



A View From the Top

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403(b) Plans New Requirements Update

Uniform Prudent Management of Institutional Funds Act (UPMIFA) -
Affecting How Not-for-Profits Must
Report Their Endowments

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403(b) Plans: Revisited

Thursday, June 18, 2009

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403(b) Plan New Requirements Update

- Overview of the 403(b) plan new regulations
- Getting ready for the new 403(b) plan Form 5500 reporting and audit requirements
- ERISA vs. Non-ERISA 403(b) plan impact
- Next Steps

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Significant 2009 Changes

Employer Now Responsible for the Plan

- Compliance with the rules and regulations, such as
 - Contribution limits
 - Nondiscrimination rules
 - Distributions
- Coordination of actions among multiple vendors
- Liability for penalty taxes, correction fees, employment taxes
- Accordingly, the employer responsibilities should be assigned to and appropriate personnel

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Significant 2009 Changes

5500 Reporting Regulations for ERISA 403(b) Plans for Years Beginning in 2009

- Expanded Form 5500 reporting requirements
- Independent accountant plan audit requirements for “large plans”

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Significant 2009 Changes

Internal Revenue Regulation Changes

- Written plan document, including all required provisions
- Stricter exchange and transfer rules
- Changed and clarified Universal Availability rules
- Annual notice to participants on rights to participate and methods for making or changing elections

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Significant 2009 Changes

Internal Revenue Regulation Changes (continued)

- Controlled group rule clarification
- Timing of deposit requirements
- Plan termination availability

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Self-Correction Opportunity

- Plan document satisfying the requirements on or before 12/31/2009 effective as of 1/1/2009
- Operates the plan in accordance with a reasonable interpretation of 403(b)
- Before the end of 2009, sponsor makes best efforts to retroactively correct any operational error using the correction principles set forth in RP 2008-50 - Employee Plans Compliance Resolution System “EPCRS”

Self-correction window without incurring large government correction fees

Bottom-line fix it in 2009

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2009 Compliance Checklist

Does the Employer Really Make Deferral Opportunity Universally Available?

- All employees of the employer must be permitted to make salary deferrals except:
 - Nonresident aliens
 - Employees eligible to make deferrals to another 403(b), 401(k) or 457(b) plan
 - Students under a work study program
 - Employees working less than 20 hours (expect less than 1,000 hours in the upcoming year and less than 1,000 hours in the preceding year)

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2009 Compliance Checklist

Has an Annual Notice to Employees Been Provided for 2009?

- Notice requirement at least once a year
- Stating the
 - Period of time during which an election may be made, and
 - Any other conditions on elections

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2009 Compliance Checklist

Is an Information Sharing Agreement In Place with Vendors Where Required?

- Discontinued/de-selected contracts (Rev. Proc 2007-71)
 - No contributions since 12/31/04 – grandfathered, no compliance responsibilities and not part of the plan
 - Contributions ceased 1/1/05 – 12/31/08 – reasonable good faith effort to include vendor contracts in current plan – notify vendor, but no response required
 - Pre-2009 contracts - vendor must make reasonable, good faith effort to contact employer before making any distribution or loan

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2009 Compliance Checklist

Is the Organization Meeting the New Timing of Deferral Contributions Deposit Requirements?

- 403(b) elective deferrals must be transferred within a period that is not longer than is reasonable for the proper administration of the plan
- Typically within 7 days for most situations
- ERISA Plans already subject to this rule

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The New Audit Requirement For ERISA Plans

*Financial statements and footnotes of large plans
must be audited by an independent auditor*

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Current IRS/DOL Reporting

For the plan years beginning in 2009 new Form 5500 rules will require same extensive reporting and independent audit requirements as apply to 401(k) plans.

“The DOL intends to fully enforce this new audit requirement in 2009”

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New Reporting Requirements for ERISA 403(b) Plans - 2009 Plan Year

- Plan must file full Form 5500
 - Large plans – Financial info in Schedule H
 - Small plans – Financial info in Schedule I
- Financial statements and footnotes of large plans must be audited by an independent auditor
- All returns must be filed electronically
- Increased oversight

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403(b) Plan Audit Considerations

Will the Plan be auditable for the year beginning in 2009?

Careful consideration is essential in 2008 to ensure the plan will be auditable in 2009

Can a comparative statement of net assets for both 2009 and 2008 years be ready for the audit?

- 2008 will be covered by auditor's report
- Participant records may be difficult to “roll up” into plan level records
- Auditor's cannot prepare your financial statements

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First Year Audit Considerations

Does the plan asset beginning balances appear reasonable considering the life of the plan?

- Participant account balance amounts
- Contributions
- Withdrawals
- Investment activity

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403(b) Plan Audit

Will you be able to provide the auditors with the following information that is in compliance with the new Regs?

- Plan document and any plan amendments
- Summary Plan Description
- Copies of investment or insurance contracts
- Vendor service agreements, including Information Sharing Agreements
- Plan communications and materials provided to employees

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403(b) Plan Audit

Are you ready to provide the following information to auditor?

