UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT: SPENDING AND INVESTING IN A POST-UMIFA WORLD

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I. Introduction and History

A. Background. The Uniform Management of Institutional Funds Act (“UMIFA”) was promulgated in 1972 by the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) and has been enacted in 47 states. During the 30 years following enactment, as total return spending became more common, and as charitable institutions grappled with “underwater” endowed funds, questions arose about UMIFA’s approach to management, investment, and spending endowed funds. A drafting committee to revise UMIFA was formed in spring 2002 (the “Committee”) and was given the charge to conform UMIFA with provisions of two subsequent uniform acts, the Uniform Prudent Investor Act (“UPIA”), promulgated in 1994, and now enacted in 44 states, and the Uniform Trust Code (“UTC”), promulgated in 2000, amended in 2001, 2003, 2004, and 2005, and now enacted in 23 states.

B. Committee’s Charge. The Committee was asked to undertake the following:

1. conform UMIFA’s investment provisions (Sections 4-6) to UPIA’s investment provisions;

2. update UMIFA’s release of restrictions provision (Section 7) to reflect the UTC standards on cy pres (Section 413) and the Restatement (Third) of Trusts (“Restatement of Trusts”), Sections 66-67, Tentative Draft No. 3, Mar. 2001;

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3. consider the issue of settlor enforcement, permitted under UTC;

4. clarify the terms “institution” and “institutional fund;” and

5. explore whether a revised UMIFA could address the tension between UMIFA and the accounting treatment of endowed funds.

6. Although the Committee’s initial charge was to conform UMIFA to UPIA and the UTC, the Committee ultimately determined that UMIFA must also conform to certain provisions of the revised Uniform Principal and Income Act, adopted in 1997, and amended in 2000, which has now been enacted by 43 states.

C. Adoption of UPMIFA. UPMIFA was adopted by NCCUSL in 2006. As of August 31, 2009, it has been enacted in 42 states and the District of Columbia and has been introduced in another 5 states, with several more introductions under consideration. See map and chart of enactments in Appendix.

II. Note on Tension Between Nonprofit Corporation Law and Trust Law. UMIFA and UPMIFA both apply largely to charitable nonprofit corporations. However, they address the investment and expenditure of charitable assets, particularly endowment funds, which have been historically viewed in certain respects as analogous to trust funds. Accordingly, some, but not all, of the concepts applicable to charitable trusts apply to nonprofit corporations holding charitable assets. The doctrine of cy pres is one example of the hybrid character of a charitable corporation. The courts have struggled to apply the doctrine to charitable assets held by a corporation, sometimes applying the doctrine directly, and sometimes adopting a doctrine of “quasi cy pres.” Further, the roles and responsibilities of directors of a nonprofit corporation engaged in a business extend beyond the role of a trustee of a trust. Thus, both UMIFA and UPMIFA must coordinate with the nonprofit corporation law applicable generally to a nonprofit charitable corporation.

III. UMIFA vs. UPMIFA See brief comparison chart in Appendix.

A. Scope of Acts

1. Limited Applicability to Trusts. UMIFA and UPMIFA both have limited applicability to trusts.
   a. UMIFA. UMIFA applies to “institutions,” which are defined as “incorporated or unincorporated organizations” organized and operated exclusively for certain charitable purposes. “Institutional funds” exclude trusts unless the trustee is itself an institution.
UMIFA, Section 1 (1) and (2). A number of states have made UMIFA applicable to community foundations; see, for example, Connecticut, Hawaii, Indiana, North Carolina.

b. **UPMIFA.** Like UMIFA, UPMIFA applies to wholly charitable "institutions," but extends its applicability to funds held by a governmental entity exclusively for charitable purposes. UPMIFA, Section 2(4). UPMIFA also excludes trusts from the definition of "institutional fund," unless the trustee itself is an institution. UPMIFA, Section 2(5). Charitable trusts with individual or commercial trustees accordingly remain subject to UPIA, the Uniform Principal and Income Act, and the UTC. UPMIFA specifically provides that a split interest trust will become subject to the Act only after its noncharitable interests expire. Section 2(4)(C).

2. **Exclusion of Program-Related Assets.** UPMIFA specifically excludes "program-related assets" from the definition of "institutional fund." Section 2(5). A program-related asset is defined as "an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment." Section 2(7). Thus, expenditures intended to carry out an institution’s charitable purposes, for example a below-market loan to a minority business, will not be subject to UPMIFA, but to the law generally governing the institution’s operations.

