

With J.H. Cohn, It's All About Teamwork

# ***How NYPMIFA Impacts Endowment Management***

**November 18, 2010**



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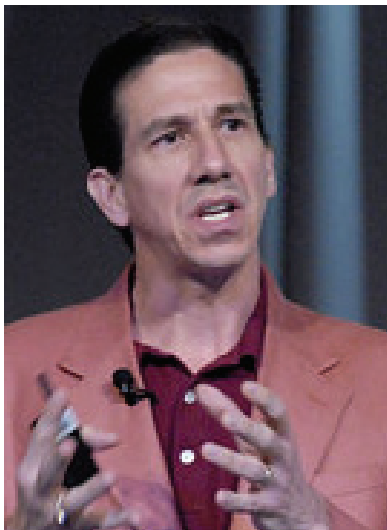
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# Objectives

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- Understanding the legislation
- What boards and management need to do now
- Accounting considerations
- Operational considerations



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November 18, 2010

# Impact of the New York Prudent Management of Institutional Funds Act

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# What is the Nature of Charitable Fund Investment Today?

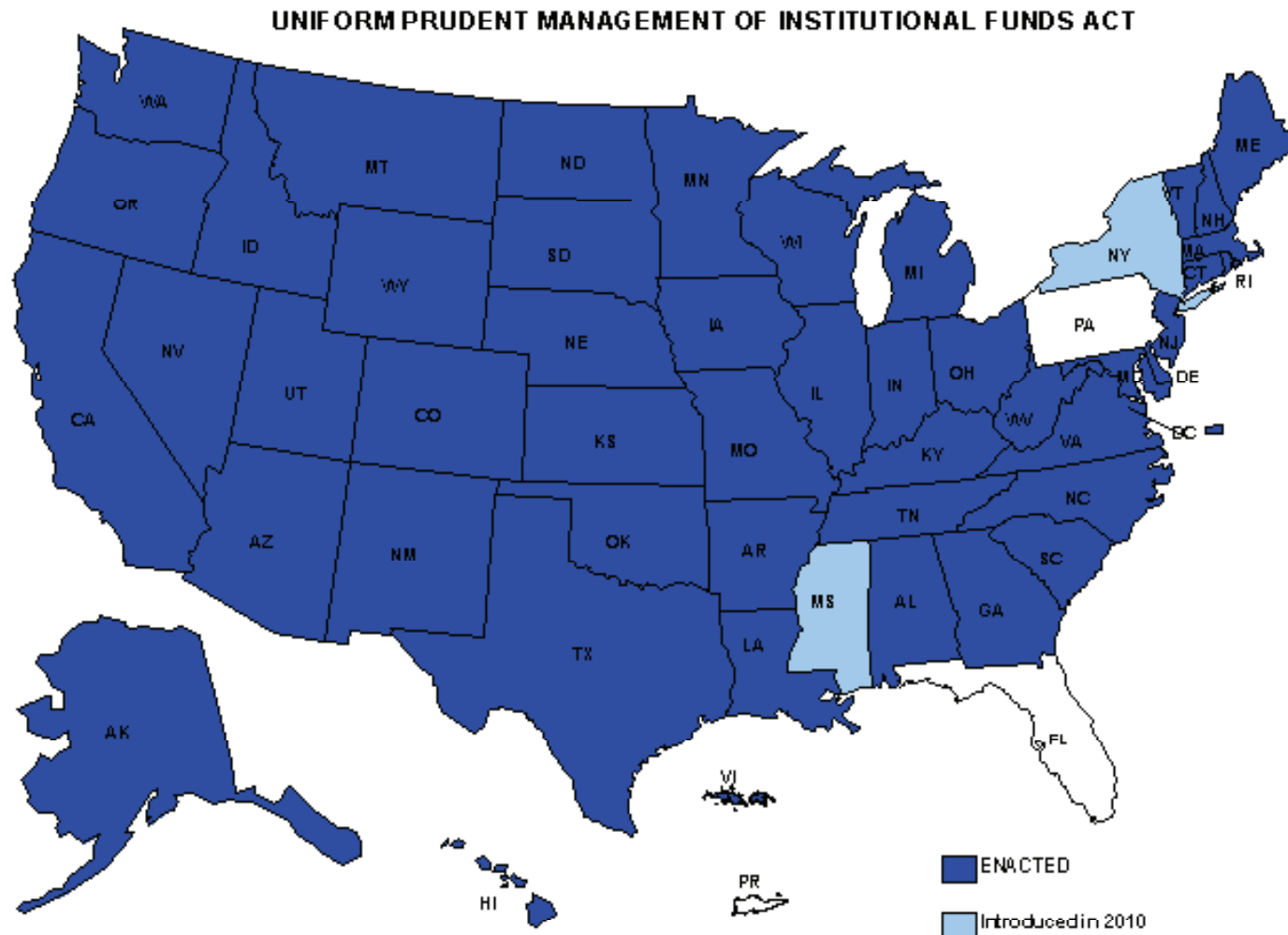
- Donors have choices among charities and are mobile
- Charities operate across a number of jurisdictions
- Charitable fund managers hail from a number of jurisdictions
- Investments are made world-wide
- But the laws on the management of institutional funds are still largely local



