

**UNIVERSITY OF KENTUCKY  
AND AFFILIATED CORPORATIONS**

**OPERATING FUND INVESTMENT POLICY**

Amended April 1, 2024

**University of Kentucky  
University of Kentucky Research Foundation  
University of Kentucky Gluck Equine Research Foundation, Inc.  
University of Kentucky Humanities Foundation, Inc.  
University of Kentucky Mining Engineering Foundation, Inc.**

# Table of Contents

	<b>Page</b>
<b>I. Overview and Purpose of the Investment Policy</b>	<b>3</b>
<b>II. Delegation of Authority and Roles and Responsibilities</b>	<b>3</b>
<b>III. Investment Objectives and Structure</b>	<b>4</b>
<b>IV. Investment Policies and Permitted Investments</b>	<b>7</b>
<b>V. Performance Evaluation</b>	<b>10</b>
<b>VI. Policy History</b>	<b>11</b>
<b>APPENDIX 1 – Selection of Investments and Investment Managers</b>	<b>12</b>
<b>APPENDIX 2 – Kentucky Uniform Prudent Management of Institutional Funds Act</b>	<b>14</b>

## **I. Overview and Purpose of the Investment Policy**

This policy applies to the investment of operating or non-endowed funds of the University of Kentucky and its affiliated corporations. Endowments and trust funds are covered by separate policies. Additionally, bond proceeds are invested pursuant to investment guidelines in bond documents and are not subject to this policy. The purpose of this policy is to outline a philosophy that will guide the management of the operating cash and investments toward the desired results. It is intended to be sufficiently specific to be meaningful, yet flexible enough to be practical.

This investment policy is set forth in order to:

- a. Define and assign the responsibilities.
- b. Establish a clear understanding of the investment goals and objectives of the operating fund assets.
- c. Offer guidance and limitations regarding the investment of operating fund assets.
- d. Establish a basis of evaluating investment results.
- e. Manage the operating fund assets according to industry best practices and applicable laws.

The investment policy shall be formally reviewed annually and at such times as desired by the Operating Fund Investment Committee (“OFIC”) and Treasury Staff, as defined in Section II. Any modifications to the policy shall be approved by the OFIC.

## **II. Delegation of Authority and Roles and Responsibilities**

### **Delegation of Authority**

Pursuant to procedures set forth in AR 8:3, the Executive Vice President for Finance and Administration (“EVPFA”) has delegated to the Treasurer the responsibility for the custody, investment and disbursement of University funds in accordance with applicable laws and established policies and procedures. The Treasurer shall establish additional specific written policies and procedures for the administration of the operating fund investment program, which are consistent with the approved investment policy and fulfill the fiduciary responsibility to the University. No person may engage in an investment transaction except as provided under the terms of this policy and the procedures established by the Treasurer.

### **Treasury Staff**

The Treasury Staff (“Staff”) includes the Treasurer, the Assistant Treasurer/Training and Policy Director, the Debt and Liquidity Senior Director, the Debt and Liquidity Analyst and employees in the Treasury Services department. Staff shall manage the daily operating fund investments and prepare analysis and recommendations to the OFIC. Staff shall prepare assessments of investment balances and performance.

When selecting investments to purchase for staff managed funds, as defined in Tiers I and III below, a standard selection process shall be utilized. See Appendix 1 for more information regarding the selection process.

University Financial Services may retain the services of a qualified investment manager(s) to invest funds pursuant to this policy. In collaboration with the OFIC, Staff may appoint, monitor and evaluate external investment managers for the investment of Tier III funds defined in Section III below. Staff will provide updates to the OFIC on manager appointments, terminations, and the ongoing monitoring and evaluation of existing managers, at each meeting and at other times as requested by the OFIC. See Appendix 1 for more information regarding the selection process for external investment managers.

### **Operating Fund Investment Committee**

The OFIC consists of the EVPFA, Treasurer, Chief Investment Officer, Assistant Treasurer/Training and Policy Director and Controller. The OFIC will meet periodically as needed to review operating fund investments and to advise Staff on investment allocations. Staff will prepare investment reports and make recommendations to the OFIC.

## **III. Investment Objectives and Structure**

The primary investment objective is to achieve and maintain a high degree of safety and liquidity. The secondary objective is to maximize investment income taking into consideration investment risk constraints and liquidity needs. Investments shall be made in a manner that seeks to balance these goals for the overall portfolio.

