Berea College

Learning, labor, & service

Investment Policy

Amended and Restated as of October 22, 2021

INTRODUCTION

Berea College, founded in 1855, offers a high-quality liberal arts education to those least able to afford one. While our students come from very different rural, urban and international backgrounds, they share hard-won tenacity, persistence and drive from lived experience. Recognizing the economic limitations of the early Berea students - composed of freed slaves and poor Appalachian youth - the College stopped charging tuition in 1892 and continues that practice today. 99% of our students are Pell Grant recipients and all students are expected to work in Berea's Labor Program that allows them to earn some of their room and board costs.

Foundational elements of our outstanding education emphasize respect and empathy, racial and gender equity, sustainable living, a service mindset and a work program that provides and promotes leadership opportunities. These and other values are set forth in the College's Great Commitments (www.berea.edu/the-great-commitments) and the investment of Berea's endowment shall be made with sensitivity to these Great Commitments, the ethical values they embody, and the significant dependence of the operating budget on endowment spendable return. Environmental, social and governance factors are among other essential considerations in the College's management of its endowment.

To finance this exceptional program of full tuition scholarships, Berea College established a policy in 1920 that places all unrestricted bequests into the College's quasi endowment. This policy has helped the College fund approximately 75% of its educational and general operating budget from the spendable return of the combined quasi and endowment pool. Unlike many colleges and universities, Berea's endowment is the centerpiece of the funding strategy for its educational mission of learning, labor and service. In a real sense, Berea's endowment is its "tuition replacement fund." Consequently, Berea's investment strategy must promote both real growth and acceptable levels of risk if the College is to maintain its no tuition policy and continue as an engine of intellectual, economic and social mobility for those with great promise and limited means.

This investment policy (the "Investment Policy" or “Policy”) has been carefully considered and constitutes a series of guidelines for management in perpetuity of an investment program consistent with the objectives and important mission of Berea College. It is a living document that may be modified over time by the Investment Committee with the approval of the Board of Trustees, but while in force, the Investment Committee, Board, and those who assist the College in managing and investing its endowment must comply with its terms. Consequently, current and prospective members of the Investment Committee and those who assist the Investment Committee should thoroughly understand the Policy to ensure compliance and to establish a shared philosophical base from which all modifications are made.

This Investment Policy is strategic in nature and is augmented by a written investment plan developed by the Chief Investment Officer and approved by the Investment Committee (the "Investment Plan" or the "Plan"). The Investment Plan sets forth specific asset allocation targets and ranges and can be altered as often as necessary. While the Investment Policy is subject to approval by the Board of Trustees, the Investment Plan may be reviewed and revised from time to time by action of the Investment Committee. The current Investment Plan can be found in <u>Appendix A</u>.

Investment Objectives

Working within the spirit of the Great Commitments of Berea College, the Investment Committee, acting on behalf of the Board of Trustees, will supervise a long-term investment program for the College's Endowment Fund, hereafter referred to as the "Fund." The Berea College Investment Program (the "Investment Program") will seek four objectives, in the following order of priority:

1. Preserve the inflation-adjusted value, as defined by the CPI-U (non-seasonally adjusted), of the Fund through contributions, investment returns and prudent spending formulas.

2. Produce an average annual investment return over time that provides for real growth (inflation adjusted by the CPI-U) in assets net of the distributions defined by the spending formula within a reasonable and tolerable level of risk as defined by the Investment Committee.

3. Achieve competitive returns relative to appropriate benchmarks.

4. Consider investment opportunities that make a positive impact on society and the environment, without sacrificing competitive investment return.

The foregoing will be measured over a complete market cycle with emphasis on preserving capital and reducing volatility through prudent diversification. In order to achieve these objectives, the Investment Committee and Chief Investment Officer must be cognizant of the current spending policy of the College, so it has been included as an appendix to this document for reference. Interim results will be reviewed with the understanding that an important priority of the assets is providing for future generations. Due to capital market volatility, the return may vary significantly over shorter periods of time.

Consideration of ESG factors takes into account sustainable business practices that include safe and supportive work environments, resource efficiency, product and service safety, strong corporate governance, and other activities that enhance the long-term sustainability of its investments. This approach does not restrict asset classes or specific companies, but rather it seeks out best in class ESG performers across all industries and sectors based on an independent rating system produced by a third-party organization. Through the ESG process, the College seeks to fulfill its mission of making investments with sustainable and responsible practices that also meet the Program's principal investment objectives.

