

Loeb & Troper's *e-Bulletin*

New York's UPMIFA: Opportunities and Challenges

Background

New York State recently enacted its own version of the Uniform Prudent Management of Institutional Funds Act (UPMIFA). The New York Prudent Management of Institutional Funds Act (NYPMIFA) has two key objectives:

1. To create a new standard of prudence governing the investment of institutional funds; and
2. To create greater flexibility in appropriating funds.

NYPMIFA provides new opportunities for not-for-profit organizations, including the ability, in appropriate cases, to utilize funds from an endowment that is "underwater." It also creates additional responsibility to the organization and its board to comply with the new standards. The compliance is likely to affect investment policy, spending policy, appropriation process, and donor communications.

In addition to the standard UPMIFA requirements, the following three areas are unique to NYPMIFA:

Written Policy Requirements

Each not-for-profit organization must create a written investment policy and spending policy that ensures compliance with the new standards of prudent financial management. NYPMIFA outlines eight standards for prudent spending that should be incorporated into the written policy.

Presumption of Imprudence Calculation

New York State has adopted within NYPMIFA a provision creating a rebuttable presumption that an appropriation from an endowment fund in any given year greater than 7% of its market value is imprudent. The fair market value of the endowment fund is calculated at least quarterly based upon the average of the last five years or the period of the fund's existence, if shorter.

Many organizations adopt a spending rate each year, which should be included in the basic assumptions of the operating budget. Amounts need to be formally appropriated for expenditure by the Board of Directors.

Written Notification

Available Donors — NYPMIFA gives the option to available donors of funds received prior to September 17, 2010, to opt in or out of the new law. Moreover, NYPMIFA goes so far as to include specific language that must be utilized for donor communications, as well as guidelines regarding methods of communication. With this as a backdrop, the organization may wish to develop and communicate policies that will encourage donors to select the option that is optimal for the organization, while assuring donors of fiscal health within the organization. A committee of the board should review the policies before they are finalized.

Attorney General — In cases of old, small, unused funds, the law provides the mechanism to change the original use of funds for a more useful purpose. This is achieved by written notification to the Attorney General.

NYPMIFA will have a significant impact on the governance, communications, accounting, and appropriation of endowment funds. It is essential that not-for-profit executives immediately assess the opportunities and challenges that NYPMIFA presents to the organization while simultaneously ensuring board education with regard to the many implications resulting from complying with NYPMIFA. Additionally, organizations are reminded that, while access to funds that were previously unavailable may be beneficial, it is imperative to preserve the principal of the endowment.

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