- Listing of parties in interest
- Meeting minutes and any legal correspondence
- Year end statements for all plan assets (2009 and 2008) as well as subsequent asset statements
- Participant account statements (2009 and 2008)
- Year-end payroll or census report
- SAS 70 report for service providers
- Discrimination testing results
- Plan expenses

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403(b) Plan Audit

Documentation of internal controls – Are you ready to walk through each process with the auditors and provide support for each process?

- Eligibility
- Payroll system
- Contributions calculation and remittance timing
- Benefit payments
- Plan exchanges

No controls?

- Expect a SAS 112 – control deficiency letter from the auditor (every year until controls are put into place)

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403(b) Plan Audit Considerations

...and all of the back up for any of those transactions the auditors choose to test

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403(b) Plan Audit Considerations

- New Reporting and Disclosure Requirements
 - FASB Statement No. 157 - Fair Value Measurements
- Guaranteed investment contract or stable value funds - SOP 94-4-1 information

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ERISA 403(b) Plans

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ERISA 403(b) Plan Attributes

- Reporting and disclosure requirements
- ERISA fiduciary standards
- ERISA pre-empts state laws

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ERISA Fiduciary Standards

- Fiduciary - anyone with decision making authority over the plan and/or plan assets
- Fiduciaries are charged with:
 - Acting solely for the benefit of plan participants
 - In a prudent manner
 - Acting based on the knowledge and experience of an expert
 - Avoiding conflicts of interest
 - Allowing only “reasonable” expenses to be charged to participant accounts

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ERISA 403(b) Plan Sponsor Fiduciary Responsibilities

- Selection and monitoring of investments
- Selection and monitoring of investment managers
- Investment information provided to plan participants
- Plan technical compliance
- Selection and monitoring of plan record keeping and administration provider(s)

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Potential Fiduciaries

- Board of Directors
- Officers
- Anyone with authority over the plan and/or plan assets, including:
 - Plan compliance
 - Plan investments
 - Claims
 - Distributions
 - Plan provisions and/or benefits

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Non-ERISA Plans

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Non-ERISA Plan Safe Harbor Attributes

- Employee participation completely voluntary
- Salary reduction arrangement only
 - Employers' responsibilities limited to:
 - Collect and remit \$ to vendor
 - Maintain collection records
 - Ensure that employees' W-2 income and tax withholding are properly adjusted for payroll taxes
- All rights solely enforceable by employee

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Non-ERISA Plan Safe Harbor Attributes

- Allowable Activities (FAB 2007-2)
 - Review program structure and operation for tax compliance defects
 - Ensure program is 403(b) tax compliant
 - Develop administrative processes and obtain cooperation of vendors to correct tax defects
 - Keep records of plan activities
 - Permit vendors to publicize their products
 - Compile information to facilitate employee review
 - Limit number and selection of vendors to give employees a reasonable choice

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Tricky Non-ERISA Safe Harbor Issues

Vendors may require instructions from Plan Sponsor to:

- Authorize plan-to-plan transfers
- Process distributions
- Make determinations regarding hardship distributions, QDROs and eligibility for or enforcement of loans

Negotiate with annuity providers or account custodians to change the terms of their products

- Employer contributions

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Next Steps

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Next Steps

- List existing and future retirement plan goals
- Assign plan responsibility
- Determine current vendor contacts and review contracts/information sharing agreements
- Determine what critical decisions need to be made
 - Plan provisions
 - Vendors going forward - deselecting of vendors
 - ERISA/Non-ERISA plan
- Develop a process with a timeline to achieve/maintain compliance and to carry out plan goals
- Identify and fix any current compliance issues

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The Process

- If non-ERISA plan:
 - Establish and document procedures to stay within “safe harbor”
 - Evaluate past and present vendors to ascertain if the plan has the vendor relationship going forward
 - Consider limiting number of vendors

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The Process

- If an ERISA plan:
 - Evaluate past and present vendors to ascertain if the plan has the vendor relationship going forward
 - Consider consolidation to a single vendor
 - Review vendors' investment line-up and fees
 - Gather, or engage a firm to help you gather, plan accounts data to prepare for 2009 plan year independent CPA audit if applicable
 - Consider hiring a third party to establish and monitor processes and procedures to maintain compliance and limit liability exposure

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Summary

- It is a New World for 403(b) plans
- Liability exposure management is the necessary and least expensive alternative

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UPMIFA and FASB Staff Position (FSP) No. FAS 117-1

Presenter: Melissa Harman

Date: June 18, 2009

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Presentation Overview

- UPMIFA (Uniform Prudent Management of Institutional Funds Act of 2006) and the differences from UMIFA (Uniform Management of Institutional Funds Act of 1972)
- FSP No. FAS 117-1 Endowments of Not-For-Profit Organizations: Net Asset Classification of Funds Subject to an Enacted Version of the UPMIFA, and Enhanced Disclosures for all Endowment Funds