Fiduciary Responsibilities

The Board of Trustees and its Investment Committee have a legal responsibility to manage the Fund in compliance with the requirements of Kentucky law, including, but not limited to, the provisions of the Kentucky Non-Profit Corporation Act and the Kentucky Uniform Prudent Management of Institutional Funds Act, both found in Chapter 273 of the Kentucky Revised Statutes. (The current text of the Kentucky Uniform Prudent Management of Institutional Funds Act can be found in Appendix C).

The College holds foremost its adherence to fiduciary duties prescribed by law. Within those obligations, as permitted, the Investment Committee strives to consider the impact of investment choices on the environment, society and good corporate governance.

The College makes spending withdrawals from the Fund based on an endowment spending formula and policy. The Berea College endowment spending policy and formula is found in Appendix B. The Board of Trustees has a fiduciary responsibility to comply with the restrictions imposed by the donors of *restricted endowment funds (true endowment funds)*. There are no similar legal requirements limiting the appropriations from the Berea College *quasi endowment funds (also referred to as Tuition Replacement Funds)*. The *quasi endowment funds* are, however, subject to the same standards governing investment authority and standard of conduct for investment and management as pertain to true endowment funds.

The Investment Committee, within the broad framework of the College's By Laws, delegated responsibilities and policies established by the Board of Trustees, will have direct responsibility for the oversight and management of the Fund and for the establishment of investment policies, plans and procedures. The Investment Committee, acting pursuant to authority granted by the Board of Trustees, shall exercise the power to employ or discharge financial agents or advisors. The Investment Committee’s authority may not be delegated to or exercised by a sub-committee or any of the committee’s individual member(s).

Oversight and management of the Fund's assets will be performed by a tiered fiduciary structure. The Berea College Investment Committee, referred to herein as the Governing Fiduciary, shall have ultimate responsibility for establishing the long-term goals, objectives and guidelines that will govern management of the Fund.

The Managing Fiduciary, or Chief Investment Officer, appointed by the Governing Fiduciary, shall be responsible for developing and implementing the investment program in accordance with this Investment Policy and the written Investment Plan attached hereto as Appendix A and to direct, monitor and supervise the various Operating Fiduciaries, hereinafter defined, and report regularly to the Governing Fiduciary and the Vice President for Finance. The Managing Fiduciary has an affirmative obligation, at all times, to share its investment rationale and convictions with the Investment Committee and Vice President for Finance regardless of whether any member(s) of the Investment Committee has different viewpoints.

Operating Fiduciaries are defined as qualified persons or organizations that provide specialized professional services necessary to fulfill functional and administrative requirements of the Fund.

Agreement between the Governing Fiduciary and the Managing Fiduciary on a shared set of long-term investment goals is central to the successful execution of investment policy. This shared vision includes ranking risks by degree of acceptance. Without this shared vision, market volatility and human psychology can work to defeat a well-constructed and disciplined investment program. To that end, the risks below are ranked from least acceptable to most as a touchstone to inform asset allocation and investment decisions:

Failure defined as the inability to, in all significant ways, deliver on executing the mission

Permanent loss of capital - e. g selling in 2008 and staying in cash

Erosion of purchasing power - to preserve intergenerational equity in executing the mission

Drawdowns - in which sustained market declines temporarily decrease spending under the formula

Illiquidity - invested assets are accessible only pursuant to contractual terms

Volatility - the variation in portfolio value driven by constant market movements

Career /embarrassment - choosing safe rather than best options to meet goals

Governing Fiduciary

As the Governing Fiduciary, the Investment Committee's responsibilities, acting by and through its members in accord with this Policy and the College’s By Laws, include:

1. Recommending revisions in the Investment Policy to the Board of Trustees of the College.

2. Appointing and overseeing the Managing Fiduciary who shall have responsibility for the development and implementation of the Fund's investment strategies and discretion to implement these investment strategies in accordance with the Investment Plan attached hereto as Appendix A.

3. Performing a periodic written review of the current Managing Fiduciary and requesting information and proposals from other firms providing Chief Investment Officer services, but no less than every ten years, unless the period is specifically extended by a vote of the Investment Committee.

