# REPORT ON EXAMINATION
# OF THE
# SEGREGATED GIFT ANNUITY FUND
# OF THE
# ENVIRONMENTAL DEFENSE FUND, INCORPORATED

**AS OF December 31, 2023**

**EXAMINER: Hasan Ahmed**

**DATE OF REPORT: March 17, 2025**

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April 15, 2025

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

Dear Adrienne A. Harris:

In accordance with instructions contained in Appointment No. 32623, dated April 10th, 2024, and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Environmental Defense, Incorporated. The Fund's home office is located at 257 Park Avenue South, New York 10010.

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 signed statements from the board of trustees indicating that they received and read the prior report on examination. The examiner directs that the Fund comply with Section 312(b) of the New York Insurance Law by obtaining the signature of each board member indicating that they have received and read any current or future filed report on examination. (See item 3E of this report)

The Fund should adopt an Investment Policy Statement that refers to the prudent investor standard as defined in Estates, Powers and Trusts Law § 11-2.3, which standard, as specified in New York Insurance Law § 1110(b), 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 IPS's risk, return, and time horizon objectives. (See item 4A of this report)

The Fund should 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 Board of Trustees, or a committee thereof, should be provided, at least annually, with a report concerning the Fund's investment of required admitted assets and note such in the minutes. (See item 4B 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") examination and assessment of the Environmental Defense Fund, Incorporated Segregated Annuity Fund (the "Fund") through which Environmental Defense Fund, Incorporated (the "Organization") provides annuity benefits.

The prior examination was conducted as of December 31, 2018. This examination covers the period from January 1, 2019 through December 31, 2023. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2023 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 to 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, 2023 to determine whether the Fund's filed 2023 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 violation and recommendations 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 Environmental Defense Fund, Inc. was chartered in 1967 and is organized for the purpose of preserving the natural systems on which all life depends. The Organization established the Fund to issue gift annuity agreements in return for gifts from donors in 1991. The Superintendent of Insurance granted to the Organization a Charitable Annuity Society special permit on November 4, 1994.

### B. Structure

The Fund is overseen by the Organization's board of trustees. All operations related to the issuance, maintenance and settlement of annuity agreements are handled by the Fund.

### C. Assets under the Board of Trustees

As of the September 30, 2023, audited financial statement, the Organization's Board of Trustees endowment comprising $16,829,140 in total assets. Further, the Organization held $128,082,194 in assets on September 30, 2023. The Fund, as of December 31, 2023, held total admitted assets of $7,926,617.

### D. Third Party Service Providers

The Fund's custodian is State Street Global Advisors ("State Street"). State Street provides custodial and investment services, prepares the annual statement, provides 1099-R notices and issues annuity payments on behalf of the Fund. The Fund hired PG Calc Inc., which provides actuarial supports for charitable organizations, to calculate the annuity benefits and reserves.

### 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 Fund failed to obtain statements signed by each member of its board of trustees 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 of trustees indicating that they received and read the prior report on examination.

The examiner directs that the Fund comply with Section 312(b) of the New York Insurance Law by obtaining the signature of each board member indicating that they have received and read any current or future filed 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") showed that it failed to contain reference to the prudent investor standard, as specified in New York Insurance Law § 1110(b).

The Fund should adopt an Investment Policy Statement that refers to the prudent investor standard as defined in Estates, Powers and Trusts Law § 11-2.3, which standard, as specified in New York Insurance Law § 1110(b), 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 IPS's risk, return, and time horizon objectives.

State Street Global Advisors is the Fund's investment adviser and custodian.

State Street Global Advisors prepared and provided a form investment policy statement ("IPS") to the Fund. The Fund adopted that form as its IPS.

The Fund should 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.

B. Monitoring

New York Estate Powers and Trust Law § 11-2.3(c)(1) requires trustees to exercise care, skill and caution in periodically reviewing the delegee's exercise of the delegated function and compliance with the scope and terms of the delegation.

New York Not-for-Profit Corporation Law § 554(a)(3) provides that, when delegating investment functions, an institution must monitor its agents' performance and compliance with the scope and terms of each's respective delegation. In so doing, the institution must use the care that an ordinarily prudent person in a like position would exercise under similar circumstances.

