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**Has UPIA Been Sacked:  
A Guide to the Uniform Fiduciary Income and  
Principal Act**

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## I. Introduction

More often than one would expect, when an estate planning professional is tasked with answering a fiduciary accounting question, he or she may preface the response with, “well, I am not an expert in fiduciary accounting, but...”. Who can blame them? This is an area of expertise laden with ambiguity, not because of inconsistencies in the law *per se*, but because reasonable fiduciaries and practitioners can differ in their interpretation of the law or other guiding principles as applied to the specific set of facts. Not only is this permissible, it is common, and in practice many fiduciaries are left to their own devices. Moreover, there are a variety of sources from where “rules” or guidance can be derived, including the governing document, statutory law, common law, uniform laws, and secondary sources, such as the Restatement(s) of the Law of Trusts. To further complicate matters, trust accounting income is a state law concept and U.S. tax law defines “income” more broadly than the uniform laws do.<sup>1</sup>

What is fiduciary accounting and why is it important? The term “fiduciary accounting” generally refers to the determination of what constitutes principal and what constitutes income for an estate or trust. Fiduciary accounting governs the economic interests of legatees and other beneficiaries.<sup>2</sup> In many cases, the interests of these various parties conflict and the underlying principles of fiduciary accounting are intended to promote and support fairness in determining the rights and beneficial interests between current income beneficiaries and any other potential beneficiaries, such as remaindermen. Traditionally, trust beneficiaries were entitled to either receive income earned by the trust investments or inherit a share of the trust principal. In this scenario, the trustee’s allocation of receipts and expenditures to income or principal had a direct effect on the beneficial interests of the beneficiaries.

For example, an allocation of a receipt to income would benefit the current income trust beneficiary at the expense of the remaindermen. One can see how determining how to allocate receipts can quickly make any fiduciary apprehensive about making such decisions. Trustees and executors, and the professionals they rely upon, must understand the multitude of rules governing allocating receipts and expenditures between principal and income in order to (1) properly carry out their fiduciary duties, (2) minimize or avoid conflict and liability and (3) support fairness among beneficiaries.<sup>3</sup>

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<sup>1</sup> Taxable income is used to determine the payment of taxes to a governmental taxing agency, in this case, the Internal Revenue Service. See Internal Revenue Code Section 61; Treasury Regulation Section 1.61-2. All references to “I.R.C.” or the “Treasury Regulations” are to the Internal Revenue Code of 1986, as amended, including the Tax Cuts and Jobs Act of 2017, and the Regulations promulgated thereunder.

<sup>2</sup> Generally, an “estate” begins when a person dies and the administration of an estate is governed by state law. *See, e.g.,* Texas Estates Code Section 101.001. Whether a trust exists is a matter of state law, and there are instances where a court may determine whether a trust should exist. For example, the Restatement (Second) of Trusts defines a trust as a fiduciary relationship in which one person holds a property interest, subject to an equitable obligation to keep or use that interest for the benefit of another. Unless otherwise indicated, the concepts contained in this article apply to both estates and trusts.

<sup>3</sup> The term “executor” as used in this article refers to executors, independent and dependent administrators, and any personal representative of an estate. See Texas Estates Code Section 22.031 for the definition of “representative” and “personal representative.”

The leading source of guidance for fiduciaries is derived from the Uniform Principal and Income Act (the current form referred to herein as “UPIA”).<sup>4</sup> UPIA provides a set of rules to guide fiduciaries in making fiduciary accounting decisions. UPIA’s stated purpose is to provide procedures for trustees administering trusts and personal representatives administering estates in allocating assets to principal and income, and to govern proper distribution to beneficiaries, heirs and devisees. Most states, including Texas, rely on some version of the Uniform Principal and Income Act, as revised in 1997, and as (slightly) amended in 2000 and 2008.

In 2018, ten years after the most recent amendment to UPIA, the Uniform Law Commission (ULC) approved the revised Uniform Fiduciary Income and Principal Act (UFIPA).<sup>5</sup> Essentially, UFIPA supersedes UPIA and contains several substantial revisions to account for changes in investing concepts and in the way estate planning professionals draft and implement trusts. In the last few decades, the historical distinction between income and principal in trust administration has become less important, and this has a direct effect on how practitioners think about fiduciary accounting. First, the development and general acceptance of modern portfolio theory encourages trustees to invest for the maximum total return, whether the return is in the form of income or growth of principal. Second, modern trusts are often drafted with more flexible terms that give trustees discretion to accumulate income or invade principal when advantageous to further the purposes of the trust. Many trust agreements that we see today permit the trustee to distribute income or principal to children and other descendants of the settlor in the trustee’s discretion, often limited to an ascertainable standard, typically of health, education, maintenance and support. Additionally, many states, including Texas, have lengthened their perpetuities period, so trusts can last much longer, in theory in perpetuity.<sup>6</sup> UFIPA recognizes these developments more so than does its predecessor, the UPIA, and as a result gives trustees additional flexibility to administer discretionary trusts.<sup>7</sup>

So, perhaps the title of this paper goes way too far by stating that the current Uniform Principal and Income Act has been “sacked.” UFIPA is merely a reboot of UPIA intended to provide enhanced and more flexible rules for modern trusts. This article provides an overview of the history of the UPIA and UFIPA, compares and contrasts the two, and provides key takeaways for the practitioner to consider.

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<sup>4</sup> Additional information and the full text of all Uniform Law Commission acts can be found here: <https://www.uniformlaws.org/acts/catalog/searchacts>. In this article, references to UPIA refer to the 1997 version including the 2000 and 2008 amendments (as described in greater detail later in this article). If a specific version of UPIA is referenced, the year it was approved will appear after. For example, “UPIA (1997).”

<sup>5</sup> Full text of the Uniform Fiduciary Income and Principal Act (UFIPA) as drafted by ULC (formerly known as the National Conference of Commissioners on Uniform State Laws (NCCUSL) at its Annual Conference (July 20-26, 2018) with prefatory note and comments can be found here: <https://www.uniformlaws.org/viewdocument/final-act-with-comments-41?CommunityKey=1105f9bb-eb93-4d4d-a1ab-a535ef73de0c&tab=librarydocuments>.

<sup>6</sup> Kelly M. Perez, “My Two Cents: Two Provisions to Include in Trusts Governed by the New Texas Rule Against Perpetuities Period,” REPTL Reporter, State Bar of Texas Real Estate, Probate & Trust Law Section, Volume 59, No. 4 (November 2021).

<sup>7</sup> ULC, “The Uniform Fiduciary Income and Principal Act: A Summary,” UFIPA Enactment Kit, December 8, 2020.

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