



**REPORT ON EXAMINATION  
OF THE  
SEGREGATED GIFT ANNUITY FUND  
OF THE  
ANTI-DEFAMATION LEAGUE FOUNDATION**

**AS OF December 31, 2017**

**EXAMINER: Julius Asubonteng**

**DATE OF REPORT: January 17, 2019**

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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KATHY HOCHUL  
Governor



ADRIENNE A. HARRIS  
Superintendent

February 1, 2022

Honorable Adrienne A. Harris  
Superintendent of Financial Services  
New York, New York 10004

Madam:

In accordance with instructions contained in Appointment No. 31720, dated April 13, 2018 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Anti-Defamation League Foundation. The Fund's home office is located at 605 Third Avenue, New York, NY 10158-3560.

The report indicating the results of this examination is respectfully submitted.

## 1. EXECUTIVE SUMMARY

The Fund violated New York Insurance Law § 312(b) 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 New York Insurance Law § 312(b) by maintaining the signature of each board member indicating that they received and read the prior report on examination. (See item 3E of this report)

The examiner recommends that the Fund review at least annually its written investment policy setting forth guidelines on investments and delegation of management and the conformance of its delegates to that investment policy and statutory guidance and that it memorialize those reviews in either board minutes or materials. (See item 4A of this report)

The examiner's review of a sample of transactions did not reveal any differences which materially affected the Fund's financial condition as presented in its financial statements contained in the December 31, 2017 filed annual statement. (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. (See item 6 of this report)

The Fund violated New York Insurance Law § 1110(a) by issuing annuities that exceeded the maximum rates allowed. The examiner recommends that the Fund implement appropriate monitoring controls that will ensure that when annuities are issued, payout rates do not exceed the maximum rates determined in accordance with of the New York Insurance Law § 1110(a). (See item 7 of this report)

The examiner recommends that the Fund prepare its annual statements according to the Department's instructions. (See item 8 of this report)

## 2. SCOPE OF EXAMINATION

This Scope of Examination summarizes the nature of the Superintendent of the Department of Financial Services' (the "Department" or "DFS") examination and assessment of the Anti-Defamation League Foundation Segregated Gift Annuity Fund (the "Fund") through which Anti-Defamation League Foundation (the "Foundation") provides annuity benefits.

The prior examination was conducted as of December 31, 2012. This examination covers the period from January 1, 2013 through December 31, 2017. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2017 but prior to the date of this report (i.e., the completion date of the examination).

This report outlines DFS's supervisory expectations or priorities and articulates DFS's general views regarding the exceptional circumstances where the College or Fund, in relation to their annuity activities, could have better satisfied statutory standards or adhered to practices or methods of dealing that are regularly observed among similar circumstances.

The Fund is subject to the solvency and examination requirements of New York Insurance Law § 1110 and of New York Insurance Law articles 1, 2, 3, 25, and 74.

The investment of the Fund's required admitted assets is subject to N.Y. Estates, Powers and Trust Law § 11-2.3. The investment of the remainder of the Fund's admitted assets is subject to N.Y. Not-for-Profit Corporation Law Article 5-a. Both establish that the trustees are to invest the assets consistent with prudent person standards.

The examination comprised a verification of assets and liabilities as of December 31, 2017 to determine whether the Fund's filed 2017 annual statement fairly presents its financial condition. The examiner reviewed the Fund's income and disbursements necessary to accomplish such verification. The examiner reviewed the prior report on examination which did not contain any violations, recommendations or comments.