3. **Applicability to All Institutional Funds.** Like UMIFA, UPMIFA applies to the investment and management of all "institutional funds," not merely to endowment funds. An "institutional fund" is defined "as a fund held by an institution exclusively for charitable purposes." Section 2(5).

4. **Retroactivity.** UPMIFA applies to all institutional funds, including funds established before its enactment. UPMIFA, Section 8. Although practitioners and Attorneys General had expressed concerns about the retroactive application, particularly with regard to the new spending rule, the Committee concluded that it would be too difficult for institutions to segregate old and new endowed funds and to apply different spending rules to each.

B. **Spending Rule.**

1. **UMIFA**

   a. **Historic Dollar Value.** UMIFA introduced the concept of historic dollar value ("HDV") and adopted a spending rule permitting the governing board to spend realized and unrealized net appreciation in excess of HDV, limited by a prudence standard. UMIFA,
Sections 2 and 6. Historic dollar value is defined as the fair value of the endowment fund at the time it is established, as increased by each donation to the fund, and by accumulations directed by the applicable gift instrument. UMIFA, Section 1(5). Thus, UMIFA expanded the concept of income beyond traditional trust accounting income, to include a prudent allocation of realized and unrealized capital gains. This expansion provided clear authority to charities for total return investing, an area of great uncertainty in 1972. See UMIFA, Prefatory Note.

b. Problems for Underwater Funds. Current UMIFA’s spending rule raises significant issues for funds whose fair market value has fallen below historic dollar value. UMIFA does not specifically address this problem and has left institutions uncertain as to whether even traditional trust accounting income may be spent if an institutional fund’s value has fallen below historic dollar value. Most advisors believe that income may still be spent in these circumstances. See Memo, New York State Attorney General Eliot Spitzer Advises Not-for-Profit Corporations on the Appropriation of Endowment Fund Appreciation, July 2003. Many underwater funds have been forced to alter their investment practices to yield income at the expense of long-term appreciation, so that some spendable income can be generated. In effect these underwater funds can no longer take advantage of total return investing.

c. Limited Guidance for Highly Appreciated Funds. In contrast to the problems encountered by underwater funds, many endowed funds, particularly old funds, have appreciated substantially in value. Current UMIFA permits spending under a prudence standard of any portion of the appreciation, and the historic dollar value required to be preserved may be so small that the initial endowment restriction may be almost meaningless. Furthermore, current UMIFA provides limited guidance on what factors to consider in making such spending determinations and focuses on the general needs and purposes of the charity, rather than upon the intended purposes and duration of the fund. See UPMIFA, Prefatory Note, Endowment Spending.

2. UPMIFA – Spending and Accumulation Rule.

a. Elimination of Historic Dollar Value. UPMIFA’s most significant change from UMIFA is the elimination of the requirement that the historic dollar value of a fund—the aggregate value at the time made of all gifts to the fund—be preserved in perpetuity. Instead, UPMIFA permits an institution, subject to the donor’s intent as
expressed in the gift instrument, to spend or accumulate as much of an endowment fund (principal or income, realized and unrealized appreciation) “as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established.” UPMIFA, Section 4(a). The intent of the provision is to recognize modern portfolio theory and the concept of total return investing and to conform to both UPIA and the Uniform Principal and Income Act.

b. Factors. In making the determination on spending or accumulation, an institution is required to “act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances.” An institution is directed to consider the following factors, if relevant:

1. the duration and preservation of the endowment fund;
2. the purposes of the institution and the endowment fund;
3. general economic conditions;
4. the possible effect of inflation or deflation;
5. the expected total return from income and the appreciation of investments;
6. other resources of the institution;
7. the investment policy of the institution;

UPMIFA, Section 4(a).

c. A Legislative Choice Under UPMIFA: Flexible Prudence Standard Versus Bright-Line Limitations on Spending. In response to concerns expressed by practitioners, some attorneys general, and the American Bar Association, UPMIFA includes optional statutory language, as well as optional language in the comments, to give legislators an option to limit the prudent spending standard expressed in Section 4(a).