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Uniform Prudent Management of Institutional Funds Act (UPMIFA)

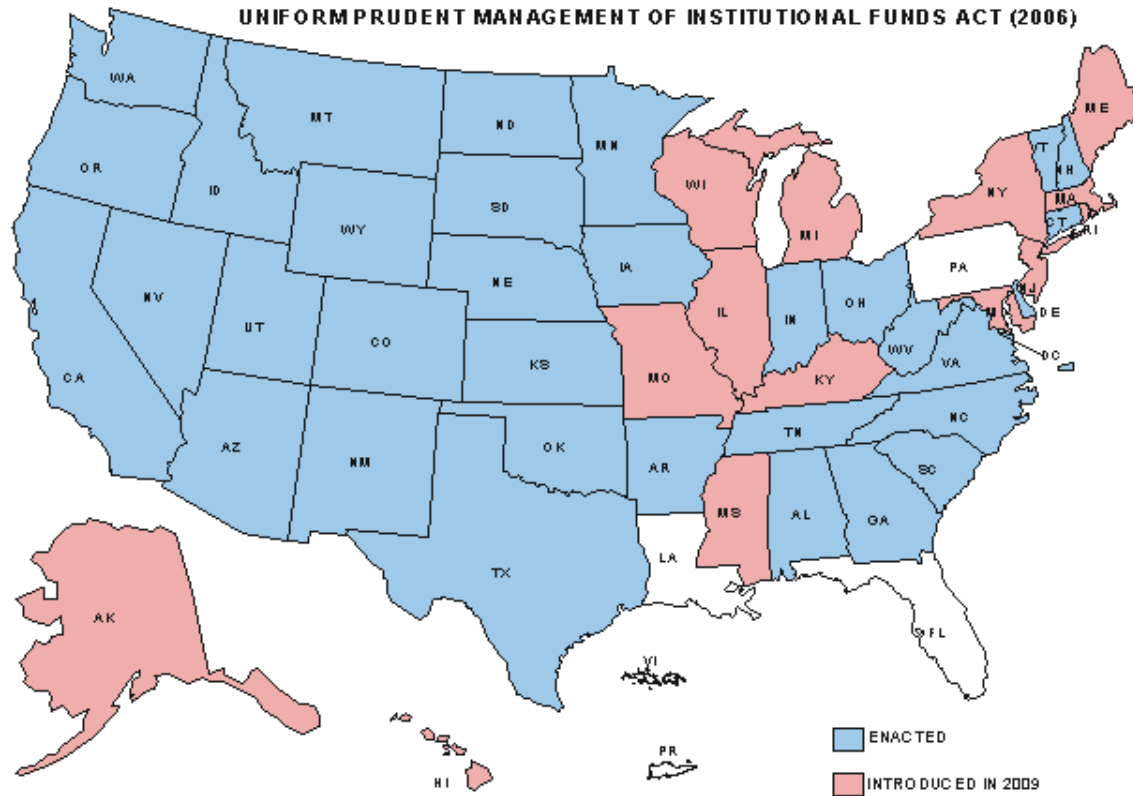
- In July 2006, the National Conference of Commissioners on Uniform State Laws (now called the Uniform Law Commission) approved UPMIFA
 - A uniform act is officially promulgated for consideration by the states, for legislative enactment
- UPMIFA is a revision of the Uniform Management of Institutional Funds Act of 1972 (UMIFA), which has been adopted by 46 states and the District of Columbia
 - **Thus far (as of May 2009), UPMIFA has been enacted by thirty-five states and the District of Columbia and is being considered for enactment by several other states**
 - California – Enacted and effective January 1, 2009.

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UPMIFA Enactment Status Map



- Obtain

May 12, 2009

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UPMIFA – An Institutional Perspective

Governance - Spending Policy & Prudence Standards

Reporting and Disclosure - Net Asset Classification & the Board's Interpretation of the Law

Clarification - Gift-Agreement Wording Implications

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UPMIFA: Scope and Definitions

Applies to institutional funds that are held by an institution exclusively for charitable purposes.

Institution is defined in the California Probate Code Section 18502 as:

- 1) a person, other than individual, organized and operated exclusively for charitable purposes;
- 2) a government or governmental subdivision, agency or instrumentality, to the extent that it holds funds exclusively for charitable purposes;
- 3) a trust that had both charitable and non-charitable interests, after all non-charitable interests have terminated.

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UPMIFA: Definitions – Continued

An **Institutional Fund** (as defined in the California Probate Code Section 18502) means a fund held by an institution exclusively for charitable purposes, but does not include:

- Program-related assets;
- A fund held for an institution by a trustee that is not an institution;
- A fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

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UPMIFA: Definitions – Continued

Endowment fund (as defined in the California Probate Code Section 18502) – means an institutional fund, or any part thereof, that, under a gift instrument, is not wholly expendable by the institution on a current basis. The term **does not** include assets that an institution designates as an endowment fund for its own use. In other words, **board designated endowment funds** are not part of this definition.