# NYPMIFA

- “Uniform **Prudent** Management of Institutional Funds Act”
- Approved on July 13, 2006, by the National Conference of Commissioners on Uniform State Laws
- Adopted in New York on September 17, 2010, as the “New York Prudent Management of Institutional Funds Act”
- Impacts the solicitation, management (including delegation), investment and expenditure of charitable funds

# Uniform Prudent Management of Institutional Funds Act

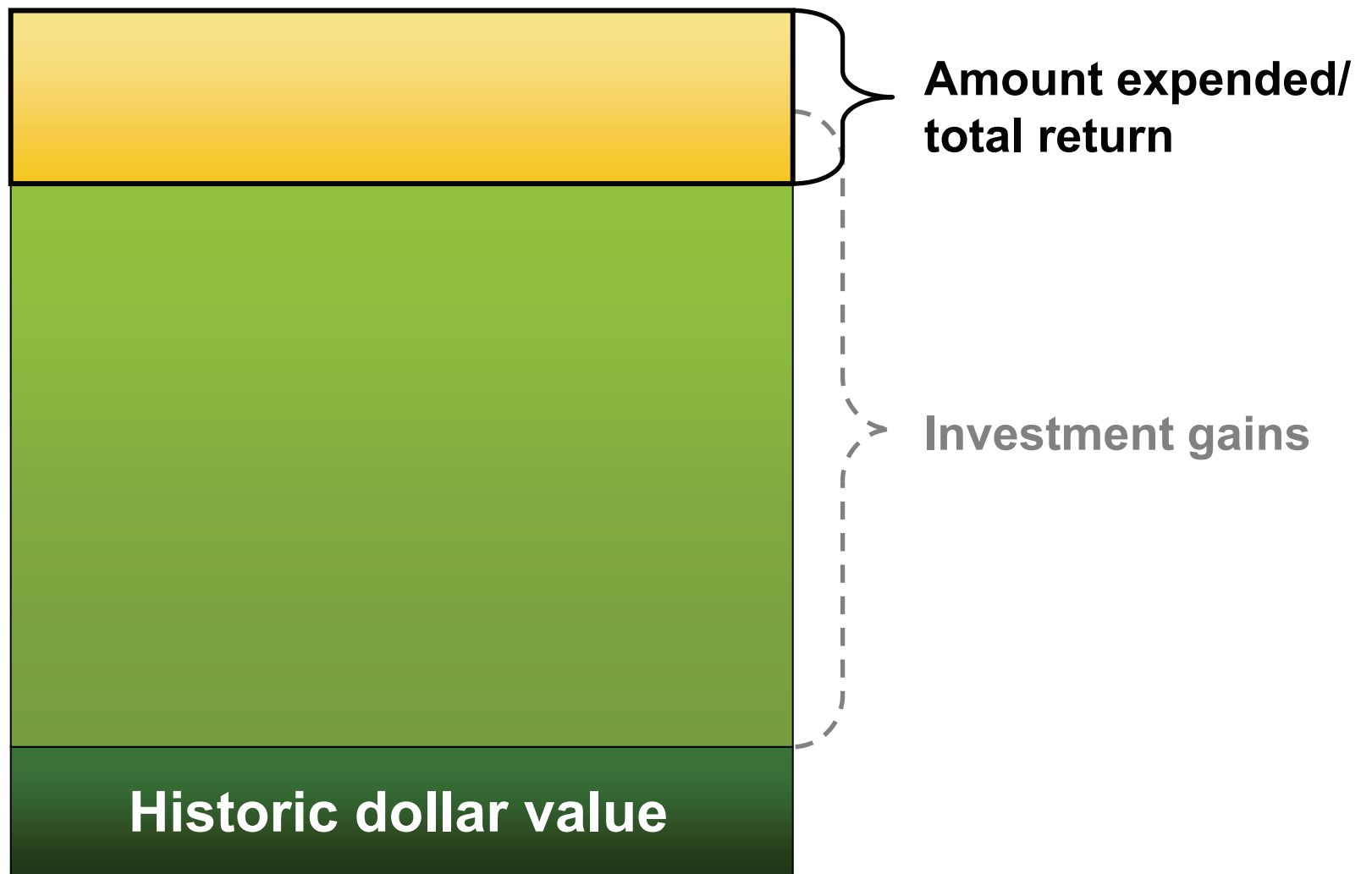


June 14, 2010

# Development Office

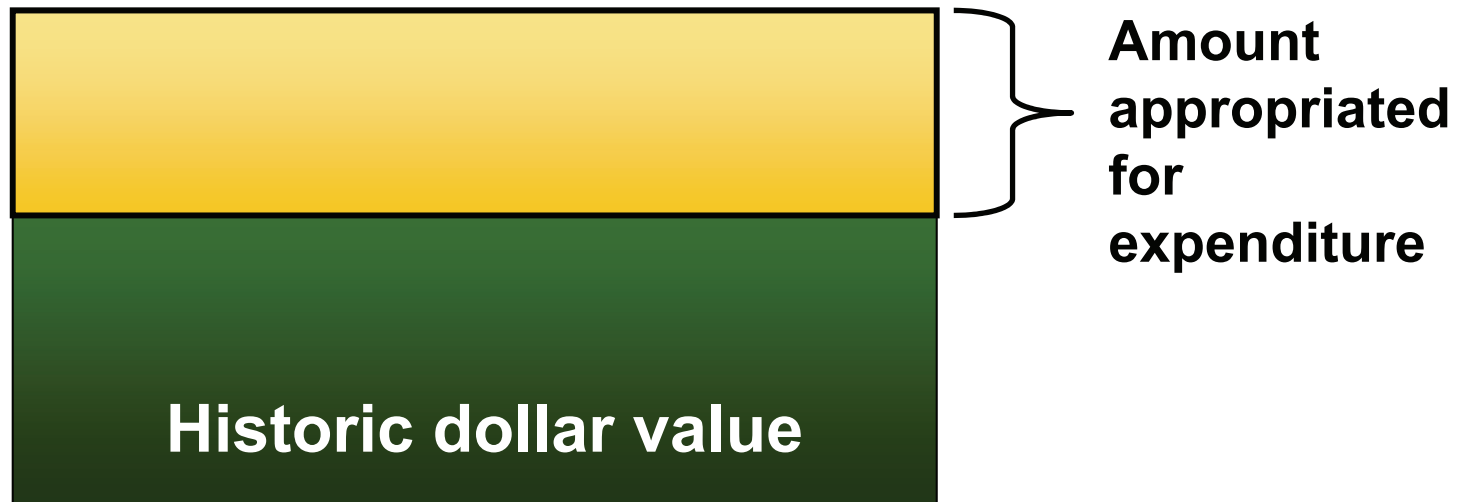
- Donor notice before establishing/affirming spending formula
- Modify gift agreements and solicitations
  - › Clarify donor rights and standing
  - › Avoid Massachusetts rule
  - › Disclosure for endowment solicitations
- Modify gift acceptance policy

# Slicing the Endowment Fund



# Invading Historic Dollar Value

- For old and cold funds:
  - › Must provide 90 days notice to donor (if available)
  - › Who may, with the consent of the institution, clarify or amend the gift instrument to prohibit the use of gain recharacterization
- Specific notice language in statute