1. Debate Over Approach to Endowment Spending. A number of Attorneys General, including those from California, New York, Michigan, Washington, and New Hampshire, as well as many practitioners, expressed concern about the elimination of HDV without a cap, spending range or safe harbor. In their view, UPMIFA’s
spending rule does not give enough importance to donor intent, fails to provide adequate guidance to institutions, particularly small organizations, and may provide institutions less protection from general creditors and in bankruptcy. Commentators have also questioned introducing such a flexible standard in the current climate for nonprofits. The commissioners, practitioners, and legislators who support spending subject to a prudence standard place a high value on flexibility and further believe that a percentage limit will at various times be either too high or too low and that it will encourage charities to spend up to 7 percent when that amount would not be prudent.

(2) **Rebuttable Presumption of Imprudence.** To address the concerns described above, UPMIFA provides bracketed language in Section 4(d) for a rebuttable presumption that spending more than 7% of the fair market value of an endowed fund is imprudent. This provision is similar to UMIFA as adopted in Massachusetts, New Hampshire, and New Mexico, which provides for a rebuttable presumption of imprudence for spending more than 7% of the appreciation of an endowed fund. These states, however, do not permit underwater funds to spend any part of HDV, which UPMIFA would permit.

(a) **Smoothing Period.** Section 4(d) requires a charity to compute the 7% cap by valuing the fund at least quarterly and averaging the values over a period of at least 3 years. To avoid hindsight determinations using different valuation periods, the comments to section 4(d) provide that the period selected by the charity for the rolling average and the frequency of valuation will be binding in any determination of whether the presumption applies.

(b) **No Presumption of Prudence.** UPMIFA, Section 4(d)(2) expressly states that it does not “create a presumption of prudence” for spending at or below the 7% cap.

(3) **Notice Rule for Small Organizations Spending Historic Dollar Value.** The comments to Section 4 of UPMIFA provide an optional notice procedure for small charities to address concerns expressed by the National Associations of State Charity Officials and some attorneys general that
small charities with limited investment and spending experience might need additional guidance on prudent decision-making beyond the prudence test and the 7% rebuttable presumption. Under this provision a charity with endowed funds of less than $2,000,000, or other amount selected by a legislature, would be required to give 60 days notice to the Attorney General if it plans spending that would bring its endowed funds below the aggregate HDV for all of its endowed funds. Such notice would permit Attorney General involvement as appropriate, but the provision does not specifically require Attorney General approval. A version of this provision has been enacted in New Hampshire and Maine.

(4) Enactments with Spending Cap. To date, 13 of the 43 states that have adopted UPMIFA have adopted the 7% cap, or a variation, as follows:

California – (Cap not applicable to private or public post secondary educational institutions or related foundations)
Maine – (Excludes section 4(d)(2) regarding no presumption of prudence)
Maryland – (Excludes section 4(d)(2) regarding no presumption of prudence; requires notice to AG of appropriation for expenditure greater than 7%)
Montana
Nevada
New Hampshire – (Excludes section 4(d)(2) regarding no presumption of prudence)
Ohio – (Appropriation for expenditure of up to 5% creates irrebuttable presumption of prudence; no presumption of imprudence or prudence for appropriation above 5%)
Oregon
Rhode Island
Tennessee
Texas (7% for endowment fund valued at $1 million or more; 5% for endowment fund less than $1 million; 9% for educational funds valued at over $450 million)
Utah –
Wyoming – 5%
d. **Rule of Construction.** The revised spending rule of UPMIFA retains the rule of construction (UMIFA, Section 3) that a restriction to spend only traditional trust income will not be implied from words designating a gift as “endowment” or to use “income only,” or other similar words. The revised construction rule states that such terms “create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (a).” UPMIFA, Section 4(c). The construction rule will apply to a gift unless the donor specifically limits the institution’s authority to expend or accumulate endowment funds in the gift instrument. UPMIFA, Section 4(b).

e. **Accounting Issues Regarding the Character of Endowment Restrictions.**

(1) Under applicable accounting standards, amounts in a restricted fund that may be spent are treated for accounting purposes as unrestricted or temporarily restricted, depending on the nature of the restriction. Under UMIFA, capital appreciation on endowed funds is thus treated as unrestricted since it maybe spent under a prudence standard. The elimination of HDV without a cap under UPMIFA raised significant accounting issues, since the entire fund could be available for prudent expenditure.