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UPMIFA: Definitions – Continued

Gift Instrument – means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

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Effective Date for California UPMIFA

- UPMIFA is effective in **California** for institutional funds existing on or established after **January 1, 2009**. For the funds existing on January 1, 2009, the new law governs only decisions made or actions taken on or after that date.
 - UPMIFA as used in this presentation is based on the enacted law for California

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UPMIFA: Two significant differences from UMIFA

- **UPMIFA eliminates the concept of historic dollar value (HDV), in favor of more robust guidance on what constitutes “prudent” endowment spending. The new law modernizes investment management and endowment spending.**
 - Outlines seven factors for accumulating or spending endowment funds (outlined on next slide)
 - Includes a rebuttable presumption that spending above 7% of the value of the fund in one year is imprudent. See next slide for guidance.
- **Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution.**

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UPMIFA – Seven Spending Factors

1. Duration and preservation of the endowment fund.
2. Purposes of the institution and the endowment fund.
3. General economic conditions.
4. Possible effect of inflation or deflation.
5. Expected total return from income and the appreciation of investments.
6. Other resources of the Institution.
7. Investment Policy of the Institution.

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Spending Rate Policies & Prudence Standards

Rebuttable Presumption of Imprudence

The appropriation for expenditure in any year of an amount greater than 7% of the fair market value of an endowment fund

- FMV is calculated on the basis of market values determined at least quarterly and averaged over a period of not less than 3 years immediately preceding the year in which the appropriation for expenditure is made.

This provision does not:

- Apply to an appropriation for expenditure permitted under law other than this part or by the gift instrument;
- Apply to a private or public postsecondary educational institution;
- Create a presumption of prudence for an appropriation for expenditure of an amount less than or equal to 7% of the fair value of the endowment fund.

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UPMIFA – Managing and Investing an Institutional Fund

Eight relevant factors to consider:

1. General economic conditions.
2. Possible effect of inflation or deflation.
3. Expected tax consequences, if any, of investment decisions or strategies.
4. Role that each investment or course of action plays within the overall investment portfolio of the fund.
5. Expected total return from income and the appreciation of the investments.
6. Other resources of the institution.
7. Needs of the institution and the fund to make distributions and preserve capital.
8. An asset's special relationship or special value, if any to the charitable purposes of the institution.

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UPMIFA – Investment Guidelines

- May incur **only costs** that are **appropriate and reasonable** in relation to the assets, the purposes of the institution, and the skills available to the institution.
- Make a reasonable effort to **verify facts** relevant to the **management and investment of the fund**.
- **May pool** two or more institutional funds for purposes of management and investment.
- **May invest** in **any kind of property or type of investment**, unless prohibited by the **gift instrument or law**.
- **Shall diversify** the investments of the institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.
- Perform required **periodic portfolio rebalancing**.


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UPMIFA – Investment Management: Delegation

An Institution may delegate the management and investment of institutional funds *(Subject to any specific limitation set forth in a gift instrument or in law)*

An institution shall act in good faith in all of the following:

- 1) Selecting an agent.
- 2) Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund.
- 3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

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UPMIFA – Investment Management: Delegation

- In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.
- An institution that prudently delegates to an external agent is not liable for the decisions or actions of an agent to which the function was delegated except to the extent a trustee would be liable for those actions or decisions.
- By accepting delegation of a management or investment function from an institution that is subject to the laws of the state, an agent submits to the jurisdiction of the courts of the state in all proceedings arising from or related to the delegation or the performance of the delegated function.
- An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of the state other than this part.

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UPMIFA – Releases and Modifications

With donor consent, an institution may release or modify (for charitable purposes only) a restriction contained in a gift instrument.

Or.... Go to the courts.

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UPMIFA – Releases and Modifications

- Restriction has become impracticable or wasteful - the court may modify
- Restriction has become unlawful, impracticable, impossible to achieve, or wasteful - the court may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument.

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UPMIFA – Releases and Modifications

- If an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, 60 days after notification to the Attorney General and to the donor at the donor's last known address in the records of the institution, may release or modify the restriction, in whole or part, if all of the following apply:
 - The institutional fund subject to the restriction has a total value of less than one hundred thousand dollars (\$100,000) in California.
 - More than 20 years have elapsed since the fund was established.
 - The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument. An institution that releases or modifies a restriction under this subdivision may, if appropriate circumstances arise thereafter, use the property in accordance with the restriction notwithstanding its release or modification, and that use is deemed to satisfy the consistency requirement of this paragraph.

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Understanding UPMIFA

- The Law does not require that a specific amount be set aside as “principal,” i.e., to maintain the purchasing power of the fund.
- The Law assumes charity will act to preserve principal.
- The Law doesn’t reference Historic Dollar Value – only consideration of the preservation of the fund.
- The Law does not specifically reference maintenance of purchasing power – only consideration of inflation and deflation.

