

New York Prudent Management of Institutional Funds Act

The Attorney General of New York has released a publication (available at <http://www.charitiesnys.com/pdfs/NYPMIFA-Guidance-March-2011.pdf>) providing valuable guidance to not-for-profit institutions on the New York Prudent Management of Institutional Funds Act (the "Act"). The Act governs the management and investment of institutional funds held by not-for-profit corporations and other institutions. It adds a new Article, 5-A (§§ 550-558) to New York's Not-for-Profit Corporation Law ("N-PCL") and replaces and updates key provisions of the Uniform Management of Institutional Funds Act, which was adopted in New York in 1978. The Act provides standards for institutional funds as well as certain trusts. The Act became effective on September 17, 2010 (the "Effective Date") and applies to any legal entity existing on or established after the Effective Date that is organized and operated exclusively for charitable purposes or formed under the N-PCL. The Act governs decisions made or actions taken after the Effective Date.

The Act sets forth (i) a standard of conduct for managing and investing institutional funds; (ii) rules of construction for the expenditure or accumulation of endowment funds; (iii) standards governing the delegation of management and investment functions to outside advisors and agents; and (iv) rules for the release or modification of donor restrictions on the management, investment, or purpose of funds. The Act also addresses the issue of "underwater endowments" (i.e., funds that have current market values that have declined below their original values), which have become more common. It eliminates the prohibition on invading the historic dollar value (i.e., original value) of an endowment fund and allows appropriation from an endowment fund below such amount without court approval or Attorney General review (subject to the donor's intent as expressed in a gift instrument) if the institution's board of directors concludes that such spending is prudent after considering stated factors.

In order to comply with the Act, institutions need to take the following steps:

1. Educate governing boards and officers on the standards and rules of the Act;
2. Draft or update policies and procedures for:
 - a. managing and investing institutional funds in accordance with the Act and maintaining records contemporaneously documenting such efforts;
 - b. determining standards for appropriation for expenditure and accumulation of endowment funds in accordance with the Act and maintaining records contemporaneously documenting such matters;
 - c. delegating and monitoring management and investment duties of institutional funds to outside agents and ensuring that written agreements with such agents comply with the Act (e.g., may be terminated by the institution at any time, without penalty, upon 60 days notice);
 - e. releasing or modifying donor restrictions on the management, investment, or use of institutional funds;
 - f. notifying donors regarding the Act; and
 - g. preparing solicitation materials for endowment funds.

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- 3. Discuss with an accountant or other advisor the financial impact the Act has on its funds. For instance, FSP FAS 117-1 provides guidance on classifying the equity associated with donor-restricted endowment funds held by organizations that are subject to an enacted version of the Uniform Prudent Management of Institutional Funds Act and may require an institution to make changes in the asset classification of its endowment funds.

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If you have any questions, please contact the GW attorney with whom you regularly consult.

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