(2) Section 4(a) of UPMIFA clarifies that a prudent spending rule does not eliminate a legal restriction on a fund until the institution acts to eliminate the restriction. Section 4(a) states that “unless stated otherwise in the gift instrument, the assets in an endowment fund are donor—restricted assets until appropriated for expenditure by the institution.” This language is similar to current UMIFA provisions in Maine and Utah. See also Massachusetts Attorney General Opinion No. 117 (January 2004).

(3) The accounting treatment of endowed funds is beyond the scope of this outline, but readers should be aware that FASB issued FASB Staff Position FAS 117-1 on August 6, 2008, to provide guidance on the classification of donor restricted endowment funds subject to UPMIFA.
C. Revised Release of Restrictions on Use or Investment.

1. UMIFA: Release with Donor Consent or Court Approval. Section 7(a) of UMIFA permits a governing board to release restrictions imposed on a gift with the written consent of the donor. Under Section 7(b), if the written consent of the donor cannot be obtained, the governing board may apply to the appropriate court, which may release the restriction in whole or in part if it is “obsolete, inappropriate, or impracticable.” Section 7(d) provides that the Section does not limit the application of the doctrine of cy pres.

2. UPMIFA: Limited Power to Release or Modify Small Funds of Extended Duration without Donor Consent. UPMIFA permits an institution to release or modify a restriction on the management, investment, or purpose of a fund of limited size that has been in existence for an extended period, after notice to the Attorney General, but without donor consent or notice or court approval, if the institution concludes that the restriction is “unlawful, impracticable, impossible to achieve, or wasteful.” UPMIFA, Section 6(d). The statute suggests a cap of $25,000 and a minimum length of existence of 20 years, but has left it to each state to adopt the limits. Section 6(d) (1) and (2). When an institution modifies or releases a restriction pursuant to this “self-cy pres” rule, it must use the property in a manner that it determines in good faith “to be consistent with the charitable purposes expressed in the gift instrument.” Section 6(d)(3).

3. UPMIFA: Release with Donor Consent. As under UMIFA, an institution may release a restriction on any institutional fund with donor consent. UPMIFA, Section 6(a). A release may not permit a fund to be used for a non-charitable purpose.

4. Deviation and Cy Pres. UPMIFA Section 6(b) and (c) clarify that an institution may always request a court to modify or release a restriction by applying either the doctrine of equitable deviation or cy pres. Both of these concepts derive from trust law, but at least in the case of cy pres, the courts have recognized their applicability to funds held by charitable corporations. See, e.g., Queen of Angels Hospital v. Younger, 66, Cal. App. 3rd 359 (Cal. Ct. App. 1977). Accordingly, UPMIFA eliminates the provision of UMIFA stating that the section does not limit the application of cy pres.

   a. Cy Pres. UPMIFA adopts the cy pres standard of Section 413 of the UTC, and changes the standard under which a court may modify a restriction from “obsolete, inappropriate, or impracticable” to “unlawful, impracticable, impossible to achieve, or wasteful.” Section 6(c).
b. **Deviation.** The standard for deviation derives from UTC section 412 and permits modification of a restriction on management or investment if, because of circumstances unanticipated by the donor, modification of the restriction will further the purposes of the fund or will eliminate a restriction that has become “impracticable or wasteful [or] impairs the management or investment of the fund.” Section 6(b).

D. **Standard of Conduct.**

1. **UMIFA – Ordinary Business Care and Prudence.**

   a. **Standard.** UMIFA requires the members of an institution’s governing board to “exercise ordinary business care and prudence under the facts and circumstances [then] prevailing”, with respect to decisions to appropriate appreciation, investment decisions, and delegation of investment management. UMIFA, Section 6.

   b. **Factors.** The members of the governing board are further directed to consider:

   “the long and short term needs of the institution in carrying out its educational, religious, charitable, or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions.”

   UMIFA, Section 6.