4. Establishing one or more custody accounts with a custodian to maintain Fund assets.

5. Monitoring the Fund's performance and reviewing the Fund's asset allocation.

6. Delegating to the Managing Fiduciary administrative and operational responsibilities dealing with the investment and reinvestment of the Fund's assets, as outlined in the Managing Fiduciary Client Agreement.

7. Monitoring compliance with this Investment Policy.

8. Reviewing periodically the following subjects with the Managing Fiduciary:
   a. Progress toward all of the stated performance objectives documented in this Policy.
   b. Current asset allocation of all assets included in the Fund.
   c. Investment performance, including comparisons to appropriate benchmarks.

Managing Fiduciary

The Managing Fiduciary, or Chief Investment Officer, will have day-to-day responsibility and discretion for developing, recommending and implementing the Investment Plan for the Fund.

As the Managing Fiduciary, the responsibilities of the Chief Investment Officer include:

1. Reviewing, analyzing, developing and recommending changes to the Investment Policy and Plan, including conducting asset allocation studies and evaluating new investment strategies.

2. Monitoring and managing the Fund's actual asset allocation weights within the strategic targets and ranges defined by the Investment Plan.

3. Selecting, appointing and monitoring specialist investment managers consistent with the Investment Policy and Investment Plan, including periodically making adjustments to manager allocations to best meet the Fund's investment objectives. Providing administrative and operational discretion to support the Investment Policy dealing with the investment and reinvestment of the Fund's assets.

4. Allocating contributions and other cash flows to investment managers or to other investment accounts as established.

5. Taking all actions with respect to investment managers including hiring and terminating, monitoring and reviewing of investment manager contracts.

6. Setting investment guidelines for investment managers and monitoring their compliance and reviewing these guidelines and their compliance with the Governing Fiduciary to the extent the account assets are placed in a separately managed account.

7. Meeting with investment managers and evaluating their investment performance.

8. Providing the Governing Fiduciary and Vice President for Finance with periodic updates concerning the Chief Investment Officer's firm, key personnel and operational matters.

9. Reporting to and meeting with the Governing Fiduciary as directed by the Governing Fiduciary.

10. Providing a periodic review of the overall cost of maintaining the Fund's investment program as directed by the Governing Fiduciary.

11. Providing a review of the liquidity profile of the Fund at each regularly scheduled Investment Committee meeting.

12. Sharing, at all times, its investment rationale and convictions with the Investment Committee and Vice President for Finance regardless of whether any member(s) of the Investment Committee has different viewpoints.

The Master Custodian

The master custodian, usually a major banking institution, will hold in safekeeping all liquid assets of the Fund in the name of Berea College. Independent managers supervising liquid, publicly traded investments regardless of location will settle "delivery versus payment" with the master custodian. Illiquid assets, whether or not they are held by the master custodian, will be tracked for the purpose of consolidating reports.

Specific responsibilities for the Master Custodian include:

1. Safeguarding all assets under custody.

2. Transferring funds from a Berea College account to another pre-designated, pre-approved bank account in the name of Berea College, when properly requested by the Chief Investment Officer and authorized by a Berea College official having appropriate authority.

3. Accounting for all stock splits and other corporate actions.

4. Producing timely and accurate monthly reports listing all assets held by the Fund and reflecting current pricing for any transactions that have taken place during the reporting period.

5. Responding promptly and accurately to periodic reporting requests from the Chief Investment Officer or the Vice President for Finance.

6. Producing monthly performance reports.

The Vice President for Finance

The Vice President for Finance is responsible for administrative support of the Investment Committee and for working closely with the Investment Committee and Managing Fiduciary to carry out the Investment Plan.

Specific responsibilities of the Vice President for Finance include:

1. Carrying out directions of the Investment Committee and acting as an authorized signatory on behalf of the College when entering into investment agreements and related documents, after appropriate legal review.

2. Acting as liaison between the Managing Fiduciary, Finance Office, and Investment Committee, facilitating effective communications between and among these parties.

3. Maintaining detailed records for all endowment funds and investments.

4. Calculating the unit value of the commingled Fund.

5. Supervising receipt and disbursement of monies associated with the Fund.

6. Being informed, on a continuing basis, of the activities of the Managing Fiduciary and the Investment Committee.

7. Conducting periodic reviews of fees relating to the Managing Fiduciary.

8. Being informed, on a continuing basis, regarding the offerings and services of other Chief Investment Officer firms.

9. Being cognizant, on a continuing basis, of the College's cash requirements and maintaining an appropriate liquidity buffer at all times.