### **Safety of Capital**

Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. Credit risk shall be minimized by limiting investments to the types of securities described in Section IV; pre-qualifying the financial institutions, broker/dealers, and advisors; and diversifying the investment portfolio so that potential losses are minimized. Total portfolio management will seek to ensure capital losses are avoided, whether from securities defaults or erosion of market value.

Investment risk can result from changes in credit quality underlying a security, issuer defaults, market price changes or temporary liquidity problems. In order to reduce investment risk while attaining market average rates of return, the investment portfolio shall be diversified with respect to the type of securities in the portfolio; the concentration of investments held by any financial institution; and the length of maturities of investments.

Interest rate risk, the risk that the market value of securities fall due to changes in general market rates shall be minimized by structuring the portfolio so that securities mature to meet cash flow requirements, thereby avoiding the need to sell securities before maturity. Operating funds held in Tiers I, II, or III, discussed below, shall be invested pursuant to Section IV of this policy and duration shall be appropriate for each Tier.

## Liquidity

The investment portfolio shall maintain sufficient liquidity to meet all operating requirements that may be reasonably anticipated. This is accomplished by structuring the portfolio so that securities mature concurrent with cash needs. Cash flow forecasts, based on reasonable knowledge of future fiscal events and historical fiscal trends, shall be developed and maintained by Staff. Investment maturities shall be based on these forecasts so that cash may be available to meet anticipated expenditures.

Since all cash needs cannot be anticipated, the portfolio shall consist largely of securities with active secondary or resale markets. A portion of the portfolio shall be placed in money market mutual funds or investment pools which offer same-day liquidity.

As indicated on the table below, Tiers I and II will serve to meet daily liquidity needs. The total of Tier I and Tier II shall have a minimum of 60 days cash for day-to-day operating liquidity. When calculating the days cash on hand, expenses shall be based on the consolidated prior fiscal year average operating expense per day. Additionally, the Debt Management Committee shall set targeted cash levels for Tiers I-III on an annual basis by establishing an approved days cash on hand target range for the total cash and investments to be held in Tiers I-III. See [Debt Policy](#) for further details.

The Board of Trustees authorized the establishment of the Hospital Quasi-Endowment Fund<sup>1</sup> and the University Operating Quasi-Endowment Fund<sup>2</sup>, permitting operating funds to be invested in the Endowment Investment Pool, defined as Tier IV below. When determining amounts to be invested, the OFIC shall ensure the approved minimum cash targets are maintained and that the funds will not be needed to support operations for more than 10 years. Consideration shall also be given to market conditions and other financial circumstances. The total of any such funds invested, including existing Tier IV funds, shall not exceed 35% of the overall operating cash and investments contained in Tiers I-III below at the time of investment. Additionally, the maximum amount that can be added to the University Operating Quasi-Endowment Fund within a fiscal year is \$75,000,000.

## Tiered Investment Structure

The investment structure for University operating funds shall be divided into Tiers based on expected liquidity needs, return objectives and State statutes.

---

<sup>1</sup> The Board of Trustees established the Hospital Quasi-Endowment Fund and authorized transfers up to \$250,000,000 of Hospital reserve funds to the quasi-endowment in two separate actions dated March 7, 2006 and April 24, 2007. To date, \$225,000,000 has been transferred to the quasi-endowment for investment in the Endowment investment pool.

<sup>2</sup> The Board of Trustees established the University Operating Quasi-Endowment Fund on May 2, 2017 and authorized transfers subject to (1) liquidity targets approved by the Debt Management Committee; (2) a total operating quasi-fund investment limitation of 35%; and (3) an annual maximum contribution of \$75,000,000 as set forth in the Operating Fund Investment Policy. To date, \$190,000,000 has been transferred to the quasi-endowment for investment in the Endowment investment pool.

The Tiers are defined below:

Category	Manager	Liquidity/Duration	Investment/Return Objective
<b>Tier I</b> <b>Cash, overnight and short-term investments</b>	Staff/ External manager(s)	Daily	Principal preservation and liquidity
<b>Tier II<sup>1</sup></b> <b>Cash on deposit with Commonwealth (subject to KRS 164A.555)</b>	OFM <sup>1</sup>	Daily	Principal preservation and liquidity
<b>Tier III</b> <b>Other operating investments</b>			
<b>Short/intermediate term investments</b>	Staff/ External manager(s)	0 to 5 years	Principal preservation and enhanced return on investment
<b>Intermediate/long-term investments</b>	Staff/ External manager(s)	>5 to 10 years	Principal preservation and enhanced return on investment
<b>Tier IV<sup>2</sup></b> <b>Operating funds invested in Endowment Investment Pool</b>	Staff/ External manager(s)	>10 years	Long-term principal preservation and increased return on investment
<b>Tier V</b> <b>Operating funds allocated for internal loans</b>	Staff	N/A <sup>3</sup>	N/A <sup>3</sup>

<sup>1</sup>The University is required to deposit all receipts collected with the State Treasury within 30 days of receipt except amounts received as gifts, received from grants and endowments, or received by affiliated corporations. The receipts remitted to the State are managed by the Office of Financial Management (“OFM”).