2. **UPMIFA – Required Duties of Care and Loyalty: Default Rules for Investment Management and Investment.**

   a. **Overall Structure.** Section 3 of UPMIFA imposes a mandatory duty of good faith and care on the individuals responsible for managing and investing an institution’s fund, in addition to the duty of loyalty that directors and trustees are subject to under other law. Mandatory duties also are imposed on the institution to incur only reasonable costs and to investigate information used in making decisions. Section 3(b) and (c). Section 3(d) permits an institution to pool two or more institutional funds for the purposes of management and investment. The remainder of Section 3 provides a series of default rules that may be altered or eliminated by the gift instrument as follows: factors for prudent
decisionmaking, a portfolio approach to investment; broad, rather than enumerated, investment authority; a duty to diversify; a duty to make decisions about disposing or retaining assets; and a duty to use special skills or expertise. Section 3(e).

b. Blending of Nonprofit Corporation and Trust Law Standards. UPMIFA provides for a prudence rule that reflects elements of both the Revised Model Nonprofit Corporation Act (“RMNCA”) and UPIA. The Comments to this section highlight the complexity of applying UMIFA to both wholly charitable trusts and nonprofit corporations.

c. Mandatory Duties.

(1) **Donor Intent and Charitable Purposes.** Section 3(a) of UPMIFA requires that “subject to the intent of a donor expressed in a gift instrument,” in managing and investing an institutional fund an institution shall consider the “charitable purposes of the institution and the purposes of the institutional fund.”

(2) **Duty of Care.** Section 3(b) of UPMIFA requires each individual responsible for managing and investing an institutional fund, to “manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.” This standard adopts the language of Section 8.30 of RMNCA. However, the Comment notes that the duty of care “involves considering the factors set forth in section (e).” Comment, Section 3, Subsection (b), Duty of Care.

(3) **Duty to Minimize Costs.** Section 3(c)(1) of UPMIFA requires an institution in managing and investing an institutional fund to limit its costs to those “that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution.” This provision follows Section 7 of UPIA.

(4) **Duty to Investigate.** Section 3(c)(2) of UPMIFA requires an institution to make a reasonable effort to verify the relevant facts.

(5) **Duty of Loyalty.** UPMIFA does not provide a duty of loyalty, as does UMIFA, but instead defers to existing law applicable respectively to corporations and trusts. This approach was adopted out of concern that differing standards of loyalty may apply to corporate directors and
trustees. Comment, Section 3, Subsection (b), Duty of Loyalty.

d. Default Rules. The remainder of Section 3 provides a series of default rules that are derived largely from UPIA and to some extent from the Restatement of Trusts. While many of these duties would be followed by a corporate director to fulfill the duty of care, this approach diverges from the nonprofit corporation law approach to officer and director liability, which does not separately enumerate such duties. However, as provided in the Comments, the Committee concluded that “the greater precision of the prudence norms of the Restatement and UPIA…could helpfully inform managers of charitable institutions.” Comments, Section 3. As provided in Section 3(e) of UPMIFA, the default rules apply unless the applicable gift instrument provides otherwise.

(1) Prudent Decision Making. Subsection 3(e)(1) of UPMIFA provides a lengthy list of factors, if relevant, that an institution must consider in managing and investing an institutional fund:

1. general economic conditions;
2. the possible effect of inflation or deflation;
3. the expected tax consequences, if any, of investment decisions or strategies;
4. the role that each investment or course of action plays within the overall investment portfolio of the institutional fund;
5. the expected total return from income and the appreciation of investments;
6. other resources of the institution;
7. the needs of the institution and the fund to make distributions and to preserve capital; and
8. an asset’s special relationship or special value, if any, to the purposes of any gift instrument, or to the institution.

This subsection is derived from Sections 2(a) and (c) of UPIA.
(2) **Diversified Portfolio Approach.** UPMIFA adopts the requirement to diversify investments, absent special circumstances, conforming to UPIA, Section 3. UPMIFA, Section 3(e)(4). UPMIFA adopts the modern portfolio approach to investing from UPIA, Section 2(b), providing that investment and management decisions about an individual asset shall be made in the context of the fund’s entire portfolio and as part of an overall investment strategy. UPMIFA, Section 3(e)(2).

(3) **Review of Assets; Investment Authority.** UPMIFA conforms to UPIA Section 4 by adding a requirement that the board review gifted property and determine whether to retain or dispose the property, or to rebalance a portfolio, so that the institutional fund will comply with the applicable purposes, terms, distribution requirements and other circumstances of the institution. Section 3(e)(5). Section 3(e)(3) of UPMIFA provides for broad investment authority, rather than enumerating permitted investments, in conformity with UPIA Sections 1(b) and 2.