10. Promptly alerting the Managing Fiduciary and/or the President of any signs of irregularity or reasons for concern regarding any and all activities affecting the College's endowment funds and investments.

Asset Allocation

To achieve the College's overall objectives for the Fund, an asset allocation study is conducted periodically to establish percentage ranges for each asset class eligible for investment within the portfolio. The asset allocation study analyzes the expected return, risk and correlation of several asset classes, as well as the expected return and risk of various portfolios of these asset classes. The study not only includes asset classes and their expected return and correlation matrix but also includes any constraints applied to the optimization along with the overall expected return of the Fund and its overall volatility. The expected return and risk of various portfolios are evaluated in terms of their ability to best meet the College's long-term investment objectives. Based upon this analysis, an asset allocation policy including ranges for each asset class is constructed that best meets those objectives. The current asset allocation policy is contained in the Investment Plan shown in Appendix A. This Investment Plan may be amended upon a recommendation from the Managing Fiduciary subject to the approval of the Governing Fiduciary.

Rebalancing Procedures

The Managing Fiduciary will periodically rebalance the Fund within the asset allocation ranges set forth in Appendix A. The need for rebalancing should be addressed at least quarterly, or more frequently if warranted by events. Rebalancing should be done only after considering the effect that transaction costs and market impact will have on the overall portfolio.

Although it is the policy of the Managing Fiduciary to invest assets in accordance with the maximum and minimum ranges for each asset class, as set forth in Appendix A, rapid unanticipated market movements or cash flows may cause the asset mix to temporarily fall outside those ranges.

Investment Manager Structure

The assets in each asset class will be invested in accounts managed by one or more independent, third party investment managers that specialize in the specific asset class. Investment managers of varying styles (e.g. growth, value, active, passive, etc.) may be employed within each asset class. Multiple investment managers may be utilized within an asset class at the discretion of the Managing Fiduciary. Performance results for each asset class will be included in the Managing Fiduciary's report to the Governing Fiduciary.

Guidelines for Traditional Investment Managers

Traditional investment managers that are appointed to manage assets for the Fund through separately managed accounts will be provided investment guidelines as appropriate. In general, the guidelines will stipulate the types of securities in which the account may invest, the general characteristics for the portfolio and/or the performance benchmark and objectives. The specific guidelines may vary depending upon the asset class or sub-asset class. These guidelines do not pertain to alternative investments. The guidelines will conform to the following requirements:

1. Investment managers shall generally remain fully invested, except for transitional cash that is needed for cash flows and trading; and shall be invested to maintain risk characteristics consistent with their benchmark and their asset class style.

2. Investment portfolios shall be diversified across managers, asset classes, and styles.

3. Investment managers shall invest the majority of their assets in securities that reflect their asset class assignment.

4. Investment managers may invest in fully collateralized derivatives (swaps or futures) to maintain market exposure, provide liquidity, and hedge currency. Notwithstanding the previous sentence, a manager may utilize derivatives as part of their strategy to gain exposure to certain markets and sectors or to maintain portfolio risk. Derivatives may not be used to introduce leverage into the portfolio.

5. Investment managers may invest in private placements (excluding 144a issues) with the approval of the Managing Fiduciary.

6. The Fund may invest in commingled funds, in recognition of the benefits of commingled funds as investment vehicles (i.e., the ability to diversify more extensively than in a small, direct investment account and the lower costs which can be associated with these funds). The Investment Committee recognizes that they may not be permitted to give specific policy directives to a fund whose policies are already established; therefore, the Investment Committee is relying on the Managing Fiduciary to assess and monitor the investment policies of such commingled funds. The commingled pools, exchanged traded

funds, and limited partnerships may have specific policies that deviate from the guidelines established in this Policy Statement that govern assets supervised by the Managing Fiduciary.

7. Investment managers are permitted to trade in publicly traded Real Estate Investment Trusts (REIT's) and- private real estate transactions.