<sup>2</sup> Operating funds invested in the Endowment Investment Pool shall be defined as the Hospital Quasi-Endowment Fund (established by the Board of Trustees in March 2006) and the University Operating Quasi-Endowment Fund (established by the Board of Trustees in May 2017).

<sup>3</sup> Operating funds allocated for internal loans shall be utilized to help minimize the overall cost of capital for the University and provide flexibility on funding for capital projects.

## IV. Investment Policies and Permitted Investments

### Laws and Regulations

The operating funds shall be invested in accordance with the provisions of the Kentucky Uniform Prudent Management of Institutional Funds Act, KRS 273.600 to 273.645, included in Appendix 2.

### Permitted Investments

Investments in Tier I and Tier III which are managed by an external fund manager(s) shall adhere to specific investment guidelines established by Staff and approved by the OFIC, as appropriate, based on the liquidity needs of the University. Investments managed in house by Staff in Tier I and Tier III shall be limited to investments on the Tier I and III Permitted Investments Table below, or other investments and/or funds approved by the OFIC.

Tier II investments managed by the Office of Financial Management at the Commonwealth of Kentucky shall comply with Kentucky Revised Statute 42.500 and Kentucky Administrative Regulations (200 KAR 14:011 and KAR 14:091).

Tier IV investments shall be managed in accordance with the Endowment Investment Policy.

### Tier I and III Permitted Investments Table

Investment	Tier I	Tier III
<b>Repurchase Agreements: collateralized at 102% by U.S. Treasuries</b>	Allowed	Allowed
<b>Compensating balance arrangements with depository banks</b>	Allowed	n/a
<b>Shares of money market funds governed by SEC Rule 2a-7, each of which shall have the following characteristics:</b> <ul style="list-style-type: none"> <li>• The mutual fund shall be an open-end diversified investment company registered under Federal Investment Company Act of 1940, as amended;</li> <li>• The management company of the investment company shall have been in operation for at least five (5) years; and</li> <li>• The mutual fund shall be rated in the highest category by a NRSRO</li> </ul>	Allowed	Allowed
<b>Shares of funds not governed by SEC Rule 2a-7</b> <ul style="list-style-type: none"> <li>• Investment in the fund must be approved by the OFIC</li> </ul>	Not allowed	Allowed
<b>Obligations and contracts for future delivery of obligations backed by the full faith and credit of the U.S. or a U.S. government agency, including but not limited to:</b> <ul style="list-style-type: none"> <li>• U.S. Treasury;</li> <li>• Export-Import Bank (EXIM) of the U.S.;</li> <li>• Farmers Home Administration (FmHA);</li> </ul>	Allowed, duration should be appropriate for Tier	Allowed, duration should be appropriate for Tier

Investment	Tier I	Tier III
<ul style="list-style-type: none"> <li>• Government National Mortgage Corporation (GNMA); and</li> <li>• Merchant Marine bonds</li> </ul>		
<p><b>Obligations of any corporation of the U.S. government or government-sponsored enterprise (GSE), including but not limited to:</b></p> <ul style="list-style-type: none"> <li>• Federal Home Loan Mortgage Corporation (FHLMC);</li> <li>• Federal Farm Credit Banks;</li> <li>• Bank for Cooperatives;</li> <li>• Federal Intermediate Credit Banks; and</li> <li>• Federal Land Banks;</li> <li>• Federal Home Loan Banks (FHLB);</li> <li>• Federal National Mortgage Association (FNMA); and</li> <li>• Tennessee Valley Authority (TVA) obligations</li> </ul>	Allowed, duration should be appropriate for Tier	Allowed, duration should be appropriate for Tier
<p><b>Collateralized or uncollateralized certificates of deposit (CD), issued by banks rated in one (1) of the three (3) highest categories by a nationally recognized statistical rating organization (NRSRO) or other interest-bearing accounts in depository institutions chartered by this state or by the U.S., except for shares in mutual savings banks</b></p>	Collateralized only allowed, duration should be appropriate for Tier	Allowed, duration should be appropriate for Tier
<p><b>Bankers acceptances (BA) for banks rated in the highest short-term category by a NRSRO</b></p>	Allowed, limited to the lessor of \$25 million per name or 10% of the total Tier investments and have a maturity of less than 120 days	Allowed, limited to the lessor of \$25 million per name or 10% of the total Tier investments and duration should be appropriate for Tier
<p><b>Commercial paper (CP) rated in the highest short-term category by a NRSRO</b></p>	Allowed, amount limited to the lesser of \$25 million per name or 10% of the total Tier investments and must have a maturity of less than 120 days	Allowed, limited to the lessor of \$25 million per name or 10% of the total Tier investments and duration should be appropriate for Tier
<p><b>Securities issued by a state or local government, or any instrumentality or agency thereof, in the U.S., and rated in one (1) of the three (3) highest long-term categories by a NRSRO</b></p>	Allowed, amount limited to the lessor of	Allowed, duration should