# Donor Standing in New York

- Required notice on application of total return to existing endowment funds
- Required notice on court-ordered modification of restriction on the management or investment of a fund
- Required notice on court-ordered modification of use restriction
- Required notice on small, old-and-cold funds
- Donor may consent to release or modification, in whole or in part, a restriction contained in a gift instrument

# Investment Committee

- Adopt/review written investment policy
- Recite specific criteria for investment and total return in a contemporaneous record
- Acknowledge any lack of diversification
- Review delegations to managers



# Delegation Standard

- Ordinarily prudent person in a like position
  - › Selecting, continuing or terminating an agent
  - › Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund
  - › Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation
- By making an effective delegation, the institution is not liable for the decisions or actions of an agent to which the function was delegated

# Effect of 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
- Each contract pursuant to which authority is so delegated shall provide that it may be terminated by the institution at any time, without penalty, upon not more than 60 days notice
- An effective delegation requires an assessment of the agent's independence, including conflicts of interest
- Clarity that ability to delegate to committees, officers or employees remains intact

# Governing Board

- Need to keep accurate accounts
- Treasurer's annual report to members/Board
- Review of existing restricted accounts to establish whether changes are needed
- Review of veracity of internal reporting systems
- Establish approach with donors and donor inquiries

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# Accounting Considerations for NYPMIFA

Presented by  
John Alfonso, CPA, Partner, J.H. Cohn LLP



# ASC Section 958-205-45, Other Presentation Matters

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*(Formerly FSP FAS 117-1 Endowments & UPMIFA)*

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

# ASC Section 958-205-45

## Net Asset Classification – Key Points

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- An endowment is the original gift amount plus the accumulated earnings/deficit thereon
- Elimination of the concept of historic dollar value
- Statement 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.”
- Net asset classification is done fund-by-fund and then aggregated

# ASC Section 958-205-45

## Net Asset Classification – Key Points *(cont.)*

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- Historic dollar value (HDV) portion of fund is classified initially as permanently restricted net assets
  
- Portion of each fund in excess of HDV:
  - Additional amounts a governing board determines that the law requires to be retained permanently are also classified as permanently restricted net assets
  - Remainder of funds is classified as temporarily restricted or unrestricted net assets

# ASC Section 958-205-45

## Net Asset Classification – Key Points *(cont.)*

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- Losses that bring the value of the fund below HDV are charged to temporarily restricted or unrestricted net assets, rather than permanently restricted net assets.
- Unless maintenance of purchasing power is required by either the donor or UPMIFA legislation, the amount classified as permanently restricted net assets for a particular fund **doesn't** change from year to year.

# ASC Section 958-205-45

## Net Asset Classification – Restrictions

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- Time Restrictions:
  - Lapse **upon appropriation**.
  - Appropriation is considered to occur with **approval** for expenditure, **unless** the approval is for a future period.
  - For funds without purpose restrictions, reclassification to unrestricted occurs at that time.
  
- Purpose Restrictions:
  - Reclassification can only happen when funds are spent or deemed spent for that purpose
  - Purpose restrictions cannot be released until amounts are appropriated: the “deemed spent” rule will **no longer apply** to unappropriated amounts.

# ASC Section 958-205-45

## Minimum Disclosure Requirements

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- A description of the governing board's interpretation of the law(s) that underlies the organization's net asset classification of donor-restricted endowment funds.
- A description of the organization's policy(ies) for the appropriation of endowment assets for expenditure (its endowment spending policy(ies))
- A description of the organization's endowment investment policies.
- The composition of the organization's endowment by net asset class at the end of the period, in total and by type of endowment fund.
- A reconciliation of the beginning and ending balance of the organization's endowment, in total and by net asset class.