### 3. DESCRIPTION OF FUND

#### A. History

The Anti-Defamation League Foundation was chartered in 1977 and is organized for the purpose of assisting and furthering the principal object and business of the Anti-Defamation League of B'nai B'rith, a corporation of the District of Columbia, namely: to eliminate defamation of Jews and other religious and ethnic groups; to advance proper understanding of all peoples; and to preserve and translate into greater effectiveness the principles of freedom, equality and democracy; and in addition to the foregoing, to provide an ongoing source of financial support for special projects of the Anti-Defamation League of B'nai B'rith, including but not limited to exposing and eliminating adolescent prejudice, undertaking educational programs on the lessons of the Holocaust, increasing public awareness of the problems of the Middle East, and such other special projects as shall be of a timely and informative nature on the issue of discrimination in all forms. The Foundation established the Fund to issue gift annuity agreements in return for gifts from donors in 1983. The Superintendent of Insurance granted to the Foundation a Charitable Annuity Society special permit on September 10, 1998.

#### B. Structure

The management of the Foundation and the Fund and all of its affairs and property are entrusted to a board of trustees.

#### C. Assets under the Board of Trustees

As of the December 31, 2017 Form 990, the Foundation's Board of Trustees oversaw an endowment comprising \$92,038,956 in total assets. The Fund, as of December 31, 2017, held total admitted assets of \$4,835,641.

#### D. Third Party Payment Service Provider

The Fund's custodian is Bank of New York Mellon ("BNY Mellon"). All operations related to the issuance, maintenance and settlement of annuity agreements are handled by the Fund. BNY Mellon administers the Fund's assets, distributes benefit payments to annuitants, distributes residual amounts to the Foundation and prepares reports, such as Form 1099-R and the Fund's annual statement. The Fund uses Gift Wrap, a planned giving software, from PG Calc Inc., which provides custom computer programming services for charitable organizations, to calculate the

annuity benefits and reserves. Sanford S. Bernstein Company, Inc. invests the Fund's assets per the instructions of the Foundation.

#### E. Oversight Structure

New York Insurance Law § 312(b) 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 examiner's review revealed that 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 New York Insurance Law § 312(b) 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 New York Insurance Law § 312(b) by maintaining the signature of each board member indicating that they received and read the prior report on examination.



#### 4. INVESTMENT REVIEW

##### A. Investment Policy Statement

New York Estate Powers and Trust Law § 11-2.3(b)(3)(A) requires trustees to “pursue an overall investment strategy to enable the trustee[s] to make appropriate present and future distributions to or for the benefit of the beneficiaries under the governing instrument, in accordance with risk and return objectives reasonably suited to the entire portfolio.”

New York Not-for-Profit Corporation Law § 552(e)(2) calls for “an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.” New York Not-for-Profit Corporation Law § 552(f) states that each “institution shall adopt a written investment policy setting forth guidelines on investments ... and delegation of management and investment functions in accord with the standards of this article.”

Sanford S. Bernstein Company, Inc is also the Fund’s investment adviser.

The examiner’s review revealed that the Organization prepared and provided a form investment policy statement (“IPS”) to the Fund that the Fund provided to the Department as its adopted IPS. There was no indication of an annual review nor adoption of the investment policy statement.

The examiner recommends that the Fund review at least annually its written investment policy setting forth guidelines on investments and delegation of management and the conformance of its delegates to that investment policy and statutory guidance and that it memorialize those reviews in either board minutes or materials.

## 5. ASSETS AND LIABILITIES SUMMARY

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>2012</u>	<u>December 31,</u> <u>2017</u>	<u>Increase</u> <u>(Decrease)</u>
Admitted assets	<u>\$5,543,005</u>	<u>\$4,835,641</u>	<u>\$ (707,364)</u>
Liabilities	<u>\$4,503,655</u>	<u>\$3,233,820</u>	<u>\$(1,269,835)</u>
Minimum required fund balance	\$ 450,366	\$ 323,382	\$ (126,984)
Excess fund balance (surplus)	<u>588,984</u>	<u>1,278,439</u>	<u>689,455</u>
Total annuity fund balance	<u>\$1,039,350</u>	<u>\$1,601,821</u>	<u>\$ 562,471</u>
Total liabilities and annuity fund balance	<u>\$5,543,005</u>	<u>\$4,835,641</u>	<u>\$ (707,364)</u>

The decrease in assets and liabilities reflects a decrease in the total number of annuities in force. The Fund explained that the increase in annuity fund balance is due to the decrease in annuity payments. Annuities decreased from 242 with annual payment amounts of \$664,922 as of December 31, 2012 to a total of 185 with annual payment amounts of \$479,084 as of December 31, 2017. The increase in annuity fund balance was also due to the decrease in the total number of annuities in force.