(4) **Duty to Use Special Skills or Expertise.** Section 3(e)(6) of UPMIFA requires an individual trustee or director with special skills or expertise to use them in managing and investing institutional funds. This provision follows the language of UPIA Section 2(f) and is echoed in the Comments to Section 8.30 of RMNCA on the nonprofit director duty of care.

E. **Delegation of Investment Management.** UPMIFA provides bracketed language on delegation because existing law in many states may already provide delegation authority for charitable institutions. Every state that has enacted UPMIFA has included the delegation provision, a few with variations.

1. **UMIFA – Delegation to Committees, Officers, Employees, and Agents.** Under UMIFA, an institution’s governing board may delegate investment management authority to its committees, officers, or employees. The statute specifically authorizes the institution to contract with and to compensate independent investment advisors, investment counsel or managers, banks or trust companies. UMIFA, Section 5. In making a delegation, the governing board is required to exercise ordinary business care and prudence. UMIFA, Section 6.

2. **UPMIFA – Delegation to External Agents.** Section 5 of UPMIFA follows the delegation rule for trusts in Section 9 of UPIA.
a. **Prudent Delegation.**

Section 5(a) specifically permits “prudent” delegation of investment and management authority to “external agents”. An institution is required to “act in good faith with the care of an ordinarily prudent person” in selecting an agent, setting the scope and terms of the delegation, and periodically reviewing the agent. When an institution complies with the requirement of Section 5(a), it will not be liable for the agent’s actions or decisions. UPMIFA Section 5(c).

Section 5(e) provides that an institution may delegate to committees, officers, or employees as authorized by other applicable law. The Comment to Section 5 states that the section applies only to external delegation and that institutions should look respectively to the nonprofit corporation and trust laws with respect to internal delegation.

b. **Obligations of Agent.**

Sections 5(b) and 5(d) of UPMIFA address obligations of the agent. Under Section 5(b) an agent must exercise reasonable care to carry out the terms of the delegation. Section 5(d) of UPMIFA requires the agent to submit to jurisdiction in the courts of the state whose laws apply to the institution.

F. **Donor Standing.** UPMIFA does not provide for donor standing, although some early drafts included a provision for donor standing to enforce a restricted gift in limited circumstances. April 2, 2003 Draft, Section 8. In this respect UPMIFA does not conform to UTC, Section 405(c), which permits a settlor to enforce a charitable trust without any limitation. This was an area of significant concern and discussion for the Committee. The Committee concluded that although there are a few egregious cases of misuse of charitable gifts, without redress by the Attorney General, e.g., Herzog Foundation v. University of Bridgeport, 699 A. 2d 995 (Comm. 1997), providing for donor standing would make the management of endowments extremely difficult for many charitable institutions.

G. **Revised Description of Charitable Purposes.** UPMIFA modernizes and clarifies the description of charitable purposes, following generally Section 405 of the UTC and Restatement (Second) of Trusts, Section 368. UPMIFA, Section 2(1). UPMIFA does not specifically adopt the definition of charitable purposes under Section 501(c)(3) of the Internal Revenue Code.

H. **Instrument Includes Electronic Records.** The definition of gift instrument is revised to include electronic records. UPMIFA Section 2(8).
APPENDIX

Attached charts reprinted with permission from NCCUSL:

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2009 Introductions and Enactments

Alaska: Introduced as SB 134 in 2009 - Senate Finance
Arkansas: Introduced as SB 254 in 2009 - ENACTED
Hawaii: Introduced as HB 618/SB 121 in 2009 - ENACTED
Illinois: Introduced as HB 811 in 2009 - ENACTED
Kentucky: Introduced as SB 127 in 2009 - House Rules
Maine: Introduced as LD 1402 in 2009 - ENACTED
Maryland: Introduced as HB 200/SB 230 in 2009 - ENACTED
Massachusetts: Introduced as S 2078 in 2009 - ENACTED
Michigan: Introduced as SB 411 in 2009 - House 2nd Reading
Mississippi: Introduced as HB 419/SB 2335 in 2009 - House Judiciary
Missouri: Introduced as HB 239 in 2009 – ENACTED
New Jersey: Introduced as SB 2583 in 2009 - ENACTED
New Mexico: Introduced as HB 454 in 2009 - ENACTED
New York: Introduced as AB7907/SB4778 in 2009 - Assembly Corporations
North Carolina: Introduced as SB 127/HB 133 in 2009 - ENACTED
North Dakota: Introduced as HB 1074 in 2009 - ENACTED
Ohio: Introduced as HB 522 in 2008 - ENACTED
Rhode Island: Introduced as HB 5244 in 2009 - ENACTED
Vermont: Introduced as H. 287 in 2009 - ENACTED
Washington: Introduced as HB 1119 in 2009 - ENACTED
Wisconsin: Introduced as SB 31 in 2009 - ENACTED
Wyoming: Introduced as HB 118 in 2009 - ENACTED