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FASB Staff Position (FSP) FAS 117-1

- Key Objectives:
 - Provide guidance on **net asset classification** of donor-restricted endowment funds for not-for-profit organizations subject to an enacted version of UPMIFA.
 - Improve **disclosures** about an organization's endowment funds (both donor-restricted and board-designated), whether or not the organization is subject to an enacted version of UPMIFA.

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FSP FAS 117-1 (Overview)

- Issued on August 6, 2008, with effective date for fiscal years ending after December 15, 2008
 - The reclassification for this pronouncement shall be reported in those financial statements in the earliest comparative period presented for which UPMIFA was effective.
- Key changes in endowment spending guidelines made by UPMIFA and the effect on net asset classification
 - Major changes
 - Implication of a time restriction
 - Further guidance on spending of endowment funds

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FSP FAS 117-1: Temporarily Restricted “Inappropriate” Amounts

For each donor-restricted endowment fund, the organization shall classify the portion of the fund that is not classified as **permanently restricted net assets** as **temporarily restricted net assets** (for a time restriction) until appropriated for expenditure by the organization

Appropriation for expenditure is deemed to occur upon approval for expenditure (by the Board, for example), unless approval is for a future period, in which case appropriation is deemed to occur when that period is reached.

Upon appropriation for expenditure (absent purpose restrictions still be satisfied), the amount appropriated is released from **temporarily restricted net assets** to **unrestricted net assets**.

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FSP FAS 117-1: Disclosure Requirements

Intent

Enable financial statement users to understand the net asset classification, net asset composition, changes in net assets, and spending and investment policies of the endowment funds.

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FSP FAS 117-1: Disclosure Requirements

These minimum disclosures are required whether or not the organization is subject to an enacted version of UPMIFA:

- A. Description of the Board's interpretation of the law that underlies the organization's net asset classification of donor-restricted endowment funds (UPMIFA).

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FSP FAS 117-1: Disclosure Requirements

[A] Board interpretation of law

FMV at Date of Donation

Interpretation of Relevant Law – UPMIFA enacted by California – FMV preservation

The Board of Trustees of the Organization has interpreted the California Prudent Management of Institutional Funds Act (CPMIFA) as requiring the preservation of the fair value of the original gift as of the gift date of the donor-restricted endowment funds absent explicit donor stipulations to the contrary. As a result of this interpretation, the Organization classifies as permanently restricted net assets (a) the original value of gifts donated to the permanent endowment, (b) the original value of subsequent gifts to the permanent endowment, and (c) accumulations to the permanent endowment made in accordance with the direction of the applicable donor gift instrument at the time the accumulation is added to the fund. The remaining portion of the donor-restricted endowment fund that is not classified in permanently restricted net assets is classified as temporarily restricted net assets until those amounts are appropriated for expenditure by the Organization in a manner consistent with the standard of prudence prescribed by CPMIFA. In accordance with CPMIFA, the Organization considers the following factors in making a determination to appropriate or accumulate donor-restricted endowment funds:

- a. The duration and preservation of the fund*
- b. The purposes of the Organization and the donor-restricted endowment fund*
- c. General economic conditions*
- d. The possible effect of inflation and deflation*
- e. The expected total return from income and the appreciation of investments*
- f. Other resources of the Organization*
- g. The investment policies of the Organization*

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Interpretation of Relevant Law – UPMIFA enacted by California – Purchasing power preservation

Purchasing Power

The Board of Trustees of the Organization has interpreted the California Prudent Management of Institutional Funds Act (CPMIFA) as requiring the preservation of the purchasing power (real value) of the donor-restricted endowment funds absent explicit donor stipulations to the contrary. As a result of this interpretation, the Organization classifies as permanently restricted net assets (1) the original value of gifts donated to the permanent endowment, (2) the original value of subsequent gifts to the permanent endowment, (3) accumulations to the permanent endowment made in accordance with the direction of the applicable donor gift instrument at the time the accumulation is added to the fund, and (4) the portion of investment return added to the permanent endowment to maintain its purchasing power. For purposes of determining that portion, each year the Organization adjusts permanently restricted net assets by the change in the Consumer Price Index (CPI) for that year. If the endowment assets earn investment returns beyond the amount necessary to maintain the endowment assets' real value, that excess is available for appropriation and, therefore, classified as temporarily restricted net assets until appropriated by the Board for expenditure. In accordance with CPMIFA, the Organization considers the following factors in making a determination to appropriate or accumulate donor-restricted endowment funds:

- (1) The duration and preservation of the fund*
- (2) The purposes of the Organization and the donor-restricted endowment fund*
- (3) General economic conditions*
- (4) The possible effect of inflation and deflation*
- (5) The expected total return from income and the appreciation of investments*
- (6) Other resources of the Organization*
- (7) The investment policies of the Organization.*

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- B. Description of the organization's policy for the appropriation of endowment assets for expenditure (i.e. its endowment spending policy).

Description of the endowment investment policy, including the organization's return objectives and risk parameters, how those objectives relate to their spending policy, and the strategies used for achieving those objectives.