Alternative Investment Guidelines

The Fund may invest in private real estate, limited partnership interests and other alternative investments, including private equity, hedge funds, and special opportunities. The Managing Fiduciary, will determine the appropriateness of each investment on a case-by-case basis, taking into consideration the relevant analysis of the investment, including the illiquidity of the investment, the size of the investment, etc. in addition to the Fund's overall allocation to alternative investments.

Performance Benchmarks

To evaluate investment performance of the Fund's portfolio, the measure below will be used for comparison:

The combined return of the MSCI All Country World Index (ACWI), the HFRI Fund of Funds Composite and the Barclays Capital Aggregate Bond Index weighted according to the strategic allocation to "Growth Assets", "Diversifying Assets" and "Income Assets" as set forth in <u>Appendix A</u>.

Commingling and Unitizing

The Fund will be commingled and unitized.

Exceptions to this policy include:

1. A donor who specifically directs that a gift be separately invested; or

2. A gift in a form that does not have a ready market, is illiquid or for other reasons that make the asset an unacceptable holding in the Fund.

Every addition to the Fund shall receive units in the Fund based upon the market value of the gift and the unit value of the Fund on the date the gift is added to the Fund. New gifts or other additions purchase units in the Fund at the calendar quarter-end unit value of the Fund prior to the date of the gift. For example, gifts received between April 1 - June 30 purchase units in the Fund at the March 31 unit value.

Chief Investment Officer

Following its appointment by the Board of Trustees, the Investment Committee (Governing Fiduciary) shall have the power to employ or discharge financial agents, including a Chief Investment Officer (Managing Fiduciary) or advisor, with concurrence of the Executive Committee of the Board of Trustees.

The Chief Investment Officer reports directly to the Investment Committee, in its capacity as Governing Fiduciary for the Fund, and will be responsible and have discretion for implementing the Investment Policy and Plan contained herein, monitoring the overall investment program and investment managers, recommending changes to the Investment Policy and Plan and other duties as discussed in this document. The specific duties, authorities, responsibilities, liabilities and fees of the Chief Investment Officer (Managing Fiduciary) shall be articulated in a separate Investment Management Agreement.

Conclusion

Through spendable endowment return, the perpetual pool of endowment investments provides critical operating budget support for the College. This policy is intended to help guide the College in the investment and management of its endowment in order to ensure that the College meets its objectives in carrying out its mission. The Board of Trustees, Investment Committee, College financial staff, and the Managing Fiduciary have the fiduciary responsibility to oversee the College endowment in a prudent manner through regular benchmarking and review of this Investment Policy and the Investment Plan to help maximize the College's overall objectives.

APPENDIX A

Hirtle Callaghan Investment Plan

Client Name	Berea College Endowment
Managed Group	BEREA
Main Account	BR2F20410102
Date	11/22/2022

Asset Class	Long Term Target	Range Min	-	Max
Growth	**73.0%**	**63%**	-	**83%**
Global Equity	54.0%	44%		64%
Private Equity	19.0%	0%		25%
Commodities[1]	0.0%	0%		10%
Real Estate[1]	0.0%	0%		10%
Diversifiers	**10.0%**	**0%**	-	**20%**
Alternative Credit	10.0%	0%		20%
Corporate Opportunities[1,3]	0.0%	0%		10%
Hedge Funds[1]	0.0%	0%		10%
Income	**17.0%**	**0%**	-	**37%**
Investment Grade Fixed Income[2]	17.0%	0%		37%
Cash	0.0%	0%		10%

This Investment Plan was developed by Hirtle Callaghan in consultation with Client and is made a part of the Client Agreement. Client acknowledges and agrees that the Investment Plan applies to the assets held in all of Client's accounts and related sub-accounts (whether existing or opened after the effective date of the Investment Plan), managed as a consolidated account. This means that while each account or sub-account alone may or may not conform to the asset allocation above, the consolidated account will be managed in accordance with such allocation. Similarly, commingled funds (e.g., mutual funds, limited partnerships) in which Client may invest may have specific investment parameters that deviate from the asset allocation above.

Market conditions, cash flows or other factors may move the consolidated account outside of the approved ranges. The implementation of any changes to rebalance the account (or any decision to maintain exposures on a temporary basis, despite being outside of the minimum or maximum ranges) will be made in an orderly manner and consistent with Hirtle Callaghan's fiduciary responsibilities to Client.