Investment	Tier I	Tier III
	\$25 million per name or 10% of the total Tier investments; must have a maturity of less than 120 days; and be rated in the highest long-term category by a NRSRO	be appropriate for Tier
<b>U.S. denominated corporate, Yankee, and Eurodollar securities, excluding corporate stocks, issued by foreign and domestic issuers, including sovereign and supranational governments, rated in one (1) of the three (3) highest long-term categories by a NRSRO</b>	Allowed, amount limited to the lesser of \$25 million per name or 10% of the total Tier investments; must have a maturity of less than 120 days; and be rated in the highest long-term category by a NRSRO	Allowed, duration should be appropriate for Tier
<b>Asset-backed securities (ABS) rated in the highest category by a NRSRO</b>	Not allowed	Allowed, duration should be appropriate for Tier

### Safekeeping, Custody and Collateralization

The bank selected as the primary depository for the University will serve as the primary Custodian (“Custodian”) for the University's bank deposits (Tier I). The Custodian for the operating fund investments (Tier I and Tier III managed by Staff) will either be the University’s primary depository bank or designated by the University pursuant to a competitive selection process. Custodian(s) will perform standard custodial functions, including security safekeeping, collection of income, settlement of trades, maintenance of collateral levels, collection of proceeds of maturing securities, and distribution of income. Other Custodians may be utilized when deemed appropriate based on the underlying fund(s) selected for investment. All cash deposits in excess of FDIC or NCUA insurable amounts and investments maintained by any financial institution shall be collateralized. Collateralized securities shall be purchased using the delivery versus

payment procedure. Collateral shall be marked to market daily.

The Custodian(s) shall provide monthly account statements and other reports as requested by University Financial Services. Staff may also establish a collateral account with the Federal Reserve Bank in the name of the University of Kentucky for collateral requirements.

Short-term and intermediate-term investments held by the Commonwealth for the benefit of the University (Tier II) are invested in the Commonwealth’s investment pools and are held in the name of the Commonwealth by the Commonwealth’s custodian. The low duration strategy investments managed by an external manager(s) (Tier III managed by external manager(s)) are held in the University’s name by the University’s endowment investment custodian.

### **Financial Institutions and Broker/Dealers**

In selecting financial institutions, the creditworthiness of the institution shall be considered. Financial institutions seeking to be eligible for the University’s certificate of deposit purchase program, security transactions, repurchase agreements and safekeeping agreements shall annually submit audited financial statements and regulatory reports on financial condition. Security broker-dealers will be selected by creditworthiness. These may include primary dealers of the Federal Reserve rated A1-P1 by a nationally recognized rating agency or other dealers that qualify under 200 KAR 14:011, Section 10.

All financial institutions and broker/dealers who desire to become qualified for investment transactions must supply audited financial statements, proof of National Association of Security Dealers (“NASD”) certification, proof of state registration and a certification of having read and understood and agreeing to comply with the University’s investment policy.

University Financial Services shall formulate a program to provide specific criteria to determine the qualifications of financial institutions or broker/dealers.

## **V. Performance Evaluation**

The investment portfolio shall be designed with the objective of attaining a market rate of return taking into account the investment risk constraints and liquidity needs.