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[B] Spending Policy, Investing Policy, and Strategy

Return Objectives and Risk Parameters

The Organization has adopted investment and spending policies for endowment assets that attempt to provide a predictable stream of funding to programs supported by its endowment while seeking to maintain the purchasing power of the endowment assets. Endowment assets include those assets of donor-restricted funds that the organization must hold in perpetuity or for a donor-specified period(s) as well as board-designated funds. Under this policy, as approved by the Board of Trustees, the endowment assets are invested in a manner that is intended to produce results that exceed the price and yield results of the S&P 500 index while assuming a moderate level of investment risk. The Organization expects its endowment funds, over time, to provide an average rate of return of approximately nine percent annually. Actual returns in any given year may vary from this amount.


Strategies Employed for Achieving Objectives

To satisfy its long-term rate-of-return objectives, the Organization relies on a total return strategy in which investment returns are achieved through both capital appreciation (realized and unrealized) and current yield (interest and dividends). The Organization targets a diversified asset allocation that places a greater emphasis on equity-based investments to achieve its long-term return objectives within prudent risk constraints.

Spending Policy and How the Investment Objectives Relate to Spending Policy

The Organization has a policy of appropriating for distribution each year five percent of its endowment fund's average fair value over the prior twelve quarters through the calendar year-end preceding the fiscal year in which the distribution is planned. In establishing this policy, the Organization considered the long-term expected return on its endowment. Accordingly, over the long term, the Organization expects the current spending policy to allow its endowment to grow at an average of four percent annually. This is consistent with the Organization's objective to maintain the purchasing power of the endowment assets held in perpetuity or for a specified term as well as to provide additional real growth through new gifts and investment return.

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- C. Composition of the organization's endowment by net asset class at the end of the period, in total and by type of endowment fund, showing donor-restricted endowment funds separately from board-designated endowment funds.

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[C] Endowments by Net Asset Class, in Total and by Fund⁸


Endowment Net Asset Composition by Type of Fund as of June 30, 2009

	Unrestricted	Temporarily Restricted	Permanently Restricted	Total
Donor-restricted endowment funds	\$ -	\$ 46,380	\$ 95,673	\$142,053
Board-designated endowment funds	6,947	-	-	6,947
Total endowment funds	\$ 6,947	\$ 46,380	\$ 95,673	\$149,000

Board Designated



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- D. Reconciliation of the beginning and ending balances of the endowment fund, in total and by net asset class, including, at a minimum, the following line items, as applicable:
- a. Investment return, separated into investment income (interest, dividends, rents) and net appreciation/depreciation of investments
 - b. Contributions
 - c. Amounts appropriated for expenditure
 - d. Reclassifications

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[D] Reconcile Beginning and Ending Balance by Net Asset Class¹⁰

So maybe not 2009

Changes in Endowment Net Assets for the Fiscal Year Ended June 30, 2009

	Unrestricted	Temporarily Restricted	Permanently Restricted	Total
Endowment net assets, beginning of year	\$35,922	\$14,369	\$93,398	\$143,689
Net asset reclassification based on change in law	(28,738)	28,738	-	-
Endowment net assets after reclassification	7,184	43,107	93,398	143,689
Investment return:				
Investment income	287	2,587	-	2,874
Net appreciation (realized and unrealized)	835	7,511	275	8,621
Total investment return	1,122	10,098	275	11,495
Contributions	-	-	2,000	2,000
Appropriation of endowment assets for expenditure	(359)	(6,825)	-	(7,184)
Other changes:				
Transfers to remove board-designated endowment funds	(1,000)	-	-	(1,000)
Endowment net assets, end of year	\$6,947	\$46,380	\$95,673	\$149,000

Note to Reader: In this example, investment returns classified as changes in permanently restricted net assets of \$275 represent only those amounts required to be retained permanently as a result of explicit donor stipulations.

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- E. The nature and types of permanent restrictions or temporary restrictions (FAS 117 ¶14 and 15)

[E] Nature and Types of Restrictions


ENDOWMENT

The Organization's endowment consists of approximately 100 individual funds established for a variety of purposes. Its endowment includes both donor-restricted endowment funds and funds designated by the Board of Trustees to function as endowments. As required by generally accepted accounting principles, net assets associated with endowment funds, including funds designated by the Board of Trustees to function as endowments, are classified and reported based on the existence or absence of donor-imposed restrictions.

Description of Amounts Classified as Permanently Restricted Net Assets and Temporarily Restricted Net Assets (Endowment Only)

Permanently Restricted Net Assets	2009	2008
The portion of perpetual endowment funds that is required to be retained permanently by explicit donor stipulation	\$97,959	\$95,673
Total endowment funds classified as permanently restricted net assets	\$97,959	\$95,673
Temporarily Restricted Net Assets		
Term endowment funds	\$4,388	\$5,058
Total endowment funds classified as temporarily restricted net assets	\$4,388	\$5,058

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- F. The aggregate amount of the deficiencies for all donor-restricted endowment funds for which the fair value of the assets at the reporting date is less than the level required by donor stipulations or law (FAS 124 ¶15 (d))

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[F] Aggregate Amount of Deficiencies for Donor-Restricted Endowments

Funds with Deficiencies

From time to time, the fair value of assets associated with individual donor-restricted endowment funds may fall below the level that the donor requires the Organization to retain as a fund of perpetual duration. In accordance with generally accepted accounting principles, deficiencies of this nature that are reported in unrestricted net assets were \$200 as of June 30, 2009. These deficiencies resulted from unfavorable market fluctuations that occurred shortly after the investment of new permanently restricted contributions and continued appropriation for certain programs was deemed prudent by the Board of Trustees. There were no such deficiencies as of June 30, 2008.