The Fund's admitted assets, as of December 31, 2017, were invested mainly in equity securities (95.56%), and money market mutual funds (4.44%).

## 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's review of a sample of 20 annuity contracts terminated revealed that in 3 of the 20 cases (15%) reviewed, the Fund failed to 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.

## 7. ANNUITY RATES

New York Insurance Law § 1110(a) 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 and a schedule of its maximum annuity rates, which shall be computed on the basis of the annuity standard adopted by it for calculating its reserves so as to return to it upon the annuitant's death a residue at least equal to one-half the original gift or other consideration for such annuity.”

The examiner's review of the reserve report noted that five (5) out of the eleven (11) annuities issued in the New York during the examination period used payout rates greater than the maximum rates provided in the filed schedule.

The Fund violated New York Insurance Law § 1110(a) by issuing annuities that exceeded the maximum rates allowed. The examiner recommends that the Fund implement appropriate monitoring controls that will ensure that when annuities are issued, payout rates do not exceed the maximum rates determined in accordance with of the New York Insurance Law § 1110(a).

## 8. ANNUAL STATEMENT REPORTING

The General Instructions for the New York State Segregated Gift Annuity Fund Annual Statement for December 31, 2013, 2014, 2015, and 2017 states the following:

“All amounts are to be reported based upon annuities issued in all states, except for states that mandate a legally required segregated and distinct trust account for that particular state’s annuitants (e.g., California ).”

Further, the instructions to line 1 of the income section of the annual statement state the following, in part, for December 31, 2013, 2014, 2015, and 2017:

“Line 1:“Current Year” Column: Should reflect the gross amount of gifts received during the year conditioned upon annuity agreements.

“Prior Year” Column: Report the prior year’s gross amount of gifts received conditioned upon annuity agreements.”

During the examiner’s review of the Fund’s filed annual statements and reserve listings, the following was noted regarding the amount of gifts received during the captioned years in the table below:

	2013	2014	2015	2017
<b>Total per Reserve Listing</b>	\$215,000.00	\$463,997.00	\$139,959.39	\$256,822.89
<b>Total Per A/S</b>	\$281,985.00	\$473,997.00	\$196,658.00	\$560,353.00
<b>Difference</b>	\$(66,985.00)	\$(10,000.00)	\$(56,698.61)	\$(303,530.11)

The examiner sent a memo to the Fund concerning the above captioned differences. The Fund noted that the discrepancies in each noted year stem from California issued annuities. The examiner noted that the reserve totals on page 2, line 10, of the Fund’s annual statement for each year tie to the reserve listings provided to the examiner. Further, the reserve listings do not contain any California-issued annuities. Therefore, the income reported in the annual statement for each captioned year under examination was overstated by the amounts shown above.

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

## 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>
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D	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
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F	The examiner recommends that the Fund implement appropriate monitoring controls that will ensure that when annuities are issued, payout rates do not exceed the maximum rates determined in accordance with of the New York Insurance Law § 1110(a).	9
G	The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.	11

Respectfully submitted,

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/s/  
Julius Asubonteng  
Senior Insurance Examiner

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

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

\_\_\_\_\_  
/s/  
Julius Asubonteng

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



*APPOINTMENT NO. 31720*

*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:*

***JULIUS ASUBONTENG***

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

***SEGREGATED GIFT ANNUITY FUND OF THE  
ANTI-DEFAMATION LEAGUE FOUNDATION***

*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 13th day of April, 2018*

*MARIA T. VULLO  
Superintendent of Financial Services*

*By:*

*Mark M Leod*

**MARK MCLEOD  
DEPUTY CHIEF - LIFE BUREAU**

