



understanding upmifa: fiduciary issues with mission-related investing

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The Uniform Prudent Management of Institutional Funds Act (UPMIFA), adopted in 49 states, provides guidance to charitable organizations concerning the management and investment of charitable funds.

Prior posts (Understanding UPMIFA: Delegation of Management and Investment of Endowment Funds and Understanding UPMIFA: Important Endowment Concepts) focused on UPMIFA standards for determining the endowment spending rate and rules for delegation of management and investment functions, while this post will address the guidance provided by UPMIFA to fiduciaries considering investment of institutional funds in mission-related investments (MRIs).

What is Subject to UPMIFA

For this purpose, it is important to distinguish between MRIs and program related investments (PRIs), since UPMIFA by its terms does not apply to PRIs. Both MRIs and PRIs involve the use of funds by an organization for both investment and charitable purposes. However, with a PRI, the charitable purpose is of *primary* importance, while the investment purpose is only *secondary*. The examples given by the Uniform Law Commission are a microfinance fund maintained by a community foundation to make very small loans to small businesses in underserved neighborhoods, and the purchase by a university of land adjacent to its campus for future development of campus facilities.

With an MRI, it is the investment purpose that is primary, while the use of funds also furthers a charitable purpose of the organization. Because MRIs are considered to be investments, institutions are not precluded from using investment assets, including endowment assets, to acquire MRIs, which undoubtedly accounts in part for the increased focus on MRIs in recent years. And because MRIs are considered to be investments, they must be evaluated

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practice areas

nonprofit organizations
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by fiduciaries within the framework of UPMIFA.

Evaluating Investment Decisions

UPMIFA provides a list of eight factors to be considered by fiduciaries when making investment decisions:

1. General economic conditions;
2. Effects of inflation and deflation;
3. Tax consequences;
4. The role of each investment in the overall portfolio
5. Expected total return from income and appreciation;
6. The charity's other resources;
7. The need of the portfolio to make distributions and to preserve capital; and
8. An asset's special relationship, if any, to the charitable purposes of the institution.

While a board or investment committee must consider all eight factors when making investment decision, it is the eighth that provides the support to include MRIs in the investment portfolio of charitable organizations.

The Place of MRIs in the Portfolio

Fiduciaries must consider other provisions of UPMIFA when making investment decisions. Embracing modern portfolio theory borrowed from the Uniform Prudent Investor Act, UPMIFA requires investment decisions regarding a specific asset to be made not in isolation, but instead in the context of the portfolio as a whole and as part of an overall investment strategy. It also generally requires diversification of assets across investment classes. These two UPMIFA principles are employed by fiduciaries to assign allocation percentages within the portfolio to various investment classes, and might, for example, provide target allocations of W% emerging market equity, X% corporate fixed income, Y% private equity and Z% MRIs. The Uniform Law Commission, in its UPMIFA Commentary, has helpfully underscored the ability of fiduciaries to adopt this approach by observing that UPMIFA "does not preclude a charity from acquiring and holding assets that have both investment purposes and purposes related to the organization's charitable purposes."

Of course, UPMIFA is not the only guidance for fiduciaries making investment decisions; other considerations include investment restrictions, if any, imposed by donors on funds they contribute as well as the investment policy adopted by the organization.

The Prudent Leveraging of Charitable Assets



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Many charitable organizations have embraced MRIs as a vehicle to leverage investment assets to further their charitable purposes, and are amending investment policies to embrace this approach. Various examples may be found in the current nonprofit environment. For example, consider an organization with substantial endowment assets and with charitable purposes that include addressing wealth and income inequality as well as housing affordability. A portion of the spending from its endowment is deployed in these program areas. It also designates a percentage allocation of endowment investment assets to MRIs, and uses a portion of that allocation to invest in a company that manufactures modular units that reduce the cost of housing, and another portion to invest in the development of low-income housing. These investments leverage the impact the organization can have in achieving its objectives, beyond what could be accomplished with just the spending from its endowment.

For Serious Students

Professor Susan Gary was the Uniform Law Commission's Reporter for the UPMIFA project. Her article "Is It Prudent to be Responsible? The Legal Rules for Charities that Engage in Socially Responsible Investing and Mission Investing" is a comprehensive scholarly overview of this topic. "Mission-Related Investing: Legal and Policy Issues to Consider Before Investing" is a very useful publication by the MacArthur Foundation.

Coming Up Next

This is one in a series of posts on UPMIFA. A future post will address (by popular demand!) the rules for release or modification of restrictions contained in gift instruments.