Performance will be measured as follows:

<b>Category</b>	<b>Index</b>
<b>Tier I</b> <b>Cash, overnight and short-term investments</b>	FTSE 3-Month Treasury Bill Index
<b>Tier II</b> <b>Cash on deposit with Commonwealth (subject to KRS 164A.555)</b>	

Category	Index
<b>Limited Investment Pool</b>	Based on benchmark approved by the State Investment Commission <sup>1</sup>
<b>Intermediate Investment Pool</b>	Based on benchmark approved by the State Investment Commission <sup>2</sup>
<b>Tier III Other operating investments</b>	
<b>Short/intermediate-term investments</b>	Blended 50% FTSE 3-Month Treasury Bill Index and 50% Barclays 1-5 Govt Credit Index
<b>Intermediate/long-term investments</b>	TBD based on liquidity needs and investment objectives
<b>Tier IV Operating funds invested in Endowment Investment Pool</b>	Endowment Policy Index
<b>Tier V Operating funds allocated for internal loans</b>	N/A

<sup>1</sup>Current benchmark is the Standard & Poor's Local Government Investment Pool index.

<sup>2</sup>Current benchmark is blended based on 70% BofA Merrill Lynch 1-3 Year US Treasury & Agency Index, 15% BofA Merrill Lynch 0-3 Year US Mortgage Backed Securities Index, and 15% BofA Merrill Lynch 0-3 Month US Treasury Bill Index.

### Reporting Requirements

Staff shall generate reports for management purposes and provide the Board of Trustees periodic information updates on the operating fund investment program.

### Evaluation of External Manager(s)

Managers shall be evaluated quarterly, taking into account the specific investment objectives of the manager, alignment of interest, investment process and resources as well as their past performance.

## VI. Policy History

Revised: April 2024  
Revised: November 2022  
Revised: October 2020  
Revised: July 2018  
Revised: May 2017  
Revised: February 2014  
Revised: February 2012  
Revised: January 2008  
Original: December 1995

**APPENDIX 1**

**Selection of Investments and Investment Managers**

## **Selection of Investments and Investment Managers**

Staff shall utilize a standard process when selecting operating investments to purchase and hiring and monitoring external investment managers.

Money Market Funds, other than government and treasury, and other investments to be made through a contracted brokerage platform shall be selected based on the following process:

- Fund/strategy complies with the parameters outlined in Section IV of this policy
- Review portfolio at least semi-annually to ensure there are not underlying investments that would be undesirable holdings
- Compare the net yields to those of similarly classified funds/investments

The selection of operating investments and external investment managers that do not follow the selection process outlined in this policy shall be based on agreed upon procedures with the University's Chief Procurement Officer and the Office of Legal Counsel.

**APPENDIX 2**  
**Kentucky Uniform Prudent Management of Institutional Funds Act**  
**(KRS 273.600 to KRS 273.645)**

# Kentucky Uniform Prudent Management of Institutional Funds Act

## **273.600 Definitions for KRS 273.600 to 273.645.**

In KRS 273.600 to 273.645:

- (1) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community;
- (2) "Endowment fund" means an institutional fund or part thereof that, under the terms of 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;
- (3) "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;
- (4) "Institution" means:
  - (a) A person, other than an individual, organized and operated exclusively for charitable purposes;
  - (b) A government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; or
  - (c) A trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated;
- (5) "Institutional fund" means a fund held by an institution exclusively for charitable purposes. The term does not include:
  - (a) Program-related assets;
  - (b) A fund held for an institution by a trustee that is not an institution; or
  - (c) 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;
- (6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;
- (7) "Program-related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment; and
- (8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

**Effective:** July 15, 2010

**History:** Created 2010 Ky. Acts ch. 34, sec. 1, effective July 15, 2010.

## **273.605 Standard of conduct in managing and investigating institutional fund.**

- (1) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.
- (2) In addition to complying with duty of loyalty imposed by law other than in KRS 273.600 to 273.645, each person responsible for managing and investing an institutional fund shall 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.
- (3) In managing and investing an institutional fund, an institution:
  - (a) 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; and
  - (b) Shall make a reasonable effort to verify facts relevant to the management and investment of the fund.
- (4) An institution may pool two (2) or more institutional funds for purposes of management and investment.
- (5) Except as otherwise provided by a gift instrument, the following rules apply:

(a) In managing and investing an institutional fund, the following factors, if relevant, shall be considered:

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 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 charitable purposes of the institution;

(b) Management and investment decisions about an individual asset shall be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution;

(c) Except as otherwise provided by law other than KRS 273.600 to 273.645, an institution may invest in any kind of property or type of investment consistent with this section;

(d) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification;

(e) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of KRS 273.600 to 273.645; and

(f) A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

**Effective:** July 15, 2010

**History:** Created 2010 Ky. Acts ch. 34, sec. 2, effective July 15, 2010.

**273.610 Appropriation for expenditure or accumulation of endowment -- Rules of construction.**

(1) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

- (a) The duration and preservation of the endowment fund;
- (b) The purposes of the institution and the endowment fund;
- (c) General economic conditions;
- (d) The possible effect of inflation or deflation;
- (e) The expected total return from income and the appreciation of investments;
- (f) Other resources of the institution; and
- (g) The investment policy of the institution.

