



**REPORT ON EXAMINATION  
OF THE  
SEGREGATED GIFT ANNUITY FUND  
OF THE  
LAMBDA LEGAL DEFENSE & EDUCATION FUND, INC.**

**AS OF December 31, 2020**

**EXAMINER: Philip Youssef**

**DATE OF REPORT: August 18, 2021**

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

REPORT ON EXAMINATION

OF THE

SEGREGATED GIFT ANNUITY FUND

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LAMBDA LEGAL DEFENSE & EDUCATION FUND, INC.

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PHILIP YOUSSEF

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KATHY HOCHUL  
Governor



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ADRIENNE A. HARRIS  
Superintendent

August 12, 2022

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

Madam:

In accordance with instructions contained in Appointment No. 32221, dated July 30, 2021 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Lambda Legal Defense & Education Fund, Inc. The Fund's home office is located at 120 Wall Street, 19<sup>th</sup> Floor, New York, NY 10005.

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

## 1. EXECUTIVE SUMMARY

The examiner recommends that the Fund use the name it agreed to by board resolution as part of its permit application to the Department for a special permit to issue charitable gift annuities in New York. (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 delegees 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 the Fund's treatment of annuitants did not reveal significant instances which deviated from the New York Insurance Law, Department regulations and circular letters and the operating rules of the Fund. (See item 6 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 Lambda Legal Defense & Education Fund, Inc. Segregated Annuity Fund (the "Fund") through which the Lambda Legal Defense & Education Fund, Inc. (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 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, 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 7 of this report.

### 3. DESCRIPTION OF FUND

#### A. History

The Lambda Legal Defense & Education Fund, Inc was chartered in 1972 and is organized for the purpose of seeking, through the legal process, to ensure legal protection of the laws and the protection of civil rights of LGBTQ individuals and those living with HIV. The Corporation established the Fund to issue gift annuity agreements in return for gifts from donors in 2004. The Superintendent of Insurance granted to the Corporation a Charitable Annuity Society special permit on July 22, 2011.

#### B. Structure

The management of the Corporation 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, 2020 audited financial statement, the Corporation's Board of Trustees oversaw an endowment comprising \$9,318,489 in total assets. The Fund, as of December 31, 2020, held total admitted assets of \$1,513,119.

#### D. Third Party Payment Service Provider

Merrill Lynch Trust Company (now known as U.S. Trust), the Fund's custodian, receives proceeds of contracts purchased and makes the deposits into the segregated fund's account(s), makes scheduled payments to annuitants, prepares and issues tax forms 1099 to annuitants, provides reporting to the Corporation including inventories of annuities in force and calculations of net required reserves under various methods including the Department's and Financial Accounting Standards Board requirements, and provides fiduciary oversight of the activities of the investment manager to ensure compliance with New York State law and with the Financial Accounting Standards Board as well as the Corporation's investment policy statement.

#### E. Oversight Structure

The examiner's review of a sample of disbursements issued on behalf of the Fund during the examination period revealed that the name of the Corporation, not the Fund's name, appeared on the bank statements.

The examiner recommends that the Fund use the name it agreed to by board resolution as part of its permit application to the Department for a special permit to issue charitable gift annuities in New York.



#### 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.”

U.S Trust is also the Fund’s investment adviser and custodian.

U.S. Trust prepared and provided a form investment policy statement (“IPS”) to the Fund that the Fund provided to the Department as it’s adopted IPS.

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 delegees 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:

	December 31, <u>2015</u>	December 31, <u>2020</u>	Increase (Decrease)
Admitted assets	\$ <u>1,367,526</u>	\$ <u>1,513,119</u>	\$ <u>145,593</u>
Liabilities	\$ <u>954,353</u>	\$ <u>1,154,520</u>	\$ <u>200,167</u>
Minimum required fund balance	\$ 95,435	\$ 115,452	\$ 20,017
Excess fund balance (surplus)	<u>317,738</u>	<u>243,148</u>	<u>(74,590)</u>
Total annuity fund balance	\$ <u>413,173</u>	\$ <u>358,600</u>	\$ <u>(54,573)</u>
Total liabilities and annuity fund balance	\$ <u>1,367,526</u>	\$ <u>1,513,119</u>	\$ <u>145,593</u>

The increase in assets and liabilities was due to market activities. The decrease in annuity fund balance stemmed from an increase in liabilities. The annuity total was 42 with annual payment amounts of \$111,021 as of December 31, 2020, compared to a total of 43 with annual payment amounts of \$91,401 as of December 31, 2015.

The Fund's admitted assets, as of December 31, 2020, were invested mainly in equity securities (52.76%) and bonds (45.63%). All bonds held were investment grade.

## 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. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violations, recommendations and comments 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 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 examiner determined that the board conducted a review of the Fund's investment portfolio.</p>
B	<p>The examiner recommends that the Fund use the name it agreed to by board resolution as part of its permit application to the Department for a special permit to issue charitable gift annuities in New York.</p> <p>The Fund uses the Corporation's name, instead of its own name in its bank statements and disbursements. A similar recommendation appears in this report on examination.</p>
C	<p>The examiner recommends that the Fund prepare and maintain a general ledger, trial balances and transaction registers that reconcile to its annual statements.</p> <p>The examiner determined that there is a transaction register used for Fund transactions. However, there is no general ledger or trial balance. The bank statements serve as proper supporting documentation.</p>

## 8. SUMMARY AND CONCLUSIONS

Following are the violations, recommendations and comments contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The examiner recommends that the Fund use the name it agreed to by board resolution as part of its permit application to the Department for a special permit to issue charitable gift annuities in New York.	5
B	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 delegees to that investment policy and statutory guidance and that it memorialize those reviews in either board minutes or materials.	6

Respectfully submitted,

\_\_\_\_\_/s/  
Philip Youssef  
Insurance Examiner

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

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

\_\_\_\_\_/s/  
Philip Youssef

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

*APPOINTMENT NO. 32221*

*NEW YORK STATE*

***DEPARTMENT OF FINANCIAL SERVICES***

*I, LINDA A. LACEWELL, 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:*

***PHILIP YOUSSEF***

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

***SEGREGATED GIFT ANNUITY FUND OF THE  
LAMBDA LEGAL DEFENSE & EDUCATION FUND, INC.***

*and to make a report to me in writing of the condition of said*

***FUND***

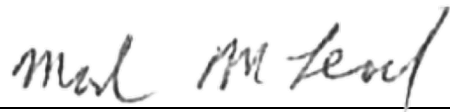
*with such other information as he shall deem requisite.*

*In Witness Whereof, I have hereunto subscribed my name  
and affixed the official Seal of the Department  
at the City of New York*

*this 30th day of July, 2021*

*LINDA A. LACEWELL  
Superintendent of Financial Services*

*By:*



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