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Previous GAAP with UMIFA (and HDV)

- FASB Statements 117 and 124 and EITF Topic D-49
- Historic dollar value (HDV) portion of fund is in permanently restricted net assets.
- Additional amounts a governing board determines that the law requires to be retained permanently are also in permanently restricted net assets.
- Remainder of fund is in temporarily restricted or unrestricted net assets.
- Losses that bring the value of the fund below historic dollar value are charged to temporarily restricted or unrestricted net assets, rather than permanently restricted net assets.

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FSP FAS 117-1 and UPMIFA's Elimination of HDV

In the absence of explicit overriding donor stipulations, a governing board must determine what portion of the overall donor-restricted fund (not just appreciation) the state's UPMIFA (and other relevant law) requires the organization to retain permanently.

- Reflects the organization's fiduciary duty for a fund of permanent duration
- Depending on whether or not the state's UPMIFA is interpreted to require maintenance of purchasing power, the portion is commonly interpreted to be either the equivalent of historic dollar value or purchasing-power-maintained historic dollar value.

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FSP Implementation Issues

- Reclassification of Unrestricted Net Assets (UNA) accumulated gains to Temporarily Restricted Net Assets (TRNA)
- Review legal covenants and other contracts– Are they based on UNA? On TRNA or Permanently Restricted Net Assets that will change?
- Negotiate changes – FSP accounting change has minimal, if any, economic effect on the entity
- Potential accounting system coding changes – need to plan ahead

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What About the Original Gift Amount?

- The FSP and CA/OR UPMIFA did **not** change FASB's definition of Permanently Restricted Net Assets (PRNA)
- Must review classification of gifts in light of FASB's definition of PRNA
- How does FASB define PRNA?
 - Assets **whose use** by the organization **is limited** by donor-imposed stipulations
 - This Limitation of Use is **Permanent**
 - Cannot Be Removed by Passage of Time
 - Cannot Be Removed by Any Action of the Board

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Gift Agreement Wording

- Donor agreement language ALWAYS takes precedence
- If you don't like your state's enacted law, change your Agreement Template. Ensure agreement are written in alignment with your needs.
- What in the agreement could possibly be unclear?
 - Intent of the donor – for future generations.
 - Alternative application of funds.
 - What to do when fund minimum levels are not met?
 - What to do in “underwater” situations?

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“Best Practice” Gift Agreement Points

- Spirit and intent of Donor.
- Why is Donor making this gift?
- What should future generations know about the donor and this gift?
- Alternate application of the Fund
 - If no longer practical for the fund to be used as specified indicate the process for redirecting in a manner that honors donor’s original intent.

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“Best Practice” Gift Agreement Points

- **Provide for an alternative application of the fund.**
 - For example, “If XXX purpose cannot be matched, funds will be awarded to XXX purpose that most closely or reasonably resembles the donor’s intended purpose so that every attempt is made to expend the funds”.
 - It is important at the inception of the gift that this be resolved and agreed upon to ensure no contingencies exist (and that the purpose is achievable) and the gift can be recorded in accordance with GAAP.
- **Action is matching fund or gift value minimum not met**
 - When does payout begin?
 - Need to reach a certain value?
 - If minimum not reached, transfer amounts to another endowment account or specify what you will do.

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“Best Practice” Gift Agreement Points

- **Specify what to pay if an endowment is “underwater”.**
 - Should the Organization continue to appropriate for expenditure at the rate approved by the governing board?
 - Should appropriations be terminated until such time as the fund market value exceeds the gift value?
- **Include a description of reports available to donors.**
 - Donors should receive or have access to an annual report of the Organization’s financial and operating results.
 - This helps ensure the Organization’s ongoing accountability.
 - Donors may wish to designate other people to receive annual reports.

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“Best Practice” Agreement Points

- **Allow for appropriate flexibility to invest the funds.**
 - Donors may state preferences or restrictions on how the Organization may invest the funds.
 - Such limitation should not unduly limit the Organization’s ability to manage the investments and should not contradict the policies of the Organization.
 - Examples of limitations imposed by a donor include not investing in alternative investments or pooled investments.
- **Specify that endowment spending (appropriations) will be based on the rates and policies in effect at any given time approved by the Organization’s governing board, and may be amended from time to time.**

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UPMIFA – State Law Resources

Where to find your UPMIFA as adopted by California:

UPMIFA - <http://www.upmifa.org>

California - http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb_1301-1350/sb_1329_bill_20080930_chaptered.pdf

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Questions?

