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RE: AGO Position on FASB Statement of Financial Accounting Standards No. 117-1,  
Paragraph 8, and Related M.G.L. ch. 180A Issues

**Issued April 2011**

**FASB Staff Position No. FAS 117-1 (“FSP FAS 117-1”)**

Paragraph 8 provides as follows:

For each donor-restricted endowment fund for which the restriction described in subsection 4(a) [subsection 3(a) in Massachusetts] of UPMIFA is applicable, a not-for-profit organization shall classify the portion of the fund that is not classified as permanently restricted net assets as temporarily restricted net assets (time restricted) until appropriated for expenditure by the organization.

To view the entire statement (available on the FASB website):

<http://www.fasb.org/pdf/fas117.pdf>

**The AGO’s Position**

Pursuant to the Attorney General’s responsibility under [M.G.L. c. 12, s. 8](#), to enforce the due application of charitable funds, set forth below is the Attorney General’s position on the proper treatment under Massachusetts law of donor-restricted endowment funds in financial statements prepared in accordance with No. FAS 117-1, and on related issues under the Uniform Prudent Management of Institutional Funds Act, adopted in Massachusetts as [M.G.L. c. 180A](#) (“UPMIFA”).

The Office of the Attorney General has been requested to provide guidance to Massachusetts charities with respect to certain issues arising under UPMIFA and No. FAS 117-1.

Accounting requirements as to classification of funds for financial statement purposes and legal requirements under UPMIFA in some cases overlap and in some cases are distinct from each other. It is the current position of the Attorney General:

- That, in the absence of explicit donor stipulations contained in the gift instrument which state otherwise, the assets in a donor-restricted endowment are to be treated by an institution as restricted under the terms of UPMIFA, and hence unavailable for expenditure, until appropriated for expenditure by the institution.

- That, consistent with No. FAS 117-1, Paragraph 8, an institution shall in its financial statements classify the portion of a donor-restricted endowment fund that is not classified as permanently restricted net assets as temporarily restricted net assets until appropriated for expenditure by the institution.
- That, as of the date of the enactment of UPMIFA, there is no presumption that an appropriation for expenditure by an institution of an amount that is greater than 7% of the assets of a donor-restricted endowment fund in any given year is imprudent.
- That while under No. FAS 117-1 all or some portion of a donor-restricted endowment fund must be classified as permanently restricted for financial-statement purposes, UPMIFA nonetheless permits an organization to draw from an endowment fund even if that drawing would bring the fund below the dollar amount treated as permanently restricted for accounting purposes, provided, that, the fund is maintained as a permanent fund over time.
- That the term “appropriated for expenditure” should be considered from both an accounting, and a legal, perspective. No. FAS 117-1 Paragraph 9 provides that:

... appropriation for expenditure is deemed to occur upon approval for expenditure, unless approval is for a future period, in which case appropriation is deemed to occur when that period is reached. Upon appropriation for expenditure, the time restriction expires to the extent of the amount appropriated and, in the absence of any purpose restrictions, results in a reclassification of that amount to unrestricted net assets. If the fund is also subject to a purpose restriction, the reclassification of the appropriated amount to unrestricted net assets would not occur until that purpose restriction also has been met, in accordance with the provisions of paragraph 17 of Statement 16.

If an organization takes action to appropriate funds for a future period, it is the position of this Office that regardless of delayed reclassification for purposes of financial-statement presentation, the fiduciary-duty standards of UPMIFA are to be applied when the board takes action. That would occur, for example, when a board approves a budget, even though expenditure, and hence reclassification for financial-statement purposes, will not occur until a future period. A board’s actions should be evaluated for fiduciary-duty purposes in light of considerations before the board at the time of action. If a board authorizes the use of funds for a future period and subsequently finds that as that period arrives, circumstances bearing on the board’s original decision have changed significantly, then as a matter of ongoing fiduciary duty, the board should consider whether its original judgment should be modified.

Please note that this position is effective with respect to [M.G.L. c. 180A](#) as the statute currently applies to institutional funds.