance	\$ 149,812	\$ 112,982	\$ (36,830)
Excess fund balance (surplus)	<u>500,451</u>	<u>(51,481)</u>	<u>(551,932)</u>
Total annuity fund balance	<u>\$ 650,263</u>	<u>\$ 61,501</u>	<u>\$(588,762)</u>
Total liabilities and annuity fund balance	<u>\$2,148,383</u>	<u>\$1,191,317</u>	<u>\$(957,066)</u>

The decrease in assets, liabilities and annuity fund balance reflects a decrease in the total number of annuities in force. Annuities decreased from 74 with annual payment amounts of \$229,668 as of December 31, 2010 to a total of 72 with annual payment amounts of \$202,557 as of December 31, 2015.

The decrease in assets and annuity fund balance is also attributable to an excess of the total disbursements over total receipts for the five year period ended December 31, 2015. Total disbursements exceeded total receipts by \$1.0 million.

The Fund's admitted assets, as of December 31, 2015, were invested mainly in common stocks (97.48%).

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 2015 annual statement, the Fund reported 12.21% of its admitted assets invested in the securities of Dodge & Cox Income Fund #147. The Fund's current concentration

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

The examiner recommends that the Fund diversify its investment holdings. 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 ("ISS") 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. 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.

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.

The examiner reviewed a sample of 12 gift annuity agreements issued during the examination period. The examiner noted that in 7 of the 12 cases, the forms used did not contain the identifying form number of the form approved by the Superintendent; in the remaining five cases, the forms failed to display the correct form number of the form approved by the Superintendent.

The examiner recommends that the Fund ensure for all gift annuity agreements issued that the forms have the appropriate form number as approved by the Superintendent.

## 7. ANNUAL STATEMENT REPORTING

The Department's Instructions for Completing the New York Segregated Gift Annuity Fund Annual Statement ("Annual Statement"), namely the Exhibit of Annuities In Force, column 1 "Reserve," for all years during the examination period (January 1, 2011 through December 31, 2015) state, in part:

"Column 1 '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 \$1,129,816 in page 2, line 10b in its 2015 Annual Statement; however, the Fund reported a reserve of \$982,449 in column 1, line 1 in the exhibit of annuities in force. The Fund should have reported a reserve of \$1,129,816 in this exhibit.

The Fund reported \$1,282,917 in page 2, line 10b in its 2014 Annual Statement; however, the Fund reported a reserve of \$1,115,580 in column 1, line 1 in the exhibit of annuities in force. The Fund should have reported a reserve of \$1,282,917 in this exhibit.

The Fund reported \$1,329,758 in page 2, line 10b in its 2013 Annual Statement; however, the Fund reported a reserve of \$1,156,311 in column 1, line 1 in the exhibit of annuities in force. The Fund should have reported a reserve of \$1,329,758 in this exhibit.

The Fund reported \$1,482,758 in page 2, line 10b in its 2012 Annual Statement; however, the Fund reported a reserve of \$1,289,355 in column 1, line 1 in the exhibit of annuities in force. The Fund should have reported a reserve of \$1,482,758 in this exhibit.

The Fund reported \$1,568,825 in page 2, line 10b in its 2011 Annual Statement; however, the Fund reported a reserve of \$1,364,196 in column 1, line 1 in the exhibit of annuities in force. The Fund should have reported a reserve of \$1,568,825 in this exhibit.

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

## 8. 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 the recommendation:

<u>Item</u>	<u>Description</u>
A	<p>The examiner recommends that the Fund obtain broker advices or other supporting documentation for the investment transactions and reconcile such advices to the monthly statements provided by the custodian.</p> <p>The examiner's review of the Fund's investment transactions revealed that the Fund failed to obtain broker's advices or other supporting documentation to reconcile such advices to the monthly statements furnished by the custodian. Thus, this is a repeat recommendation. (See item 4 of this report)</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 obtain statements signed by every board member indicating that they received and read the prior report on examination.	5
B	The examiner recommends that the Fund obtain statements signed by every 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 obtain broker's advices or other supporting documentation for its investment transactions and reconcile such advices to the monthly statements provided by the custodian. This is a repeat recommendation.	5
E	The examiner recommends that the Fund execute a service agreement with each third party service provider.	5
F	The examiner recommends that the Fund diversify its investment holdings	7
G	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>
H	The examiner recommends that the Fund ensure for all gift annuity agreements issued that the forms have the appropriate form number as approved by the Superintendent.	8
I	The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.	9

Respectfully submitted,

\_\_\_\_\_/s/  
Denise Saunders  
Insurance Examiner

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

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

\_\_\_\_\_/s/  
Denise Saunders

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



**APPOINTMENT NO. 31444**

**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:

**DENISE SAUNDERS**

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

**SEGREGATED GIFT ANNUITY FUND OF THE  
ACTORS' FUND OF AMERICA**

*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 12th day of July, 2016*

**MARIA T. VULLO**  
*Superintendent of Financial Services*

By:

*Mark McLeod*

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

