

## Nonprofit Notes

# Are Nonprofit Boards Meeting UPMIFA Requirements for Endowment Funds?

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In our experience, not-for-profit organizations (NFPs) with donor-restricted endowments typically properly account for the funds on their financial statements and in the related note disclosures. But the passage of time since the Uniform Prudent Management of Institutional Funds Act (UPMIFA) and, in New York, the New York Prudent Management of Institutional Funds Act (NYPMIFA) were enacted, along with board rotation, may lead to gaps in governance, particularly in the consistent documentation of certain board actions.

With increased scrutiny over the management and use of donor-restricted funds, it is important for organizations to ensure these requirements are consistently met.

### UPMIFA and NYPMIFA Overview

It has been more than 15 years since UPMIFA and NYPMIFA were approved and enacted in July 2006 and on September 17, 2010, respectively. UPMIFA was approved by the Uniform Law Commission as a model law, allowing states to adopt their own versions, hence, New York's NYPMIFA variation.

Both UPMIFA and NYMIFA established legal requirements over the governance, investment and expenditure of donations received by NFPs intended by the donors to be held in perpetuity by the NFPs. While UPMIFA and NYPMIFA focus on board actions and decisions, Accounting Standards Update (ASU) 116-14, which superseded Financial Accounting Standards (FAS) 117-1, provides guidance on accounting and reporting for endowed funds.

### Key UPMIFA Requirements for Nonprofit Boards

As a reminder, the board has a fiduciary responsibility under UPMIFA and NYPMIFA to "Act in good faith and with the care an ordinarily prudent person would exercise." This prudence directive applies to several requirements under UPMIFA/NYPMIFA as follows:

- Oversight of the invested endowment funds
  - At least annually, review the appropriateness of the investment allocations.
  - Compare performance outcomes against established benchmarks.
  - Consider return objectives against the investment risk profile.
- Consider, discuss and document the required prudence factors
  - Duration and preservation of the endowment fund
  - Economic conditions
  - Inflation and/or deflation considerations
  - Expected total investment return
  - Other available resources of the organization
  - The mission of the organization
- Consider, discuss and document annual appropriations from the endowment fund

- Ensure any appropriations are in accordance with donor restrictions.
- Contemplate impact on future outlays.
- Approve spending rate percentage.
  - If NYPMIFA applies, then a rebuttable spending rate of 7% or less exists; if the spending rate exceeds 7%, then the rationale for the higher appropriation must be documented.
- Existence of underwater endowment funds
  - Identify if any underwater funds exist.
  - Decide whether to appropriate expenditure of the underwater funds.
  - Document the rationale for expending underwater funds.
- Delegation of investing activity to investment advisors
  - Determine scope of advisors' work and consider any changes.
  - Review endowment portfolio performance.

### **If Not Documented, It's Not Done**

The above requirements are all important components of a required and complete governance policy under UPMIFA or NYMIFA. It is key to remember that if decisions or action items are not documented, then the NFP fails to meet the requirements under UPMIFA/NYPMIFA. Again, it is essential to document in the board minutes the following:

- Consideration of prudence factors and conclusions.
- Decisions regarding spending appropriations.
  - The appropriation decisions should be made annually, not just automatically rolled forward.
- Investment policy decisions, including ensuring proper oversight of investment advisors.
- Rationale for all decisions.

### **Why This Matters Now**

Not-for-profit organizations can expect increased scrutiny over receipt, maintenance and expenditures of contributions, including donor-endowed funds. It is important to have strong controls in place to ensure UPMIFA/NYPMIFA requirements are properly applied. It is not only good practice, but also the law.

### **Contact Us**

For assistance with your endowment fund controls or policies, do not hesitate to contact a member of PKF O'Connor Davies NFP services team. Our extensive resources and experience are available for all your NFP concerns. If you have any questions, please contact your client service team or:

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