2008 Enactments

Alabama: Introduced as HB 8 in 2006-07 - ENACTED
Arizona: Introduced as SB 1228 in 2008 - ENACTED
California: Introduced as SB 1329 in 2008 - ENACTED
Colorado: Introduced as HB 1173 in 2007-08 - ENACTED
District of Columbia: Introduced as B17-145 in 2006-07 - ENACTED
Georgia: Introduced as HB 972 in 2007-08 - ENACTED
Iowa: Introduced as SF 2316 in 2008 - ENACTED
Kansas: Introduced as SB 433 in 2007-08 - ENACTED
Minnesota: Introduced as HF 1499/SF 1406 in 2006-07 - ENACTED
New Hampshire: Introduced as 1382 in 2007-08 - ENACTED
South Carolina: Introduced as SB 1007 in 2007-08 - ENACTED
Virginia: Introduced as HB 951 in 2007-08 - ENACTED
West Virginia: Introduced as SB 144 in 2007-08 - ENACTED

2007 Enactments

Nebraska: Introduced as LB 136 in 2006-07 - ENACTED
Connecticut: Introduced as SB 1143 in 2006-07 - ENACTED
Idaho: Introduced as SB 1016 in 2006-07 - ENACTED
South Dakota: Introduced as SB 89 in 2006-07 - ENACTED
Indiana: Introduced as HB 1505 in 2006-07 - ENACTED
Oklahoma: Introduced as HB 1596 in 2006-07 - ENACTED
Texas: Introduced as HB 860 in 2006-07 - ENACTED
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<td>• Portfolio balancing required</td>
<td></td>
<td></td>
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<tr>
<td>• Special skills standard of performance</td>
<td></td>
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<tr>
<td><strong>Expenditure of Funds:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Express prudent total return standard, 7 factors:</td>
<td></td>
<td>• Net appreciation may be spent for purposes of endowment</td>
</tr>
<tr>
<td>- Fund duration</td>
<td></td>
<td>• Historic dollar value limitation</td>
</tr>
<tr>
<td>- Fund/institution purposes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- General economic conditions</td>
<td></td>
<td></td>
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<tr>
<td>- Effects, inflation/deflation</td>
<td></td>
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<tr>
<td>- Expected total return</td>
<td></td>
<td></td>
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<tr>
<td>- Other resources</td>
<td></td>
<td></td>
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<tr>
<td>- Institutional investment policy</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Optional, over 7% of total return presumed imprudent</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Delegation of Management/Investment:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Prudent delegation in good faith, care standard of prudent person:</td>
<td></td>
<td>• Delegation allowed without express standards</td>
</tr>
<tr>
<td>- To select agent</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Establish scope and terms of delegation</td>
<td></td>
<td></td>
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<tr>
<td>- Requires periodic review and supervision of agent</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Agent has duty of reasonable care</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Agent subject to court jurisdiction</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Delegation to committees, officers or employees as authorized by other law</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### UPMIFA

**Release or Modification of Restrictions:**

- **Restriction**
  - Court may release or modify if restriction is:
    - Impracticable or wasteful
    - Impairs management or investment
    - Meets unanticipated circumstances that allow release or modification furthering purposes of the fund
  - Notice to Attorney General required

- **Purpose**
  - Court may release or modify if purpose is:
    - Unlawful to retain
    - Impracticable
    - Impossible to achieve
    - Wasteful
  - Must be consistent with donor’s intent
  - Notice to Attorney General Required

- **Small Old Fund**
  - Institution may institute release or modification without court approval
  - Notice to Attorney General required

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### UMIFA

**Release or Modification of Restrictions:**

- Court release if restriction obsolete, inappropriate or impracticable

- Notice to Attorney General required

- Cy pres (modification of purpose) not limited or addressed