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Appendix A

403(b) Plan Overview

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What Employers Can Have a 403(b) Plan?

- Code Section 501(c)(3) organizations - tax-exempt organizations
 - Organized for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international sports competition, or for the prevention of cruelty to children or animals
- Public educational organizations
- Licensed church minister or an organization that shares religious bonds with such minister that it employs

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Maximum Deferral Limits

- \$16,500 (Code Sec 402(g))
- Special catch-up contribution for 15 years of service employees of educational organizations, hospitals, health and welfare service organizations and church related organizations. The lesser of:
 - \$3,000,
 - Excess of \$15,000 over prior year special catch-up contribution deferrals with current employer, or
 - Excess of \$5,000 X years with the employer, over total prior year deferrals with employer
- \$5,500 catch-up contribution for employees age 50 and over (Code Sec 414(r))

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Roth Contributions

- Roth (after-tax) contributions are allowed subject to the following:
 - Plan must separately account for Roth contributions
 - Limits remain the same – treated like deferrals for purposes of contribution limits and distribution rules
 - Qualified distributions (made after 59 ½ or made after death) not taxed if distribution is made after 5 year holding period (begins first year of Roth contribution)

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Employer Contributions

- 403(b) plans that allow employer contributions are ERISA plans
- Employer contributions are subject to:
 - Nondiscrimination testing under Sec 401(a)(4)
 - Minimum coverage testing under Sec 410(b) of the Code
 - ACP testing under Code Sec 401(m) for matching contributions
- Combined employer & employee contributions cannot exceed:
 - \$49,000 dollar limit, or
 - 100% of compensation under Sec 415(c) of the Code.
 - Alternate limit for churches of \$10,000 if 100% of compensation is exceeded (\$40,000 lifetime maximum)

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Employer Contributions

- An employer can make contributions to former employees
 - Deemed to have monthly compensation for the period through the end of the taxable year in which ceases to be an employee and through the end of each of the next 5 taxable years
 - Must not exceed the lesser of the
 - Dollar limit of \$49,000 for 2009, or the
 - Compensation based on the former employee's average monthly compensation during most recent year of service
 - Cannot discriminate in favor of former employees who are HCEs

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Appendix B

Best Practices Issues And Considerations

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Plan Administration

- A Multitude of vendors can mean:
 - Higher participant plan costs
 - Added complexity to plan compliance and administration
 - Lack of clear vendor responsibility for and/or participation in plan compliance
 - Lower plan administration service quality
 - Absence of independent, knowledgeable selection and monitoring of plan investments
- The employer remains liable for compliance breaches

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Vendor Selection Criteria

- Will vendor accept fiduciary responsibility for:
 - Plan compliance
 - Investment selection and monitoring
- Will vendor indemnify employer for compliance failures?
- Are procedures in place to identify and avoid potential vendors' conflict of interests?
- Does vendor offer a complete universe of investment managers or only its own products?

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Corporate Governance

- Employers can no longer avoid “being involved” in a 403(b) plan
- Best Practices
 - Written Investment Policy with periodic monitoring
 - Periodic plan expense review
 - Effective communication to employees
 - Documented procedures to assure compliance
 - Plan Administration and Investments Committee
 - Clear delegation of responsibilities from Board of Directors
 - Periodic reporting to Board of Directors

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Appendix C

401(k)/ERISA/NON-ERISA 403(b) Plan

Comparison

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401(k)/ERISA/NON-ERISA 403(b) Plan Comparison

	401(k)	ERISA 403(b)	Non-ERISA 403(b)
Elective deferral contributions - limit 2009 \$16,500	Yes	Yes	Yes
Elective deferral catch-up contributions - limit 2009 \$5,500	Yes	Yes	Yes
Special catch-up for 15 years of service max \$3,000	No	Yes	Yes
Roth contributions	Yes	Yes	Yes
Employer matching contributions	Yes	Yes	No
Employer contributions for former employees	No	Yes	No
Employer profit-sharing contributions	Yes	Yes	No
Frequency of deferral elections	Yes	Yes	Yes
Minimum distribution rules	Yes	Yes	Yes
Investment alternatives limited to annuity contracts and mutual funds	No	Yes	Yes

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401(k)/ERISA/NON-ERISA 403(b) Plan Comparison

	401(k)	ERISA 403(b)	Non-ERISA 403(b)
Plan Document required	Yes	Yes	Yes
SPD, Form 5500 & SAR	Yes	Yes	No
Elective deferral ADP testing	Yes	No	No
Universality Requirement	No	Yes	Yes
Termination of Plan	Yes	Yes	Yes
Loans & Hardship provisions	Yes	Yes	Yes
ERISA fiduciary responsibilities	Yes	Yes	No
State law governance	No	No	Yes
Incidental death benefits *Existing insurance grandfathered	Yes	No*	No*

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