



**REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
ACTOR'S FUND OF AMERICA, INC.**

AS OF December 31, 2020

EXAMINER: Hasan Ahmed

DATE OF REPORT: January 16, 2022

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

REPORT ON EXAMINATION

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HASAN AHMED

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KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

August 10, 2022

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

Madam:

In accordance with instructions contained in Appointment No. 32205, dated December 8th, 2021 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. The Fund's home office is located at 729 7th Avenue, 10th Floor, New York, NY 10019.

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 3E of this report)

The examiner recommends that the Investment Policy Statement be approved by the board of trustees. (See item 4A 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 Fund violated Section 1110(a) of the New York Insurance Law by issuing annuities that exceeded the maximum rates allowed. The examiner recommends that the Fund implement appropriate controls that will ensure when annuities are issued, payout rates do not exceed the maximum rates provided in the filed schedule in compliance with Section 1110(a) of the New York Insurance Law. (See item 7 of this report)

The examiner recommends that the Fund exercise due care in the preparation of its filed annual statements. (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' ("Department" or "DFS") examination and assessment of the Actors' Fund of America Segregated Annuity Fund (the "Fund") through which Actors' Fund of America (the "Corporation") provides annuity benefits.

The prior examination was conducted as of December 31, 2015. This examination covers the period from January 1, 2016 through December 31, 2020. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2020 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 Foundation 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, 2020 to determine whether the Fund's filed 2020 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, recommendations and/or comments contained in the prior report on examination. The results of such review are contained in item 9 of this report.

3. DESCRIPTION OF FUND

A. History

The Actors' Fund of America was chartered in 1882 and 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 arts. The Corporation established the Fund to issue gift annuity agreements in return for gifts from donors in 1995. The Superintendent of Insurance granted to the Corporation a Charitable Annuity Society special permit on November 20, 2006.

B. Structure

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

C. Assets under the Board of Trustees

As of the December 31, 2020 audited financial statement, the Corporation's Board of Trustees oversaw an endowment comprising \$17,822,653 in total assets. The Fund, as of December 31, 2020, held total admitted assets of \$839,924.

D. Third Party Payment Service Provider

Morgan Stanley is the Fund's custodian and asset manager. Morgan Stanley receives donations from annuitants, and transfers funds to cover annuity distributions. Charitable Trust Administration Company makes annuity payments, mails 1099R forms to annuitants, and prepares tax filings as needed. The Fund uses PG Calc for the annual statement filing and calculation of the reserve liability.

E. Oversight Structure

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 examiner’s review revealed that the Fund failed to obtain 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 signed statements from the board members 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.

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) requires institutions to adopt “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) provides 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.”

The examiner’s review of the Fund’s Investment Policy Statement (“IPS”) revealed that the board did not approve the ISS.

The examiner recommends that the Investment Policy Statement be approved by the board of trustees.

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:

	December 31, <u>2015</u>	December 31, <u>2020</u>	Increase (Decrease)
Admitted assets	<u>\$1,191,317</u>	<u>\$839,924</u>	<u>\$(351,393)</u>
Liabilities	<u>\$1,129,816</u>	<u>\$654,375</u>	<u>\$(475,441)</u>
Minimum required fund balance	\$ 112,982	\$ 65,438	\$ (47,544)
Excess fund balance (surplus)	<u>(51,481)</u>	<u>120,111</u>	<u>171,592</u>
Total annuity fund balance	<u>\$ 61,501</u>	<u>\$185,549</u>	<u>\$ 124,048</u>
Total liabilities and annuity fund balance	<u>\$1,191,317</u>	<u>\$839,924</u>	<u>\$(351,393)</u>

The decrease in assets and liabilities is due to decrease in total gift annuities during the examination period. Annuities decreased from 73 with annual payment amounts of \$204,357 as of December 31, 2016 to a total of 50 with annual payment amounts of \$116,836 as of December 31, 2020. The increase in total fund balance is due to additional operating funds of \$51,481 and \$60,130 added to the gift annuity fund in 2016 and 2019, respectively.

The Fund's admitted assets, as of December 31, 2020, were invested mainly in equity securities (98.99%).

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 a sample of five gift annuity agreements issued in New York during the examination period revealed that in five out of the five cases (100%), the Fund used gift annuity agreement forms that differed from the gift annuity agreements filed with the Superintendent. The deviating form numbers found in the sample are 1da-I-NY and 2sda-I-NY.

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.

7. ANNUITY RATES

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 and a schedule of its maximum annuity rates....”

The examiner’s review of the reserve report noted that 3 out of the 55 annuities issued in the New York during the examination period had payout rates greater than the maximum rates provided in the filed schedule in violation of the applicable New York Insurance Law.

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

8. ANNUAL STATEMENT REPORTING

During the examiner's review of the Fund's filed 2020 Annual Statements the following discrepancies were noted:

A comparison of the amount reported for the annuity payment in the Fund's filed 2020 Annual Statement with the amount provided for total annuity payment as shown in the gift payment breakdown provided by the Fund revealed a discrepancy of \$9,132.

A recalculation of the amount for annualized annuity-in-force indicates that the Fund overstated annualized amount of annuities-in-force in the amount of \$2,080 in the following calendar years: 2018, 2019 and 2020.

The examiner recommends that the Fund exercise due care in the preparation of its filed annual statements.

9. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violation and 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 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</p> <p>The Fund failed to obtain statements signed by every board member indicating that they received and read the prior report on examination. A similar violation appears in this report on examination.</p>
B	<p>The examiner recommends that the Fund obtain statements signed by every board member indicating that they received and read the prior report on examination.</p> <p>The Fund failed to obtain statements signed by every board member indicating that they received and read the prior report on examination. A similar recommendation appears in this report on examination.</p>
C	<p>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.</p> <p>The Board of Trustees reviewed the Fund's investment portfolio at least annually and noted the same in the minutes.</p>
D	<p>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.</p> <p>The SOC 1 report for the custodian (Morgan Stanley) had an unqualified opinion.</p>
E	<p>The examiner recommends that the Fund execute a service agreement with each third party service provider.</p> <p>The Fund executed service agreements with third party service providers.</p>

<u>Item</u>	<u>Description</u>
F	<p>The examiner recommends that the Fund diversify its investment holdings.</p> <p>The Department no longer provides guidance for investment diversification.</p>
G	<p>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.</p> <p>The Fund adopted an Investment Policy Statement which 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.</p>
H	<p>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.</p> <p>The examiner found violating forms during this examination.</p>
I	<p>The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.</p> <p>The examiner's review revealed new discrepancies in the Fund's filed annual statements. A similar recommendation appears in this report on examination.</p>

10. 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 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 Investment Policy Statement be approved by the board of trustees.	6
D	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.	8
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.	8
F	The Fund violated Section 1110(a) of the New York Insurance Law by issuing annuities that exceeded the maximum rates allowed.	9
G	The examiner recommends that the Fund implement appropriate controls that will ensure when annuities are issued, payout rates do not exceed the maximum rates provided in the filed schedule in compliance with Section 1110(a) of the New York Insurance Law.	9
H	The examiner recommends that the Fund exercise due care in the preparation of its filed annual statements.	10

Respectfully submitted,

/s/

Hasan Ahmed
Senior Insurance Examiner

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

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

/s/

Hasan Ahmed

Subscribed and sworn to before me

this _____ day of _____

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, ADRIENNE A. HARRIS, Acting 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:

HASAN AHMED

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 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 8th day of December, 2021

*ADRIENNE A. HARRIS
Acting Superintendent of Financial Services*

By:



*MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU*