(2) To limit the authority to appropriate for expenditure or accumulate under subsection (1) of this section,



a gift instrument must specifically state the limitation.

(3) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or words of similar import:

(a) Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and

(b) Do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (1) of this section.

**Effective:** July 15, 2010

**History:** Created 2010 Ky. Acts ch. 34, sec. 3, effective July 15, 2010.

### **273.615 Delegation of management and investment functions.**

(1) Subject to any specific limitation set forth in a gift instrument or in law other than KRS 273.600 to 273.645, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

(a) Selecting an agent;

(b) Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and

(c) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(2) 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.

(3) An institution that complies with subsection (1) of this section is not liable for the decisions or actions of an agent to which the function was delegated.

(4) By accepting delegation of a management or investment function from an institution that is subject to the laws of the Commonwealth, an agent submits to the jurisdiction of the courts of the Commonwealth in all proceedings arising from or related to the delegation or the performance of the delegated function.

(5) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of the Commonwealth other than KRS 273.600 to 273.645.

**Effective:** July 15, 2010

**History:** Created 2010 Ky. Acts ch. 34, sec. 4, effective July 15, 2010.

### **273.620 Release or modification of restrictions on management, investment, or purpose.**

(1) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(2) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the Attorney General of the application, and the Attorney General shall be given an opportunity to be heard. To the extent practicable, any modification shall be made in accordance with the donor's probable intention.

(3) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the

fund in a manner consistent with the charitable purpose expressed in the gift instrument. The institution shall notify the Attorney General of the application, and the Attorney General shall be given an opportunity to be heard.

(4) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, sixty (60) days after notification to the Attorney General, may release or modify the restriction, in whole or part, if:

- (a) The institutional fund subject to the restriction has a total value of less than fifty thousand dollars (\$50,000);
- (b) More than twenty (20) years have elapsed since the fund was established; and
- (c) The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

**Effective:** July 15, 2010

**History:** Created 2010 Ky. Acts ch. 34, sec. 5, effective July 15, 2010.

**273.625 Reviewing compliance with KRS 273.600 to 273.645.**

Compliance with KRS 273.600 to 273.645 is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

**Effective:** July 15, 2010

**History:** Created 2010 Ky. Acts ch. 34, sec. 6, effective July 15, 2010.

**273.630 Application of KRS 273.600 to 273.645 to existing institutional funds.**

KRS 273.600 to 273.645 apply to an institutional fund existing on or established after July 15, 2010. As applied to institutional funds existing on July 15, 2010, KRS 273.600 to 273.645 govern only decisions made or actions taken on or after that date.

**Effective:** July 15, 2010

**History:** Created 2010 Ky. Acts ch. 34, sec. 7, effective July 15, 2010.

**273.635 Relation of KRS 273.600 to 273.645 to the Electronic Signatures in Global and National Commerce Act.**

KRS 273.600 to 273.645 modify, limit, and supersede the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. secs. 7001 et seq., but does not modify, limit, or supersede Section 101 of that act, 15 U.S.C. sec. 7001(a), or authorize electronic delivery of any of the notices described in Section 103 of that act, 15 U.S.C. sec. 7003(b).

**Effective:** July 15, 2010

**History:** Created 2010 Ky. Acts ch. 34, sec. 8, effective July 15, 2010.

**273.640 Uniformity of application and construction of the Kentucky Uniform Prudent Management of Institutional Funds Act.**

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**Effective:** July 15, 2010

**History:** Created 2010 Ky. Acts ch. 34, sec. 9, effective July 15, 2010.

**273.645 Short title for KRS 273.600 to 273.645.**

KRS 273.600 to 273.645 may be cited as the Kentucky Uniform Prudent Management of Institutional Funds Act.

**Effective:** July 15, 2010

**History:** Created 2010 Ky. Acts ch. 34, sec. 10, effective July 15, 2010.