The examiner reviewed the Board of Trustees minutes to determine if the board had been provided with a report concerning the Fund's investment of required admitted assets. The minutes did not contain any indication that the board was provided with a report concerning the Fund's investment of required admitted assets.

The Board of Trustees, or a committee thereof, should be provided, at least annually, with a report concerning the Fund's investment of required admitted assets and note such in the minutes.

## 5. ASSETS AND LIABILITIES SUMMARY

The following summary table indicates the decline in various categories of the Fund's assets, liabilities, and fund balance during the period under review:

| | December 31, 2018 | December 31, 2023 | Increase |
|---|---|---|---|
| Admitted assets | $5,271,983 | $7,926,617 | $2,654,634 |
| Liabilities | $4,324,581 | $6,620,478 | $2,295,897 |
| Minimum required fund balance | $ 432,458 | $ 662,048 | $ 229,590 |
| Excess fund balance (surplus) | 514,944 | 644,092 | 129,148 |
| Total annuity fund balance | $ 947,402 | $1,306,139 | $ 358,737 |
| Total liabilities and annuity fund balance | $5,271,983 | $7,926,617 | $2,654,634 |

The increase in assets, liabilities, and annuity fund balance reflects an increase in the total number of annuities in force. Annuities increased from 189 with annual payment amounts of $482,069 as of December 31, 2018, to a total of 233 with annual payment amounts of $689,275 as of December 31, 2023.

The Fund's admitted assets, as of December 31, 2022, were invested in equity securities (95.47%) and money market mutual funds (4.38%).

## 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 VIOLATIONS AND RECOMMENDATIONS

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 citation:

| Item | Description |
|---|---|
| A | 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.<br><br>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. A similar violation appears in this report on examination. |
| B | 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.<br><br>The Fund failed to 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. A similar violation appears in this report on examination. |
| 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.<br><br>The board of trustees, or a committee thereof, did not conduct a review of the Fund's admitted assets during the exam period. A similar recommendation appears in this report on examination. |
| D | 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.<br><br>The Department no longer provides specific guidance on investment diversification. |

| Item | Description |
|---|---|
| E | 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.<br><br>The Fund filed with the Superintendent all gift annuity agreement forms that were used and not previously filed with the Superintendent. |
| F | 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.<br><br>The Fund filed with the Superintendent all gift annuity agreement forms that were used and not previously filed with the Superintendent. |
| G | 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.<br><br>The Fund obtained and maintained a death certificate or other reliable evidence that supported the termination of annuity contracts. |

## 8. VIOLATION AND RECOMMENDATIONS

Following are the violation and recommendations contained in this report:

| Item | Description | Page No(s). |
|---|---|---|
| A | The Fund violated Section 312(b) of the New York Insurance Law by failing to obtain signed statements from the board of trustees indicating that they received and read the prior report on examination. | 5 |
| B | The examiner directs that the Fund comply with Section 312(b) of the New York Insurance Law by obtaining the signature of each board member indicating that they have received and read any current or future filed report on examination. | 5 |
| C | The Fund should adopt an Investment Policy Statement that refers to the prudent investor standard as defined in Estates, Powers and Trusts Law § 11-2.3, which standard, as specified in New York Insurance Law § 1110(b), 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 IPS's risk, return, and time horizon objectives. | 6 |
| D | The Fund should 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 |
| E | The Board of Trustees, or a committee thereof, should be provided, at least annually, with a report concerning the Fund's investment of required admitted assets and note such in the minutes. | 7 |

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 _____

***APPOINTMENT NO. 32623***

***NEW YORK STATE***

# *DEPARTMENT OF FINANCIAL SERVICES*

*I, **ADRIENNE A. HARRIS**, 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 ENVIRONMENTAL DEFENSE FUND, INCORPORATED***

*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 10th day of April, 2024*

*ADRIENNE A. HARRIS*
*Superintendent of Financial Services*

*By:* Mark McLeod

*MARK MCLEOD*
*DEPUTY CHIEF - LIFE BUREAU*