Amendments to this Investment Plan may be made upon execution by Client and Hirtle Callaghan of a new Investment Plan, provided that the implementation of any changes will be made in an orderly manner and consistent with Hirtle Callaghan's fiduciary responsibilities to Client.

Jeffrey Amburgey 11/22/2022 | 11:12 AM EST

Jeffrey S. Amburgey, Vice President of Financ Date

Mark J Bagley 11/22/2022 | 1:28 PM EST

Portfolio Manager, Hirtle Callaghan Date

11/22/2022 | 1:22 PM EST

Sara B. Clements, Controller Date

Jamie Eisner 11/22/2022 | 1:56 PM EST

Hirtle Callaghan Date

Appendix B

Endowment Spending Policy & Formula

I. Endowment Spending Policy

The spendable return for the College's commingled long-term pooled investments is determined annually on the basis of the following Endowment Spending Formula, upon recommendation of the Administrative Committee and the approval of the Finance Committee and Board of Trustees. This income is allocated to the specific pooled endowment funds based on the respective number of units assigned to each of those funds.

Subject to the foregoing, decisions concerning the accumulation or appropriation for expenditure of the income or principal of any individual endowed fund shall be governed by the Kentucky Uniform Prudent Management of Institutional Funds Act, KRS 273.600 to 273.645. Spendable income for long-term investment funds, which are not included in the investment pool and which are separately invested due to donor restrictions, being outside the control of the College, or other similar situations, shall be the actual income earned by those investments for those respective funds and spent in accordance to the restrictions of those funds.

II. Endowment Spending Formula

A. Overview

Spendable return for the pooled endowment funds shall be determined annually based on a weighted formula taking into account both the prior year's spendable return and the recent market performance of the long- term pooled investments. The purpose of this formula is to allow Berea College to have prudent and adequate annual support for its educational mission, as well as to preserve the principal and significant gains of the pooled endowment funds in an appropriate manner.

In any given year, if spendable income from this formula results in income in excess of the demonstrated operating budgetary needs of the College, then these excess funds are to be placed in reserve funds to be used for specific current or future capital project or program needs (e. g. TCERF and Capital and Plant reserves). Expenditures of these funds must be reported to and approved by the Board of Trustees. Realizing, too, that in any given year, spendable income from this formula could result in income inadequate to meet the College's needs, there are provisions, with the approval of the Board of Trustees, for adjustment of this formula to allow for adequate income for support of the College.

B. Formula

The amount available for spending per unit from the pooled endowment funds shall be calculated by taking the prior year's spendable return and multiplying it by the annual change in the Consumer Price Index for all Urban Consumers compiled by the U. S. Department of Labor, Bureau of Labor Statistics (CPI) for the previous twelve-month period plus 0.5% multiplied by a weighting factor of 70%. Added to this amount is 5% of the average market value of the pooled investments for the immediately preceding 6 calendar quarters multiplied by a weighting factor of 30%. To help maintain intergenerational equity and ensure a prudent level of spending, if the endowment spendable return calculated under this formula is less than 4.0% or more than 6.0% of the prior June 30 market value of the pooled endowment, the Board of Trustees shall decide whether to make any adjustments to the endowment spendable return for the current year. This calculation is expressed as follows:

$$[(\text{Prior Year Endowment Spendable Return}) \times (1+\text{CPI}+.005) \times .70]$$
$$+$$
$$[(\text{6 Qtr. Avg. Market Value} \times .05) \times .30]$$

Next Fiscal Year Endowment Spendable Return

In each budget year the requested support for Educational and General Expenditures shall be justified through the budget approval process. In years where it is determined that the unrestricted spendable income from the endowment pool is in excess of the justified operational budgetary needs of the College, such excess funds shall be placed in appropriate reserve funds (e. g. TCERF and Capital and Plant reserves), to be utilized based on the recommendation of the Administration and with the approval of the Board of Trustees. In all years, the restricted endowment funds shall be allocated their full allocations under the spending formula. Alternatively, if spendable income exceeds demonstrated operating budgetary needs, TCERF and Capital and Plant Fund needs, any excess may be retained as part of the long-term pooled investments upon recommendation of the Administration and approval of the Board of Trustees.

Appendix C

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.

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.

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;

(c) The possible effect of inflation or deflation;

(d) The expected total return from income and the appreciation of investments;

(e) Other resources of the institution; and

(f) 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.

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.

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.

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.

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.

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).

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.

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