# ASC Section 958-205-45

## Minimum Disclosure Requirements *(cont.)*

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- In accordance with the requirements of Statements 117 and 124, an organization also shall provide information about the net assets of its endowment funds, including:
  - The nature and types of permanent restrictions or temporary restrictions
  - 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
  
- Illustrative example of the disclosures
  - Appendix C to 117-1
  - ASC Section 958-205-55

# Sample Endowment Composition Disclosure (No Underwater Funds)

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## Endowment Net Asset Composition by Type of Fund as of June 30, 200X

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

# Sample Endowment Composition Disclosure (Underwater Funds)

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## Endowment Net Asset Composition by Type of Fund as of June 30, 200Y

	<u>Unrestricted</u>	<u>Temporarily Restricted</u>	<u>Permanently Restricted</u>	<u>Total</u>
Donor-restricted endowment funds	\$ (200) <sup>11</sup>	\$ 39,589	\$ 97,959	\$ 137,348
Board-designated endowment funds	<u>7,084</u>	<u>—</u>	<u>—</u>	<u>7,084</u>
<b>Total funds</b>	<u>\$ 6,884</u>	<u>\$ 39,589</u>	<u>\$ 97,959</u>	<u>\$ 144,432</u>

# Sample Endowment Roll-Forward Disclosure (Year of Adoption)

## Changes in Endowment Net Assets for the Fiscal Year Ended June 30, 200X

	<u>Unrestricted</u>	<u>Temporarily Restricted</u>	<u>Permanently Restricted</u>	<u>Total</u>
Endowment net assets, beginning of year	\$ 35,922	\$ 14,369	\$ 93,398	\$ 143,689
Net asset reclassification based on change in law	<u>(28,738)</u>	<u>28,738</u>	—	—
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)	<u>835</u>	<u>7,511</u>	<u>275</u>	<u>8,621</u>
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	<u>(1,000)</u>	—	—	<u>(1,000)</u>
<b>Endowment net assets, end of year</b>	<u><b>\$ 6,947</b></u>	<u><b>\$ 46,380</b></u>	<u><b>\$ 95,673</b></u>	<u><b>\$ 149,000</b></u>

# Sample Endowment Roll-Forward Disclosure (Ongoing Year)

## Changes in Endowment Net Assets for the Fiscal Year Ended June 30, 200Y

	<u>Unrestricted</u>	<u>Temporarily Restricted</u>	<u>Permanently Restricted</u>	<u>Total</u>
Endowment net assets, beginning of year	\$ 6,947	\$ 46,380	\$ 95,673	\$ 149,000
Investment return:				
Investment income	298	2,396	286	2,980
Net depreciation (realized and unrealized)	<u>(413)<sup>12</sup></u>	<u>(2,185)<sup>13</sup></u>	<u>—</u>	<u>(2,598)</u>
Total investment return	(115)	211	286	382
Contributions	—	—	2,000	2,000
Appropriation of endowment assets for expenditure	(448) <sup>14</sup>	(7,002) <sup>15</sup>	—	(7,450)
Other changes:				
Transfers to create board- designated endowment funds	500	—	—	500
<b>Endowment net assets, end of year</b>	<b><u>\$ 6,884</u></b>	<b><u>\$ 39,589</u></b>	<b><u>\$ 97,959</u></b>	<b><u>\$ 144,432</u></b>

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# Panel Discussion and Questions & Answers

# Questions & Answers

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- Does NYPMIFA apply to all investments or just endowments?
- Which state's UPMIFA laws would apply to an NPO? Is it in the state where:
  - The NPO is incorporated
  - The endowment is received
  - Where the donor resides?
- What is the difference between a board designated fund and a board designated endowment?
- Do any of the following need to be included in the table in the footnotes?
  - Board designated assets
  - Perpetual trusts
  - Pledges

# Questions & Answers

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- We are a religious/educational organization; does NYPMIFA apply to us?
- What is the penalty for failure to comply with the new law?
- How does ACS manage differences in the various state laws?  
Are there multiple investment pools?
- What software does ACS use to account for its endowments?
- Does State Street Bank have a mechanism to monitor if an NPO is complying with its investment policies?

# Questions & Answers

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- Do most of State Street Bank's clients have one investment pool or multiple pools for endowments and other net assets?
- Do we need to give donor notice before spending from underwater funds or before spending from endowment funds generally?
- The law states that the rebuttal presumption of imprudence is calculated using a period of **not less than 5 years**. How far back can an organization go?
- What does a board need to consider in determining if their spending policy is prudent?
- To what extent does the law define prudent investment management, asset allocation and custody decisions?

# Contact Information

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