

Spotlight: MRI Public Policy

Like PRIs, the emerging practice of **mission-related investing (MRI)** is primarily regulated by §4944 of the Internal Revenue Code at the Federal level. Because MRIs take impact into account in addition to traditional financial considerations, one could think that these strategies run afoul of the prohibition on jeopardizing investments. The Treasury Department and the IRS, however, have sought to put those concerns to rest.

In guidance issued in 2015, the Treasury Department stated (emphasis added):

*When exercising ordinary business care and prudence in deciding whether to make an investment, foundation managers may consider all relevant facts and circumstances, **including the relationship between a particular investment and the foundation's charitable purposes.***

This guidance was catalytic in encouraging boards and investment committees to approve new MRI strategies. Importantly, it recognizes that foundations can reasonably accept some level of financial trade-off when making MRIs, noting that “foundation managers are not required to select only investments that offer the highest rates of return, the lowest risks, or the greatest liquidity.” Instead, as foundations assess individual investments, they are instructed to consider effects on the entire portfolio and whether it will enable the long-term charitable purpose of the institution.

This view is also consistent with long-standing state regulations. In that context, foundations and other nonprofits are generally permitted to consider an asset’s “relationship or special value” to their institutions’ charitable purposes.

Still, MRIs are not explicitly defined by federal or state regulation, which has led to many calls to codify the 2015 Treasury Department guidance as part of the Internal Revenue Code. While doing so would provide further assurance and clarity to foundations looking to develop MRI programs, existing regulations provide ample latitude for foundations to explore innovative and dynamic strategies.